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Subject:	Electronic Filing for Docket No. 070650-EI / FPL's Response in Opposition to JEA's Motion for Reconsideration and Seminole Electric Cooperative Inc'.s Motion for Reconsideration
Attachments:	FPL's Responses in Opposition to JEA.Seminole M for Reconsideration.final.doc

Electronic Filing

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b. Docket No. 070650-EI

In re: Florida Power & Light Company's Petition to Determine Need for Turkey Point Nuclear Units 6 and 7 Electrical Power Plant

c. The document is being filed on behalf of Florida Power & Light Company.

d. There are a total of **9** pages, including an attached certificate of service.

e. The document attached for electronic filing is Florida Power & Light Company's Response in Opposition to JEA's Motion for Reconsideration and Seminole Electric Cooperative Inc.'s Motion for Reconsideration

(See attached file: FPL's Responses in Opposition to JEA.Seminole M for Reconsideration.final.doc)

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Florida Power & Light Company's Petition to Determine Need for Turkey Point Nuclear Units 6 and 7 Electrical Power Plant	))))	Docket No. 070650-EI Filed: January 29, 2008

FLORIDA POWER & LIGHT COMPANY'S RESPONSE IN OPPOSITION TO JEA'S MOTION FOR RECONSIDERATION AND SEMINOLE ELECTRIC COOPERATIVE INC.'S MOTION FOR RECONSIDERATION

Pursuant to 28-106.204, Florida Administrative Code, Florida Power & Light Company ("FPL") hereby files its response in opposition to the motion for reconsideration filed by JEA on January 23, 2008 (the "JEA Motion") and response in opposition to the motion for reconsideration filed by Seminole Electric Cooperative, Inc. ("Seminole") on January 28, 2008 (the "Seminole Motion") and in support thereof states:

INTRODUCTION

JEA and Seminole each filed a petition to intervene in this docket, and FPL filed responses in opposition to those petitions. On January 14, 2008, the prehearing officer announced his decision to grant the petitions to intervene filed by the co-ownership intervenors on a strictly limited basis. On January 23, 2008, JEA filed the JEA Motion with a Request for Oral Argument and on January 28, 2008, Seminole filed the Seminole Motion with a Request for Oral Argument, both in response to the prehearing officer's decision but prior to the issuance of the orders granting intervention.[1]

[1] The JEA Motion and Seminole Motion are premature and inconsistent with the Commission's rules of procedure, which clearly contemplate that reconsideration may be sought concerning orders after they have been issued by the Commission. *See* Rule 25-22.0376, F.A.C.

I. FPL's Response in Opposition to JEA's Motion for Reconsideration

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law that the Commission overlooked or failed to consider in rendering its order. *See, e.g., Diamond Cab Co. of Miami v. King*, 146 So. 2d 889, 891 (Fla. 1962) (purpose of petition for reconsideration is to bring to an agency's attention a point of law or fact which it overlooked or failed to consider when it rendered its order); *Steward Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315, 317 (Fla. 1974) (granting petition for reconsideration should be based upon specific factual matters set forth in the record and susceptible to review); *See also, Petition for arbitration of certain unresolved issues associated with negotiations for interconnection, collocation, and resale agreement with Florida Digital Network, Inc. d/b/a FDN Communications, by Sprint-Florida, Inc.*, 2006 Fla. PUC LEXIS 146, *20-21, Docket No. 041464-TP, Order No. PSC-06-0238-FOF-TP (issued March 20, 2006) ("Sprint-Florida").

The JEA Motion should be denied because it is an attempt to re-argue points of law already decided by the prehearing officer and to improperly raise new arguments for the first time in the motion. JEA does not identify a point of fact or law that the Commission overlooked or failed to consider. The arguments previously raised by JEA prior to filing the JEA Motion were already considered and rejected by the prehearing officer.

