

UNITED STATES OF AMERICA
BEFORE THE
ATOMIC ENERGY COMMISSION

ANTI-TRUST

IN THE MATTER OF)
FLORIDA POWER CORPORATION) Docket No. 50-302-A
(Crystal River No. 3)
Nuclear Generating Plant) 4-21-72

ANSWER OF FLORIDA POWER CORPORATION
TO CONDITIONAL REQUEST FOR HEARING
AND PETITION TO INTERVENE

In answer to the Statement of Position and Conditional Request for Hearing and Petition to Intervene in the above entitled matter by the City of Gainesville, Florida, and the Gainesville Utilities Department, Florida Power Corporation requests that the Petition be denied for the following reasons.

1. The Petition has not been filed within the time provided by 10 CFR 2.714 and the Commission's notice published in the Federal Register on February 19, 1972, and the Petitioner has not shown good cause for failure to file on time.
2. The Petitioner's "conditional" request for hearing is not responsive to the AEC notice, and is otherwise improper.
3. The Petition does not state adequate grounds on which to base a request for hearing.

8003 240798

4. A hearing on anti-trust issues in this proceeding is neither necessary nor desirable.

I. The Petition has not been filed within the time provided by 10 CFR 2.714 and the Commission's notice published in the Federal Register on February 19, 1972, and the Petitioner has not shown good cause for failure to file on time.

The Commission's Rules of Practice provide at 10 CFR 2.714: "A petition for leave to intervene which is not timely filed will be dismissed unless the petitioner shows good cause for failure to file it on time." The petitioner has failed to show good cause for its failure to file on time.

The only cause stated by the Petitioner for its late filing is that it "was not aware of the fact that the formal notice was filed in the Federal Register on February 19, 1972 (37 F.R. 3782) which states that petitions for leave to intervene and request for hearings shall be filed within 30 days thereafter."

As set forth in the Petitioner's request the Department of Justice by letter of February 11, 1972, recommended that certain "commitments made by Florida Power Corporation be imposed as license conditions by the Commission and that if this would be done there would be no need for an anti-trust hearing in this matter." Also, as admitted in Petitioner's request the "Commission on February 15, 1972, mailed to Gainesville's Counsel

a copy of the Attorney General's letter of February 11, 1972" and that formal notice was filed in the Federal Register on February 19, 1972 (37 F.R. 3782) which states that Petitions for Leave to Intervene and Request for Hearing shall be filed within thirty days thereafter.

Section 105(c)(1) of the Atomic Energy Act of 1954 as amended provides for the prompt transmission to the Attorney General of any written request for anti-trust review provided for in Paragraph 3 of this Sub-section (which would include the request made by the Petitioner in the above entitled matter) and that the Attorney General shall, within not to exceed 180 days after receiving a copy of the Commission's written request, "render such advice to the Commission as he determines to be appropriate in regard to the finding to be made by the Commission pursuant to Paragraph 5 of this Sub-section." The Attorney General's letter of February 11, 1972, constitutes compliance with this requirement of the Atomic Energy Act. Section 105(c)(5) provides "Promptly upon receipt of the Attorney General's advice the Commission shall publish the advice in the Federal Register." This provision of the statute is confirmed by the Commission's Rules of Practice 10 CFR Part 2 Appendix A VIII (d) which provides "The Director of Regulation will publish the Attorney General's advice in the Federal Register promptly upon receipt...." Section d of the Regulation goes on to provide that the Federal Register Notice "will state that petitions for leave to intervene and requests for hearing shall be filed within 30 days after publication of the Notice."

The Petitioner and its Counsel must be presumed to have had actual notice of the provisions of Section 105(c) of the Atomic Energy Act of 1954, as amended, and of the Commission's implementing regulations. The Petitioner has exhibited an intense interest in the development of those procedures. It intervened unsuccessfully in the proceedings leading to the issuance of a construction permit to Florida Power Corporation for the purpose of attempting to raise anti-trust issues. The Petitioner's Counsel participated directly in the Congressional hearings held in 1970 leading to the enactment of the amendments to Section 105(c) of the Act, upon which the procedures here in question were based. Upon receipt of notice from the Commission of its rights under Section 105(c)(3), the Petitioner requested the conduct of an anti-trust review by the Department of Justice.

Upon receiving from the Commission a copy of the Attorney General's letter, Petitioner and its Counsel should have known that the Notice would be published by the Commission at an early date, as required by the Act, and the Commission's regulations. Assuming they did not in fact have actual knowledge of the Commission's publication of notice, they should have had sufficient interest to inquire as to the Commission's future course of proceeding. Taking into account the intense interest expressed by the Petitioner in this subject matter in the past, and its present assertion of its importance, the Petitioner had a responsibility to keep itself currently informed and should not be permitted

at this juncture to place a responsibility on others to take positive action to give the Petitioner actual notice of its rights or be subjected to late petitions and dilatory actions.

The Petitioner asserts its belief that it is already a party intervenor in the proceeding. The Petitioner was a party intervenor in the construction permit proceeding. That proceeding was concluded by the Initial Decision of the Atomic Safety and Licensing Board on September 24, 1968, and the issuance of Construction Permit No. CPPR-51 on September 25, 1968. There is no pending "proceeding" on the anti-trust issue and there will be none unless the Commission grants this Petition and directs that an anti-trust hearing be held. The Petitioner's belief is erroneous.

