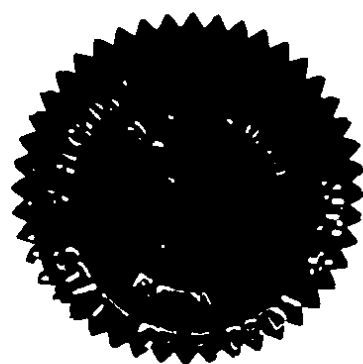


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of :  
Petition to determine need for :  
Cane Island Power Park Unit 3 :  
and related facility in Osceola :  
County by Kissimmee Utility :  
Authority and Florida Municipal :  
Power Agency. :  
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DOCKET NO. 980802-EM



**PROCEEDINGS:** PREHEARING CONFERENCE

**BEFORE:** COMMISSIONER J. TERRY DEASON  
Prehearing Officer

**DATE:** Monday, August 31, 1998

**TIME:** Commenced at 1:30 p.m.  
Concluded at 1:55 p.m.

**PLACE:** Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

**REPORTED BY:** H. RUTHE POTAMI, CSR, RPR  
Official Commission Reporter

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1 **APPEARANCES:**

2 **ROY C. YOUNG, Young, van Assenderp and**  
3 **Varnadoe, P.A., P.O. Box 1833, Tallahassee, Florida**  
4 **32302-1833, appearing on behalf of Kissimmee Utility**  
5 **Authority (KUA).**

6 **FREDERICK M. BRYANT, Williams, Bryant &**  
7 **Gautier, P.A., 2010 Delta Boulevard, Tallahassee,**  
8 **Florida 32303, appearing on behalf of Florida**  
9 **Municipal Power Agency (FMPA).**

10 **WILLIAM COCHRAN KEATING, Florida Public**  
11 **Service Commission, Division of Legal Services, 2540**  
12 **Shumard Oak Boulevard, Tallahassee, Florida**  
13 **32399-0870, appearing on behalf of the Commission**  
14 **Staff.**

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**P R O C E E D I N G S**

(Hearing convened at 1:30 p.m.)

**COMMISSIONER DEASON:** Call the prehearing to order. Counsel, could you read the notice, please?

**MR. KEATING:** Pursuant to notice issued July 21st, this time and place have been set for a prehearing conference in Docket 980802-EM, in re petition to determine need for Cane Island Power Park Unit 3 and related facility in Osceola County by Kissimmee Utility Authority and Florida Municipal Power Agency.

**COMMISSIONER DEASON:** Take appearances.

**MR. YOUNG:** Roy Young representing Kissimmee Utility Authority.

**MR. BRYANT:** Frederick Bryant, Williams & Bryant Law Firm representing Florida Municipal Power Agency.

**MR. KEATING:** And Cochran Keating on behalf of the Commission Staff.

**COMMISSIONER DEASON:** Preliminary matters?

**MR. KEATING:** I don't think there are any that I'm aware of.

**COMMISSIONER DEASON:** Parties have any preliminary matters?

**MR. YOUNG:** No, sir.

1           **MR. BRYANT:** Nothing.

2           **COMMISSIONER DEASON:** Very well. What I  
3 intend to do is proceed through the draft prehearing  
4 order, which I understand everyone has, and that there  
5 may need to be some minor modifications to some  
6 positions, but that there seems to be no need for  
7 major modifications.

8           We will proceed with Sections I and II. Any  
9 changes or corrections? (No response.)

10           Section III? Section IV? Section V?  
11 Section VI, Order of Witnesses? (No response.)

12           Mr. Keating, let me ask, when are we going  
13 to discuss the possibility of waiving the need for  
14 witnesses to appear? Do that at the end after we go  
15 through issues, or do you want to do that now?

16           **MR. KEATING:** I guess we could -- well, do  
17 you want to wait until the end and make sure that  
18 we're in agreement on all the positions?

19           **COMMISSIONER DEASON:** Okay. We'll do that.  
20 Let me ask this: Assuming that witnesses will be  
21 appearing, is there any concern with the order as  
22 presented in the draft prehearing order?

