

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

ANSWER OF THE AEC REGULATORY STAFF TO PETITION
FOR LEAVE TO INTERVENE AND MOTION TO
BROADEN ISSUES



I

Introduction

On June 1, 1968, a notice of hearing to consider the applica-
tion filed by the Florida Power Corporation for a provisional
construction permit for a nuclear reactor at its Crystal River
Nuclear Generating Plant was published in the Federal Register
(33 F.R. 8235).

On June 14, 1968, the City of Gainesville, Florida, and the
Gainesville Utilities Department (the "petitioners") filed a
timely petition for leave to intervene in this proceeding and a
motion to broaden the issues set forth in the notice of hearing.

In the petition, the petitioners state that the Gainesville
Utilities Department operates an electrical generating, trans-
mitting and distribution system "in and about" the City of
Gainesville. Petitioners further state that they have applied to
the Federal Power Commission for an interconnection with Florida

Power Corporation and the interchange of capacity and energy and that the initial decision of a hearing examiner ordered such an interconnection subject to certain terms and conditions. This matter is currently pending before the Federal Power Commission on exceptions to the initial decision filed by the parties, including the petitioners.

The petitioners state that, in anticipation of the aforementioned interconnection, they are interested in participating with the Florida Power Corporation in the financing and construction of the proposed plant, as well as in purchasing output from the plant. The petition alleges that petitioners have an interest in the type and validity of the license to be issued by the Commission since, if negotiations with Florida Power Corporation regarding participation in the proposed plant fail, the petitioners must establish their rights pursuant to the terms and conditions of the license which is the subject of this proceeding.

The petitioners allege that (1) the application should be withdrawn or dismissed and a new application filed under § 103 of the Atomic Energy Act of 1954, as amended (the "Act"), since the proposed plant is one which has "practical value" within the meaning of § 102 of the Act and the Commission lacks jurisdiction to grant the application under § 104 of the Act; (2) the license,

whether issued pursuant to §§ 103 or 104 of the Act, should be conditioned to provide a reasonable opportunity for smaller electric utilities interconnected with Florida Power Corporation to participate on fair and reasonable terms in the ownership and output of the project; and (3) the license should be conditioned to prevent the development of a monopoly in nuclear generation or other anti-competitive acts.

It is further alleged by petitioners that (1) the Commission must be concerned under §§ 105(c) and 104(b) of the Act whether the issuance of a license to the Florida Power Corporation under § 103 of the Act would "significantly affect the licensee's activities under the anti-trust laws" or "would tend to create or maintain a situation inconsistent with the antitrust laws"; and (2) the Commission must be concerned that the "actions" of Florida Power Corporation are contrary to the declarations of Congressional policy set forth in §§ 1 and 3 of the Act.

In the motion to broaden the issues, the petitioners moved that the questions of whether the proposed plant is one having practical value and whether the provisional construction permit should be conditioned as proposed by the petitioners in the petition for leave to intervene be added to the issues to be considered in this proceeding.

At the prehearing conference on June 19, 1968, the Atomic Safety and Licensing Board denied the petition for leave to intervene on the grounds that the petitioners were not customers of Florida Power Corporation and consequently had not shown the requisite interest to qualify as an intervenor under the precedents established by the Commission. The Board, however, allowed the Florida Power Corporation and the AEC regulatory staff an opportunity to formally answer the petition and the motion. (Tr. 47-49) This answer is filed pursuant to the Board's ruling.

II

The Petitioners Have Not Stated An Interest In The Proceeding Which Would Permit Intervention As A Matter Of Law

Section 189 a. of the Act provides in relevant part that in a 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..."

The statutory provision is implemented in 10 CFR § 2.714(a) of the Commission's "Rules of Practice" which 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..."

The stated interests of the petitioners do not constitute those which "may be affected" by this proceeding within the meaning of the cited statutory and regulatory provisions. As the Commission has stated in the Matter of Vermont Yankee Nuclear Power Corporation (Docket No. 50-271):^{1/}

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

The petitioners in this proceeding have in no way related their interests to these matters nor have they shown how their interests will be affected by a Commission determination on the radiological safety and national security issues in this proceeding.

