

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

Florida Power & Light Company
(St. Lucie Plant, Units No. 1
and No. 2. . .

Docket Nos. (50-335A)
50-389A

Florida Power & Light Company
(Turkey Point Plant, Units
No. 3 and No. 4)

Docket Nos. 50-250A
50-251A

APPLICANT'S RESPONSE TO CITIES' MOTION FOR LEAVE
-- TO REPLY TO ANSWERS TO PETITION TO INTERVENE
AND REQUEST FOR CLARIFICATION

AT
4

APPLICANT'S RESPONSE TO CITIES' MOTION FOR LEAVE
TO REPLY TO ANSWERS TO PETITION TO INTERVENE
AND REQUEST FOR CLARIFICATION

Florida Cities have moved that the Board grant them leave to file a reply to the Staff's and Applicant's answers to their Late Petition to Intervene. Applicant respectfully urges the Board to deny this request.

The Rules of Practice do not allow such a reply to be made. Cities rely on Section 2.706, but that reliance is misplaced. That section allows a "party" to reply, but clearly in the context of Section 2.705, which provides only for answers to a notice of hearing, not to a petition to intervene. This interpretation of Section 2.706 is supported by both the context in which it appears and the use of the word "party", which applies only to a person that has already been permitted to intervene.^{1/} Section 2.714(c) specifies the nature of pleadings allowed where intervention is sought, which consist of the petition and an answer. No mention is made in Section 2.714 of the kind of reply that Cities now seek to make.

Moreover, no basis is shown for the Board's granting the Cities special leave to file a reply in this particular instance. The reasons given in the Cities' Motion are that the Cities wish to counter certain characterizations contained in the Applicant's response and that they desire to respond to

^{1/} 10 CFR §2.714(g).

certain of Applicant's legal arguments. The former objective has been accomplished by the filing of the Motion (see pp. 3-4). The latter request is apparently grounded on the view that Applicant's response raised "technical" legal arguments not-anticipated by the Cities.^{2/} To the contrary, Applicant's legal arguments relate to the basic scope of Section 105 of the Atomic Energy Act and to the application of Section 2.714 of the Commission's regulations, both of which are basic to the controversy before the Board. The Cities certainly had a fair opportunity to address these questions in their 86-page Petition.

It is not uncommon for a party, upon reading the responses to one of its pleadings, to devise better and clearer ways to state its own position. Hindsight has the advantage over anticipation. However, the pleading process must end, and someone must have the last word. Section 2.714(c) specifies the order in which the litigants are to lodge their pleadings. Further pleading, which is bound to upset the balance in one direction or the other, should not be allowed except for compelling reasons.

^{2/} Motion, p. 2

WHEREFORE, Applicant respectfully requests that the
Motion be denied.

Respectfully submitted,

Robert H. Culp

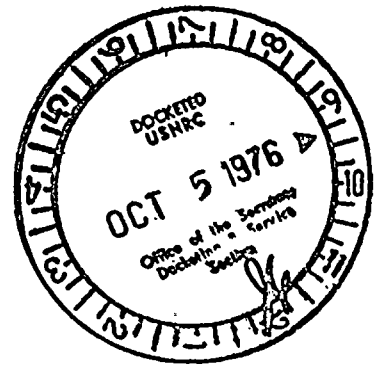
Robert H. Culp
Lowenstein, Newman, Reis & Axelrad
1025 Connecticut Avenue, N. W.
Washington, D. C. 20036
(202) 833-8371

John E. Mathews, Jr. / RMC

John E. Mathews, Jr.
Mathews, Osborne, Ehrlich, McNatt,
Gobelman & Cobb
1500 American Heritage Life Building
Jacksonville, Florida 32202
(904) 354-0624

Counsel for Florida Power & Light
Company

Date: October 1, 1976



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

Florida Power & Light Company
(St. Lucie Plant, Units No. 1
and No. 2.

Docket Nos. 50-335A
50-389A

Florida Power & Light Company
(Turkey Point Plant, Units
No. 3 and No. 4)

Docket Nos. 50-250A
50-251A

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the following:

Applicant's Response to Cities' Motion for Leave to Reply To
Answers to Petition to Intervene and Request for Clarification
have been served on the persons shown on the attached list by
hand delivery or deposit in the United States Mail, properly
stamped and addressed on October 1, 1976.

By:

Robert H. Culp

Robert H. Culp

Counsel for Florida Power
& Light Company

Date: October 1, 1976

Daniel M. Head, Esquire
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D. C. 20555

John M. Frysiak, Esquire
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Ivan W. Smith, Esquire
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Robert A. Jablon
Daniel J. Guttman
2600 Virginia Avenue, N.W.
Washington, D.C. 20037

David A. Leckie
Antitrust Division
Department of Justice
P.O. Box 7513
Washington, D.C. 20044

Lee Scott Dewey
Counsel for the Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. C. R. Stephens, Supervisor
Docketing and Service Station
Office of the Secretary of the
Commission
Washington, D.C. 20555
(Original and 20 copies)

Secretary
U.S. Nuclear Regulatory
Commission
Washington, D. C. 20555

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Appeal Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555