DOCKET NUMBER
PROD. & UTIL. FAC. 50-302

UNITED STATES OF AMERICA

ATOMIC ENERGY COMMISSION

In the Matter of	)	
	)	
FLORIDA POWER CORPORATION	)	Docket No. 50-302
	)	
(Crystal River Unit 3 Nuclear Generating Plant)	)	

ANSWER OF FLORIDA POWER CORPORATION TO PETITION FOR LEAVE TO INTERVENE AND MOTION TO BROADEN ISSUES FILED BY THE CITY OF GAINESVILLE, FLORIDA, AND GAINESVILLE UTILITIES DEPARTMENT

I
INTRODUCTION

Florida Power Corporation (Florida Power) is the Applicant in Docket No. 50-302 for a construction permit under Section 104(b) of the Atomic Energy Act (Act) for Crystal River Unit 3 Nuclear Generating Plant. On June 1, 1968, a Notice of Hearing to consider the Application filed under Section 104(b) of the Act by Florida Power was published in the Federal Register (33 FR 8235).

On June 14, 1968, the City of Gainesville, Florida, and the Gainesville Utilities Department (collectively referred to as "Gainesville") filed a Petition for Leave to Intervene and Motion to Broaden Issues (Petition and Motion) in the proceedings, dated June 14, 1968, pursuant to Section 2.714 of the Commission's "Rules of Practice", 10 CFR Part 2.

On June 19, 1968, the Chairman of the Atomic Safety and Licensing Board (AS&LB) announced at the prehearing conference duly convened at the Crystal River Elementary School Auditorium in Crystal River, Florida,

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pursuant to the Notice of Hearing in the above Docket, that it was the decision of the AS&LB that Gainesville's Petition and Motion be denied upon authority of the decisions of the Atomic Energy Commission (AEC) in the Duke, Vermont Yankee and Philadelphia Electric Company proceedings and the decision of the AS&LB in the Boston Edison proceedings, more fully discussed and cited in this Answer.

II
RESPONSE TO SPECIFIC ALLEGATIONS

1. The Petition and Motion alleges in paragraph 2 that Gainesville operates an electrical generating, transmitting, and distribution system in and about the City of Gainesville and that it is seeking, by application to the Federal Power Commission, an interconnection with Florida Power. Gainesville's statement that the Presiding Examiner, on January 17, 1968, issued an initial decision ordering the interconnection is correct insofar as it is recited, however, it does not disclose any of the "terms and conditions" to which the initial decision is subject. The Presiding Examiner specifically found that since 1964 Gainesville has constructed approximately 16.2 miles of electric lines which duplicated Florida Power's and that Gainesville had continued this wasteful and uneconomical practice between the close of the evidentiary hearing and the date of his initial decision. The Presiding Examiner stated that such duplication of Florida Power's plant and facilities is an uneconomical and wasteful practice and was, therefore, contrary to the public interest. Among the terms and conditions the Presiding Examiner imposed as a condition precedent to any interconnection was the requirement that Florida Power and Gainesville

work out a mutually satisfactory territorial agreement in order to avoid the further construction by Gainesville of duplicating facilities.

2. Florida Power has filed exceptions to the Presiding Examiner's Initial Decision in the Federal Power Commission proceeding challenging the Federal Power Commission's authority to require Florida Power to interconnect with Gainesville. The ultimate outcome of the interconnection proceeding is most uncertain and will not be known for several years if Gainesville or Florida Power exercises their rights to full judicial review of any final order of the Federal Power Commission.

3. The Petition and Motion alleges in paragraph 3. that Gainesville is interested in the possibility of participating with Florida Power in the financing and construction of the proposed plant, together with the purchase of a part of the output of the plant as a possible alternative to the construction of its own additional generators. Gainesville's interest in participating in Florida Power's nuclear project, among many other reasons, comes too late to be worthy of any consideration. The project is beyond the point of modification and Gainesville's concern for an additional source of electric power is in no way the responsibility of Florida Power. Florida Power's nuclear facility was planned in 1965, contracts were signed, and the Application to construct the nuclear facility was filed in August of 1967 in order that the unit would become operational in 1972 to meet its projected system load growth and maintain system reliability. Since the electrical systems of Gainesville and Florida Power were not interconnected in 1965, nor are they at this time, Gainesville's electric power supply problems were not contemplated in determining the size or location of the nuclear facility. The entire output of Florida Power's nuclear unit is

required for its own projected system load growth.

