

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

11-6-68

In the Matter of)
)
FLORIDA POWER CORPORATION)
)
(Crystal River Unit 3)
Nuclear Generating Plant))

Docket No. 50-302

REGULATORY STAFF'S RESPONSE TO
FLORIDA POWER CORPORATION'S MOTION TO
STRIKE AND TO GAINESVILLE'S
MOTION FOR HEARING



I

Background

The Initial Decision of the atomic safety and licensing board (board), issued September 24, 1968, authorized the issuance of a construction permit to Florida Power Corporation (applicant) to construct a nuclear reactor, designated Crystal River Unit 3, at its site near Crystal River, Florida. On October 14, 1968, the City of Gainesville, Florida, and Gainesville Utilities Department (collectively referred to as "Gainesville") filed exceptions to the Initial Decision directed, among other things, to the board's denial of its Motion to Broaden Issues to include the question of whether the Crystal River facility has "practical value". In support of its contention that the board erred in denying its motion, Gainesville referred to information filed with the Federal Power Commission concerning the cost of electric energy from the

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Connecticut Yankee facility during its first few months of operation and to an AEC release concerning the status of nuclear power plants at the end of September 1968, neither of which had been introduced into the record in this proceeding.

On October 25, 1968, the applicant filed a Motion to Strike the documents referred to by Gainesville and the discussion of these documents set forth in Gainesville's exceptions on the ground that the statements and documents are immaterial and irrelevant to any issue properly before the board and are belated attempts to include this material in the record of this proceeding.

On October 30, 1968, Gainesville filed an "Answer" to the applicant's motion to strike and a Motion for Hearing. Gainesville asserts that the "purpose of bringing to the Commission's attention the latest data concerning the practical value of the Connecticut Yankee Project...was to...help it determine whether the Board should have review and a hearing held as to whether...[the Crystal River] plant has practical value...." (Gainesville's Answer to Motion to Strike, p. 2.) In its prayer for relief, Gainesville requests that the Commission "grant a hearing on the matter of practical value in light of the...information [relating to the operation of the Connecticut Yankee facility]". (Gainesville's Answer to Motion to

Strike, p. 6.) In addition, Gainesville seems to request (page 5) that the record be reopened so that the data concerning Connecticut Yankee's operating experience can be received in evidence with respect to the "jurisdictional issue", i.e., whether the construction permit for the Crystal River facility can be properly issued pursuant to § 104 b. of the Atomic Energy Act of 1954, as amended (Act).

II

Argument

Gainesville's Motion for Hearing

Gainesville's request for a "hearing on the matter of practical value", is yet another attempt to interject the practical value question into this adjudicatory proceeding. The same question is pending before the Commission in Gainesville's exception challenging the board's denial of its Motion to Broaden Issues to include the practical value question. Each of these efforts by Gainesville ignores the Commission's decision in the Philadelphia Electric case in which the Commission held that "[t]he finding of practical value is a non-delegable function of the Commission which can properly be made by the Commission only in a rule making proceeding in which all interested persons would have an opportunity to participate." 1/

1/ Matter of Philadelphia Electric Co., Nos. 50-277 and 50-278, Memorandum and Order (AEC, Dec. 5, 1967), p. 3.

This question cannot properly be considered in this adjudicatory proceeding. Moreover, as pointed out by the Commission in that case, the finding of practical value is to be made as to a "type" of utilization facility and not as to a specific proposed facility. Accordingly, Gainesville's request to reopen the record in this case to receive evidence on the question of the "practical value" of the Crystal River facility should be denied.

Gainesville's request to reopen the record to receive the data concerning the Connecticut Yankee operations, with respect to the "jurisdictional issue" should also be denied. The information concerning the operation of the Connecticut Yankee facility is not relevant or material to the question of whether the construction permit for the Crystal River facility can properly be issued pursuant to § 104 b. of the Act. The Connecticut Yankee facility is authorized to operate at 1473 megawatts (thermal) 2/ compared to an anticipated initial power level of 2452 megawatts (thermal) for the Crystal River facility. While both facilities are pressurized, light water reactors, there are very substantial differences in the design of the two facilities. The Connecticut Yankee reactor is a

2/ Matter of Connecticut Yankee Atomic Power Co., 2 AEC 393 at 393 (Initial Decision, May 14, 1964) [hereinafter referred to as Connecticut Yankee].

four loop plant 3/ whereas the Crystal River facility has only two loops in the primary system. (Applicant's Summary Description of Application, following Tr., p. 264 at 11; PSAR, Vol. I. Section 4, paragraph 4.2.5; Staff Safety Evaluation, following Tr., p. 275 at 25.) A particularly important difference is the "once through steam generator" which is incorporated in the Crystal River plant.

(Applicant's Summary Description of Application, following Tr., p. 264 at 22; PSAR, Vol. IV. Supp. 1, Question 1.4; Staff Safety Evaluation, following Tr., p. 275 at 11.) This feature, which is not included in the Connecticut Yankee plant, 4/ is the subject of an extensive research and development program. (Applicant's Summary Description of Application, following Tr., p. 264 at 22; PSAR, Vol. IV. Supp. 1, Question 1.4; Staff Safety Evaluation, following Tr., p. 275 at 58.) Gainesville has made no showing that the economic data relating to Connecticut Yankee operation would, in any way, tend to establish that the Crystal River facility is not properly licensable under § 104 b. Further, the record of this proceeding contains ample evidence that the Crystal River facility is a utilization facility involved in the conduct of research and development activities leading to the demonstration of practical value which accordingly, is properly licensable under § 104 b. of the Act.

3/ Id. at 397.

4/ Connecticut Yankee, supra note 2 at 397.

(See Applicant's Summary Description of Application, following Tr., p. 264 at 22-25; Staff Safety Evaluation, following Tr., p. 275 at 58-60.) Its construction and operation will contribute economic data, useful in the demonstration of practical value and the applicant is engaged in research and development activities of a technical nature with respect to the proposed facility.

In view of the foregoing, the "Motion for Hearing" filed by Gainesville should be denied.

Applicant's Motion to Strike

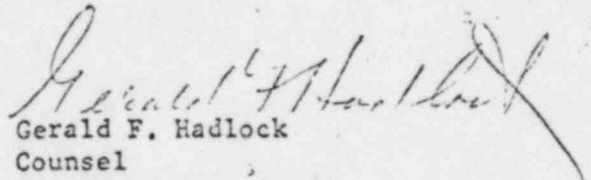
In our view the applicant's Motion to Strike should be granted. Gainesville states that the only purpose in referring to the Connecticut Yankee data was to give the Commission "background information" on which to base its decision as to whether the issues in this case should be broadened to include the "practical value" question. The basic question presented concerns the proper type of proceeding for a determination of "practical value". This legal question has already been resolved by the Commission in the Philadelphia Electric case. Factual evidence, such as the economic data concerning the Connecticut Yankee facility, could not affect this legal determination.

IV

Conclusion

For the reasons set forth above, we believe that Gainesville's Motion for Hearing should be denied and the applicant's Motion to Strike should be granted.

Respectfully submitted,


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Dated at Bethesda, Maryland,
this 6th day of November, 1968.

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