

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of:)	Docket No. 63-001-HLW
)	
U.S. Department of Energy)	ASLBP No. 09-892-HLW-CAB04
High Level Waste Repository)	
_____)	

**MOTION OF THE FLORIDA PUBLIC SERVICE COMMISSION
FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE
AND FILE MEMORANDUM**

Pursuant to 10 C.F.R. § 2.315, the Florida Public Service Commission (“Florida Commission”), through its undersigned attorney, respectfully requests that it be allowed to participate as amicus curiae in this case and file the accompanying Amicus Curiae Memorandum in opposition to the withdrawal, with prejudice, of the Yucca Mountain repository application. In support of its motion, the Florida Commission states the following:

1. The Florida Commission is an agency of the State of Florida given exclusive jurisdiction by Section 366.05(1), Florida Statutes, “to prescribe fair and reasonable rates and charges, classifications, standards of quality, and measurements, and service rules and regulations” for investor-owned electric utilities.

2. The Florida Commission believes that its participation would benefit the Board in its deliberation on the Yucca Mountain repository.

3. The Florida Commission has a clear interest in, and unique perspective concerning, the instant proceeding. The Florida Commission is responsible for the determination of need for nuclear facilities of investor-owned utilities in Florida and for passing on the just and reasonable costs to the ratepayers.

4. In addition, the utilities that the Florida Commission regulates have paid \$787.6 million into the Nuclear Waste Fund (“Fund”) established under Section 302 of the Nuclear Waste Policy Act, 42 U.S.C. § 10222, to cover costs associated with used nuclear fuel disposal.

5. As of December 31, 2008, nuclear generation composed 13.3 percent of the electric generation in Florida. The five existing nuclear generating units located in Florida have a total summer capacity of 3,915 megawatts (MW). Four of these generating units are owned by Florida Power and Light Company (FPL) and one unit is owned by Progress Energy Florida, Inc. (PEF). Currently, a total of 2,654 metric tons of uranium in spent fuel pools are stored on site at these facilities. FPL has a total of 2,145 metric tons of uranium in spent fuel pools, while PEF has 509 metric tons of spent fuel.

6. The Florida Commission has recently approved the need for approximately 5,000 MW of additional nuclear capacity, including four new nuclear generating units and uprates at all five existing nuclear facilities. In 2007 and 2008, the Florida Commission found there was a need for uprates of all existing Florida nuclear generating units, totaling 554 MW. In 2008, the Florida Commission found that PEF had a need for two new nuclear generating units at their greenfield Levy site.¹ PEF's planned Levy Units 1 and 2 will mark the first construction of new nuclear generation in Florida in more than 20 years. These units have been fully certified under Florida Statutes, with Florida's Governor and Cabinet unanimously approving PEF's site request for the Levy Units on August 8, 2009. PEF's Levy units will provide approximately 1,100 MW of capacity each, with estimated in-service dates of 2021 and 2023. Similarly, in 2008, the Florida Commission found that FPL had a need for two new nuclear generating units at FPL's existing Turkey Point site. FPL's Turkey Point Units 6 and 7 will also provide approximately 1,100 MW of capacity each, with estimated in-service dates of 2022 and 2023. Certification of the Turkey Point generating units is currently scheduled to be addressed by Florida's Governor and Cabinet in August 2010.

¹ See Order No. PSC-08-0237-FOF-EI, issued April 11, 2008, 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 and Light Company. See also Order No. PSC-08-518-FOF-EI, issued August 12, 2008, in Docket No. 080148-EI, In re: Petition for Determination of Need for Levy Units 1 and 2 Nuclear Power Plants, by Progress Energy Florida, Inc.

Thus, the Florida Commission believes that Florida utility regulation is greatly impacted by what actions occur in this instant case.

7. The Florida Commission has determined the importance of nuclear generation to maintaining system reliability and fuel diversity for Florida's consumers. In its orders approving need for new nuclear generating capacity for FPL and PEF, the Florida Commission stated that there is a need for this new nuclear capacity when taking into account the: (1) electric system reliability and integrity, (2) fuel diversity, (3) base-load generating capacity, and (4) adequate electricity at a reasonable cost. In addition, in its *Review of 2009 Ten-Year Site Plans for Florida's Electric Utilities*, the Florida Commission noted that increased nuclear capacity will significantly contribute to both greater system fuel diversity and lower greenhouse emissions. Further, nuclear generation does not face the same potential supply disruptions as fossil fuel generation because nuclear fuel is added to the units during refueling outages that typically take place once every 18 to 24 months.