4. On its face the Petition and Motion filed by Gainesville has not stated any present economic interest in the proceeding which would permit intervention. Gainesville's electric system is not now interconnected with Florida Power's electric system. Gainesville is in the same situation as Piedmont Cities Power Supply, Inc. (Piedmont), which attempted to intervene in the Matter of Duke Power Company, AEC Dockets Nos. 50-269, 50-270, and 50-287. Piedmont, like Gainesville, filed a petition for leave to intervene in the Duke proceeding and claimed it had a present economic interest in Duke's reactors because it wished to purchase a fair share of Duke's Oconee Nuclear Project. The AEC disagreed with Piedmont, stating that Piedmont had "no existing economic interest related to the jurisdictional issue but only seeks to acquire such an interest.". In affirming the AS&LB's denial of Piedmont's right to intervene, the AEC stated in its Decision in the Duke proceeding, dated January 3, 1968 (3 AEC ____):

> "We turn now to the question of intervention. As earlier indicated, Piedmont Cities Power Supply, Inc. has excepted to the board's denial of its petition to intervene. Piedmont disputes the statement in the initial decision that it did not have a present interest sufficient to warrant intervention and claims that it had as much economic, public and other interest in this proceeding as had the eleven cities. In this connection, Piedmont asserts an economic interest in its plan to own a 'fair share' of the Oconee plant and to sell its share of the electricity at cost to the eleven municipalities and declares that its interests and those of the municipalities are identical and unitary.
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> "Before treating with the Piedmont exception, it is appropriate that we comment on the status of the eleven municipalities. Our Memorandum and Order of December 5, 1967, in the Matter of Philadelphia Electric Company, had occasion to remark on the Duke board's

grant of intervention to the municipalities since a similar intervention request by the City of Dover was pending before the board in the Philadelphia Electric proceeding and the latter was seeking our guidance thereon. We stated in the Memorandum and Order that, while the question is not free from doubt, we thought the grant of intervention by the Duke board was correct, and that the municipal customer seeking intervention in Philadelphia Electric should be permitted to intervene for the stated purpose of contesting licensing jurisdiction under Section 104b. We went on, however, to declare our view that 'the matter of legal entitlement to intervene in the somewhat novel circumstances is less clear than certain of the statements in the Duke initial decision would imply' and that we preferred to 'rest our holding on what we deem to be a sound exercise of administrative discretion as applied to the particular circumstances here presented'. Thus, our sanctioning of intervention as respects the municipalities in both proceedings rests on the narrow grounds stated.

"The circumstances with regard to Piedmont are substantially different than those dealt with above. Unlike the cities, Piedmont has no existing economic interest related to the jurisdictional issue but only seeks to acquire such an interest. This interest claim, in our view, is a remote and tenuous one at best and does not warrant a grant of intervention."

The AEC summed up its Decision dated January 3, 1968, in the Duke proceeding, supra, by stating:

"In sum, we perceive no sound basis for overturning the board's denial of intervention to the corporation."

5. On January 12, 1968, the municipalities and Piedmont filed petitions for reconsideration by the AEC of its Decision of January 3, 1968, in the Duke proceeding. On February 29, 1968, the AEC entered its Memorandum and Order (3 AEC _____) and it stated with regard to the denial of Piedmont's right to intervene:

"The petition for reconsideration filed by Piedmont Cities Power Supply, Inc., presents nothing which would lead us to alter our previous holding that denial of intervention was proper. We remain of the view that the

interest claimed by Piedmont is remote and tenuous at best and that it affords neither a basis for entitlement to intervene under our Act nor one warranting a grant of intervention in the sound exercise of administrative discretion, as was the case with the municipalities."

6. In the Matter of Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), Docket No. 50-271, a group of municipal electric systems in Massachusetts filed petitions for leave to intervene, asserting they had an interest in the proceeding because they desired to purchase a share of the Vermont Yankee nuclear plant on the same basis as the private power companies which were sponsoring Vermont Yankee Nuclear Power Corporation. On April 8, 1968, the AEC entered its Memorandum and Order, reported in 3 AEC _____ , upholding the AS&LB's denial of the Massachusetts Municipals' right to intervene. The AEC dealt with the question of intervention as follows:

"Intervention. We address ourselves initially to the question of entitlement on the part of the Massachusetts Municipals to intervene in this proceeding. Our treatment of this question necessarily begins with an examination of Section 189a. of our Act. That section provides, insofar as here relevant, that in any Commission proceeding under the Act for the granting of a construction permit:

"'...the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding ... .' (Emphasis added.)

"Section 2.714(a) of our Rules of Practice (10 CFR Part 2) implements this statutory provision and delineates the requirements governing intervention in our licensing proceedings. That section provides, in pertinent part:

"'Any person whose interest may be affected by a proceeding and who desires to participate as a party shall file a written petition ... /and/ set forth the interest of the petitioner in the proceeding, how that interest may be affected by Commission action, and the contentions of the petitioner. ...'

"In their joint petition to intervene, the individual Municipals stated that their 'interests are affected because each of the individual Massachusetts intervenors owns and operates a municipal electric utility which distributes and sells electricity at retail and seeks the opportunity to purchase a share of the output of the Vermont Yankee Nuclear Power Station and arrange for transmission thereof, on the same or equivalent basis as such opportunity has been proposed for the sponsor companies and to all Vermont distribution utilities'. While petitioner Power Planning Committee did not state, in like fashion, how its 'interest may be affected', it did declare that: 'The Committee is seeking to obtain a reasonable opportunity for Massachusetts municipals to purchase power, and also stock if necessary, from the Vermont Yankee project on the same or economically equivalent basis, as power is proposed to be made available to the present stockholder purchasers'.

