

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.)

RECORDS AND REPORTING
DOCKET NO. 981042-EM
FILED: NOVEMBER 2, 1998

PREHEARING STATEMENT OF ISSUES AND POSITIONS OF THE
UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA
AND DUKE ENERGY NEW SMYRNA BEACH POWER COMPANY LTD, L.L.P.

The Utilities Commission, City of New Smyrna Beach, Florida ("UCNSB" or "Utilities Commission") and Duke Energy New Smyrna Beach Power Company Ltd., L.L.P. ("Duke New Smyrna"), collectively referred to herein as the "Joint Petitioners," pursuant to the Order Establishing Procedure for this docket, as amended, and Uniform Rule 28-106.211, Florida Administrative Code, hereby file their Prehearing Statement of Issues and Positions.

A. WITNESSES

- ACK _____
- AFA 2 1. Ronald L. Vaden
- APP _____ 2. Michael C. Green, P.E.
- CAF _____ 3. John C. "Claude" L'Engle
- CMU _____ 4. Dale M. Nesbitt, Ph.D.
- CTR _____
- EAG Futrell 5. Martha O. Hesse
- LEG 3 6. Mark Locascio, P.E.
- LIN 5
- OPC _____ 7. Kennie Sanford, P.E.
- RCH _____ 8. Michel P. Armand, P.E.
- SEC 1
- WAS _____
- OTH _____

RECEIVED & FILED
[Signature]
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
12233 NOV-2 88
000804
FPSC-RECORDS/REPORTING

9. Larry A. Wall

10. Jeffrey L. Meling, P.E.

The Joint Petitioners are in the process of preparing to take the depositions of the witnesses of Florida Power & Light Company ("FPL") and Florida Power Corporation ("FPC") and of the corporate representatives of those entities, and the Joint Petitioners reserve their rights to use those depositions, either in part or in their entirety, as evidence at trial (as well as for other purposes as allowed under the Florida Rules of Civil Procedure).

B. EXHIBITS

Witness sponsoring Exhibits

Ronald L. Vaden

RLV-1; The Participation Agreement between the UCNSB and Duke New Smyrna, including Amendment Number One to the Participation Agreement.

RLV-2; Historical and projected customers of the UCNSB.

RLV-3; Historical and projected summer and winter peak demands of the UCNSB system.

RLV-4; Historical and projected energy requirements of the UCNSB system.

RLV-5; The UCNSB's power supply resources.

RLV-6; Cost-effectiveness tables.

RLV-7; Summer and winter reserve margins for Peninsular Florida with and without the Project's seasonal capacity.

RLV-8; Comparison of capital costs, heat rates, and availability factors for proposed generating units for Peninsular Florida.

Witness sponsoring Exhibits

Vaden (continued)

Mr. Vaden is also sponsoring Tables 4, 5, 6, 7, 8, 9, 11, 12, 13, and 14, and Figures 16, 17, and 18 in the Exhibits filed in support of the Joint Petition on August 19, 1998, as well as the text contained in Sections II.B, II.F, IV.A, V.A, and VI of those Exhibits.

Michael C. Green, P.E.

MCG-1; Duke Energy New Smyrna Beach Power Company Ltd., L.L.P. Ownership Structure.

MCG-2; Order of the Federal Energy Regulatory Commission ("FERC") approving Duke New Smyrna's market-based rate tariff.

MCG-3; Order of the FERC confirming Duke New Smyrna's status as an Exempt Wholesale Generator under the Public Utility Holding Company Act of 1935.

MCG-4; The Participation Agreement between the UCNSB and Duke New Smyrna.

MCG-5; New Smyrna Beach Power Project, Project Structure.

Mr. Green is also sponsoring Figures 1 and 2 in the Exhibits filed on August 19, 1998 in support of our joint petition for determination for the Project, as well as the text contained within Sections II.A, II.C, II.D, II.E, II.F, and III.F of those exhibits.

John C. "Claude" L'Engle

None

Dale M. Nesbitt, Ph.D.

DMN-1; Altos North American Regional Electric Model (graphic).

DMN-2; Altos North American Regional Gas Model ("NARG" Model)(graphic).

Witness sponsoring Exhibits

Nesbitt (continued)

DMN-3; 1998 Florida Load Duration Curve.

DMN-4; 1998 SERC/Southern Load Duration Curve.

DMN-5; Florida Capacity per NERC.

DMN-6; Southern Capacity per NERC.

