

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

3/28

In the Matter of )  
 )  
Florida Power & Light Company )  
 )  
(St. Lucie Plant, Unit No. 1) )  
 )  
(Turkey Point Plant, Unit Nos. )  
3 and 4) )

Docket No. 50-335A

Docket Nos. 50-250A  
and 50-251A

MOTION FOR ANTITRUST HEARING

By Order of July 27, 1978, the Commission requested advice as to whether to hold an antitrust proceeding in connection with the above-captioned dockets and whether such proceedings should be consolidated with the current 105(c) antitrust hearing on the St. Lucie 2 plant. Although the decision of the Fifth Circuit in Gainesville v. Florida Power & Light, 573 F.2d 292 (1978) has become final 1/, the Commission has not yet acted in this matter.

On March 23, 1979, the United States Court of Appeals for the District of Columbia Circuit entered an Order in Fort Pierce Utilities Authority of the City of Fort Pierce, et al. v. Nuclear Regulatory Commission, Docket No. 77-1925, et al. 2/ sustaining the Commission's position that it does not have

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1/ Letter from Robert A. Jablon to Mr. Samuel J. Chilk, Secretary, NRC, of November 29, 1978, enclosing Denial of Certiorari and requesting action on the Commission's July 27, 1978 Order.

2/ This order is subject to certiorari review by the Supreme Court.

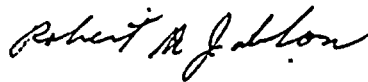


jurisdiction under Section 186 to order an antitrust review in connection with these units. However, in support of its holding, the Court further states (Slip Opinion, pgs. 30-31):

"To so immunize the licenses at issue here from post-licensing antitrust review under section 186(a) is not, as Florida Cities assert, to give FP&L a 'carte blanche to use [its] facilities directly contrary to the antitrust laws.' Section 105(a) not only provides that nothing in the Act preempts the normal operation of the antitrust laws, but also vests the Commission with authority to revoke or modify FP&L's operating licenses in the event that a court finds that FP&L has violated those laws in the course of licensed activity.", thereby confirming the Commission's antitrust authority in this regard.

Since the questions relating to a 105(a) proceeding with regard to these dockets have been fully briefed, Florida Cities deem it inappropriate to reargue their position as to the basis for review and consolidation. However, in view of the decision of the Court of Appeals, Florida Cities do deem it appropriate to again renew their request that the Commission act on this matter 1/.

Respectfully submitted,



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March 28, 1979

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1/ In view of the ongoing proceedings in Florida Power & Light (St. Lucie 2), Docket No. 50-389A, judicial economy would favor a ruling so that if a hearing is ordered there need not be separate proceedings.



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing MOTION FOR ANTITRUST HEARING has been served on the following persons by deposit in the United States mail, first class, postage prepaid, this 28th day of March, 1979:

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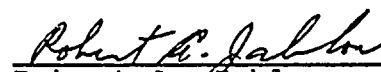
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