



City of Lakeland

WORLD CITRUS CENTER
LAKELAND, FLORIDA 33802

December 13, 1978

HAND DELIVERED

William R. Phillips, General Counsel
U.S. EPA, Region IV
Atlanta, Georgia

Dear Mr. Phillips:

In re City of Lakeland McIntosh Power Plant Unit 3
Non-Applicability of New NSPA

I appreciate very much the opportunity to have discussed with you on Friday, December 8, 1978, the applicability or non-applicability of the proposed new NSPS to McIntosh Power Plant Unit 3 which has been under a continuous program of construction as evidenced by contractual obligations to complete the expansion within a reasonable time for a period well in excess of one year prior to September 19, 1978, i.e. the relevant date for application of the new NSPS. Pursuant to our discussion, I have prepared the following letter report with the attached and enclosed addendum and evidence which the City of Lakeland strongly feels would establish clearly that the new NSPS would not be applicable in the instant expansion.

The definition of "commenced" is set forth in 40 CFR 60 2(i):

"(1) 'Commenced' means, with respect to the definition of new source in Section III (a)(2) of the Act, that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification."

As you clearly indicated in our discussion, it would be necessary for the City of Lakeland to produce satisfactory evidence that the project had "commenced" within the definition prior to September 19, 1978. This letter and the addendum, attachments, and enclosures, are submitted in support of the position of the City of Lakeland that the new NSPS would not be applicable to the subject project. The subject letter and enclosures are being hand delivered to you by Mr. Michael Opalinski, Environmental Coordinator, City of Lakeland, Department of Electric and Water Utilities. Mr. Opalinski is extremely knowledgeable in all areas of the proposed expansion and has worked extremely close with this office not only in preparing



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this document but in a myriad of other areas with respect to the expansion. Mr. Opalinski, therefore, would be in a position to answer any inquiries you might make.

The City of Lakeland has pursued an extensive permitting and engineering schedule to reach the present posture. The permitting process began in May of 1975, when the City submitted an application for a 250 MW coal and refuse fired power plant to the Florida Department of Environmental Regulation (DER) under the Florida Power Plant Siting Act, Florida Statutes Ch. 403 (PPSA). As required by the PPSA, the application was reviewed by the DER, Public Service Commission (PSC), Division of State Planning (DSP), and Southwest Florida Water Management District (SWFWMD), to review the technical sufficiency of the application and investigate the potential environmental impact of constructing and operating the unit. The review process included two hearings before a State-appointed Hearing Officer to initially determine whether the proposed site of the unit was in compliance with State and local land use regulations, and secondly, to determine if the construction and operation of the unit would be in accordance with State and federal environmental limitations. These hearings were held on November 8, 1974, and August 5, 1976, respectively.

Following the conclusion of the hearings, the Hearing Officer submitted Finding of Fact, Conclusions of Law, and a Recommended Order, to the Governor and Cabinet sitting as the Board of the PPSA for review and approval. Certification approval was granted on December 7, 1977. The City of Lakeland also submitted an application to the Environmental Protection Agency (EPA) in May 1977.

In order to insure that the proposed unit would have a starting date of October 1981, it was necessary for design engineering work to commence concurrently with the power plant siting process. In any power plant construction process, the essential elements in scheduling a start-up date are the boiler and turbine generator. The time required from date of purchase to completion of on-site construction for each element is 48 months. On November 7, 1977, the Charles T. Main Company of Boston entered into a contract with the City of Lakeland to design and engineer the proposed unit with a design start-up date of October 1981.

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Subsequent to the near completion of the permitting process for the 250 MW unit, the City was approached by the Orlando Utilities Commission (OUC) as to the feasibility of increasing the size of unit 3 from 250 MW to 364 MW, and making the expansion a joint ownership project with Lakeland owning 60% of the unit and OUC 40%. The proposal presented serious problems: (1) unit 3 was nearing the conclusion of the Florida permitting process and a change in unit size from 250-364 MW could require the submission of a new application and a restarting of the process; (2) the writing of design specifications for a 250 MW had already begun, and if a larger unit was required, the decision would have to be made to avoid expensive redesign work at a later time; and (3) finally, the decision of increasing the size would have to be done without a formal agreement between the City and OUC.