DMN-7; New Smyrna Beach Power Project, Projected Operations and Fuel Savings.

DMN-8; Florida - 1998 Baseload (40%).

DMN-9; Florida Dispatch - 1998 High Load Factor Intermediate (25%).

DMN-10; Florida Dispatch - 1998 Low Load Factor Intermediate (15%).

DMN-11; Florida Dispatch - 1998 High Load Factor Peak (15%).

DMN-12; Florida Dispatch - 1998 SuperPeak (5%).

DMN-13; Comparative Electricity Production Costs, SERC & FRCC, 1995-1998.

DMN-14; Benefits of Duke New Smyrna Beach Power Project (graphic).

DMN-15; Achieving Competitive Advantage Through Quantitative Electric Asset Valuation Using the Altos North American Regional Electricity Model.

DMN-16; Overview of the North American Regional Gas (NARG) Model

Mr. Nesbitt is also sponsoring Table 10 and Part I of Table 15 contained in the Exhibits submitted on August 19, 1998.

Martha O. Hesse, P.E.

None

Witness sponsoring Exhibits

Mark Locascio, P.E. ML-1; Current resume of Mark Locascio.

ML-2; New Smyrna Beach Power Project, Project Profile.

ML-3; New Smyrna Beach Power Project Site Plan.

ML-4; New Smyrna Beach Power Project, Proposed Plot Plan.

ML-5; CAD Renderings of the power plant and site layout.

ML-6; Estimated Plant Performance and Emissions.

ML-7; New Smyrna Beach Power Project; Process Flow Diagram.

ML-8; Summary of the Design Basis for the Project.

ML-9; Generation Alternatives considered for the Project.

ML-10; Preliminary Water Balances for the Project.

ML-11; EPC Schedule for the Project.

Mr. Locascio is also sponsoring Tables 1, 2, and 15, and Figures 4, 5, 6, 7, 9, 10, 11, and 14 in the Exhibits filed on August 19, 1998 and the text that accompanies those exhibits.

Kennie Sanford, P.E.

KS-1; Resume' of Kennie Sanford, Jr., P.E.

KS-2; Electrical One-Line Diagram of the New Smyrna Beach Power Project.

KS-3; New Smyrna Beach Power Project, Electrical Facilities Description, which includes an electrical system overview of the Project, descriptions of the major electrical components of the Project, description of the Project's startup and

Witness sponsoring Exhibits

Sanford (continued)

standby power supplies, listing of applicable electrical design considerations (codes and standards), and description of systems controls for the Project.

Michel P. Armand, P.E.

MPA-1; Qualifications of Michel P. Armand, P.E.

MPA-2; Summary of Transmission Project Experience, Resource Management International, Inc.

MPA-3; Transmission Interconnection Map for the New Smyrna Beach Power Project (Figure 12 in the Exhibits filed on August 19, 1998).

MPA-4; New Smyrna Beach Power Project, Results of Power Flow Studies - 2001.

MPA-5; New Smyrna Beach Power Project, Results of Power Flow Studies - 2004.

Larry A. Wall

LAW-1, The Transaction Agreement between Duke Energy Power Services, L.L.C. and Citrus Trading Corp.

Jeffrey L. Meling, P.E.

JLM-1, Preliminary Evaluation of Site Features and Potential Impacts.

The above is a listing of all known exhibits at this time. The Joint Petitioners may introduce additional exhibits, not identified at this time, in their cross-examination of the witnesses of FPL and FPC or as exhibits to the deposition testimony of FPL's or FPC's corporate representatives. The Joint Petitioners may also move the Commission for leave to introduce additional exhibits as such may be identified during the course of the depositions that are expected to

be taken in the proceeding over the next three weeks.

C. STATEMENT OF BASIC POSITION

The Commission should issue its order granting the determination of need sought by the Joint Petitioners for the New Smyrna Beach Power Project ("the Project"). The Project is a state-of-the-art, natural gas fired combined cycle power plant that will contribute meaningfully to the needs of the UCNSB and of electric customers in Peninsular Florida for system reliability and integrity and for adequate electricity at a reasonable cost. The Project is the most cost-effective alternative available for the UCNSB, for Duke New Smyrna, and for Florida electric customers, because no utilities (other than the UCNSB) are required to buy power from the Project, and because no Florida electric customers are subject to being required to pay for the Project's capital or operating costs. Duke New Smyrna is assuming all business and operating risk associated with the Project, thereby providing this cost-effective power supply resource to retail-serving utilities in Peninsular Florida, for resale to their customers, at no risk either to those utilities nor to their customers. Delaying the construction and operation of the Project would adversely affect the reliability of the Peninsular Florida bulk power supply system, would adversely affect the availability of adequate electricity at a reasonable cost, and would adversely affect the environment of Florida.

