

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

October 12, 1998

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REGULATORY AND
REPORTING

DIRECT TESTIMONY


OF

VINCENT M. DOLAN

ON BEHALF OF

FLORIDA POWER CORPORATION

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FPSC-RECORDS/REPORTING

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

DIRECT TESTIMONY OF VINCENT M. DOLAN

1 Q Please state your name and business address.

2

3 A My name is Vincent M. Dolan, and my business address is
4 100 Central Avenue, St. Petersburg, Florida, 33701.

5

6

7 Q By whom are you employed and in what position?

8

9 A I am the Director of Corporate and Regulatory Strategy for
10 Florida Power Corporation (FPC).

11

12

13 Q What are your duties and responsibilities in that
14 position?

15

16 A My responsibilities include dealing with strategic
17 planning and policy issues of significance to FPC. These
18 issues include existing and emerging policy issues for the
19 electric utility industry, including industry
20 restructuring trends in other states and at the Federal
21 level. In addition, my responsibilities include dealing

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1 with the full range of regulatory policy issues before the
2 Florida Public Service Commission (the Commission).

3

4

5 Q Please summarize your educational background and
6 employment experience.

7

8 A I attended Rutgers University in New Brunswick, New
9 Jersey. I received a Bachelor of Science degree with
10 honors in Mechanical Engineering in 1977. My employment
11 experience includes a series of project management,
12 engineering startup, and sales positions with Foster
13 Wheeler Energy Corporation, an international engineering
14 and manufacturing company based in Clinton, New Jersey.
15 This experience included the startup and testing of large
16 central station steam generating equipment sold to such
17 electric utilities as Florida Power and Light, Seminole
18 Electric Cooperative, and Kentucky Utilities.

19

20 Since 1986 I have held a variety of management
21 positions with FPC in the areas of Strategic Planning,
22 Regulatory Policy, Governmental Affairs, District
23 Operations, and Customer Service and Marketing. Most
24 recently, I have studied the emerging trends in other

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1 states around the country related to industry
2 restructuring, including the issues related to
3 deregulation and the variety of ways that the early-mover
4 states have attempted to deal comprehensively with those
5 issues.

6
7
8 SUMMARY AND PURPOSE OF TESTIMONY

9 Q What is the purpose of your testimony?

10
11 A I am testifying on behalf of FPC in opposition to the
12 Joint Petition for a need determination by the Utilities
13 Commission, City of New Smyrna Beach, Florida (UCNSB) and
14 Duke Energy New Smyrna Beach Power Company Ltd., LLP
15 (Duke). My testimony addresses policy issues relating to
16 the Project and merchant plants generally and discusses
17 the impropriety of resolving those issues directly or by
18 implication in the context of this proceeding.

19
20
21 Q Please summarize your testimony.

22
23 A Granting the Joint Petition would constitute a complete
24 about-face from the prevailing approach in this State to

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1 evaluating, planning, and siting new generation capacity
2 and would require legislative authorization and direction.
3 The Commission is not in a position to address these
4 issues now. Although ostensibly limited to one plant,
5 this case is the tip of the iceberg for merchant plant
6 issues in this State. The Joint Petition calls upon the
7 Commission to change the ground rules for developing new
8 generation capacity in Florida. Yet, the Commission has
9 neither the time nor the resources in this proceeding to
10 address fully the important issues associated with such
11 plants.

12
13
14 INAPPROPRIATENESS OF GRANTING THE JOINT PETITION

15 Q From a policy standpoint, is the Commission in a position
16 to pass on the Joint Petition at this point in time?

17
18 A No, it is not. The Joint Petition squarely presents the
19 issue of whether the Commission has the authority to make
20 a determination of need for a merchant plant and, if it
21 has that authority, whether this is an appropriate thing
22 to do. I will not address at this time the Commission's
23 lack of statutory authority to make such a determination
24 of need, which has been discussed in the legal submissions

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1 of FPC. The mere fact that we are here today discussing
2 the need petition for the first merchant plant proposal in
3 Florida should give us reason to pause and ask why
4 merchant plants do not currently exist in this State. The
5 answer is quite simple, these plants do not currently
6 exist because by law they are not permitted. That fact
7 alone should cause us to stop this proceeding, but perhaps
8 we should discuss other compelling reasons why this is
9 neither the time nor the place for merchant plants to
10 arrive in Florida. Even if one were to imagine that the
11 statutory authority exists, which it doesn't, it is quite
12 clear that to take that step would amount to an about-face
13 from the Commission's position and the position of the
14 Supreme Court in the Nassau decisions, and, at a minimum,
15 would amount to a major re-working of the currently
16 prevailing regulatory understanding and approach in this
17 State.

