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**Sent:** Monday, January 28, 2008 11:06 AM

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**Subject:** Docket No. 070650

**Attachments:** Motion for Reconsideration FINAL 01.28.08.pdf

In accordance with the electronic filing procedures of the Florida Public Service Commission, Seminole Electric Cooperative, Inc. makes the following filing.

a. The name, address, telephone number and email of the person responsible for the filing is:
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b. This filing is made in Docket No. 070650-EI, In re: Petition to Determine Need for Turkey Point Nuclear Units 6 and 7 Electrical Power Plant, by Florida Power & Light Company

c. The document is filed on behalf of Seminole Electric Cooperative, Inc.

d. The total number of pages in the document is 13.

e. The attached document is Seminole's Motion for Reconsideration.

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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| In re: Petition To Determine Need for Turkey Point Nuclear Units 6 and 7 Electrical Power Plant, by Florida Power & Light Company | DOCKET NO. 070650-EI<br><br>FILED: January 28, 2008 |

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**SEMINOLE ELECTRIC COOPERATIVE, INC.'S MOTION FOR RECONSIDERATION**

Seminole Electric Cooperative, Inc. (Seminole), pursuant to Rule 25-22.0376, Florida Administrative Code, files this Motion for Reconsideration of the Prehearing Officer's ruling limiting Seminole's participation in this docket. The Prehearing Officer's ruling severely and unlawfully limits Seminole's ability to participate in this proceeding, omits relevant issues, unduly and unlawfully restricts the Commission's jurisdiction in this matter, and omits from the record information highly relevant to this proceeding.

**INTRODUCTION**

Seminole is a non-profit electric generation and transmission cooperative organized under the Rural Electric Cooperative Law of Florida (Chapter 425, Florida Statutes). Seminole's corporate purpose is to supply wholesale electric power and energy reliably and at the lowest feasible cost to its ten member non-profit, rural distribution cooperatives. Seminole's member systems provide retail electric service to over 900,000 consumers in 46 Florida counties. In 2006, member system retail sales were in excess of 16 billion kWh, and these sales are expected to grow over the next 15 years at an average annual rate of 4.0%. Seminole acquires the power to serve its member load from its own generation, from power purchases from both investor-owned utilities and independent power producers, and from co-owned facilities in the State.

## PROCEDURAL BACKGROUND

On October 16, 2007, Florida Power & Light Company (FPL) filed a Petition To Determine Need for two nuclear-fueled generating units which will add between 2,200 and 3,040 MW to the grid. FPL projects that the first of the units will be brought into service in 2018 and the second one will be brought into service in 2020. Seminole has a need for base load generation during the same timeframe in which the Turkey Point units will come on line.

On December 3, 2007, Seminole filed a Petition To Intervene in this Proceeding. FPL objected to Seminole's intervention.[1] The Prehearing Officer received briefs on the issue of the intervention requests of Seminole (and other electric utilities) on January 3, 2008. Oral argument on Seminole's petition to intervene (and the other petitions) was held on January 7, 2008. The Prehearing Officer announced his ruling orally at the Prehearing Conference held on January 14, 2008. To date, no written order has been issued.

The hearing is scheduled to begin on January 30, 2008 (one week from today). Given the extreme effect the Prehearing Officer's ruling will have on Seminole's participation in the case, Seminole has no choice but to file this motion based on the transcript of the Prehearing Conference where the ruling was announced. This will permit the full Commission sufficient time to consider the matters at issue.[2]

The Prehearing Officer's oral ruling was as follows:

> COMMISSIONER SKOP: Thank you. With respect to the petitions for intervention by FMEA, FMPA, OUC and Seminole, my ruling is going to grant the request for intervention pursuant to the direction contained in my forthcoming orders. . . . In this

[1] FPL objected to the intervention of all other utilities who attempted to participate in this docket. Other utilities and utility organizations who have attempted to participate in this docket are Orlando Utilities Commission, Florida Municipal Electric Association, Florida Municipal Power Association and JEA. These entities are referred to herein as Utility Intervenors.

[2] Seminole reserves the right to supplement this motion, if necessary, when the written order is issued.

