

ORIGINAL

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June 15, 2006

VIA HAND DELIVERY

Blanca S. Bayó, Director
Division of the Commission Clerk &
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No.: 060220-EC

Dear Ms. Bayó:

Enclosed for filing are the original and seven (7) copies of Seminole Electric Cooperative, Inc.'s Post Hearing Statement and Brief.

If you or your Staff have any questions regarding this transmittal, please contact me at 222-2300.

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Very truly yours,

SQUIRE, SANDERS & DEMPSEY L.L.P.

Charles A. Guyton
Partner

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for determination of need for)
Seminole Generating Station Unit 3 electrical)
power plant in Putnam County, by Seminole)
Electric Cooperative, Inc.)
_____)

Docket No. 060220-EC

Filed: June 15, 2006

SEMINOLE ELECTRIC COOPERATIVE INC.'S

POST HEARING STATEMENT AND BRIEF

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BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for determination of need for
Seminole Generating Station Unit 3 electrical
power plant in Putnam County, by Seminole
Electric Cooperative, Inc.

Docket No. 060220-EC

Filed: June 15, 2006

**Posthearing Statement of
Seminole Electric Cooperative, Inc.**

Pursuant to Order No. PSC-06-0481-PHO-EC, Seminole Electric Cooperative, Inc.

(“Seminole”) files its Posthearing Statement in Docket No. 060220-EC.

BASIC POSITION

STIPULATED POSITION: *Seminole, a not for profit generation and transmission cooperative organized to serve its Member cooperatives, requests an affirmative determination of need for SGS Unit 3, a 750 MW supercritical pulverized coal generating unit to be located at the Seminole Generating Station. SGS Unit 3 will be designed to burn bituminous coal as well as a mix of coal and up to 30% petroleum coke and to employ state of the art air emission controls. SGS Unit 3 has an estimated cost of approximately \$1.4 billion and is scheduled for commercial operation in May 2012.

Seminole has undertaken a rigorous process to determine the most cost-effective means of meeting its capacity needs. Seminole’s need assessment indicated that Seminole and its Members needed over 1,200 MW to meet their reliability criteria in 2012, and 750 MW should be base load capacity. Seminole, its Members and their member/consumers need SGS Unit 3 to maintain system reliability and integrity, to provide adequate electricity at a reasonable cost and to avoid an undue reliance upon natural gas.

Seminole has considered a wide variety of alternatives to SGS Unit 3, including market alternatives identified in an open and fair capacity solicitation. There is not sufficient conservation and DSM available to Seminole and its Members to avoid the need for SGS Unit 3. Seminole’s extensive analyses show that SGS Unit 3 is the most cost-effective means for Seminole, its Members and their member/consumers to meet their base load needs in 2012. The addition of SGS Unit 3 allows Seminole to avoid an undue reliance upon natural gas and enhances the State of Florida’s fuel diversity and supply reliability.

Seminole has met each of the standards under Section 403.519, Florida Statutes for an affirmative determination of need. In addition, Seminole has proven serious adverse consequences to Seminole, its Members and their member/consumers and the communities they serve if an affirmative determination of need for SGS Unit 3 is not granted. Therefore, an affirmative determination of need for SGS Unit 3 is warranted. *

ISSUES AND POSITIONS

STIPULATED

ISSUE 1: Is there a need for the proposed Seminole Generating Station Unit 3, taking into account the need for electric system reliability and integrity, as this criterion is used in Section 403.519, Florida Statutes?

POSITION: *Yes. Seminole has two principal reliability criteria: (1) a 15% reserve margin and (2) a 1% Equivalent Unserved Energy (EUE) limitation. Seminole has projected its future needs based upon serving seven of the ten member distribution cooperatives that have signed contract extensions. Based on reasonable projected load growth and the expiration of existing power purchase contracts, Seminole has identified a need for additional capacity of approximately 1200 MW by 2012, and at least 750 MW needs to be base load capacity. Absent the addition of SGS Unit 3, Seminole will fail to meet its 15% reserve margin criterion in the year 2012, and its Members and their member/consumers will be faced with an unacceptably high risk of service interruptions.

SGS Unit 3 allows Seminole to avoid an undue reliance on natural gas generation, thereby maintaining a fuel mix that is sufficiently diverse to limit Seminole's vulnerability to the price uncertainty of natural gas and reliability issues related to natural gas. The addition of SGS Unit 3 would also reduce the State of Florida's reliance upon natural gas generation and improve its fuel diversity and supply reliability.*

STIPULATED

ISSUE 2: Is there a need for the proposed Seminole Generating Station Unit 3, taking into account the need for adequate electricity at a reasonable cost, as this criterion is used in Section 403.519, Florida Statutes?