D. ISSUES 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?

DUKE/UCNSB: Yes. The proposed Project will contribute to the reliability of Florida customers' electric service without requiring them to assume responsibility for the investment risk of the Project.

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?

DUKE/UCNSB: Yes.

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?

DUKE/UCNSB: Yes.

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?

[The parties have not reached consensus on this issue.]

DUKE/UCNSB: To the extent that this issue is relevant, yes. The issue that is properly before the Commission is whether the Commission should grant the requested need determination for the Project, taking into account the criteria in Section 403.519. There is a need for the Project in Florida considering those criteria.

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?

DUKE/UCNSB: Yes. The capacity of the New Smyrna Beach Power Project can and should be included in calculating the reserve margin of Peninsular Florida, which is also known as the Florida Reliability Coordinating Council region. The capacity of the New Smyrna

Beach Power Project can and should be included when calculating the reserve margin of the Utilities Commission, City of New Smyrna Beach, Florida. The capacity of the New Smyrna Beach Power Project can and should be included in calculating the reserve margin of any other Peninsular Florida utility, including associations such as Seminole Electric Cooperative or the Florida Municipal Power Agency, once such utility has signed a contract for the purchase of firm capacity and energy from the Project.

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

DUKE/UCNSB: The New Smyrna Beach Power Project will improve the reliability of the generation system within Peninsular Florida and will not impair the transmission system, or the capabilities thereof, within Florida. The Project will actually improve the reliability of the transmission system in the southeast Volusia County area.

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?

DUKE/UCNSB: The transmission improvements that are planned to accommodate power deliveries from the New Smyrna Beach Power Project include approximately 25 miles of additional 115 kV transmission line connecting the Smyrna Substation to the Cassadaga Substation and the Lake Helen Substation. Other facilities that are required for the operation of the Project include the proposed 42-mile gas lateral connecting the Project to FGT's main gas transmission pipeline and approximately 500 feet of water transmission pipe connecting the Project to the adjacent wastewater treatment plant of the UCNSB. The costs of these improvements have been adequately considered in the Project.

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?

DUKE/UCNSB: Yes. The proposed project will help meet the need for adequate electricity at a reasonable cost without requiring any utility or utility customer to bear the risk of the Project. As a result, customers can only win as a result of the granting of the determination of need.

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?

DUKE/UCNSB: Yes.

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?

DUKE/UCNSB: Yes.

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

[The parties have not reached consensus on this issue.]

DUKE/UCNSB: The Joint Petitioners do not agree that this issue is appropriate for this power plant need determination proceeding. Without waiving their objection, the Joint Petitioners take the position that the Project's construction and operation will not adversely affect gas supply or transportation resources. When the Project is operating, it will displace less efficient generation, resulting in more efficient use of both generation and gas transportation (transmission) resources in Florida.

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

DUKE/UCNSB: No. This question must be gauged from the perspective of costs imposed on customers. Because Duke New Smyrna is bearing all risk, and utilities will purchase only if the transaction is economic, by definition the project cannot result in the uneconomic duplication of facilities.

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?

DUKE/UCNSB: Yes.

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?

DUKE/UCNSB: Yes.

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?

[The Parties have not reached consensus on this issue.]

DUKE/UCNSB: The Joint Petitioners object to this issue because it is argumentative and untimely. Duke New Smyrna will sell power from the Project, and electric utilities that choose to buy power from the Project will make such purchases, pursuant to terms and conditions negotiated between Duke New Smyrna and purchasing utilities at the time that such arrangements are entered into. It is reasonable to expect that such terms and conditions would be comparable and similar to the terms and conditions pursuant to which other wholesale transactions, of varying "firmness" and duration, are made between other Florida utilities.

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?

DUKE/UCNSB: No.

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?

DUKE/UCNSB: There are no additional conservation measures reasonably available to the Joint Petitioners that would mitigate the need for the proposed power plant.

FINAL ISSUES

ISSUE 41: 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?

DUKE/UCNSB: Yes.

ISSUE 42: Should this docket be closed?