23           No concern. Very well.

24           Section VII addresses the basic positions.  
25 Any changes or corrections to that section and those

1 positions?

2           **MR. KEATING:** Yes. Staff would like to  
3 change its basic position. We'd like the position to  
4 now read "Based on the information in the petitioners'  
5 need for power application prefiled testimony in  
6 responses to Staff discovery, Staff recommends  
7 approval of the Kissimmee Utility Authority/Florida  
8 Municipal Power Agency's joint petition to determine  
9 need for electrical power plant."

10           **COMMISSIONER DEASON:** Very well.  
11 Section VIII, Issues and Positions. We will proceed  
12 issue by issue beginning with Issue 1. Changes or  
13 corrections? (No response.)

14           Issue 2? Issue 3? Issue 4? Issue 5?  
15 Issue 6? (No response.)

16           Issue 7?

17           **MR. KEATING:** Staff would like to modify its  
18 position on Issue 7. The position will read -- it  
19 will still read "Yes. The additional capacity from  
20 Cane Island Unit 3 will enable KUA and FMFA to meet  
21 their reserve margin criteria and will contribute to  
22 maintaining -- and here we'll replace the words  
23 'minimum 15% reserve margin' with the word  
24 'reliability' for Peninsular Florida."

25           **COMMISSIONER DEASON:** Okay. Any other

1 changes? (No response.)

2 Issue 8?

3 MR. KEATING: Staff would also like to  
4 modify its position on Issue 8. In the first sentence  
5 of the position we'd like to change the word  
6 "generation" to "capacity," so that it reads "The  
7 proposed natural gas-fired combined cycle unit will  
8 not contribute to fuel diversity for KUA, because over  
9 half of KUA's existing capacity is gas-fired."

10 In the second sentence we'd also like to  
11 change the word "generation" to "capacity," and after  
12 the word "capacity" add "from 12%." So the sentence  
13 will read "However, the proposed unit will contribute  
14 to FMPA's fuel diversity by increasing the  
15 all-requirements project's gas-fired capacity from 12%  
16 to 21%." And that's the extent of our changes.

17 COMMISSIONER DEASON: Okay. Issue 9?

18 MR. KEATING: We also have one minor  
19 modification on Issue 9. In the second sentence, the  
20 second full sentence, the last words -- the last two  
21 words are "the market," and we'd like to change those  
22 words to "power marketers."

23 COMMISSIONER DEASON: Any other changes to  
24 Issue 9?

25 MR. KEATING: None from Staff.

1           **COMMISSIONER DEASON:** Okay. Issue 10?  
2 Issue 11? Issue 12? Issue 13? Issue 14? Issue 15?  
3 Issue 16? Issue 17? Issue 18? Issue 19? Issue 20?  
4 Issue 21? Issue 22? Issue 23? And Issue 24? (No  
5 response.)

6           That concludes all of the issues.

7           **MR. KEATING:** Commissioner Deason, it's my  
8 understanding that perhaps the petitioners could agree  
9 to the language in Staff's position on each of the  
10 issues and adopt those positions. I just wanted to  
11 see at this point if that's still a possibility.

12           **COMMISSIONER DEASON:** Mr. Young?

13           **MR. YOUNG:** Yes, sir. We would agree with  
14 the positions as proposed and amended today by Staff.

15           **COMMISSIONER DEASON:** Mr. Bryant?

16           **MR. BRYANT:** We concur, sir.

17           **COMMISSIONER DEASON:** So it can be shown,  
18 then, that the parties stipulate to all of the issues,  
19 Issues 1 through 24?

20           **MR. BRYANT:** Yes.

21           **MR. YOUNG:** Yes.

22           **COMMISSIONER DEASON:** Very well. Perhaps  
23 now might be a good time to discuss the possibility  
24 of --

25           **MR. YOUNG:** Commissioner, on the exhibit

1 list, I have a couple of minor --

2 COMMISSIONER DEASON: Okay. We'll go  
3 through with the exhibit list, then. That's  
4 Section IX. There are some corrections to those?