POSITION: *Yes. Seminole's analyses show that at least 750 MW of Seminole's capacity need in 2012 should be base load type capacity for reasons of economics. With current projections, SGS Unit 3 is expected to provide adequate electricity at a reasonable cost. If SGS Unit 3 is not constructed, Seminole's Members and their member/consumers will face significantly higher costs and greater price uncertainty.*

STIPULATED

ISSUE 3: Is the proposed Seminole Generating Station Unit 3 the most cost-effective alternative available, as this criterion is used in Section 403.519?

POSITION: *Yes. SGS Unit 3 is the most cost-effective alternative available to Seminole, its Members and their member/consumers to meet their base load capacity needs in 2012. While not required pursuant to Commission Rules, Seminole conducted an open and fair capacity solicitation in an effort to secure the most cost-effective option for its Members. Seminole's comprehensive evaluation of alternatives shows that SGS Unit 3 is more cost-effective than market-based and self-build alternatives, saving almost \$500 million relative to an all gas alternative.*

STIPULATED

ISSUE 4: Are there any conservation measures taken by or reasonably available to Seminole Electric Cooperative, Inc. which might mitigate the need for the proposed power plant?

POSITION: *No. Seminole does not offer conservation or DSM programs directly to retail customers, and Seminole and its Members do not have Commission-approved goals and plans pursuant to FEECA. Seminole's Members do offer conservation and DSM programs to their consumers, and the effects of those programs are captured in the load forecast. Even after consideration of such conservation and DSM efforts, Seminole has a capacity need of over 750 MW in 2012. No additional DSM and conservation measures have been identified that would cost-effectively mitigate the need for SGS Unit 3.*

STIPULATED

ISSUE 5: Based on the resolution of the foregoing issues, should the Commission grant Seminole Electric Cooperative, Inc.'s petition to determine the need for the proposed Seminole Generating Station Unit 3?

POSITION: *Yes. Seminole has satisfied each of the statutory criteria for a determination of need, and Seminole, its Members and their member/consumers would suffer significant adverse consequences if such a determination were not granted. Seminole should continue to monitor the cost-effectiveness of SGS Unit 3 prior to committing substantial capital dollars.*

STIPULATED

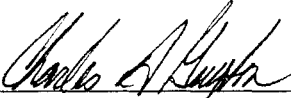
ISSUE 6: Should this docket be closed?

POSITION: *Yes. When the Commission has issued its final order in the case and the time for reconsideration has passed, this docket should be closed.*

Respectfully Submitted,

Squire, Sanders & Dempsey LLP
215 S. Monroe St., Suite 601
Tallahassee, FL 32301-1804

Attorneys for Seminole Electric Cooperative, Inc.

By: 

Charles A. Guyton
Fla. Bar No. 0398039

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for determination of need for
Seminole Generating Station Unit 3 electrical
power plant in Putnam County, by Seminole
Electric Cooperative, Inc.

Docket No. 060220-EC

Filed: June 15, 2006

BRIEF OF SEMINOLE ELECTRIC COOPERATIVE, INC.

**I.
INTRODUCTION**

The case before the Commission has been stipulated by the parties: Seminole Electric Cooperative, Inc. ("Seminole") and the Commission staff. Seminole, in a comprehensive and rigorous effort, took over two and half years to analyze its needs, seek market alternatives to meet its needs, assess its options, bring in independent third parties to perform feasibility studies, technology assessments and risk assessments, reach a reasoned decision, and justify its need for and decision to build SGS Unit 3 to the Commission. Then the Commission Staff thoroughly reviewed Seminole's testimony and exhibits, conducted informal and formal discovery and then reached the conclusions shared by Seminole: that Seminole needs SGS Unit 3, that SGS Unit 3 is the most cost-effective option available to meet Seminole's needs, and that there is not sufficient DSM and conservation available to mitigate the need for SGS Unit 3. Those stipulations are reflected in the Prehearing Order and in Seminole's foregoing Posthearing Statement. There is no other party to this proceeding, and at the hearing Seminole's extensive testimony and exhibits were stipulated into the record.

However, at the hearing, consistent with its Notice of Hearing, the Commission also received public testimony. Nine members of the public representing themselves and the Sierra Club provided non-expert testimony. Only one of the nine individuals providing public

testimony was a customer of Seminole's Members. The focus of most of this testimony was upon matters not before the Commission: (a) general environmental and health issues related to coal and coal mining in general and not SGS Unit 3, and (b) environmental externalities, a matter the Commission has previously decided as a matter of law is inappropriate for consideration in need cases. Sensitive to the need to reflect upon the comments of the public witnesses, the Commission chose to employ posthearing procedures set forth in its Order Establishing Procedure and the Prehearing Order.

Seminole's stipulated case unequivocally establishes that Seminole has satisfied each and every statutory criterion set forth in Section 403.519, Florida Statutes, for an affirmative determination of need. Moreover, Seminole has proven significant adverse consequences to Seminole, its Members, their member/consumers, the residents of Putnam County and the State of Florida if SGS Unit 3 is not added.

