

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: NOVEMBER 2, 1998

STAFF'S PREHEARING STATEMENT

Pursuant to Order No. PSC-98-1183-PCO-EM, issued September 4, 1998 and Order No. PSC-98-1221-PCO-EM, issued September 16, 1998, the Staff of the Florida Public Service Commission files its Prehearing Statement.

a. All Known Witnesses

None.

b. All Known Exhibits

None.

c. Staff's Statement of Basic Position

Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions stated herein.

d. Staff's Position on the Issues

NEED FOR ELECTRIC SYSTEM RELIABILITY AND INTEGRITY

ISSUE 1: Is there a need for the proposed power plant, taking into account the need for electric system reliability and integrity, as this criterion is used in Section 403.519?

POSITION: No position at this time pending the evidence adduced at hearing.

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG _____
- LIN 5 _____
- OPC _____
- RCH _____
- SEC 1 _____
- WAS _____
- OTH _____

DOCUMENT NUMBER-DATE

12214 NOV-20 00779

FPSC-RECORDS/REPORTING

ISSUE 2: 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?

POSITION: No position at this time pending evidence adduced at hearing.

ISSUE 3: Does the Commission have sufficient information to assess the need for the proposed power plant under the criteria set forth in Section 403.519, Fla. Statutes?

POSITION: No position at this time. This issue is duplicative and can be addressed in Issue 1.

ISSUE 4: 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?

POSITION: No position at this time. This issue is duplicative and can be addressed in Issue 1.

ISSUE 5: Can or should 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?

POSITION: No position at this time. This issue is duplicative and can be addressed in Issue 1.

ISSUE 6: What impact will the proposed project have on the reliability of generation and transmission systems within Florida?

POSITION: No position at this time. This issue is duplicative and can be addressed in Issue 1.

ISSUE 7: What transmission improvements and other facilities are required in conjunction with the construction of the proposed facility, and were their costs adequately considered?

POSITION: No position at this time pending the evidence adduced at hearing.

NEED FOR ADEQUATE ELECTRICITY AT A REASONABLE COST

ISSUE 8: Is there a need for the proposed power plant, taking into account the need for adequate electricity at a reasonable cost, as this criterion is used in Section 403.519?

POSITION: No position at this time pending the evidence adduced at hearing.

MOST COST EFFECTIVE ALTERNATIVE AVAILABLE

ISSUE 9: Is the proposed power plant the most cost-effective alternative available, as this criterion is used in Section 403.519?

POSITION: No position at this time pending the evidence adduced at hearing.

ISSUE 10: 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?

POSITION: No position at this time pending the evidence adduced at hearing.

ISSUE 11: What impact, if any, will the proposed power plant have on natural gas supply or transportation resources on State regulated power producers?

POSITION: No position at this time. This issue is duplicative and can be addressed in Issue 9.

ISSUE 12: Will the proposed project result in the uneconomic duplication of transmission and generation facilities?

POSITION: No position at this time. This issue is duplicative and can be addressed in Issue 9.

ISSUE 13: Have 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?

POSITION: No position at this time. This issue is duplicative and can be addressed in Issue 9.

ISSUE 14: Have the costs of environmental compliance associated with the New Smyrna Beach Power Project been adequately considered by the UCNSB and Duke New Smyrna?

POSITION: No position at this time. This issue is duplicative and can be addressed in Issue 9.

ISSUE 15: 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?

POSITION: No position at this time. This issue is speculative and should be dropped.

ISSUE 16: 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?

POSITION: No position at this time. This issue is duplicative and can be addressed in Issue 9.

CONSERVATION MEASURES

ISSUE 17: Are there any conservation measures taken by or reasonably available to the petitioners which might mitigate the need for the proposed power plant?

POSITION: No position at this time pending the evidence adduced at hearing.

LEGAL ISSUES

ISSUE 18: Does the Florida Public Service Commission have the statutory authority to render a determination of need under Section 403.519, Florida Statutes, for a project that consists in whole or in part of a merchant plant (i.e., a plant that does not have as to the merchant component of the project, an agreement in place for the sale of firm capacity and energy to a utility for resale to retail customers in Florida)?

POSITION: No position at this time pending the review and analysis of the arguments of the parties.

ISSUE 19: Does the Public Service Commission have jurisdiction under the Power Plant Siting Act, Sections 403.501 - 403.518, and Section 403.519, Florida Statutes, to determine "applicant" status?

POSITION: No position at this time pending the review and analysis of the arguments of the parties.

ISSUE 20: As to its project's merchant capacity, does Duke New Smyrna have a statutory or other legally enforceable obligation to meet the need of any electric utility in Peninsular Florida for additional generating capacity?

POSITION: No position at this time pending the review and analysis of the arguments of the parties.

ISSUE 21: 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?

POSITION: No position at this time. This issue can be addressed in Issue 18.

ISSUE 22: As to the project's merchant capacity, 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?

POSITION: No position at this time. This issue can be addressed in Issue 18.

ISSUE 23: Under the Siting Act and Section 403.519, Florida Statutes, may the Commission issue a generic determination of need?

POSITION: No position at this time. This issue is argumentative and should be dropped.

ISSUE 24: 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?

POSITION: No position at this time. This issue is argumentative and should be dropped.

ISSUE 25: 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?

POSITION: No position at this time. This issue is argumentative and should be dropped.

ISSUE 26: Does the Joint Petition meet the pleading requirements of Rule 25-22.081, Florida Administrative Code?

POSITION: No position at this time.

ISSUE 27: 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?

