

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition to determine need for Treasure Coast Energy Center Unit 1, proposed electrical power plant in St. Lucie County, by Florida Municipal Power Agency.

DOCKET NO. 050256-EM
ORDER NO. PSC-05-0722-PHO-EM
ISSUED: July 5, 2005

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on June 20, 2005, in Tallahassee, Florida, before Commissioner J. Terry Deason, as Prehearing Officer.

APPEARANCES:

GARY V. PERKO, ESQUIRE, AND CAROLYN S. RAEPPLE, ESQUIRE, Hopping, Green, & Sams, P.A., 123 South Calhoun Street, Tallahassee, Florida 32301, FREDERICK M. BRYANT, ESQUIRE, AND JODY LAMAR FINKLEA, ESQUIRE, Florida Municipal Power Agency, P.O. Box 3209 Tallahassee, Florida 32315-3209.

On behalf of Florida Municipal Power Agency.

BRIAN D. O'NEILL, ESQUIRE, LeBoeuf, Lamb, Grenne & MacRae, L.L.P., 1875 Connecticut Avenue, N.W., Washington, D.C. 20009

On behalf of City of Vero Beach.

MARTHA CARTER BROWN, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

On behalf of the Florida Public Service Commission.

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

II. CASE BACKGROUND

On April 13, 2005, the Florida Municipal Power Agency (FMPA) filed a petition for determination of need for a proposed 300 megawatt (MW), natural gas-fired, combined cycle electrical power plant to be constructed at the Treasure Coast Energy Center in St. Lucie County.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

The petition was filed pursuant to section 403.519, Florida Statutes, and Rule 25-22.080, Florida Administrative Code. The Commission issued a Notice of Commencement of Proceedings to the appropriate agencies, local governments, and interested persons on April 22, 2005. A formal administrative hearing is scheduled for July 8, 2005.

III. JURISDICTION

The Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 366 and section 403.519, Florida Statutes. This hearing will be governed by said Statutes and Rules 25-22 and 28-106, Florida Administrative Code.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 366.093, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any parties intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Commission Clerk and Administrative Service's confidential files.

V. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

VI. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes. Upon insertion of a witness' testimony,

exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VII. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Richard L. Casey	FMPA	1, 2, 3, 4, 5
* Jonathan F. Schaefer	FMPA	1, 2, 5
Myron R. Rollins	FMPA	1, 2, 3, 4, 5
* Mary H. Novak	FMPA	2, 4, 5
* Michael P. Taran	FMPA	1, 2, 5
Stanley A. Armbruster	FMPA	2, 5
William S. May	FMPA	4, 5
* Bradley E. Kushner	FMPA	3, 4, 5

Each witness whose name is preceded by an asterisk (*) has been excused from this hearing if no Commissioner assigned to this case seeks to cross-examine the particular witness. Parties shall be notified by Wednesday, July 6, 2005, whether any of those witnesses shall be required to be present at the hearing. The testimony of excused witnesses will be inserted into the record as though read, and all exhibits submitted with those witnesses' testimony shall be identified as shown in Section X of this Prehearing Order and be admitted into the record.

VIII. BASIC POSITIONS

FMPA: Pursuant to Section 403.519, Florida Statutes, and Rule 25-22.081, Florida Administrative Code, FMPA seeks an affirmative determination of need for the proposed Treasure Coast Energy Center Unit 1 ("TCEC Unit 1). TCEC Unit 1 will enable FMPA to maintain electric system reliability and integrity and to allow FMPA to continue to provide adequate electricity to its member municipal utilities and their customers at a reasonable cost.

As demonstrated in FMPA's Need for Power Application, supporting appendices and pre-filed testimony, TCEC Unit 1 is needed for electric system reliability and integrity by the summer of 2008 when, absent TCEC Unit 1, FMPA's reserve margin would drop below its reserve margin criteria. TCEC Unit 1 is a highly efficient, state-of-the-art, natural gas-fired F class combined cycle electrical power plant which will be owned by FMPA. TCEC Unit 1 is highly efficient generating technology with demonstrated reliable commercial operation and will provide adequate electricity at a reasonable cost to FMPA and Peninsular Florida.

The Project is the most cost-effective alternative available to FMPA. FMPA determined to seek approval of the Project only after FMPA analyzed: (1) responses to a Request for Proposals ("RFP") for power supply from any source and/or technology constructed or to be constructed, and (2) demand side management alternatives. Based on a detailed economic analysis, TCEC Unit 1 was found to be more cost-effective than the lowest cost alternative proposal. Additionally, no cost-effective conservation measures were found that could mitigate the need for TCEC Unit 1. Furthermore, delaying TCEC Unit 1 would result in reduced reliability and higher costs.

For these and other reasons discussed more fully in FMPA's Need for Power Application, supporting appendices, and pre-filed testimony, the Commission should grant a favorable determination of need for TCEC Unit 1.

COVB: COVB's position is: a) that the project is not needed to meet the load requirements of the Florida Municipal Power Agency; and b) if the Commission determines there is a need for some additional generation capacity, COVB questions whether the project is the least cost way to meet this need.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

IX. ISSUES AND POSITIONS

ISSUE 1: Is there a need for the proposed Treasure Coast Energy Center Unit 1, taking into account the need for electric system reliability and integrity, as this criterion is used in Section 403.519, Florida Statutes?

