

FLORIDA PUBLIC SERVICE COMMISSION

VOTE SHEET

MARCH 4, 1999

RE: DOCKET NO. 981042-EM - Joint petition for determination of need for an electrical power plant in Volusia County by the Utilities Commission, City of New Smyrna Beach, Florida, and Duke Energy New Smyrna Beach Power Company Ltd., L.L.P.

Issue 1A: Should the Commission grant the Motions to Dismiss filed by Florida Power & Light Company and Florida Power Corporation?

Primary Recommendation: No. The Motions To Dismiss should be denied because Joint Petitioners have stated a cause of action upon which relief can be granted. Joint Petitioners have adequately alleged all of the applicable elements required for a need determination pursuant to Section 403.519, Florida Statutes. They have also demonstrated that they are "electric utilities" pursuant to the Power Plant Siting Act, that Duke New Smyrna is a "regulated electric company" pursuant to Chapter 366, and that the Project is a "joint electric power supply project" pursuant to Chapter 361, Florida Statutes. Furthermore, decisional law does not require dismissal of the petition. It is not necessary for the Commission to render a decision on the constitutional Issues in order to adjudicate the Motions To Dismiss.

APPROVED

Commissioners Clark and Jacobs dissented.

COMMISSIONERS ASSIGNED: Full Commission

COMMISSIONERS' SIGNATURES

MAJORITY

Handwritten signatures of majority commissioners: Susan Clark, Joe Garcia, and Henry Weaver.

DISSENTING

Handwritten signatures of dissenting commissioners: Susan Clark.

REMARKS/DISSENTING COMMENTS:

*Dissenters: Issue 1A Cl, JC; Issue 1 Cl; Issue 2 Cl, JC; Issue 3 Cl; Issue 5 Cl; Issue 7 Cl, JC; Issue 13 Cl; Issue 29 Cl, JC; Issue 32 Cl

DOCUMENT NUMBER - DATE

102813 MAR-4 99

FPSC-RECORDS/REPORTING

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Alternative Recommendation: Yes. The Commission should grant Florida Power & Light Company's and Florida Power Corporation's motions to dismiss. Alternative staff agrees with Florida Power & Light Company and Florida Power Corporation that, even assuming all well pled facts are true, the Joint Petitioner's petition for a determination of need fails to meet the criteria set forth in Section 403.519, Florida Statutes, Rule 25-22.081, Florida Administrative Code, Commission precedent, and the Florida Supreme Court's interpretation of both Sections 403.501-518, and 403.519, Florida Statutes, for a determination of need. Alternative staff also believes that the Joint Petitioner's federal preemption and dormant Commerce Clause arguments are unpersuasive because the authority to regulate need and environmental impact of new generating facilities has been reserved to the states.

DENIED

Issue 1B: Should the Commission grant Florida Wildlife Federation's Petition for Reconsideration of Hearing Officer's Order Denying Intervention?

Recommendation: No. Motions or petitions for reconsideration are granted only if the petitioner can show that the tribunal based its original decision on mistake of fact or law.

APPROVED

Issue 1C: Should Florida Power & Light Company's Motion to Strike "Additional Authority" letter be granted?

Recommendation: Yes. The Additional Authority letter and attachments are an untimely posthearing filing and should be stricken.

APPROVED

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Issue 1: Is there a need for the proposed power plant, taking into account the need for electric system reliability and integrity, as this criterion is used in Section 403.519?

Recommendation: Yes, the 514 MW Project is needed. The City needs at least the 30 MWs offered by Duke New Smyrna to partially replace 83 MWs of existing capacity contracts which will expire between September 1999 and 2004. The price which Duke New Smyrna has offered to sell the City this 30 MWs of replacement power is significantly less than what the City's retail customers are currently paying for purchased power. The low-cost power to be provided to the City is contingent upon the entire Project being constructed. As such, if the Project is not constructed, the City will have to construct or contract for higher cost capacity and energy. With respect to the remaining 484 MWs of capacity associated with the Project, the record also indicates that the availability and sale of this capacity to other Peninsular Florida utilities on an as-needed, as-available basis is cost-effective and will enhance the reliability of the Peninsular Florida electric grid. This recommendation to approve the Project based on cost-effectiveness to the retail serving utility (the City), comports with what has been done in prior power plant siting proceedings. However, the Commission may wish to approve the 484 MWs as a stand-alone merchant plant based on a Peninsular Florida need.

APPROVED

A workshop on all related issues will be held and a determination for rulemaking will be made; guidance from the legislature will be sought.