> regard, participation will be strictly limited to the issues that are relevant to the need determination proceeding.[3]
>
> . . .
>
> . . . [T]he Petitioners will be afforded the opportunity to cross-examine witnesses regarding the adequacy of FPL's disclosure only under the statute, not the merits of, not the merits of co-ownership.[4]

Further, Seminole and other Utility Intervenors raised seven issues related to the interpretation of section 403.519(4)(b), Florida Statutes, and the Commission's authority under that section and under the Grid Bill to consider issues which it deems relevant in the exercise of its authority. At the Prehearing Conference, with the exception of one issue related to the accuracy of FPL's summary of its discussion with other utilities,[5] the Prehearing Officer struck every issue Utility Intervenors raised and removed those issues from this Commission's consideration.[6] This ruling severely limits Seminole's right to inquire into areas which affect its substantial interests, severely limits the Commission's jurisdiction, unduly restricts the information which may be developed in the record of this proceeding, and is an erroneous interpretation of the statutory provisions at issue. The Commission should receive evidence and permit inquiry regarding these issues and should vote on these issues at the conclusion of the case.

To Seminole's knowledge, this is the first time the Commission will interpret the new amendments to section 403.519, Florida Statues, regarding co-ownership. The restrictive interpretation placed on the new statutory language, as well as on other portions of the statutes

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[3] Prehearing Conference transcript at 5, l. 25 – p. 6, l. 6.
[4] *Id.* at 27, l. 3-6.
[5] The remaining issue is Issue 7: Does FPL's nuclear power plant petition contain a summary of any discussions with other electric utilities regarding ownership of a portion of the plant by such electric utilities, consistent with the requirements of Rule 25-22.081, F.A.C.?
[6] Attached hereto is a list of all the co ownership issues stricken from the proceeding as well as JEA's suggested rewording of some of the issues.

relating to this Commission's jurisdiction under the Grid Bill, is erroneous. The full Commission should overturn the Prehearing Officer's ruling, Seminole should be permitted to fully participate in this proceeding, and the stricken issues should be reinstated and voted upon by the full Commission.

## STANDARD FOR RECONSIDERATION

The standard for a motion for reconsideration is whether the motion identifies a point of law or fact which the Prehearing Officer overlooked or failed to consider. *See*, *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So.2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So.2d 889 (Fla. 1962). In this instance, the Prehearing Officer's ruling overlooks and fails to consider critical issues of law and fact.

## ARGUMENT

### I. The Prehearing Officer's Ruling Inappropriately Limits the Relevant Matters the Commission Will Consider in This Docket.

At the Prehearing Conference, the Prehearing Officer opined that the issues Utility Intervenors raised were "not relevant to the core proceeding."[7] Seminole understands this "core" reference to be to Issues 1-5, 8-9 in the Prehearing Order. The Prehearing Officer's ruling greatly truncates the Commission's proper jurisdiction in this matter, limits the evidence germane to this case which the full Commission will be permitted to consider at the evidentiary hearing, and is an incorrect reading of the law.

The Prehearing Officer's severely restrictive interpretation of section 403.519, Florida Statutes, overlooks and fails to consider the clear language in section 403.519(4)(b), which states:

> In making its determination, the commission shall take into account matters within its jurisdiction which it deems relevant. . . .

[7] *See*, Prehearing Conference Transcript at p. 37, l. 17-19.

Such matters clearly include issues that relate to the needs of the state as a whole, including whether the proposed plants will:

> 2. Enhance the reliability of electric power production *within the state* by improving the balance of power plant fuel diversity and reducing *Florida's* dependence on fuel oil and natural gas;
> 3. Provide the most cost-effective source of power, taking into account the need to improve the balance of fuel diversity, reduce *Florida's* dependence on fuel oil and natural gas, reduce air emission compliance costs, and contribute to the long-term stability and reliability of the electric grid.[8]

There can be no doubt that the large nuclear units FPL has proposed in this docket will impact power generation, transmission and planning in the entire state. Further, there can be no doubt that issues of co-ownership by the Utility Intervenors are relevant to these considerations.

Relevant matters also encompass the Commission's authority under the Grid Bill which directs the Commission pursuant to section 366.04(5), Florida Statutes, to ensure that "uneconomic duplication of generation [and] transmission" facilities is avoided. The alternative to co-ownership of nuclear base-load generation is the proliferation of smaller gas or oil burning units and accompanying transmission upgrades. The stricken issues and development of the record as to those issues is highly relevant to this need determination and to the Commission's primary statutory responsibilities.

