

RECEIVED-FPSC
DEC 10 PM 3:28
RECORDS AND
REPORTING
December 10, 1998

Steel Hector & Davis LLP
215 South Monroe, Suite 601
Tallahassee, Florida 32301-1804
850.222.2300
850.222.8410 Fax
www.steelhector.com

Charles A. Guyton
850.222.3423

Blanca S. Bayó, Director
Records and Reporting
Florida Public Service Commission
4075 Esplanade Way, Room 110
Tallahassee, Florida 32399-0850

By Hand Delivery

**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**

Dear Ms. Bayo:

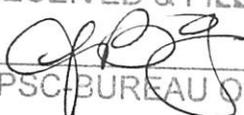
Enclosed please find the original and fifteen (15) copies of Florida Power & Light Company's Revised Direct Testimony of William D. Steinmeier in Docket No. 981042-EM.

If you or your Staff have any questions regarding this filing, please contact me.

Very truly yours,



Charles A. Guyton

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

Enc.
cc: Counsel for all parties of record

- CK _____
- FA _____
- PP _____
- AF _____
- MU _____
- TR _____
- AG _____
- EG _____
- IN _____
- OPC _____
- RCH _____
- SEC _____
- WAS _____
- OTH _____

TAL/26787-1

DOCUMENT NO.
DN 13675-98
12/4/98
Rio de Janeiro

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DIRECT TESTIMONY OF WILLIAM D. STEINMEIER

DOCKET NO. 981042-EM

1 **Q. Please state your name and address.**

2 A. I am William D. Steinmeier. My business address is P.O. Box
3 104595, Jefferson City, Missouri 65110-4595.

4

5 **Q. By whom are you employed and in what capacity?**

6 A. I am an attorney and a consultant on issues related to public utility
7 regulation. My practice is incorporated in the State of Missouri as
8 William D. Steinmeier, Professional Corporation (P.C.)

9

10 **Q. Please outline your educational qualifications and experience.**

11 A. I hold a Bachelor of Arts degree in political science from Wheaton
12 College, Wheaton, Illinois (1972), and a Juris Doctor from the School
13 of Law of the University of Missouri-Columbia (1975). I served as a
14 Hearing Examiner for the Public Service Commission of Missouri from
15 1980 to 1984, and as Chairman of the Missouri PSC from 1984 to
16 1992. While a member of the Commission, I was active in the
17 National Association of Regulatory Utility Commissioners (NARUC).

1 I am a past president of NARUC and also served on the Executive and
2 Electricity Committees. NARUC is the national organization of
3 regulators of utility services. In 1992, I entered the private practice
4 of law and consulting on issues related to the regulation of investor-
5 owned utilities.

6

7 **Q. What is the purpose of your direct testimony?**

8 A. I am appearing on behalf of Florida Power & Light Company (FPL).
9 FPL opposes the Joint Petition of the Utilities Commission, City of New
10 Smyrna Beach, Florida (UCNSB) and Duke Energy New Smyrna Beach
11 Power Company Ltd., L.L.P. (Duke). The purpose of my testimony is
12 to provide my perspective, based upon my experience as a state
13 regulator and my knowledge of the utility industry, on the Joint
14 Petition in this case. I will address the Joint Petition from the
15 perspective of state regulatory policy, and particularly, what I read to
16 be Florida's regulatory policy. I will discuss how the Joint Petition is
17 inconsistent with Florida policy in that it does not provide sufficient
18 information for this Commission to make the findings required of it by
19 the Power Plant Siting Act. I will also address how granting a
20 determination of need for this project raises serious concerns for FPL
21 in carrying out its obligations to serve its customers.

22

1 **Q. Please summarize your direct testimony.**

2 A. My testimony reviews what I believe the Florida Electrical Power Plant
3 Siting Act (PPSA), enacted by the Florida Legislature, requires of the
4 Commission. For ease of reference, when I speak of the PPSA, I am
5 including Section 403.519, Florida Statutes as part of the Act. I believe
6 that the Commission should not grant an affirmative decision on need for
7 the Duke/NSB project.

