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Subject: Docket No. 070650-EI
Attachments: Mtn for Leave to File Reply -- Reply 12.12.07.pdf

In accordance with the electronic filing procedures of the Florida Public Service Commission, Seminole Electric Cooperative, Inc. makes the following filing:

a. The name, address, telephone number and email of the person responsible for the filing is:
Vicki Gordon Kaufman
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b. This filing is made in Docket No. 070650-EI, In re: Petition to Determine Need for Turkey Point Nuclear Units 6 and 7 Electrical Power Plant, by Florida Power & Light Company

c. The document is filed on behalf of Seminole Electric Cooperative, Inc.

d. The total number of pages in the document is 11.

e. The attached document is a Motion for Leave to File A Reply and Reply.

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12/12/2007

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 12, 2007

SEMINOLE ELECTRIC COOPERATIVE, INC.'S
MOTION FOR LEAVE TO FILE A REPLY

Seminole Electric Cooperative, Inc. (Seminole), pursuant to rule 28-106.204, Florida Administrative Code, files this Motion for Leave to File a Reply to Florida Power & Light Company's Response in Opposition to Seminole's Petition to Intervene. As grounds therefor, Seminole states:

1. On October 16, 2007, Florida Power & Light Company (FPL) filed a Petition to Determine Need for two nuclear-fueled generating units which will add substantial capacity to the Florida grid.

2. On December 3, 2007, Seminole moved to intervene in the proceeding, asserting that its substantial interests will be affected by the action the Commission takes in this matter.

3. On December 10, 2007, FPL filed a Response to Seminole's petition opposing Seminole's intervention.

4. The crux of FPL's objection to Seminole's participation in this docket rests on its view of the appropriate interpretation of section 403.519(4)(a)(5), Florida Statutes. FPL asserts that the information this section requires is simply "informational" and that co-ownership issues have no place in this docket. Seminole strongly disagrees.

5. To Seminole's knowledge, this docket is the first time that the Commission has been called upon to opine on the requirements of section 403.519(4)(a)(5) which was passed by the Legislature in 2006. It is therefore important that the Commission be fully apprised of all

parties' views as to this section. Thus, Seminole seeks leave to file a brief Reply, which it has attached hereto.

6. Seminole does not intend to repeat the information in its Petition to Intervene, but rather offers a brief response to the arguments FPL raises so that the Commission will be fully informed when it rules on the Seminole's pending Petition to Intervene.

7. Pursuant to rule 28-106.204(3), Florida Administrative Code, Seminole has contacted the parties to ascertain their positions on this motion. Seminole represents that the Office of Public Counsel, Jan and Bob Krasowski, the Florida Municipal Power Agency, and the Orlando Utilities Commission have no objection. Florida Power & Light Company objects. The other parties have not responded.

WHEREFORE, Seminole requests that the Commission accept this Reply to FPL's Response in Opposition to Seminole's Petition to Intervene.

s/ Vicki Gordon Kaufman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Leave to File Reply has been furnished by electronic mail (*) and U.S. Mail this 12th day of December 2007 to the following:

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s/ Vicki Gordon Kaufman

Vicki Gordon Kaufman

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: December 12, 2007

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

Pursuant to rule 28-106.204, Florida Administrative Code, Seminole Electric Cooperative, Inc. (Seminole), through its undersigned attorneys, files this Reply to Florida Power & Light Company's (FPL) Response in Opposition to Seminole's Petition To Intervene. In support thereof, Seminole states:

1. On October 16, 2007, FPL filed a Petition To Determine Need for two nuclear-fueled generating units which will add between 2,200 and 3,040 MW to the Florida grid. On December 3, 2007, Seminole filed a Petition To Intervene. On December 10, 2007, FPL filed a Response in Opposition to Seminole's Petition to Intervene (Response) seeking to keep Seminole from participating in this docket.

2. Section 403.519(4)(a)(5), Florida Statutes, requires a utility seeking a determination of need for a nuclear power plant to include information in its application regarding discussions with other utilities as to co-ownership. The Commission's rule implementing this section requires a summary of such discussions. Rule 25-22.081(2)(d), Florida Administrative Code.

3. The basis for FPL's opposition to Seminole's participation rests on its view that this statutory provision and the implementing rule requirement are " merely . . . informational " [1]

[1] FPL Response at 2.

and apparently, in FPL's view, confer no obligation on FPL to do anything. Thus, FPL asserts, Seminole does not meet the second prong of the test for standing.[2] However, the injury which Seminole alleges – FPL's failure to discuss the possibility of co-ownership of the nuclear units – is clearly the type this proceeding is designed to protect and thus Seminole's interests fall within the zone of interest of section 403.519.

4. The statute's language belies FPL's assertion that "[t]here is nothing in section 403.519(4) that is designed to protect Seminole's asserted interest in engaging in joint ownership discussions with FPL." [3] The very statute pursuant to which FPL seeks the determination of need – section 403.519(4)(a)5 – raises the issue of co-ownership. The statute *requires* an applicant for a nuclear power plant to include information regarding discussions of co-ownership with other utilities. FPL has failed to discuss such co-ownership with Seminole, despite Seminole's explicit request that it do so, and despite the statute's direction.

