

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

**ORIGINAL**

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

October 12, 1998

**DIRECT TESTIMONY**

OF

**VINCENT M. DOLAN**

ON BEHALF OF

**FLORIDA POWER CORPORATION**

*Corrected*

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FPSC-RECORDS/REPORTING

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

**DIRECT TESTIMONY OF VINCENT M. DOLAN**

1       **Q Please state your name and business address.**

2       A     My name is Vincent M. Dolan, and my business address is 100 Central Avenue, St.  
3             Petersburg, Florida, 33701.

4       **Q By whom are you employed and in what position?**

5       A     I am the Director of Corporate and Regulatory Strategy for Florida Power Corporation  
6             (FPC).

7       **Q What are your duties and responsibilities in that position?**

8       A     My responsibilities include dealing with strategic planning and policy issues of  
9             significance to FPC. These issues include existing and emerging policy issues for the  
10            electric utility industry, including industry restructuring trends in other states and at  
11            the Federal level. In addition, my responsibilities include dealing with the full range  
12            of regulatory policy issues before the Florida Public Service Commission (the  
13            Commission).

14      **Q Please summarize your educational background and employment experience.**

1        **A**    I attended Rutgers University in New Brunswick, New Jersey. I received a Bachelor  
2                    of Science degree with honors in Mechanical Engineering in 1977. My employment  
3                    experience includes a series of project management, engineering startup, and sales  
4                    positions with Foster Wheeler Energy Corporation, an international engineering and  
5                    manufacturing company based in Clinton, New Jersey. This experience included the  
6                    startup and testing of large central station steam generating equipment sold to such  
7                    electric utilities as Florida Power and Light, Seminole Electric Cooperative, and  
8                    Kentucky Utilities.

9                                       Since 1986 I have held a variety of management positions with FPC in the  
10                    areas of Strategic Planning, Regulatory Policy, Governmental Affairs, District  
11                    Operations, and Customer Service and Marketing. Most recently, I have studied the  
12                    emerging trends in other states around the country related to industry restructuring,  
13                    including the issues related to deregulation and the variety of ways that the early-  
14                    mover states have attempted to deal comprehensively with those issues.

15                                       **SUMMARY AND PURPOSE OF TESTIMONY**

16        **Q**    **What is the purpose of your testimony?**

17        **A**    I am testifying on behalf of FPC in opposition to the Joint Petition for a need  
18                    determination by the Utilities Commission, City of New Smyrna Beach, Florida  
19                    (UCNSB) and Duke Energy New Smyrna Beach Power Company Ltd., LLP (Duke).  
20                    My testimony addresses policy issues relating to the Project and merchant plants

1 generally and discusses the impropriety of resolving those issues directly or by  
2 implication in the context of this proceeding.

3 **Q Please summarize your testimony.**

4 **A** Granting the Joint Petition would constitute a complete about-face from the prevailing  
5 approach in this State to evaluating, planning, and siting new generation capacity and  
6 would require legislative authorization and direction. The Commission is not in a  
7 position to address these issues now. Although ostensibly limited to one plant, this  
8 case is the tip of the iceberg for merchant plant issues in this State. The Joint Petition  
9 calls upon the Commission to change the ground rules for developing new generation  
10 capacity in Florida. Yet, the Commission has neither the time nor the resources in this  
11 proceeding to address fully the important issues associated with such plants.

