Seminole Electric
COOPERATIVE, INC.
IN PARTNERSHIP WITH THOSE WE SERVE

(10)

March 18, 1999

Mr. John C. Hoyle, Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

DOCKET NUMBER
PETITION RULE PRM 50-64
(64FR432)

ATTENTION: Rulemaking and Adjudications Staff

RE: Docket No. PRM-50-64

Dear Mr. Hoyle:

Seminole Electric Cooperative, Inc. (Seminole) is a generation and transmission cooperative serving ten Member distribution systems in the state of Florida which in turn serve over 650,000 retail Member consumers. While over eighty percent of the energy we sell to our Members is generated by our own coal-fired facilities, we are a non-operating minority owner of Florida Power Corporation's Crystal River Unit 3 Nuclear Plant. Our system peak is over 3,100 MW, and the amount of nuclear capacity meeting this demand is a mere 14.7 MW, or 1.697 percent of the total output of Crystal River Unit 3. On behalf of our Members, Seminole offers the following comments on the Nuclear Regulatory Commission's Federal Register Notice on *Atlantic City Electric Company, Austin Energy, Central Maine Power Company, Delmarva Power & Light Company, South Mississippi Electric Power Association, and Washington Electric Cooperative, Inc.: Receipt of Petition for Rulemaking* (64 Fed. Reg. 432, January 5, 1999).

Seminole shares the concern of the petitioners over the inclusion of the "joint and several liability" clause for co-owner/licensees in NRC's Final Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry, 10 C.F.R. Part 50. We understand and fully support NRC's concerns over ensuring the public health and safety under all circumstances. However, it is our belief that greater clarification of NRC's intent is necessary, particularly with respect to potential financial obligations of nuclear power plant licensees.

In the Final Policy Statement, NRC acknowledges that *pro-rata* division of responsibility is the norm, and should remain the operative standard. NRC has not stated that it will abrogate the contractual relations creating the *pro-rata* responsibilities. NRC has expressed, however, that under extraordinary circumstances, where public health and safety is adversely affected, it would consider imposing joint and several liability responsibility of more than *"de minimis* shares" when one or more owners have defaulted, in order to address the health issue.

NRC has the responsibility to ensure that adequate funds are available for decommissioning of nuclear reactors. It is our understanding, and NRC has so stated, that the current utility financial

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assurances for decommissioning funding levels are adequate; therefore, Seminole fails to see what extraordinary circumstances could arise that would allow NRC to consider implementing a joint and several liability. Certainly, a clarification of the circumstances that could trigger the condition for the "joint and several liability" should be described. The potential liability raises many concerns. The extent and information on the *"de minimis"* shares also has to be explained and defined.

If a ninety-percent owner of a nuclear plant is in financial distress, requiring the ten percent owner to pick up the burden would just add a second owner in distress. The minority owners are not walking away from their responsibilities, but do not have the financial resources available to assume the additional burden.

Similar to all minority owners, we continue to have a need to raise funds for new construction, capital improvements, and continued operations of our non-nuclear facilities. The potential liability imposed by NRC's statement of "joint and several liability" could hamper our ability to raise funds. This is particularly stressing to us at a time when our industry is undergoing restructuring. We are making great efforts at lowering our costs in order to be competitive. The risk associated with potential unlimited liability due to minority ownership of a nuclear power plant, could increase our cost of capital.

Because of the high cost associated with owning nuclear plants, we are attempting to sell our ownership share. Again, the potential liability imposed by the "joint and several liability" statement could pose a very large hurdle over our ability to sell our share in the nuclear unit.

The Atomic Energy Act of 1954, as amended, does not give the NRC the authority to impose liability on nuclear plant owners. The Act does give NRC the regulatory authority to impose safety obligations on the licensees. This lack of liability authority in the Act opens the door to future litigation should the NRC even attempt to impose the condition of joint and several liability.

Based upon the above, we urge the Commission to delete the paragraph containing the "joint and several liability" clause as contained in the Final Policy Statement. In lieu of its deletion, we urge that the clause be expanded to define the full parameters of what could trigger the implementation of "joint and several" and the full extent and liability involved in the "de minimis" shares.

We appreciate the opportunity to comment on this petition.

Very truly yours,

Richard J. Midulla

Richard J. Midulla
Executive Vice President
and General Manager

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