"We fail to perceive how either of these stated interests constitute ones which 'may be affected' by the present proceeding within the meaning of the cited statutory and regulatory provisions. As will be shown more fully below, the substantive regulatory authority of the Commission in a proceeding on an application for a construction permit under Section 104b. of our Act is limited to matters of radiological health and safety and common defense and security. The Massachusetts Municipals in no way relate their interests to these matters or show how those interests will be affected by our determination on the radiological safety and national security issues in the proceeding. Whatever may be the authority of other governmental agencies, the Municipals' desire to purchase power and stock from the applicant is not a matter within our redress and we see no basis for deeming it an interest affected by this licensing proceeding in view of the matters which are properly ours for consideration herein."

7. Under the rulings of the Atomic Energy Commission in the Duke proceeding, supra, and the Vermont Yankee proceeding, supra, Gainesville is not entitled to intervene in this proceeding for the purpose of setting

forth its desire to purchase a share of Florida Power's nuclear plant or participate in the financing and construction of the proposed plant.

8. The Petition and Motion alleges in paragraph 4 that Florida Power is, in fact, applying for a "commercial license" within the meaning of Section 103 of the Act and that, therefore, the Commission lacks jurisdiction to grant the application under Section 104 of the Act for a research and development license. This very same issue was raised by the Municipals in their petitions to intervene in the Duke, Vermont Yankee and Philadelphia proceedings. In fact, Counsel for Gainesville also represented the Massachusetts municipal electric systems.

9. In paragraphs 5 and 6 of its Petition and Motion, Gainesville is attempting to inject the issue of possible violation of anti-trust laws into this proceeding. These contentions, that Florida Power should be applying for a Section 103 commercial license and that the AEC must consider the Federal anti-trust laws in granting a Section 104 license, have been resolved against Gainesville in the Duke, Vermont Yankee and Philadelphia proceedings. In the Vermont Yankee proceeding, the AEC dealt with these same contentions when they were made by the Massachusetts Municipals, as follows:

> "The Municipals' attempts to bring their interests within the purview of this proceeding turn principally on their contentions that those interests are affected by actions of the applicant and its sponsors which are alleged to be in violation of the anti-trust laws. We are being asked, in this regard, to allow them to develop these contentions in what they characterize as the 'public investigatory hearing contemplated under the /Atomic Energy/ Act' and to take curative licensing or other action on the basis of the record developed. The Municipals' requests, however, are plainly beyond our statutory province.

"As the staff points out, proceedings to license power reactors can be conducted only under Sections 103 and 104 of our Act. Section 103 governs the licensing of power reactors of a type which the Commission has found to be of 'practical value' pursuant to Section 102 of the Act. In connection with such licensing, Section 105c. of the Act prescribes certain steps to be taken by the Commission with respect to antitrust considerations. Included therein, is Commission notification to the Attorney General of the proposed license and its terms and conditions and the receipt of advice from the latter official as to whether 'the proposed license would tend to create or maintain a situation inconsistent with the antitrust laws'. As its terms make clear, however, Section 105c. is not applicable to licensing proceedings under Section 104b.

"In a proceeding for the issuance of a license under Section 104b. of the Act, which the instant proceeding properly is (see below), the Commission's substantive regulatory authority is limited, as earlier stated, to matters of radiological health and safety and common defense and security. The Commission, in such a proceeding, lacks the 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. We believe this is clear from the distinction which the Act draws between proceedings under Section 103 and Section 104b. as respects consideration of antitrust matters, and from a reading of the legislative history of those provisions of the Act which bear on Commission consideration of antitrust matters in facility licensing. That history shows a deliberate limitation in the 1954 Act of the broader antitrust authority in licensing matters which had been contained in Section 7(c) of the Atomic Energy Act of 1946.

"It might further be noted, that our construction of the 1954 Act in the subject regard, is reflected in the long-standing AEC regulations implementing the Act's reactor licensing provisions. Those regulations set forth the requirements of Section 105c. as part of the 'additional standards' applicable to issuance of licenses under Section 103, and state that, in such licensing, '[d]ue account will be taken of the advice provided by the Attorney General pursuant to subsection 105c. of the Act'. These 'additional standards' have no counterpart in the standards applicable to licensing under Section 104. See, 10 CFR Section 50.42; and compare, 10 CFR Sections 50.40 and 50.41.

"While the Commission lacks the authority to deny or condition a Section 104b. license on the basis that it would tend to create or maintain a situation inconsistent with the antitrust laws, organizations which receive licenses under that section are not relieved from the operation of the antitrust laws. Section 105a. of our Act explicitly declares that nothing contained in the Act shall relieve any person from the operation of the various antitrust statutes specified therein. Moreover, under Section 105b. of the Act, the Commission is required to report promptly to the Attorney General any information it may have with respect to any utilization of special nuclear material or atomic energy which appears to violate or to tend toward the violation of the antitrust laws enumerated in Section 105a. or to restrict free competition in private enterprise.