JEA requests reconsideration of the decision to eliminate the issues it and other utilities proposed relating to co-ownership. As a basic premise for the issues JEA is attempting to interject, JEA asserts that Rule 25-22.081(2)(d), and section 403.519(4)(a)(5) create an affirmative duty on FPL to engage in "good faith negotiations" with all utilities that are interested in joint ownership. This expansion of the plain language of the rule and statute was expressly rejected by the prehearing officer during the prehearing conference. Prehearing

Transcript at 26, lines 18-20 ("As written and enacted by the Florida Legislature, the statute is clear [on its] face and does not support the Petitioners' assertion."). JEA has not identified a point of fact or law that the prehearing officer overlooked or failed to consider in rendering his decision. Rather, JEA is still attempting to impose its expansion of this facially clear language on the Commission. That is not an appropriate basis for reconsideration, and these issues were properly excluded as beyond the scope of this proceeding.

Next, JEA asserts that it is a retail customer of FPL and that it is concerned about the cost effectiveness of the project. JEA proposes co-ownership as a means by which to reduce the project's effect on FPL's base rates. This assertion has not been previously raised by JEA. It is well established that it is inappropriate to raise new arguments in a motion for reconsideration. *See, e.g., In re Supra Telecommunications and Information Systems, Inc. v. Bell South*, Order No. PSC-05-0157-PCO-TP, issued Feb. 8, 2005. Moreover, even if JEA could properly raise this new assertion now, it would be unavailing. To accept JEA's assertion that co-ownership has the ability to reduce the total project cost to FPL's customers and that therefore it cannot be excluded as a proper issue, would suggest that this issue has been improperly ignored in every need determination since the adoption of the Power Plant Siting Act and section 403.519. Naturally, any joint ownership of a plant would reduce the project's capital cost to the sole applicant's customers. But that alone would not confer standing on JEA because that is not the way in which the cost-effectiveness of a project would be assessed. Among other things, the cost to FPL of *replacing* the capacity taken by the co-owner as well as the compensation to be received from the co-owner would also necessarily have to be considered, yet these are topics beyond the proper scope of the need proceeding.

Finally, JEA claims that the project will substantially affect the grid and that co-ownership of a portion of Turkey Point 6 & 7 may represent the most cost effective means of meeting JEA's identified 2018 capacity needs. JEA Motion at 4-5. These claims are apparently intended to imply that some sort of injury will be sustained by JEA depending on whether the Commission does or does not grant FPL's petition for a determination of need, but JEA has failed to demonstrate – or even allege – any sufficiently immediate injury-in-fact. Additionally, JEA's 2018 capacity needs are irrelevant to the proceeding. *See Nassau Power Corp. v. Deason*, 641 So. 2d. 396, 399 (Fla. 1994), quoting *Nassau Power Corp. v. Beard*, 601 So. 2d 1175, 1178 (Fla. 1992). JEA's capacity needs are irrelevant, despite the state-wide considerations the Commission is authorized to consider under section 403.519(4), such as enhancing the reliability of power production within the state, reducing Florida's dependence on fuel oil and natural gas, and the project's contribution to the long-term stability and reliability of the electric grid. *See* § 403.519(4)(b). This is because co-ownership would not affect the extent to which the Project would address those state-wide considerations. If the Commission finds that the reliability and fuel diversity within FPL's system will be enhanced by Turkey Point 6 & 7, the reliability and fuel diversity of the state will also necessarily be enhanced. It cannot be assumed that the Legislature intended that every need determination proceeding would involve a weighing and balancing of relative interests, costs, resource needs, and alternatives of every utility in the state of Florida. There is no iterative or other process that could reasonably provide a definitive and rational resolution of such a complex, multivariate problem.

JEA asserts that issues associated with co-ownership are "directly relevant to this Commission [sic] duty to maintain the Florida grid and prevent uneconomic duplication of generation" pursuant to the Grid Bill. JEA Motion at 5. Apparently, because the Commission is

authorized to consider in a need determination all matters within its jurisdiction that it deems relevant, JEA believes it is error not to include issues on the merits of co-ownership as they may relate to the Grid Bill. However, by the express terms of section 403.519(4), it is within the Commission's discretion to determine what, if any, matters outside section 403.519(4) are relevant. The Commission has properly exercised that discretion by rejecting the co-ownership issues.