12 **INAPPROPRIATENESS OF GRANTING THE JOINT PETITION**

13 **Q From a policy standpoint, is the Commission in a position to pass on the Joint**  
14 **Petition at this point in time?**

15 **A** No, it is not. The Joint Petition squarely presents the issue of whether the  
16 Commission has the authority to make a determination of need for a merchant plant  
17 and, if it has that authority, whether this is an appropriate thing to do. I will not  
18 address at this time the Commission's lack of statutory authority to make such a  
19 determination of need, which has been discussed in the legal submissions of FPC. The  
20 mere fact that we are here today discussing the need petition for the first merchant

1 plant proposal in Florida should give us reason to pause and ask why merchant plants  
2 do not currently exist in this State. That fact alone should cause us to stop this  
3 proceeding, but perhaps we should discuss other compelling reasons why this is  
4 neither the time nor the place for merchant plants to arrive in Florida. Even if one  
5 were to imagine that the statutory authority exists, it is quite clear that to take that step  
6 would, at a minimum, amount to a major re-working of the currently prevailing  
7 regulatory understanding and approach in this State.

8 Recent history tells us that there is neither a critical need to address this issue  
9 at this time, nor is the Commission, its Staff, or the Legislature interested in  
10 overhauling a regulatory framework that has served the State and its citizens well for  
11 over a hundred years. The Commission has already concluded that this issue has wide  
12 ranging legal and policy implications, and in addition, the Staff has suggested the need  
13 to monitor the developments of early-mover states towards competition, and recent  
14 events, such as the recall petitions related to industry restructuring in both California  
15 and Massachusetts — arguably the “bleeding edge” states on the competitive front —  
16 offer important lessons regarding the need to use caution before deciding to overhaul a  
17 system that offers safe, reliable, economic, and environmentally sound energy for all  
18 the citizens of Florida.

19 **Q What are some of the relevant lessons one might extract when examining the**  
20 **series of events that have transpired over the last few years in such states as**  
21 **California and Massachusetts?**

1       **A**    One might look at the states of California and Massachusetts and conclude, from a  
2            narrow field of vision, that yes, due to recent legislative changes, new generation,  
3            including merchant plants can be built by anyone who desires to enter that business.  
4            A closer inspection would offer other critical insights as well. First, both California  
5            and Massachusetts have fundamentally restructured their entire electric utility  
6            industry, all the way through to the retail level. They are among those early-mover  
7            states, almost all with the common characteristic of high electric prices (approximately  
8            50% higher than Florida) who, primarily because of their high prices, decided to be  
9            pioneers in the world of competition. In undertaking this review (which took in the  
10           range of five years in California before legislation was adopted), these states looked at  
11           all of the issues and their inter-relationships and impacts on all of the key stakeholders.  
12           The point is they took the appropriate amount of time to examine the issues prior to  
13           making such momentous changes to the electric industry in their respective states.  
14           The range of issues they examined were many, most notably the structure of the  
15           market including the applicability of an independent system operator (ISO) and a  
16           power exchange, the siting and planning laws, rules for retail suppliers, the role of  
17           public power/municipal electric suppliers, public interest programs, taxes, and  
18           stranded costs of existing generating resources that were put in place with the  
19           expressed approval of the utility commissions in those jurisdictions. Extensive  
20           revisions were made to existing statutes and rules to transition to this new system  
21           called electric competition. It was not a “piecemeal” approach dealing solely with  
22           merchant generation that Duke has proposed for consideration by this Commission.

1       **Q    What is the current status of competition in those states and what is the relevance**  
2       **to this proceeding?**

3       **A    It should be pointed out that as of this date there are pending in both states recall**  
4       **petitions to revisit key decisions made in establishing the new rules. In November, the**  
5       **voters in both states will speak about whether they feel this new system is truly better**  
6       **than the former model of utility regulation. In addition, the opening of the markets in**  
7       **Massachusetts, as well as in some other New England states, has resulted, by some**  
8       **estimates, in applications to build somewhere in the range of 20,000 MW of new**  
9       **generating capacity, which if built would replace in excess of 50% of the embedded**  
10      **generation (approximately 36,000 MW) in that region. To stop and examine this “free**  
11      **for all” rush to build new capacity in this region, and the impact it might have on both**  
12      **the environment and the integrity of the generation and transmission system, should**  
13      **make us conclude at a minimum that this Duke proposal is not about a single plant at**  
14      **all, but rather it is the “trojan horse” which would unleash unfettered construction of**  
15      **new generating capacity in the State of Florida. Would this result be good or bad?**  
16      **Reasonable people might disagree on the answer to that question, but those same**  
17      **people would certainly agree that the impact of this type of power plant “gold rush”**  
18      **would have broad impacts on all current and prospective market participants,**  
19      **including the consumers we are here to serve, and those impacts deserve the**  
20      **appropriate amount of discussion in the right forum before that type of change is**  
21      **instituted. This narrow proceeding, supposedly about a 30 MW need that has given**

