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Sent: Tuesday, January 29, 2008 3:13 PM
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Subject: Electronic Filing for Docket No. 070650-EI / FPL's motion for reconsideration of orders granting intervention
Attachments: FPL's Motion for Reconsideration of Orders Granting Intervention 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 7 pages, including an attached certificate of service.

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DOCUMENT NUMBER-DATE
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**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
MOTION FOR RECONSIDERATION OF ORDERS
GRANTING INTERVENTION AND REQUEST FOR CLARIFICATION**

Florida Power & Light Company ("FPL") pursuant to Rule 25-22.0376, F.A.C., hereby moves for reconsideration of the orders of the Florida Public Service Commission ("the Commission") through the prehearing officer, granting intervention to Seminole Electric Cooperative, Inc. ("Seminole"), Orlando Utilities Commission ("OUC"), Florida Municipal Power Agency ("FMPA"), Florida Municipal Energy Association ("FMEA"), and JEA (collectively, the "orders granting intervention" and the "co-ownership intervenors"),¹ and also requests clarification. In support of its motion for reconsideration, FPL states as follows:

INTRODUCTION

The co-ownership intervenors each filed a petition to intervene and FPL filed responses in opposition to those petitions. Each party submitted a brief in support of its position and oral argument was held on the issue on January 7, 2008. 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. The orders granting intervention were issued on January 28, 2008.

I. The Standard 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.

¹ The orders granting intervention are Order Nos. PSC-08-0057-PCO-EI (Seminole), PSC-08-0058-PCO-EI (OUC), PSC-08-0059-PCO-EI (FMEA), PSC-08-0060-PCO-EI (FMPA) and PSC-08-0062-PCO-EI (JEA).

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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 Commission should grant a motion for reconsideration where reconsideration and amendment is necessary to ensure that an order is consistent with law and does not overlook prior Commission orders. *See, e.g., Sprint-Florida*, 2006 Fla. PUC LEXIS 146, *20-21, (granting motion for reconsideration “on the basis that we overlooked or failed to consider our previous decision” in a generic arbitration proceeding and overlooked clear requirements of an existing Commission rule).

In addition, the Commission should grant a motion for reconsideration in order to correct findings that are not supported by substantial evidence in the record. *In re: Application of Seacoast Utilities, Inc. for increased water and sewer rates to its customers in Palm Beach County, Florida*, 1984 Fla. PUC LEXIS 139, *1-2, Docket No. 820073-WS, Order No. 13789 (issued October 22, 1984) (granting motion for reconsideration and amending order due to absence of evidence in the record supporting its action).

II. Reconsideration Should Be Granted, to Deny the Co-Ownership Intervenors Standing Because the Orders Granting Intervention Do Not Contain Any Valid Basis for Standing

In each of the orders granting intervention, the prehearing officer states that the co-ownership intervenor has a “substantial interest” in this proceeding to address whether FPL’s petition includes information on whether there were any discussion with other electric utilities regarding co-ownership, as required by 403.519(4)(a)5, Florida Statutes, and whether FPL’s petition includes a summary of any discussions, as required by Rule 25-22.081(2)(d), Florida Administrative Code. Orders granting intervention, at page 4. However, none of the orders discusses what this “substantial interest” might be. Moreover, none of the co-ownership intervenors demonstrated or even alleged a valid basis for this “substantial interest,” because none of them showed how they would 1) suffer an injury in fact that could result from how FPL described and summarized its co-ownership discussions as contemplated by the statute and rule, or 2) how section 403.519, Florida Statutes, is designed to protect the co-ownership intervenors’ interests versus the general interests of the Commission in the information presented. As a result, each intervenor has failed to meet the two prong *Agrico* test as it relates to this issue. *See Agrico Chemical Co. v. Dept. of Env’tl. Regulation*, 406 So.2d 478, 482 (Fla. 2nd DCA 1981), *rev. denied*, 415 So.2d 1359 (Fla. 1982). Because this issue is the sole basis upon which standing has been found and intervention granted, FPL respectfully requests reconsideration of the orders granting intervention in this proceeding.

The co-ownership intervenors have not, and furthermore cannot, make any showing that they will suffer an injury in fact as a result of FPL meeting or failing to meet the pleading requirements related to its petition to determine need for Turkey Point 6 & 7. The Commission can determine the adequacy of FPL’s petition on its face and it does not need the assistance of

the parties to co-ownership conversations in order to do so. This issue is simply a matter of pleading sufficiency, which the Commission is well equipped to handle on its own; it certainly cannot confer an independent basis for intervention.² Furthermore, regardless of the level of detail provided the Commission, through its Staff, can conduct discovery on this issue in order to understand the nature of discussions, if any, concerning potential co-ownership. Furthermore, the orders granting intervention each note that it is clear on the face of section 403.519 and Rule 25-22.081(2)(d) that they do not impose an obligation on FPL to engage in discussions with other electric utilities, so the co-ownership intervenors cannot plausibly argue that whatever injury they might allege would result from FPL not conducting discussions with them (or not having the discussions that they would like) is within the zone of interests that section 403.519 is designed to protect. Orders granting intervention, at pages 4 and 5.

Thus, there is nothing to support the finding in the orders granting intervention that that the co-ownership intervenors have standing to intervene under the two prongs of the *Agrico* test, and their intervention should have been denied. This does not mean, however, that no forum exists for the co-ownership intervenors to address issues about co-ownership. The Commission is free to open a docket in which to consider the nature and extent of its jurisdiction over co-ownership issues and the appropriate exercise thereof. 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 over co-ownership and the appropriate exercise of that jurisdiction, including the establishment of any factual predicates.

² FPL would also note that section 403.519(4) and Rule 25-22.081(2) do not contain any requirements or criteria concerning the adequacy of the applicant's summary of co-ownership discussions.

III. If Standing is Granted, the Proper Scope of the Co-Ownership Intervenors' Participation Should be Clarified.

If intervention by the co-ownership intervenors is affirmed, FPL requests clarification as to the appropriate scope of the co-ownership intervenors' participation in this docket. Each of the orders granting intervention states unequivocally that "issues as to the merits of co-ownership will not be entertained in this proceeding. Orders granting intervention, at pages 4 and 5. However, the orders also state elsewhere that the co-ownership intervenors may participate with respect to "the issues that are within the Commission's jurisdiction, and that the Commission deems relevant." *Id.* FPL anticipates that, if they are allowed to intervene, the co-ownership intervenors will seek to argue at hearing that a host of issues going to the merits of co-ownership are somehow "within the Commission's jurisdiction" and that the Commission should consider them "relevant" to this proceeding. To avoid the potential for prolonged and repeated debates on this point throughout the hearing, FPL respectfully requests the Commission to clarify that, whatever else may be addressed in this proceeding, subjects going to "the merits of co-ownership" are definitively out of bounds.

WHEREFORE, because the co-ownership intervenors have failed to demonstrate a legitimate basis for standing, FPL respectfully requests that the decision granting intervention be reconsidered and that intervention by the co-ownership intervenors be denied. The Commission has other, more appropriate avenues available to explore and consider the alleged interests of the co-ownership intervenors. Allowing the co-ownership intervenors to intervene for the purpose of exploring or coercing joint participation in the project would only delay and unnecessarily complicate the need determination proceeding, which would be contrary to the Legislature's intent to encourage development of new nuclear generation. If the Commission nonetheless allows the co-ownership intervenors to intervene, FPL respectfully requests clarification that

they may not seek to address the merits of co-ownership at the hearing, via cross-examination, the introduction of exhibits or otherwise.

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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