



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

**DATE:** October 26, 1998

**TO:** Russell Badders, Esquire  
Michelle Hershel, Esquire  
Gail Kamaras, Esquire  
Matthew M. Childs, Esquire  
Gary L. Sasso, Esquire  
Robert Scheffel Wright, Esquire  
James Beasley, Esquire  
Roger Howe, Esquire

**FROM:** Leslie J. Paugh, Senior Attorney, Division Of Legal Services  
Grace A. Jaye, Attorney, Division of Legal Services

**RE:** Docket No. 981042-EM - 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.

QOE For LTP  
GAI

Via Facsimile

A fourth issue identification meeting has been scheduled for the following time and place:

9:30 a.m., Thursday, October 29, 1998  
Betty Easley Conference Center, Room 171  
4050 Esplanade Way  
Tallahassee, Florida

- ACK \_\_\_\_\_
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG \_\_\_\_\_
- LIN \_\_\_\_\_
- OPC \_\_\_\_\_
- RCH \_\_\_\_\_
- SEC   1
- NAS \_\_\_\_\_
- DTH \_\_\_\_\_

The purpose of the meeting is to clarify the issues in the above-referenced docket prior to the November 5, 1998 Prehearing. Attached are the draft issues discussed by the parties and staff during the three issue identification meetings held in this docket. The position on inclusion of each issue by each party is provided.

If there are any questions regarding the foregoing, please feel free to contact Leslie Paugh at (850) 413-6183 or Grace Jaye at (850) 413-6191.

LJP/js  
Attachment  
cc: Mark Futrell  
Blanca Bayo

DOCUMENT NUMBER-DATE  
11951 OCT 26 88  
000692  
FPSC-RECORDS/REPORTING

Docket No. 981042-EM  
Notice of Issue Identification Meeting No. 4  
October 26, 1998 - Page 2

**Proposed Issues**  
**UCNSB/Duke New Smyrna Need Determination**  
**Docket No. 981042-EM**

**NEED FOR ELECTRIC SYSTEM RELIABILITY AND INTEGRITY**

FPC

ISSUE 2: Is the proposed power plant needed for electric system reliability and integrity, as this criterion is used in Section 403.519?

UCNSB/Duke New Smyrna: Object to wording, as the statutory language, which requires the Commission to "take into account... the need for system reliability and integrity" has been modified to shade the issue to favor a particular theory of the case. (With respect to this criterion, unlike the cost-effectiveness criterion in the same sentence, the statute does not say that "the Commission shall consider whether the proposed power plant is needed for electric system reliability and integrity." Rather, it simply directs the Commission to "take into account . . . the need for system reliability and integrity.") Object also because the wording differs from the way the corresponding issue has been articulated in at least several other need determination cases. As Staff and UCNSB/Duke New Smyrna agreed during the initial ID meeting, the issue should simply track the statute, and should read:

Will the proposed power plant contribute to the need for electric system reliability and integrity for Peninsula Florida and/or the Utilities Commission, New Smyrna Beach, Florida (UCNSB)?

As an alternative, the Petitioners would be agreeable to wording this issue as follows:

Will the proposed power plant contribute to meeting the need for electric system reliability and integrity, as that term is used in Section 403.519, Florida Statutes?

FP&L: Supports inclusion of the issue.

FPC: Supports inclusion of the issue.

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TECO: Supports inclusion of the issue.

FECA: Supports inclusion of the issue.

LEAF: No position on issue inclusion.

Staff: Supports inclusion of the issue.

FPC

ISSUE 7: Does Duke New Smyrna have an agreement in place with the UCNSB, and, if so, do its terms meet the UCNSB's needs in accordance with the statute?

UCNSB/Duke New Smyrna: Supports inclusion of the issue.

FP&L: Supports inclusion of the issue.

FPC: Supports inclusion of the issue.

TECO: Supports inclusion of the issue.

FECA: Supports inclusion of the issue.

LEAF: No position on issue inclusion.

Staff: Acquiesces to inclusion of the issue.

FP&L

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?