1 birth to a 540 MW power plant proposal, is certainly not the appropriate proceeding to  
2 take this up.

3 **Q Would a resolution of the important issues raised by the Joint Petition in this**  
4 **limited proceeding be consistent with the position that the Commission or its**  
5 **Staff has taken on these matters to date?**

6 **A** No, it would not. In late 1997, the Commission Staff conducted workshops that  
7 recognized the novelty of the issues presented by merchant plant penetration in this  
8 State, and these workshops were attended by representatives from far and wide. Many  
9 important and difficult issues were discussed in these workshops. Thereafter, the full  
10 Commission denied Duke's request for a declaratory statement.

11 At that time, the Commission said that granting the relief requested "would  
12 carry implications for the electric power industry statewide," and it specifically  
13 directed the Staff "to discuss with the Chairman appropriate proceedings to review law  
14 and policy as to merchant plants being applicants for certificates of need." In  
15 re: Petition for Declaratory Statement by Duke Energy New Smyrna Beach Power  
16 Company, L.L.P. Concerning Eligibility to Obtain Determination of Need Pursuant to  
17 Section 403.519, F.S., Rules 25-22.080 and .081, F.A.C., and Pertinent Provisions of  
18 the Florida Electrical Power Plant Siting Act, Dkt. No. 971446-EU, Order No. PSC-  
19 98-0078-FOF-EU (Jan. 13, 1998). This need petition filed by Duke Energy falls way  
20 short of being the broad policy vehicle that the Commission requested the Staff to  
21 return with for further discussion.



1                   Also during the agenda conference, the Commission pointed out that the  
2                   Legislature had expressed a need for restraint in even considering opening the door to  
3                   merchant plant development in this State. See VMD-1 (letter from James A. Scott to  
4                   Hon. Julia Johnson) and VMD-2 (letter from Julia L. Johnson to Hon. Jim Scott).  
5                   This admonition is truly relevant, and consistent with the Commission's view, in the  
6                   fact that the Legislature recognizes that matters of such significance, such as the  
7                   introduction of merchant plants, can be contemplated only in a broad industry review,  
8                   which by necessity must result in legislative changes that would have significant  
9                   implications for many aspects of the current regulatory structure in Florida.

10           **Q    Would it be fair or appropriate to view this proceeding as involving a single**  
11           **project?**

12           **A    Not at all. It may be tempting to reason that the Joint Petition in this case involves a**  
13           **single power plant, but the precedent that an affirmative decision in this docket would**  
14           **create could not be so easily contained. No participant in this proceeding can state in**  
15           **complete honesty that this case is about a single power plant. Since Duke has shown**  
16           **no inclination to match plant size with the actual retail need of the Utilities**  
17           **Commission of New Smyrna Beach, one wonders why they did not propose a 3,000**  
18           **MW power plant site to serve this 30 MW need. And what of the other developers**  
19           **that spoke at the merchant workshop? How long will they wait before proposing the**  
20           **next 10,000 MW of plant additions to serve perhaps less than 500 MW of true retail**  
21           **need? The Commission has in the past consistently determined need that is utility**

1 specific and tied to retail load in order to avoid such gross mismatches of need and the  
2 resources constructed to serve that need. What is at stake is no less than an attempt to  
3 duplicate the bulk of the existing generating fleet in Florida and, as a result, to  
4 restructure the regulatory framework in this State because of a perception on the part  
5 of some that the time is right. Whatever one's views may be on that issue, there is a  
6 right way and a wrong way to go about industry restructuring. Now is certainly not  
7 the time for Florida to undertake a "piecemeal" approach to such important change as  
8 the fundamental restructuring of the electric industry.

