

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: January 3, 2008

SEMINOLE ELECTRIC COOPERATIVE, INC.'S
BRIEF ON INTERVENTION

Seminole Electric Cooperative, Inc. (Seminole), by its undersigned attorneys, files its Brief on Intervention.

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 more than 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.

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 between 2018 and 2020. Seminole anticipates a need for base load capacity to serve its members in the same time frame in which FPL proposes to bring Turkey

Point Nuclear Units 6 and 7 on line. Seminole's intervention in this proceeding is warranted on several independent grounds, discussed below.

I. SEMINOLE HAS A SUBSTANTIAL INTEREST IN THE ADEQUATE, RELIABLE, AND COST-EFFECTIVE SUPPLY OF POWER IN THE STATE.

Seminole, as a utility in this State, is responsible for ensuring an adequate, reliable and cost-effective supply of electricity for its members. The nuclear units FPL proposes are important to the energy future of the State of Florida *as a whole*, as *all* Florida utilities continue to search for ways to economically and reliably meet the power needs of Florida's retail consumers. As a utility interconnected to Florida's transmission grid, with a responsibility to serve its members, which in turn serve Florida retail customers, Seminole's interests are directly impacted by the project FPL proposes in this docket.

Seminole has a substantial interest in ensuring that appropriate generating units are built and permitted in the State so that it may continue to provide adequate, reliable and cost-effective electricity to its members. Any action taken in this docket will affect Seminole's substantial interests as it continues to seek ways to reliably and efficiently serve its members. The fact that Seminole supports FPL in its application for a determination of need does *not* mean that Seminole is not substantially affected by the action the Commission will take in this docket. None of the parties can presume what action (approval or denial) the Commission will take at the conclusion of the hearing in this matter; therefore, to protect its interest in an adequate, reliable, and cost-effective supply of electricity in the state, Seminole is entitled to intervene.

It is undisputed that Florida's electric load continues to grow, while, due to environmental and other constraints, the options for meeting that load growth are diminishing. The ability of any utility, including FPL, to site, permit, and comply with the numerous

regulatory requirements for a nuclear plant is limited at best. Nuclear projects have a long lead time and involve a substantial amount of money and risk. The number of nuclear units that can be permitted and built in Florida to meet the reliability needs of *all* of Florida's consumers, including the customers of Seminole's members, is, of necessity, very small. FPL cannot add such a large and important project without taking into account the needs of the other utilities in the State, including Seminole.

Seminole's substantial and clear interest in this proceeding is recognized in the determination of need statute and in the Commission's determination of need rules. Section 403.519(4) of the determination of need statute, which addresses nuclear units explicitly, directs the Commission to consider:

The need for electric system reliability and integrity, including fuel diversity, the need for base-load generating capacity, [and] the need for adequate electricity at a reasonable cost. . . .

Further, Commission rule 25-22.081(1)(a), Florida Administrative Code, requires a petitioning utility to provide the Commission with a description of the utilities primarily affected by the determination of need filing. FPL is not the only entity affected by a petition to build a nuclear plant; Seminole is affected as well because it must continue to have access to such resources in order to adequately, reliably and cost-effectively serve its members.

The Commission has previously recognized that utilities in the State have a substantial interest in the determinations of need sought by their brethren. In Order No. PSC-98-1305-PCO-EM, the Commission granted intervention to FPL and other utilities in a determination of need proceeding filed by the Utilities Commission of New Smyrna Beach and Duke Energy.¹

¹ *In re: Joint petition for determination of need for an electrical power plant in Volusia County by the Utilities Commission, City of New Smyrna Beach, Florida, and Duke Energy New Smyrna Beach Power Company, Ltd., L.L.P.*, Docket No. 981042-EM.

In that case, *FPL sought intervention* over the objection of the petitioning parties. In support of its intervention, FPL claimed it was affected by the petitioners' application for a determination of need, due, in part, to the impact the project would have on the planning, construction, and operation of its facilities. Seminole agrees with the position FPL took in that case as stated by its counsel during oral argument in that docket: "The Commission is being asked to make determinations which will affect the interests of all utilities."² FPL was permitted to intervene and the outcome here should be the same.