Commissioner Clark dissented.

Issue 2: Does Duke New Smyrna have an agreement in place with the UCNSB, and, if so, do its terms meet the UCNSB's needs in accordance with the statute?

Recommendation: Yes. The Participation Agreement is a legally binding agreement between Duke New Smyrna and the City which identifies a megawatt entitlement of the proposed plant, and a price per megawatt-hour at which the City will pay for the energy from the proposed plant. While the entitlement may be terminated if the Project does not produce a reasonable profit to Duke New Smyrna, the Participation Agreement is the most cost-effective means of supplying 30 MWs to the City. However, if the joint petition is denied, the City will have to pursue higher cost options.

APPROVED

Commissioners Clark & Jacobs dissented

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Issue 3: Does the Commission have sufficient information to assess the need for the proposed power plant under the criteria set forth in Section 403.519, Fla. Statutes?

Recommendation: Yes. Sufficient information has been provided showing that 30 MW from the Project is needed by the City and that the \$18.50 per MWH is due solely to the existence of the 484 MWs.

APPROVED

Commissioner Clark dissented

Issue 4: Does Duke New Smyrna have a need by 2001 for the 484 MW of capacity (476 MW summer and 548 MW winter less 30 MW) represented by the proposed facility?

Recommendation: Yes. The need exists because 30 MWs are needed by the City. The 484 MWs make the 30 MWs cost-effective to the City and its retail customers.

NO VOTE

Issue 5: Can or should the capacity of the proposed project be properly included when calculating short term operating and long term planning reserve margins of an individual Florida utility or the State as a whole?

Recommendation: The capacity should be considered for hourly and short term operating reserves, but not for long term planning reserve margins, unless contracted for. The absence of a contract for the entire capacity of the project, however, is not dispositive of the Commission considering the additional reliability to Peninsular Florida that will be provided by the proposed plant.

APPROVED

Commissioner Clark dissented

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Issue 6: What transmission improvements and other facilities are required in conjunction with the construction of the proposed facility, and were their costs adequately considered?

Recommendation: Additional transmission lines connecting the proposed plant to existing substations, as well as a natural gas lateral are required. Duke New Smyrna will pay for any transmission upgrades required as a result of long term sales, pursuant to FERC rules.

MODIFIED

No cost will be borne by other entities and Duke will pay for upgrades.

Issue 7: Is there a need for the proposed power plant, taking into account the need for adequate electricity at a reasonable cost, as this criterion is used in Section 403.519?

Recommendation: Yes. See Issue 1.

APPROVED

Commissioners Clark & Jacobs dissented.

Issue 8: Is the proposed power plant the most cost-effective alternative available, as this criterion is used in Section 403.519?

Recommendation: Yes. The proposed plant appears to provide the City with the most cost-effective option. The merchant portion of the plant will not be contracted for by retail utilities unless it is the most cost-effective option available to the purchasing retail utility. IOUs must comply with the bidding rule for proposed power plants subject to the PPSA.

APPROVED

Covered in issue 1.

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Issue 9: Has Duke New Smyrna provided adequate assurances regarding available primary and secondary fuel to serve the proposed power plant on a long- and short-term basis?

Recommendation: No. A generic rulemaking docket should be opened to establish the proper criteria and mitigation strategies needed to ensure reliable electric service during severe weather conditions or when the primary fuel delivery is substantially interrupted. All Florida electric utilities subject to the Commission's Grid Bill authority should be a party to this generic rulemaking, including Duke New Smyrna.

NO VOTE

Issue 10: What impact, if any, will the proposed power plant have on natural gas supply or transportation resources on State regulated power producers?

Recommendation: The record is inconclusive as to whether there will be any impact on natural gas supply or transportation resources.

NO VOTE

Issue 11: Will the proposed project result in the uneconomic duplication of transmission and generation facilities?

Recommendation: No. All costs associated with the proposed plant, and transmission upgrades needed to deliver power to purchasing retail utilities will be the responsibility of the investors of Duke New Smyrna and not ratepayers. Retail utilities should only purchase from the proposed plant if it is the most cost-effective alternative available. If duplication exists due to the Project being approved, it is economic, not uneconomic, duplication.

NO VOTE

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Issue 12: Is the identified need for power of the Utilities Commission, New Smyrna Beach ("UCNSB") which is set forth in the Joint Petition met by the power plant proposed by Florida Municipal Power Association in Docket No. 980802-EM?