UCNSB/Duke New Smyrna: Object, because both the phrase, "Absent purchased power contracts" and the references to needs of specific electric utilities are intended to slant the issue so as to advance a particular theory of the case, which relates to the legal issue that the Commission will dispose of when it rules on pending motions to dismiss. The portions of the issue relating to sufficiency of information and criteria of Section 403.519 are covered in other issues.

The Petitioners would be agreeable to the more neutrally worded version of this issue suggested above in response to FPL's ISSUE 1.

FP&L: Supports inclusion of the issue, and proposes including the phrase "by the proposed power plant" after the phrase "...will be met."

FPC: Supports inclusion of an issue condensing FP&L Issues 1 and 2.

TECO: Supports inclusion of an issue condensing FP&L Issues 1 and 2.

FECA: Supports inclusion of an issue condensing FP&L Issues 1 and 2.

LEAF: No position on issue inclusion.

Staff: This issue can be addressed in FPC Issue 2.

FP&L

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?

UCNSB/Duke New Smyrna: While on September 21, UCNSB/Duke New Smyrna indicated that they were willing to respond to this issue, UCNSB/Duke New Smyrna agree with Staff that this issue is duplicative of issues posing whether the proposed plant contributes to the need for reliability and integrity and the need for adequate electricity at reasonable cost.

FP&L: Supports inclusion of the issue.

FPC: Supports inclusion of the issue.

TECO: Supports inclusion of the issue.

FECA: Supports inclusion of the issue.

LEAF: No position on issue inclusion.

Staff: This issue can be addressed in FPC Issue 2.

FPC

ISSUE 8: Can the capacity of the proposed project be properly included when calculating the reserve margin of an individual Florida utility or the State as a whole in the absence of an agreement with the individual utility for the sale of firm capacity and energy from the project?

UCNSB/Duke New Smyrna: Object, because the issue is argumentative, and begs the question of the authority of the Commission to approve merchant capacity under the Siting Act, which is the subject of a separate issue (LEGAL ISSUE 1). The parties who proffer this issue can argue their position in response to the issue that asks whether the project contributes to the need for reliability and integrity.

FP&L: Supports inclusion of the issue.

FPC: Supports inclusion of the issue.

TECO: Supports inclusion of the issue.

FECA: Supports inclusion of the issue.

LEAF: No position on issue inclusion.

Staff: This issue can be addressed in FPC Issue 2.

FPC

ISSUE 10: What impact will the proposed project have on the reliability of the generation and transmission systems, of state regulated utilities?

UCNSB/Duke New Smyrna: Object, because the issue is argumentative and is worded to advance a particular theory of the case. Specifically, the phrase, "State regulated utilities" is an attempt to advance the position of some that the Siting Act is intended to restrict access to the Siting Act's permitting process to state-regulated, retail-serving utilities. That contention will be ruled upon when the Commission disposes of pending motions to dismiss. With respect to reliability of generation systems, the issue is duplicative of Issue 2. With respect to transmission systems, the issue is inappropriate because transmission-related issues of access, rights, priorities, and cost responsibilities are within the jurisdiction of the FERC.

FP&L: Supports inclusion of the issue.

FPC: Supports inclusion of the issue.

TECO: Supports inclusion of the issue.

FECA: Supports inclusion of the issue.

LEAF: No position on issue inclusion.

Staff: This issue can be addressed in FPC Issue 2.

NEW

STAFF:

What transmission improvements and other facilities are required in conjunction with the construction of the proposed facility, and were their costs adequately considered?

UCNSB/Duke New Smyrna: Supports inclusion of the issue.

FP&L: Supports inclusion of the issue.

FPC: No position on issue inclusion.

TECO: No position on issue inclusion.

FECA: Supports inclusion of the issue.

LEAF: No position on issue inclusion.

Staff: Supports inclusion of the issue.

#### **NEED FOR ADEQUATE ELECTRICITY AT A REASONABLE COST**

FPC

ISSUE 3: Is the proposed power plant needed to provide adequate electricity at a reasonable cost, as this criterion is used in Section 403.519?

UCNSB/Duke New Smyrna: Object to wording, as the statutory language, "take into account . . . the need for adequate electricity at a reasonable cost," has been modified to shade the issue to favor a particular theory of the case, and object further because as worded the issue is inconsistent with the manner in which this

statutory issue has been articulated in at least several other need determination cases. The issue should simply track the statute, and should read:

Will the proposed power plant contribute to meeting the need for adequate electricity at a reasonable cost for Peninsular Florida and/or the UCNSB?

