

SUZANNE BROWNLESS, P. A.

ATTORNEY AT LAW
1975 Buford Boulevard
Tallahassee, Florida 32308

TELEPHONE (850) 877-5200

TELECOPIER (850) 878-0090

January 23, 2008

VIA HAND DELIVERY

RECEIVED-FPSC
08 JAN 23 PM 4: 28
COMMISSION
CLERK

Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0800

Re: Docket No. 070650-EI

Dear Ms. Cole:

Attached please find the original and seven copies of JEA's Motion for Reconsideration, and Request for Oral Argument. Also attached is a copy to be stamped and returned to our office.

Should you have questions or need any additional information, please contact me. Thank you for your assistance in this matter.

Very truly yours,

Suzanne Brownless
Suzanne Brownless
Attorney for JEA.

- CMP _____
- COM _____
- CTR _____
- ECR _____
- GCL 3 _____
- OPC _____
- RCA _____
- SCR _____
- SGA _____
- SEC _____
- OTH _____

DOCUMENT NUMBER-DATE

00587 JAN 23 08

FPSC-COMMISSION CLERK

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 23, 2008

MOTION FOR RECONSIDERATION

Pursuant to Rule 25-22.0376, F.A.C., JEA, by and through its undersigned counsel, file this Motion for Reconsideration before the full Commission of Prehearing Officer Nathan Skop's ruling granting JEA limited intervention in this proceeding and striking certain issues from consideration in this proceeding and in support thereof state as follows:

1. JEA filed its Petition to Intervene in this docket on January 9, 2008. Florida Power & Light Company (FPL) filed its Response in Opposition to JEA's Petition to Intervene on January 10, 2008. On January 14, 2008 a prehearing conference was held in the docket before Prehearing Officer Nathan Skop. Commissioner Skop ruled at the prehearing conference as follows:

With respect to the petition to intervene by JEA, the petition to intervene was filed on January 9, 2008. FPL filed its response in opposition to the intervention on January 10, 2008. And basically the - - my ruling is also going to be to grant the intervention pursuant to the direction that will be contained in the forthcoming order. Again, that participation will be strictly limited to the issues relevant to the need determination proceeding.

Prehearing Conference Transcript at 6.

2. No written order granting intervention to JEA has been issued as of the date of this motion. However, it is JEA's understanding that any question concerning the financial impact of co-ownership on the cost effectiveness of the proposed Turkey Point Units 6 and 7 would be prohibited as beyond the scope of JEA's intervention. [Prehearing Conference Transcript at 27] Questions concerning the utilities with whom FPL has had discussions regarding co-ownership and the content of those discussions would be allowed. [Prehearing Conference Transcript at 56-8]

3. At the prehearing conference JEA raised the following issues for inclusion in this

DOCUMENT NUMBER-DATE

00587 JAN 23 08

proceeding:

- Issue 14: Is co-ownership an appropriate issue to be considered in the determination of need for a nuclear power plant?
- Issue 16: Do § 403.519(4)(a)5, Fla. Stat. (2007) and Rule 25-22.081(2)(d), F.A.C, create a duty upon Florida Power & Light Company to initiate and meaningfully discuss co-ownership of nuclear power plants with other electric utilities in the State of Florida?
- Issue 17: If a statutory or administrative duty exists to initiate meaningful discussions regarding co-ownership of nuclear power plants with Florida electric utilities pursuant to § 403.519(4)(a)5, Fla. Stat. (2007) and Rule 25-22.081(2)(d), F.A.C , do Florida electric utilities have a substantial interest in the need determinations for those nuclear power plants?

These issues are a rewording of issues initially raised by the Orlando Utilities Commission (OUC) as Issues 14, 16 and 17.¹

4. JEA also supported the inclusion in this proceeding of the following issues raised by OUC, the Florida Municipal Power Agency (FMPA) and the Seminole Electric Cooperative, Inc. (Seminole). These issues are as follows:

- 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)?
- 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?

¹ 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?

Issue 16: Does 403.519(4)(a)5, Fla. Stat., and Rule 25-22.081(2)(d), FAC, 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)?

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.?

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

5. All of these issues were stricken by the Commissioner Skop on the grounds that they were beyond the scope of a need determination. [Prehearing Transcript at 37, 46, 49, 51, 59]

Commissioner Skop did include one issue related to co-ownership of the proposed Turkey Point Units 6 and 7, Issue 13²: “Does FPL’s nuclear power plant petition contain a summary of any discussions with other electric utilities regarding ownership of a portion of the plant by such electric utilities, consistent with the requirements of Rule 25-22.081, F.A.C.?”

