



FECA

Florida Electric Cooperatives Association, Inc.

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November 2, 1998

Ms. Blanca Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RE: Docket No. 981042-EM

Dear Ms. Bayo:

Enclosed for filing in the the above docket are the original and fifteen (15) copies of Florida Electric Cooperatives Association's Prehearing Statement.

Thank you for your assistance in this matter.

Sincerely,

ACK Michelle Hershel

AFA _____

APP _____

CAF _____

CMU _____

CTR _____

EAG Futrell

LEG 3

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OPC _____

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SEC 1

WAS _____

OTH _____

DOCUMENT NUMBER-DATE

12169 NOV-2 1998

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition for)	Docket No. 981042-EM
determination of need for an)	
electrical power plant in Volusia)	Dated: November 2, 1998
County by the Utilities Commission,)	
City of New Smyrna Beach, Florida,)	
and Duke Energy New Smyrna)	
Beach Power Company Ltd., L.L.P.)	
_____)	

FLORIDA ELECTRIC COOPERATIVES ASSOCIATION, INC.'S PREHEARING STATEMENT

The Florida Electric Cooperatives Association, Inc., (FECA), by and through its undersigned counsel, submits its Prehearing Statement in connection with the hearing that is scheduled for December 2 through 4, 1998 in the above-styled docket.

A. WITNESSES

FECA is not sponsoring any witnesses.

B. EXHIBITS

FECA has not filed any exhibits.

C. BASIC POSITION

Duke New Smyrna's petition cannot be approved by the Florida Public Service Commission because it does not satisfy the fundamental requirements that are set forth in Section 403.519, F.S., and Rule 25-22.081, F.A.C. Moreover, Duke New Smyrna has not identified a retail need for the majority of the capacity and energy from the proposed plant. Until such time that Duke identifies an end-use "need" for its proposed plant, it must be presumed that the need at issue already is being addressed by FECA's members and the other utilities that sell electricity at retail in Florida, and that there is no "need" for the proposed plant.

DOCUMENT NUMBER-DATE

12169 NOV-28 000754

FPSC-RECORDS/REPORTING

D. STATEMENT OF EACH QUESTION OF FACT

NEED FOR ELECTRIC SYSTEM RELIABILITY AND INTEGRITY

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?

FECA's Position: No.

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?

FECA's Position: No position at this time.

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?

FECA's Position: The Commission has sufficient information to deny the petition for need, but the Commission cannot approve the Petition based upon the information that Duke has submitted.

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?

FECA's Position: No. FECA supports the inclusion of this issue in this docket.

ISSUE 5: Can or should the capacity of the proposed project be properly included when calculating the reserve margin of an individual Florida utility or the State as a whole?

FECA's Position: The capacity of the proposed project can not and should not be included in the calculation of the reserve margin of an individual Florida utility or the State as a whole until such time that the plant's output is contractually obligated to be delivered to a utility that serves retail customers in Florida.

ISSUE 6: What impact will the proposed project have on the reliability of generation and transmission systems within Florida?

FECA's Position: Duke's proposal to meet an unidentified need will not

contribute to a retail utility's planning for future needs and will, in fact, unnecessarily increase the uncertainty and financial risk associated with providing reliable service.

ISSUE 7: What transmission improvements and other facilities are required in conjunction with the construction of the proposed facility, and were their costs adequately considered?

FECA's Position: No position at this time.

NEED FOR ADEQUATE ELECTRICITY AT A REASONABLE COST

ISSUE 8: 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?

FECA's Position: No.

MOST COST EFFECTIVE ALTERNATIVE AVAILABLE

ISSUE 9: Is the proposed power plant the most cost-effective alternative available, as this criterion is used in Section 403.519?

FECA's Position: No. Duke New Smyrna has not provided prices for sales of capacity and energy from the proposed plant.

ISSUE 10: 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?

FECA's Position: No position at this time.

ISSUE 11: What impact, if any, will the proposed power plant have on natural gas supply or transportation resources on State regulated power producers?

FECA's Position: No position at this time. FECA supports the inclusion of this issue in this docket.

ISSUE 12: Will the proposed project result in the uneconomic duplication of transmission and generation facilities?

FECA's Position: No position at this time.

ISSUE 13: Have the UCNSB and Duke New Smyrna provided sufficient information on the site, design, and engineering characteristics of the New Smyrna Beach Power Project to evaluate the proposed Project?

FECA's Position: No position at this time.

ISSUE 14: Have the costs of environmental compliance associated with the New Smyrna Beach Power Project been adequately considered by the UCNSB and Duke New Smyrna?

FECA's Position: No position at this time.

ISSUE 15: What are the terms and conditions pursuant to which the electric utilities having the need will purchase the capacity and energy of the proposed power plant?

FECA's Position: No position at this time. FECA supports the inclusion of this issue in this docket.

ISSUE 16: 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?

FECA's Position: No position at this time.

CONSERVATION MEASURES

ISSUE 17: Are there any conservation measures taken by or reasonably available to the petitioners which might mitigate the need for the proposed power plant?

FECA's Position: No position at this time.

FINAL ISSUES

ISSUE 18: 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?

FECA's Position: No.

