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 ORDER NO. PSC-08-0057-PCO-EI ISSUED: January 28, 2008

ORDER GRANTING INTERVENTION

On October 16, 2007, Florida Power & Light Company (FPL) filed a petition for determination of need for Turkey Point Nuclear Units 6 and 7 electrical power plants in Dade County pursuant to Sections 366.04 and 403.519, Florida Statutes (F.S.), and Rules 25-22.080, 25-22.081, and 28-106.201, Florida Administrative Code (F.A.C.). By Order No. PSC-07-0869-PCO-EI, issued October 30, 2007, the matter has been scheduled for a formal administrative hearing commencing on January 30, 2008.

On December 3, 2007, Seminole Electric Cooperative, Inc. (Seminole) filed a Petition to Intervene (petition) in this docket. Seminole is a non-profit generation and transmission cooperative, whose member systems provide retail electric service to over 880,000 customers in 46 Florida counties. Seminole acquires the power to serve its member load from it own generation, from power purchases from both investor-owned and independent power producers, and from co-owned facilities in the State. On December 10, 2007, FPL filed a response in opposition to Seminole's petition. On December 12, 2007, Seminole filed a Motion for Leave to File a Reply to FPL's response in opposition.[1]

On December 24, 2007, the Commission issued a notice that oral argument would be heard by the Prehearing Officer on the issue of intervention. Pursuant to the notice, Seminole and FPL filed briefs summarizing their arguments on January 3, 2008. On January 7, 2008, oral argument was heard by Seminole, FPL, and other persons with pending intervention requests in this docket.[2]

Petition for Intervention

In its petition, Seminole contends that it is entitled to intervene in this matter based upon the following assertions: (1) as a non-profit electric generation and transmission cooperative, Seminole has a direct and substantial interest in ensuring that there are adequate and economical sources of power in the State for all citizens; (2) Seminole has a direct and substantial interest in pursuing discussions with FPL regarding joint ownership of Turkey Point 6 and 7; and (3)

[1] Neither the Uniform Rules nor our rules contemplate a reply to a response to a motion. The Commission has routinely declined to consider such replies, and as such those arguments need not, and will not, be considered. See, e.g., Order No. PSC-07-0032-PCO-EU, issued January 9, 2007, in Docket No. 060635-EU, In Re: Petition for determination of need for electrical power plant in Taylor County by Florida Municipal Power Agency, JEA, Reedy Creek Improvement District, and City of Tallahassee.

[2] Intervention requests filed individually by the Florida Municipal Power Agency, Orlando Utilities Commission, JEA, and Florida Municipal Electric Association, Inc., will be addressed by separate orders.

Section 403.519(4)(a)(5), F.S., and Rule 25-22.081(2)(d), F.A.C., empower the Commission to ensure that the applicant seeking a determination of need for a nuclear power plant is committed to discussions regarding co-ownership with electric utilities in this State. [3]

FPL's Response

In its response, FPL asserts that the relief requested by Seminole is not of a type contemplated by Section 403.519, F.S., and thus may not be sought in this need determination. As such, FPL states that because the relief requested is not contemplated by Section 403.519(4), F.S., Seminole has failed to asserts a sufficient basis for the Commission to grant it standing as an intervenor in this matter.

In support of this argument, FPL asserts that Section 403.519(4)(a)(5), F.S., simply requires that an applicant seeking a determination of need for a nuclear power plant must include in its petition information on whether there were any discussions with any electric utilities regarding ownership of a portion of the nuclear power plant. FPL states that the Legislature did not intend this provision to confer upon Seminole or any other utility any preference, advantage or leverage in negotiating a potential joint ownership arrangement. In addition, FPL contends that via the adoption of Section 403.519(4)(a)(5), F.S., the Legislature similarly did not intend to confer upon this Commission the duty to promote, oversee or administer any such joint ownership relationship or that a need determination proceeding should become a forum for one utility to pursue or coerce such opportunities.

