

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: OCTOBER 19, 1998

**PETITIONERS' RESPONSE IN OPPOSITION TO FPL'S MOTION TO
EXPEDITE DISCOVERY AND MOTION FOR ALTERNATE
EXPEDITED DISCOVERY SCHEDULE**

The Utilities Commission, City of New Smyrna Beach, Florida
("UCNSB") and Duke Energy New Smyrna Beach Power Company, Ltd.,
L.L.P. ("Duke New Smyrna"), hereinafter referred to collectively
as "the Petitioners," pursuant to Commission Rule 25-22.037(2),
Florida Administrative Code ("F.A.C.") and Uniform Rule 28-
106.204, F.A.C., respectfully submit their response in opposition
to FPL's Motion to Expedite Discovery and their Motion for
Alternate Expedited Discovery Schedule. In summary, FPL's motion
is unreasonable, particularly in light of the fact that FPL has,
within the past week, propounded 111 interrogatories and 38
requests for production of documents to Duke New Smyrna and 43
interrogatories and 28 requests for production of documents to

ACK the UCNSB. The Petitioners are, however, willing to agree to an
AFA 3 expedited discovery schedule in this proceeding, and accordingly,
APP _____ respectfully move the Commission, or the Prehearing Officer, to
CAF _____
CMU _____ enter an order providing for discovery responses to be furnished
CTR _____ within 20 days from the date on which they are received by the
EAG Futrell
LEG 2 party of whom discovery is sought. As grounds for their response
LIN 5 and alternate motion, the Petitioners states as follows.

OPC _____
RCH _____
SEC 1 _____
WAS _____
OTH _____

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[Signature]
FPSC BUREAU OF RECORDS

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FPSC-RECORDS/REPORTING

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Response to FPL's Motion to Expedite Discovery

FPL is incorrect when it asserts in its Motion that this case is on an extremely accelerated and abbreviated time schedule. The schedule for this need determination proceeding is actually on a slower schedule than normal for such proceedings. Indeed, pursuant to the Petitioners' waiver of the procedural rules normally applied to need determination cases, the hearing in this docket is scheduled to begin 105 days after the Joint Petition initiating this proceeding was filed, rather than the normal, rule-prescribed 90 days.

FPL is, and was when it filed its Motion, also incorrect in its assertions that there is no preexisting Siting Application. The Petitioners filed their Site Certification Application with the Florida Department of Environmental Protection ("DEP") on October 5, 1998, and have already received the DEP's determination of completeness of that Site Certification Application.

The gist of FPL's argument is that it needs a shorter discovery schedule in order to have two rounds of discovery. FPL has no legal right to two rounds of discovery. In a normal need determination proceeding, with the normal 30-day discovery response times applied, there would generally not be time for two rounds of discovery. Moreover, given that FPL has already propounded 111 interrogatories (with a total of approximately 152 parts and subparts) and 38 document production requests, to Duke New Smyrna, as well as 43 interrogatories (with a total of

approximately 94 parts and subparts) and 28 document production requests to the UCNSB, it appears likely that FPL has already exceeded the maximum limit of 200 interrogatories prescribed by the procedural orders in this case. Indeed, in light of the extreme volume of FPL's discovery requests, it is fairly difficult to imagine that FPL hasn't already asked for everything that it thinks might be even conceivably relevant. The Petitioners also note that, as a party to the case, FPL will have the opportunity to take the depositions of the Petitioners' witnesses.

The Petitioners are working diligently on their responses to FPL's numerous discovery requests, and will endeavor to answer all non-objectionable requests promptly. If the Petitioners' responses to FPL's non-objectional discovery requests are deemed insufficient, FPL can file a motion to compel.

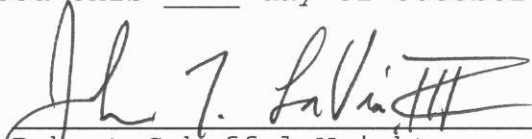
Motion for Alternate Expedited Discovery Schedule

In an effort to be reasonable and to accommodate the parties' legitimate discovery needs in this case, the Petitioners respectfully move the Commission, or the Prehearing Officer, for an alternate expedited discovery schedule. The Petitioners propose that responses to discovery be served by hand delivery, facsimile transmission, or express courier delivery on the twentieth day following receipt of the discovery requests. Petitioners believes that this proposed schedule is more than reasonable. In addition, this proposed schedule is consistent

with expedited discovery procedures implemented by the Commission in other cases. See In Re: Determination of the Cost of Basic Local Telecommunications Service Pursuant to Section 364.025, Florida Statutes, 98 FPSC 6:332, 333 (Order No. PSC-98-0813-PCO-TP) (adopting a discovery response time of 20 days).

Counsel for the Petitioners have discussed the Petitioners' proposed alternate expedited discovery schedule with counsel for the other parties, including the Commission Staff, and report the following responses. FPL does not agree. The Staff does not object to the alternate schedule proposed by the Petitioners. Likewise, LEAF and the Florida Electric Cooperatives Association have no objection to the Petitioners proposed alternate schedule. FPC does not object to either FPL's proposal or to the Petitioners' proposal for expedited discovery. TECO takes no position on this matter.

Respectfully submitted this 19th day of October, 1998.


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CERTIFICATE OF SERVICE
DOCKET NO. 981042-EM

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by hand delivery (*) or by United States Mail, postage prepaid, on the following individuals this 19th day of October, 1998:

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