18
19 Recent history tells us that there is neither a
20 critical need to address this issue at this time, nor is
21 the Commission, its Staff, or the Legislature interested
22 in overhauling a regulatory framework that has served the
23 State and its citizens well for over a hundred years. The
24 Commission has already concluded that this issue has wide

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1 ranging legal and policy implications, and in addition,
2 the Staff has suggested the need to monitor the
3 developments of early-mover states towards competition,
4 and recent events, such as the recall petitions related to
5 industry restructuring in both California and
6 Massachusetts -- arguably the "bleeding edge" states on
7 the competitive front -- offer important lessons regarding
8 the need to use caution before deciding to overhaul a
9 system that offers safe, reliable, economic, and
10 environmentally sound energy for all the citizens of
11 Florida.

12
13
14 Q What are some of the relevant lessons one might extract
15 when examining the series of events that have transpired
16 over the last few years in such states as California and
17 Massachusetts?

18
19 A One might look at the states of California and
20 Massachusetts and conclude, from a narrow field of
21 vision, that yes, due to recent legislative changes, new
22 generation, including merchant plants can be built by
23 anyone who desires to enter that business. A closer
24 inspection would offer other critical insights as well.

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1 First, both California and Massachusetts have
2 fundamentally restructured their entire electric utility
3 industry, all the way through to the retail level. They
4 are among those early-mover states, almost all with the
5 common characteristic of high electric prices
6 (approximately 50% higher than Florida) who, primarily
7 because of their high prices, decided to be pioneers in
8 the world of competition. In undertaking this review
9 (which took in the range of five years in California
10 before legislation was adopted), these states looked at
11 all of the issues and their inter-relationships and
12 impacts on all of the key stakeholders. The point is they
13 took the appropriate amount of time to examine the issues
14 prior to making such momentous changes to the electric
15 industry in their respective states. The range of issues
16 they examined were many, most notably the structure of the
17 market including the applicability of an independent
18 system operator (ISO) and a power exchange, the siting and
19 planning laws, rules for retail suppliers, the role of
20 public power/municipal electric suppliers, public interest
21 programs, taxes, and stranded costs of existing generating
22 resources that were put in place with the expressed
23 approval of the utility commissions in those
24 jurisdictions. Extensive revisions were made to existing

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1 statutes and rules to transition to this new system called
2 electric competition. It was not a "piecemeal" approach
3 dealing solely with merchant generation that Duke has
4 proposed for consideration by this Commission.

5
6
7 Q What is the current status of competition in those states
8 and what is the relevance to this proceeding?

9
10 A It should be pointed out that as of this date there are
11 pending in both states recall petitions to revisit key
12 decisions made in establishing the new rules. In
13 November, the voters in both states will speak about
14 whether they feel this new system is truly better than the
15 former model of utility regulation. In addition, the
16 opening of the markets in Massachusetts, as well as in
17 some other New England states, has resulted, by some
18 estimates, in applications to build somewhere in the range
19 of 20,000 MW of new generating capacity, which if built
20 would replace in excess of 50% of the embedded generation
21 (approximately 36,000 MW) in that region. To stop and
22 examine this "free for all" rush to build new capacity in
23 this region, and the impact it might have on both the
24 environment and the integrity of the generation and

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1 transmission system, should make us conclude at a minimum
2 that this Duke proposal is not about a single plant at
3 all, but rather it is the "trojan horse" which would
4 unleash unfettered construction of new generating capacity
5 in the State of Florida. Would this result be good or
6 bad? Reasonable people might disagree on the answer to
7 that question, but those same people would certainly agree
8 that the impact of this type of power plant "gold rush"
9 would have broad impacts on all current and prospective
10 market participants, including the consumers we are here
11 to serve, and those impacts deserve the appropriate amount
12 of discussion in the right forum before that type of
13 change is instituted. This narrow proceeding, supposedly
14 about a 30 MW need that has given birth to a 540 MW power
15 plant proposal, is certainly not the appropriate
16 proceeding to take this up.