As an alternative, the Petitioners would be agreeable to wording this issue as follows:

Will the proposed power plant contribute to meeting the need for adequate electricity at a reasonable cost, as that term is used in Section 403.519, Florida Statutes?

FP&L: Supports inclusion of the issue.

FPC: Supports inclusion of the issue.

TECO: Supports inclusion of the issue.

FECA: Supports inclusion of the issue.

LEAF: No position on issue inclusion.

Staff: Supports inclusion of the issue.

**MOST COST EFFECTIVE ALTERNATIVE AVAILABLE**

FPC

ISSUE 4: Is the proposed power plant the most cost-effective alternative available, as this criterion is used in Section 403.519?

UCNSB/Duke New Smyrna: Supports inclusion of the issue.

FP&L: Supports inclusion of the issue.

FPC: Supports inclusion of the issue.

TECO: Supports inclusion of the issue.

FECA: Supports inclusion of the issue.

LEAF: No position on issue inclusion.

Staff: Supports inclusion of the issue.

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NEW

STAFF 6: Has Duke New Smyrna provided adequate assurances regarding available primary and secondary fuel to serve the proposed power plant on a long- and short-term basis?

UCNSB/Duke New Smyrna: Supports inclusion of the issue.

FP&L: Supports inclusion of the issue.

FPC: Supports inclusion of the issue.

TECO: Supports inclusion of the issue.

FECA: Supports inclusion of the issue.

LEAF: No position on issue inclusion.

Staff: Supports inclusion of the issue.

FPC

ISSUE 9: What impact, if any, will the proposed power plant have on natural gas supply or transportation resources on State regulated power producers?

UCNSB/Duke New Smyrna: Object, because the issue is argumentative. It assumes without legal basis that the Siting Act is designed to discriminate in favor of "State regulated" entities and that they have claims to resources beyond those to which they have contractual rights. Additionally, if the Commission finds the subject is appropriate, parties can address it in response to a broader, neutrally worded policy issue or issues. (The Petitioners suggest such issues at the end of this response. See below.)

FP&L: Supports inclusion of the issue.

FPC: Supports inclusion of the issue.

TECO: Supports inclusion of the issue.

FECA: Supports inclusion of the issue.

LEAF: No position on issue inclusion.

Staff: This issue can be addressed in FPC Issue 4.

FPC

ISSUE 13: Will the proposed project result in the uneconomic duplication of transmission and generation facilities?

UCNSB/Duke New Smyrna: Supports inclusion of the issue.

FP&L: Supports inclusion of the issue.

FPC: Supports inclusion of the issue.

TECO: Supports inclusion of the issue.

FECA: Supports inclusion of the issue.

LEAF: No position on issue inclusion.

Staff: This issue can be addressed in FPC Issue 4.

STAFF

ISSUE 7: Has the UCNSB and Duke New Smyrna provided sufficient information on the site, design, and engineering characteristics of the New Smyrna Beach Power Project to evaluate the proposed Project?

UCNSB/Duke New Smyrna: Supports inclusion of the issue.

FP&L: Supports inclusion of the issue.

FPC: Supports inclusion of the issue.

TECO: No position on issue inclusion.

FECA: Supports inclusion of the issue.

LEAF: No position on issue inclusion.

Staff: This issue can be addressed in FPC Issue 4.

STAFF

ISSUE 8: Have the costs of environmental compliance associated with the New Smyrna Beach Power Project been adequately considered by the UCNSB and Duke New Smyrna?

UCNSB/Duke New Smyrna: Supports inclusion of the issue.

FP&L: Supports inclusion of the issue.

FPC: Supports inclusion of the issue.

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TECO: No position on issue inclusion.

FECA: Supports inclusion of the issue.

LEAF: Supports inclusion of the issue.

Staff: This issue can be addressed in FPC Issue 4.

FP&L

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?