In denying a similar petition to intervene in the Vermont Yankee proceeding, the Commission stated that:

"Whatever may be the authority of other governmental agencies, the Municipals'

^{1/} Memorandum and Order dated April 8, 1968, p. 18

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." ^{2/}

As in this proceeding, the petitioners in the Vermont Yankee proceeding sought to bring their interests within the purview of the proceeding on the contention that their interests were affected by actions of the applicant which were alleged to be in violation of the antitrust laws and asked that they be permitted to develop these contentions at a hearing. The Commission responded by stating that such requests "are plainly beyond our statutory province."^{3/} The Commission further stated that:

"The Commission, in such a proceeding, [proceeding for the issuance of a license under § 104 b. of the Act] 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."^{4/}

^{2/} Id., p. 17

^{3/} Id., p. 17

^{4/} Id., p. 18

In view of the foregoing, the petitioners in this proceeding have not stated an interest which would permit them to intervene as a matter of law.

III

Petitioners Contentions Regarding The Jurisdiction Of The Commission To Issue Licenses Under Section 104 b. Of The Act

As previously noted, the petitioners allege that the Commission lacks jurisdiction to grant a provisional construction permit to the Florida Power Corporation pursuant to § 104 b. of the Act since the proposed facility is subject to a "commercial license" pursuant to § 103 of the Act. In two recent proceedings the Commission permitted certain municipalities which were customers of the applicants to intervene in licensing proceedings for the limited purpose of questioning the jurisdiction of the Commission to issue licenses under § 104 b. of the Act. Such interventions were allowed not as a matter of law but as a "sound exercise of administrative discretion as applied to the particular circumstances here presented."^{5/}

In both the Duke and Philadelphia Electric proceedings the intervenors were limited in their presentation of evidence to the

^{5/} Matter of Philadelphia Electric Company (Docket Nos. 50-277 and 50-278), Memorandum and Order dated December 5, 1967, pp. 2-3; Matter of Duke Power Company (Docket Nos. 50-269, 50-270 and 50-287), Decision dated January 3, 1968, p. 14.

question of whether the applications involved satisfied the requirements of § 104 b. of the Act. This limitation to the intervenors' participation was to avoid any attempt by the intervenors to convert the proceeding into one for a determination of "practical value" under § 102 of the Act.

Although the petitioners are not now customers of the Florida Power Corporation, there is pending before the Federal Power Commission, as previously noted, an application for an interconnection of electric lines between the petitioners and the Florida Power Corporation. In the event this application is approved, the petitioners would have a potential customer relationship with the Florida Power Corporation. In view of the decisions of the Commission in the Duke and Philadelphia Electric proceedings, the petitioners' status is sufficiently similar, as a practical matter, to the status of the petitioners in those proceedings to warrant, as a matter of administrative discretion, the intervention of the petitioners in this proceeding to raise the jurisdictional question. Accordingly, the AEC regulatory staff consents to the admission of the petitioners as parties to this proceeding for the sole purpose of challenging the jurisdiction of the Commission to issue a license to the Florida Power Corporation under § 104 b. of the Act, and with the limitation that the petitioners' presentation of evidence be restricted to the question of whether the

Florida Power Corporation's application satisfies the requirement of § 104 b. of the Act.

IV

Motion To Broaden The Issues Should Be Denied

For the reasons stated in Section II above as well as those found in the Commission's Memorandum and Order in the Vermont Yankee proceeding, the petitioners motion should be denied. The proposed questions for inclusion as issues in this proceeding relate to matters which are outside the jurisdiction of the Commission in a licensing proceeding or an application subject to § 104 b. of the Act.

V

Conclusion

The Petition for Leave to Intervene should be granted in accordance with the conditions set forth in Section III above. The Motion to Broaden the Issues should be denied.

Respectfully submitted,

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Dated at Bethesda, Maryland,
this 25th day of June, 1968.