



Public Service Commission

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DATE: JUNE 8, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF SAFETY AND ELECTRIC RELIABILITY (BALLINGER)
DIVISION OF LEGAL SERVICES (STERN) MKS RVE

RE: DOCKET NO. 000612-EU - PETITION FOR DETERMINATION OF NEED FOR AN ELECTRICAL POWER PLANT IN ST. LUCIE COUNTY BY DUKE ENERGY ST. LUCIE, L.L.C.

AGENDA: 06/20/00 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\SER\WP\000612.RCM

CASE BACKGROUND

On May 22, 2000, Duke Energy St. Lucie, L.L.C., (Duke) filed a Petition for Determination of Need for an Electrical Power Plant. Duke proposes a 608 MW natural gas-fired, combined cycle merchant plant, an associated natural gas lateral pipeline, and transmission facilities to connect the plant to the Florida grid. These facilities are to be located in St. Lucie County. The anticipated in-service date is June 1, 2003.

On April 20, 2000, the Florida Supreme Court issued its decision in Tampa Electric Co.; Florida Power Corp.; and Florida Power & Light Co., v. Garcia, et al., as the Florida Public Service Commission; Utilities Commission, City of New Smyrna Beach; and Duke Energy New Smyrna Beach Power Co., Ltd., L.L.P., Case Nos. SC95444, SC95445, SC95446 (Order). Therein, the Court reversed the Commission's decision to grant a need determination "for an electric power company's proposal to build and operate a merchant plant in Volusia County." Order, p. 2. At page 13 of its Order,

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the Court indicated that "[a] determination of need is presently available only to an applicant that has demonstrated that a utility or utilities serving retail customers has specific committed need for all of the electrical power to be generated at a proposed plant."

On May 5, 2000, the Commission petitioned the Court for rehearing. The Court has not yet acted on the petition. Based on the Court's April 20, 2000, opinion, a determination of need is not available for Duke's proposed plant in St. Lucie County.

This recommendation addresses the status of the pending need determination docket.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission hold Docket No. 000612-EU in abeyance pending the Florida Supreme Court's final decision in Tampa Electric Co., et al. V. Garcia, et al., Case Nos. SC95444, SC95445, SC95446 (Duke-New Smyrna)

RECOMMENDATION: Yes. The petition for need determination in Docket No. 000612-EU should be held in abeyance until the Court issues a final decision in the Duke-New Smyrna case.

STAFF ANALYSIS: Staff believes it is necessary to put the docket in abeyance until the Court issues a final decision in the Duke-New Smyrna case. The Court's Order will not become final until a decision is made on the Commission's motion for rehearing and any motions for rehearing filed by other parties.

Given the Court's initial opinion, that need determinations are not available to merchant plants, proceeding with the docket could result in the unnecessary expenditure of the parties' and the Commission's time and resources. Therefore, staff recommends that the Commission hold this docket in abeyance pending a final decision by the Court in the Duke-New Smyrna case.

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ISSUE 2: Should Docket No. 000612-EU be closed?

RECOMMENDATION: No. This docket should remain open pending the Florida Supreme Court's final decision in the Duke-New Smyrna case.

STAFF ANALYSIS: The docket should remain open pending a final decision by the Florida Supreme Court in the Duke-New Smyrna case.