17
18
19 Q Would a resolution of the important issues raised by the
20 Joint Petition in this limited proceeding be consistent
21 with the position that the Commission or its Staff has
22 taken on these matters to date?

23

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1 A No, it would not. In late 1997, the Commission Staff
2 conducted workshops that recognized the novelty of the
3 issues presented by merchant plant penetration in this
4 State, and these workshops were attended by
5 representatives from far and wide. Many important and
6 difficult issues were discussed in these workshops.
7 Thereafter, the full Commission recognized the gravity of
8 these issues, and their wide ranging policy impacts, in
9 denying Duke's request for a declaratory statement
10 affirming a right or opportunity on the part of merchant
11 plant developers to avail themselves of Section 403.519
12 for a need determination by the Commission.

13

14 At that time, the Commission quite correctly
15 recognized that granting the relief requested "would carry
16 implications for the electric power industry statewide,"
17 and it specifically directed the Staff "to discuss with
18 the Chairman appropriate proceedings to review law and
19 policy as to merchant plants being applicants for
20 certificates of need." In re: Petition for Declaratory
21 Statement by Duke Energy New Smyrna Beach Power Company,
22 L.L.P. Concerning Eligibility to Obtain Determination of
23 Need Pursuant to Section 403.519, F.S., Rules 25-22.080
24 and .081, F.A.C., and Pertinent Provisions of the Florida

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1 Electrical Power Plant Siting Act, Dkt. No. 971446-EU,
2 Order No. PSC-98-0078-FOF-EU (Jan. 13, 1998). This need
3 petition filed by Duke Energy falls way short of being the
4 broad policy vehicle that the Commission requested the
5 Staff to return with for further discussion.

6
7 Also during the agenda conference, the Commission
8 pointed out that the Legislature had expressed a need for
9 restraint in even considering opening the door to merchant
10 plant development in this State. See VMD-1 (letter from
11 James A. Scott to Hon. Julia Johnson) and VMD-2 (letter
12 from Julia L. Johnson to Hon. Jim Scott). This admonition
13 is truly relevant, and consistent with the Commission's
14 view, in the fact that the Legislature recognizes that
15 matters of such significance, such as the introduction of
16 merchant plants, can be contemplated only in a broad
17 industry review, which by necessity must result in
18 legislative changes that would have significant
19 implications for many aspects of the current regulatory
20 structure in Florida.

21
22
23 Q Would it be fair or appropriate to view this proceeding as
24 involving a single project?

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1 A Not at all. It may be tempting to reason that the Joint
2 Petition in this case involves a single power plant, but
3 the precedent that an affirmative decision in this docket
4 would create could not be so easily contained. No
5 participant in this proceeding can state in complete
6 honesty that this case is about a single power plant.
7 Since Duke has shown no inclination to match plant size
8 with the actual retail need of the Utilities Commission of
9 New Smyrna Beach, one wonders why they did not propose a
10 3,000 MW power plant site to serve this 30 MW need. And
11 what of the other developers that spoke at the merchant
12 workshop? How long will they wait before proposing the
13 next 10,000 MW of plant additions to serve perhaps less
14 than 500 MW of true retail need? The Commission has in
15 the past consistently determined need that is utility
16 specific and tied to retail load in order to avoid such
17 gross mismatches of need and the resources constructed to
18 serve that need. What is at stake is no less than an
19 attempt to duplicate the bulk of the existing generating
20 fleet in Florida and, as a result, to restructure the
21 regulatory framework in this State because of a perception
22 on the part of some that the time is right. Whatever
23 one's views may be on that issue, there is a right way and
24 a wrong way to go about industry restructuring. Now is

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1 certainly not the time for Florida to undertake a
2 "piecemeal" approach to such important change as the
3 fundamental restructuring of the electric industry.
4
5

