

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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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.)

DOCKET NO. 981042-EM

DATED: NOVEMBER 19, 1998

RECORDS AND REPORTING

PETITIONERS' RESPONSE TO FLORIDA POWER & LIGHT COMPANY'S
FIRST REQUESTS FOR ADMISSIONS TO DUKE ENERGY NEW SMYRNA
BEACH POWER COMPANY LTD., L.L.P. AND UTILITIES
COMMISSION, NEW SMYRNA BEACH

The Utilities Commission, City of New Smyrna Beach, Florida ("Utilities Commission") and Duke Energy New Smyrna Beach Power Company Ltd., L.L.P. ("Duke New Smyrna"), collectively referred to as Petitioners, pursuant to Uniform Rule 28-106.206, Florida Administrative Code, hereby respond to Florida Power & Light Company's ("FPL") First Requests for Admissions.

A. The numbered paragraphs below repeat FPL's requests for admissions. Petitioners' response to each request follows the numbered paragraph.

1. Duke New Smyrna has no final purchased power contract for any of the output from its proposed Project.

- ACK _____
- AFA 2
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG Futrell
- LEG 3
- LIN 5
- OPC _____
- RCH _____
- SEC 1
- WAS _____
- OTH _____

Admitted.

2. Duke New Smyrna has not provided in either its Joint Petition and Exhibits or its direct testimony and exhibits the terms and conditions pursuant to which it will sell the output of its Project to Florida utilities.

Denied.

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3. Duke New Smyrna has not identified in either its Joint Petition and Exhibits or its direct testimony and exhibits any individual Florida utility other than the Utilities Commission, New Smyrna Beach, to which it intends to sell the output of its Project.

Admitted.

4. Duke New Smyrna has not identified in either its Joint Petition and Exhibit or its direct testimony and exhibits any individual Florida utilities, other than the Utilities Commission, New Smyrna Beach, which have a need for the output of the Project.

Admitted.

5. Duke New Smyrna has not proposed any reliability criteria appropriate for determining either Peninsular Florida's or any individual peninsular Florida utility's need for capacity.

Admitted.

6. Duke New Smyrna has not demonstrated in its Joint Petition and Exhibit or in its direct testimony and exhibits that the uncommitted merchant plant capacity of its Project is needed for an individual Florida utility to have adequate electricity at a reasonable cost.

Denied.

7. Duke New Smyrna has not demonstrated in its Joint Petition and Exhibit or in its direct testimony and exhibits that the uncommitted merchant plant capacity of its Project is the most cost-effective alternative for any individual Florida utility.

Denied.

8. Duke New Smyrna has not demonstrated in its Joint Petition and Exhibit or in its direct testimony and exhibits that any individual Florida utility to which it might sell the output of its Project, other than the Utilities Commission, New Smyrna Beach, does not have conservation measures reasonably available which would mitigate the need for the Project.

Admitted.

9. Electric system reliability and integrity are appropriately measured through the use of reliability criteria.

Admitted.

10. In its Joint Petition and Exhibit and its direct testimony and exhibits Duke New Smyrna relies upon the 1998 Regional Load and Resource Plan dated July, 1998 and prepared by the Florida Reliability Coordinating Council ("FRCC").

Denied.

11. The 1998 Regional Load and Resource Plan shows that both summer and winter reserve margins for Peninsular Florida will meet or exceed 15% for the years 1998 through the winter of 2007/2008.

Denied.

12. The 1998 Regional Load and Resource Plan does not include the Duke New Smyrna Project.

Admitted.

13. The 1998 Regional Load and Resource Plan prepared by the FRCC and relied upon by Duke New Smyrna in its Joint Petition and Exhibit and direct testimony exhibits shows that Peninsular Florida will achieve or exceed its reserve margin criteria of 15% for 1998 through summer 2007 without the Duke New Smyrna Project.

Denied.

14. The 1998 Reliability Assessment, dated August, 1998 and prepared by the Florida Regional Coordinating Council examined Peninsular Florida's bulk reliability reflected in the 1998 Regional Load and Resource Plan.

Admitted that page 6 of the 1998 Reliability Assessment states that the "FRCC's 1998 Reliability Assessment Study examines peninsular Florida's bulk reliability, reflected in [the utility companies' resource plans]". The 1998 Reliability Assessment speaks for itself. Duke New Smyrna did not prepare the 1998 Reliability Assessment and thus is without knowledge as to the accuracy of the statement.

15. The FRCC's 1998 Reliability Assessment concludes "that the peninsular Florida electric system is reliable through the ten year planning period and that the FRCC 1998 Load and Resource Plan is suitable.

Admitted that page 50 of the 1998 Reliability Assessment states that "the FRCC concludes that the peninsular Florida electric system is reliable through the ten year planning period and that the FRCC 1998 Load and Resource Plan is suitable." The 1998 Reliability Assessment speaks for itself. Duke New Smyrna did not prepare the 1998 Reliability Assessment, thus it is without knowledge as to the accuracy of this statement.