There is nothing in the public comments received by the Commission which refutes Seminole's compelling evidence. The public testimony should not be considered or should be given minimal weight. Most of the few relevant points offered are not Seminole specific, and in many instances remarks made by public commenters reinforce rather than refute the need for SGS Unit 3.

Given the record before the Commission, SGS Unit 3 should be given an affirmative determination of need. The following sections summarize the mostly uncontested evidence before the Commission and address the few relevant points raised in public testimony.

II. THERE IS A COMPELLING NEED FOR SGS UNIT 3.

Seminole, a not for profit generation and transmission cooperative owned and governed by its ten member distribution cooperatives ("Members") (Tr. 17, 18), has presented a

compelling need for Seminole Generating Station (“SGS”) Unit 3, a 750 MW supercritical pulverized coal to be brought into service in May 2012 at a cost of \$1.43 billion (Tr. 13). SGS Unit 3, which will be designed to burn bituminous coal and a mixture of up to 30% petroleum coke combined with coal, will employ state of the art technologies, including air emission controls. Exhibit 3 Need Study at 1, 32; Tr. 43-44. SGS Unit 3 will be built at Seminole’s existing plant site where it will share facilities with two existing 650 MW class pulverized coal units (Tr. 40-42), thereby minimizing its environmental impact and reducing its overall cost. Seminole, its Members and their members/consumers need SGS Unit 3 to (a) maintain system reliability and integrity, (b) to provide adequate electricity at a reasonable cost, and (c) to avoid an undue reliance upon natural gas. Tr. 27, 28, 112-16; Exhibit 3, Need Study at 49 – 51, 81.

A. SGS Unit 3 is Needed to Maintain System Reliability.

Seminole employs two reliability criteria to determine the amount of resources needed to maintain system reliability and integrity: a 15% reserve margin and an Expected Unserved Energy (“EUE”) of no more than 1.0%. Tr. 112. These measures of reliability are uncontested. Without SGS Unit 3, in 2012 Seminole will not meet either of its reliability criteria: Seminole’s reserve margin in 2012 would be negative (Seminole would not have sufficient resources to meet its forecasted load, much less 115% of its load), and its EUE would be 1.2%. Exhibit 3, Need Study at 78. At such low levels of reliability there would be an unacceptable risk of customer interruptions. Id.

In assessing its need for capacity, Seminole prepared a load forecast which included historic and forecasted conservation and DSM on Seminole’s system. Tr. 92. That load forecast is uncontested. Seminole’s need assessment showed that it would need 1261 MW of additional resources in 2012 to meet its 15% reserve margin criterion. Exhibit 3, Need Study at 50. In

2014 Seminole's need for additional capacity was shown to increase to over 4,000 MW. *Id.* Seminole's analysis also showed that at least 750 MW of its 2012 need should be met with base load capacity. *Id.* Thus, SGS Unit 3 is needed to meet Seminole's significant need for base load capacity in 2012 and is essential for Seminole to meet its reliability criteria in 2012.

B. SGS Unit 3 is Needed to Provide Adequate Electricity at a Reasonable Cost.

Without SGS Unit 3, Seminole would have to rely upon natural gas alternatives to attempt to meet its reliability criteria. Tr. 30. There are no alternative coal options now available to Seminole to meet its 2012 base load capacity need. *Id.* The best natural gas alternative available to Seminole would have been a comparable amount of gas combined cycle capacity. Tr.125-26. Seminole's economic analysis, which was reinforced by independent analyses performed by Burns & McDonnell and R. W. Beck, showed that the least cost gas alternative available to Seminole would be almost \$500 million dollars net present value (NPV) more expensive than SGS Unit 3. Tr.126. Seminole, its Members and their member/consumers would face almost \$500 million dollars of higher costs over the next thirty years if SGS Unit 3 were not approved. Exhibit 3, Need Study at 79. Moreover, they would face greater price and fuel supply uncertainty if Seminole relied upon natural gas rather than SGS Unit 3 for additional base load capacity. Tr. 31 – 32. This evidence is uncontested.

C. SGS Unit 3 is Needed to Avoid an Undue Reliance upon Natural Gas.

Without SGS Unit 3, Seminole's reliance upon natural gas generation would increase from its present level of 37% of energy generated to 52% in 2013, the first full year after the addition of SGS Unit 3. Exhibit 9. This is an unacceptable level of reliance upon natural gas generation for Seminole. Tr. 31, 32. Natural gas has suffered significant price escalation and

volatility over the last several years. Tr.31. In addition, Florida's natural gas supply has experienced significant risk of interruptions, particularly during hurricane season (Tr. 31), which coincides with significant peak demand periods in Florida. With SGS Unit 3, Seminole would generate only 27% of its energy in 2013 with natural gas. Exhibit 9. This would expose Seminole, its members and their member/consumers to a far smaller risk of price and supply uncertainty. Tr. 31, 32.