6 Q Is there any compelling reason to consider introducing
7 merchant plants into the regulatory framework in Florida
8 at this time?
9

10 A No. In fact, one must also ask why merchant plants in
11 Florida, and why now? The utilities in this State, under
12 the regulatory guidance of the Commission, have a long-
13 standing history of honoring their statutory obligation to
14 serve, something that they have done successfully for
15 decades without the need for merchant plants. The fact
16 that merchant plants do not exist is not only a matter of
17 law, it is a reflection of the practical fact that they
18 are not needed. The Commission has no existing
19 legislative or regulatory context to determine how
20 merchants would fit into an environment where they have
21 full regulatory oversight with the existing state-
22 regulated utilities. Duke will not only be beyond the
23 regulatory oversight of the Florida Commission, but they
24 propose to play by an entirely different set of rules --

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1 rules that they propose should apply only to them. And as
2 a further insult to the Commission and the utilities in
3 Florida it regulates, Duke has opposed any attempt to
4 include in these discussions the very utilities that have
5 consistently honored their obligation to serve the retail
6 customers of Florida. If the Commission is genuinely
7 desirous of a new set of rules -- and recent events would
8 suggest they are not -- perhaps they should look no
9 further than California and Massachussetts to determine if
10 the benefits of new rules will outweigh the negative
11 impacts, in particular the uneconomic duplication of
12 facilities that were put in place by mutual agreement of
13 the utilities and the Commission to serve the needs of
14 retail customers.

15
16
17
18 Q Do the federal laws and rules relating to wholesale
19 competition preempt the State from making the ultimate
20 determination of whether, when, and how merchant plants
21 should be utilized?

22
23 A No. In the vast majority of states that have addressed
24 the issue of merchant plants, resolution of the issue was

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1 not dictated by the impetus for wholesale competition.
2 Rather, merchants were dealt with in the context of a full
3 review of laws and regulations related to retail and
4 wholesale energy supply in these states. The states have
5 taken the lead in addressing these issues; not the federal
6 government. Federal law leaves these issues to the
7 states. Section 201(b)(1) of the Federal Power Act says
8 that the Federal Energy Regulatory Commission (FERC)
9 "shall have no jurisdiction [except in matters not relevant
10 here] over facilities used for the generation of
11 electricity" FERC has said that "jurisdiction
12 over the capacity planning, determination of power needs,
13 plant siting, licensing, construction, and the operations
14 of [power] plants ha[s] been deliberately withheld from
15 our control or responsibility when Congress specifically
16 preserved the States' authority over such matters in
17 section 201(b) of the FPA." Monongahela Power Company,
18 Docket No. ER87-330-001, 40 FERC ¶ 61,256 (Sept. 17,
19 1987). So it is clear that the Florida Public Service
20 Commission is not required by federal law to grant Duke's
21 petition, and it is not authorized by state law to do so.

22
23

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1 Q Does Duke provide sufficient assurances in its petition or
2 testimony that introducing merchant plants at this time
3 will not have negative or unintended consequences for the
4 State?

5
6 A Certainly not. Duke offers many empty promises in its
7 petition to help the reliability of Peninsular Florida.
8 Given the fact that the Commission has no regulatory
9 oversight over wholesale merchant plants, what real
10 assurances do the consumers of Florida have that Duke, or
11 any other merchant-plant developer, will consistently and
12 economically provide energy where and when it is needed?
13 Duke will care less about the health, safety, and
14 environment of Florida than its own economic self-interest
15 in selling power to the highest bidder, whether in Florida
16 or outside the State. If Duke were truly interested in
17 serving Florida consumers, why is the vast majority of the
18 proposed capacity remaining uncommitted? If it were truly
19 a good deal for Florida, contracts would already be in
20 place for the plant's full capacity. The fact that the
21 capacity is not under contract should be another
22 indication that the need does not exist.

23

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1 It is ironic that in a state where Duke's parent
2 company sells retail electric service -- South Carolina --
3 Duke urged the state's public service commission to
4 address "fundamental changes to the industry . . . in an
5 orderly and responsible manner," arguing that the
6 commission should take "sufficient time" to evaluate all
7 important data, the experience from other states, and
8 other relevant considerations because "[a] poorly managed
9 transition could have a deleterious effect on South
10 Carolina's electric consumers." Electric Industry
11 Restructuring Plan of Duke Energy Corporation d/b/a Duke
12 Power, at 4 (June 30, 1997). The consumers of this State,
13 and those who have served them for many decades, are no
14 less deserving of deliberation and care in any
15 restructuring effort.