"It was, perhaps, Section 105b. which the Municipals had in mind in asking that the issues specified for hearing be enlarged so that testimony, evidence, and recommended findings respecting antitrust considerations 'may be reported to the Attorney General for his use in the dispatch of his statutory responsibilities'. We would only state in response, that while the AEC endeavors to comply fully with both the letter and spirit of Section 105b., we cannot view its provisions as a warrant to use our licensing proceedings to develop evidence on matters unrelated to the issues properly within our jurisdiction solely so that we may assist the Attorney General in his law enforcement responsibilities.

"Licensability under Section 104b. In their exceptions, the Massachusetts Municipals have also asserted that the board 'erred in failing to deny/the Vermont Yankee/ application as one improperly brought under Section 104 of the Act for a research and development license since it is plainly a project having"practical value" under Section 102 and therefore cognizable only for a "commercial" license under Section 103 of the Act'. The Municipals ask, in connection with the request for intervention, that we direct the board to consider their jurisdictional contentions in a reopened proceeding.

"The staff and the applicant have responded that the Municipals did not raise this jurisdictional issue in their filings with the board and further that our Decision of January 3, 1968, in Matter of Duke Power Company (Docket Nos. 50-269, 50-270 and 50-287) states a rationale respecting licensability of utilization facilities under Section 104b, which refutes the Municipals' present jurisdictional contentions. We believe that the staff and applicant are correct on both counts.

"In two recent decisions, we have, as a matter of administrative discretion, sanctioned intervention in construction permit proceedings by municipal customers of the applicants who sought to challenge the Commission's jurisdiction to issue the permits under Section 104b. of the Act. In those proceedings, as contrasted to the instant one, the persons seeking intervention clearly asserted their jurisdictional contentions to the board in their petitions to intervene. We believe that, in the circumstances of the instant proceeding, an earlier holding of ours states a premise which is here dispositive:

> "'One seeking intervention should in the first instance set forth before the atomic safety and licensing board the matters on which he relies for a showing of interest. Maintenance of an orderly hearing process and a due regard for the rights of the parties to a proceeding point to this as the proper course.'

"We further agree with the staff and the applicant that the rationale set forth in our Duke Decision of January 3, 1968, respecting licensability of the Oconee reactors under Section 104b., applies as well to the matter of our jurisdiction to license the present facility under that section. The Vermont Yankee facility is clearly involved in the conduct of activities encompassed by Section 104b. of the Act as we have earlier construed it."

10. Paragraphs 4, 5 and 6 of Gainesville's Petition and Motion are an attempt to inject into this proceeding the issue of whether or not Florida Power's proposed nuclear reactor has "practical value" within the meaning of Section 102 of the Act and should therefore be licensed under Section 103 of the Act. The Massachusetts Municipals attempted to inject this same issue into the Vermont Yankee proceeding, supra. The AEC followed its decision in the Duke proceeding, supra, and refused to permit the issue to be raised. In dealing with this matter of "practical value", the AEC stated in its decision in the Duke proceeding:

"We address our attention first to the jurisdictional contentions underlying the exceptions of the intervening North Carolina

[illegible] that our [illegible] board's [illegible] [illegible] [illegible] [illegible] [illegible] that [illegible] the [illegible] and [illegible] of [illegible] and our [illegible] broad [illegible] encompass an 'development' [illegible] basis for commercial evaluation. The Memorandum and Order went on to [illegible] that the construction and operation of the proposed Oconee facilities would be sufficiently related to the demonstration of the practical value of such reactors for commercial purposes to permit the proceeding to be conducted under Section 104 b. We further stated that, from the pattern established by the Act for the licensing of utilization facilities, Section 104 b. is the appropriate section for the licensing of facilities of the type covered by this application and cited, in connection therewith, the conclusion which attended our Section 102 rule making proceedings on 'practical value'.

"Our Memorandum and Order confined itself to Units 1 and 2 because the board's order, which dealt with a preliminary motion to dismiss, had deferred a ruling on Unit 3. We deemed it appropriate, in that context, to reserve our decision regarding Unit 3 until the board had spoken thereto. This the board has now done, its initial decision concluding that the 'proposed nuclear utilization facility including Oconee Units 1, 2 and 3 are properly subject to license under Section 104 b. of the Act'.

"We are in agreement with the conclusion that the pro[illegible] Oconee reactors are properly to be licensed under Section [illegible]. Our earlier Memorandum and Order, as we have recounted, contained certain preliminary declarations respecting this jurisdictional question. In view of the fact that the parties have since had the opportunity fully to develop their respective positions on the record [illegible] it is appropriate [illegible] [illegible]

[illegible]

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"In the context, then, of the statutory language and our construction of it, until there has been a 'demonstration of the practical value of such facilities for industrial or commercial purposes', utilization facilities which will provide a basis for commercial evaluation in connection therewith (i.e., 'leading to' such 'demonstration') may be licensed under Section 104 b. As the discussion below shows, this clearly places the Oconee reactors within the compass of Section 104 b.