III.
Unit 3 is the Most Cost-Effective Alternative
to Meet Seminole's Demonstrated Need.

Seminole has assessed a wide array of alternatives to meet its demonstrated need. Those alternatives include self-build generating technologies as well as market based alternatives. No renewable alternatives bid into Seminole's "all-source" RFP, and SGS Unit 3 was, by far, the most cost-effective alternative available. It will save Seminole, its Members and their member/consumers over \$123 million over the next best coal option, which would have included a smaller self-build coal unit at SGS plus a share in a joint project and \$500 million over the least cost natural gas alternative. Tr. 126.

A. Seminole's Preliminary Analysis Showed Pulverized Coal to be Cost-Effective.

After determining its significant need for capacity in the 2009-1012 time frame, Seminole began considering self-build alternatives it might build and which it would use as a target for its RFP. Seminole assessed a wide variety of generating technologies, including nuclear, pulverized coal, combustion fluidized bed (CFB) coal, integrated coal gasification combined cycle (IGCC), and gas combined cycle. Exhibit 3, Need Study at 61 – 63. Seminole's analysis suggested that the two most promising technologies to meet Seminole's 2012 base load requirements were

pulverized coal and gas combined cycle, with pulverized coal having a significant economic advantage relative to gas combined cycle. Id.

B. An Independent Engineering Firm Found a Pulverized Coal Unit to be More Cost-Effective than Other Alternatives.

Seminole commissioned an independent engineering firm, Burns & McDonnell, to assess pulverized coal, gas combined cycle and IGCC as potential self-build candidate alternatives. Exhibit 3, Need Study at 63, 64; Tr. 116, 117. Burns & McDonnell concluded that a pulverized coal unit (either supercritical or subcritical) was feasible at the SGS site and would be more economical than a combined cycle unit; Burns & McDonnell also assessed IGCC was not sufficiently proven in commercial applications, both as to operational experience and cost. Exhibit 15; Tr. 58, 59. Therefore, Seminole decided to analyze RFP responses against three self-build alternatives: a 600 MW pulverized coal unit, a 500 MW gas combined cycle unit and a 150 MW joint coal unit participation. Tr. 117, 118.

C. Seminole's RFP Found a Self-Build Pulverized Coal Option to be far more Cost-Effective than any Market Alternative.

In April 2004 Seminole issued an "all-source" RFP requesting purchased power alternatives for base load capacity as early as summer 2009 and as late as Summer 2012. Tr. 99; Exhibit 3, Appendix H. Seminole did not specify a technology or contract term. Tr. 101; Exhibit 3, Need Study Appendix H. The RFP was widely published and distributed. Tr. 101; Exhibit 30.

Seminole received fourteen RFP proposals from five bidders, both Independent Power Producers and Investor Owned Utilities, with proposals ranging from 100 MW to 750 MW and terms ranging from ten to forty years. Tr. 102, 103. The offers were from both existing and

proposed gas combined cycle units and three proposed pulverized coal units. Id. None of the RFP bids were from renewable energy resources such as biomass, wind or solar. Id.

Seminole performed an economic evaluation of the RFP proposals. Tr. 118 – 120. The evaluation showed that pulverized coal options were significantly less costly than gas combined cycle alternatives. Exhibit 34; Tr.120. It also showed that Seminole’s self-build alternative was the least cost pulverized coal alternative. Exhibit 34. Seminole gave the lowest cost bidders an alternative to lower their bids, but that effort did not meaningfully change the results of the economic analysis. Tr. 104; Exhibit 34.

D. An Independent Consultant Found an 80 % Probability That A Pulverized Coal Unit Would be More Cost-Effective than a Combined Cycle Natural Gas.

Seminole contracted with R.W. Beck to conduct a probability based risk assessment between a coal-based scenario and an all-gas scenario. Tr. 122. In that assessment, R.W. Beck performed a base line present worth revenue requirements analysis showing that the coal option was \$476 million less costly than the gas scenario, confirming the earlier RFP evaluation. Tr. 123. The risk variables examined by R.W. Beck included: major loss of load; high and low fuel prices; changes in power market prices; changes in inflation; changes in environmental costs (a carbon tax on CO2 emissions); capital cost recovery uncertainty; and variations in fixed cost of generic units. Exhibit 3, Need Study Appendix K. Beck assessed the cumulative probability that the coal scenario would be less costly than the gas scenario. Id. Beck found that there was “an 80% probability that cumulative NPV under the Coal Option will be lower than the cumulative NPV under the Gas Option.” Id.

E. Burns & McDonnell's Updated Feasibility Study Showed that a 750 MW Supercritical Pulverized Coal Unit had a still Lower Cost.