8. On April 28, 2010, the Florida Commission contacted the parties in this proceeding to determine their position on this motion. The only entity that opposes the Florida Commission participation is the Native Community Action Council, which also stated that it reserves the right to answer the Florida Commission motion once it is filed. The National Association of Regulatory Utility

Commissioners, the Department of Energy, the State of South Carolina, the State of Washington, White Pine County, Nye County, Lincoln County, the Nuclear Energy Institute, and the Prairie Island Indian Community do not object. Eureka County, County of Inyo and the State of California take no position on the motion. The NRC staff, Clark County, and the State of Nevada take no position on the motion, but reserve the right to file a response to the motion. No response was received from the rest of the parties in the proceeding.

9. The Florida Commission has made a good faith effort to substantially comply with 10 C.F.R. § 2.1003 and has been in communication with the NRC's Licensing and Support Network Administrator to obtain technical guidance to comply with LSN requirements. On April 30, 2010, the Florida Commission filed a document regarding the certification of licensing support network supplementation, in which it was stated that no documentary material as specified in 10 C.F.R. § 2.1003 had been identified.

WHEREFORE, the Florida Public Service Commission requests leave to participate as amicus curiae in the instant case and submit the accompanying Amicus Curiae Memorandum.

Respectfully submitted,

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Dated: May 14, 2010

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

ATOMIC SAFETY AND LICENSING BOARD

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U.S. Department of Energy)	ASLBP No. 09-892-HLW-CAB04
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High Level Waste Repository)	
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THE FLORIDA PUBLIC SERVICE COMMISSION
AMICUS CURIAE MEMORANDUM

The Florida Public Service Commission (the Florida Commission), hereby files its Amicus Curiae Memorandum. The Florida Commission urges that this tribunal should deny the Department of Energy's request to withdraw, with prejudice, the Yucca Mountain Repository application. The Florida Commission concurs with the position taken by the National Association of Regulatory Utility Commissioners in this proceeding.

- I. To Allow the DOE to Withdraw with Prejudice the Yucca Mountain Application Would be at Odds with the DOE's Obligation for Disposal of Nuclear Fuel.

The withdrawal with prejudice of the Yucca Mountain application will significantly undermine the government's ability to fulfill its outstanding obligation to take possession and dispose of the nation's spent nuclear fuel and high level nuclear waste. Dismissal at this late stage, in the absence of any rational

explanation or record-based findings to justify it, is a waste of the billions in ratepayer dollars spent on the licensing proceeding to date. Ratepayers across the country continue to pay for a national storage “solution,” enhanced litigation costs, and the increased costs of interim storage.

As of December 31, 2008, nuclear generation composed 13.3 percent of the electric generation in Florida. The five existing nuclear generating units located in Florida have a total summer capacity of 3,915 megawatts (MW). Four of these generating units are owned by Florida Power and Light Company (FPL) and one unit is owned by Progress Energy Florida, Inc. (PEF). Currently, a total of 2,654 metric tons of uranium in spent fuel pools are stored on site at these facilities. FPL has a total of 2,145 metric tons of uranium in spent fuel pools, while PEF has 509 metric tons of spent fuel. Clearly, it is important to Florida that there be a national nuclear waste repository.

The Florida Commission has recently approved the need for approximately 5,000 MW of additional nuclear capacity, including four new nuclear generating units and uprates at all five existing nuclear facilities. In 2007 and 2008, the Florida Commission found there was a need for uprates of all existing Florida nuclear generating units, totaling 554 MW. In 2008, the Florida Commission found that PEF had a need for two new nuclear generating units at their greenfield

Levy site.¹ PEF's planned Levy Units 1 and 2 will mark the first time construction of new nuclear generation will be undertaken in Florida in more than 20 years. These units have been fully certified under Florida Statutes, with Florida's Governor and Cabinet unanimously approving PEF's site request for the Levy Units on August 8, 2009. PEF's Levy units will provide approximately 1,100 MW of capacity each, with estimated in-service dates of 2021 and 2023.