8 Beyond the obvious failure of Duke New Smyrna to meet the standards
9 set by the PPSA, I believe that the proposed Duke/NSB plant creates
10 very real concerns for FPL in meeting its obligation to plan, finance and
11 construct resources to meet its obligation to serve. I also raise several
12 other public policy issues which I believe should be of concern to this
13 Commission, including the potential for uneconomic duplication of
14 facilities, and possible negative rate impacts on utility customers.

15

16 **Q. What is your understanding of what the Joint Petition seeks in this**
17 **case?**

18 A. The Joint Petition of Duke and UCNSB in this case asks the Commission
19 for an affirmative "need determination" under Section 403.519 for Duke's
20 New Smyrna Beach Project, a proposed new power plant which would
21 have approximately 500 MW of capacity. The Joint Petition does not
22 allege that the plant is required to meet the needs of any Florida utility for

1 maintaining system reliability and integrity, or for assuring adequate
2 electricity at a reasonable cost. The Joint Petition does not allege that
3 the facility is the least cost alternative available for the utility with need for
4 capacity. Instead the Joint Petition alleges that "the Project is consistent
5 with Peninsular Florida's needs for generating capacity to maintain
6 system reliability and integrity," that "the Project is consistent with
7 Peninsular Florida's need for adequate electricity at a reasonable cost,"
8 and that "the Project will be a cost-effective power supply resource for
9 Peninsular Florida." "Peninsular Florida" is a planning convention, not a
10 utility. Duke New Smyrna stops short of saying its plant is needed;
11 instead, it says its project is "consistent with" some general need. Duke
12 New Smyrna has no final purchased power contracts with any Florida
13 utility (including, apparently, UCNSB) for the output of the proposed plant.
14 None of the approximately 500 MW of proposed capacity is associated
15 with any utility's obligation to provide service, except Duke's proposal to
16 sell 30 MW of the output to UCNSB. The Joint Petition provides no
17 information as to the extent, if any, Duke New Smyrna has sought
18 contracts for this power beyond UCNSB.

19

20 **Q. Do you believe that, independent of prior Commission and Supreme**
21 **Court decisions, the PPSA need determination criteria should be**
22 **utility-specific?**

1 A. Even if the prior decisions did not exist, I believe the need determination
2 criteria should be read as utility-specific criteria. While planning and even
3 construction and operation of plants can be done on a combined basis,
4 the obligation to serve customers rests with individual utilities and not
5 with Duke New Smyrna. It is at the individual utility level that the ultimate
6 decision to build or buy is made. Unless the Commission knows the
7 utility or utilities which will receive a power plant's output, the price of the
8 output or the cost of the plant, and the terms and conditions under which
9 the output of a plant will be provided, the Commission cannot
10 meaningfully apply the PPSA need criteria.

11

12 **Q. Please discuss how, as a matter of policy, the need being**
13 **determined in a need determination arises from an obligation to**
14 **provide service.**

15 A. A wholesale provider of power, whether a qualifying facility, an
16 independent power producer or a merchant plant, has no statutory
17 obligation to serve. Consequently, it is my opinion that wholesale power
18 providers cannot demonstrate need on their own. As a matter of policy,
19 it is the obligation to serve which gives rise to a demonstrable need for
20 a power plant.

21

22 **Q. Please explain why it is important that an entity seeking a need**

1 **determination for a plant which will make wholesale sales first have**
2 **a contract with a purchasing utility.**