UCNSB/Duke New Smyrna: Object, because the references to "terms and conditions" and to "electric utilities having the need" beg the questions (1) whether a contract is a necessary prerequisite to a request for a determination of need, and (2) whether an applicant must necessarily propose to satisfy a particular need of a specific utility. Both of these references are designed to slant the issue so as to advance a particular theory of the case. The Commission will necessarily rule on these matters when it disposes of pending motions to dismiss.

FP&L: Supports inclusion of the issue, proposes changing the phrase "having the need" with "having a need".

FPC: Supports inclusion of the issue.

TECO: Supports inclusion of the issue.

FECA: Supports inclusion of the issue.

LEAF: No position on issue inclusion.

Staff: Biased issue, should be dropped.

FP&L

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?

UCNSB/Duke New Smyrna: Supports inclusion of the issue.

FP&L: Supports inclusion of the issue.

FPC: Supports inclusion of the issue.

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TECO: Supports inclusion of the issue.

FECA: Supports inclusion of the issue.

LEAF: No position on issue inclusion.

Staff: This issue can be addressed in FPC Issue 4.

### CONSERVATION MEASURES

#### STAFF

ISSUE 5: Are there any conservation measures taken by or reasonably available to the petitioners which might mitigate the need for the proposed power plant?

UCNSB/Duke New Smyrna: Supports inclusion of the issue.

FP&L: Supports inclusion of the issue.

FPC: Supports inclusion of the issue.

TECO: Supports inclusion of the issue.

FECA: Supports inclusion of the issue.

LEAF: Supports inclusion of the issue.

Staff: Supports inclusion of the issue.

### LEGAL ISSUE

#### FPC LEGAL

ISSUE 1: Does the Florida Public Service Commission ("PSC") have the statutory authority to render a determination of need under Section 403.519, Fla. Stat., for a project that consists in whole or in part of a merchant plant that does not have as to that component of the project an agreement in place for the sale of firm capacity and energy to a state-regulated utility with a statutory obligation to serve retail customers in this State?

UCNSB/Duke New Smyrna: Oppose inclusion of this issue on the grounds that the Commission's ruling on pending motions to dismiss will be dispositive of the issue.

FP&L: Supports inclusion of the issue.

FPC: Supports inclusion of the issue.

TECO: Supports inclusion of the issue.

FECA: Supports inclusion of the issue.

LEAF: No position on issue inclusion.

Staff: Supports inclusion of the issue.

## **POLICY ISSUES**

FP&L

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?

UCNSB/Duke New Smyrna: Object, for the reason that as phrased the issue is argumentative. UCNSB/Duke New Smyrna suggest that this issue is more appropriately considered within the context of broader, neutrally worded policy issues, stated below.

FP&L: Supports inclusion of the issue.

FPC: Supports inclusion of the issue.

TECO: Supports inclusion of the issue.

FECA: Supports inclusion of the issue.

LEAF: No position on issue inclusion.

Staff: Acquiesces to inclusion of the issue.

FP&L

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?

UCNSB/Duke New Smyrna: Object, for the reason that as phrased the issue is argumentative. UCNSB/Duke New Smyrna suggest that this subject is more appropriately considered, if at all, within the context of broader, neutrally worded policy issues, stated below.

FP&L: Supports inclusion of the issue.

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FPC: Supports inclusion of the issue.  
TECO: Supports inclusion of the issue.  
FECA: Supports inclusion of the issue.  
LEAF: No position on issue inclusion.  
Staff: Acquiesces to inclusion of the issue.

FP&L

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?

UCNSB/Duke New Smyrna: Object, for the reason that as phrased the issue is argumentative. UCNSB/Duke New Smyrna suggest that this subject is more appropriately considered, if at all, within the context of broader, neutrally worded policy issues, stated below.

FP&L: Supports inclusion of the issue.  
FPC: Supports inclusion of the issue.  
TECO: Supports inclusion of the issue.  
FECA: Supports inclusion of the issue.  
LEAF: No position on issue inclusion.  
Staff: Acquiesces to inclusion of the issue.

FP&L

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?

UCNSB/Duke New Smyrna: UCNSB/Duke New Smyrna suggest that this subject is more appropriately considered within the context of broader, neutrally worded policy issues, stated below.

FP&L: Supports inclusion of the issue.