Confronted with a larger than originally anticipated base load capacity need and potential delay with the joint coal project, Seminole requested an updated Feasibility Study from Burns & McDonnell assessing a 750 MW class pulverized coal unit. Burns & McDonnell's updated Feasibility Assessment showed that a 750 MW unit was feasible and had a lower cost than the 600 MW unit or the 600 MW unit in conjunction with participation in a 150 MW joint unit. Exhibit 15; Tr. 124.

F. Seminole's Updated Economic Analysis Showed that SGS Unit 3 Would be \$500 Million NPV More Cost-Effective Than a Natural Gas Plan.

Based upon the various analyses performed, in March 2005 Seminole's Board voted to move forward with SGS Unit 3. Tr. 125. In the summer of 2005, Seminole updated its base case assumptions and performed an updated analysis of SGS Unit 3. Id. The updated analysis showed that SGS Unit 3 was \$498 million less costly on a cumulative present worth revenue requirement basis than an all-gas alternative. Tr. 126.

G. SGS Unit 3 is the Most Cost-Effective Alternative.

SGS Unit 3 is the best, most cost-effective alternative available to meet the base load capacity needs of Seminole, its Members and their member/consumers in 2012. This has been exhaustively documented through internal analyses, a thorough assessment of market alternatives and independent evaluations by reputable engineering and consulting firms.

IV.

There Is Not Sufficient Conservation and DSM Available to Mitigate the Need For SGS Unit 3.

Seminole does not serve end use customers. Tr. 90. Therefore, Seminole does not have the opportunity to offer conservation or demand side management ("DSM") programs to end use

customers. Exhibit 3, Need Study at 72. However, through proper pricing signals that provide incentives to lower demand on the Seminole system peak, Seminole has encouraged its Members to offer DSM and conservation when it is cost-effective to do so. Tr. 29, 90, 91. These efforts by Seminole have contributed to Seminole's Members installing 237 MW of DSM, which were reflected in Seminole's load forecast. Tr. 91, 92.

Seminole and its Members are not included in the Florida Energy Efficiency and Conservation Act ("FEECA"). Exhibit 3, Need Study at 72. Therefore, they do not have Commission approved DSM and conservation goals and plans. *Id.* Nonetheless, Seminole's Members do offer a wide array of conservation and DSM programs to their member/consumers. *Id.*; Tr. 91, 92. The historic and forecasted impact of these programs was reflected in Seminole's load forecast. Tr. 92.

Seminole's need assessment, which captured all known conservation and DSM on Seminole's system, showed Seminole needed 1261 MW of additional capacity to meet its 15% reserve margin criterion, with 750 MW of that need being base load capacity. Exhibit 3, Need Study at 50. Given the size of Seminole's additional capacity need, the fact that all known DSM and conservation on the Seminole system was reflected in that capacity need, the fact that Seminole is comprised of ten different members with different sizes, costs and risk characteristics and is not an integrated utility which can offer uniform DSM programs, that DSM is not an appropriate substitute for base load capacity, and that even the most aggressive FEECA utilities in Florida forecast a DSM and conservation adoption rate well below the level necessary for Seminole to meet its capacity need through DSM and conservation, there is not reasonably achievable DSM and conservation available for Seminole and its Members to avoid the need for SGS Unit 3. Exhibit 3, Need Study at 74 – 77.

V.

The Public Comments Presented to the Commission Do Not Warrant a Denial of a Determination of Need for SGS Unit 3.

At the hearing the Commission was presented with the testimony of nine public witnesses. Seminole cross-examined most of those witnesses to demonstrate that they were not experts and to show that their comments were not Seminole specific. The Commission decided not to reach a bench decision to give consideration to these public comments. Therefore, the remainder of this brief focuses upon those comments to demonstrate that they provide no basis upon which to deny an determination of need for SGS Unit 3.

A. Public Testimony Addressing Environmental and Health Impacts is Irrelevant to the Issues in this Proceeding.

Much of the public testimony focused upon the environmental impact associated with coal-fired generation and coal mining. Seminole objected to this testimony as being irrelevant and beyond the scope of this proceeding.

The Commission recognized in its Notice of Hearing and Prehearing that environmental issues were not properly before the Commission in this proceeding. There the Commission said:

Only issues relating to the need for the proposed power plant will be heard at this hearing. Separate public hearings will be held before the Division of Administrative Hearings at a later date to consider environmental and other impacts of the proposed plant and associated facilities.

Exhibit 2.

