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Subject: FMEA Filing Dkt. 070650-EI
Attachments: FMEA Brief in Support of Intervention - 01-03-2008 (Final).doc

Hi Matilda,

Attached for filing is **Florida Municipal Electric Association's Brief in Support of Intervention** in PSC **Docket 070650-EI**.

The document has six (6) pages, plus a certificate of service. 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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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

FLORIDA MUNICIPAL ELECTRIC ASSOCIATION'S
BRIEF IN SUPPORT OF INTERVENTION

In this proceeding, the Commission will determine whether there is need for a proposed 2,200 – 3,040 MW nuclear power plant in Florida. The Commission is the sole forum for this determination of need, and that factual determination will be binding. See § 403.519(3), Florida Statutes (2007). Although Florida Power & Light (FPL) is the need applicant, the planning and siting of a nuclear power plant in Florida has statewide implications. Nuclear power is a non-greenhouse gas emitting generation resource that is essential to meet statewide environmental goals, and the continuance of adequate energy supply sources for FPL as well as the State of Florida. There are, however, limited ownership opportunities for nuclear power in Florida. As an association of Florida electric utilities in need of nuclear baseload generation, a number of which have participated in preliminary discussions with FPL regarding possible minority ownership of a portion of Turkey Point 6 & 7, FMEA and its members have a substantial interest that will be affected by the Commission's determination in this proceeding, and the interest is one that this proceeding is designed to protect. See Agrico Chemical Co. v. Dept. of Env'tl. Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981). FMEA should therefore be permitted to intervene and participate in this proceeding.

1. Yes, FMEA members have a substantial interest in the adequate, reliable, and cost-effective supply of electricity in the State, such that it is therefore entitled to intervene in this proceeding.

In its petition, FPL acknowledges, “[t]here are only a few technologies suited to providing baseload capacity in Florida today and in the foreseeable future....” (FPL Petition at 6). Of those, FPL acknowledges, “[n]uclear energy is the only baseload generating technology available to Florida that operates with zero greenhouse gas emissions.” (FPL Petition at 8). FPL concludes:

Therefore, as FPL and other utilities across this state face the need to add baseload generating units to meet customers’ needs, nuclear energy in general, and the addition of Turkey Point 6 & 7 in particular, will be essential if meaningful reductions in CO₂ or other greenhouse gas emissions are to be achieved.

(FPL Petition at 20) (emphasis added).

As Florida electric utilities in need of baseload generation resources, FMEA members have a substantial interest in a proceeding that will determine whether two large nuclear generating units are needed in Florida. In addition, certain FMEA members and FPL have held preliminary discussion on possible participation by those FMEA members in this nuclear project. As more fully discussed below, all Florida electric utilities’ interests in nuclear generation have been recognized by the Florida Legislature in its recent amendments to Section 403.519, Florida Statutes, which now require applicants such as FPL to include in the need petition participation opportunities discussed with other electric utilities. This view is consistent with the Commission’s jurisdiction over the planning of a coordinated electric grid in Florida:

The Commission shall further have the 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 and the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities.

§ 366.04(5), Florida Statutes (2007). There are not infinite nuclear siting opportunities in Florida. A determination of need in this proceeding without considering whether the applicant discussed joint participation with other electric utilities may reduce opportunities for nuclear capacity in Florida, result in uneconomic duplication of generating facilities, and adversely impact transmission facilities, all of which may adversely affect the ability of FMEA members and other electric utilities to meet their customers' needs.

Of note, the Commission has previously recognized an electric utility's substantial interest in the adequate, reliable, and cost-effective supply of electricity in Florida, such that it is entitled to intervene in another utility's need determination proceeding. For example, in 1998, FPL filed a petition for leave to intervene in the City of New Smyrna Beach, Florida, and Duke Energy's joint determination of need proceeding, alleging that FPL's substantial interest would be affected by the Commission's determination in the need proceeding by potentially affecting FPL's generation and transmission planning and operation.¹ The Commission granted FPL's intervention over the objection of the need applicants, agreeing that FPL's substantial interests may be affected. See In re: Joint petition for determination of need for an electrical power plant in Volusia County by the Utilities Commission, New Smyrna Beach, Florida, and Duke Energy New Smyrna Beach Power Company Ltd., L.L.P., Docket No. 981042-EU, Order No. PSC-98-1305-EM (F.P.S.C. Oct. 8, 1998); see also In re: Petition to determine need for Treasure Coast Energy Center Unit 1, proposed electrical power plant in St. Lucie County, by Florida Municipal Power Agency, Docket No. 050256-EM, Order No PSC-05-0679-EM (F.P.S.C. June 20, 2005)

¹ In its petition to intervene in the City of New Smyrna Beach and Duke Energy's need determination, FPL argued:

FPL's ability to plan, build and operate its generation and transmission systems to meet its service obligations and the needs of its customers are subject to determination in this proceeding.

