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Subject: FMPA Filing in PSC Dkt. 070650-EI
Attachments: FMPA Reply - 12-19-2007.doc

Hi Matilda,

Attached for filing is **Florida Municipal Power Agency's Reply to FPL's Response in Opposition to FMPA's Petition to Intervene** in PSC Docket 070650-EI.

The document has six (6) pages. Please contact me either by email or telephone if you have any questions.

As always, thank you for your assistance!

Karen

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12/19/2007

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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
FILED: December 19, 2007

FLORIDA MUNICIPAL POWER AGENCY'S
REPLY TO FPL'S RESPONSE IN OPPOSITION TO
FMPA'S PETITION TO INTERVENE

Pursuant to rule 28-106.204, Florida Administrative Code, Florida Municipal Power Agency (FMPA), through its undersigned counsel, hereby files this Reply to Florida Power & Light Company's Response in Opposition to FMPA's Petition to Intervene, and in support therefore states as follows:

1. On October 16, 2007, Florida Power & Light Company (FPL) filed a Petition to Determine Need for two nuclear power plants in Dade County, Florida. On December 7, 2007, FMPA moved to intervene in this proceeding in support of FPL's need petition while demonstrating that FMPA's substantial interest will also be affected by the Commission's determination in this proceeding. On December 14, FPL filed a Response in Opposition to FMPA's Petition to Intervene.

2. FPL asserts that FMPA does not have standing to intervene because the relief requested by FMPA may not be sought in this need determination. FPL's opposition is based on its mistaken interpretation of section 403.519(4)(a)(5), Florida Statutes, and rule 25-22.081, Florida Administrative Code. FPL's statement of the law, Commission rules, and its portrayal of FMPA's interests in this intervention are flawed.

3. The Commission has been charged with the great responsibility of determining whether there is need for a proposed nuclear power plant in Florida. In making this

determination, the Commission must consider not only the need of the applicant utility, but also the greater need of the entire state of Florida. This is evidenced through the § 403.519, Florida Statutes, requirement that the Commission:

[S]hall consider any matters within its jurisdiction which it deems relevant, specifically including whether the nuclear power plant will (1) provide needed base-load capacity, (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, and (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.

Section 403.519(4)(b), Fla. Stat (2007) (emphasis added). To assist the Commission with its consideration of these factors, the statute directs the applicant (FPL) to address specific issues in its application.¹

4. In 2006, the legislature amended section 403.519 to further require an applicant to include “information on whether there were any discussions with any electric utilities regarding ownership of a portion of the nuclear...power plant by such electric utilities.” The Commission implements this section through rule 25-22.081, which requires a “summary” of any such discussions. FMPA’s interest in this proceeding is founded in these provisions.

5. Presuming that both the legislature and the PSC did not intend to enact meaningless provisions, discussions with other electric utilities must play a role in the Commission’s consideration of the issues before it in this proceeding. As this is the first need determination proceeding for a nuclear power plant since the amendments to section 403.519 and

¹ Section 403.519(4)(a), Florida Statutes, requires an applicant for a determination of need for a nuclear power plant to provide: (1) a description of need for the nuclear power plant; (2) A description of how the proposed nuclear power plant will 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) A description of and an estimate of the nonbinding cost of the nuclear power plant; (4) the annualized base revenue requirement for the first 12 months of operation of the nuclear power pant; and (5) information on whether there were discussions with any electric utilities regarding ownership of a portion of the nuclear power plant by such other utilities.

rule 25-22.081 relating to nuclear power, this proceeding is the first instance in which the Commission must interpret these new provisions.

6. FPL categorizes these provisions on discussions of co-ownership with other electric utilities as “merely an informational requirement.” (FPL Response at 2). However, the Commission relies on the information provided in a need application to undertake its consideration. FMPA does not presume to direct the Commission on how, or to what extent, the Commission should use the information on co-ownership discussions. However, both the legislature and this Commission have seen fit to create an obligation on the nuclear need applicant to include such co-ownership discussions in the application. Therefore, these discussions must hold some weight and have some bearing on the Commission’s determination in this proceeding.

7. The Commission may consider the information of the discussions as it deems appropriate when making its determination; however, other electric utilities must be permitted to intervene and participate in the need determination proceeding to ensure that the discussions, or lack thereof, are adequately and accurately portrayed to the Commission. Whether ownership opportunities are ultimately afforded to other electric utilities notwithstanding, such other electric utilities clearly have an interest in this proceeding. FMPA is one such electric utility, and therefore should be permitted to intervene and participate in this proceeding.

8. FPL has in fact discussed ownership opportunities with FMPA. FMPA is encouraged by these discussions, and anticipates continued dialogue with FPL as this proceeding moves forward. However, FPL is now required by statute and Commission rule to provide a summary of these discussions with FMPA to the Commission. FPL has not done so. FMPA must be permitted to intervene and participate in this proceeding to ensure that FPL properly

represents to the Commission these discussions with FMPA. FMPA is the only party, other than FPL, to ensure that FPL's summary of the discussions are accurate.

9. As this is the Commission's first instance to consider co-ownership discussions in a nuclear need determination proceeding, coupled with the fact that FMPA is an electric utility in Florida that has held discussions with FPL regarding possible co-ownership of the proposed units, and the fact that FPL has not adequately summarized these discussion in its application, FMPA should be allowed to intervene in this docket.

WHEREFORE, FMPA requests that the Commission enter an order granting its petition to intervene.

Respectfully submitted this 19th day of December, 2007.

s/Frederick M. Bryant

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Petition to Intervene has been furnished by electronic mail and U.S. Mail this 19th day of December, 2007 to the following:

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