In addition, issues of co-ownership relate directly to the cost effectiveness of the project. The issue of cost-effectiveness is squarely addressed by Issue 4 in this case,[9] and no party has suggested that this issue is inappropriate for Commission consideration. If co-ownership of the proposed plants, or a different configuration or number of plants, would be more cost effective than FPL's proposal, the Commission must be permitted to consider that fact in making its

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[8] Section 403.519(4)(b).

[9] Issue 4: Is there a need for the proposed generating units, taking into account the need for adequate electricity at a reasonable cost, as this criterion is used in Section 403.519(4), Florida Statutes.

determination. Under the Prehearing Officer's ruling, such inquiry and consideration is inappropriately foreclosed.

Further, the Prehearing Officer's ruling treats the issues raised by Utility Intervenors differently from those FPL proposed. Issue 6 in this case relates to whether it is appropriate for FPL to make certain advance payments related to procurement for the proposed nuclear units. This issue is one that addresses cost recovery. Staff objected to the issue,[10] and the Prehearing Officer recognized that this issue was not a "core" issue.[11] Nonetheless, the Prehearing Officer included the issue in the case for the Commission's consideration. He justified its inclusion by noting that it was an issue of public policy[12] which the Commission could consider.

Similarly, issues related to co-ownership and grid reliability are not only clearly within this Commission's jurisdiction as noted above, but are also infused with critical public policy concerns as the entire state struggles to ensure an adequate supply of power for all Florida's citizens. In its Report to the Legislature, the 2007 Florida Energy Commission stated:

> In order to achieve future price stability and enjoy new capacity economies of scale, *all* of the state's electric utilities should have access to a wide range of generation technologies when choosing capacity. While this is an inherent ability of large systems, smaller utilities are limited in these options. A state energy policy encouraging jointly developed and/or jointly owned generating units could provide impetus for providing such generation options.[13]

The Prehearing Officer's treatment of the Utility Intervenors' issues is inconsistent and at odds with his inclusion of the FPL cost recovery issue and should be overturned.

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[10] Prehearing Conference Transcript at p. 88, l. 6 -22.
[11] *Id.* at p. 94, l. 2-4.
[12] *Id.* at 76, l. 17-18.
[13] 2007 Florida Commission Report to the Legislature at 97, emphasis supplied.

The ruling for which Seminole seeks reconsideration errs in its highly restrictive interpretation of what matters are relevant to the Commission's review of FPL's petition. If permitted to stand, the Prehearing Officer's ruling will limit the evidence which the Commission considers and result in a record which fails to consider matters clearly within the Commission's jurisdiction and pertinent to its deliberations on FPL's request.

## II. The Prehearing Officer's Ruling Renders the New Co-ownership Language In Section 403.519 Meaningless.

In 2006, the Florida Legislature amended section 403.519(4)(a)(5), Florida Statutes, to require a utility seeking a determination of need for a nuclear plant to include information its application regarding co ownership discussions with other utilities. At the time of the enactment of this section, the Legislature was well aware that load was growing rapidly in Florida, that concerns over carbon dioxide ($CO_2$) emissions had escalated both at the state and national level, that the options for meeting Florida's projected growth were decreasing, and that the ability to site and permit nuclear units was very limited. The new statutory language indicates the Legislature's view that public utilities planning major new nuclear facilities must talk meaningfully to other electric utilities in the State about co-ownership. To view this new provision any other way simply renders it meaningless.

In his ruling at the Prehearing Conference, the Prehearing Officer refererred to principles of statutory construction[14] in an attempt to limit any inquiry as to discussions regarding co-ownership to only the issue of *whether* any discussions occurred.[15] The Prehearing Officer stated that questions regarding such discussions were to relate only to the "adequacy of disclosure."[16]

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[14] *See*, Prehearing Conference Transcript at 46, l. 14-16.
[15] *Id.* at 57, l. 20-25.
[16] *Id.* at 27, l. 3-6.

This interpretation is clearly erroneous and overlooks the clear principles of statutory construction tht provide that the Legislature does not enact meaningless language. [17] If this ruling is not reversed, however, that is exactly the meaning the Commission will have ascribed to the Legislature's action. This interpretation nullifies the amendment and should not stand. Even worse, the Prehearing Officer's ruling relies on legislative language that *enhances* the information that a need petitioner must file for the conclusion that an issue – namely, co-ownership – that is clearly relevant to the Commission's considerations in this proceeding under core statutory provisions (see section I, above) may not now be considered. The Commission must not allow legislation intended to broaden the information in the record to be used as a basis for circumscribing the scope of the Commission's authority and of participants' rights.