POSITION: No position at this time. This issue can be addressed in Issue 18.

ISSUE 28: Is "Peninsular Florida" a legal entity with an obligation to serve?

POSITION: No.

ISSUE 29: 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?

POSITION: No position at this time. This issue is speculative and should be dropped.

POLICY ISSUES

ISSUE 30: 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?

POSITION: No position at this time pending evidence adduced at hearing.

ISSUE 31: 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?

POSITION: No position at this time pending evidence adduced at hearing.

ISSUE 32: 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?

POSITION: No position at this time pending evidence adduced at hearing.

ISSUE 33: 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?

POSITION: No position at this time pending evidence adduced at hearing.

ISSUE 34: If the Commission abandons its interpretation that the statutory need criteria are "utility and unit specific," how will the Commission ensure the maintenance of grid reliability and avoid uneconomic duplication of facilities in need determination proceedings?

POSITION: No position at this time pending evidence adduced at hearing.

ISSUE 35: 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?

POSITION: No position at this time pending evidence adduced at hearing.

ISSUE 36: 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?"

POSITION: No position at this time pending evidence adduced at hearing.

ISSUE 37: What effect, if any, would granting a determination of need as herein requested have on the level of reasonably achievable cost-effective conservation measures in Florida?

POSITION: No position at this time pending evidence adduced at hearing.

ISSUE 38: Would granting the determination of need requested by the joint petitioners be consistent with the public interest and the best interests of electric customers in Florida?

POSITION: No position at this time pending evidence adduced at hearing.

ISSUE 39: Would granting the determination of need requested by the joint petitioners be consistent with the State's need for a robust competitive wholesale power supply market?

POSITION: No position at this time pending evidence adduced at hearing.

ISSUE 40: Would granting the determination of need requested by the joint petitioners be consistent with state and federal energy policy?

POSITION: No position at this time pending evidence adduced at hearing.

FINAL ISSUES

ISSUE 41: 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?

POSITION: No position at this time pending evidence adduced at hearing.

ISSUE 42: Should this docket be closed?

POSITION: No position at this time.


e. Pending Motions

FPC's Motion to Dismiss Proceeding, filed September 8, 1998.
FPC's Request for Oral Argument, filed September 8, 1998.
UCNSB's Memorandum of Law in Opposition to FPL's Motion to Dismiss, filed September 15, 1998.
FPL's Memorandum of Law Supporting Motion to Dismiss Joint Petition, filed September 8, 1998.
FPL's Request for Oral Argument Regarding Motion to Dismiss Joint Petition, filed September 8, 1998.
UCNSB's Memorandum of Law in Opposition to FPC's Motion to Dismiss Proceeding, filed September 21, 1998.
FPL's Motion to Dismiss Joint Petition, filed September 8, 1998.
System Council U-4, IBEW's petition for Leave to Intervene, filed October 7, 1998.
UCNSB and Duke's Response in Opposition and Motion to Deny System Council's Petition for Leave to Intervene and Accompanying Memorandum of Law, filed October 16, 1998.
FPL's Motion to expedite discovery, filed October 12, 1998.
UCNSB's Response in Opposition to FPL's Motion to Expedite Discovery and Motion for Alternate Expedited Discovery Schedule, filed October 19, 1998.

f. Compliance with Order No. PSC-98-1183-PCO-EM and Order No. PSC-98-1221-PCO-EM

Staff has complied with all requirements of the Order Establishing Procedure entered in this docket.

Respectfully submitted this 2nd day of November, 1998.



LESLIE J. PAUGH
Staff Counsel
Florida Bar No. 063568



GRACE A. JAYE
Staff Counsel
Florida Bar No. 0847143

FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Boulevard
Gerald L. Gunter Building - Room 370
Tallahassee, Florida 32399-0863
(850) 413-6199

000789

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 22, 1998

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that one true and correct copy of Staff's
Prehearing Statement has been furnished by facsimile and U.S. Mail
to the following this 2nd day of November, 1998:

Ausley & McMullen
Lee Willis
P.O. Box 391
Tallahassee, FL 32302

Carlton Fields
Gary Sasso
P.O. Box 2861
St. Petersburg, FL 33731

Florida Electric Cooperatives
Association
Michelle Hershel
P.O. Box 590
Tallahassee, FL 32302

Legal Environmental Assistance
Foundation
Gail Kamaras
1114-E Thomasville Road
Tallahassee, FL 32303

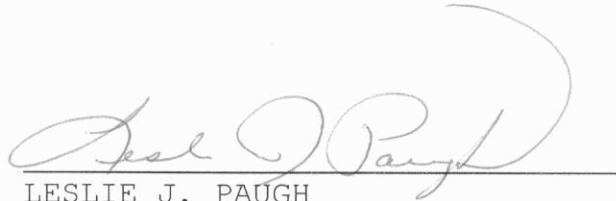
000790

Certificate of Service
Docket No. 981042-EM


Steel Hector & Davis
Matthew Childs
215 S. Monroe Street
Suite 601
Tallahassee, FL 32301

Landers & Parsons
Scheffel Wright
Post Office Box 271
Tallahassee, FL 32302

Florida Power Corporation
James McGee
Post Office Box 14042
St. Petersburg, FL 33733



LESLIE J. PAUGH
Staff Counsel
Florida Bar No. 063568



GRACE A. JAYE
Staff Counsel
Florida Bar No. 0847143

FLORIDA PUBLIC SERVICE COMMISSION
Gerald L. Gunter Building
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
(850) 413-6199

000791