

NUCLEAR REGULATORY COMMISSION

COMMISSION MEETING

IN THE MATTER OF:

DISCUSSION OF ST. LUCIE

(ALAB-420)

Place - Washington, D. C.

Date - Tuesday, 24 January 1978

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DISCUSSION OF ST. LUCIE (ALAB-420)

Room 1130
1717 H Street, N. W.
Washington, D. C.

Tuesday, 24 January 1978

The Commission met, pursuant to notice, at 11:30 a.m.

BEFORE:

- DR. JOSEPH M. HENDRIE, Chairman
- PETER A. BRADFORD, Commissioner
- VICTOR GILINSKY, Commissioner
- RICHARD KENNEDY, Commissioner

1 CHAIRMAN HENDRIE: Let us start then on the next
2 section of this morning's agenda which was further discussion
3 by the Commission of the ALAB-420 matter.

4 This was scheduled simply to provide a little
5 time cushion after the oral event which I thought might run
6 on past one hour, and it did, and also to allow opportunity
7 for us to ask the counsel's office to remind us again of the
8 issues here and any further comments you think appropriate
9 in view of this morning's presentations here; and then we
10 will see if the Commissioners have further questions that
11 they want to exercise in this time.

12 MS. BELL: The question that was originally placed
13 before the Commission, one of the questions by this petition
14 had to do with the standards enunciated in 10 CFR 2.714 which
15 deal with late intervention petitions; and the question
16 was whether these standards should be applied directly to late
17 interventions in antitrust hearings in view of the policies
18 that were explored in the South Texas decision.

19 That is the statutory policy for early examination
20 of these questions. And, of course, this petition coming
21 some 31 months after the original application presents just
22 that issue.

23 We asked the parties today here to discuss certain
24 related matters to that. We asked them first of all whether
25 licensing boards could be given discretion to take into

1 account the lateness of a request for an antitrust hearing
2 in determining the scope of the hearing and in establishing,
3 if it came to that, establishing relief.

4 The parties seemed to agree that it would be
5 very difficult to limit the scope of the hearing; they also
6 seemed to agree it would be possible to feed this factor into
7 the relief portions of the hearing.

8 COMMISSIONER KENNEDY: I am not clear as to how
9 that works when allegations were laid out to the end that
10 cities seem to believe that Florida Power & Light was guilty
11 of a variety of antitrust violations, all of which presumably
12 would have to be aired in a hearing.

13 MS. BELL: I think they did say it wasn't the
14 scope of the hearing. It was the examination of the various
15 facts related to their contentions of antitrust violations.

16 They did not believe that those could be limited.
17 They did, I believe, say as you got to the relief portions
18 it might be possible to take into account lateness in terms
19 of the hardship on the applicant and in terms of his own need
20 for power, and proceed on that basis.

21 MR. EILPERIN: The point was, there was a statutory
22 standard and statutory finding that had to be made and that
23 that could not be buried, but in terms of deciding upon relief
24 you had much broader discretion.

25 COMMISSIONER BRADFORD: Presumably to the extent

1 that at the end of the hearing there is a feeling that what
2 was stated in the affidavit was correct, that the cities were
3 misled; if the Board felt that way one wouldn't want to
4 constrain him from offering full relief, if they were misled
5 by Florida Power & Light, if the Board finds that to be true.

6 Florida Power & Light shouldn't profit by that by
7 having a narrower range of relief available to those who
8 were harmed.

9 MS. BELL: I do believe he did say for planning
10 purposes which affected them as well as Florida Power & Light
11 that some account could be taken, nevertheless, if it were
12 shown, if hardship, true hardship were shown.

13 I can't remember the exact word formulation, but
14 it was along those lines. That there could be some balancing
15 there in apportioning participation rights.

16 There was a good deal of discussion about the
17 affidavits, and Florida Power & Light has suggested that we
18 could send the matter back to the Board to examine those
19 affidavits and get further information and look behind them
20 to consider whether or not there was any truth to the allega-
21 tions upon which the Appeal Board relied so heavily.

22 That is a possible course of action the Commission
23 could consider.

24 COMMISSIONER KENNEDY: Weren't they asserting as
25 well, Ruth, that whatever is done perhaps that issue ought to

1 be ventilated and cleared up, that charges of that order
2 should be disposed of than left lying or left as a basis for
3 other proceedings without having been clarified?

4 MS. BELL: I believe they were stating that be-
5 cause the Appeal Board relied so heavily on it, perhaps
6 exclusively on it, because it is fuzzy as to the extent which
7 they did or did not affirm the other findings of the Licensing
8 Board, that that issue should be closely examined.

9 MR. EILPERIN: I think the point also was that the
10 issue would have to come up, would come up at least in terms
11 of talking about relief, and the real question is whether or
12 not the Commission should seek a preliminary evidentiary
13 finding on that as a condition to intervention or conduct a
14 single hearing with intervention already allowed.

15 I think evidence on matters relating to the
16 affidavit will in some fashion necessarily come up.

17 COMMISSIONER KENNEDY: Whatever the nature of the
18 hearing?

19 MR. EILPERIN: Whatever the nature of the hearing.

20 If the Commission agrees with the Appeal Board.

21 MS. BELL: I think that is confirmed by the Justice
22 Department who said that that could be an element in the
23 total finding, in the series of elements which might make up
24 a situation inconsistent with the antitrust laws.

25 I don't know to what extent you want me to restate

1 the things you have already heard.

2 I think, frankly, it is difficult immediately
3 after an oral argument to come to much -- to sort of instantly
4 determine what you want to do with this matter.