**CONCLUSION**

In this docket, the Commission will consider the first request for certification of new nuclear power units in Florida in many decades and it will consider this request at a time when load is growing and options to meet that growth are diminishing. It behooves the Commission to gather all information germane to its decision, which will affect the supply of power in the entire state, not just in FPL's service territory. Such consideration should encompass what options are best for all consumers and make the most sense in terms of the future needs of the entire state.

**WHEREFORE,** Seminole requests that the full Commission:

1. Reverse the Prehearing Officer's ruling limiting Seminole's intervention and ability to participate in this docket;

2. Permit Seminole to participate as a full party in this matter, including permitting Seminole to inquire as to matters related to co-ownership;

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[17] *American Home Assurance Co. v. Plaza Materials Corp.*, 908 So.2d 360, 366 (Fl. 2005); Unruh *v. State*, 669 So.2d 242, 245 (Fl. 1996).

3. Include in the proceeding and vote on the issues previously stricken;

4. Grant such other relief as the Commission deems appropriate.

Respectfully submitted this 28th day of January, 2008.

s/ Vicki Gordon Kaufman

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## CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Motion for Reconsideration was furnished by (*) electronic mail and U.S. Mail this 28th day of January, 2008 to:

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s/ Vicki Gordon Kaufman

Vicki Gordon Kaufman

**Docket No. 070650**
**Utility Intervenor Issues Stricken by the Prehearing Officer**

**ISSUE 14:**[1] Does not 403.519(4)(b), Fla. Stat., stating that the Commission shall "take into account matters within its jurisdiction, which it deems relevant" allow the Commission to conclude that co-ownership is relevant especially in light of (4)(b)(2) which requires the Commission to consider whether the approval will enhance the reliability of power production within the state (not just in FPL's territory) and (4)(b)(3) requiring the Commission to take into account the plant's contribution to the long-term stability and reliability of the electric grid? (OUC 1)

**ISSUE 15:** Did Florida Power and Light's Petition, as required by Rule 25-22.081 (2) (d) F.A.C., contain a summary of any discussions Florida Power and Light had with other electric utilities concerning the other electric utilities' ownership of a portion of the Florida Power and Light nuclear plant? (OUC 2)

**ISSUE 16:** Does 403.519(4)(a)(5), Fla. Stat., and Rule 25-22.081(2)(d) F.A.C., create any duty on Florida Power & Light ("FPL") to initiate discussion with other utilities that might have an interest in ownership of a portion of the nuclear plants or is this legislation and rule meaningless and may be ignored all together (FPL says they can satisfy law and rule by not having any discussions and reporting that fact at FPL Response, Paragraph 2, page 2)? (OUC 4)

**ISSUE 17:** Does OUC, a utility that presently has ownership in two nuclear power plants, have a substantial interest in having meaningful discussions with Florida Power & Light regarding ownership of a portion of the nuclear power plants at issue here as required by 403.519(4)(a)(5), Fla. Stat. (OUC 5)

**ISSUE 18:** Should the Commission infer any intent by Legislature from actions that were not taken by the Legislature (an amendment was proposed but withdrawn)? (OUC 6)

**ISSUE 19:** Has FPL engaged in meaningful discussions with other electric utilities regarding ownership of a portion of the proposed nuclear plants by such utilities? (SEMINOLE 7)

**ISSUE 20:** If not, should the Commission require such discussions? (SEMINOLE 8)

**JEA PROPOSED REWORDING OF ISSUES 14, 16, 17**

**ISSUE 14:** Is co-ownership an appropriate issue to be considered in the determination of need for a nuclear power plant?

**ISSUE 16:** Do § 403.519(4)(a)(5), Fla. Stat. (2007) and Rule 25-22.081(2)(d), F.A.C, create a

[1] Issue numbers are as they appeared in the original Draft Prehearing Order.

duty upon Florida Power & Light Company to initiate and meaningfully discuss co-ownership of nuclear power plants with other electric utilities in the State of Florida?

**ISSUE 17:** If a statutory or administrative duty exists to initiate meaningful discussions regarding co-ownership of nuclear power plants with Florida electric utilities, pursuant to § 403.519(4)(a)(5), Fla. Stat. (2007) and Rule 25-22.081(2)(d), F.A.C do Florida electric utilities have a substantial interest in the need determinations for those nuclear power plants?