5 MR. YOUNG: Yes, sir. On Page 21,  
6 Witness Miller, under the description after  
7 Section 1B.5.1, it should read "5.3 and," A-N-D.

8 COMMISSIONER DEASON: Could you repeat that?  
9 It should read what?

10 MR. YOUNG: It should read after the  
11 Section 1B.5.1, "-5.3 and," A-N-D, so that it really  
12 encompasses 5.1 through 5.3.

13 COMMISSIONER DEASON: Very well. If there's  
14 any confusion, just provide that to Staff to make sure  
15 they get it incorporated correctly.

16 MR. YOUNG: The second one, under the  
17 Witness Williams for FMFA there were no exhibits, so  
18 it either should be deleted or "none" should be  
19 written beside that description.

20 COMMISSIONER DEASON: I think we'll just  
21 delete that if there are no exhibits.

22 MR. YOUNG: On Page 22 by the  
23 Witness Rollins, about halfway down in the description  
24 it now reads "Section 1A.8.0." We should add to that  
25 "Section 1B.1.0, Section 1B.3.0, Section 1B.8.0



1 through 1B.8.4," and we will provide that to Staff.

2           **COMMISSIONER DEASON:** Very well. Any other  
3 corrections to the exhibit list? (No response.)

4           Then that takes us to Section X, Proposed  
5 Stipulations, and perhaps now we can talk about the  
6 possibility of waiving the appearance of witnesses and  
7 having the depositions stipulated into the record.  
8 Staff?

9           **MR. KRATING:** What we would like to do is,  
10 and find out today if the parties agree to this, is  
11 have the witnesses excused, but made subject to the  
12 possibility of having to appear to answer any  
13 questions, specific, that any of the Commissioners on  
14 the panel might have, and also that the possibility  
15 that the intervenors may still join this docket up to  
16 a certain point and cross-examine witnesses.

17           **COMMISSIONER DEASON:** What I wanted to do is  
18 discuss this matter with the parties. And I want to  
19 accommodate my fellow Commissioners who may have  
20 questions. At the same time, I know that the  
21 practical side of this is that you need to have a date  
22 certain to where you need to know whether they have to  
23 appear or not because of travel arrangements, and  
24 other logistics have to be addressed.

25           What I propose -- and I hope this would give

1 sufficient time and, if not, please let me know -- is  
2 that by the close of business on the 14th, if you've  
3 not heard otherwise, the witnesses will not have to  
4 appear; and if there are to be any witnesses that do  
5 have to appear, that you will be notified by that time  
6 which witnesses do, in fact, need to appear. Will  
7 that be sufficient for your needs?

8 MR. YOUNG: Yes, sir. And I'm thinking as a  
9 stopgap measure, since there are two days scheduled  
10 for this, if something did happen on the 17th, if we  
11 could keep the second day open, we could hopefully  
12 always get the witnesses in that night. Take a break,  
13 and then reconvene the next day to take those  
14 witnesses, just to be sure.

15 COMMISSIONER DEASON: I don't have a problem  
16 with that. I assume Staff does not. I know we have  
17 two days set aside on the calendar, and it would be my  
18 intent to have those days available if there were any  
19 contingencies of that nature which arose.

20 MR. BRYANT: May I inquire?

21 COMMISSIONER DEASON: Yes.

22 MR. BRYANT: Thus, if a member of the public  
23 through counsel appeared or themselves appeared at the  
24 hearing the first hearing day and said -- addressed  
25 the Commission said, well, we want to hear the

1 witnesses, I assume, then, that would -- the next day  
2 we would bring those witnesses in. That would be the  
3 type of contingency?

4 **COMMISSIONER DEASON:** Well, that's an  
5 interesting question. I'm not sure I have the answer  
6 at this point. It seems to me that there could be an  
7 argument made that an intervenor takes the case as  
8 they find it.

9 **MR. BRYANT:** Yes, sir.