DUKE/UCNSB: Yes. When the Commission's order granting the requested determination of need for the New Smyrna Beach Power Project has become final and no longer subject to appeal, this docket should be closed.

E. ISSUES OF LAW

ISSUE 18: 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)?

DUKE/UCNSB: Yes. Past decisions requiring agreements were limited to circumstances in which the applicant tried to obligate a utility and its customers as a condition precedent. By contrast, Duke New Smyrna proposes to enhance reliability and economics while absorbing all investment risk.

ISSUE 19: 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?

DUKE/UCNSB: Yes.

ISSUE 20: 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?

[The parties have not reached consensus on this issue.]

DUKE/UCNSB: Not at this time, nor is such an obligation a necessary prerequisite for the Commission's granting the determination of need for the Project requested by the Joint Petitioners. Once utilities avail themselves of the capacity and energy of the project through contractual arrangements because it is economic, Duke New Smyrna's obligations will be no different from any other wholesale supplier.

ISSUE 21: 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?

[The parties have not reached consensus on this issue.]

DUKE/UCNSB: The Joint Petitioners do not believe that this issue is appropriate for this proceeding. To the extent that the underlying concept is relevant, it is addressed by Issues 18 and 22, as well as by FPL's and FPC's pending motions to dismiss. The relevant issues in this case are whether the Joint Petitioners have standing to seek the Commission's determination of need for the Project, and whether the Commission should grant the requested determination based on its evaluation pursuant to Section 403.519. To the extent a position is required, the Joint Petitioners say "Yes."

ISSUE 22: 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?

[The parties have not reached consensus on this issue.]

DUKE/UCNSB: This issue is duplicative of Issue 18 and others. Each of Duke New Smyrna and the UCNSB is an "applicant" and an "electric utility" within the meaning of the Siting Act and Section 403.519, Florida Statutes.

ISSUE 23: Under the Siting Act and Section 403.519, Florida Statutes, may the Commission issue a generic determination of need?

[The parties have not reached consensus on this issue.]

DUKE/UCNSB: This issue is vague and is not the issue posed by the Joint Petition for Determination of Need, which issue is whether the Commission should grant the requested determination of need for the New Smyrna Beach Power Project. The Joint Petition proposes a specific project. It does not ask the Commission to issue a "generic determination of need."

ISSUE 24: 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?

[The parties have not reached consensus on this issue.]

DUKE/UCNSB: The Joint Petitioners object to this issue as stated because it is argumentative and inflammatory. Without waiving this objection, the Joint Petitioners take the following position:

No. The Commission would be acting within its authority and consistently with the public interest, the best interests of Florida electric customers, and the intent of the Siting Act, Section 403.519, and Chapter 366, Florida Statutes, by granting the requested need determination on the basis that the Project will provide power and energy to Florida utilities and their customers at cost-effective prices and without risk to those customers.

ISSUE 25: 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?

[The parties have not reached consensus on this issue.]

DUKE/UCNSB: The Joint Petitioners object to this issue as stated because it is argumentative and duplicative of other issues. Without waiving this objection, the Joint Petitioners take the following position:

Yes. The Commission would be meeting its responsibilities under Section 403.519 and the Grid Bill by assuring adequate electricity at a reasonable cost and by providing for enhancement of electric system reliability in Florida without economic risk to Florida electric customers, as well as by assuring the other benefits to Florida electric customers that would flow from a robust competitive wholesale power market.

ISSUE 26: Does the Joint Petition meet the pleading requirements of Rule 25-22.081, Florida Administrative Code?

[The parties have not reached consensus on this issue.]

DUKE/UCNSB: Yes.

ISSUE 27: 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?

[The parties have not reached consensus on this issue.]

DUKE/UCNSB: Yes, the Joint Petition states a cause of action.

ISSUE 28: Is "Peninsular Florida" a legal entity with an obligation to serve?

[The parties have not reached consensus on this issue.]

DUKE/UCNSB:

The Joint Petitioners believe that this issue is irrelevant. The Commission has routinely considered the needs of Peninsular Florida for system reliability and integrity and for adequate electricity at a reasonable cost. Indeed, it would be ostrich-like for the Commission not to consider the needs of the reliability region within which a proposed power plant would be located and in which it would operate and make most or all of its sales. This "issue" is irrelevant to the Commission's consideration of the needs of Peninsular Florida for system reliability and integrity and for adequate electricity at a reasonable cost.