Also in 2008, the Florida Commission found that FPL had a need for two new nuclear generating units at their existing Turkey Point site. FPL's Turkey Point Units 6 and 7 will also provide approximately 1,100 MW of capacity each, with planned in-service dates of 2022 and 2023. Certification of the Turkey Point generating units is currently scheduled to be addressed by Florida's Governor and Cabinet in August 2010.

The Florida Commission has determined the importance of nuclear generation to maintaining system reliability and fuel diversity for Florida's consumers. In its orders approving the need for new nuclear generating capacity for FPL and PEF, the Florida Commission stated that there is a need for this new nuclear capacity when taking into account: (1) electric system reliability and

¹ See Order No. PSC-08-0237-FOF-EI, issued April 11, 2008, 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 and Light Company. See also Order No. PSC-08-518-FOF-EI, issued August 12, 2008, in Docket No. 080148-EI, In re: Petition for Determination of Need for Levy Units 1 and 2 Nuclear Power Plants, by Progress Energy Florida, Inc.

integrity; (2) fuel diversity; (3) base-load generating capacity; and (4) adequate electricity at a reasonable cost. In addition, in its *Review of 2009 Ten-Year Site Plans for Florida's Electric Utilities*, the Florida Commission noted that increased nuclear capacity will significantly contribute to both greater system fuel diversity and lower greenhouse emissions. Further, nuclear generation does not face the same potential supply disruptions as fossil fuel generation because nuclear fuel is added to the units during refueling outages that typically take place once every 18 to 24 months.

The Florida Commission oversees nuclear utility rates including the pass-through cost of the Nuclear Waste Fund (NWF) that pays for the establishment of a long-term repository. Florida ratepayers have paid over \$787.6 million into the NWF, which amounts to \$1.4 billion when including interest in the calculation. So what have the Florida ratepayers received for the contribution if the Yucca Mountain repository is forever abandoned?

The withdrawal with prejudice of the Yucca Mountain application is contrary to DOE's statutory obligation and would significantly harm Florida ratepayers who have paid such large amounts of money into the NWF. In addition, it raises technical issues relating to onsite storage that was not previously planned. Nuclear waste has continued to accumulate at Florida utilities' nuclear facilities over the past 40 years. Florida's utilities are continuing to have to cope with the

nuclear waste disposal in the absence of a national repository. It makes no sense to the Florida Commission for the Federal Government to discard the information accumulated at the Yucca Mountain repository and to close off the possibility of a future use. Further, approving the motion with prejudice would preclude the Blue Ribbon Commission from even considering the option.

II. Neither the Department of Energy nor the NRC has discretion to terminate this proceeding with Prejudice.

Congress has determined that the deep geological repository at Yucca Mountain is the appropriate method for disposing of nuclear waste, and established a procedure to analyze that choice. See 42 U.S.C. Sec. 10131(b) and the Joint Resolution to Congress Approving the site at Yucca Mountain, Nevada, or the Development of a Deep Geological Repository, Public Law No. 107-200 Stat. 735 (2002). Thus, neither the DOE nor the NRC has the discretion to terminate this proceeding with prejudice.

III. The U.S. Government Should Retain the Option to Reopen the Yucca Mountain Licensing Process and Scientific Evidence Should be Preserved.

The Florida Commission is concerned about dismissing the application. However, the withdrawal “with prejudice” is particularly troublesome. There should be flexibility to re-open the application and the scientific data should be preserved.

The FPSC has found nuclear energy in Florida is vital to meeting electricity demand and for increasing fuel diversity. The Federal Government has spent a large amount of money from the Nuclear Waste Fund and Congressional appropriations for scientific and emergency studies at the Yucca Mountain site. If DOE withdraws the application, it should be done in a manner that allows the refiling of the license application. Billions of dollars of ratepayer funds have been invested in the program at Yucca Mountain, including funds for scientific research. All scientific evidence and documentation developed by the DOE should be preserved in case the option is needed.

IV. Conclusion

In conclusion, the Florida Commission urges the Board to reject the DOE's withdrawal, with prejudice, of the application.

Respectfully submitted,

/s/: Cynthia B. Miller

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CERTIFICATE OF SERVICE

I hereby certify that the **MOTION OF THE FLORIDA PUBLIC SERVICE COMMISSION FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE AND FILE MEMORANDUM** and **THE FLORIDA PUBLIC SERVICE COMMISSION AMICUS CURIAE MEMORANDUM** in the above captioned proceeding have been served on the following persons this 14th day of May, 2010, by Electronic Information Exchange.

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