"Our Memorandum and Order of September 8, 1967, noted that the Commission has considered on two occasions in rule making proceedings the question of whether a finding of 'practical value' should be made with respect to some type or types of light water, nuclear power reactors. We concluded in the first proceeding, following receipt and consideration of extensive public comments, the holding of a legislative-type public rule making hearing, and a careful evaluation of all relevant factors, that '/p_/ending the completion of scaled-up plants, and the information to be obtained from their operation', there 'has not yet been sufficient demonstration of the cost of construction and operation of light water, nuclear electric plants to warrant making a statutory finding that any types of such facilities have been sufficiently developed to be of practical value'. This conclusion was reaffirmed in connection with our denial of a petition for rule making approximately one year ago.

"It is worth restating at this point the circumstances which we took into account in arriving at our rule making determinations. In conjunction with our initial determination, we outlined these circumstances as follows:

> "'Currently operable light water, nuclear electric plants range up to about 200 net MW(e) and are not economically competitive. In 1962 the Commission encouraged the construction of scaled-up plants by requesting authorization under the Power Demonstration program for plants in the 400-500 net MW(e) range. Operating experience, including maintenance and availability, from the plants for which Congress authorized appropriations in these intermediate sizes is not available, since none of them is completed. More recently, plants in sizes exceeding 600 net MW(e) are being designed and constructed without Government financial assistance. The Commission has examined in some detail whether the information provided by the award of contracts for the construction of scaled-up plants without Government assistance is sufficient to support, without further demonstration, a finding of practical value under the Act. Without the operating information the intermediate sized plants are expected to provide, we are not prepared to

make a statutory finding on the basis of demonstrated results of the currently operable plants that plants at least three times larger than 200 net MW(e) are of practical value within the meaning of section 102.'

"We were faced with like circumstances at the time of our second rule making action and, while two of the intermediate-sized plants have now been licensed for operation, essentially the same situation as regards 'demonstration' obtains today. In this context, we think it manifest that large-scale utilization facilities, such as the Oconee reactors, by contributing to the as yet incomplete basis for a reliable estimate of economic competitiveness, are involved in the conduct of activities encompassed by Section 104b. and, thus, are properly to be licensed thereunder.

"In their exceptions to us, the intervenors maintain that the proper standard for determining whether the type of utilization facility to be employed by the applicant has demonstrated practical value is whether or not it is being sold by the manufacturer and bought by the purchaser, without Government subsidy to either, for use in the large scale generation and sale of electrical energy in the regular course of business. From what we have previously stated, it should be clear that we cannot accept this as the basis for determining applicability of Section 104b.; nor does such an absolute standard constitute the test for a finding of 'practical value' under Section 102, although business factors of the type referred to are relevant for consideration in the latter regard.

"It is worth noting, in the above connection, that we addressed ourselves to a similar proposition in the first rule making determination regarding a finding of practical value. We there concluded, after examining the underlying data in some detail, that while certain economic evaluations governing the award of contracts for scaled-up plants not involving Government assistance provide strong indications that economic competitiveness will be achieved, we should await a reliable estimate of the economics based upon a demonstration of the technology and plant performance before making the statutory finding.

"Analytical support for the above approach is contained in the Staff Memorandum accompanying our determination. The staff there stated:

"'Although the willingness of utilities and equipment companies to accept the business risks involved is an impressive indication of the probabilities of successful operation at anticipated levels, it is not alone a sufficient basis to support a statutory finding of practical value by the Commission. The manufacturers of nuclear reactors compete for the business of utilities which are considering the purchase of power plants,

and are motivated to offer incentives such as warranties as to certain features in order to obtain the award of a contract. The willingness of utilities to purchase nuclear plants and of reactor manufacturers to warrant the plants is a reflection of the acceptance of what may be considered reasonable business risks, but does not necessarily constitute a sufficient assurance that the plants will in fact perform as warranted or will otherwise meet expectations.'

"In our second rule making determination, we gave further consideration to this matter when we took specific note of announcements of new light water reactors to be constructed, the type of business arrangements being negotiated between reactor manufacturers and utilities and the fact that utilities have decided upon nuclear plants on the basis of comparative economic studies. Our determination stated that while these developments are further strong indications that economic competitiveness will be achieved we continued to believe that we should await a reliable estimate of the economics based upon a demonstration of the technology and plant performance.

"The intervenors, in their exceptions, have also sought to emphasize the experimental facet of the terms 'research and development' and to argue therefrom that the Oconee facilities do not properly fit within the statutory language. While we believe these arguments are answered by the statements already made respecting the role of economic demonstration under Section 104 b., it is appropriate further to note the following passage in the previously-referenced Staff Memorandum:

"'A substantial extrapolation of demonstrated results from currently operable plants, which range up to about 200 net MW(e), is necessary in order to determine anticipated technological and economic performance in plants currently being built and sold without Government financial assistance in size ranges of 600 net MW(e) and above. Since the gap involves an increase in reactor size by a factor of three, many technical and engineering problems must be resolved and demonstrated.'