5. Further, a requirement regarding co-ownership discussions does not appear in the other portion of the need statute addressing non-nuclear plants. Thus, the Legislature was clearly concerned about co-ownership of nuclear plants and sought to encourage such co-ownership discussions early in the process. Otherwise, it would not have included the requirement regarding information on such discussions in the determination of need statute – the first step in power plant siting.[4] There would be no reason for the Legislature to include the requirement of joint ownership discussions in the statute if it did not intend for the Commission to consider that issue in a determination of need proceeding.

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[2] *Agrico Chemical Co. v. Department of Environmental Protection*, 406 So.2d 478 (Fla. 2nd DCA 1981).
[3] FPL Response at 4.
[4] Iin an attempt to support its position, FPL includes as Attachment 1 to its Response, a floor amendment to Senate Bill 888 which was withdrawn. However, this amendment did not relate to the Commission's responsibilities under the determination of need portion of the statute, but rather to deliberations of the Siting Board at the conclusion of the process.

6. The Legislature added the co-ownership language to the statute in 2006. To accept FPL's reading of the statutory language would render this new statutory section absolutely meaningless. Such a result would be directly at odds with well known rules of statutory interpretation. As the Florida Supreme Court has said:

> We have stated "[i]t is an elementary principle of statutory construction that significance and effect must be given to every word, phrase, sentence, and part of the statute if possible, and words in a statute should not be construed as mere surplusage." *Hechtman v. Nations Title Ins.*, 840 So.2d 993, 996 (Fla.2003). Further, "a basic rule of statutory construction provides that the Legislature does not intend to enact useless provisions, and courts should avoid readings that would render part of a statute meaningless." *State v. Goode*, 830 So.2d 817, 824 (Fla. 2002).

American Home Assurance Co. v. Plaza Materials Corp., 908 So.2d 360, 366 (Fl. 2005).

7. The Florida Supreme Court has also said that:

> As a fundamental rule of statutory interpretation, 'courts should avoid readings that would render part of a statute meaningless.' *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So.2d 452, 456 (Fla.1992); *Villery v. Florida Parole & Probation Comm'n*, 396 So.2d 1107 (Fla.1980); *Cilento v. State*, 377 So.2d 663 (Fla.1979). Furthermore, whenever possible "courts must give full effect to *all* statutory provisions and construe related statutory provisions in harmony with one another." *Forsythe*, 604 So.2d at 455. **This follows the general rule that the legislature does not intend "to enact purposeless and therefore useless, legislation."** *Sharer v. Hotel Corp. of America*, 144 So.2d 813, 817 (Fla.1962).

Unruh v. State, 669 So.2d 242, 245 (Fl. 1996) (emphasis added). FPL's gloss on the language of the statute would run afoul of these requirements.

8. While FPL claims that Seminole is seeking some sort of " preference, advantage, or leverage," [5] this assertion rings hollow. The requirement for co-ownership discussions in the context of a nuclear plant makes perfect sense, as the Legislature recognized. Sites for nuclear plants in Florida are very limited; obtaining the required state and local approvals can be

[5] FPL Response at 3.

challenging; and the cost of such plants will be staggering. Therefore, all power customers must have the opportunity to utilize this type of generation on appropriate terms and conditions. The Legislature recognized this in enacting specific requirements regarding discussion of co-ownership applicable only to nuclear facilities.

9. Finally, FPL makes a half-hearted attempt to suggest that Seminole does meet the first portion of the *Agrico* test, which requires a demonstration of injury in fact. Even though Seminole generally supports FPL's request in this docket, that does not mean it will suffer no injury in fact, depending on the Commission's decision. At the time of this response, at least one intervenor has taken the position that the Turkey Point nuclear units should not receive a determination of need from the Commission.[6] Seminole has standing to assert that such plants are needed to secure Florida's energy future, and it has a sufficient and immediate interest in the permitting of these future nuclear plants.

10. Finally, FPL requests that if Seminole is permitted to intervene, its participation be circumscribed and that it be foreclosed from inquiry into certain areas before the case has even begun.[7] Particularly, FPL asks the Commission to foreclose discovery and cross-examination into certain areas, *before* such discovery has been sent or such questions posed. This effort to curtail participation should be rejected outright as an effort to inappropriately limit Seminole's right to participate in this proceeding.[8]

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[6] *See*, Petition to Intervene filed by Jan M. and Bob Krasowski (Dec. 3, 2007) at 2-3. Other parties may also seek to intervene. *See*, rule 25-22.039, Florida Administrative Code, permitting petitions to intervene to be filed up until five (5) days prior to the hearing.

[7] FPL hypothesizes that Seminole will "hijack" the proceeding. FPL Response at 5. That contention has no basis, and Seminole assures the Commission that it has no such intention.

[8] FPL's claim that "intervenors take the case as they find it" (FPL Response at 4) does not mean that FPL has the authority to shape the issues, discovery, and cross-examination to its liking to the exclusion of others. Order No. PSC-07-0869-PCO-EI, Order Establishing Procedure, at 2, notes: "The scope of this proceeding will be based upon these issues as well as other issues raised by the parties up to and during the Prehearing Conference, unless modified by the Commission."

WHEREFORE, Seminole requests that it be permitted to intervene as a full party in this docket.

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