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ORIGINAL

November 2, 1998

HAND DELIVERED

Ms. Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

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.  
FPSC Docket No. 981042-EU

Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Tampa Electric Company's Prehearing Statement.

Also enclosed is a diskette containing the above Prehearing Statement originally typed in Corel WordPerfect 8 format.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

ACK \_\_\_\_\_

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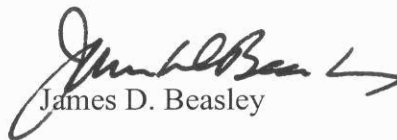
SEC 1

WAS \_\_\_\_\_

OTH \_\_\_\_\_

Thank you for your assistance in connection with this matter.

Sincerely,

  
James D. Beasley

cc: All parties of record (w/enc.)

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition for )  
Determination of Need for an )  
Electrical Power Plant in )  
Volusia County by the ) DOCKET NO. 981042-EM  
Utilities Commission City of ) FILED: November 2, 1998  
New Smyrna Beach, Florida, )  
and Duke Energy New Smyrna )  
Beach Power Company Ltd.LLP )  
\_\_\_\_\_ )

**TAMPA ELECTRIC COMPANY'S  
PREHEARING STATEMENT**

**A. APPEARANCES:**

LEE L. WILLIS  
JAMES D. BEASLEY  
Ausley & McMullen  
Post Office Box 391  
Tallahassee, Florida 32302  
On behalf of Tampa Electric Company.

**B. WITNESSES:**

Tampa Electric Company does not have any witnesses.

**C. EXHIBITS:**

Tampa Electric Company is not sponsoring any exhibits.

**D. STATEMENT OF BASIC POSITION**

**Tampa Electric Company's Statement of Basic Position:**

Duke Energy New Smyrna Beach Power Ltd. LLP ("Duke") does not qualify as an applicant under the Florida Power Plant Siting Act ("Siting Act"), Section 403.501 - 403.518 and Section 403.519, Florida Statutes. Specifically, Duke does not qualify as an

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"Electric Utility" within the meaning of Section 403.503(13) of the Florida Statutes. Only "Electric Utilities" qualify as Applicants under the Siting Act.

The fact that Duke is joined in its application by the Utilities Commission of the City of New Smyrna Beach ("New Smyrna") does nothing to remedy Duke's ineligibility. New Smyrna has no contract to purchase any of the capacity of the proposed plant and does not qualify as a co-applicant. Duke proposes a 484 MW (476 MW summer and 548 MW winter) plant to be built on a purely speculative basis. New Smyrna's co-application does nothing to support the applicant status on Duke with regard to the proposed generation in which New Smyrna has no interest.

The relief sought in this case would injure Tampa Electric's ability to plan, certify, build and operate transmission generation facilities necessary to meet its service obligation and the needs of its customers. Duke has no obligation to provide service and cannot justify the need for its project based upon its own need or on the need of New Smyrna. Duke is improperly relying upon the need of the 59 Florida utilities comprising "Peninsular Florida" to attempt to demonstrate the need for its project but would have no obligation to use the capacity of the project for the citizens of Florida if its request were granted. The relief sought in this case would also introduce tremendous uncertainty in the planning process for Tampa Electric and other Florida utilities, adversely affecting

their ability to plan their generation and transmission facilities to reliably meet the future demand for electric service by the residents of this state. The proposed project has not been shown to be needed for electric system reliability and integrity nor for adequate electricity at a reasonable cost.

The proposed project has not been shown to be the most cost-effective alternative available. It has not been shown that there are no conservation measures reasonably available to the Utilities Commission, New Smyrna Beach to mitigate the alleged need for the project. Based upon the foregoing, the petition in this proceeding should either be dismissed or denied.

**E. STATEMENT OF ISSUES AND POSITIONS**

**NEED FOR ELECTRIC SYSTEM RELIABILITY AND INTEGRITY**

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

**TECO:** No.

**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?

**TECO:** No.

**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?

**TECO:** No.

**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?

**[The parties have not reached consensus on this issue.]**

Tampa Electric supports the inclusion of this issue.

If it is included, Tampa Electric's position on this issue is no.

**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?

**TECO:** No. The capacity is not committed to serve the customers of any individual Florida utility or the state as a whole.

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

**TECO:** The proposed project would have a long-term negative effect on the reliability of the coordinated grid in Florida.

**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?

**TECO:** Petitioners have not sustained their burden of proof on these issues.

**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?

TECO: No. The Petition does not allege facts sufficient to support a determination of need.

**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?

TECO: No. Duke New Smyrna has not and cannot show that the proposed power plant is the most cost-effective alternative available as that term is used in Section 403.519, Fla. Stat.

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?

TECO: No.

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

**[The parties have not reached consensus on this issue.]**

TECO: Tampa Electric supports the inclusion of this issue. Given all of the uncertainties and lack of definitive commitments or plans as to how the proposed project would be operated, it is clear Petitioners have not sustained their burden of proof on these issues.

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

TECO: Yes.

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?

TECO: No, Petitioners have not met their burden of showing how this information relates to a required demonstration of need.

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?

TECO: No position at this time.

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?

**[The Parties have not reached consensus on this issue.]**

TECO: Tampa Electric supports the inclusion of this issue. Petitioners have failed to identify the terms and conditions of any purchases.