"The initial decision has additionally enumerated a number of aspects of research and development needed to complete the design of certain components for the Oconee units. Mentioned in this regard are: 'a proposed once-through steam generator test, the control rod drive line test, self-powered in-core neutron detector tests, thermal and hydraulic programs, . . . and the fuel assembly heat transfer and fluid flow test.' We agree with the board that the foregoing, individually and in combination, evidences an experimental purpose concomitant with the purpose of economic demonstration.

"One additional observation is in order before we leave the jurisdictional question. The licensing authority under Section 103 of our Act is only applicable as respects facilities of a type which the Commission has found, in accordance with Section 102, to have been sufficiently developed to be of practical value for industrial or commercial purposes. The approach we have taken regarding the construction of Section 104b. is consistent with the premise that the finding of 'practical value' under Section 102 separates the issuance of developmental licenses under Section 104b. and the issuance of commercial licenses under Section 103. This, we think, is in keeping with the scheme of the Act and is legislative history."

11. The nuclear reactor which Florida Power has filed its application to construct in this proceeding is substantially similar to Duke Power's Oconee Units 1, 2 and 3 which the AEC has held are licensable only under Section 104(b) of the Act. All of the above quoted statements and observations the AEC made regarding Oconee Units 1, 2 and 3 are equally applicable to Florida Power's Crystal River Unit 3. Crystal River Unit 3 is approximately twice the size of any nuclear reactor now in operation. It properly belongs in the same generation of pressurized light water reactors with Duke Power's Oconee Units 1, 2 and 3; Metropolitan Edison Company's Three Mile Island Nuclear Plant; and Florida Power & Light Company's Turkey Point Units 3 & 4 -- all still in the early stages of construction. Florida Power's Crystal River Unit 3 is expected to be completed about the same time as Duke Power's Oconee Unit No. 2. There can be no doubt that Florida Power's Crystal River Unit 3 is a large-scale utilization facility requiring the conduct of research and development activities and is therefore properly licensable only under Section 104(b) of the Act. The AEC has specifically ruled that before it will make such a finding of practical value pursuant to Section 102 of the Act, the type of reactor involved must have a sufficiently long period of operating experience so as to demonstrate that it is economically competitive with conventional electric generating plants. Operation of

nuclear reactors the size of Florida Power's Crystal River Unit 3 will be just commencing about the same time as Florida Power's reactor is nearing completion. Section 104(b) of the Act is presently the only section of the Act under which Florida Power may obtain a construction permit.

12. In further support of the proposition that Florida Power's Crystal River Unit 3 is properly licensable under Section 104(b) of the Act, the AEC, on June 5, 1968, rendered its decision in the Matter of Philadelphia Electric Company (Peach Bottom Atomic Station Units 2 and 3), Docket Nos. 50-277 and 50-278, denying the municipal intervenor's contentions that the Peach Bottom reactors did not involve a sufficient amount of research and development to be licensed under Section 104(b) of the Act. In denying the intervenor's contentions, the AEC stated as follows:

> "This matter comes before us upon exceptions which have been filed by the City of Dover, Delaware, to an initial decision of an atomic safety and licensing board dated January 29, 1968. In its initial decision, the board authorized the issuance of provisional construction permits under Section 104b. of the Atomic Energy Act to the Philadelphia Electric Company, the Public Service Electric and Gas Company, the Delmarva Power and Light Company, and the Atlantic City Electric Company, to build two boiling water reactors. The proposed facilities, which will be owned by all four companies as tenants in common with specified undivided interests, are to be located at the Peach Bottom Atomic Power Station of the Philadelphia Electric Company in York County, Pennsylvania. Philadelphia Electric will be responsible for the design, construction and operation of the facilities.
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> "The exceptions filed by the City of Dover, an intervenor in this proceeding, are in support of its basic contention that the Commission lacks jurisdiction to license the two proposed reactors under Section 104b. of the Act. Philadelphia Electric and the staff, in submissions completed on March 4, 1968, have filed briefs opposing the City's exceptions.

"The appeal presently before us raises no health and safety question but disputes only the jurisdiction of the Commission to license the Peach Bottom facilities under Section 104b. of the Act. The crux of the appellant's position is that these facilities may not be licensed under that section since they were sold by the manufacturer and bought by the purchaser for commercial use, without Government subsidy to either.

"The jurisdictional objection has been central to the City of Dover's participation in this proceeding. The City, a municipal customer of one of the applicant utilities, petitioned to intervene in the proceeding for the purpose of opposing the grant of licenses under Section 104b. on the ground of lack of jurisdiction. The board granted intervention for this purpose on the basis, and within the terms, of our Memorandum and Order of December 5, 1967. We had therein advised the board, in response to its request for guidance, that we deemed a grant of intervention to be appropriate as a matter of administrative discretion and that evidence may be received on the question of whether the application satisfies the requirements of Section 104b.

