

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-EU  
FILED: January 19, 1999

**TAMPA ELECTRIC COMPANY'S  
POST-HEARING STATEMENT OF ISSUES AND POSITIONS**

Tampa Electric Company ("Tampa Electric" or "the company"), pursuant to the Prehearing Order issued in this docket on December 1, 1998, submits the following as its Post-Hearing Statement of Issues and Positions:

**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?

**TECO:** \*No. Duke New Smyrna has not even attempted to demonstrate a utility specific need for approximately 94% of the capacity of its proposed power plant. Neither the Commission nor utilities in Florida can rely upon the uncommitted capacity of a merchant plant for reliability purposes.\*

**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. The participation agreement between New Smyrna Beach and the UCNSB calls for the subsequent negotiation of a power purchase agreement, which agreement has yet to be negotiated. No agreement of any kind exists with regard to the vast majority (94%) of the output of the proposed plant.\*

**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. Duke New Smyrna has not even identified the utilities to which it will sell the output of its proposed plant or the terms or conditions of any sale. Without

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this information the Commission cannot assess need under the utility specific criteria of Section 403.519, Florida Statutes.\*

**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?

**TECO:** \*No. Duke New Smyrna has no need for any generating capacity given their lack of any obligation to serve.\*

**ISSUE 5:** Can or should the capacity of the proposed project be properly included when calculating short term operating and long term planning reserve margins of an individual Florida utility or the State as a whole?

**TECO:** \*No. Even Duke New Smyrna's own witness, Mr. L'Engle, confirmed that the output of the proposed plant cannot be properly counted toward reserve margins in the absence of an executed power purchase agreement. (Tr. 562, lines 5-9)\*

**ISSUE 6:** 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 this issue. Without knowing the utilities to whom Duke New Smyrna will sell the output of its proposed plant, this question has not been answered.\*

**ISSUE 7:** 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 criteria in Section 403.519, Florida Statutes, are utility specific. Duke New Smyrna has not attempted to demonstrate a utility specific need but, instead, has simply relied on a "more is better" standard.\*

**ISSUE 8:** Is the proposed power plant the most cost-effective alternative available, as this criterion is used in Section 403.519?

**TECO:** \*No. Whether the proposed power plant is the most cost-effective alternative is a utility specific criterion which cannot be evaluated in the absence of firm power sales agreements.\*

**ISSUE 9:** 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. Duke New Smyrna does not even address a secondary fuel.\*

**ISSUE 10:** **What impact, if any, will the proposed power plant have on natural gas supply or transportation resources on State regulated power producers?**

**TECO:** \*The proposed power plant would divert natural gas supply and transportation resources from utilities having an obligation to serve customers in this state. \*

**ISSUE 11:** **Will the proposed project result in the uneconomic duplication of transmission and generation facilities?**

**TECO:** \*Yes. The petitioners proposed power plant is intended to displace existing plants that still have a useful life. This would constitute uneconomic duplication of existing facilities.\*

**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?**

**TECO:** \*No position.\*

**ISSUE 13:** **Are there any conservation measures taken by or reasonably available to the petitioners which might mitigate the need for the proposed power plant?**

**TECO:** \*The petitioners have not shown a utility specific need for the proposed power plant. Consequently, they have not demonstrated that there are no conservation measures available to mitigate any need for the proposed plant.\*

**ISSUE 14:** **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. Such would be contrary to the expressed terms of Sections 366.82(1) and 403.519, Florida Statutes, and the decisions of the Supreme Court in the Nassau cases.

**ISSUE 15:** **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 and affirmed by the Supreme Court of Florida in the Nassau decisions.\*

**ISSUE 16:** 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?

**TECO:** \*No.\*

**ISSUE 17:** 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?

**TECO:** \*No. UCNSB does not hold itself out to be an applicant as to the merchant plant portion of the proposed project and, in the absence of a firm power sales agreement with Duke New Smyrna, it cannot be an applicant for the remaining portion.\*

**ISSUE 18:** 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?

**TECO:** \*No. Such a decision would foster uneconomic duplication of existing facilities.\*

**ISSUE 19:** Does the Joint Petition meet the pleading requirements of Rule 25-22.081, Florida Administrative Code?

**TECO:** \*No.\*

**ISSUE 20:** 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?

**TECO:** \*No.\*

**ISSUE 21:** 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?

**TECO:** \*Yes. Duke New Smyrna would be afforded an unwarranted special status.\*

**ISSUE 22:** 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?

**TECO:** \*Such a result would expose Commission regulated utilities to significant risks and uncertainties and adversely affect their ability to plan for future demand, thereby jeopardizing reliable electric service to utility customers in Florida.\*

