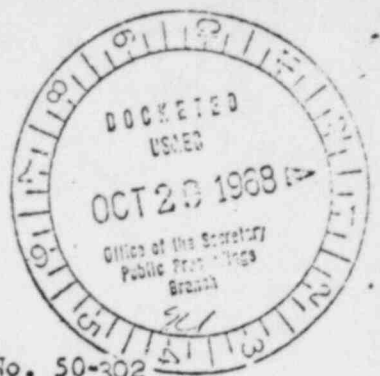


11-28-68



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

SUMMARY OF BRIEF OF THE REGULATORY STAFF

File

The attached brief of the regulatory staff is directed to the exceptions filed by the intervenors, the City of Gainesville, Florida, and the Gainesville Utilities Department ("Gainesville") to the Initial Decision of the atomic safety and licensing board issued September 24, 1968. Gainesville claims that the board erred in denying its motion to enlarge the issues to consider evidence of the "practical value" of the Crystal River facility and evidence concerning antitrust matters. Gainesville also maintains that the board erred in concluding that the Crystal River plant is a utilization facility involved in the conduct of research and development activities leading to a demonstration of practical value and therefore licensable pursuant to § 104 b. of the Act and in failing to condition the construction permit with respect to antitrust considerations and to assure compatibility with § 103.

The Commission's Memorandum and Order in the Philadelphia Electric case in which the Commission held that a finding of practical value can only be made within the context of a rule

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making proceeding is dispositive of Gainesville's contention that the board erred in denying its motion to enlarge the issues to consider evidence of the practical value of the Crystal River facility. As pointed out in that decision, the finding of practical value under § 102 is a non-delegable function of the Commission and is to be made as to a "type" of utilization facility and not as to a specific proposed facility. In any event, as the Commission stated in the Duke case, the applicant's decision to rely on a nuclear facility rather than a fossil fueled plant to fulfill its future needs for generating capacity is not, as Gainesville suggests, a sufficient basis for a finding of practical value.

The Commission's decisions in Duke, Vermont Yankee and Philadelphia Electric are also dispositive to Gainesville's contention that the Crystal River facility is not properly licensable under § 104 b. of the Act. As the Commission pointed out in the Duke case, "development", as used in § 104 b., includes a demonstration that will provide a basis for commercial evaluation and, until there has been such a demonstration of practical value, large scale utilization facilities which will contribute to the basis for a reliable estimate of economic competitiveness are involved in the conduct of activities encompassed in § 104 b.

Moreover, a number of design features are incorporated in the Crystal River facility which require research and development to complete the design. Of particular significance is the research and development program related to the effectiveness of the containment sprays to absorb radioactive iodine.

Thus, the Crystal River facility is clearly licensable under § 104 b. of the Act because its construction and operation will contribute economic data useful in the demonstration of practical value and because the applicant is engaged in research and development activities with respect to the proposed facility.

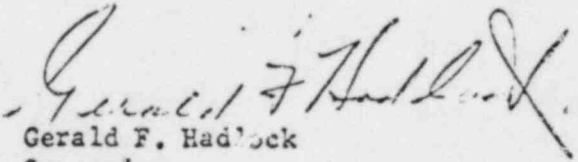
Gainesville's contention that the Commission should condition the construction permit with respect to antitrust matters was disposed of by the Commission in the Vermont Yankee case. In that case the Commission held that in a proceeding for the issuance of a license under § 104 b. of the Act, the Commission lacks authority to deny or condition a permit or license on the basis that it would tend to create or maintain a situation inconsistent with the antitrust laws.

Nor should the construction permit be conditioned to assure compatibility with a § 103 license, as suggested by Gainesville. The Commission has determined that the terms of license applicable to a facility engaged in the conduct of research and development

activities leading to the demonstration of practical value are compatible with the regulations and terms of license which will apply in the event that a Class 103 license were later to be issued for that type of facility. Section 50.24 of the Commission's regulations provides that the making of a finding of practical value pursuant to section 102 of the act will not be regarded by the Commission as grounds for requiring conversion of any Class 104 license prior to the date of expiration contained in the license or conversion of any construction permit, issued under section 104 of the act, prior to the date designated in the permit for expiration of the license. However, the Commission has stated that at such time as it makes a finding of practical value, it will consider, in a rule making proceeding, whether to change its present regulations respecting conversion.

In our view, the Exceptions and Request for Relief filed by Gainesville should be denied.

Respectfully submitted,


Gerald F. Hadlock
Counsel
AEC Regulatory Staff

Dated at Bethesda, Maryland
this 28th day of October, 1968.