The Commission's observation in its Notice of Hearing and Prehearing regarding the proper scope of need determination proceedings is consistent with prior Commission precedent which has consistently rejected consideration of environmental testimony in need cases. In both the Ft. Lauderdale repowering need case and the Martin expansion case in 1990 the Commission specifically addressed why it was inappropriate to consider environmental issues in need cases:

The Siting Act sets forth a comprehensive licensing scheme for new and expanded steam-fired generating capacity. . . . The Commission does not have statutory jurisdiction over the environment or natural resources in the State of Florida. The responsibility for those areas is divided among numerous state and local agencies: DER, the Department of Natural Resources, local Water Management Districts, the Game and Fresh Water Fish Commission, local zoning boards to name but a few. These are the agencies which are charged with the evaluation of environmental impacts of this or any future proposed plants. These matters are simply not within the jurisdiction of this body and therefore, are not properly considered in the need determination at issue here.

The environmental impacts of these proposed units are properly litigated before the hearing officer in the final certification hearing. And under Section 403.507(2), Florida Statutes, DER is charged with the responsibility and authority to conduct or contract for studies in the following areas:

- (e) Impact on suitable present and projected water supplies for this and other competing land uses;
- (f) Impact on surrounding land uses;
- (h) Environmental impacts.

The forum in which the Legislature intended the record to be developed on the environmental impacts of proposed power plants is the forum in which the agencies charged with environmental matters have the greatest input: the final certification hearing. Given the existence of this forum and the lack of jurisdiction over the subject matter, the Commission should not seek to expand its need determination proceedings to cover environmental and natural resource issues.

In re: Petition of Florida Power & Light Co. to determine need for electrical power plant – Lauderdale repowering, Docket No. 8990973-EI, Order No. 23079 at 18-20, June 15, 1990, 90 FPSC 6:240, 257-59; In re: Petition of Florida Power & Light Co. to determine need for electrical power plant – Martin County, Docket No. 890974, Order No. 23080, June 15, 1990, 90 FPSC 6:268, 287-89.

The issue arose again in the 1992 Cypress need determination case, and the Commission's disposition was the same:

Only issues relating to the need for the proposed power plant as proscribed by section 403.519, Florida Statutes, will be heard in this proceeding. Separate

public hearings will be held by the Department of Environmental Regulation before the Division of Administrative Hearings to consider environmental and other impacts of the proposed plant and associated facilities.

In re: Joint Petition to determine the need for electric power plant to be located in Okeechobee County by Florida Power & Light Company and Cypress Energy Partners, Limited Partnership, Docket No. 920520-EQ, Order No. 92-0827-PHO-EQ, Aug. 18, 1992.

Seminole respectfully submits that the Commission should not consider the public testimony in this case regarding environmental impacts, no matter how well-intentioned. Consistent with your Notice of Hearing and Prehearing, upon which Seminole relied, and your prior precedent, this evidence is irrelevant to the determination of need and should be disregarded.

B. Environmental Externalities Are Not Appropriately Considered In a Determination of Need Case.

Several of the public witness also asked the Commission to consider environmental externalities in its consideration of costs. Initially, it should be noted that there was no attempt by any of the witnesses to address whether Seminole had considered such costs or how such costs should be identified or calculated if it were determined that Seminole did not employ them and they should have been employed. So, even if the Commission were inclined to consider externalities, there is nothing in the record to quantify them for SGS Unit3.

However, consistent with prior Commission precedent, the Commission should not consider environmental externalities in determination of need cases. This has been decided as a matter of law in at least three different Commission need determination cases.

In the Ft. Lauderdale repowering and Martin expansion cases, the Commission had the following to say regarding environmental externalities:

[W]e are of the opinion that the Commission cannot and should not consider these types of environmental and natural resource costs in making need determinations pursuant to the Power Plant Siting Act.

...

Externalities which involve a balancing of public good versus the need for new generation are the matters which are properly excluded from consideration by this body and best left to the environmental agencies and ultimately the Governor and Cabinet. Therefore, we find that the Commission **can not** and **should not** consider the cost to the state and its citizens of the environmental and natural resource impacts of the proposed [units]. (Emphasis added.)

In re: Petition of Florida Power & Light Co. to determine need for electrical power plant – Lauderdale repowering 90 FPSC 6:240, 254, 259; *In re: Petition of Florida Power & Light Co. to determine need for electrical power plant – Martin County*, Docket No. 890974, Order No. 23080, June 15, 1990, 90 FPSC 6:268, 281 289-90. The Commission similarly stated in the Cypress need determination case:

Generally, we believe that we should not consider the costs and benefits associated with environmental externalities when evaluation cost effectiveness in need determination proceedings. This is because the statutory scheme envisions the bifurcation of environmental issues (which are considered by the DER) and regulatory issues (which are considered by the Commission). The Florida Public Service Commission has neither the expertise, the personnel, nor a statutory directive to consider such environmental issues. These issues, traditionally and statutorily have been considered by the Florida Department of Environmental Regulation and not by the Florida Public Service Commission.

In re: Joint Petition to determine need for electric power plant to be located in Okeechobee County by Florida Power & Light Co. and Cypress Energy Partners, Limited Partnership, Docket No. 920520-EQ, Order No. 92-1355-FOF-EQ, Nov. 23, 1992.

