

FLORIDA POWER CORPORATION

ST. PETERSBURG FLORIDA

August 22, 1968

Samuel W. Jensch, Esquire
Chairman, Atomic Safety and Licensing Board
United States Atomic Energy Commission
Washington, D. C. 20545

Dear Mr. Chairman:

In re: Florida Power Corporation
(Crystal River Unit 3)
Docket No. 50-302



Florida Power Corporation is in receipt of a copy of Gainesville's letter of August 20, 1968, responding to the three questions contained in your letter of August 12, 1963, addressed to Counsel for Gainesville.

In response to the Chairman's first question relating to Gainesville's purpose in offering Mr. A. P. Perez' unsworn statement into evidence, Gainesville candidly states that the sole purpose of the offer is to show that the chief executive officer of Florida Power has concluded that the Application does not fall within the intent and purpose of Section 104b. of the Atomic Energy Act of 1954, as amended. Had Mr. Perez been on the witness stand under oath, any such question attempting to elicit his opinion or conclusion as to the intent and purpose of a law would have been objectionable as incompetent and immaterial since it would not have been shown that Mr. Perez is competent to express a legal opinion or conclusion. Mr. Perez' educational and professional qualifications are set forth in Exhibit 6 under Tab 3 of the Application, which is in evidence as Item No. 1 of Joint Exhibit "A". As shown in this evidence, Mr. Perez is an Electrical Engineer. Any opinion or conclusion Mr. Perez may have as to the intent and purpose of Section 104b. is not competent or relevant and must be ruled to be inadmissible and improper. Such evidence or incompetent conclusion of law would have been clearly inadmissible and improper cross-examination if Gainesville had attempted to inject it into the record at the hearing, had Mr. Perez been a witness under oath. The unsworn statement cannot now be logically ruled admissible when belatedly offered for the same improper purpose.

Gainesville's response to the second question, asking to what issue does Mr. Perez' unsworn statement relate, begins by narrowly interpreting Section 104b. as only authorizing the licensing of nuclear facilities that lead to major advances in the application of atomic

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energy for industrial or commercial purposes. This interpretation conveniently ignores the language of the first two sentences and takes the last sentence of Section 104b. out of context. This sentence merely vests the Commission with discretionary powers in determining priorities between applications to construct nuclear facilities, if circumstances do not permit the construction of both facilities. This last sentence in no way passes upon the jurisdictional licensability under Section 104b. of the application deemed by the Commission to have the lower priority.

The remainder of Gainesville's response to the second question relates to the business judgment exercised by Florida Power in choosing to construct a nuclear power plant in lieu of a conventional plant. Such considerations are clearly beyond the jurisdictional issues being considered.

Gainesville's response to the third question merely sets forth Gainesville's interpretation of what is or is not research and development as defined in the Atomic Energy Act. This type of argument should more properly be left for exceptions and briefs addressed to the full Commission.

Florida Power renews its objections to the admissibility into evidence of the unsworn statement of Mr. A. P. Perez. In addition to the grounds set forth in its Answer in Opposition served on all parties August 1, 1963, Gainesville has now acknowledged in its response to the three questions that the purpose of the offer is to inject into the record an incompetent and irrelevant legal conclusion. The document would not have been properly admitted into evidence for this purpose had the offer been made during the evidentiary hearing. Florida Power, therefore, respectfully renews its objections and urges the Chairman of the Atomic Safety and Licensing Board to deny Gainesville's motion.

Respectfully submitted,

FLORIDA POWER CORPORATION

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Assistant Counsel

HAE:tm

cc: Gerald F. Hadlock, Esquire
 J. T. Turnbull, Esquire
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 Secretary, Atomic Energy Commission