Intervention

6. The basis for JEA’s petition for intervention, JEA’s substantial interest in this proceeding, is based on three assertions. First, that Rule 25-22.081(2)(d), F.A.C., and § 403.519(4)(a)5, Fla. Stat. (2007), create an affirmative duty on the part of FPL, or any electric utility building a nuclear power plant, to engage in good faith negotiations with other Florida electric utilities regarding co-ownership of the proposed nuclear unit(s). It is this duty which underlies the requirement of Rule 25-22.081(2)(d), F.A.C., that FPL include “[a] summary of any discussions with other electric utilities regarding ownership of a portion of the plant of such electric utilities.” Rule 25-22.081(2)(d), F.A.C., implements §403.519(4)(a)5, Fla. Stat. (2007) which states that a need determination petition for a nuclear power plant shall include “[i]nformation on whether there were any discussions with any electric utilities regarding ownership of a portion of the plant by such electric utilities.”

7. JEA is an electric utility in the State of Florida to whom this duty of discussion of co-ownership is owed. No co-ownership discussions regarding Turkey Point Units 6 & 7 have been held with JEA to date. JEA is entitled, therefore, to intervene in this docket in order to pursue its interest in having such discussions and ensure FPL’s compliance with the need determination statute and Commission rule. JEA is also entitled to intervene in this docket in order to develop the record on

² This issue has been renumbered as Issue 7 in the Prehearing Order.

whether FPL's two sentence "summary" of its discussions with potential co-owners of the Turkey Point Units is accurate and complete.

8. Second, JEA is a retail customer of FPL receiving retail service at numerous locations. The inclusion of Turkey Point Units 6 and 7 in FPL's generating portfolio will increase FPL's base rates in the future and increase its capital cost recovery factors within the near future pursuant to the provisions of §366.93, Fla. Stat. (2007). Co-ownership is a means of reducing the overall capital costs and financing costs incurred by FPL in the construction of the proposed Turkey Point Units 6 and 7 and thereby decreasing both future base rate and near-term capital cost recovery factor increases. The cost of the proposed power plant has always been an issue in need determinations as reflected in 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." Indeed, this issue is taken directly from §403.519(4), Fla. Stat. (2007): "The commission shall consider the need for electric system reliability and integrity, including fuel diversity, the need for base-load generating capacity, and *the need for adequate electricity at a reasonable cost.*" [Emphasis added.] Because co-ownership has the ability to reduce the total project cost of Turkey Point Units 6 and 7 to FPL ratepayers, it is an issue in this proceeding and can not be excluded. Co-ownership would be an issue even if §403.519(4)(a)5, Fla Stat. (2007) or Rule 25-22.081(2)(d), F.A.C., did not exist.

9. Third, JEA is connected the Florida electric grid. The addition of Turkey Point Unit 6, whether the Westinghouse AP1000 design of 1,100 MW or the General Electric ESBWR design of 1,520 MW is selected, will constitute the addition of the largest single generating unit on the Florida grid. Loss of that generating unit will have significant impacts upon the entire grid as noted by FPL Witness Sanchez. [Sanchez Testimony at 16-18] Specifically, the addition of Turkey Units 6 and 7 will affect the import capability of electricity into Florida. [Sanchez Testimony at 17] Further, co-ownership of some portion of Turkey Point Units 6 and 7 may well represent the most cost effective means of meeting JEA's

identified 2018 capacity needs.

10. The reliability and adequacy of the Florida grid is the responsibility of the Florida Public Service Commission by virtue of §§366.04(5) and 366.05(8), Fla. Stat. (2007), commonly referred to as the “Grid Bill”. Section 366.04(5), Fla. Stat. (2007) states as follows:

The commission shall further have 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.

[Emphasis added.]

11. Section 403.519(4)(b), Fla. Stat. (2007), directs that the Commission “shall take into account matters within its jurisdiction, which it deems relevant” in a nuclear need determination. The reliability of the Florida grid as well as the prevention of the uneconomic duplication of generation is clearly within the Commission’s jurisdiction. The issues associated with co-ownership of the Turkey Point Units 6 and 7 are directly relevant to this Commission duty to maintain the Florida grid and prevent uneconomic duplication of generation by preventing the potential construction of power plants that are less cost effective than purchasing a portion of the Turkey Point Units 6 and 7.

12. Thus, JEA has established that it has substantial interests that are of the type that are addressed in nuclear need determination proceedings and that its interests are directly affected by the outcome of this proceeding. Both prongs of *Agrico Chemical Co. v. Dept. of Environmental Regulation*, 406 So.2d 1359 (Fla. 2d DCA 1981) have been met. JEA’s intervention should not be limited in any way.

Issues

13. The basis for the inclusion of the co-ownership issues, Issues 14, 16-20, is their relevance: i.e., their connection to the cost effectiveness of the proposed Turkey Point Units 6 and 7, the

statutory and administrative duty to have discussions with electric utilities regarding co-ownership and the impact of these units on the Florida grid. All of the arguments presented above which establish JEA's substantial interest in this proceeding also support the inclusion of these issues in this docket.

14. JEA would offer this observation. Over the objection of Mr. Krasowski, the consumer intervenor in this docket, Issue 6 has been included in this proceeding. Issue 6 states as follows: "If the Commission grants Florida Power & Light Company's petition to determine the need for the proposed generating units, should FPL commit, prior to the completion of Rule 25-6.423 cost recovery proceeding in 2008 (the "2008 NPPCR proceeding") to make advance forging reservation payments of approximately \$16 million to Japan Steel Works in order to preserve the potential for 2018-2020 in-service dates for the proposed generating units?"