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FPC: Supports inclusion of the issue.  
TECO: Supports inclusion of the issue.  
FECA: Supports inclusion of the issue.  
LEAF: No position on issue inclusion.  
Staff: Acquiesces to inclusion of the issue.

FP&L

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?

UCNSB/Duke New Smyrna: Object, for the reason that as phrased the issue is biased, argumentative, and duplicative of other issues that address reliability of the grid and uneconomic duplicative of facilities. To the extent that this issue raises legitimate policy issues, the Petitioners suggest that such issues would be properly addressed in broader, neutrally worded policy issues as stated below.

FP&L: Supports inclusion of the issue.  
FPC: Supports inclusion of the issue.  
TECO: Supports inclusion of the issue.  
FECA: Supports inclusion of the issue.  
LEAF: No position on issue inclusion.  
Staff: Acquiesces to inclusion of the issue.

FP&L

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?

UCNSB/Duke New Smyrna: In three previous need determination proceedings, utilities proposed, and were issued determinations of need for, units that they

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acknowledged were not needed to maintain reliability criteria. The utilities justified the need for those units -- not on reliability criteria -- but on such matters as backing out of oil and increasing Broker sales. The "State regulated utilities" have demonstrated that the concept of need in the Siting Act can take on more than one dimension.

To the extent that this issues raises legitimate policy issues, such issues would be more properly addressed in broader, neutrally worded policy issues, stated below.

FP&L: Supports inclusion of the issue.

FPC: Supports inclusion of the issue.

TECO: Supports inclusion of the issue.

FECA: Supports inclusion of the issue.

LEAF: No position on issue inclusion.

Staff: Acquiesces to inclusion of the issue.

FP&L

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?"

UCNSB/Duke New Smyrna: Object, because the issue is one-sided, argumentative, and an attempt to invoke an order from QF-related proceedings that is inapplicable to this case. Further, UCNSB/Duke New Smyrna suggest that issues treating the implications of granting the determination of need are more appropriately considered within the context of broader, neutrally worded policy issues, stated below.

FP&L: Supports inclusion of the issue.

FPC: Supports inclusion of the issue.

TECO: Supports inclusion of the issue.

FECA: Supports inclusion of the issue.

Docket No. 981042-EM  
Notice of Issue Identification Meeting No. 4  
October 26, 1998 - Page 16

LEAF: No position on issue inclusion.

Staff: Acquiesces to inclusion of the issue.

FP&L

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

UCNSB/Duke New Smyrna: Object, for the reason that as phrased the issue is one-sided and argumentative. Further, UCNSB/Duke New Smyrna suggest that this issue is more appropriately considered within the context of broader, neutrally worded policy issues, stated below.

FP&L: Supports inclusion of the issue.

FPC: Supports inclusion of the issue.

TECO: Supports inclusion of the issue.

FECA: Supports inclusion of the issue.

LEAF: No position on issue inclusion.

Staff: Acquiesces to inclusion of the issue.

**PROPOSED NEW POLICY ISSUES BY UCNSB/DUKE NEW SMYRNA:**

The UCNSB and Duke New Smyrna propose the following new policy issues to substitute for FP&L Issues 13-20.

NEW POLICY ISSUE 1: What, if any, policy considerations are applicable to the Commission's consideration of whether to grant a determination of need for the project? How, if at all, should these issues be considered in this proceeding?

NEW POLICY ISSUE 2: What, if any, policy implications would follow from the Commission's granting a determination of need for the project? How, if at all, should the Commission address these issues in this proceeding?

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Docket No. 981042-EM  
Notice of Issue Identification Meeting No. 4  
October 26, 1998 - Page 17

**FINAL ISSUE**

STAFF

ISSUE 9: Based on the resolution of the foregoing issues, should the petition of the UCNSB and Duke New Smyrna for determination of need for the New Smyrna Beach Power Project be granted?

UCNSB/Duke New Smyrna: Supports inclusion of the issue.

FP&L: Supports inclusion of the issue.

FPC: Supports inclusion of the issue.

TECO: No position on issue inclusion.

FECA: Supports inclusion of the issue.

LEAF: No position on issue inclusion.

Staff: Supports inclusion of the issue.

STAFF

ISSUE 10: Should this docket be closed?

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