"In the ensuing hearing, the intervenor and the other parties made their submissions to the board on the jurisdictional question. The board, in its initial decision, dealt specifically with this point and concluded that the application is properly filed and that licenses may be issued under Section 104b. In so holding, the board relied upon the construction of the applicable statutory language in our Memorandum and Order of December 5, 1967, and in our later Duke Decision of January 3, 1968, and found that there is substantial evidence in the record to bring the Peach Bottom facilities within the ambit of those Commission expressions.

"The board's jurisdictional determination was manifestly correct. As our discussion below shows, the rationale set forth in the Duke Decision of January 3, 1968, wherein we considered and rejected a similar jurisdictional objection respecting the licensability of the Oconee reactors, is dispositive here.

"Turning first to the statutory language, Section 104b. authorizes the Commission, insofar as is here relevant, to license thereunder '. . . utilization . . . facilities involved in the conduct of research and development activities leading to the demonstration of the practical value of such facilities for industrial or commercial purposes . . .'. In Duke, we stated with respect to this language that:

"'. . . the "research and development" about which Section 104b. speaks encompasses as "development" a demonstration that will provide a basis for commercial evaluation. Such "commercial evaluation", in terms of earlier relevant declarations, means an evaluation of the economic competitiveness of the nuclear facility with conventional power plants.

"'In the context, then, of the statutory language and our construction of it, until there has been a "demonstration of the practical value of such facilities for industrial or commercial purposes", utilization facilities which will provide a basis for commercial evaluation in connection therewith (i.e., "leading to" such "demonstration") may be licensed under Section 104b.'

"We went on to point out in Duke that the Commission has concluded on two occasions in rule making proceedings that '"/ p_/ending the completion of scaled-up plants, and the information to be obtained from their operation", there "has not yet been sufficient demonstration of the cost of construction and operation of light water, nuclear electric plants to warrant making a statutory finding that any types of such facilities have been sufficiently developed to be of practical value"'. The Duke Decision restated the circumstances which we took into account in arriving at our rule making determinations and declared that, while two intermediate-sized plants have now been licensed for operation, essentially the same situation as regards 'demonstration' obtains today. We then held:

"'In this context, we think it manifest that large-scale utilization facilities, such as the Oconee reactors, by contributing to the as yet incomplete basis for a reliable estimate of economic competitiveness, are involved in the conduct of activities encompassed by Section 104b. and, thus, are properly to be licensed thereunder.'

"It should be clear from the foregoing, that the proposed Peach Bottom facilities fall squarely within the compass of Section 104b. as we have construed it. In this regard, we note and concur in the board's specific finding that these facilities will provide design, construction and operating information bearing upon the practical value of such facilities for industrial or commercial purposes.

"We further note that the initial decision enumerates a number of aspects of research and development needed to complete the design of certain components for the Peach Bottom facilities. We are of the view here, as in Duke,

that these research and development efforts, 'individually and in combination, evidence/s_/an experimental purpose concommitant with the purpose of economic demonstration'.

"In its exceptions, the City of Dover has specifically challenged certain statements in the initial decision respecting the scope of the term 'utilization facility'. The City contends that the board's understanding of the term as including not only the reactor but associated equipment as well, is contrary to the definition of the term as set forth in Section 50.2(b) of our regulations. This asserted misunderstanding, the City argues, nullifies the board's determination that the Peach Bottom facilities are involved in the conduct of activities encompassed by Section 104b.

"It is, of course, clear that the term 'utilization facility' as we have defined it in 10 CFR Section 50.2(b) means the nuclear reactor. We think it further evident, from an examination of the opening paragraph of the initial decision, that the board was well aware that the application which it was considering was one 'for provisional construction permits to construct two boiling water reactors'. The board's view that equipment associated with a nuclear reactor cannot be disregarded in the review of a license application, is founded on what would seem to be the sound premise that associated equipment may be integral to the operation of a reactor and that such equipment can have nuclear safety significance.

"We do not regard the foregoing view of the board as invalidating its conclusion respecting the licensability of these facilities under Section 104b.; and it patently does not alter our conclusion as to the applicability of that section or the reasons for it. What we set forth in Duke respecting utilization facilities which will provide a basis for commercial evaluation applies, as already stated, to the present facilities. With respect to the experimental aspects of these facilities, we cannot deem the proposed research and development programs to be irrelevant to a Section 104b. determination on the ground that those programs relate, as the City asserts, 'to "certain components" and not to the Boiling Water Reactors themselves'. A 'reactor' it would seem evident, is the composite of its component parts; and research and development dealing with those components is plainly relevant to our determination -- as, for that matter, is research and development on associated equipment which bears directly on the operation of the reactor. At any event, in the present case there is proposed research and development which clearly relates to component parts of the reactors.

