

Matilda Sanders

From: Karen.Culpepper@fmpa.com
Sent: Friday, January 04, 2008 4:48 PM
To: Filings@psc.state.fl.us
Cc: bmoline@publicpower.com; Minimushomines@aol.com; Charles Beck; charles.gauthier@dca.state.fl.us; dshirreffs@cleanwater.org; Dan.OHagan@fmpa.com; ekee@crai.com; Alliance4Cleanfl@aol.com; Fred.Bryant@fmpa.com; jack_leon@fpl.com; Jody.Lamar.Finklea@fmpa.com; John_Butler@fpl.com; Katherine Fleming; kksionek@ouc.com; Ken Hoffman; Mike.Halpin@dep.state.fl.us; Wade_Litchfield@fpl.com; roger@fmpa.com; ryoung@yvlaw.net; oncavage@bellsouth.net; stephen_huntoon@fpl.com; Trudy Novak; vkaufman@asglegal.com; wmiller@mbolaw.com; zeasterling@ouc.com
Subject: FMEA Filing Dkt. 070650-EI
Attachments: FMEA Prehearing Statement - 01-04-2008 (Final).doc

Hi Matilda,

Attached for filing is **Florida Municipal Electric Association's Prehearing Statement** in PSC Docket **070650-EI**.

The document has nine (9) pages, including the certificate of service. Please contact me either by email or telephone if you have any questions.

As always, thank you for your assistance!

Karen

Karen R. Culpepper, CP
Paralegal/Law Office Administrator
FMPA Office of the General Counsel

Florida Municipal Power Agency
2061-2 Delta Way
Tallahassee, FL 32303

P. O. Box 3209
Tallahassee, FL 32315-3209

850.297.2011
850.297.2014, Fax
www.fmpa.com
karen.culpepper@fmpa.com

Community Power. Statewide Strength.

DOCUMENT NUMBER DATE
00117 JAN-4 08
FMPA COLLECTION CLERK

This email may contain confidential and privileged material for the sole use of the intended recipient(s). Any review, use, retention, distribution or disclosure by other others is strictly prohibited. If you are not the intended recipient (or authorized to receive for the recipient), please contact the sender by reply email and delete all copies of this message. Also, email is susceptible to data corruption, interception, tampering, unauthorized amendment and viruses. We only send and receive emails on the basis that we are not liable for any such corruption, interception, tampering, amendment or viruses or any consequences

1/4/2008

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 4, 2008

FLORIDA MUNICIPAL ELECTRIC ASSOCIATION'S
PREHEARING STATEMENT

Pursuant to Order No. PSC-07-0869-PCO-EI, issued October 30, 2007, establishing the prehearing procedure in this docket, Florida Municipal Electric Association (FMEA), through its undersigned counsel, hereby files its prehearing statement.

Appearances:

Frederick M. Bryant, General Counsel
Daniel B. O'Hagan, Attorney

on behalf of Florida Municipal Electric Association.

a. All Known Witnesses

FMEA does not anticipate at this time calling any witnesses; however FMEA reserves the right to cross examine witnesses called by other parties.

b. All Known Exhibits

FMEA has not prefiled any exhibits.

c. FMEA's Statement of Basic Position

FMEA's positions are preliminary and based upon FMEA's current status in the docket and information known at this time. FMEA's final positions will be based on all evidence in the record and may differ from FMEA's preliminary positions articulated in this prehearing statement.

FMEA generally supports FPL's petition for a determination of need for Turkey Point 6 & 7. FMEA supports FPL because joint participation discussions between FPL and certain FMEA members have occurred, and are expected to continue in a meaningful manner as this and other permitting proceedings move forward. FMEA is concerned, however, that FPL has not met its obligation under Florida Statutes and Commission rules to hold discussions, inform the Commission, and provide a summary of those discussions held with other electric utilities regarding ownership of a portion of Turkey Point 6 & 7. See § 403.519, Florida Statutes (2007); Fla. Admin. Code r. 25-22.081 (2007). Therefore, given the importance of nuclear power to the State of Florida in general, and FMEA members in particular, FMEA intends to participate in

these proceedings to ensure that all prior discussions and future discussions are adequately and accurately summarized so the Commission has an accurate record on which to base its determination of whether there is a statewide need for Turkey Point 6 & 7.

d. FMEA's Position on the Issues

Issue 1: Is there a need for the proposed generating units, taking into account the need for electric system reliability and integrity, as this criterion is used in Section 403.519(4), Florida Statutes?