10 **COMMISSIONER DEASON:** And that there's an  
11 obligation to intervene and let it be known to all  
12 parties their intent at an early date.

13 It may be if we get to that point, they may  
14 have waived that right. I don't know what that would  
15 be, but I assume if that event arises, we can debate  
16 that at the time and, if need be, follow Mr. Young's  
17 suggestion and have those witnesses appear the next  
18 day if that's possible.

19 Staff, do you have any input?

20 **MR. KEATING:** Well, I think the notices  
21 provided for public testimony at the start of the  
22 hearing, if any.

23 **COMMISSIONER DEASON:** But I think the  
24 question was an intervenor wanting to ask questions of  
25 witnesses who have prefiled testimony. Was that

1 the --

2           **MR. BRYANT:** Yes, sir, or a member of the  
3 public show up and say, well, we came to hear these  
4 witnesses and you're telling me there are no witnesses  
5 going to be here. And I just was curious, you know,  
6 in the event that happened, how we'd handle that.

7           **COMMISSIONER DEASON:** Well, the practical  
8 side of that is, is that the testimony is going to be  
9 stipulated into the record, and all of the record will  
10 consist of will be the prefiled testimony, and that  
11 would have been available to any members of the public  
12 for some time. So it's not that they would have been  
13 prevented from knowing what would transpire at the  
14 hearing, because it's all been prefiled and inserted  
15 into the record.

16           **MR. KEATING:** I think if a member of the  
17 public was represented and wanted to cross-examine a  
18 witness, witnesses, I believe that they would have had  
19 to intervene by the deadline for intervention. I  
20 think the notice just provides for public testimony  
21 that would be added to the record. It wouldn't give  
22 that citizen party status.

23           **MR. BRYANT:** Yes. Right.

24           **COMMISSIONER DEASON:** It would be the intent  
25 that we will convene the hearing for purposes of

1 taking care of all matters, getting all testimony into  
2 the record, and hearing public testimony. So members  
3 of the public will be afforded an opportunity to  
4 address the Commission, but traditionally a member of  
5 the public does not have standing to ask  
6 cross-examination questions unless they're represented  
7 by -- and actually intervene in the proceeding.

8 MR. BRYANT: Yes. That's correct. That's  
9 fine with me. I just didn't want all of us to be in a  
10 position of having to discuss that if the public  
11 showed up, because I just don't think that's the right  
12 representation to be making to the public, that we're  
13 objecting to them participating, as opposed to having  
14 this worked out ahead of time.

15 COMMISSIONER DEASON: Okay.

16 MR. BRYANT: But I'm comfortable with that.  
17 Are you comfortable with that, Roy?

18 MR. YOUNG: Yes. I just feel real  
19 comfortable we've got the second day, so that if  
20 anything occurs, I think we'll have all of our witness  
21 on notice that they might get a late hour call to get  
22 in a car or jump in a plane or whatever and get here  
23 so that we could put them on that Friday morning, if  
24 necessary.

25 MR. BRYANT: That's fine.

1           **COMMISSIONER DEASON:** Very well. I  
2 understand that it's Staff's intent to have  
3 depositions that were taken in this docket entered  
4 into the record at the time of the testimony, prefiled  
5 testimony, is entered into the record. Is there any  
6 objection to that?

7           **MR. YOUNG:** No, sir.

8           **MR. BRYANT:** No, sir.

9           **COMMISSIONER DEASON:** There are no pending  
10 motions; is that correct?

11          **MR. KEATING:** That's correct.

12          **COMMISSIONER DEASON:** Let me also discuss  
13 another matter at this point.

14                 It's been brought to my attention that Staff  
15 may be prepared to make an oral recommendation at the  
16 close of taking of evidence, which may just consist of  
17 inserting testimony and depositions, which would give  
18 the Commission an opportunity to make a bench decision  
19 if the Commission is so inclined.

