

DOCKET NUMBER  
PROD. & UTIL. FAC. 50 302

UNITED STATES OF AMERICA  
ATOMIC ENERGY COMMISSION



In the Matter of )  
Florida Power Corporation )  
Crystal River Unit 3 )  
Nuclear Generating Plant )

Docket No. 50-302

0120/ASLR 11-16

EXCEPTIONS BY GAINESVILLE TO PREHEARING  
ORDER AND INITIAL DECISION OF ATOMIC  
SAFETY AND LICENSING BOARD; AND REQUEST  
FOR RELIEF

The Intervenors, the City of Gainesville and the Gainesville Utilities Department (collectively referred to as "Gainesville") pursuant to Section 2.762 of the Commission's Rules of Practice hereby file exceptions to and request relief from the Atomic Safety and Licensing Board's ("Board") Prehearing Order of June 28, 1968 and its Initial Decision of September 24, 1968.

The exceptions taken to the Order of June 28, 1968 go to the Board's refusal to grant Gainesville's motion to enlarge the issues. The exceptions taken to the Initial Decision are with respect to Conclusions 5, 6 and 7.

1. The Board in its Order of June 28, 1968 erred in denying Intervenor's Motion to Enlarge the Issues (Order, pp. 4-5).

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a. Practical value

The ruling failed to consider the complete record contained in the filings and correspondence associated with this application. The applicant sought exemption from provisions of 10 CFR 50.10(b) or 10 CFR 50.12 alleging the capacity of the Crystal River unit to be of vital importance to the reliability of its power system (Intervenor's Exhibit No. 1). Such assertions are a clear illustration of "practical value" with respect to the paramount public utility duty to maintain an adequate system. Such considerations precede the narrower question of economic "competitiveness of the nuclear power plant with conventional power plants," which the Commission views as the essential test of "practical value." In the Matter of Duke Power Company, Docket No. 50-269 et seq., p. 6, Decision dated January 3, 1968.

The Applicant initially sought licenses for two identical units (Docket No. 50-302, 50-303, Application filed August 1, 1967). The second unit (Crystal River No. 4) was withdrawn by letter of March 25, 1968 (Joint Appendix, Item No. 8) which asserted that from the company's evaluation of future load growth (rather than competitiveness with conventional units) construction of Unit No. 4 "would not constitute a prudent investment in generating capacity" (emphasis added).

Gainesville submits that it is improper for the Licensing Board under the authority granted by Section 191 of the Atomic Energy Act (42 U. S. C. 2241) to claim lack of jurisdiction to consider the issue of practical value as it pertains to the appropriateness of the application under Section 104(b) while the Division of Reactor Licensing requests information relevant to the granting of exemptions for construction activity (Intervenor's Exhibit 1, p. 2). Such exemptions by way of facilitating timely installation of Crystal River Unit 3 run directly to the matter of operational integrity of the Applicant's power system.

b. Conditioning of permit and license

As to this second issue (Petition to Intervene, p. 3, paragraph 5, June 14, 1968), whether the grant of license or provisional construction permit for the Crystal River Unit 3 be conditioned upon the availability of output to municipal utilities on non-discriminatory terms and termination of any other violations of anti-trust policy, Section 50-54(g) of the Commission Regulations provides, that whether stated therein or not, compliance with the anti-trust laws as specified in Section 105a of the Act shall be a condition of every license issued. Therefore, it is obviously relevant and within the Commission's jurisdiction to determine whether this condition can be complied with, i. e. whether anti-trust laws are already violated

and the condition violated in advance. For the very reason that such compliance is a condition, the Board erred in failing to consider the allegations of the Intervenor in this proceeding and in effect ruled that it is not the Board's function to conduct investigations of alleged violations of the anti-trust laws. The anti-trust laws express fundamental national policy in favor of free and fair competition and in abhorrence of attempts to restrain such competition and to achieve monopolies for such purposes. The fundamental policy is binding upon this Commission, as it is upon other agencies of the Government. It has been made binding on this Commission by the provisions of the Atomic Energy Act, such as 1(a), 1(b), 2(c), 2(d), 2(e), 2(g), 2(i), 3(d), 3(f), 102, 103, 104 (b), 105 and 182. The Board erred in ignoring this policy.

2. The Board erred in its Initial Decision (Conclusion 5, p. 20) wherein it was determined this project was involved in research and development leading to a demonstration of practical value. Its reliance (Initial Decision pp. 15-16) on the views of the Commission set forth in the Duke decision fails to recognize significant recent history in the demonstration of the economic competitiveness of scaled-up, light water reactors. As shown in Appendix A\*, the Connecticut Yankee plant, even in its first six months of operation has

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\* Data are from New England Power Company's Financial Statement and Operating Report for Month and Period Ended June 30, 1968, page 5.5. This was obtained in deposition proceedings held beginning August 13, 1968, Power Planning Committee v. New England Power Co., FPC E-7388.

proved to be competitive with respect to other energy supplies purchased by the New England Power Company. Nearly 200 million kilowatt-hours were provided at a cost of 6.87 mills, contrasted with energy supplied by Boston Edison and Consolidated Edison at unit costs of 8.33 mills and 8.03 mills per kilowatt-hour respectively. Of equal significance is the lower cost shown in comparison with the performance of the Yankee (Rowe) Atomic, a predecessor in the history of demonstration units approved under 104(b) licenses.