II. SEMINOLE HAS A SUBSTANTIAL INTEREST IN ENSURING THAT FPL HOLDS DISCUSSIONS WITH IT AS A POTENTIAL CO-OWNER OF A PORTION OF THE NUCLEAR UNITS.

As the attachments to Seminole's Petition To Intervene demonstrate, Seminole has sought, without success, to have discussions with FPL regarding co-ownership of the nuclear units at issue in this docket. FPL's refusal to discuss co-ownership issues with Seminole is pertinent to the outcome of this proceeding. Seminole has a substantial interest in ensuring that FPL has meaningful discussions with it as a potential co-owner of the proposed nuclear units.

Section 403.519(4)(a)(5), Florida Statutes, expresses the Legislature's interest in ensuring that co-ownership of nuclear facilities is explored among Florida's utilities when a nuclear plant is proposed. The applicant is required to include in its application "[i]nformation on whether there were any discussions with any electric utilities regarding ownership of a portion of a nuclear or integrated gasification combined cycle power plant by such electric utilities." The Commission, in Rule 25-22.081(2)(d), Florida Administrative Code, requires the applicant to provide a summary of such discussions. FPL has failed to comply with these requirements.

² *Id.*; Transcript of Oral Argument at 13. In support of its intervention, FPC stated that it had an interest in ensuring it would be able to meet its duty to furnish reliable electric service at a reasonable cost. FPC Petition to Intervene in Docket No. 981042-EM at 15.

When the Legislature enacted the requirement that applicants for nuclear generation inform the Commission of discussions with other utilities as to co-ownership, it well understood that the siting, permitting and construction of a nuclear unit is a large, expensive, and risky undertaking and that such an undertaking affects and involves not only the applicant but also potentially all other utilities in the State. The Legislature understood that in this day of rapidly growing power load in Florida and elevated concerns over carbon dioxide (CO₂) emissions, public utilities planning major new nuclear facilities must talk meaningfully to other electric utilities in the State about co-ownership.

FPL, however, seeks to effectively nullify the Legislature's directive by claiming the statutory requirement is simply "informational." FPL asserts that this requirement "would be satisfied by an applicant stating that no such discussions were had."³ However, such a statutory "interpretation" would render the statute a nullity and would be directly at odds with well-known principles of statutory interpretation, which provide that the Legislature does not enact meaningless provisions or provisions that are mere surplusage.⁴ FPL has offered no support for its view that the Legislature included language in the newly-enacted statute, directed specifically to nuclear power plants, which is superfluous and thus may be effectively disregarded. FPL's construction of the legislative requirement in question virtually reads the requirement out of the statute and renders the Commission helpless to inquire in a substantive manner regarding co-ownership issues. Seminole believes such an interpretation not only is unwarranted by the plain language of the statute and well-accepted rules of statutory construction, but in addition is an

³ FPL Response in Opposition to FMPA Petition To Intervene at 2.

⁴ *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).

affront to this Commission, which clearly now has a statutory as well as public interest obligation to consider co-ownership issues.

In this docket, the Commission will make a determination as to whether there is a need in the State for nuclear power. This determination of necessity requires the Commission to look at the power needs of the State *as a whole*.⁵ That the Commission must look to the needs of the *entire* State is confirmed by Section 403.519(4)(b) (emphasis added), which provides that the Commission shall consider matters within its jurisdiction that it considers relevant, including whether the proposed plant 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.

Furthermore, The Commission has a statutory obligation under section 366.04(5), Florida Statutes, to avoid “uneconomic duplication of generation [and] transmission” facilities. The alternative to co-ownership of nuclear base-load generation is the proliferation of smaller gas or oil burning units and accompanying transmission upgrades. Thus, co-ownership issues are relevant to the need determination as well as the Commission’s core statutory responsibilities.

The Commission may not evaluate FPL’s petition in a vacuum, as FPL suggests, but must ensure that the State’s needs, which encompass co-ownership issues, are considered in this docket.

⁵ See, e.g., section 366.04(5), Florida Statutes, which gives the Commission “jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida....”

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CERTIFICATE OF SERVICE

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