C. None of the Public Witnesses were Experts in the Matters Upon Which they Offered Opinion Testimony.

Most of the public witnesses acknowledged either during cross examination or volunteered on their own that they did not consider themselves to be experts in the matters they were addressing. Tr. 137, 147-48, 154, 159, 190, 200. Thus, the myriad opinions they offered

were not expert opinions. This is not the type of evidence the Commission should rely upon in making a determination of need, particularly when there is uncontested, stipulated expert evidence supporting every relevant aspect of Seminole determination of need.

D. There are not Renewable Energy Options Available to Meet Seminole's 2012 Base Load Capacity Need.

Several of the public witnesses advocated the use of renewable energy resources in lieu of SGS Unit 3. They argued, as Mr. Lupiani did, that biomass and wind "is coming" (Tr. 196). However, the evidence shows that there are not sufficient, low cost renewable resources available to meet Seminole's need, which Seminole cannot wait to meet.

Seminole has a commitment to the use of cost-effective renewable resources that have economic value to its customers. Seminole has three renewable resources under contract. Tr. 99. Two of those contracts, a 7 MW contract with a landfill gas based provider and a 12 MW contract with a biomass based provider, were entered while Seminole was seeking resources to meet its 2012 need. Exhibit 3, Need Study at 12, 13. Moreover, Seminole has previously issued a renewable RFP. Tr. 98.

The evidence in this case shows that there are not sufficient renewable resources available to meet Seminole's need. The RFP Seminole issued in April 2004 to meet the need to be met by SGS Unit 3 was an "all-source" RFP. Tr. 99 – 100. That means no type of unit was required to be bid. Renewable energy providers were free to bid into the RFP. Tr. 100. No renewable providers bid into Seminole's RFP. Tr. 103; Exhibit 31. In short, the market does not support the urging of the public witnesses. No biomass, no wind resources and no solar providers bid into Seminole's RFP. Id. This is compelling evidence that there are not renewable resources available to cost-effectively meet Seminole's need for SGS Unit 3.

Moreover, even the public testimony raises question about the feasibility of using renewable resources to meet Seminole's need. Mr. Brinkman, who offered no evidence of the relative cost of biomass to pulverized coal, acknowledged that to provide the 750 MW of capacity SGS Unit 3 would provide, a biomass facility would need 80,000 to 90,000 acres devoted to it, and he had no idea whether such acreage is even available in Florida. Tr. 146.

E. Seminole Has Appropriately Considered the Costs of Incremental Emission Allowances in its Economic Analysis.

Mr. Hendrickson raised an issue of whether Seminole had appropriately considered emission allowances in its economic analysis of alternatives. He pointed out that OUC had recognized such costs when considering incremental unit additions, and he was uncertain whether Seminole has considered such costs.

This issue is addressed in Seminole's response to Staff Interrogatory 19, which is part of Exhibit 2. There Seminole explains that the retrofits of SGS Units 1 and 2 would free up so many NOx and SO2 allowances that the addition of SGS Unit 3 would not require the purchase of additional emission allowances. So, unlike OUC, which would have to purchase incremental allowances for its options, Seminole will not. Consequently, Seminole did not include incremental emission allowance costs in its economic analysis. Exhibit 2, Staff Interrogatory 19.

F. None of the Commenters Demonstrated any Deficiency with Seminole's DSM Assessment or Implementation.

Several of the public commenters advocated the use of additional energy efficiency measures. Mr. Urse spent a great deal of time addressing the additional DSM potential that consultants for the City of Tallahassee had found for the City of Tallahassee. However, none of the commenters specifically addressed the DSM and conservation efforts of Seminole and its Members. Therefore, Seminole's evidence regarding its DSM and conservation, that there is not

a sufficient quantity of reasonably achievable conservation and DSM available to meet the need for SGS Unit 3, is uncontested.

G. Seminole Appropriately Considered the Risk of a Carbon Tax.

A couple of public commenters suggested that a risk of coal is the risk that a carbon tax would be imposed by Congress and such a risk should be considered. It appears that none of the commenters knew that Seminole had assessed this risk with SGS Unit 3.

The uncontested evidence in this case is that Seminole did assess the risk of a potential carbon tax in its evaluation. This was one of several risks considered by Seminole in its R.W. Beck-assisted risk assessment analysis. See Exhibit 3, Need Study Appendix K. That risk assessment concluded that even considering the possibility of a carbon tax, there was an 80% probability that a coal strategy would prove less costly for Seminole than a gas strategy. Therefore, this uninformed public opinion about carbon tax is not a basis to reject SGS Unit 3, this matter was appropriately considered.

H. Commissioner Jacobs' Testimony Supported the Addition of SGS Unit 3.

Former commissioner Leon Jacobs presented comments on behalf of the Sierra Club, asking the Commission to consider a myriad of risks associated with coal generation. Tr. 199 – 215. Once again, little or nothing specific about SGS Unit 3 was addressed.