15. JEA supported the inclusion of this issue to address a very real timing issue posed by FPL. However, this issue is not a "core" issue. This issue is a prudence, cost recovery issue for FPL. This is the first time of which the undersigned is aware that such a cost recovery issue has been included in a need determination proceeding. It was included because cost recovery of expenditures for Turkey Point Units 6 and 7 is within the clear jurisdiction of the Commission and is relevant due to the fact that FPL has represented that advance payment must be made to reserve a manufacturing spot at Japan Steel Works before the conclusion of the 2008 NPPCR proceeding, the proceeding specifically established to consider cost recovery and prudence determinations for these proposed nuclear units.

16. Likewise, co-ownership of the nuclear units is a matter clearly within the jurisdiction of the Commission as discussed above, is relevant to the cost of the units, and should be directly addressed in this proceeding as well.

WHEREFORE, JEA requests that the full Commission reconsider Commissioner Skop's decision to limit the intervention of JEA in this proceeding and issue an order which grants JEA full intervention with the ability to discuss all of the implications of co-ownership and includes JEA's Issues

14, 16 and 17 and Issues 18, 19 and 20 in this proceeding.

Respectfully submitted this 23rd day of January, 2008 by:



Suzanne Brownless, Esq.
Fla. Bar No. 309591
Suzanne Brownless, P.A.
1975 Buford Blvd.
Tallahassee, FL 32308
Phone: (850) 877-5200; FAX: (850) 878-0090

Bruce Page, Esq.
Office of General Counsel
Fla. Bar No. 651389
City of Jacksonville
City Hall, St. James Building
117 West Duval Street, Suite 480
Jacksonville, Florida 32203

c: 6079

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by U.S. Mail and electronic mail(*), this 23rd day of January, 2008 to the following:

Kenneth A. Hoffman, Esq. (*)
Rutledge, Ecenia, Purnell & Hoffman, P.A
215 South Monroe Street, Suite 420
Tallahassee, Florida 32302-0551
ken@reuphlaw.com

Charles J. Beck, Deputy Public Counsel(*)
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400
Beck.charles@leg.state.fl.us

Bill Feaster (*)
Regulatory Affairs
215 South Monroe Street, Suite 810
Tallahassee, Florida 32301-1859
Bill_Feaster@fpl.com

Florida Power & Light Company (*)
Stephen L. Huntoon
801 Pennsylvania Ave., N.W., Ste. 200
Washington, D.C. 20004
Stephen_huntoon@fpl.com

William T. Miller, Esq. (*)
Miller, Balis & O'Neil, P.C.
1140 19th Street, N.W., Ste. 700
Washington, D.C. 20036
wmiller@mbolaw.com

Vicki Gordon Kaufman, Esq. (*)
Anchors Smith Grimsley
118 North Gadsden Street
Tallahassee, Florida 32301
vkaufman@asglegal.com

Fredrick M. Bryant, Esq. (*)
Jody Lamar Finklea, Esq.
Daniel B. O'Hagan
Florida Municipal Power Agency
P.O. Box 3209
Tallahassee, Florida 32315-3209
Fred.bryant@fmpa.com
Jody.lamar.finklea@fmpa.com
Dan.ohagan@fmpa.com

Roger Fontes (*)
Florida Municipal Power Agency
8553 Commodity Circle
Orlando, Florida 32819
roger@fmpa.com

Bob and Jane Krasowski (*)
1086 Michigan Avenue
Naples, Florida 34103-3857
minimushomines@aol.com

Katherine E. Fleming, Esq. (*)
Jennifer Brubaker, Esq. (*)
Senior Attorney
Florida Public Service Comm.
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850
keflem@psc.state.fl.us
jbrubake@psc.state.fl.us

John T. Butler, Esq. (*)
Bryan S. Anderson, Esq.
Natalie Smith, Esq.
Jessica A. Cano, Esq.
Litchfield, Ross, Butler, etc.
700 Universe Blvd.
Juno Beach, Florida 33408
John_Butler@fpl.com

Kenneth P. Ksionek, Esq. (*)
Zoila P. Easterling, Esq.
OUC
500 South Orange Ave.
Orlando, Florida 32801
kksionek@ouc.com
zeasterling@ouc.com

P.G. Para (*)
JEA
21 West Church Street
Jacksonville, Florida 32202
parapg@jea.com

Seminole Electric Cooperative, Inc. (*)
Timothy S. Woodbury
P.O. Box 272000
Tampa, Florida 33688-2000
tnovak@Seminole-Electric.com

Roy C. Young, Esq. (*)
Young, van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, Florida 32301
ryoung@yvlaw.net

Bruce Page, Esq. (*)
Office of the General Counsel
City of Jacksonville
City Hall, St. James Building
117 West Duval Street, Suite 480
Jacksonville, Florida 32203
bpage@coj.net

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

c: FPLcert



Attorney for JEA