In order to take advantage of the economic benefits to both Lakeland and Orlando from the joint project, it was decided that: (1) the permitting of the 250 MW unit would be completed with the intention of submitting a modified application increasing the size as soon as possible; (2) C. T. Main would prepare technical specifications for a 364 MW boiler and turbine generator; and (3) Lakeland and OUC would work as expeditiously as possible to enter into a formal joint venture agreement. This decision was made on the basis that the unit would still be able to meet the start-up date of October 1981.

On March 21, 1978, the City of Lakeland signed a Letter of Intent with Babcock & Wilcox Company (B&W) to purchase the unit 3 boiler, SO₂ scrubber, and electrostatic precipitator for \$35,000,000. The Letter of Intent served as a formal agreement between B&W and the City of Lakeland to begin construction of the above elements. The schedule was designed to cover all work that would be incurred by B&W through the expected time required for recertification of the 364 MW unit. To cover the fee schedule outlined in the Letter of Intent, the City secured \$80 million in short term notes to cover the Letter of Intent until long term municipal bonds could be obtained. A similar action was also taken with General Electric (G.E.) when the City signed a Letter of Intent with G.E. on April 17, 1978. The City subsequently entered into a more formal contract with G.E. on September 5, 1978.

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On February 8, 1978, the City of Lakeland and OUC formally submitted to EPA, Region IV, an application to construct a 364 MW unit, and in May 1978, reapplied under the Florida Power Plant Siting Act to modify the current unit 3 certification from 250 MW to 364 MW. Under the PPSA, it was necessary to go thru the same hearing schedule for land use and environmental acceptability as previously conducted for the 250 MW unit in 1977. The land use hearing was held on July 17, 1978, with subsequent Governor and Cabinet approval on October 10, 1978, and the Environmental Hearing was held on August 15, 1978, with final Governor and Cabinet approval to construct and operate unit 3 on December 5, 1978.

On October 30, 1978, representatives of the City, OUC, C. T. Main, and B&W, met with EPA's Roger Pfaff, to present specific design data on unit 3's pollution control equipment. This data consisted of the actual drawings and technical specifications that will be used at the unit 3 site when construction begins. The subject meeting is important to note due to the fact that the presentation of exact design data required by EPA had to be in existence and the production of months of engineering work prior to this date and, therefore, prior also to September 19, 1978. The design work was conducted pursuant to the formal contract entered into on November 7, 1977.

I hope the above discussion has clearly outlined the construction program in which the City of Lakeland has been pursuing for several years. We feel that we are clearly within the definition of "commenced," and that the new NSPS would not be applicable. I have enclosed as a part of this transmittal the documents referenced herein including, inter alia, the C. T. Main contract, G.E. contract, boiler and turbine specifications, produced by C. T. Main, and B & W Letter of Intent. Mr. Opalinski will I am sure detail these documents for you and outline their applicability.

We understand the time restrictions under which EPA is placed. It would be our intent to provide any additional documentation, evidence, or other materials desired by you in a expeditious manner to insure that your decision may be reached

CITY OF LAKEVIEW

William R. Phillips
General Counsel

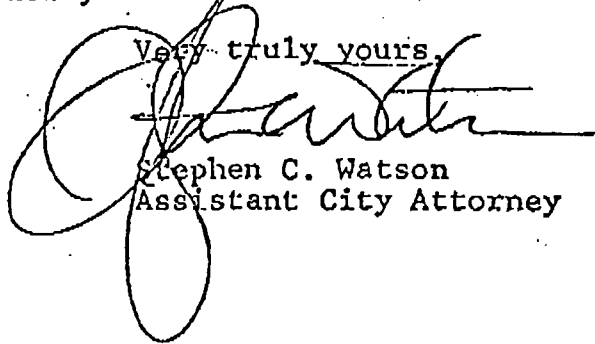
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within the time restriction. I would be most grateful if you would call me at either my private office, 813-688-7747, or my City Hall office, 813-682-1141, Ext. 211, should you desire any further information or comments from my office.

Thank you very much for your consideration.

Very truly yours,

A handwritten signature in cursive script, appearing to read "S. Watson", is written over a horizontal line. The signature is fluid and somewhat stylized, with a large loop at the end.

Stephen C. Watson
Assistant City Attorney

SCW:ch
Encs.