Position: Yes, however the commission cannot fully consider this issue unless and until it is provided with an adequate and accurate summary of any discussions with other electric utilities regarding ownership opportunities of a portion of Turkey Point 6 & 7 by such electric utilities, as required by section 403.519(4)(a)5., Florida Statutes, and rule 25-22.081(2)(d) of the Florida Administrative Code.

Issue 2: Is there a need for the proposed generating units, taking into account the need for fuel diversity, as this criterion is used in Section 403.519(4), Florida Statutes?

Position: See FMEA position on Issue 1 above.

Issue 3: Is there a need for the proposed generating units, taking into account the need for base-load generating capacity, as this criterion is used in Section 403.519(4), Florida Statutes?

Position: See FMEA position on Issue 1 above.

Issue 4: Is there a need for the proposed generating units, taking into account the need for adequate electricity at a reasonable cost, as this criterion is used in Section 403.519(4), Florida Statutes?

Position: See FMEA position on Issue 1 above.

Issue 5: Are there any renewable energy sources and technologies or conservation measures taken by or reasonably available to Florida Power & Light Company which might mitigate the need for the proposed generating units?

Position: No position.

Issue 6: Will the proposed generating units provide the most cost-effective source of power, as this criterion is used in Section 403.519(4), Florida Statutes?

Position: See FMEA position on Issue 1 above.

Issue 7: Based on the resolution of the foregoing issues, should the Commission grant Florida Power & Light Company's petition to determine the need for the proposed generating units?

Position: Yes, provided that the Commission considers whether FPL has examined sharing the costs, burdens, and benefits of nuclear power plant ownership with other electric utilities in this state by holding meaningful discussions with such other electric utilities.

Issue 8: Should this docket be closed?

Position: No.

Issue 9: If the Commission grants Florida Power & Light Company's petition to determine the need for the proposed generating units, should the Commission's order expressly state support for the development of new nuclear generation, affirm the need to take steps now to preserve new nuclear generation as a resource option to meet future customer needs, acknowledge the risks and costs associated with a project of such magnitude and the corresponding stepwise role of the annual review process, and emphasize the importance of continued regulatory support throughout the process? (FPL 8)

Position: No position.

Issue 10: If the Commission grants Florida Power & Light Company's petition to determine the need for the proposed generating units, is it prudent for FPL to make advance payments for such long-lead procurement items as are reasonably necessary to preserve the potential for 2018-2020 in-service dates for the proposed generating units? (FPL 9)

Position: No position.

Issue 11: If the Commission grants Florida Power & Light Company's petition to determine the need for the proposed generating units, are prudent advance payments made prior to the completion of the proposed generating units' site clearing work properly characterized as "pre-construction costs," to be recovered pursuant to the mechanism provided in Rule 25-6.0423, F.A.C.? (FPL 10)

Position: No position.

Issue 12: If FPL were to file for recovery by May 1, 2008, would pre-construction costs associated with the proposed generating units that the Commission determines are reasonable and prudent be included for cost recovery purposes as a component of the 2009 Capacity Cost Recovery Factor in the annual Fuel and Purchased Power Cost Recovery proceeding, pursuant to Rule 25-6.0423(5)(c), F.A.C.? (FPL 11)

Position: No position.

Issue 13: Whether FPL has provided a summary of any discussions with other electric utilities regarding ownership of a portion of the proposed nuclear power plant by such electric utilities, consistent with the requirements of rule 25-22.081 of the Florida Administrative Code.

Position: No. FPL has not summarized in its petition discussions with other electric utilities, namely FMEA members. FPL and certain FMEA members have held preliminary discussions regarding FMEA members' possible ownership of a portion of Turkey Point 6 & 7. FPL has not summarized these discussions, nor any other discussions with other electric utilities, regarding ownership opportunities of the proposed nuclear generating units. The Commission cannot properly determine whether there is a need for Turkey Point 6 & 7 without taking these discussions with FMEA members, and other electric utilities, into consideration.

