

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Determination)	DOCKET NO. 900454-EQ
of Need for a Solid Waste-Fired)	
Cogeneration Power Plant by Lee)	ORDER NO. 23963
County)	
_____)	ISSUED: 1-7-91

The following Commissioners participated in the disposition of this matter:

MICHAEL MCK. WILSON, Chairman
 THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 FRANK S. MESSERSMITH

NOTICE OF PROPOSED AGENCY ACTIONORDER GRANTING PETITION FOR
 DETERMINATION OF NEED

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Under the Florida Electrical Power Plant Siting Act (Chapter 403, Florida Statutes), the Florida Public Service Commission is empowered to make a determination of need for any electric power plant for which an applicant seeks certification under the act. As set forth in Section 403.508(3), Florida Statutes, that affirmative determination of need by the Commission is a condition precedent to the conduct of a certification hearing by the Florida Department of Environmental Regulation. Thereafter, the Governor and Cabinet, sitting as the Power Plant Siting Board, ultimately determine whether to grant approval for construction of the proposed plant.

The Siting Act requires prior certification for any generating facility greater than 75 MW, but provides that certification may be obtained for a smaller facility. Lee County has elected to seek certification of its proposed solid waste-fired cogeneration plant, which will include a steam generator, electrical generator, waste unloading facilities, and cooling tower. Pursuant to Rule 25-17.091(1), Florida Administrative Code, this is a "solid waste facility". The facility will initially process 1800 tons per day of municipal solid waste and be capable of generating rating 50 MW

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of electricity, 43 MW of which Lee County plans to sell to Florida Power & Light Company ("FPL"). The facility will be designed to allow future expansion to process a total of 2400 tons per day of waste, with an ultimate generating capacity of 65 MW.

The facility will interconnect to FPL's system at the existing Buckingham substation, which is adjacent to the facility site, with transmission through FPL's adjacent 138 KV transmission line. Lee County will pay for the interconnection, which will be made according to FPL's technical specifications.

Section 403.519, Florida Statutes, requires the Commission, which is the exclusive forum for determination of need, to consider four criteria in determining need:

- (1) the need for electric system reliability and integrity;
- (2) the need for adequate electricity at a reasonable cost;
- (3) whether the proposed plant is the most cost-effective alternative available; and
- (4) conservation measures taken by or reasonably available to the applicant or its members which might mitigate the need for the proposed plant.

The statute also provides that the Commission may consider such other matters as it deems relevant in making its determination of need. The Commission's determination of need for an electrical power plant shall create a presumption of public need and shall serve as the Commission's report required by Section 403.507(2)(a)2.

We have reviewed Lee County's application in light of the statutory criteria, and find that the proposed facility meets the relevant criteria for a determination of need under Section 403.519, Florida Statutes. According to FPL's current Ten Year Site Plan, the utility will need approximately 3100 MW of capacity in order to maintain adequate system reliability. FPL plans to meet this need through energy conservation programs (156 MW), load management (897 MW), firm purchases from qualifying facilities (1110 MW) and installation of new capacity (2950 MW). The plant will not negatively affect electric system reliability and integrity in the southern Gulf coast area of Florida.

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Lee County has proposed to sell the facility's capacity and energy through either a standard offer contract or negotiated contract. Sales would be made in accordance with applicable Commission rules and Florida Statutes. Normally we will not presume cost effectiveness merely because a project's capacity will be sold through a standard offer or negotiated contract at less than standard offer price. The legislature however, favors municipal waste cogeneration facilities so we will therefore presume cost effectiveness because Lee County's capacity and energy will be priced at or below the standard offer. We limit this treatment to municipal waste power production facilities. We do not repudiate our general policy as expressed in Order No. 22341.

We find that the fourth criterion for determination of need has been met, in that FPL has taken appropriate conservation measures which might result in eliminating the need for the proposed plant. We note that we recently approved FPL's comprehensive conservation plan in Docket No. 900091-EG, which is expected to account for 156 MW of demand savings over the next ten years. However, in that this facility would serve the dual purpose of waste disposal and production of electricity, conservation of electrical energy is not directly at issue herein.

Congress and the Florida Legislature have determined that cogeneration and small power production should be encouraged on the premise that they constitute alternate sources of power that either displace production of fossil fuel electricity or use fossil fuels more efficiently. Moreover, the proliferation of cogeneration and small power production facilities may obviate the need for construction of additional generating facilities by electric utilities. Further, pursuant to Section 377.709, Florida Statutes, the legislature has encouraged construction of municipal solid waste facilities as both an effective conservation effort and environmentally preferred alternative to conventional solid waste disposal in Florida. The Commission, in Rule 25-17.091, Florida Administrative Code, further encourages municipal solid waste facilities by offering special financing options.

Therefore, it is

ORDERED by the Florida Public Service Commission that the petition of Lee County for a determination of need for its proposed 50 MW solid waste-fired generating facility is hereby granted as set forth in the body of this order. It is further

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ORDERED that this order shall constitute the final report of the Florida Public Service Commission required by Section 403.507(2)(a)2, Florida Statutes. It is further

ORDERED that this order, if not timely protested or appealed, shall constitute final agency action.

BY ORDER of the Florida Public Service Commission, this
7th day of JANUARY, 1991.



STEVE TRIBBLE, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on January 28, 1991.

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In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.