In re Joint petition for determination of need for an electrical power plant in Volusia County by the Utilities Commission, New Smyrna Beach, Florida, and Duke Energy New Smyrna Beach Power Company Ltd., L.L.P., Docket No. 981042-EU, FPL Petition for Leave to Intervene at 5-6 (F.P.S.C. Aug. 28, 1998).

(granting the City of Vero Beach electric utility's intervention in a recent FMPA need determination proceeding).

It should also be noted that FMEA's intervention in this proceeding is not intended to cause delay, nor does FMEA seek to "hijack" these proceedings, as suggested by FPL. (FPL Response at 5). To the contrary, FMEA continues to be an enthusiastic proponent of nuclear generation in general, and specifically FPL's proposed Turkey Point 6 & 7. In anticipation of FMEA members ultimately being participants in FPL's Turkey Point nuclear project, FMEA is intervening in general support of FPL's need petition.

2. Yes, FMEA members have a substantial interest in ensuring that Florida Power & Light Company (FPL) holds discussions with potential co-owners as to the proposed nuclear units, and to include in its petition a summary of those discussions, such that it is therefore entitled to intervene in this proceeding.

In determining whether there is a need for a proposed nuclear power plant in Florida, the Commission has the authority to take into consideration any matter within its jurisdiction that it deems relevant. See § 403.519(b), Florida Statutes (2007).

Of significance, Section 403.519(4)(a), Florida Statutes, was amended during the 2006 legislative session to require a utility seeking a determination of need for a proposed nuclear power plant to include in its need application "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 of the Florida Administrative Code, which requires a "summary" of any such discussions. The fact that the Legislature added the provision relating to co-ownership discussions to the need determination statute removes any question as to the Commission's authority to consider such discussions, or their relevance in this proceeding.

In its petition, FPL eloquently makes FMEA's argument, acknowledging that "the Legislature amended section 403.519 of the Florida Statutes to establish new criteria for determining the need for new nuclear capacity that are somewhat different from the need standards applicable to conventional steam units." (FPL Petition at 2). FPL correctly points out that the Legislature's actions "define a new paradigm for the development of nuclear generation." (FPL Petition at 3).

Recognizing the statewide implications of nuclear power, one of the new criteria the Legislature established for determining the need for new nuclear capacity is a consideration of the applicant's discussions with other electric utilities. These discussions, therefore, now play a role in the Commission's consideration of a nuclear power plant. This is further evidenced by the fact that FPL has been asked by PSC staff in its fifth set of interrogatories (Interrogatory No. 75) to provide greater detail of its discussions with other electric utilities.

FMEA does not presume to direct the Commission on how or to what extent it should use this information. In fact, whether the Commission should grant or deny a utility's petition for a determination of need based on these discussions (or lack thereof), or whether the Commission has the authority to compel discussions in this proceeding is not at issue in deciding whether FMEA should be permitted to intervene. The fact of the matter is that these discussions are now a part of the Commission's consideration and FPL has discussed ownership opportunities of Turkey Point 6 & 7 with certain FMEA members. Although FMEA members are encouraged by these discussions, and anticipate continued dialogue with FPL as this and other permitting proceedings move forward, FPL has not provided the Commission a "summary" of its discussions with FMEA members, as required by rule 25-22.081 of the Florida Administrative Code.

This proceeding is the Commission's first opportunity to consider co-ownership discussions in a nuclear need determination proceeding since the amendment of section 403.519 and rule 25-22.081. Assuming that both the Legislature and this Commission did not intend to enact meaningless provisions, co-ownership discussions must hold some weight and have some bearing in this need determination proceeding. As an association of electric utilities that are in need of nuclear power, a number of which having participated in preliminary discussions with FPL regarding potential joint ownership of the generating units at issue in this proceeding, FMEA and its members have a substantial interest in this proceeding to, among other things, ensure that these discussions are accurately and adequately summarized for the Commission. There is no way for the Commission to give full consideration of these discussions unless the very parties that were present during such discussions are permitted to intervene in this proceeding.

Respectfully submitted this 3rd day of January, 2008.

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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/or U.S. Mail this 3rd day of January, 2008, to the following:

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