

Matilda Sanders

From: Jessica_Cano@fpl.com
Sent: Monday, December 10, 2007 2:57 PM
To: Filings@psc.state.fl.us
Cc: Katherine Fleming; Jennifer Brubaker; Charles Beck; Minimushomines@aol.com; vkaufman@asglegal.com; zeasterling@ouc.com; wmiller@mbolaw.com; ryoung@yvlaw.net; fred.bryant@fmpa.com; jody.lamar.finklea@fmpa.com; dan.ohagan@fmpa.com
Subject: Electronic Filing for Docket No. 070650-EI / FPL's Response in Opposition to Seminole Electric Cooperative, Inc.'s Petition to Intervene
Attachments: FPL's Response in Opposition to Seminole's Petition to Intervene.doc; Attachments to FPL's Response in Opposition to Seminole's Petition to Intervene.pdf

Electronic Filing

a. Person responsible for this electronic filing:

Jessica A. Cano, Esq.

700 Universe Boulevard

Juno Beach, FL 33408

561-304-5561

Jessica_Cano@fpl.com

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 12 pages, including the attachments.

e. The document attached for electronic filing is Florida Power & Light Company's Response in Opposition to Seminole Electric Cooperative, Inc.'s Petition to Intervene, with attachments.

(See attached file: FPL's Response in Opposition to Seminole's Petition to Intervene.doc) (See attached file: Attachments to FPL's Response in Opposition to Seminole's Petition to Intervene.pdf)

Jessica Cano
Attorney
Law Department

Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408
561-304-5226
Jessica_Cano@fpl.com

12/10/2007

Response
DOCUMENT NUMBER-DATE
10807 DEC 10 5
FPSC-COMMISSION CLERK

Attachments
DOCUMENT NUMBER-DATE
10808 DEC 10 5
FPSC-COMMISSION CLERK

**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: December 10, 2007

**FLORIDA POWER & LIGHT COMPANY'S RESPONSE IN OPPOSITION TO
SEMINOLE ELECTRIC COOPERATIVE, INC.'S PETITION TO INTERVENE**

Pursuant to 28-106.204, Florida Administrative Code, Florida Power & Light Company ("FPL") hereby files its response in opposition to the petition to intervene filed by Seminole Electric Cooperative, Inc. ("Seminole") on December 3, 2007, and in support thereof states:

1. Seminole is a non-profit electric generation and transmission cooperative, and asserts that it has a direct and substantial interest "in ensuring that there are adequate and economical sources of power in the State for all citizens." Seminole petition at 3. In support of its request to intervene, Seminole states that it is interested in pursuing discussions with FPL regarding joint ownership of Turkey Point 6 and 7, and asks the Commission "to direct FPL to engage in meaningful discussions with Seminole regarding co-ownership" of Turkey Point 6 and 7. Seminole Petition at 3. The relief requested by Seminole is not of a type contemplated by section 403.519, Florida Statutes, and may not be sought in this need determination. As a result, Seminole's alleged interest in seeking that relief does not give it standing to intervene. *Agrico Chemical Co. v. Dep't of Env'tl. Regulation*, 406 So. 2d 478 (Fla. 2nd DCA 1981), *rev. denied*, 415 So. 2d 1359 (Fla. 1982).

2. Section 403.519(4) lists the elements that the Commission must address in making a determination of need for a nuclear power plant, and co-ownership is not one of them. Section 403.519(4)(b) states that the Commission shall "take into account matters within its jurisdiction, which it deems relevant" in making such a determination, and lists three such

DOCUMENT NUMBER-DATE

10807 DEC 10 08

FPSC-COMMISSION CLERK

matters, none of which authorize the relief sought by Seminole in its intervention. Indeed, nothing in Section 403.519(4) or elsewhere in the Florida Statutes enables the Commission “to direct FPL to engage in meaningful discussions with Seminole regarding co-ownership” of Turkey Point 6 and 7. Rather, Section 403.519(4)(a)(5) states simply that an applicant must include in its petition “[i]nformation on whether there were any discussions with any electric utilities regarding ownership of a portion of the nuclear or integrated gasification combined cycle power plant by such electric utilities.” This is merely an informational requirement, and does not “express the Legislature’s interest in ensuring that co-ownership of nuclear facilities is explored” as asserted by Seminole. Seminole Petition at 4. In fact, the legislative history directly contradicts Seminole’s contention. An amendment to Senate Bill 888 was proposed that would have required the Siting Board to consider whether an allowance had been made for minority ownership by other utilities in a proposed nuclear power plant. That amendment was withdrawn, however, and the language ultimately adopted as section 403.519(4)(a)(5) was added instead. *See* Senator Amendment Barcode 484342 (April 25, 2006) (attached hereto as Attachment 1); Senator Amendment Barcode 843116 (April 27, 2006) (attached hereto as Attachment 2). Thus, the Legislature considered but did not adopt the notion that joint ownership should be a condition or criterion in determining whether a nuclear plant may be sited and built in Florida.