II. The Petitioner's "conditional" request for hearing is not responsive to the Commission's Notice and is otherwise improper.

The Commission's "Notice of Receipt of Attorney General's Advice and Time for Filing of Petitions to Intervene on Antitrust Matters" (37 F.R. 3782) stated that "any person whose interest may be affected by this proceeding may....file a petition for leave to intervene and request a hearing on the anti-trust aspects of the application." A "conditional" request for hearing is not responsive to the Notice.

A request for hearing, conditioned as is the Petitioner's request here, is improper and should be dismissed. A hearing is requested, unless the Commission is prepared to condition the operating license in accordance with the Petitioner's proposed interpretation of, and enforcement provisions concerning, certain commitments made by Florida Power Corporation to the Department of Justice. The alternative proposed by the Petitioner is one that the Commission could not properly adopt over the objection of Florida Power Corporation without a hearing on the issues presented by the proposal. A request for hearing so conditioned is improper and should be denied.

III. The Petition does not state adequate grounds on which to base a request for hearing.

The Petition fails to state any facts that could form the basis for a finding by the Commission that the licensed activities of Florida Power Corporation would create or maintain a situation inconsistent with the anti-trust laws. To the contrary, the Petition states only that the Petitioner and Florida Power Corporation are arranging for the construction of facilities and an operating agreement for interconnected operation in accordance with orders of the Federal Power Commission and that the Petitioner has requested from Florida Power Corporation the rates, terms and

conditions for transmission of power between the Petitioner and the electric utilities. There is no allegation by the Petitioner of any refusal or failure to negotiate in good faith coordinating arrangements or of any discrimination or unfair competition or of any other actions by Florida Power Corporation that might conceivably be regarded as monopolistic, restrictive of competition or otherwise inconsistent with the anti-trust laws.

The Petition is defective in failing to state any facts that would indicate any adverse effect on the Petitioner if the application of Florida Power Corporation is granted or any basis on which the Commission could find that the licensed activities would create or maintain a situation inconsistent with the anti-trust laws.

IV. A hearing on anti-trust issues is neither necessary nor desirable.

The interests of Petitioner will be fully protected by the order of the Federal Power Commission (40 FPC 1227), affirmed by the U.S. Supreme Court, 402 U.S. 515 (1971), directing the interconnection of the Petitioner with the system of Florida Power Corporation and coordination of operations of the two utilities and by the commitments made by Florida Power Corporation in a letter to the Department of Justice, dated December 6, 1971 (attached to the letter dated February 11, 1972 from the Department of Justice to the Commission, containing the Department's advice on its anti-trust review).

The commitments there proposed by Florida Power Corporation include a commitment to "facilitate the exchange of bulk power by transmission over its system between or among two or more entities with which it is interconnected on terms which will fully compensate it for the use of its system to the extent that subject arrangements reasonably can be accommodated from a functional and technical standpoint." Florida Power Corporation is prepared to accept that commitment, as well as the other commitments stated in its letter to the Department of Justice, as a condition of its license for operation of Crystal River Unit 3.

As we understand the Petitioner's position, it does not seek additional new commitments, but seeks only an interpretation of the commitments already made. As the Attorney General pointed out in his letter of February 11, 1972, "these commitments.... collectively state a policy which should tend to eliminate abuses possible from Applicant's unregulated monopoly control over transmission". The Attorney General concludes: "It appears that if Florida Power Corporation's commitments were to be imposed as license conditions by the Commission, the question of accommodating anti-trust policies with power needs in this case would be satisfactorily resolved".

The commitments made by Florida Power Corporation clearly state a set of basic principles that should assure that the

Petitioner will have access to the generating and transmission capacity of Florida Power Corporation on terms that are fair and reasonable. Certainly they provide a solid framework for governing the operating relationship of the two systems that will meet all requirements of anti-trust policy and considerations of equity.

To attempt at this time to apply those principles to an infinite array of hypothetical situations, each of which would present complex technical and financial problems, would be an unnecessarily difficult and futile exercise. Assuming that the commitments expressing those principles are included as conditions to the operating license, the Petitioner will have access to the Commission for the purpose of obtaining interpretations of the principles and their application to specific factual situations as to which the parties have been unable to reach agreement. The Federal Power Commission too would be available to resolve controversies in areas under its jurisdiction.

Florida Power Corporation believes that the litigious atmosphere that has pervaded its relationship with the Petitioner has persisted for too long. The time has come to follow the course of good faith negotiation between the parties on matters concerning their continuing coordination and cooperation, using as a basis

for negotiations the principles established in the commitments made by Florida Power Corporation and accepted by the Attorney General as a satisfactory resolution of the anti-trust aspects of the situation.

The hearing requested by the Petitioner is neither necessary nor desirable. The request should be denied.

Respectfully submitted,
FLORIDA POWER CORPORATION

Stanley A. Brandimore

Harry A. Evertz, III

Roy B. Snapp

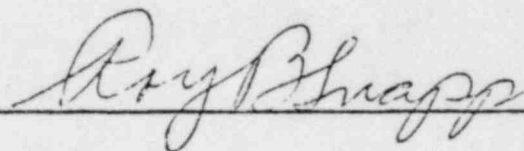
Counsel for Florida Power Corporation

April 21, 1972

Law Offices:

Bechhoefer, Snapp & Trippe
1725 K Street, N.W.
Washington, D. C. 20006

By



N.W.