Issue 14: Does not 403.519(4)(b), Fla. Stat., stating that the Commission shall "take into account matters within its jurisdiction, which it deems relevant" allow the Commission to conclude that co-ownership is relevant especially in light of (4)(b)(2) which requires the Commission to consider whether the approval will enhance the reliability of power production within the state (not just in FPL's territory) and (4)(b)(3) requiring the Commission to take into account the plant's contribution to the long-term stability and reliability of the electric grid?

Position: Yes, section 403.519(4)(b), Florida Statutes, allows the Commission to conclude that co-ownership discussions between FPL and other electric utilities are relevant in this proceeding. In fact, the Commission has the authority to take into consideration any matter within its jurisdiction that it deems relevant to these proceedings. See § 403.519(4), Fla. Stat. (2007). The fact that the Legislature added subsection (4)(a)5 in 2006 regarding discussions with other electric utilities clarifies the Commission's authority to consider these discussions when making its determination, and their relevance to these proceedings.

Issue 15: Did Florida Power and Light's Petition, as required by Rule 25-22.081(2)(d) F.A.C., contain a summary of any discussions Florida Power and Light had with other electric utilities concerning the other electric utilities' ownership of a portion of the Florida Power and Light nuclear plant?

Position: See FMEA's position on Issue 13 above.

Issue 16: Does 403.519(4)(a)(5), Fla. Stat., and Rule 25-22.081(2)(d) F.A.C., create any duty on Florida Power & Light (“FPL”) to initiate discussion with other utilities that might have an interest in ownership of a portion of the nuclear plants or is this legislation and rule meaningless and may be ignored all together (FPL says they can satisfy law and rule by not having any discussions and reporting that fact at FPL Response, Paragraph 2, page 2)?

Position: Yes. Section 403.519(4)(a)(5), Florida Statutes, and rule 25-22.081(2)(d) require FPL to inform and provide a summary, respectively, of any discussions with other electric utilities regarding ownership of a portion of Turkey Point 6 & 7 by such electric utilities. This creates a duty on FPL to engage in such discussions.

Issue 17: Does OUC, a utility that presently has ownership in two nuclear power plants, have a substantial interest in having meaningful discussions with Florida Power & Light regarding ownership of a portion of the nuclear power plants at issue here as required by 403.519(4)(a)(5), Fla. Stat.? (OUC 5)

Position: Yes.

Issue 18: Should the Commission infer any intent by the Legislature from actions that were not taken by the Legislature (an amendment was proposed but withdrawn)? (OUC 6)

Position: No. The withdrawal of a proposed amendment does not provide the basis for the Commission to infer any intent by the Legislature concerning the subject matter of the withdrawn amendment.

Issue 19: Has FPL engaged in meaningful discussions with other electric utilities regarding ownership of a portion of the proposed nuclear plants by such utilities?

Position: Certain FMEA members and FPL have engaged in preliminary discussions regarding ownership of a portion of Turkey point 6 & 7. How meaningful these discussions have been thus far remains to be seen. However, FPL has not provided the Commission with a summary of these discussions as required by rule 25-22.081(2)(d). Once provided with an accurate summary of the discussions, whether the discussions have been meaningful is a factual matter for the Commission to determine.

Issue 20: If not, should the Commission require such discussions?

Position: Yes, if FPL has not engaged in meaningful discussions with other electric utilities, the Commission should require such discussions. In making its determination of need, the Commission must consider state-wide objectives, including whether the proposed nuclear plant will “[e]nhance the reliability of electric power production within the state....” § 403.519(4)(b)2., Fla. Stat. (2007) (emphasis added). In determining whether the proposed nuclear power plant will “[p]rovide the most cost-effective source of power,” the Commission must “tak[e] 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." § 403.519(4)(b)3., Fla. Stat. (2007) (emphasis added). These are state-wide objectives that the Commission is required to consider. In 2006, the Legislature added to the list of nuclear need application requirements an obligation to inform the Commission of any discussions with other electric utilities regarding ownership opportunities of the proposed nuclear plant. The Commission implements this section through rule 25-22.081 which requires a "summary" of any such discussions. The legislation and rulemaking highlights the statewide importance of nuclear generation. Given this statewide importance, the Commission should require such discussions.

e. Stipulated Issues

FMEA is not aware of any issues to which the parties have stipulated as of the date of this prehearing statement.