3. In assessing the need for a project whose capacity significantly exceeds the applicant’s projected need, it may be particularly important for the Commission to know of any discussions that such applicant has had with other potential co-owners. But that is not the case in this instance in which FPL’s petition and supporting testimony demonstrate a need well in excess of the capacity that the proposed nuclear units will provide.

4. Contrary to the implication of Seminole's ultimate request for relief, the Legislature did not intend through the language of section 403.519(4)(a)(5) to confer upon Seminole or any other utility any preference, advantage or leverage, commercial or otherwise, in negotiating a potential joint ownership arrangement. Nor did the Legislature intend to task the Commission with a duty to promote, oversee, administer, or broker any such joint ownership relationship or that a need determination proceeding become a forum for one utility to pursue or coerce such opportunities. The relief sought by Seminole has no basis in the plain language of section 403.519(4)(a)(5) and is specifically contradicted by the legislative history of this provision. The scope and purpose of a need determination proceeding before the Commission is clearly delineated by statute and does not include Seminole's stated purpose.

5. Because the relief requested by Seminole is not contemplated by section 403.519(4), Seminole has failed to assert a sufficient basis for this Commission to grant it standing as an intervenor in this proceeding. An intervenor must demonstrate that its "substantial interests" will be affected. § 120.52(12)(b), Fla. Stat.; 25-22.039, F.A.C. The standard to establish whether a party has a "substantial interest" in a proceeding under the Administrative Procedure Act was set forth in *Agrico Chemical Co. v. Department of Environmental Regulation*, in which the court stated:

We believe that before one can be considered to have a substantial interest in the outcome of the proceeding he must show 1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57 hearing, and 2) that his substantial injury is of a type or nature which the proceeding is designed to protect.

406 So. 2d at 482. Seminole has failed to demonstrate that it meets the second prong of this test, because its asserted interest in having the Commission reach conclusions about the proper extent of joint ownership is not within the zone of interests that section 403.519(4) is intended to

protect. *Agrico* expressly rejects the use of “bootstrapping” to establish standing, by requiring that the substantial interest upon which standing is premised be one that the proceeding in question is actually designed to protect. There is nothing in section 403.519(4) that is designed to protect Seminole’s asserted interest in engaging in joint ownership discussions with FPL. Therefore, Seminole has failed to meet the *Agrico* test, and its petition to intervene should be denied. *See Agrico*, 406 So. 2d at 482 (holding that the petitioners were unable to show that the nature of their asserted injury was protected by chapter 403 of the Florida Statutes, and reversing the Department of Environmental Regulation’s decision to deny *Agrico*’s construction permit on the basis that petitioners were erroneously granted standing).

6. Seminole also states that its substantial interests will be affected because the Commission will determine whether there is a need for Turkey Point 6 and 7 according to each of the issues listed in 403.519(4) for Commission consideration. Seminole Petition at 3. However, Seminole has not raised any particular concerns with respect to these issues, and has not demonstrated or alleged that it will suffer any “injury in fact” as the result of a Commission decision properly taking them into account. Accordingly, while these issues are properly before the Commission in this proceeding, Seminole has not alleged any facts with respect to them that would be sufficient to establish the “injury in fact” required under the first prong of the *Agrico* test.

7. If Seminole is nonetheless permitted to intervene, the Commission should clarify that the scope of this proceeding does not include issues related to joint ownership discussions. Pursuant to Rule 25-22.039, intervenors “take the case as they find it.” *See Riviera Club v. Belle Mead Development Corp.*, 194 So. 783, 784-85 (Fla.1940). This case, a determination of need for FPL’s Turkey Point 6 & 7, is not an appropriate forum to consider Seminole’s arguments in

support of a state-wide policy to encourage the joint ownership of nuclear generation facilities or Seminole's specific interests in joint ownership. Seminole should not be permitted to hijack the proceeding and convert it into a forum for its own, unrelated and non-jurisdictional purposes.