3 A. Regardless of whether the Commission or the Supreme Court previously
4 had found that an entity seeking to build a power plant to make wholesale
5 sales to a utility must have an executed purchased power contract to
6 initiate a need determination, I think the need determination criteria
7 necessitate such a contract. Without a contract, a wholesale provider of
8 power cannot identify the utility or utilities to which it will sell. Without a
9 contract which addresses the amount and availability of capacity and
10 other terms and conditions affecting performance, the impact of a
11 wholesale provider's plant on "electric system reliability and integrity"
12 cannot be demonstrated. Without a contract identifying the utility to
13 which a wholesale provider will provide power and the price at which the
14 power will be sold, a wholesale provider cannot demonstrate that its plant
15 is needed for "adequate electricity at a reasonable cost;" or that its
16 "proposed plant is the most cost-effective alternative available;" or that
17 there are no "conservation measures taken or reasonably available" to
18 mitigate the need for its plant. Therefore, without a contract that identifies
19 the purchasing utility, the price of the power to the purchasing utility, and
20 the other terms and conditions which affect cost-effectiveness and
21 reliability, a wholesale provider cannot provide sufficient information for
22 the Commission to make an affirmative determination of need.

1 Q. It has been suggested that the Commission and Supreme Court
2 decisions concerning utility-specific need determinations all
3 involved cogeneration and entities that desired to sell to specific
4 utilities and perhaps are not applicable to a merchant plant that has
5 not identified the utilities to which it intends to sell. What is your
6 reaction?

7 A. I have two reactions.

8

9 First, it is not just cases that suggest the Commission's need
10 determination should be utility-specific. As I pointed out earlier, I believe
11 that these interpretations of the PPSA would be correct even if those
12 decisions had not been entered. The need determination criteria should
13 be utility-specific. Utilities are the only entities with an obligation to serve,
14 and the need examined in a need determination should be the need of
15 a utility with such an obligation to serve. The only practical means of
16 implementing this statutory scheme for entities that do not have an
17 obligation to serve but desire to build a power plant to be able to sell to
18 entities with an obligation to sell and a corresponding need is to require
19 such entities to first have a contract or contracts for its output.

20

21 Second, I fail to see how the PPSA could properly be applied differently
22 to different entities. More particularly in this case, I fail to see how the

1 Commission could reasonably find that the PPSA's need criteria are
2 utility- specific when applied to utilities, cogenerators and non-utility
3 generators but are not necessarily utility-specific when applied to a
4 merchant plant.

5
6 In this case, Duke New Smyrna neither identifies the purchasing utility nor
7 communicates the terms and conditions necessary to apply the need
8 determination criteria.

9
10 **Q. Does the Duke/NSB project meet the utility-specific standard of the**
11 **PPSA?**

12 **A.** No. While 30 MW of a roughly 500 MW unit have been identified to meet
13 the needs of the City of New Smyrna Beach, more than 90% of the unit's
14 output may be available but is not committed to address "Peninsular
15 Florida's projected power supply needs." (Duke/UCNSB Joint Petition for
16 Determination of Need, page 2). I think it would be difficult for anyone to
17 argue that the primary need for the unit is the City of New Smyrna Beach.
18 In fact, Commission approval under the PPSA would not be required if
19 Duke was proposing to build only a 30 MW power plant. I do not believe
20 that this Joint Petition meets the intent of the PPSA in balancing the need
21 for the facility with the environmental impact resulting from the
22 construction and operation of the facility. Beyond this obvious imbalance,

1 it appears to me that the Commission would be hard-pressed to make
2 any findings regarding the specific requirements of the PPSA.

3

4 I have already discussed how the PPSA's need for power determination
5 should be utility-specific. How, then, is the Commission to assess the
6 need for this project? Only 30 MW address a specific utility need. The
7 remainder is to be sent out to peninsular Florida, and possibly beyond,
8 without contract or firm commitment from any Florida utility. No utility
9 could rely on the power to meet its need without a contract. Therefore,
10 it would be inconsistent to find that there is a "need" for 470 MW or more
11 of this plant by somehow "assigning" that capacity to any specific utility's
12 need without a contract.

