

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition to determine) DOCKET NO. 920769-EQ
need for electrical power plant)
(Okeechobee County Cogeneration)
Facility) by Nassau Power)
Corporation.)
_____))
In Re: Petition for approval of) DOCKET NO. 920783-EQ
contract for sale of capacity) ORDER NO. PSC-93-0338-FOF-EQ
and energy to Florida Power and) ISSUED: 03/04/93
Light Company by Nassau Power)
Corporation.)
_____))

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
THOMAS M. BEARD
SUSAN F. CLARK
LUIS J. LAUREDO

ORDER DENYING NASSAU'S MOTION FOR RECONSIDERATION

BY THE COMMISSION:

On May 22, 1992, Florida Power and Light Company (FPL) and Cypress Energy Partners, Ltd. (Cypress) filed a joint petition to determine need for an electrical power plant (Docket No. 920520-EQ), asserting a need for capacity in 1998-1999. Nassau Power Corporation (Nassau) intervened in that docket. In addition, on July 30, 1992, Nassau filed a petition to determine need (Docket No. 920769-EQ) and a separate petition for contract approval (Docket No. 920783-EQ). The capacity which Nassau sought to fill with its petition was the same need FPL attempted to fill with the Cypress project. Nassau did not have a power sales contract with FPL.

By Order No. PSC-92-1210-FOF-EQ we dismissed both Nassau's petition to determine need and its petition for contract approval. We ruled that Nassau's petition should be dismissed because it was not a proper applicant for a need determination proceeding under Section 403.519, Florida Statutes. It is the utility's need for power to serve its customers which must be evaluated in a need determination proceeding. A non-utility generator has no such need because it is not required to serve customers. The utility, not the cogenerator or independent power producer, is the proper applicant. It is our intent that Order No. PSC-92-1210-FOF-EQ be

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narrowly construed and limited to proceedings wherein non-utility generators seek determinations of need based on a utility's need.

Nassau filed a motion seeking reconsideration of our order dismissing Nassau's petition for need determination. Nassau argued that the following errors require us to reconsider Order No. PSC-92-1210-FOF-EQ:

The Commission's assumption that a regulated utility must be an applicant or co-applicant under the Siting Act wrongly equates an "indispensable party" with an "applicant;" the order fails to recognize that it overturns the interpretation of the Siting Board, which has responsibility for this aspect of the certification process created by the Siting Act; and it subordinates the Commission's own prior determination of legislative intent to its concerns over possible administrative burdens.

FPL responded to Nassau's motion by stating that Nassau's motion for reconsideration should be denied.

Nassau's objections to the Commission's final order do not contain a single material point of fact or law that we overlooked or failed to consider in this case. The arguments presented by Nassau in its motion are arguments which Nassau has presented to us before, and they are arguments which we have fully considered and rejected. The purpose of a motion for reconsideration is to bring to our attention some material and relevant point of fact or law which was overlooked, or which we failed to consider when we rendered the order in the first instance. See Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So.2d 161 (Fla. DCA 1981). It is not an appropriate avenue for rehashing matters which were already considered, or for raising immaterial matters which even if adopted would not materially change the outcome of the case. Because Nassau has not brought before us some material and relevant point of fact or law which we overlooked, or which we failed to consider when we rendered the order in the first instance, we deny Nassau's motion for reconsideration.

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Pursuant to Rule 25-22.060(1)(c), Florida Administrative Code,
[a] final order shall not be deemed rendered for the
purpose of judicial review until the Commission disposes
of any motion and cross motion for reconsideration of
that order....

Thus, it is the issuance of this order that deems Order No. PSC-92-
1210-FOF-EQ rendered for the purpose of judicial review.

Because we have denied Nassau's motion for reconsideration,
these dockets shall be closed.

It is, therefore,

ORDERED by the Florida Public Service Commission that Nassau
Power Corporation's motion for reconsideration of Order No. PSC-92-
1210-FOF-EQ is hereby denied. It is further

ORDERED that these dockets shall be closed.

By ORDER of the Florida Public Service Commission this 4th day
of March, 1993.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)
MAH:bmi

by: Kary Hagan
Chief, Bureau of Records

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NOTICE OF JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

Any party adversely affected by the Commission's final action in this matter may request 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 by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.