ISSUE 29: 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?

[The parties have not reached consensus on this issue.]

DUKE/UCNSB:

No. A contract is not required because, unlike prior applicants, the Joint Petitioners are not attempting to impose costs or risks on any utility or utility customer.

F. POLICY ISSUES

ISSUE 30: 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?

[The parties have not reached consensus on this issue.]

DUKE/UCNSB:

Basically, not at all, except the utilities will have another resource to evaluate. Regardless of the grounds for the Commission's decision to grant the requested determination of need, it would not affect subsequent petitions for determination of need by retail-serving utilities seeking to build power plants to meet the needs of their retail customers. Such petitions for determination of need would be evaluated on the same statutory criteria that are applicable to the petition for

determination of need for the New Smyrna Beach Power Project.

ISSUE 31: 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?

[The parties have not reached consensus on this issue.]

DUKE/UCNSB: The Joint Petitioners believe that this issue is irrelevant, but state their position as follows:

No. Like the numerous retail-serving electric utilities in Florida that presently do not own their own generation but rather buy all of their power supplies at wholesale, retail-serving electric utilities will have the same obligation to provide retail service if the Project is built as if the Project is not built. While the obligation remains the same, the Project will provide an additional resource with which to fulfill that obligation. All utilities in Peninsular Florida will have the opportunity to buy power from the Project, and presumably will do so when it is cost-effective.

ISSUE 32: 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?

[The parties have not reached consensus on this issue.]

DUKE/UCNSB: The Joint Petitioners believe that this issue is irrelevant, but state their position as follows:

No. Neither the Commission's granting the requested determination of need, nor the Project's construction and operation will create a risk of non-recovery of past or future investments. Nor will such actions increase the cost of providing electric service or the cost of maintaining reliable service. In fact, the Project will result in lower overall costs of providing electric service and of maintaining reliable electric service in Florida.

ISSUE 33: 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?

[The parties have not reached consensus on this issue.]

DUKE/UCNSB: Basically, not at all. See DUKE/UCNSB's position on Issue 30 above.

ISSUE 34: 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?

[The parties have not reached consensus on this issue.]

DUKE/UCNSB: The Joint Petitioners object to the form of the question. The Commission has only applied the statutory criteria on a utility-specific basis in cases where the petitioning entity (utility or supplier) was attempting to bind the utility's ratepayers to pay for the proposed power plants either through rates or through long-term contracts.

Because the Project (and any similar power plants) will be subject to the Commission's Grid Bill authority as part of the State's electric power supply system the Commission will fulfill its Grid Bill responsibilities as it does now, with one (or perhaps more) additional wholesale power suppliers in the State.

ISSUE 35: 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?

[The parties have not reached consensus on this issue.]

DUKE/UCNSB: No, granting the requested determination of need will not have this result, because utilities already have the opportunity to establish need for electrical power plants in this way, based on the criteria in Section 403.519.

ISSUE 36: 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?"

[The parties have not reached consensus on this issue.]

DUKE/UCNSB: The Joint Petitioners object to this issue because it is argumentative. Without waiving this objection the Joint Petitioners take the following position:

No. The high cost of preparing, filing, and litigating a site certification application, including the Commission's determination of need process, will assure that only serious, viable projects are brought before the Commission. The Commission's role with respect to management of utilities' power purchases will remain exactly as it exists today with respect to wholesale transactions between and among FPL, FPC, and all other utilities that participate in the wholesale market in Florida.

ISSUE 37: 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?

DUKE/UCNSB: None. The level of reasonably achievable cost-effective conservation measures is a function of the efficacy of such measures, the cost of such measures, and the cost and efficacy of supply-side alternatives at any point in time. The Joint Petitioners note that no evidence has been introduced with respect to this issue.

ISSUE 38: 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?

[The parties have not reached consensus on this issue.]

DUKE/UCNSB: Yes. The Project will enhance electric system reliability, provide adequate electricity at a reasonable cost without economic risk to ratepayers, and improve the overall environmental profile of electricity generation in Florida.

ISSUE 39: Would granting the determination of need requested by the joint petitioners be consistent with the State's need for, and promote, a robust competitive wholesale power supply market?

[The parties have not reached consensus on this issue.]

DUKE/UCNSB: Yes.

ISSUE 40: Would granting the determination of need requested by the joint petitioners be consistent with state and federal energy policy?

[The parties have not reached consensus on this issue.]

DUKE/UCNSB: Yes.