"In sum, we believe the two Peach Bottom reactors are properly to be licensed under Section 104b. of the Act.

"It is therefore ORDERED that the exceptions of the City of Dover are denied."

13. The statements and quotations contained in paragraphs 7, 8 and 9 of Gainesville's Petition and Motion pertaining to Congress' "Statement of Policy" and "Purpose of the Act" form no basis whatsoever to allow Gainesville to intervene in this proceeding. The AEC does not need the assistance of Gainesville to keep it on the straight and narrow path of Congressional policy and purpose in enacting the Atomic Energy Act. The Joint Committee on Atomic Energy (JCAE) has consistently demonstrated that it is up to the task of overseeing the activities of the AEC. It is interesting to note that there has been no effort by the JCAE to modify through legislation the AEC's decisions in either the Duke or Vermont Yankee proceedings. The unique role of the JCAE in nuclear licensing matters was recognized by the U. S. Supreme Court in Power Reactor Development Co. vs. Electrical Union, 367 U. S. 396, 408.

14. With regard to Gainesville's Motion to Broaden the Issues as set forth in paragraph 10 of its Petition and Motion, such a suggestion has been ruled on by the AEC in both the Duke and Vermont Yankee proceedings, supra. As stated in the AEC's decision in the Vermont Yankee proceedings:

"In a proceeding for the issuance of a license under Section 104(b) of the Act, . . ., the Commission's substantive regulatory authority is limited, as earlier stated, to matters of radiological health and safety and common defense and security. . . ."

15. The Petition and Motion filed in this proceeding by Gainesville does not seek to raise any issue relating to the radiological health

and safety of the public and the common defense and security.

16. Florida Power can only assume that a reason Gainesville has filed its Petition and Motion in this proceeding is to delay Florida Power in its plan to construct and operate its proposed nuclear plant by early 1972 and thus jeopardize Florida Power's system reliability. Attached, as Exhibit "A", is a copy of a recent exchange of correspondence with the Gainesville Director of Utilities. Gainesville is well aware of the critical timetable Florida Power must maintain if the nuclear unit is to be brought into service as scheduled, and it raises no issue of public health and safety or common defense and security. For the past several years Gainesville has conducted a campaign to duplicate Florida Power's electric lines in the area outside of Gainesville and to induce Florida Power's customers to take their electric service from Gainesville. Without an effective territorial agreement, recommended by the Federal Power Commission hearing examiner but which Gainesville has refused to consider, any such interconnection would result in Florida Power's ". . . contributing to its own economic erosion because of the adverse effect of such increased competition on its capital investment . . ." (see Presiding Examiner's Initial Decision dated January 17, 1968 in Federal Power Commission Docket No. E-7257). The interconnection objective of Gainesville is a matter within the jurisdiction of the Federal Power Commission and the subject is being adequately adjudicated before that Agency. Because of the deficient nature of this intervention, as discussed above, Florida Power can only assume that such intervention serves no useful purpose, except as a pressure tactic to force on Florida Power a course of action unrelated to AEC licensing of the Crystal River Project.

CONCLUSION

The premises considered, Applicant prays that this Commission deny the Petition for Leave to Intervene and Motion to Broaden Issues on the following grounds:

1. The Petition for Leave to Intervene and Motion to Broaden Issues filed in this Docket by Gainesville conclusively demonstrates that it has no existing economic interest related to any jurisdictional issue, but that it only seeks to acquire such an interest.
2. The Petition for Leave to Intervene and Motion to Broaden Issues filed in this Docket by Gainesville seeks only to inject into the public hearing issues and matters outside the jurisdiction of the Atomic Energy Commission.
3. The Petition for Leave to Intervene and Motion to Broaden Issues filed in this Docket by Gainesville is completely void of any allegations of facts putting into issue questions relating to the radiological health and safety of the public and the common defense and security.
4. The Petition for Leave to Intervene and Motion to Broaden Issues filed in this Docket by Gainesville

fails to comply with the requirements of Section 2.714 of the Commission's "Rules of Practice", 10 CFR Part 2, in that it does not set forth any legal interest which may be affected by any action of the Atomic Energy Commission.

5. The Petition for Leave to Intervene and Motion to Broaden Issues filed in this Docket by Gainesville fails to comply with the requirements of Section 2.714 of the Commission's "Rules of Practice", 10 CFR Part 2, in that it contains no contentions relating to the radiological health and safety of the public or to the common defense and security.

6. The Petition for Leave to Intervene and Motion to Broaden Issues filed in this Docket is ill founded because the allegations and contentions set forth therein have been heretofore determined adversely to Gainesville by the Atomic Energy Commission in formal decisions as fully described in this Answer.

7. The AS&LB correctly made a finding and ruling which denied the Petition for Leave to Intervene and Motion to Broaden Issues during the prehearing conference

proceedings duly convened and held in Crystal River, Florida, on June 19, 1968, pursuant to duly published Notice of Hearing.

Respectfully submitted,

Dated: June 21, 1968

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