FPL further contends in its response that Seminole has failed to establish that its substantial interests will be affected by this proceeding. Citing the two-pronged test for standing in Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981), FPL argues that although Seminole has stated that its interests will be affected by the Commission's determination of need in this proceeding, it has failed to demonstrate that it will suffer any injury in fact with respect to this determination. As such, it is

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[3] Section 403.519(4), F.S., sets forth those matters which the Commission must consider when making its determination on a proposed electrical power plant using nuclear materials:

> In making its determination to either grant or deny the petition, the commission shall consider the need for electric system reliability and integrity, including fuel diversity, the need for base-load generating capacity, the need for adequate electricity at a reasonable cost, and whether renewable energy sources and technologies, as well as conservation measures, are utilized to the extent reasonably available.

In a separate subparagraph, the statute requires additional information which must be included in the applicant's petition, including "[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." Section 403.519(4)(a)5., F.S.

Rule 25-22.081, F.A.C., sets forth the required contents for a petition for nuclear fuel electric plants. Rule 25-22.081(2)(d), F.A.C., specifies that a nuclear power plant petition shall also contain "[a] summary of any discussions with other electric utilities regarding ownership of a portion of the plant by such electric utilities."

FPL's contention that although 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 demonstrate either an injury in fact or that the injury contemplated is of a type which the proceeding is designed to protect.

Finally, FPL specifically requests that, if intervention is granted, the Commission clarify in its order that (1) the requirement in Section 403.519(4)(a)(5), F.S., for FPL to report its joint ownership discussions is for informational purposes only; (2) the scope of this proceeding does not extend to requiring FPL to offer Seminole joint ownership of Turkey Point units 6 and 7, nor to taking discussions about joint ownership into consideration in determining the need for Turkey Point 6 and 7; and (3) Seminole will not be permitted to raise issues, engage in discovery, or examine witnesses beyond the proper scope of the proceeding.

Standard for Intervention

Pursuant to Rule 25-22.039, F.A.C., persons other than the original parties to a pending proceeding, who have a substantial interest in the proceeding, and who desire to become parties, may petition for leave to intervene. Petitions for leave to intervene must be filed at least five days before the evidentiary hearing, must conform with Rule 28-106.201(2), F.A.C., and must include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected by the proceeding. Intervenors take the case as they find it.

To have standing, the intervenor must meet the two prong standing test articulated in Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981). The intervenor must show (1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57, F.S., hearing, and (2) that this substantial injury is of a type or nature which the proceeding is designed to protect. The first aspect of the test deals with the degree of injury. The second deals with the nature of the injury. The "injury in fact" must be both real and immediate and not speculative or conjectural. International Jai-Alai Players Assn. v. Florida Pari-Mutuel Commission, 561 So. 2d 1224, 1225-26 (Fla. 3d DCA 1990). See also Village Park Mobile Home Assn., Inc. v. State Dept. of Business Regulation, 506 So. 2d 426, 434 (Fla. 1st DCA 1987), rev. den., 513 So. 2d 1063 (Fla. 1987) (speculation on the possible occurrence of injurious events is too remote).

Analysis & Ruling

Section 403.519(4)(a)5., F.S. was enacted by the Florida Legislature in 2006. In this regard, Seminole essentially contends that section 403.519(4)(a)5., F.S., and Rule 25-22.081(2)(d), F.A.C., provide a basis for raising co-ownership issues and nuclear access claims in the context of a nuclear power plant need determination proceeding.[4] Accordingly, the

[4] Historically, nuclear access claims have been litigated within the federal court system. See generally Florida Cities v. Florida Power & Light Co., 525 F. Supp. 1000 (1981); Alabama Power Co. v. Nuclear Regulatory Commission, 692 F.2d 1362 (1982).

consideration of the nuclear access argument advanced by Seminole represents an issue of first impression to the Commission requiring interpretation of the recently enacted statute and associated rule.