16. The FRCC's 1998 Reliability Assessment contains a reserve margin standard of 15% for both summer and winter peaks.

Admitted that the 1998 Reliability Assessment contains within it a reserve margin standard of 15% for both summer and winter peaks. The 1998 Reliability Assessment speaks for itself. Duke New Smyrna did not prepare the 1998 Reliability Assessment, thus it is without knowledge as to the accuracy of this statement.

17. The FRCC's 1998 Reliability Assessment states that the "reserve margin analysis indicates that peninsular Florida maintains summer and winter reserve levels in excess of 15% throughout the entire ten-year planning period. This level is considered to provide adequate levels of reserve margin for reliable service."

Admitted that page 50 of the 1998 Reliability Assessment states that the "reserve margin analysis indicates that peninsular Florida maintains summer and winter reserve levels in excess of 15% throughout the entire ten-year planning period. This level is considered to provide adequate levels of reserve margin for reliable service." The 1998 Reliability Assessment speaks for itself. Duke New Smyrna did not prepare the 1998 Reliability Assessment, thus it is without knowledge as to the accuracy of this statement.

18. The FRCC's 1998 Reliability Assessment recommends that "the 15% reserve margin criterion be retained for reliability analyses of peninsular Florida."

Admitted that page 16 of Exhibit 2 to the 1998 Reliability Assessment states that the FRCC Resource Working Group "recommends that the 15% reserve margin criterion be retained for reliability analyses of peninsular Florida." The 1998 Reliability Assessment speaks for itself. Duke New Smyrna did not prepare the 1998 Reliability Assessment, thus it is without knowledge as to the accuracy of this statement.

19. Duke New Smyrna intends to sell the output of its Project outside of Florida when market conditions warrant such sales.

Denied.

20. Duke New Smyrna has not committed to sell the output of its Project solely to Florida utilities.

Admitted.

21. Duke New Smyrna has not committed to sell the output of its Project to any peninsular Florida utility other than the Utilities Commission, New Smyrna Beach.

Admitted.

22. Table 8 of the Joint Petition Exhibit and Exhibit _____ RLV-7, Page 1 of 2, show that peninsular Florida will achieve the FRCC's reserve margin criteria of 15% for every year in the horizon shown without the Duke New Smyrna Project.

Admitted that the subject tables show that peninsular Florida is projected to have summer reserve margins greater than 15% for each year of the horizon.

23. Table 8 of the Joint Petition Exhibit and Exhibit _____ RLV-7, Page 2 of 2, show that without the Duke New Smyrna Project peninsular Florida will achieve or exceed FRCC's winter reserve margin criteria of 15% for every winter from 1998/99 through 2006/07.

Denied.

24. Neither Duke New Smyrna nor the Utilities Commission, New Smyrna Beach have sought or been granted a waiver of or exemption from Florida Administrative Code Rule 25-22.081.

Admitted.

25. The Pahokee Power Partners II Project for which ARK Energy, Inc. and CSW Development-I, Inc. sought a determination of need in FPSC Docket No. 920761-EQ was an independent power project and not a cogeneration, small power production, or qualifying facility.

Denied.

26. The petition for a determination of need for the Pahokee Power Partners II Project was dismissed by the Florida Public Service Commission because the petitioners were found not to be "proper applicants for need determination proceeding under Section 403.519, Florida Statutes."

Admitted that Order No. PSC-92-1210-FOF-EQ at page 10:644, states "we find the petitions should be dismissed because Nassau and Ark are not proper applicants for a need determination proceeding under Section 403.519, Florida Statutes." Denied that this quoted language has any relevance to this proceeding.

27. The Pahokee Power Partners II Limited Partnership which would have owned the Pahokee Power Partners II Project could have met eligibility requirements for Exempt Wholesale Generation status.

Denied.

28. The Pahokee Power Partners II Limited Partnership did not have an executed final purchased power contract for the output of its Project.

Admitted.

29. Duke New Smyrna and the Utilities Commission New Smyrna Beach have not and will not jointly finance the Project.

Denied.

30. Duke New Smyrna and the Utilities Commission New Smyrna Beach have not and will not jointly acquire the Project.

Denied.

31. Duke New Smyrna and the Utilities Commission New Smyrna Beach have not and will not jointly construct the Project.

Denied.

32. Duke New Smyrna and the Utilities Commission New Smyrna Beach have not and will not jointly manage the Project.

Denied.

33. Duke New Smyrna and the Utilities Commission New Smyrna Beach have not and will not jointly operate the Project.

Denied.

34. Duke New Smyrna and the Utilities Commission New Smyrna Beach have not and will not jointly own the Project.

Denied.