5 You may want to think about it and meet again.

6 CHAIRMAN HENDRIE: That is unquestionably true.

7 The present discussion is not meant to replace or
8 foreclose that by any means.

9 We obviously will have to meet again, perhaps
10 a number of times.

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sh 1 Could you remind me, let's see, South Texas
2 Commission handed that down in mid-June of last year.

3 MS. BELL: That involved an application for an
4 antitrust hearing that came in after the construction permit
5 had already issued.

6 There was no question here that there was a
7 stipulation to issue the construction permit . The proceed-
8 ing had concluded in all its aspects, health, safety,
9 environmental, and the antitrust review and a CP issue, and
10 thereafter there was a request for an antitrust review.

11 The Commission chose -- well, Section 105 provides
12 procedures for antitrust review at the operating license stage
13 and the Commission set in motion that antitrust review in its
14 South Texas decision, and in the course of that discussed --

15 CHAIRMAN HENDRIE: Set in motion the operating
16 license.

17 MS. BELL: -- the operating license review, and in the
18 course of that discussed its antitrust responsibility and the
19 statute and what it perceived to be in the statute, a thrust
20 of generally early antitrust review of these matters.

21 Although the Commission did note at page 13, "For
22 like reasons we would not be limited to mere reference to the
23 Attorney General. If a licensing applicant had falsified
24 pertinent antitrust review information or who had otherwise
25 obtained a license by fraud or concealment, but no such

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1 allegation is contained in the matter before us now."

2 It was a request after the CP but before the
3 operating license phase of the case for an antitrust review.

4 CHAIRMAN HENDRIE: What is the present status of
5 the South Texas decision? Is it being challenged?

6 MS. BELL: Yes, we filed our brief in that matter
7 on Friday in the Court of Appeals.

8 CHAIRMAN HENDRIE: Where is the challenge going?

9 MR. EILPERIN: D.C. Circuit Court of Appeals and
10 the briefs have now been filed. It will be set for argument
11 some months from now, I expect.

12 COMMISSIONER KENNEDY: The appeal is arguing, in a
13 word, what?

14 MS. BELL: First of all, it is arguing that it is
15 premature for the Court to become involved in this.

16 CHAIRMAN HENDRIE: This is our brief.

17 MS. BELL: Our brief.

18 CHAIRMAN HENDRIE: The nature of the challenge is
19 what? Challenge to the Commission decision that there not be
20 an antitrust hearing now in South Texas, but that it wait
21 for whatever operating license review the matter would normally
22 be carried out in?

23 MS. BELL: Basically the Petitioners argue that
24 the antitrust responsibility of this Commission is more wide-
25 ranging than the South Texas decision determined and that the

ash 1 Commission under Section 186 of the Atomic Energy Act has dis-
2 cretion at any time to institute an antitrust proceeding.

3 We say that in view of the fact that it came in
4 after the CP and before the OL and we set in motion the OL
5 procedures, and that we have sent a request to the Attorney
6 General asking for his advice in the matter, that that has not
7 yet been received, and upon receipt it will set in motion
8 all of the other steps that are set forward in 105 for review
9 of antitrust allegations.

10 CHAIRMAN HENDRIE: That has been challenged and we
11 are in the local Circuit Court on the matter?

12 MS. BELL: That is correct.

13 CHAIRMAN HENDRIE: You might send me along a copy
14 of your brief.

15 MS. BELL: We intend to do that.

16 CHAIRMAN HENDRIE: What do you see the argument in
17 the brief doing with regard to the present matter?

18 Is there a relation, potential conflict?

19 MR. EILPERIN: I don't think it has very much
20 bearing on the present matter. It is basically the argument
21 being made by the utilities in the Court of Appeals and they
22 are the same arguments being made before the Commission which
23 the Commission rejected in setting forth of the scope of its
24 antitrust jurisdiction.

25 I don't see any reason for the -- on the basis of

ash 1 the briefs that have been filed, for the Commission to
2 change its mind. And I see no possibility of a court deci-
3 sion until many, many months after the Commission decides
4 this matter. I would say it would have no bearing whatsoever
5 on the Commission's handling of the case before them now.

6 COMMISSIONER KENNEDY: My impression also has been
7 in looking through this case at some length that there are a
8 variety of ways which it can be resolved without any conflict
9 with the conclusions and decisions in the Houston matter.

10 MR. EILPERIN: That is correct.

11 MS. BELL: Yes.

12 COMMISSIONER BRADFORD: I don't have anything sub-
13 stantive to add now. I would suggest that we not contemplate
14 a series of more meetings on it if we can help it. It is
15 not that big a case.

16 I hope it would be decided in one more meeting.
17 This thing has been knocking around a long time.

18 MS. BELL: Perhaps we should prepare for you at the
19 next stage a paper outlining the way we have proposed resolv-
20 ing the issue.

21 CHAIRMAN HENDRIE: For myself, I very much feel
22 the need for studying considered opinions from counsel's
23 office.

24 Where do we go from here?

25 COMMISSIONER BRADFORD: Fair enough.

sh 1 The antitrust proceeding itself would be a big case,
2 but in the form it is before us now I would hate to think we
3 would plan four or five more meetings on it.

4 CHAIRMAN HENDRIE: Fine.

5 Anything else?

6 I'm delighted to hear the view.

7 I support it.

8 If there seems to be no particular need for fur-
9 ther Commission discussion at this time, I thank everyone
10 very much for coming.

11 We will close this meeting and the Commission will
12 reconvene at 1:30 this afternoon.

13 (Whereupon, at 11:45 a.m., the hearing was closed.)

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