

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Determina- ) DOCKET NO. 910759-EI  
tion of Need for a Proposed ) ORDER NO. PSC-92-0495-FOF-EI  
Electrical Power Plant and ) ISSUED: 06/11/92  
Related Facilities, Polk County )  
Units 1-4, by Florida Power )  
Corporation. )  
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The following Commissioners participated in the disposition of this matter:

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

ORDER DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

In Order No. 25805, issued February 22, 1992, we adopted the Hearing Officer's Recommended Order on Florida Power Corporation's (FPC) petition to determine the need for the construction of four natural gas fired advanced combined cycle units on mined-out phosphate land in Polk County. In that order we also responded to exceptions to the Recommended order filed by Floridians for Responsible Utility Growth (FRG), one of the intervenors in the case.

Among the numerous issues considered in the Recommended Order, and in the responses to FRG's exceptions, were several issues concerning the conservation measures ". . . taken by or reasonably available to the applicant which might mitigate the need for the proposed power plant. . . ." Section 403.519, Florida Statutes. We affirmed the Hearing Officer's determination that FPC was taking the conservation measures, consistent with its Commission-approved conservation plans and the expanded demand-side management plan submitted with its petition, reasonably available to it at the time to mitigate the need for new power plants.

On March 11, 1992, FRG timely filed a motion for reconsideration, and a request for oral argument on the motion. Florida Power Corporation responded in opposition to the motion on March 23, 1992, and we considered the motion at our May 19, 1992 Agenda Conference. This order memorializes our decision to deny FRG's motion for reconsideration.

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We deny FRG's motion, because it does not provide any material factual or legal ground not previously considered that would require a different decision in this case. The motion alleges that "the PSC failed to consider matters of fact and law . . . and such failure impaired the correctness of the order". The "matters of fact and law" FRG contends that we failed to consider concern the form of the Hearing Officer's rejection of some of FRG's proposed findings of fact and further argument on the meaning of the term "cost effective". FRG requests that the Commission modify its responses to some of FRG's proposed findings of fact. FRG also requests that the Commission apply ". . . a definition of 'most cost-effective alternative available' that comports with legislative intent" and will compel the Commission to grant "the relief prayed for in FRG's Brief and Exceptions.

The purpose of a motion for reconsideration is to bring to our attention some material and relevant point of fact or law that we overlooked, or that 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.

FRG's objections to the final order do not contain a single material point of fact or law that we overlooked or failed to consider in this case. Furthermore FRG's objections to the Hearing Officer's rejections of certain proposed findings of fact are simply insubstantial criticisms of the technical form of the Recommended Order that would not change the substantive decisions of the case even if we agreed with them.

As to the technical objections FRG makes, the Hearing Officer correctly identified FRG's proposed findings of fact for what they were; applications of FRG's legal theory of the case to certain facts, that is, conclusions of law. The Hearing Officer's responses to FRG's proposed "findings of fact" adequately satisfy the Administrative Procedure Act's standards for responses to proposed findings of fact. It is not that the responses are inadequate. It is just that FRG is unhappy with the substance of the responses, and FRG is using a technical argument to argue indirectly the same substantive matters it already argued unsuccessfully at the hearing and at oral argument on its exceptions to the Recommended Order.


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FRG's "cost-effective means least cost" argument was extensively considered by the Hearing Officer in her Recommended Order. The argument was considered by the full Commission at oral argument on FRG's exceptions to the Recommended Order, and again when we made the decision to adopt the Recommended order. FRG now cites two additional unrelated statutes where the term cost-effective is used, and claims that those statutes demonstrate the inaccuracy of our decision. But FRG's argument is the same one we thoroughly considered and rejected. The term cost-effective is used 133 times in Florida's Statutes (electronic search of the term "cost effective" in the Commission's Florida Statutes Search database). Failure to consider every reference in every unrelated statute does not affect the validity of our original decision on the matter. It is therefore,

ORDERED that, for the reasons stated above, Floridians for Responsible Utility Growth's Motion for Reconsideration is denied. It is further,

ORDERED that this docket should be closed.

By ORDER of the Florida Public Service Commission, this 11th day of June, 1992.

  
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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

MCB:bmi

NOTICE OF FURTHER PROCEEDINGS OR 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.

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Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 sewer 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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.