13

14 The second issue for the Commission under the PPSA is the "need for
15 adequate electricity at a reasonable cost." I have already addressed the
16 "need" portion of this standard and shown that it cannot be addressed by
17 this project. The "reasonable cost" cannot be addressed, either. We
18 don't know to whom the project will sell its power, for how long, or at what
19 price. We just have an assertion by the Applicants that utilities will only
20 buy when it is reasonable to do so. I would suggest to the Commission
21 that this vague assertion is not sufficient to justify the utilization of scarce
22 land, air and water resources for a power plant. This assertion would, in

1 fact, be true of any power plant, making all proposals indistinguishable,
2 from the Commission's perspective.

3

4 The next issue the Commission must address is whether the proposed
5 plant is the most cost-effective alternative available. The immediate
6 question is, "alternative to meet what need?" The most cost-effective
7 technology does not necessarily equate to the most cost-effective
8 alternative to meet a specific utility's need. Duke plans to build a
9 combined cycle plant. FPL and other utilities already have combined
10 cycle plants in their ten year plans. Duke/NSB has not presented a total
11 cost or proposed price which can even be used to compare to various
12 utility projects. I fail to see how the Commission can find the Duke/NSB
13 project to be "the most cost-effective alternative available" under the
14 PPSA.

15

16 The conservation issue obviously has the same problem as the others.
17 Without identifying the purchasing utility or utilities, no assessment can
18 be made of whether there are "conservation measures taken or
19 reasonably available" which mitigate the need for the plant.

20

21 **Q. Are there other matters within the Commission's jurisdiction about**
22 **which the Commission should be concerned regarding this need**

1 **determination application?**

2 A. Yes. Under the PPSA the Commission is authorized to consider in need
3 determinations not only the criteria Duke New Smyrna has failed to meet,
4 but also other matters within its jurisdiction which it deems relevant.
5 There are a number of matters within the Commission's jurisdiction that
6 could be impacted by this determination of need. A positive
7 determination could adversely affect FPL's and other Peninsular Florida
8 utilities' ability to meet their service obligations. It could affect those
9 utilities' subsequent determination of need proceedings. It could affect
10 their ability to plan for and meet system needs. It could affect the
11 recoverability of their past and future investments. It could lead to the
12 uneconomic duplication of facilities to meet need. It could adversely
13 affect the customers of Florida utilities. All of these matters are properly
14 within the Commission's jurisdiction and should be considered in this
15 proceeding.

16
17 **Q. How would a grant of the Joint Petition affect subsequent**
18 **determinations of need by the Commission for utilities petitioning**
19 **to meet their own needs?**

20 A. It would put the utilities in a very difficult situation. On the one hand, the
21 utility cannot evaluate the cost-effectiveness of the project versus their
22 own plan. Without a contract with terms and conditions, how can the

1 utility evaluate this option? On the other hand, it would seem almost
2 certain that the petitioners would appear before the Commission making
3 the case that the utility should buy from them. This clearly puts the utility
4 in a "Catch-22," where it does not have the information it needs about the
5 Duke plant to plan for it, but it must do so anyway in order to fulfill its
6 obligation to serve.

7
8 Another problem utilities will face in subsequent need determination
9 proceedings will be how to address the findings of fact the Commission
10 is being asked to make in this case. If the Commission finds that the
11 *Duke New Smyrna plant is needed for electric system reliability and for*
12 *adequate electricity at reasonable cost for Peninsular Florida, that the*
13 *plant is the most cost-effective alternative to meet Peninsular Florida's*
14 *need, and that there are no conservation measures taken or reasonably*
15 *available to mitigate the need for the plant, any Peninsular Florida utility*
16 *seeking a subsequent determination of need will be faced with findings*
17 *that the Duke plant meets their needs and is the most cost-effective*
18 *alternative available to them. This may particularly be true of utilities*
19 *which participated in this proceeding, even though the relative cost-*
20 *effectiveness of the utilities' projects would not have been vigorously*
21 *tested in this case. It seems likely that Duke will argue that the*
22 *Commission has already addressed the issue and made findings which*
23 *make Duke the preferred alternative, even though it is apparent that no*

1 utility-specific determination of need is being sought or being made in this
2 case.