Much of what former commissioner Jacobs addressed is appropriately considered initially by the management of a utility rather than the Commission. There was no evidence offered that Seminole's management had failed to consider these matters. There is, however, considerable evidence that many of these matters have been considered by Seminole. Indeed, when that evidence is considered in conjunction with former commissioner Jacobs' testimony, Seminole

believes that former commissioner Jacobs' testimony actually supports an affirmative determination of need for SGS Unit 3.

Commissioner Jacobs began his observations by suggesting that the approach of encouraging fuel diversity through the addition of solid fuel resources was "not unreasonable." Tr. 199. He noted that it was a response to "incredible demand growth in the state, pretty much at baseload." Tr. 200. Of course, that is what Seminole faces: faster customer growth than the State of Florida's, Tr. 85, compounded by the expiration of purchased power contracts, Tr. 113, and a large part of the incremental need being base load capacity need, Tr. 116.

Commissioner Jacobs then complimented the Commission's Staff. He noted that the Staff is "tops in this region, if not the country...." Tr. 200. Of course, that is the same Staff which has reviewed Seminole's need filing and reached the conclusion that Seminole's evidence should go into the record uncontested and that Seminole should be granted an affirmative determination of need for SGS Unit 3.

Commissioner Jacobs then referred to a host of risk factors, not all of which will be repeated here. However, there are several important factors that warrant mentioning.

One of the primary risk factors former commissioner Jacobs testified should be considered is the prospect of coal price increases. Tr. 201-05. Of course, Seminole assessed that risk in the R.W. Beck study that concluded there was an 80% probability that Seminole's coal strategy would be less costly than an all-gas strategy. Exhibit 3, Appendix K.

Former Commissioner Jacobs testified that the break even point between coal and gas should be examined. Tr. 206. The evidence in this case is that there is no break even point. In every year from the in-service date of SGS Unit 3 through the end of the planning horizon SGS

Unit 3 is less expensive than an all gas approach. Exhibit 36. Over the entire period, SGS Unit 3 is \$498 million less expensive than an all gas approach.

Another risk factor former commissioner Jacobs testified should be examined is potential emissions. Tr. 208-09. However, he readily acknowledged that with the retrofits to SGS Units 1 and 2 and the state of the art emission controls on Unit 3 the level of SO₂, NO_x and mercury emission at the SGS would actually decline from current levels even after SGS Unit 3 was added. Tr. 217.

Commissioner Jacobs also suggested the risk associated with the creation of greenhouse gases should be considered. Tr. 205-06. Of course, the evidence is that Seminole did just that in the R.W. Beck Study. Exhibit 3, Need Study Appendix K.

Commissioner Jacobs testified that more distributed generation is coming on line. Tr. 215. Of course, Seminole's Members have been encouraging the addition of such generation with 97 MW of customer owned generation already having been added. Tr. 91.

Much of what former commissioner Jacobs asked the Commission to consider are matters that are not utility specific; they do not address Seminole or SGS Unit 3 in particular. However, when you consider his points in light of the evidence, it is clear that most of those points have been considered by Seminole's management. Given that consideration and the failure of Commissioner Jacobs to mention any specific factor that did not warrant approval of a determination of need for SGS Unit 3, Seminole takes the position that former commissioner Jacob's testimony supports the determination of need for SGS Unit 3. It certainly does not establish a basis to deny such a determination of need.

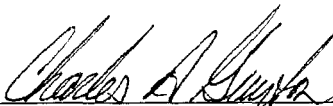
VI.
Conclusion

The stipulated case before the Commission shows that an affirmative determination of need for SGS Unit 3 is warranted. Each of the statutory standards has been satisfied. The limited portion of the public testimony that is relevant provides no basis to deny a determination of need for SGS Unit 3. Indeed, much of that testimony shows that an affirmative determination of need should be granted. Seminole, its Members and their member/consumers need SGS Unit 3 for a variety of reasons. SGS Unit 3 is the most cost-effective alternative available to meet those needs. There is not DSM and conservation available to meet the need for SGS Unit 3, and there would be serious adverse consequences to Seminole, its Members, their member/consumers, the communities they serve and the State of Florida if a determination of need for SGS Unit 3 was not granted. The Commission should grant an affirmative determination of need for SGS Unit 3.

Respectfully submitted,

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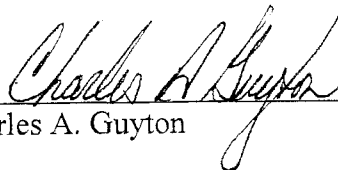


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Certificate of Service

I hereby certify that a true and correct copy of the foregoing Brief and Posthearing Statement of Seminole Electric Cooperative, Inc. has been served by hand delivery on this 15th day of June, 2006, on the following:

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