16
17
18 Q Can you identify some of the issues that the Commission
19 would need to address in a deliberative manner before
20 opening the door to merchant plants in this State?

21
22 A Yes. There are many, and it is impossible to identify all
23 the issues that may emerge in this difficult area without
24 the benefit of full and open discussion among all

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1 interested parties in an appropriate forum. But to name
2 some that come readily to mind:

3
4 (1) The Commission would have to consider how it could
5 meet its statutory obligation to ensure that adequate
6 generation capacity exists by relying upon providers that
7 have no obligation to serve and cannot be made subject to
8 one.

9
10 (2) Since merchant plants would have no obligation to
11 serve, how would the Commission deal with a merchant that
12 changes its plans to build capacity after a need
13 determination is made?

14
15 (3) Should merchants alter their plans to build, who
16 would bear the consequences of the resulting shortfalls in
17 available capacity? The utilities? The consumers? The
18 Commission?

19
20 (4) What would be the consequence if a merchant plant
21 were to sell its power to others than those with the
22 "supposed" reliability need?

23

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1 (5) If the Commission attempts to address issues of need
2 on a state-wide basis, what methodology would be used to
3 determine the appropriate amount of need, and what process
4 will be established to assure that the option chosen is
5 the best one, weighing all of the possibilities on the
6 supply and demand side?
7

8 (6) Can the Commission permit the construction of new
9 merchant plants that may render existing plants redundant
10 in view of its statutory mandate to avoid "further
11 uneconomic duplication of generating . . . facilities?"
12 Section 366.04(5), Fla. Stats.
13

14 (7) What externalities are associated with merchant
15 plants, and what would be their impact on the electric
16 industry in Florida, the consumers, and the environment?
17

18 (8) Where would the Commission draw the line? At one
19 plant? Two? Ten? Twenty?
20
21

22 Q Even if the Commission were so inclined, could these
23 issues be addressed adequately in this proceeding?
24

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1 A Absolutely not, for many reasons. For statutory reasons
2 and by virtue of the Commission's own time constraints,
3 this proceeding is on a fast track, and the Commission has
4 precious little time to devote to it. This is the worst
5 possible manner to review and resolve policy issues of
6 this magnitude.

7
8 In addition, even if the Commission were able to take
9 the time to study these issues, this forum is not
10 conducive to a resolution of the issues. This is an
11 adjudicatory proceeding, not a broad policymaking
12 proceeding. The Florida Supreme Court has admonished the
13 Commission and other agencies from attempting to tackle
14 issues of such magnitude in a narrow context that does not
15 provide for the broadest appropriate participation and
16 that does not provide a format conducive to review,
17 consideration, and debate of policy alternatives and
18 relevant data and experiences from this State and possibly
19 others.

20
21
22 Q Does the current regulatory approach provide the
23 Commission with sufficient tools to address concerns it
24 may have about generation capacity in Florida?

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1 A Yes, it does. The current regulatory approach has served
2 this State well for many years and has resulted in an
3 electric industry in Florida that continues to provide
4 affordable and reliable electric supply, while balancing
5 the standards of health, safety, and the environment. We
6 are in a state that has always taken a measured approach
7 to solving issues that are critical to providing essential
8 electric service to the residents of Florida, and we
9 should continue that approach on the issues that bring us
10 here today.

11

12 FPC acknowledges its utility obligation to provide
13 adequate and reliable power to the consumers in its
14 service territory and fully intends to continue to fulfill
15 that obligation. The Florida law and the Commission's
16 regulations sanction the obligation of the State's
17 utilities to serve the State's electric consumers
18 adequately and reliably.