20                 I don't know what the Commission's  
21 preference will be at that time. It may be to go  
22 forward with a bench decision, it may not want to go  
23 forward with a bench decision. But I want to have the  
24 possibility acknowledged in the prehearing order so  
25 that my fellow Commissioners, Staff, and the parties

1 be put on notice that that is a possibility; it may  
2 not transpire, but it is a possibility.

3 Obviously if that takes place, there would  
4 be no need for posthearing filings of briefs. If  
5 there is to be a recommendation, then that is  
6 something we can discuss at that point as to the  
7 schedule for filing briefs. It may be that the  
8 parties want to waive filing briefs, but that's  
9 something you need to be prepared to discuss at that  
10 time.

11 MR. YOUNG: That will be fine.

12 COMMISSIONER DEASON: Is there anything else  
13 to come forward at this time?

14 MR. YOUNG: One of the things, Commissioner,  
15 if I might, that we had considered doing in light of  
16 anticipating this is maybe -- would it be appropriate,  
17 do you think, to file affidavits from each of the  
18 witnesses that would really get their "swear to tell  
19 the truth" language in the record?

20 COMMISSIONER DEASON: Well, we've never  
21 really done that in the past. I don't know that it  
22 is --

23 MR. BRYANT: Help us understand procedurally  
24 how the witness' testimony will be adopted and  
25 incorporated into the record.

1           **COMMISSIONER DEASON:** The entity sponsoring  
2 the witness would simply move to have that testimony  
3 inserted into the record.

4           **MR. BRYANT:** As though read.

5           **COMMISSIONER DEASON:** As though read, right;  
6 and it would be inserted. And it's my understanding  
7 the parties would stipulate that that's what's being  
8 indicated here. Therefore, unless there is another  
9 party that's not present here today that will be  
10 intervening, that testimony will simply be inserted  
11 and cross-examination waived. It becomes part of the  
12 evidence in the case.

13           **MR. YOUNG:** I apologize. I have not had a  
14 chance to talk with the attorney for the Staff about  
15 this, but it just -- I don't see any objection they  
16 would have, but I would let them make it, if they do.

17           I would just feel more comfortable if we had  
18 something in the record that had the witnesses --  
19 normally when we put them on, we put them on; first  
20 thing is they're sworn, then we go through "is it your  
21 testimony," and it's in the record. We tender the  
22 witness. I just want to get the fact that they are  
23 swearing that the evidence that they've presented is  
24 the truth and nothing about the truth kind of thing,  
25 and I thought the simplest way to do that would be



1 just to file affidavits at the day of the hearing that  
2 will do that.

3 COMMISSIONER DEASON: Staff have any  
4 objection to that procedure?

5 MR. KEATING: No. We wouldn't object.

6 MR. YOUNG: Thank you.

7 COMMISSIONER DEASON: I can see that as kind  
8 of an additional safeguard.

9 MR. YOUNG: Yes, sir.

10 MR. BRYANT: Yes.

11 COMMISSIONER DEASON: That's something that  
12 can be done the day of the hearing. If you have those  
13 ready and prepared, you can present those. We'll  
14 probably just take those as exhibits, identify them as  
15 exhibits, and enter them into the record, assuming  
16 there's no objection.

17 MR. YOUNG: Okay.

18 COMMISSIONER DEASON: Anything further?  
19 Hearing none, this prehearing conference is adjourned.  
20 Thank you all.

21 (Thereupon, the hearing concluded at  
22 1:55 p.m.)

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1 STATE OF FLORIDA)  
2 COUNTY OF LEON )

## CERTIFICATE OF REPORTER

3 I, H. RUTHE POTAMI, CSR, RPR Official  
4 Commission Reporter,

5 DO HEREBY CERTIFY that the Prehearing  
6 Conference in Docket No. 980802-EM was heard by the  
7 Prehearing Officer at the time and place herein  
8 stated; it is further

9 CERTIFIED that I stenographically reported  
10 the said proceedings; that the same has been  
11 transcribed under my direct supervision; and that this  
12 transcript, consisting of 17 pages, constitutes a true  
13 transcription of my notes of said proceedings.

14 DATED this 2nd day of September, 1997.

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