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. 980802EM?

TECO: No position at this time.

**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?

**TECO:** No position at this time.

**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)?

**TECO:** No.

**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?

**TECO:** Yes. This issue has been decided by the Commission in the affirmative. The Commission dismissed need petitions filed by Ark Energy, Inc. and Nassau Power Corporation because they weren't proper applicants under Section 403.519, Florida Statutes. These decisions were affirmed by the Supreme Court of Florida.

**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?



[The parties have not reached consensus on this issue.]

TECO: Tampa Electric supports the inclusion of this issue and responds to it in the negative.

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?

[The parties have not reached consensus on this issue.]

TECO: Tampa Electric supports the inclusion of this issue and responds to it in the negative.

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?

[The parties have not reached consensus on this issue.]

TECO: Tampa Electric supports the inclusion of this issue and responds to it in the negative.

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

[The parties have not reached consensus on this issue.]

TECO: Tampa Electric supports the inclusion of this issue and responds to it in the negative.

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?

[The parties have not reached consensus on this issue.]

TECO: Tampa Electric supports the inclusion of this issue and responds to it in the affirmative.

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?

**[The parties have not reached consensus on this issue.]**

TECO: Tampa Electric supports inclusion of this issue and responds to it in the negative.

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

**[The parties have not reached consensus on this issue.]**

TECO: Tampa Electric supports inclusion of this issue and responds to it in the negative.

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?

**[The parties have not reached consensus on this issue.]**

TECO: Tampa Electric supports inclusion of this issue and responds to it in the negative.

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

**[The parties have not reached consensus on this issue.]**

TECO: Tampa Electric supports inclusion of this issue and responds to it in the negative.

**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?

**[The parties have not reached consensus on this issue.]**

**TECO:** Tampa Electric supports the inclusion of this issue and responds to it in the affirmative.

**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?

**[The parties have not reached consensus on this issue.]**

**TECO:** Tampa Electric supports inclusion of this issue. Such a result would expose Commission regulated utilities to significant risks and uncertainties and adversely affect the ability to plan for future demand, thereby jeopardizing reliable electric service to utility customers in Florida.

**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?

**[The parties have not reached consensus on this issue.]**

**TECO:** Tampa Electric supports inclusion of this issue and

responds to it in the negative.

**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?

**[The parties have not reached consensus on this issue.]**

**TECO:** Tampa Electric supports the inclusion of this issue and responds to it in the affirmative.

**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?

**[The parties have not reached consensus on this issue.]**

**TECO:** Tampa Electric supports the inclusion of this issue and responds by saying that such determination of need would confuse and adversely affect subsequent need determination proceedings, to the detriment of electric utility customers statewide.

**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?

**[The parties have not reached consensus on this issue.]**

**TECO:** Tampa Electric supports the inclusion of this issue and responds by saying that the Commission's ability to

accomplish these statutory duties would be adversely affected by such an abandonment.

**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?

**[The parties have not reached consensus on this issue.]**

**TECO:** Yes.

**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?"

**[The parties have not reached consensus on this issue.]**

**TECO:** Yes. Tampa Electric agrees with the Commission's observations in Order No. PSC-92-1210-FOF-EQ, issued October 26, 1992, that the Commission:

. . . would end up devoting inordinate time and resources to need cases. Wasting time in need determination proceedings for projects that may never reach fruition is not an efficient use of the administrative process. To allow non-utilities to file need petitions would greatly detract from the reliability of the process and would require us to devote excessive resources to micromanagement of utilities' power purchases.

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?

TECO: The effect would be negative.

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?

**[The parties have not reached consensus on this issue.]**

TECO: Tampa Electric opposes inclusion of this issue as worded. If it is included, Tampa Electric's position is no.

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?

**[The parties have not reached consensus on this issue.]**

TECO: Tampa Electric opposes inclusion of this issue as worded. If it is included, Tampa Electric's position is that Petitioners have not met their burden of demonstrating the affirmative.

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

**[The parties have not reached consensus on this issue.]**

TECO: Tampa Electric opposes inclusion of this issue. If it is included, Tampa Electric's position is no. State

policy should govern and, accordingly, no convincing demonstration can be made as to Federal policy.

**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?

**TECO:** No.

**ISSUE 42:** Should this docket be closed?

**TECO:** No.

**F. STIPULATED ISSUES**

**TECO:** None at this time.

**G. MOTIONS**


**TECO:** None by Tampa Electric.

**H. OTHER MATTERS**

**TECO:** None at this time.

DATED this 2<sup>nd</sup> date of November, 1998.

Respectfully submitted,

  
\_\_\_\_\_  
LEE L. WILLIS  
JAMES D. BEASLEY  
Ausley & McMullen  
Post Office Box 391  
Tallahassee, Florida 32302

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing rehearing Statement of Tampa Electric Company has been furnished by hand delivery (\*) or by U. S. Mail on this 2<sup>nd</sup> day of November, 1998 to the following:

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Ms. Grace Jaye\*  
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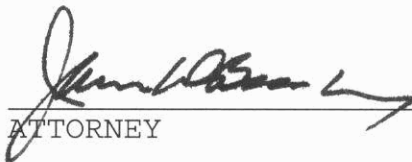
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