**ISSUE 23:** 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?

**TECO:** \*No. Granting the requested determination of need would only complicate the ability of electric utilities in Florida to carry out their obligation to serve.\*

**ISSUE 24:** 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?

**TECO:** \*Yes.\*

**ISSUE 25:** 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?

**TECO:** \*Such a determination of need would confuse and adversely affect subsequent need determination proceedings, to the detriment of electric utility customers statewide.\*

**ISSUE 26:** 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?

**TECO:** \*The Commission's ability to ensure the maintenance of grid reliability and avoid uneconomic duplication of facilities would be adversely affected by such an abandonment and there is no evidence that such effects could be overcome.\*

**ISSUE 27:** 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?

**TECO:** \*Yes.\*

**ISSUE 28:** 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 effective would be negative.\*

**ISSUE 29:** 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?

**TECO:** \*No. Granting the requested determination of need would be contrary to Florida law and contrary to the interests of the citizens of Florida.\*

**ISSUE 30:** 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?

**TECO:** \*This is not a proper issue in a statutory need determination proceeding under Section 403.519, Florida Statutes.\*

**ISSUE 31:** Would granting the determination of need requested by the joint petitioners be consistent with state and federal energy policy?

**TECO:** \*Tampa Electric has opposed inclusion of this issue. However, since it was included, Tampa Electric's position is no. Granting the petition would be inconsistent with state policy. Moreover, federal policy defers to state policy in the area of generation siting. Accordingly, such action would also be inconsistent with federal policy.\*

**ISSUE 32:** 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?

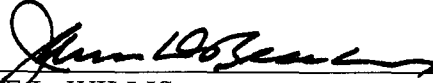
**TECO:** \*No.\*

**ISSUE 33:** Should this docket be closed?

**TECO:** \*Yes.\*

DATED this 19<sup>th</sup> day of January, 1998.

Respectfully submitted,



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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 Post-Hearing Issues and Positions, filed on behalf of Tampa Electric Company, has been furnished by hand delivery (\*) or U. S. Mail on this 19<sup>th</sup> day of January 1999 to the following:

Ms. Leslie J. Paugh\*  
Ms. Grace Jaye\*  
Staff Counsel  
Division of Legal Services  
Florida Public Service Commission  
Room 390L – Gunter Building  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Mr. Robert Scheffel Wright  
Mr. John T. LaVia, III  
Mr. Alan C. Sundberg  
Landers & Parsons, P.A.  
310 West College Avenue  
Tallahassee, FL 32301

Mr. James A. McGee  
Senior Counsel  
Florida Power Corporation  
Post Office Box 14042  
St. Petersburg, FL 33733

Mr. Gary L. Sasso  
Carlton, Fields, Ward, Emmanuel,  
Smith & Cutler, P.A.  
Post Office Box 2861  
St. Petersburg, FL 33731

Ms. Michelle Hershel  
Florida Electric Cooperatives  
Association, Inc.  
Post Office Box 590  
Tallahassee, FL 32302

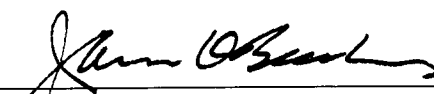
Ms. Gail Kamaras  
Legal Environmental Assistance  
Foundation, Inc.  
1114 Thomasville Road, Suite E  
Tallahassee, FL 32303

Mr. Charles A. Guyton  
Mr. Matthew M. Childs  
Steel Hector & Davis  
215 South Monroe Street, Suite 601  
Tallahassee, FL 32301

Mr. Terry L. Kammer  
PAC Director  
System Council U-4 (IBEW)  
3944 Florida Boulevard  
Palm Beach Gardens, FL 33410

Mr. Jon C. Moyle, Jr.  
Mr. Robert J. Sniffen  
Moyle, Flanigan, Katz, Kolins,  
Raymond & Sheehan  
210 South Monroe Street  
Tallahassee, FL 32301

Mr. Alan C. Sundberg  
c/o Landers & Parsons, P.A.  
Post Office Box 271  
Tallahassee, FL 32302

  
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ATTORNEY