3

4 Either the findings in this case will be binding and controlling on
5 Peninsular Florida utilities or this case will be a purely academic exercise
6 as to a fictional entity called Peninsular Florida. If the findings are to be
7 binding on Peninsular Florida utilities, then the affected utilities should be
8 given notice and their specific needs should be tried, not a more general
9 collective need for a larger geographic area. If the findings are not to be
10 binding and may be disregarded, then what purpose will this case have
11 served? I believe that if Duke is successful in this proceeding, Duke is
12 likely to use the Commission's findings in this case in subsequent need
13 determination proceedings filed by utilities. This could frustrate the ability
14 of Florida utilities to proceed under the PPSA to meet their individual
15 needs.

16

17 **Q. How would granting a determination of need as requested by**
18 **Duke/New Smyrna affect the obligation of electric utilities to plan for**
19 **and meet the need for reasonably sufficient, adequate and efficient**
20 **service?**

21 **A. Utilities would still have that obligation. That is part of the "Catch-22"**
22 **discussed above. Utilities will still be required to plan to meet their**

1 obligation to serve. They will be required to factor the merchant plant into
2 their plans without knowing if this power will be available, or when it will
3 be available, or at what price, or what the impact of this power will be on
4 the utility's transmission system. The utility must plan and build to meet
5 its obligation to serve. The result is destined to be duplication of facilities.

6

7 **Q. How would granting the Joint Petition affect the recoverability of**
8 **past and future utility investments?**

9 A. Granting the Joint Petition in this case would create a risk that past and
10 future utility investments made to provide service may not be recovered.
11 This could increase the overall cost of providing electric service and
12 impair future service reliability. In fact, the argument that the "merchant"
13 plant is being built at Duke's total risk and that so-called "captive
14 customers" would be held harmless is faulty. Who is responsible for the
15 costs of utility facilities that become underutilized because of "merchant"
16 plants? If the answer is utility customers, then they are not "held
17 harmless." If utility stockholders are responsible for bearing these costs,
18 then the utility's cost of capital will reflect that risk, which, in the long-run,
19 would impact their customers.

20

21 Another misconception that exists on this issue is that, because utility
22 plants are "rate based," utility customers bear all of the risks. This simply

1 is not true. Utilities are not guaranteed cost recovery. Rather, the
2 Commission sets rates which are designed to provide the utility a
3 reasonable opportunity to recover its prudently incurred costs, as
4 determined by the Commission. Many factors, including regulatory
5 decisions, the economy in the service area and the weather, affect a
6 utility's ability to actually recover its costs and earn a return. A key point
7 to remember here is that utilities cannot change their rates without the
8 approval of the Commission. A wholesale merchant plant that has
9 market-based rates can charge whatever the market will bear and is
10 accountable only to its stockholders.

11

12 Duke's suggestion that they will bear all the risk, even if it were true,
13 misses the point. Operating and market risk associated with a power
14 plant is not a criteria under the need statute. Under the PPSA, the proper
15 point of focus is whether there is a utility that needs the power to be
16 provided by the power plant. If there is a need for the power and Duke
17 New Smyrna contracts to meet it, then the concept of risk has little
18 meaning. Recovery will be from the same utility ratepayers who would
19 pay for the same plant built by the utility, and they would face similar
20 performance and operation risks. The real concern under the PPSA is
21 whether there is a need for the power which justifies the environmental
22 impact a plant will certainly have. If there is a risk properly considered in

1 this proceeding, it is the risk that Florida may devote environmental
2 resources for a power plant which has not been shown to be needed to
3 meet a Florida utility-specific need. Duke's discussion of "risk" distracts
4 from the proper focus of this proceeding.