Recommendation: No. The City intends to fulfill its identified need by purchasing from the proposed plant pursuant to the Participation Agreement with Duke New Smyrna.

NO VOTE

Issue 13: Are there any conservation measures taken by or reasonably available to the petitioners which might mitigate the need for the proposed power plant?

Recommendation: No. Duke New Smyrna, as a wholesale provider, cannot institute conservation measures at the retail level. The City through its load management and proposed 150 kW solar photovoltaic installation has taken adequate measures to mitigate the need for the capacity under the Participation Agreement.

APPROVED

Commissioner Clark dissented

Issue 14: Does the Florida Public Service Commission have the statutory authority to render a determination of need under Section 403.519, Florida Statutes, for a project that consists in whole or in part of a merchant plant (i.e., a plant that does not have as to the merchant component of the project, an agreement in place for the sale of firm capacity and energy to a utility for resale to retail customers in Florida)?

Recommendation: Yes, if the Primary Recommendation for Issue 1A is approved. If the Alternative Recommendation for Issue 1A is approved, this and all other issues are moot.

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NO VOTE

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Issue 15: Does the Public Service Commission have jurisdiction under the Power Plant Siting Act, Sections 403.501 - 403.518, and Section 403.519, Florida Statutes, to determine "applicant" status?

Recommendation: Yes, if the Primary Recommendation for Issue 1A is approved. If the Alternative Recommendation for Issue 1A is approved, this and all other issues are moot.

NO VOTE

Issue 16: As to its project's merchant capacity, does Duke New Smyrna have a statutory or other legally enforceable obligation to meet the need of any electric utility in Peninsular Florida for additional generating capacity?

Recommendation: No.

NO VOTE

Issue 17: As to the project's merchant capacity, is either Duke New Smyrna or UCNSB an "applicant" or "electric utility" within the meaning of the Siting Act and Section 403.519, Florida Statutes?

Recommendation: Yes, if the Primary Recommendation for Issue 1A is approved. If the Alternative Recommendation for Issue 1A is approved, this and all other issues are moot.

NO VOTE

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Issue 18: If the Commission were to grant an affirmative determination of need to Duke New Smyrna as herein requested, when the utilities in peninsular Florida had plans in place to meet reliability criteria, would the Commission be meeting its responsibility to avoid uneconomic duplication of facilities?

Recommendation: Yes.

NO VOTE

Issue 19: Does the Joint Petition meet the pleading requirements of Rule 25-22.081, Florida Administrative Code?

Recommendation: Yes, if the Primary Recommendation for Issue 1A is approved. If the Alternative Recommendation for Issue 1A is approved, this and all other issues are moot.

NO VOTE

Issue 20: Does the Joint Petition state a cause of action by not alleging that the proposed power plant meets the statutory need criteria and instead alleging that the proposed power plant is "consistent with" Peninsular Florida's need for power?

Recommendation: Yes, if the Primary Recommendation for Issue 1A is approved. If the Alternative Recommendation for Issue 1A is approved, this and all other issues are moot.

NO VOTE

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Issue 21: If the Commission were to permit Duke New Smyrna to demonstrate need on a "Peninsular Florida" basis and not require Duke New Smyrna to have a contract with purchasing utilities for its merchant plant capacity, would the more demanding requirements on QFs, other non-utility generators and electric utilities afford Duke New Smyrna a special status?

Recommendation: No, if the Primary Recommendation for Issue 1A is approved. If the Alternative Recommendation for Issue 1A is approved, this and all other issues are moot.

NO VOTE

Issue 22: If Duke New Smyrna premises its determination of need upon Peninsular Florida without contracts from individual purchasing utilities, how would the Commission's affirmative determination of need affect subsequent determinations of need by utilities petitioning to meet their own need?

Recommendation: It will have no effect. Retail utilities petitioning for need under the Siting Act, must fulfill the requirements of Section 403.519, F.S. and Commission rules, specifically the bidding rule, regardless of the outcome of the instant docket. Municipal and cooperative electric utilities not covered by the bidding rule must select their most cost-effective option, which may or may not be purchasing from a merchant power plant.

NO VOTE

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Issue 23: Will granting a determination of need as herein requested relieve electric utilities of the obligation to plan for and meet the need for reasonably sufficient, adequate and efficient service?