35. The utilities which will be primarily affected by the Project include the peninsular Florida utilities to whom Duke New Smyrna will sell the output of the Project.

Denied.

36. The terms and conditions pursuant to which Duke New Smyrna will sell the output of the merchant capacity of its proposed plant have not been established.

Admitted that not all terms and conditions have been established.

37. The Pahokee Power Partners II Project, as an independent power project, would have been a public utility under the Federal Power Act.

Denied.

38. In Order No. PSC-92-1210-FOF-EQ, the Pahokee Power Partners II Project was characterized by the Commission as owned by "Ark" and Ark was characterized as a "non-utility generator."

Denied that Order No. PSC-92-1210-FOF-EQ states that Ark "owned" the Pahokee Power Partners II Project. Admitted that Order No. PSC-92-1210-FOF-EQ at page 10:645 stated "[n]on-utility generators...such as Ark..." Denied that this statement is relevant to this proceeding.

39. As to its merchant plant capacity, Duke New Smyrna has no customers.

Admitted that at this time, Duke New Smyrna has no customers other than the UCNSB.

40. As to its merchant plant capacity, Duke New Smyrna is not obligated to serve customers.

Admitted at this time. Denied to the extent that when Duke New Smyrna has customers it will be contractually obligated to serve them.

41. The Commission has previously held in Order No. PSC-92-1210-FOF-EQ that it is "need, resulting from a duty to serve customers, which the need determination proceeding is designed to examine."

Admitted that Order No. PSC-92-1210-FOF-EQ at page 10:645 states that "[i]t is this need, resulting from a duty to serve customers, which the need determination proceeding is designed to examine." Denied that this is the holding of this case or that the statement is relevant to this proceeding.

42. As to its merchant plant capacity, Duke New Smyrna has no need since it is not required to serve customers.

Denied.

43. Duke New Smyrna has not made an offer to sell capacity from its Project to any Peninsular Florida utility other than the 30MW committed to the Utilities Commission, New Smyrna Beach.

Admitted that Duke New Smyrna has not made a specific offer, including price, duration, and all terms and conditions, to any Peninsular Florida utility other than the UCNSB. Otherwise denied. Duke New Smyrna has generally offered to sell capacity from its Project to any interested utility in Peninsular Florida.

44. No Florida utility, other than the Utilities Commission, New Smyrna Beach, alleges that the Duke New Smyrna Project is needed for electric system reliability and integrity.

Duke New Smyrna is without knowledge. Duke New Smyrna has made reasonable inquiry and absent polling all Florida utilities, the information known or readily attainable by Duke New Smyrna is insufficient to allow Duke New Smyrna to admit or deny this request.

45. No Florida utility, other than the Utilities Commission, New Smyrna Beach, alleges that the Duke New Smyrna Project is needed for adequate electricity at a reasonable cost.

Duke New Smyrna is without knowledge. Duke New Smyrna has made reasonable inquiry and absent polling all Florida utilities, the information known or readily attainable by Duke New Smyrna is insufficient to allow Duke New Smyrna to admit or deny this request.

46. No Florida utility, other than the Utilities Commission, New Smyrna Beach, alleges that the Duke New Smyrna Project is the most cost-effective alternative available.

Duke New Smyrna is without knowledge. Duke New Smyrna has made reasonable inquiry and absent polling all Florida utilities, the information known or readily attainable by Duke New Smyrna is insufficient to allow Duke New Smyrna to admit or deny this request.

47. Duke New Smyrna has not demonstrated in its Joint Petition and Exhibit or in its direct testimony and exhibits that the uncommitted merchant plant capacity of its Project is needed for electric system reliability and integrity by any individual Florida utility.

Denied.

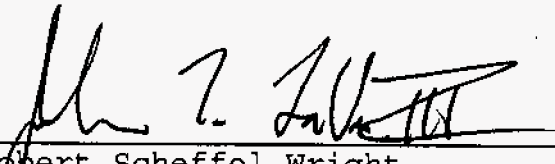
- B. Each of the following documents exhibited with this request is a true copy of the original and is genuine.

48. 1998 Reliability Assessment, August - 1998, prepared by the Florida Reliability Coordinating Council (Exhibit A)

Admitted.

49. 1998 Regional Load & Resource Plan, July, 1998,
prepared by the Florida Reliability Coordinating
Council (Exhibit B)

Admitted.



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and

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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 19th day of November, 1998:

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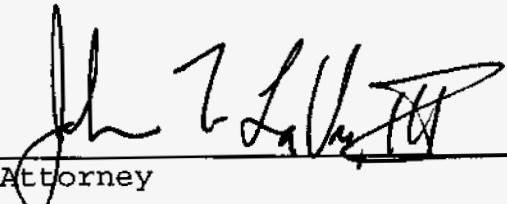
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