5

6 **Q. If the Commission did not interpret the statutory need criteria as**
7 **"utility and unit specific," how would the Commission maintain grid**
8 **reliability and avoid uneconomic duplication of facilities in need**
9 **determination proceedings?**

10 A. It simply could not. Anyone who feels that they can build, and sell power
11 from, a "merchant" plant will do so. The result will be duplication of
12 facilities, the consumption of limited natural resources and the added
13 costs of excess utility generating capacity. The lack of information about
14 whether or when this power will be available, and where it will be
15 delivered, could also make it more difficult to maintain the reliability of the
16 grid. That is the reason it is so important that Section 403.502 of the
17 PPSA be interpreted by this Commission to require the "need" to be
18 "utility and unit specific." That interpretation would avoid the scenario
19 discussed here and its negative ramifications.

20

21 **Q. When FPL makes an off-system sale, do its shareholders receive the**
22 **benefit of the revenue from that transaction?**

1 A. No. When FPL makes an off-system sale of power (to a municipal utility, for
2 example), most or all of the gain on that sale is returned to FPL's customers
3 through the Fuel Adjustment Clause or the Capacity Clause ("Clauses").
4 However, it should be noted that when Duke/NSB makes a sale from its
5 proposed power plant, the gain from that sale would go to Duke
6 shareholders. Thus, not all Florida ratepayers would necessarily "benefit"
7 from Duke's power sales, and some would lose the benefit of gains that
8 would otherwise flow through to them through the Clauses.

9

10 **Q. How would granting the Joint Petition affect utility customers?**

11 A. As just indicated, utility customers could experience direct rate impacts, in
12 addition to long-term concerns about the ability of utilities to plan accurately
13 to meet future needs, increased risk of utility investments and the potential
14 for uneconomic duplication of facilities. Customers of utilities which lose off-
15 system sales would be harmed, because they will no longer receive the
16 benefits of those sales through the Clauses. Reductions in wholesale sales
17 by utilities may also result in changes in wholesale-retail allocations of costs
18 and rate base, resulting in higher rates for the utility's customers.

19

20 **Q. If Duke New Smyrna were allowed to proceed in a need determination**
21 **proceeding by basing its case on Peninsular Florida needs, how would**
22 **this compare to the showings currently required of Florida utilities,**

1 **qualifying facilities and non-utility generators?**

2 A. It would establish a less demanding standard for Duke New Smyrna than for
3 any other entity seeking a determination of need. If Duke New Smyrna were
4 allowed to proceed based not on a utility-specific showing but on Peninsular
5 Florida showings, then Duke New Smyrna would be held to a less
6 demanding standard for no apparently sound reason. Such an inequitable
7 application of the PPSA would raise fundamental questions of fairness. It
8 seems clear to me that the PPSA should be applied to all applicants in the
9 same fashion. Duke New Smyrna should not be held to a less demanding
10 standard. If it is, then the Commission should rethink the standard applied
11 to all other applicants as well. However, I believe the better approach is to
12 hold Duke New Smyrna to the same utility- specific standards required of
13 other applicants.

14

15 **Q. Why do you find different applications of the PPSA to different types of**
16 **applicants objectionable?**

17 A. Inconsistency in application of the resource planning requirements may raise
18 legal objections, but it is also objectionable from a policy perspective. Florida
19 real estate, air and water resources are finite. It seems clear that the policy
20 of the State of Florida is that, before Florida resources are committed to
21 construction and operation of a new power plant, the developer should have
22 to show that the generation from that plant is committed to meeting Florida's

1 specific and growing needs for generation, that its proposed capacity
2 addition is the most cost-effective alternative available, and that it considered
3 conservation measures that might mitigate the need for the proposed plant.
4 FPL and other utilities which have an obligation to serve will be required to
5 address all of those issues before they will be authorized to build new
6 generation. As a matter of policy, it is not clear to me why those issues are
7 any less important in relation to a "merchant" plant than a "utility" plant.