These demonstrable results are not lost on the electric utility industry which is currently committed to 72,404,000 kw of nuclear capacity (100 units as of September 1968) or approximately 25% of the present installed capacity of conventional units. (AEC release, L-230, October 10, 1968). Moreover, a moment's reflection will lead any reasonable mind to conclude that actual plant construction cost, actual fuel costs, operating and maintenance costs and plant availability when operation commences are identical to those elements comprising verification of any new fossil-fuel addition to a utility's generating capability. Notwithstanding the fact that nuclear fuel rather than fossil fuel constitutes the energy source, the Applicant employs the same criteria for evaluating both conventional and nuclear generating facilities (Gainesville Finding of Fact 9). The performance, plant availability and economics, of a nuclear power generating station represents the composite functioning of conventional and nuclear portions of the energy

conversion system. Actual performance may be a bane or blessing to the utility company irrespective of the fuel used. Those who have committed funds to construct light water reactors will view with some detachment any subsequent determination by the Commission of "practical value."

3. The issuance of provisional construction permits as provided for in 10 CFR 50.35 makes no distinction between 103 and 104(b) projects. Public health and safety is the paramount concern whether a proposed utilization facility be categorized as "commercial" or for the "demonstration of practical value." Thus it cannot be contended as does the Board (Initial Decision pp. 10-12) that further study related to the suppression of radioactive iodine falls within the purview of Section 104(b). Under the terms of 10 CFR 50.35 such work is neuter in character. This aspect of facility design as indicated in this Board's decision (Initial Decision pp. 7-8) and as evidenced in the review of Florida Power and Light's Turkey Point facility (Docket Nos. 50-250, 50-251) reflects concern with public safety by way of exclusionary boundaries, dosages and matters which must consider the unique features of the individual site relative to its population and weather environment (10 CFR 100.10). These matters are distinct from demonstration of practical value and thus are not proper foundation for a 104(b) license.

4. The Board accepted core thermal and hydraulic design as the only other actual research and development area as distinguished from "a program to develop needed additional data" (Initial Decision p. 11) or "ordinary improvement considerations not involving any great expansion of reactor technology. . ." (Initial Decision, p. 12). However, the decision failed to show any justification in the record for this finding. The record in the proceeding does not support this determination (Gainesville Finding of Facts 2, 4d ; Staff's Finding of Fact 12). In light of the fact that the core design for the Crystal River Unit 3 is stated to be a result of the optimization of operating parameters (Gainesville Finding of Fact 2) and that this "R & D" item will be studied in the Duke (Docket 50-269) and the Metropolitan projects (Docket 50-289), there can be no basis for asserting this work as it affects this application is actual research as opposed to ordinary improvement considerations not involving any great expansion of reactor technology. There was no claim made that absent the work associated with Crystal River, the Duke or Metropolitan Edison core studies would be inadequate or incomplete.

5. The Board erred in concluding the Applicant has sustained the burden of proof to warrant license approval under Section 104(b), and that such application was properly filed thereunder (Conclusions 6, 7). Counsel for the Applicant concedes that the burden

of proving the appropriateness of this application under Section 104(b) falls on Florida Power's shoulders (Tr. 51, 124-125). Gainesville submits in view of the foregoing that the Applicant has not carried this burden. Nor does this project evidence "an experimental purpose concomitant with the purposes of economic demonstration" which the Commission found present in the Duke application (Commission Decision, 50-269 et. seq. p. 12, January 3, 1968). This is apparent in the statement (Gainesville Exhibit No. 3) by Mr. A. P. Perez.\*

It is the position of Gainesville that the Applicant with care and deliberation (Gainesville's Finding of Fact 1; Exhibit No. 3 ), having a foremost concern for its power system operation, has chosen to build a plant devoid of any uncertainties attendant to the expansion of reactor technology. It is respectfully submitted that the completion and operation of Connecticut Yankee which has intervened between this date and the Determination Regarding Statutory Finding of Practical Value (31 F.R. 221, January 7, 1966), together with facts which accompany this application warrant a finding by the Commission that the Crystal River Unit 3 cannot be properly brought within Section 104(b) of the Atomic Energy Act.

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\* Appendix B is the letter by Gainesville counsel supporting the introduction of this material into the record. See footnote 12, p. 14 of the Initial Decision.

6. The Board erred in failing to provide in its Initial Decision for regulations and terms of license as "will be compatible with the regulations and terms of license which would apply in the event that a commercial license were later to be issued, " as required by Section 104(b) of the Act. In this connection, the Board has erred in failing to require that application for commercial license under Section 103 must be made when a finding of "practical value" can be made under Section 102 with reference to the proposed Crystal River Unit 3.