8. FPL specifically requests that, if intervention is granted, the Commission clarify in its order that (i) the requirement in section 403.519(4)(a)(5) for FPL to report its joint ownership discussions is for informational purposes only; (ii) the scope of this proceeding does not extend to requiring FPL to offer Seminole joint ownership of Turkey Point 6 and 7 nor to taking discussions about joint ownership into consideration in determining the need for the project; and (iii) Seminole will not be permitted to raise issues, engage in discovery, or examine witnesses beyond the proper scope of the proceeding.

WHEREFORE, FPL respectfully requests that the Commission deny Seminole's petition to intervene for lack of standing. Alternatively, if the Commission does grant Seminole intervenor status, FPL requests that the Commission clarify the proper scope of this proceeding and of Seminole's participation therein, as described above.

Respectfully submitted this 10th day of December, 2007.

R. Wade Litchfield, Vice President &
Associate General Counsel
Mitchell S. Ross
John T. Butler
Bryan S. Anderson
Antonio Fernandez
Jessica A. Cano
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408-0420

Stephen Huntoon
Florida Power & Light Company
801 Pennsylvania Avenue, Suite 220
Washington, D.C. 20004

Kenneth A. Hoffman
Rutledge, Ecenia, Purnell & Hoffman, P.A.
215 South Monroe Street, Suite 420
P. O. Box 551
Tallahassee, FL 32302-0551

Attorneys for Florida Power & Light Company

By: *s/ John T. Butler*
John T. Butler
Fla. Bar No. 283479

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically and by United States mail this 10th day of December, 2007, to the following:

Katherine E. Fleming
Senior Attorney
Florida Public Service Commission
Gerald L. Gunter Building
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
Telephone: (850) 413-6218
Email: keflemin@psc.state.fl.us

Jennifer Brubaker
Senior Attorney
Florida Public Service Commission
Gerald L. Gunter Building
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-08503
Telephone: (850) 413-6228
Email: jbrubake@psc.state.fl.us

Office of Public Counsel
Charles Beck, Esq.
c/o The Florida Legislature
111 Madison St., Room 812
Tallahassee, FL 32399-1400
Telephone : (850) 488-9330
Email: beck.charles@leg.state.fl.us
*Attorneys for the Citizens of the State
Of Florida*

Bob Krasowski
Jan M. Krasowski
1086 Michigan Avenue
Naples, Florida 34103-3857
Telephone: (239) 434-0786
Email: Minimushomines@aol.com

Vicki Gordon Kaufman
Anchors Smith Grimsley
118 North Gadsen Street
Tallahassee, Florida 32301
Telephone: (850) 222-4771
Facsimile: (850) 222-9771
Email: vkaufman@asglegal.com
Attorneys for Seminole Electric

Zoila P. Easterling
Orlando Utilities Commission
500 South Orange Avenue
Orlando, Florida 32801
Telephone: (407) 423-9135
Facsimile: (407) 236-9616
Email: zeasterling@ouc.com
Attorneys for Orlando Utilities Commission

William T. Miller
1140 19th Street, NW, Suite 700
Washington, DC 20036
Telephone: (202) 296-2960
Facsimile: (202) 296-0166
Email: wmiller@mbolaw.com
Attorneys for Seminole Electric

Roy C. Young
Young van Assenderp, P.A.
225 South Adams Street – Suite 200
Tallahassee, FL 32301
Telephone: 850-222-7206
Facsimile: 850-561-6834
Email: ryoung@yvlaw.net
Attorneys for Orlando Utilities Commission

Frederick M. Bryant
Jody Lamar Finklea
Daniel B. O'Hagan
2061-2 Delta Way (32303)
Post Office Box 3209
Tallahassee, Florida 32315-3209
Telephone: (850) 297-2011
Facsimile: (850) 297-2014
Email: fred.bryant@fmipa.com
jody.lamar.finklea@fmipa.com
dan.ohagan@fmipa.com
*Attorneys for Florida Municipal
Power Agency*

By: *s/ John T. Butler*
John T. Butler
Fla. Bar No. 283479