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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: January 19, 1999

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U. S. GENERATING COMPANY'S POST HEARING BRIEF

Intervenor, U. S. Generating Company (hereinafter "USGEN"), files its post hearing brief pursuant to the Order Establishing Procedure for this docket, as amended. USGEN hereby sets forth its position on the issues raised in the Pre-Hearing Order, by adopting and incorporating by reference its Statement of Positions, filed on November 13, 1998.

USGEN supports the Petition filed in the instant need proceeding and urges that the Petition be granted. While the other parties to this action will undoubtedly delve into great depths and detail in arguing this case, USGEN's argument, steeped in public policy considerations, is succinct and straight-forward.

The Florida Public Service Commission (hereinafter "PSC" or "Commission") is empowered by the Legislature to implement and interpret the laws of Florida regarding electric

ACK utilities and the services they provide. The Commission is given considerable deference, by AFA 2 APP Florida courts and others, when exercising this power. Public Service Commission v. Bryson, CAF 569 So.2d 1253, 1255 (Fla. 1984). Indeed, Section 366.01, Florida Statutes, declares the CMU regulatory function performed by the PSC "to be in the public interest" and "all the [regulatory] DTR provisions hereof shall be liberally construed for the accomplishment of that [public] purpose." EAG Futrell EG 3 IN 5 The evidence adduced at the hearing clearly establishes that the Petitioners' project is in

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the "public interest." Dr. Dale M. Nesbitt, a Ph.D. economist, testified as an expert and presented compelling evidence that the Petitioners' project will result in net economic benefits for the ratepayers of Florida, which stands as perhaps the single greatest guidepost upon which decisions such as this one should be based. His testimony was not refuted.

The project presents environmental benefits that are also in the public interest. Jeffrey L. Meling, an engineer with over 19 years experience in the electric industry, established that the Petitioners' project will result in a net decrease in harmful air emissions. His testimony stood unrefuted. Specifically, this new power plant, employing the latest advancements in gas-fired combustion turbine technology, will displace a number of older, dirty, inefficient power plants that are still providing electricity in this State. A net reduction in air emissions, coupled with a new, clean, reliable source of power, is undoubtedly in the public interest.

So, too, is the project beneficial from the standpoint of reliability. As Florida continues to cope with record setting heat, the Petitioners' plant would exist as an option that retail providers of electricity could look to during critical times of high demand. The testimony of Michel P. Armand, an uncontested expert in electricity transmission, established that the existing transmission system would not allow significant energy to be shipped out of state, even if one wanted to do so. Duke's Florida manager, Mike Green, testified it was Duke's intent to sell power to Florida-based utilities, not to build a power plant in Florida so that it could sell power outside the State of Florida. To put the proper perspective on the reliability issue, no witness presented any credible reason or theory as to how the existence of a power plant, such as the one proposed by the Petitioners, would have caused any harm if it had been in the ground during the Christmas 1989 freeze. Former Federal Energy Regulatory Commission Chairman, Martha

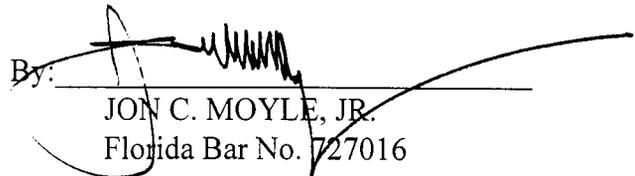
Hesse, testified that the existence of merchant plants in other jurisdictions have caused no harm. A power plant that enhances the State's reserve margins and will present a viable option during periods of high energy demand is without question in the public interest.

Finally, this Commission has gone on record as supporting a robust wholesale market. Expert testimony offered by Dr. Nesbitt established that the Petitioners' project would enhance competition in the Florida wholesale market, with ratepayers being the beneficiaries of such enhanced competition. Floridians will have the benefit of approximately 500 megawatts of additional power available on the wholesale market built to serve them. These ratepayers will not be forced to contribute any out-of-pocket expenses toward the construction costs of this new power plant.

USGEN urges this Commission, as the proverbial batter, to keep its eye on the ball and not be distracted by rote and misplaced chatter. The Petitioners established that the proposed project would benefit the State in a number of key ways. The Commission should be ever mindful of its statutory charge to "liberally construe" the State's existing regulatory scheme for "the protection of the public welfare." See Section 366.01, Florida Statutes. The Petitioners established that not only is the public interest protected by its proposed project, but that the public interest is enhanced. Indeed, it is hard to imagine how any project that enhances energy efficiency, reliability and the environmental quality of Florida's statewide generating fleet, without asking for any ratepayer-guaranteed return on investment, could do otherwise. Accordingly, the Petition should be granted.

Respectfully submitted this 19th day of January, 1999.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing U. S. Generating Company's Post Hearing Brief has been served by hand delivery (*) or by U. S. Mail on the following individuals this 19th day of January, 1999:

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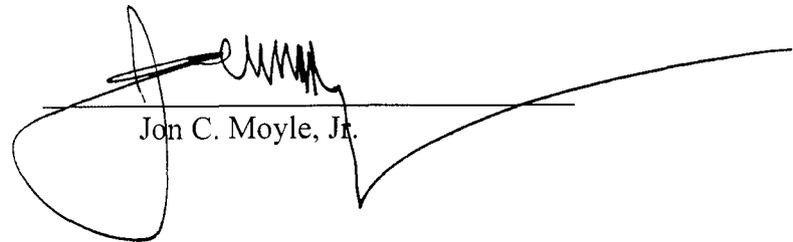
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