19

20 If during the annual review of the utilities' 10-year
21 site plans filed with the Commission, the Commission
22 determines that all or part of the utilities' plans
23 require further discussion, remedies exist to ensure that
24 the Commission is satisfied that the plans adequately

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1 address the issues of capacity and reliability. One such
2 remedy is not merchant plants, a "wild card" proposal that
3 not only is unauthorized under current law, but would have
4 far reaching implications that require careful
5 consideration in a proceeding much broader than the
6 current one initiated by Duke Energy.

7

8

9 Q Does this conclude your testimony?

10

11 A Yes, it does.

12

13



THE FLORIDA SENATE
COMMITTEE ON REGULATED INDUSTRIES

418 Senate Office Building
Tallahassee, Florida 32399-1100
(904) 487-5957

James A. Scott, *Chairman*
Alberto "Al" Gutman, *Vice Chairman*

John Guthrie, *Staff Director*

December 12, 1997

The Honorable Julia Johnson, Chairman
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Dear Chairman Johnson:

My staff has advised me that the Public Service Commission's agenda conference scheduled for December 16, 1997, includes consideration of two petitions for declaratory statements concerning the eligibility of electric companies to seek determinations of need to build large power plants in Florida, even though they would not be regulated by the Public Service Commission pursuant to Chapter 366, F.S.

The complex issues raised by these petitions extend far beyond the interests of the parties involved. In addition to regulatory issues, they raise important statewide policy questions that may affect consumers of electric power throughout the state.

When the Florida Electrical Power Plant Siting Act was enacted during the 1970s, no one contemplated the possibility that it might someday apply to electric companies that do not directly serve retail customers in Florida. Yet that is the interpretation recommended by PSC staff. Without judging the merits of the specific petitions before the Commission, I believe that a policy decision of this magnitude should not be made without a full and complete hearing by the Legislature.

Sincerely,

A handwritten signature in cursive script that reads "James A. Scott".

James A. Scott, Chairman
Regulated Industries Committee

TONI JENNINGS
President

VMD-1

ROBERTO CASAS
President Pro Tempore

STATE OF FLORIDA

JULIA L. JOHNSON
CHAIRMAN



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Public Service Commission

December 19, 1997

The Honorable Jim Scott, Chairman
Senate Regulated Industries Committee
The Florida Senate
Room 308, Senate Office Building
Tallahassee, Florida 32399

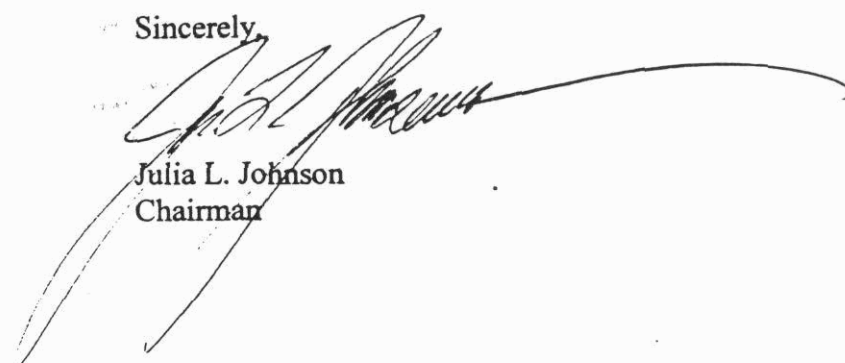
Dear Senator Scott:

On behalf of all of the Commissioners, I wanted to respond to your December 12 letter regarding the declaratory statement petitions on merchant plants. We denied those petitions and had concerns that the major policies involved required a more deliberative approach. The orders denying the petitions will be available soon and I will forward them to you.

At the agenda, staff was directed to meet with me to discuss appropriate proceedings to review law and policy related to merchant plants being applicants for certificates of need. I will keep you informed of any decisions we make in this regard. Of course, the Commission recognizes that a company proposing to build a merchant plant may file a petition for rulemaking which is one means for furthering discussion of these issues. We hope that any future work the Commission pursues in this area will provide helpful information to the Legislature in any hearings you may choose to undertake.

I hope to be able to meet with you in early January to discuss these issues.

Sincerely,



Julia L. Johnson
Chairman

JLJ:mw

cc: Commissioner Susan F. Clark
Commissioner J. Terry Deason
Commissioner Joe Garcia
Commissioner Diane K. Kiesling

VMD-2