9 **Q Is there any compelling reason to consider introducing merchant plants into the**  
10 **regulatory framework in Florida at this time?**

11 **A** No. In fact, one must also ask why merchant plants in Florida, and why now? The  
12 utilities in this State, under the regulatory guidance of the Commission, have a long-  
13 standing history of honoring their statutory obligation to serve, something that they  
14 have done successfully for decades without the need for merchant plants. The fact that  
15 merchant plants do not exist is, among other things, a reflection of the practical fact  
16 that they are not needed. The Commission has no existing legislative or regulatory  
17 context to determine how merchants would fit into an environment where they have  
18 full regulatory oversight with the existing state-regulated utilities. Duke proposes to  
19 play by an entirely different set of rules – rules that they propose should apply only to  
20 them. And as a further insult to the Commission and the utilities in Florida it  
21 regulates, Duke has opposed any attempt to include in these discussions the very

1 utilities that have consistently honored their obligation to serve the retail customers of  
2 Florida. If the Commission is genuinely desirous of a new set of rules — and recent  
3 events would suggest they are not — perhaps they should look no further than  
4 California and Massachusetts to determine if the benefits of new rules will outweigh  
5 the negative impacts, in particular the uneconomic duplication of facilities that were  
6 put in place by mutual agreement of the utilities and the Commission to serve the  
7 needs of retail customers.

8  
9  
10 **Q Do the federal laws and rules relating to wholesale competition preempt the State**  
11 **from making the ultimate determination of whether, when, and how merchant**  
12 **plants should be utilized?**

13 **A** No. In the vast majority of states that have addressed the issue of merchant plants,  
14 resolution of the issue was not dictated by the impetus for wholesale competition.  
15 Rather, merchants were dealt with in the context of a full review of laws and  
16 regulations related to retail and wholesale energy supply in these states. The states  
17 have taken the lead in addressing these issues; not the federal government. Federal  
18 policy leaves these issues to the states. So it is clear that the Florida Public Service  
19 Commission is not required by federal policy to grant Duke's petition.

20 **Q Does Duke provide sufficient assurances in its petition or testimony that**  
21 **introducing merchant plants at this time will not have negative or unintended**  
22 **consequences for the State?**

1           A    Certainly not. Duke offers many empty promises in its petition to help the reliability  
2                   of Peninsular Florida. Given the fact that the Commission has no regulatory oversight  
3                   over wholesale merchant plants, what real assurances do the consumers of Florida  
4                   have that Duke, or any other merchant-plant developer, will consistently and  
5                   economically provide energy where and when it is needed? Duke will care less about  
6                   the health, safety, and environment of Florida than its own economic self-interest in  
7                   selling power to the highest bidder, whether in Florida or outside the State. If Duke  
8                   were truly interested in serving Florida consumers, why is the vast majority of the  
9                   proposed capacity remaining uncommitted? If it were truly a good deal for Florida,  
10                  contracts would already be in place for the plant's full capacity. The fact that the  
11                  capacity is not under contract should be another indication that the need does not exist.

12                         It is ironic that in a state where Duke's parent company sells retail electric  
13                         service — South Carolina — Duke urged the state's public service commission to  
14                         address "fundamental changes to the industry . . . in an orderly and responsible  
15                         manner," arguing that the commission should take "sufficient time" to evaluate all  
16                         important data, the experience from other states, and other relevant considerations  
17                         because "[a] poorly managed transition could have a deleterious effect on South  
18                         Carolina's electric consumers." Electric Industry Restructuring Plan of Duke Energy  
19                         Corporation d/b/a Duke Power, at 4 (June 30, 1997). The consumers of this State, and  
20                         those who have served them for many decades, are no less deserving of deliberation  
21                         and care in any restructuring effort.