Section 403.519(4)(a)5., F.S., requires that a petition for need determination of a nuclear plant shall include information 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. Further, Rule 25-22.081, F.A.C., states that a nuclear power plant petition shall also contain a summary of any discussions with other electric utilities regarding ownership of a portion of the plant by such electric utilities.

In its January 3, 2008, brief summarizing oral argument, Seminole contends that it has a substantial interest in ensuring that appropriate generating units are built and permitted in the State so that Seminole may continue to provide adequate, reliable, and cost-effective electricity to its members. Seminole argues that Section 403.519(4)(a)5., F.S., expresses the Legislature's interest in ensuring that co-ownership of nuclear facilities is explored among Florida's utilities when a nuclear plant is proposed. Seminole contends that FPL has failed to comply with the requirements of Section 403.519(4)(a)5., F.S., and Rule 25-22.081(2)(d), F.A.C., and that co-ownership issues are relevant to the need determination.

I am not persuaded by Seminole's arguments that it has a generalized reliability interest in FPL's proposed nuclear plants. However, I agree that Seminole has a substantial interest in this proceeding to address whether FPL's petition includes: (1) information 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, pursuant to Section 403.519(4)(a)5., F.S.; and (2) a summary of any discussions with other electric utilities regarding ownership of a portion of the plant by such electric utilities, pursuant to Rule 25-22.081(2)(d), F.A.C. Therefore, Seminole shall be granted intervention in this proceeding. However, as with all parties to this proceeding, Seminole's intervention shall be limited to the issues that are within the Commission's jurisdiction, and that the Commission deems relevant.

I note in particular Seminole's argument that it has a substantial interest in ensuring that FPL has meaningful discussions with potential co-owners, like Seminole, as to the proposed units, and that Section 403.519, F.S., expresses the Legislature's interest in ensuring that co-ownership is explored among Florida's utilities. The plain and unambiguous language of the statute requires the disclosure of whether such discussions took place, and Rule 25-22.081(2)(d), F.A.C., requires only that a summary of any such discussions be included in the petition.[5] A plain reading of the statute does not impose a requirement that FPL engage in such discussions

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[5] It is a general rule of law that where a statute is unambiguous, the trier of fact need look no further than the statute itself. Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc., 434 So. 2d 879, 882 (Fla. 1983); see also St. Petersburg Bank and Trust Co. v. Hamm, 414 So. 2d 1071 (Fla. 1982). Even so, the determination that no ambiguity is present does not necessarily foreclose statutory construction. State v. Ross, 447 So. 2d 1380, 1383 (Fla. 4th DCA 1984). In this case, however, even if it were necessary to consider the legislative intent of Section 403.519(4)(a)5., F.S., there is no express statement of legislative intent as to the subparagraph in question.

with other electric utilities regarding ownership of a portion of its proposed plants; rather, the statute requires disclosure of whether or not these discussions have taken place. The Commission has the authority to take into consideration any matter within its jurisdiction that it deems relevant, pursuant to Section 403.519(b), F.S. Consistent with my rulings at the January 14, 2008, Prehearing Conference, while the disclosure aspect of these provisions may be addressed, issues as to the merits of co-ownership will not be entertained in this proceeding.

Conclusion

In conclusion, Seminole meets the two prong standing test in Agrico; therefore, its petition shall be granted as set forth herein. Pursuant to Rule 25-22.039, F.A.C., Seminole takes the case as it finds it.

Based on the foregoing, it is

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that the Petition to Intervene is granted with respect to the Seminole Electric Cooperative, Inc., as set forth herein. It is further

ORDERED that Seminole's motion for leave to file a reply to FPL's response in opposition to Seminole's petition to intervene is denied. It is further

ORDERED that all parties to this proceeding shall furnish copies of all testimony, exhibits, pleadings and other documents, which may hereinafter be filed in this docket, to:

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By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 28th day of January, 2008.

NATHAN A. SKOP
Commissioner and Prehearing Officer

(S E A L)

JSB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.