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16 SEP 16 PM 3:04  
RECORDS AND  
REPORTING

Matthew M. Childs, P.A.

September 16, 1998

Blanca S. Bayó, Director  
Division of Records and Reporting  
Florida Public Service Commission  
4075 Esplanade Way, Room 110  
Tallahassee, FL 32399-0850

RE: DOCKET NO. 981042-EM

Dear Ms. Bayó:

Enclosed for filing please find the original and fifteen (15) copies of Florida Power & Light Company's Preliminary List of Issues in the above referenced docket. This filing is consistent with the discussion on September 10, 1998 during the Issue ID Meeting.

FPL will be available for the continuation of the Issue ID Meeting on Friday, September 18, 1998.

RECEIVED & FILED  
*[Signature]*  
FPSC-BUREAU OF RECORDS

Very truly yours,

*[Signature]*  
Matthew M. Childs, P.A.

- ACK
- AFA 1
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG *[Signature]*
- LEG 2
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- OPC \_\_\_\_\_
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- SEC 1
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

MMC/ml

cc: All Parties of Record

DOCUMENT NUMBER-DATE

10163 SEP 16 98

FPSC-RECORDS/REPORTING

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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. )  
\_\_\_\_\_ )

DOCKET NO. 981042-EM  
FILED: SEPTEMBER 16, 1998

FLORIDA POWER & LIGHT COMPANY'S  
PRELIMINARY LIST OF ISSUES

FACTUAL ISSUES

- ISSUE 1: Absent purchased power contracts for the output of the proposed power plant, does the Commission have sufficient information to assess the need for the proposed power plant under the statutory need criteria?
- ISSUE 2: Absent purchased power contracts for the output of the proposed power plant, does the Commission have sufficient information to assess whether the needs, if any, of electric utilities in Peninsular Florida will be met and met consistently with the criteria of Section 403.519, Fla. Statutes?
- ISSUE 3: 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?
- ISSUE 4: For what electric utilities is the proposed power plant needed for electric system reliability and integrity in what amounts and in what year?
- ISSUE 5: For what electric utilities is the proposed power plant needed for adequate electricity at a reasonable cost in what amounts and in what year?
- ISSUE 6: What are the terms and conditions pursuant to which the electric utilities having the need will purchase the capacity and energy of the proposed power plant?

DOCUMENT NUMBER-DATE

10163 SEP 16 8 00039

FPSC-RECORDS/REPORTING

ISSUE 7: For what electric utilities is the proposed power plant the most cost-effective alternative to meet their identified need for additional capacity?

ISSUE 8: Are there any conservation measures taken or reasonably available to the petitioners or the electric utilities which will purchase the output of the proposed power plant which mitigate the need for the proposed power plant?

ISSUE 9: Would the construction of the proposed power plant result in the uneconomic duplication of facilities?

ISSUE 10: What is the cost and licensing requirements of the additional transmission facilities necessary to move the output of the proposed power plant to purchasing utilities and who will pay to construct these?

ISSUE 11: What is the cost and licensing requirements of the gas lateral to serve the proposed power plant and who will pay to construct these?

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?

#### **POLICY ISSUES**

ISSUE 13: 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?

ISSUE 14: 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?

ISSUE 15: 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?

ISSUE 16: 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?

ISSUE 17: If the Commission abandons its interpretation that the statutory need criteria are "utility and unit specific," how will the Commission maintain grid reliability and avoid uneconomic duplication of facilities in need determination proceedings?

ISSUE 18: 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?

ISSUE 19: If Duke New Smyrna were allowed to proceed as an applicant, would the Commission "end up devoting inordinate time and resources to need cases," "wast[e] time in need determinations proceedings for projects that may never reach fruition," and "devote excessive resources to micromanagement of utilities' power purchases?"

ISSUE 20: Will granting a determination of need as herein requested reduce the level of justifiable conservation measures in Florida?

## LEGAL ISSUES

- ISSUE 21: Does Duke New Smyrna have a statutory or other legally enforceable obligation to meet the need of any electric utility on Peninsular Florida for additional generating capacity?
- ISSUE 22: Absent a statutory or contractual obligation to serve, can Duke New Smyrna have a need within the meaning of Section 403.519, Florida Statutes and the Siting Act?
- ISSUE 23: 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?
- ISSUE 24: Under the Siting Act and Section 403.519, Florida Statutes, may the Commission issue a generic determination of need?
- ISSUE 25: If the Commission were to accept the presumption the joint petitioners ask the Commission to make, that "the Project will necessarily be a cost-effective power supply option for the utilities to which Duke New Smyrna sells its merchant power," would the Commission be abrogating of its responsibilities under the Siting Act?
- ISSUE 26: 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?
- ISSUE 27: Does the Joint Petition meet the pleading requirements of Rule 25-22.081, Florida Administrative Code?

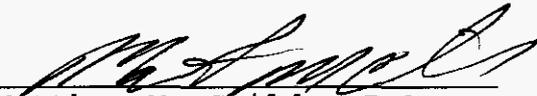
ISSUE 28: Does the Joint Petition state a cause of action by not alleging that the proposed power plant meets the statutory need criteria and instead alleging that the proposed power plant is "consistent with" Peninsular Florida's need for power?

ISSUE 29: Is "Peninsular Florida" a legal entity with an obligation to serve?

ISSUE 30: 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?

Respectfully submitted,

STEEL HECTOR & DAVIS LLP  
215 South Monroe Street  
Suite 601  
Tallahassee, FL 32301  
Attorneys for Florida Power  
& Light Company

By:   
Matthew M. Childs, P.A.  
Charles A. Guyton

**CERTIFICATE OF SERVICE  
DOCKET NO. 981042-EM**

I **HEREBY CERTIFY** that a true and correct copy of Florida Power & Light Company's Preliminary List of Issues has been furnished by Hand Delivery (\*), facsimile (\*\*) or U.S. Mail this 16th day of September, 1998, to the following:

Leslie J. Paugh, Esq.\*  
Legal Division  
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Structured Transactions  
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By:   
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