1       **Q    Can you identify some of the issues that the Commission would need to address in**  
2       **a deliberative manner before opening the door to merchant plants in this State?**

3       **A    Yes. There are many, and it is impossible to identify all the issues that may emerge in**  
4       **this difficult area without the benefit of full and open discussion among all interested**  
5       **parties in an appropriate forum. But to name some that come readily to mind:**

6           (1) The Commission would have to consider how it could meet its statutory  
7           obligation to ensure that adequate generation capacity exists by relying upon providers  
8           that have no obligation to serve and cannot be made subject to one.

9           (2) Since merchant plants would have no obligation to serve, how would the  
10          Commission deal with a merchant that changes its plans to build capacity after a need  
11          determination is made?

12          (3) Should merchants alter their plans to build, who would bear the consequences of  
13          the resulting shortfalls in available capacity? The utilities? The consumers? The  
14          Commission?

15          (4) What would be the consequence if a merchant plant were to sell its power to  
16          others than those with the "supposed" reliability need?

17          (5) If the Commission attempts to address issues of need on a state-wide basis, what  
18          methodology would be used to determine the appropriate amount of need, and what  
19          process will be established to assure that the option chosen is the best one, weighing  
20          all of the possibilities on the supply and demand side?

1 (6) Can the Commission permit the construction of new merchant plants that may  
2 render existing plants redundant in view of its statutory mandate to avoid “further  
3 uneconomic duplication of generating . . . facilities?” Section 366.04(5), Fla. Stats.

4 (7) What externalities are associated with merchant plants, and what would be their  
5 impact on the electric industry in Florida, the consumers, and the environment?

6 (8) Where would the Commission draw the line? At one plant? Two? Ten?  
7 Twenty?

8 **Q Even if the Commission were so inclined, could these issues be addressed**  
9 **adequately in this proceeding?**

10 **A** Absolutely not, for many reasons. For statutory reasons and by virtue of the  
11 Commission’s own time constraints, this proceeding is on a fast track, and the  
12 Commission has precious little time to devote to it. This is the worst possible manner  
13 to review and resolve policy issues of this magnitude.

14 In addition, even if the Commission were able to take the time to study these  
15 issues, this forum is not conducive to a resolution of the issues. This is an  
16 adjudicatory proceeding, not a broad policymaking proceeding.

17 **Q Does the current regulatory approach provide the Commission with sufficient**  
18 **tools to address concerns it may have about generation capacity in Florida?**

1       **A**    Yes, it does. The current regulatory approach has served this State well for many  
2                   years and has resulted in an electric industry in Florida that continues to provide  
3                   affordable and reliable electric supply, while balancing the standards of health, safety,  
4                   and the environment. We are in a state that has always taken a measured approach to  
5                   solving issues that are critical to providing essential electric service to the residents of  
6                   Florida, and we should continue that approach on the issues that bring us here today.

7                   FPC acknowledges its utility obligation to provide adequate and reliable power  
8                   to the consumers in its service territory and fully intends to continue to fulfill that  
9                   obligation. The Florida law and the Commission's regulations sanction the obligation  
10                  of the State's utilities to serve the State's electric consumers adequately and reliably.

11                 If during the annual review of the utilities' 10-year site plans filed with the  
12                 Commission, the Commission determines that all or part of the utilities' plans require  
13                 further discussion, remedies exist to ensure that the Commission is satisfied that the  
14                 plans adequately address the issues of capacity and reliability. One such remedy is not  
15                 merchant plants, a "wild card" proposal that would have far reaching implications that  
16                 require careful consideration in a proceeding much broader than the current one  
17                 initiated by Duke Energy.

18       **Q**    **Does this conclude your testimony?**

19       **A**    Yes, it does.

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