WHEREFORE, the City of Gainesville and the Gainesville Utilities Department pray:

1) That these exceptions be each and every one granted, and that the matter be remanded to the Board for the further proceedings consistent with this action;

2) That the Board be ordered and directed to take testimony, receive evidence and make findings on the following questions:

a) Whether in fact the instant application covers a commercial project rather than a research and development project;

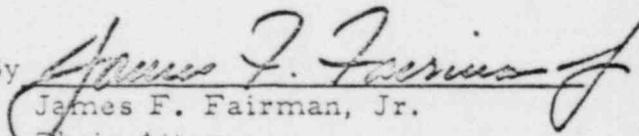
b) Whether and to what extent the instant application meets the criteria established for commercial licenses including whether it has "practical value" within the meaning of Section 102 of the Act.

3) That the Board be ordered and directed to take testimony, receive evidence, and make recommended findings on the question whether "the proposed license would tend to create or maintain a situation inconsistent with the anti-trust laws" so that such testimony, evidence and recommended findings may be reported to the Attorney General for his use in the dispatch of his statutory responsibilities.

4) That the Board reserve jurisdiction to convert this application to a project authorized under Section 103 of the Atomic Energy Act, pending the determination to be made by the United States Court of Appeals for the District of Columbia in Docket Nos. 21884 (Power Planning Committee of the Municipal Electric Association of Massachusetts v. AEC) and 21706 (Cities of Statesville, et al. v. AEC).

Respectfully submitted,

CITY OF GAINESVILLE, FLORIDA  
and  
GAINESVILLE UTILITIES DEPARTMENT

By   
James F. Fairman, Jr.  
Their Attorney

October 14, 1968

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NEW ENGLAND POWER COMPANY

Comparative Statement of Purchased Power

Period Ended June 30, 1968

	This Year			Last Year		
	K.W.H.	Rate (Mills)	Amount	K.W.H.	Rate (Mills)	Amount
<b>PURCHASED POWER—STEAM</b>						
Massachusetts Electric Company				157,917.88	21.73	3,352,432.85
Narragansett Electric Co., The				456,800	69.95	31,952.21
Canal Electric Company	103,155,000	3.00	309,465.00			
Connecticut Yankee Atomic Power Co.	192,876,855	6.87	1,324,760.68			
Yankee Atomic Electric Company	152,157,927	9.72	1,475,746.37	186,364,553	7.66	1,426,693.69
Boston Edison Company	683,152,557	8.33	5,687,368.24	329,691,167	9.81	5,198,648.15
Conn. Valley Electric Exchange	31,576,600	6.96	219,666.42	40,869,800	6.49	261,378.25
Consolidated Edison of New York	270,022,600	8.03	2,165,765.90	224,493,000	6.42	1,441,500.41
Fitchburg Gas & Electric Light Co.	1,388,800	6.61	9,184.45	(41,800)	(3.05)	(127.55)
Holyoke Power & Electric Company	208,900,900	6.42	1,341,994.00	211,457,200	6.70	1,416,799.00
Montaup Electric Company	4,860,000	8.10	39,388.17	2,139,000	10.23	21,882.70
Niagara Mohawk Power Corporation	9,535,000	6.68	65,655.37	78,387,000	8.27	647,942.59
Public Service Company of N. H.	31,779,170	4.37	139,001.10	18,589,700	7.15	132,990.32
Vermont Electric Power Co., Inc.	32,329,700	4.99	161,283.84	14,772,000	8.11	119,749.22
Ware Industries, Inc.	68,100	10.00	681.00			
Brayton Point Diesel Generation During Construction				486,000	10.82	5,258.52
<b>TOTAL POWER PURCHASED—STEAM</b>	<b>1,722,102,569</b>	<b>7.52</b>	<b>12,945,843.54</b>	<b>1,461,901,208</b>	<b>9.62</b>	<b>14,057,100.36</b>
<b>PURCHASED POWER—HYDRO</b>						
Conn. Valley Electric Exchange						
Gilman Paper Company	357,000	1.69	601.75	451,500	1.52	688.50
Metropolitan District Commission	2,655,930	5.72	15,179.70	4,960,095	5.17	27,632.99
Public Service Company of N. H.	1,206,200	1.44	1,741.24	20,900	.89	18.53
Vermont Electric Power Co., Inc.						
Ware Industries, Inc.	823,700	4.00	3,294.80	715,000	4.00	2,860.00
<b>TOTAL PURCHASED POWER—HYDRO</b>	<b>5,042,830</b>	<b>4.13</b>	<b>20,817.49</b>	<b>6,147,495</b>	<b>5.08</b>	<b>31,200.02</b>
<b>TOTAL PURCHASED POWER</b>	<b>1,727,145,399</b>	<b>7.51</b>	<b>12,966,661.03</b>	<b>1,468,048,703</b>	<b>9.60</b>	<b>14,088,300.38</b>