POSITIONS

FMPA: Yes. FMPA needs TCEC Unit 1 to meet its capacity requirements for an 18 percent summer reserve margin in 2008 and its winter 15 percent reserve margin in winter 2008. The Project also will enhance the reliability and integrity of FMPA's electric system by utilizing the highly efficient F-Class combined cycle technology with the ability to burn two different types of fuel (natural gas and ultra-low sulfur diesel oil). In addition, TCEC Unit 1 will be directly connected to FPL's transmission system. This will allow FMPA to better serve its members in the FPL transmission grid, and help the State to mitigate flow problems from the north to the south.

COVB: Whatever need FMPA may have for the project must be determined after giving weight to the impact of COVB's withdrawal in 2010.

STAFF: No position at this time.

ISSUE 2: Is there a need for the proposed Treasure Coast Energy Center Unit 1, taking into account the need for adequate electricity at a reasonable cost, as this criterion is used in Section 403.519, Florida Statutes?

POSITIONS

FMPA: Yes. As stated above, TCEC Unit 1 is needed to maintain FMPA's reserve margin criteria. TCEC Unit 1 is the most cost-effective option available to FMPA. TCEC Unit 1 also provides cumulative present worth cost savings over the lowest cost supply-side alternative. TCEC Unit 1 is highly efficient and takes advantage of nearby electric, natural gas, and future treated sewage effluent infrastructure to lower the cost of installation. The proven technology is also very reliable.

COVB: Whatever need FMPA may have for the project must be determined after giving weight to the impact of COVB's withdrawal in 2010.

STAFF: No position at this time.

STIPULATED

ISSUE 3: Are there any conservation measures taken by or reasonably available to the Florida Municipal Power Agency which might mitigate the need for the proposed Treasure Coast Energy Center Unit 1?

POSITION: No. As a wholesale supplier of electric energy to its members, FMPA is not directly responsible for demand-side management (DSM) programs. Nevertheless, FMPA evaluated the cost-effectiveness of 87 commercial/industrial DSM measures and 54 residential DSM measures. FMPA used the Florida Integrated Resource Evaluator (FIRE) model, which the

Commission has found to be appropriate for evaluating conservation and DSM measures. FMPA assumed that rates for all members were equal to the rates from Keys Energy Services, the highest rates for an FMPA member. None of the potential measures passed the rate impact test in FMPA's initial analysis. Concerns were raised that using the higher rates of Keys Energy Services would overstate the lost revenues in the RIM test for members of FMPA with lower rates, and thus understate RIM results for those members. To address this concern, FMPA updated the DSM analysis, using residential rates for the City of Starke and commercial rates for Kissimmee Utility Authority, the lowest rates of the All-Requirements members for the respective rate classes. FMPA found that one DSM measure, Low Emissivity Glass, passed the RIM test; however, this measure did not pass the Participant or Total Resource tests. Thus, FMPA has adequately demonstrated that there are no cost-effective conservation measures reasonably available that would avoid or defer the need for TCEC Unit 1.

ISSUE 4: Is the proposed Treasure Coast Energy Center Unit 1 the most cost-effective alternative available, as this criterion is used in Section 403.519, Florida Statutes?

POSITIONS

FMPA: Yes. TCEC provides the most cost-effective solution to satisfy FMPA's forecast capacity requirements in 2008. As noted above, the project results in cumulative present worth savings over the lowest cost alternative submitted in response to FMPA's RFP.

COVB: The TCEC project is not needed to meet the load requirements of FMPA. If the Commission determines that there is a need for some additional generation capacity, after giving weight to the impact of COVB's withdrawal in 2010, FMPA has not demonstrated that the TCEC project is the least cost way to meet this need.

STAFF: No position at this time.

ISSUE 5: Based on the resolution of the foregoing issues, should the Commission grant the Florida Municipal Power Agency's petition to determine the need for the proposed Treasure Coast Energy Center Unit 1?

POSITIONS

FMPA: Yes. The Commission should grant the petition for determination of need for TCEC Unit 1 because it is the most cost-effective option available to meet FMPA's need for additional capacity to meet its reserve margin criteria beginning in 2008. There are no cost-effective conservation or demand-side measures available to offset the need. TCEC Unit 1 will provide FMPA adequate electricity at a reasonable cost and it will contribute to the reliability and integrity of FMPA's system as well as Peninsular Florida.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
		<hr/>	ARP's Existing Resource Capacity
		(RLC-2)	
Michael P. Taran		<hr/>	Annual Energy Outlook 2004 Natural Gas Supply Projections
		(MPT-1)	

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

XI. PROPOSED STIPULATIONS

The parties propose the stipulated position to Issues 3 and 6, found in Section IX above.

XII. PENDING MOTIONS

There are no pending motions at this time.

XIII. PENDING CONFIDENTIALITY MATTERS

FMPA's Notice of Intent to Request Confidential Classification of Document No. 05719-05, filed June 15, 2005, is pending.


XIV. RULINGS

Opening statements, if any, shall not exceed ten minutes per party.

It is therefore,

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 5th day of July, 2005.


J. TERRY DEASON
Commissioner and Prehearing Officer

(S E A L)

MCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.