

VOTE SHEET

DECEMBER 16, 1997

RE: DOCKET NO. 971446-EU - Petition for declaratory statement by Duke Energy New Smyrna Beach Power Company, L.L.P. concerning eligibility to obtain determination of need pursuant to Section 403.519, F.S., Rules 25-22.080 and .081, F.A.C., and pertinent provisions of the Florida Electrical Power Plant Siting Act.

Issue 1: Should FPC's Motion to Dismiss Proceeding be granted?

Recommendation: No. FPC's Motion to Dismiss Proceeding should be denied.

No vote - See vote on issue 4

Issue 2: Should FPC's Petition to Intervene be granted?

Recommendation: No. FPC's Petition to Intervene should be denied.

No vote - See vote on issue 4

COMMISSIONERS ASSIGNED: Full Commission

COMMISSIONERS' SIGNATURES

MAJORITY

DISSENTING

Susan J. Clark

J. Terry Dean

James R. Hayes

Jac. Torres

REMARKS/DISSENTING COMMENTS:

Commissioner Garcia dissented.

DOCUMENT NUMBER-DATE

12839 DEC 17 97

FPSC-RECORDS/REPORTING

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Issue 3: Should Duke New Smyrna be permitted to address the Commission and should FPC be permitted to participate?

Recommendation: Yes. Duke New Smyrna and FPC should be permitted to participate in order to inform the Commission as to these complex issues.

APPROVED

Issue 4: Should the Commission issue the requested declaratory statement?

Recommendation: Yes. The Commission should issue a declaratory statement to the effect that Duke New Smyrna may seek a determination of need for its proposed power plant pursuant to provisions of the Florida Electrical Power Plant Siting Act (Siting Act) and Commission rules.

DENIED

Staff was directed to discuss with the Chairman appropriate proceedings to review law and policy as to merchant plants being applicants for certificates as need. Further, the Commission recognizes that applicants can always file a petition for rulemaking.

Issue 5: Should this docket be closed?

Recommendation: Yes. This docket should be closed.

APPROVED