8

9 **Q. Do you agree with Ms. Hesse that the basic purpose of utility regulation**
10 **is "to promote competitive and efficient resource allocations?"**

11 A. No. In my opinion, the overall purpose of utility regulation in Florida is to
12 assure the provision of adequate, reliable and efficient utility service at just
13 and reasonable rates, and to provide utility shareholders a reasonable
14 opportunity to earn a fair return on their investment in the facilities necessary
15 to meet the utility's obligation to serve. The FPSC is also charged with
16 assuring the avoidance of uneconomic duplication of generation,
17 transmission and distribution facilities. The specific purpose of the PPSA is
18 to achieve the right balance between the need for new power plants and the
19 use of the limited natural resources of the State. To that end, the PPSA
20 requires the FPSC to make a utility-specific determination of need before
21 siting any new power plant, and requires the FPSC to consider several
22 statutory factors (discussed earlier in my testimony) in making that need

1 determination.

2

3 **Q. Do you agree with Ms. Hesse that utility regulation is intended to serve**
4 **as a “surrogate for competition”?**

5 A. Yes. I have often said so myself. However, it does not logically follow that
6 the regulatory system must authorize “numerous sellers” in order to be that
7 “surrogate for competition.” (*Hesse Direct Testimony at p. 21.*) By definition,
8 a “surrogate for competition” is a “substitute for” competition, which is
9 different from “being” a system of competition. A more accurate statement
10 is Ms. Hesse’s suggestion that a goal of utility regulation is “to attempt to
11 come as close as possible, in a constrained or structurally imperfect market,
12 to the outcome that would be achieved in a competitive market.” The
13 achievement of an outcome that conserves resources, avoids uneconomic
14 duplication of facilities and assures adequate and reliable electricity at just
15 and reasonable rates accomplishes that goal. That is the goal of the Florida
16 regulatory process, including the FPSC’s need determination under the
17 PPSA. It should also be observed that neither regulation nor competition is
18 a perfect system. Ms. Hesse herself admits that it cannot be concluded “that
19 an ‘optimal’ outcome would be attained” from siting “merchant” plants in
20 Florida. (*Hesse Direct Testimony, p. 19.*)

21

22 Finally, it must be recognized that public policy is seldom a matter of “pure”

1 economic theory. Economics is not physical science. It is not an immutable
2 law of nature, nor the source of all human values. Regulatory policy must,
3 and does, look beyond the theoretical merits of competitive markets to
4 broader human and practical issues. These issues include the public need
5 for adequate and reliable power to support everyday life and commerce in
6 Florida in 1998 and beyond, and the need to protect finite and valuable
7 resources, including land use.

8
9 **Q. Do you agree with Ms. Hesse that, “for the past 20 years, federal energy**
10 **policy has favored and encouraged competition in the wholesale**
11 **generation and supply of electricity in the United States”?**

12 A. No. In my opinion, the purpose of the Public Utility Regulatory Policies Act
13 of 1978 (PURPA) was not to promote competition in the supply of bulk
14 electricity, but rather to squeeze every possible drop of energy out of
15 domestic resources in order to achieve what President Carter called, “Energy
16 Independence.” We were trying to decrease our reliance on foreign oil in the
17 wake of national energy crises precipitated by the Organization of Petroleum
18 Exporting Countries’ (OPEC) oil embargo in 1973 and the political revolution
19 in Iran in 1978-1979, which had sent energy prices soaring. While Ms.
20 Hesse, as chair of the FERC in the late 1980’s, began actively promoting
21 competition in the wholesale bulk power electric market, national policy has
22 only done so since the National Energy Policy Act of 1992.

1

2 **Q. Does the potential interest of the FMPA in capacity from Duke/NSB**
3 **demonstrate utility-specific need?**

4 A. No. At least 90% of the capacity from Duke/NSB is not under contract and
5 cannot be tied to any specific utility need for power. Even the Florida
6 Municipal Power Agency, which supports the Joint Petition, will only commit
7 to being willing to “entertain discussions” with Duke about serving a portion
8 of its needs. Mr. L’Engle says in his testimony that, “[s]ubject, of course, to
9 meeting FMPA’s pricing and operational criteria, . . . the New Smyrna Beach
10 Power Project *may be* a facility that FMPA would be interested in purchasing
11 capacity and energy from.” (*Emphasis added*). There are still at least 450
12 to 484 MW of this plant that are totally divorced from any utility-specific need
13 in Florida. In my opinion, the Commission must ask whether it is wise to
14 build 500 or more MW of capacity for every 30 MW of alleged, utility-specific
15 need.