f. Pending Motions

FMEA filed its Petition to Intervene on December 11, 2007, which remains pending as of the date of this prehearing statement.

g. Pending Confidentiality Claims or Requests

FMEA has no pending request or claims for confidentiality.

h. Objections to Witness Qualifications as an Expert

FMEA has no objections to any current witness' qualifications as experts; however FMEA reserves the right to object to future witnesses presented by other parties that are not known to FMEA as of the date of this prehearing statement.

i. Compliance with Order No. PSC-07-0819-PCO-EI

FMEA is not aware of any requirement set forth in the Order Establishing Procedure with which FMEA cannot comply.

Respectfully submitted this 4th day of January, 2008.

/s/ Daniel B. O'Hagan

DANIEL B. O'HAGAN

Florida Bar No. 0033504

FREDERICK M. BRYANT

Florida Bar No. 0126370

JODY LAMAR FINKLEA

Florida Bar No. 0336970

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

Electric Association

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 4th day of January, 2008, to the following:

Florida Public Service Commission
Jennifer Brubaker, Esq.
2540 Shumard Oak Blvd.
Tallahassee, FL 3299-0850
jbrubake@psc.state.fl.us

Florida Power & Light Company
Mr. Wade Litchfield
215 South Monroe Street, Suite 810
Tallahassee, FL 32301-1859
wade_litchfield@fpl.com

Florida Power & Light Company
Stephen L. Huntoon
801 Pennsylvania Avenue N.W.
Washington, D.C. 20004
stephen_huntoon@fpl.com

John T. Butler, Senior Attorney
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408-0420
John_Butler@fpl.com

Florida Power & Light Company
Jack Leon
9250 W. Flagler Street, Suite 6514
Miami, FL 33174
jack_leon@fpl.com

Orlando Utilities Commission
Ken Ksionek/Zoila P. Easterling
500 South Orange Avenue
Orlando, FL 32801
kksionek@ouc.com

Department of Community Affairs
Charles Gauthier
Division of Community Planning
2555 Shumard Oak Boulevard
Tallahassee, FL 32399-2100
charles.gauthier@dca.state.fl.us

Department of Environmental Protection
Michael P. Halpin
Siting Coordination Office
2600 Blair Stone Road, MS 48
Tallahassee, FL 32301
Mike.Halpin@dep.state.fl.us

Bob and Jane Martins Krasowski
1086 Michigan Avenue
Naples, FL 34103
Minimushomines@aol.com

Charles J. Beck, Deputy Public Counsel
Office of the Public Counsel
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400
beck.charles@leg.state.fl.us

Rutledge Law Firm
Kenneth A. Hoffman
Post Office Box 551
Tallahassee, FL 32302-0551
ken@reuphlaw.com

Seminole Electric Cooperative, Inc.
Timothy S. Woodbury
Post Office Box 272000
Tampa, FL 33688-2000
tnovak@Seminole-Electric.com

Anchors Law Firm
Vicki Gordon Kaufman
The Perkins House
118 North Gadsden Street
Tallahassee, FL 32301
vkaufman@asglegal.com

Mark Oncavage
Sierra Club, Miami Group
12200 SW 110 Avenue
Miami, FL 33176
oncavage@bellsouth.net

Miller, Balis & O'Neil, P.C.
William T. Miller
1140 19th Street, NW., Suite 700
Washington, D.C. 20036
wmiller@mbolaw.com

Florida Alliance for a Clean Environment
Bob Krasowski
1086 Michigan Avenue
Naples, FL 34103
Alliance4Cleanfl@aol.com

Clean Water/Clean Water Fund
Dawn Shirreffs, South Florida Community
190 Ives Dairy Road, Suite 106
Miami, FL 33179
dshirreffs@cleanwater.org

Katherine Fleming, Esq.
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
KEFLEMIN@psc.state.fl.us

Roy C. Young
Young Law Firm
225 S. Adams St., Suite 200
Tallahassee, FL 32301
ryoung@yvlaw.net

CRA International
Edward Kee
1201 F Street NW
Washington, D.C. 20004
ekee@crai.com

/s/ Daniel B. O'Hagan
DANIEL B. O'HAGAN
Florida Bar No. 0033504