Finally, JEA has failed to demonstrate how co-ownership would affect the reliability of the electric grid or prevent the uneconomic duplication of generation. If FPL is granted a determination of need, any co-ownership arrangement whereby another utility has an undivided interest in the project will not change Turkey Point 6 & 7's effect on the grid. Furthermore, it is clear that the capacity needs of FPL alone in 2018 and thereafter far exceed the capacity that will be provided by Turkey Point 6 & 7. Therefore, the concern surrounding the potential for the uneconomic duplication of generation is unfounded. JEA's attempt to connect the Grid Bill concerns with the assertion that a purchase from Turkey Point 6 & 7 may be more cost effective than other generation options available to JEA is irrelevant. That is an internal issue to resolve in the event that it reaches agreement with FPL on co-ownership at some future point in time. It is not a question that is properly before this Commission in this proceeding. FPL's petition pursuant to section 403.519(4) and the proceeding to determine the need for Turkey Point 6 & 7 is in no way intended to address the system needs of JEA. Co-ownership issues related to these concerns were properly excluded.

II. FPL's Response in Opposition to Seminole's Motion for Reconsideration

The Seminole Motion should similarly be denied because it is an attempt to re-argue issues already decided by the prehearing officer without identifying a point of law or fact that the prehearing officer overlooked or failed to consider when he rendered his decision. Like JEA, Seminole misapplies the concept of avoiding the uneconomic duplication of power. New capacity, whether self-built or purchased, will always need to be pursued by each utility to meet its individual system needs. No one has contended that FPL will not need all the capacity provided by Turkey Point 6 & 7. If another utility takes some of that capacity, FPL will be forced to build other "gas or oil burning units," as Seminole complains it may have to do. Seminole Motion at 5. But even if one were to assess the needs of the state as a whole, and not just those of FPL, the co-ownership of Turkey Point 6 & 7 would not have any effect on whether additional generating units in this state are built. Absent an implausibly large decrease in load, all utilities will need to add capacity to their systems in the future, regardless of the addition of Turkey Point 6 & 7 to FPL's system.

Seminole also echoes the cost-effectiveness assertions of JEA. The cost-effectiveness of the project is an issue in this docket. Seminole's attempt to expand that issue to encompass its co-ownership interests, however, is not. As explained in response to the JEA Motion, the effect of co-ownership on the total project cost is not an appropriate test for cost-effectiveness. To hold otherwise would represent a significant and unwieldy departure from the Commission's historical application of section 403.519.

Seminole's next claim, that the prehearing officer's decision to reject issues related to the merits of co-ownership is inconsistent with his decision to include FPL's issue on long-lead procurement items overlooks one very significant fact: FPL's issue directly affects FPL's near-term project development plan and must be resolved in this docket in order to provide FPL timely guidance on how to implement that plan so as to preserve the potential for 2018 and 2020 in-service dates. In contrast, there is no corresponding time pressure on resolution of the proposed co-ownership issues, which are in any event premature at this stage of FPL's project development. Rather, Seminole and the other co-ownership intervenors would be much better and more efficiently served by the Commission opening a separate docket pursuant to the Grid Bill, in which FPL could report periodically on co-ownership discussions. FPL has already indicated its willingness to participate in such a docket and believes it to be the proper forum for resolving issues on the scope of the Commission's jurisdiction, if any, over co-ownership and the appropriate exercise of that jurisdiction, including the establishment of any factual predicates.

Finally, Seminole takes issue with the prehearing officer's "interpretation" of section 403.519(4)(1)(5). Seminole Motion at 7. This is an attempt to re-argue its rather creative interpretation of the meaning of that requirement and has no place in a petition for reconsideration.

CONCLUSION

WHEREFORE, for the reasons stated above, FPL requests that JEA's Motion for Reconsideration and Seminole's Motion for Reconsideration be denied. As FPL predicted in its responses in opposition to JEA's and Seminole's petitions to intervene, these intervenors are attempting to hijack FPL's need determination proceeding and force the Commission to consider irrelevant issues such as the co-ownership intervenors' need for capacity and the potential

economic benefits they might realize if a co-ownership arrangement materializes. Accordingly, it was appropriate to eliminate the irrelevant co-ownership issues from the docket, which should instead be taken up in a separate Grid Bill docket as described above.

Respectfully submitted this 29th day of January, 2008.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically this 29th day of January, 2008, to the following:

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