16

17 **Q. Would you please summarize your testimony?**

18 A. The Commission’s determination of need for siting a new power plant under
19 the PPSA should be utility-specific. Since an entity such as Duke has no
20 obligation to serve and no need of its own, in my opinion Duke could
21 demonstrate a utility-specific need only if it had a contract with a specific
22 utility with a need for power. Since more than 90% of the capacity of the

1 proposed Duke/NSB plant is not under contract to any Florida utility, this
2 Joint Petition should not be granted. In addition, the other requirements of
3 the PPSA cannot be met by the Joint Application. It would be impossible in
4 this case to meaningfully fulfill the requirements of the PPSA to consider how
5 this proposed plant would relate to system reliability and integrity, the need
6 for adequate electricity at a reasonable cost, whether the plant is the most
7 cost-effective, or conservation measures. These issues are no less
8 important regarding a "merchant" power plant than for a utility plant in terms
9 of the PPSA's intent of balancing the need for the facility with the broad
10 interests of the public. Duke is essentially asking the FPSC to waive what
11 I understand to be the requirements of the PPSA for purposes of approving
12 its proposed project. In my opinion, a grant of this Joint Petition would be a
13 grave mistake as a matter of policy, as it would essentially circumvent the
14 PPSA.

15
16 Beyond the obvious failure to meet the standards set by the PPSA, I believe
17 that the proposed Duke/NSB plant creates very real concerns for FPL in
18 meeting its obligation to plan, finance and construct resources to meet its
19 obligation to serve, including the "Catch-22" that utilities would be left having
20 to include the "merchant" plant in their planning process without knowing if
21 this power will be available, or when it will be available, or at what price, or
22 what the impact of this power will be on the utility's transmission system.
23 There are several additional public policy issues which I believe should be

1 of concern to this Commission. These include the potential for underutilized
2 utility investments and uneconomic duplication of facilities, and possible
3 negative rate impacts on utility customers.

4 **Q. Does this conclude your testimony?**

5 **A. Yes, it does.**

6

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Revised Direct Testimony of William D. Steinmeier in Docket No. 981042-EM was served by Hand Delivery (when indicated with an *) or mailed this 10th day of December, 1998 to the following:

Leslie J. Paugh, Esq.*
Legal Division
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 370
Tallahassee, FL 32399-0850

Lee L. Willis, Esq.
James D. Beasley, Esq.
Ausley & McMullen
P.O. Box 391
Tallahassee, FL 32302

James A. McGee, Esq.
Florida Power Corp.
P.O. Box 14042
St. Petersburg, FL 33733

Robert Scheffel Wright, Esq. *
John T. LaVia, III, Esq.
Landers & Parsons, P.A.
310 West College Avenue
Tallahassee, FL 32301

William Willingham, Esq.
Michelle Hershel, Esq.
FECA
P.O. Box 590
Tallahassee, FL 32302

Mr. Ronald L. Vaden
Utilities Director
Utilities Commission
City of New Smyrna Beach
Post Office Box 100
New Smyrna Beach, FL 32170-0100

Ms. Gail Kamaras
Debra Swim, Esq.
LEAF
1114 Thomasville Road, Suite E
Tallahassee, FL 32303

Kelly J. O'Brien, Manager
Structured Transactions
Duke Energy Power Services LLC
5400 Westheimer Court
Houston, TX 77056

Gary L. Sasso, Esq.
Carlton Fields, et al.
P.O. Box 2861
St. Petersburg, FL 33733

Jon C. Moyle, Esq.
Moyle Flanigan, et al.
210 South Monroe Street
Tallahassee, FL 32301

By: 
Charles A. Guyton