G. STIPULATED ISSUES

The Joint Petitioners are not aware of any stipulated issues at this time.

H. PENDING MOTIONS

At this time, the Joint Petitioners are aware of the following pending motions:

FPL's Motion to Dismiss Joint Petition, filed on September 8, 1998.

FPC's Motion to Dismiss Proceeding, filed on September 8, 1998.

FPL's Motion to Expedite Discovery, filed on October 12, 1998.

Joint Petitioners' Motion for Alternate Expedited Discovery Schedule, filed on October 19, 1998.

System Council U-4, IBEW Petition for Leave to Intervene, filed on October 4, 1998.

Joint Petitioners' Motion to Deny System Council U-4, IBEW Petition for Leave to Intervene, filed on October 16, 1998.

Joint Petitioners' Motion to Strike the Testimony of William D. Steinmeier, filed on October 30, 1998.

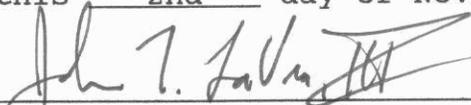
Joint Petitioners' Motion to Strike the Testimony of Michael D. Rib, filed on October 30, 1998.

Joint Petitioners' Motion to Strike the Testimony of Vincent M. Dolan, filed on October 30, 1998.

I. REQUIREMENTS OF THE PROCEDURAL ORDER

Duke New Smyrna and the UCNSB are not aware of any requirements of the Order Establishing Procedure with which they cannot comply. Because of scheduling difficulties regarding depositions, the Joint Petitioners would suggest that it may be appropriate to extend the deadline for conducting discovery through Monday, November 23, 1998.

Respectfully submitted this 2nd day of November, 1998.



Robert Scheffel Wright
Florida Bar No. 966721
John T. LaVia, III
Florida Bar No. 853666
LANDERS & PARSONS, P.A.
310 West College Avenue (ZIP 32301)
Post Office Box 271
Tallahassee, Florida 32302

Attorneys for the Utilities Commission,
City of New Smyrna Beach, Florida,

and

Duke Energy New Smyrna Beach Power
Company Ltd., L.L.P.

CERTIFICATE OF SERVICE
DOCKET NO. 981042-EM

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by hand delivery (*) or by United States Mail, postage prepaid, on the following individuals this 2nd day of November, 1998:

Leslie J. Paugh, Esquire*
Florida Public Service Commission
2540 Shumard Oak Boulevard
Gunter Building
Tallahassee, FL 32399

Gail Kamaras, Esquire
LEAF
1114 Thomasville Road
Suite E
Tallahassee, FL 32303-6290

Charles A. Guyton, Esquire*
Steel Hector & Davis
215 South Monroe Street
Suite 601
Tallahassee, FL 32301

Gary L. Sasso, Esquire
Carlton, Fields et al
P.O. Box 2861
St. Petersburg, FL 33733

William G. Walker, III
Vice President, Regulatory Affairs
Florida Power & Light Co.
9250 West Flagler St.
Miami, FL 33174

Lee L. Willis, Esquire
Ausley & McMullen
P.O. Box 391
Tallahassee, FL 32302

William B. Willingham, Esquire
Michelle Hershel, Esquire
FL Electric Cooperatives Assoc., Inc.
P.O. Box 590
Tallahassee, FL 32302

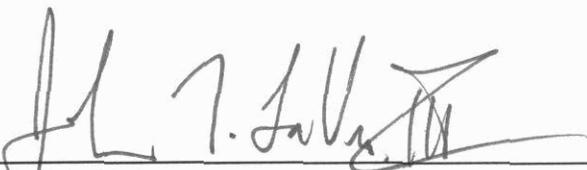
Terry L. Kammer, COPE Director
System Council U-4, IBEW
3944 Florida Blvd., Suite 202
Palm Beach Gardens, FL 33410

Susan D. Cranmer
Asst. Secretary & Asst. Treasurer
Gulf Power Company
One Energy Place
Pensacola, FL 32520-0780

John Schantzen
System Council U-4, IBEW
3944 Florida Blvd., Suite 202
Palm Beach Gardens, FL 33410

Jeffrey A. Stone, Esquire
Beggs & Lane
P.O. Box 12950
Pensacola, FL 32576-2950

J. Roger Howe, Esquire
Office of Public Counsel
111 W. Madison Ave., Room 812
Tallahassee, FL 32399-1400



Attorney

000825