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USNRC

'81 DEC 22 P4:17

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of)
)
Florida Power & Light Company) Docket No. 50-389A
)
(St. Lucie Plant, Unit No. 2)) December 22, 1981

MOTION FOR EXTENSION OF TIME TO FILE EXCEPTIONS

On December 11, 1981, the Atomic Safety and Licensing Board conducting this proceeding issued a "Memorandum and Order Concerning Florida Cities' Motion For Summary Disposition On The Merits" ("Memorandum and Order").^{*/} The Memorandum and Order contains "a determination that a situation inconsistent with the antitrust laws does exist." (p. 2.) The "Order" contained therein includes the following:

(2) We conclude that the licensing of St. Lucie Nuclear Plant, Unit 2, would maintain a situation inconsistent with the antitrust laws unless the license is appropriately conditioned.

(p. 52.)

(7) This is an interlocutory decision and is not subject to appeal.

(p. 53.) The Memorandum and Order also implements "a special objection proceeding in which the parties may persuade us to

^{*/} The Memorandum and Order was served by mail on December 14, 1981. Accordingly, if an appeal lies from the order, exceptions would be due on December 29, 1981.

alter our decision." (p. 2.) Objections to the Memorandum and Order, together with supporting briefs, may be filed by January 13, 1982; reply briefs by January 22; and argument with respect to "specified objections" only scheduled for February 9, 1982.

FPL believes that the procedure of the Licensing Board's considering objections here is a desirable one. However, the Memorandum and Order prescribes procedures which FPL believes would result in (1) the parties' being required to file trial plans, prepare for evidentiary hearings and perhaps actually proceed with an evidentiary hearing on relief (and possibly other issues) before the Board rules on the objections; and (2) commencement of hearings under circumstances where FPL will not have adequate notice of the issues to be heard or a fair opportunity to prepare for the hearing. Consequently, FPL is filing today with the Licensing Board a Motion for Modification of Procedural Schedule, which seeks procedures that would render the objection process meaningful and eliminate the unfairness perceived by FPL.

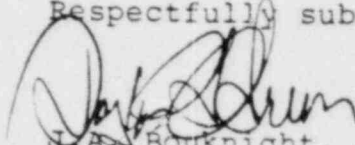
FPL is mindful of NRC precedents which indicate that: (1) an initial decision that contains the findings specified in Section 105a(5) of the Atomic Energy Act of 1954 is final and may be appealed by filing exceptions under 10 CFR § 2.762, Alabama Power Company (Joseph M. Farley Nuclear Plant, Units 1 and 2), LBP-77-24, 5 NRC 804,962 (1977); (2) a licensing board's action disposing of a major segment of a case is final

for appellate purposes, Toledo Edison Company (Davis-Besse Nuclear Power Station), ALAB-300, NRC 754, 758 (1975); and (3) filing of a motion for reconsideration of an initial decision does not toll the time for filing exceptions with the Appeal Board, Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-235, 8 AEC 645 (1974). If those precedents are applicable to the Memorandum and Order, exceptions to it would have to be filed on or before December 29, 1981. See unpublished Appeal Board orders, dated April 14 and May 17, 1977, extending the time to file exceptions to the initial decision on liability in the Farley proceeding, supra (Docket Nos. 50-348A and 50-364A), until after completion of the subsequent phase of the proceeding relating to relief. Therefore, FPL moves that the Appeal Board issue an order extending time for filing of exceptions to the Memorandum and Order until ten days after service of an order of the Licensing Board ruling on FPL's Motion for Modification of Procedural Schedule.^{*/}

If the Licensing Board acts favorably on FPL's Motion for Modification of Procedural Schedule, FPL anticipates that it may request a further extension of time for filing exceptions so that it may avail itself of the opportunity to have objections considered meaningfully by the Licensing Board.

^{*/} Counsel for the NRC Staff and the Cities have indicated that they do not object to the extension requested herein. However, counsel for Cities has asked counsel for FPL to state that Cities do not thereby concede either that the Licensing Board's Memorandum and Order is appealable or that the procedural ruling of the Licensing Board requested by FPL will be appealable.

Respectfully submitted,



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OFFICE OF SECRETARY
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CERTIFICATE OF SERVICE

I hereby certify that copies of Motion For Extension
Of Time To File Exceptions were served upon the following persons
by hand delivery (*) or by deposit in the U.S. Mail, first class,
postage prepaid this 22nd day of December, 1981.

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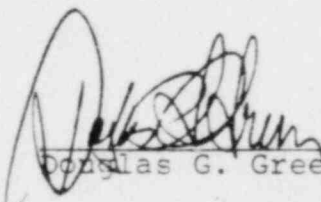
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