Recommendation: No. Retail utilities, with their statutorily granted monopoly status and corresponding obligation to serve, must still provide adequate, reliable electric service at the lowest cost possible. All retail utilities retain their obligation to serve and can satisfy that obligation through a self-build option or purchasing capacity from another utility, a QF, or a merchant plant. However, IOUs must comply with the bidding rule for proposed power plants subject to PPSA approval.

NO VOTE

Issue 24: Will granting a determination of need as herein requested create a risk that past and future investments made to provide service may not be recovered and thereby increase the overall cost of providing electric service and/or future service reliability?

Recommendation: No. There will be no stranded costs in the retail jurisdiction due to the project. Approval of the petition in this docket does not obligate the retail utilities of Peninsular Florida to purchase from the proposed project. Retail utilities should only purchase if it is the most cost-effective alternative, taking into consideration past and future investments made to provide service. Since Duke is proposing to sell as-available energy, there should be no immediate wholesale stranded costs as well. If the Commission is concerned about stranded costs, this issue can be the subject of another docket.

NO VOTE

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Issue 25: If Duke New Smyrna premises its determination of need upon Peninsular Florida without contracts from individual purchasing utilities, how would the Commission's affirmative determination of need affect subsequent determinations of need by QFs and other non-utility generators petitioning to meet utility specific needs?

Recommendation: There would be no effect because the contracts between retail utilities, and QFs and other non-utility generators would obligate retail ratepayers to the costs of the facilities. In addition, the Commission's bidding rule would apply to an IOU, whose needs were to be met by a QF or non-utility generator seeking a determination of need.

NO VOTE

Issue 26: If the Commission abandons its interpretation that the statutory need criteria are "utility and unit specific," how will the Commission ensure the maintenance of grid reliability and avoid uneconomic duplication of facilities in need determination proceedings?

Recommendation: The statutory need criteria are utility and unit specific when retail ratepayers are to be obligated to pay for the cost of new generation. When it is the lowest cost option to purchase from a merchant plant, any duplication is economic, not uneconomic, duplication.

NO VOTE

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Issue 27: Will granting a determination of need as herein requested result in electric utilities being authorized to similarly establish need for additional generating capacity by reference to potential additional capacity needs which the electric utility has no statutory or contractual obligation to serve?

Recommendation: No. Regardless of the outcome of the instant docket, retail utilities which obligate ratepayers to pay for new generation costs over the long term must show that the generation meets the statutory criteria in Section 403.519, F.S. IOUs proposing to construct generation subject to the PPSA, must evaluate supply-side alternatives pursuant to the bidding rule.

NO VOTE

Issue 28: What effect, if any, would granting a determination of need as herein requested have on the level of reasonably achievable cost-effective conservation measures in Florida?

Recommendation: It could have a positive or negative effect depending on the negotiated price for power. The proposed plant, if built, would be another option available to retail utilities in providing service to customers. Those utilities, in evaluating resources, must consider cost-effective conservation measures in meeting customer needs. The issue seems to presume that lower electricity prices, due to merchant plants, is an undesirable outcome.

NO VOTE

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Issue 29: Would granting the determination of need requested by the joint petitioners be consistent with the public interest and the best interests of electric customers in Florida?

Recommendation: Yes. The proposed plant would provide a generating option which retail utilities could purchase from if it is the most cost-effective alternative available. IOUs would determine the most cost-effective alternative for their ratepayers pursuant to the bidding rule, in which Duke New Smyrna could submit a proposal.

APPROVED

Commissioners Clark + Jacobs dissented.

Issue 30: Would granting the determination of need requested by the joint petitioners be consistent with the State's need for a robust competitive wholesale power supply market?

Recommendation: A wholesale electricity market, that lowers prices, is in the state's best interest provided environmental laws are fully complied with. The project is consistent with this objective. Depending, in large part, on whether merchant plant capacity is capped (see Issue 33), the wholesale market may or may not become robust.

NO VOTE

Issue 31: Would granting the determination of need requested by the joint petitioners be consistent with state and federal energy policy?

Recommendation: Yes.

NO VOTE

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Issue 32: Based on the resolution of the foregoing Issues, should the petition of the UCNSB and Duke New Smyrna for determination of need for the New Smyrna Beach Power Project be granted?

Recommendation: Yes. See Issue 1.

APPROVED

Commissioner Clark dissented.

Issue 33: Should this docket be closed?

Recommendation: Yes. However, a rule docket should be opened if the Commission wishes to formally establish a merchant plant policy, including a policy promoting solar photovoltaic generating plants coupled with a reserve margin cap.

APPROVED

The discussion in this issue is to include issues and concerns discussed in other issues.