ISSUE 19: Should this docket be closed?

FECA's Position: Yes.

E. QUESTIONS OF LAW

ISSUE 20: 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)?

FECA's Position: No. The Commission cannot render a determination of need unless there is an identified retail need that is sufficient to justify the proposed plant.

ISSUE 21: 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?

FECA's Position: Yes.

ISSUE 22: 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?

FECA's Position: No. FECA supports the inclusion of this issue in this docket.

ISSUE 23: Absent a statutory or contractual obligation to serve, can Duke New Smyrna have a need within the meaning of Section 403.519, Florida Statutes and the Siting Act?

FECA's Position: No. FECA supports the inclusion of this issue in this docket.

ISSUE 24: 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?

FECA's Position: FECA supports the inclusion of this issue in this docket. Duke New Smyrna is not a proper "applicant" or an "electric utility" within the meaning of the Siting Act and Section 403.519, F.S. UCNSB is a proper applicant, but it does not have a need that justifies the proposed plant.

ISSUE 25: Under the Siting Act and Section 403.519, Florida Statutes, may the Commission issue a generic determination of need?

FECA's Position: No. FECA supports the inclusion of this issue in this docket.

ISSUE 26: If the Commission were to accept the presumption the joint petitioners ask the Commission to make, that "the Project will necessarily be a cost-effective power supply option for the utilities to which Duke New Smyrna sells its merchant power," would the Commission be abrogating of its responsibilities under the Siting Act?

FECA's Position: Yes. FECA supports the inclusion of this issue in this docket.

ISSUE 27: 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?

FECA's Position: No. FECA supports the inclusion of this issue in this docket.

ISSUE 28: Does the Joint Petition meet the pleading requirements of Rule 25-22.081, Florida Administrative Code?

FECA's Position: No. FECA supports the inclusion of this issue in this docket.

ISSUE 29: 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?

FECA's Position: No. FECA supports the inclusion of this issue in this docket.

ISSUE 30: Is "Peninsular Florida" a legal entity with an obligation to serve?

FECA's Position: No. FECA supports the inclusion of this issue in this docket.

ISSUE 31: 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?

FECA's Position: Yes. FECA supports the inclusion of this issue in this docket.

F. POLICY QUESTIONS

ISSUE 32: 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?

FECA's Position: FECA supports the inclusion of this issue in this docket. Approval of the Duke New Smyrna project based upon a wholesale statewide need, would adversely impact the ability of Florida's electric cooperatives to plan for and provide capacity and energy for the present and future needs of their consumer-owners.

ISSUE 33: 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?

FECA's Position: FECA supports the inclusion of this issue in this docket. Whether or not this project is approved will have no impact on Florida's electric cooperatives' obligation to plan for and meet their present or future needs.

ISSUE 34: 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?

FECA's Position: Yes. FECA supports the inclusion of this issue in this docket.

ISSUE 35: 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?

FECA's Position: No position at this time. FECA supports the inclusion of this issue in this docket.

ISSUE 36: 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?

FECA's Position: No position at this time. FECA supports the inclusion of this issue in this docket.

ISSUE 37: 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?

FECA's Position: No position at this time. FECA supports the inclusion of this issue in this docket.

ISSUE 38: If Duke New Smyrna were allowed to proceed as an applicant, would the Commission "end up devoting inordinate time and resources to need cases," "wast[e] time in need determinations proceedings for projects that may never reach fruition," and "devote excessive resources to micromanagement of utilities', power purchases?"

FECA's Position: No position at this time. FECA supports the inclusion of this issue in this docket.

ISSUE 39: 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?

FECA's Position: No position at this time.

ISSUE 40: 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?

FECA's Position: No. FECA supports the inclusion of this issue in this docket.

ISSUE 41: 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?

FECA's Position: No position at this time. FECA does not support the inclusion of this issue.

ISSUE 42: Would granting the determination of need requested by the joint petitioners be consistent with state and federal energy policy?

FECA's Position: No. FECA does not support the inclusion of this issue.

G. STIPULATED ISSUES

FECA has not stipulated to any issues in the above-styled docket.

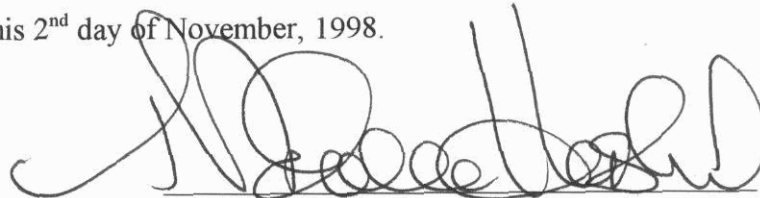
H. PENDING MOTIONS

FECA has no motions pending in the above-styled docket.

I. OTHER REQUIREMENTS

At this time FECA is not aware of any requirements set forth in the Order Establishing Procedure with which it cannot comply.

Respectfully submitted this 2nd day of November, 1998.



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Attorneys for the Florida Electric Cooperatives
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Florida Electric Cooperatives Association, Inc.'s Prehearing Statement has been furnished by U.S. Mail or Hand Delivery (*) this 2nd day of November, 1998 to the following:

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Michelle Hershel

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