

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for  
determination of need for an  
electrical power plant in St.  
Lucie County by Duke Energy St.  
Lucie, L.L.C.

DOCKET NO. 000612-EU  
ORDER NO. PSC-00-1221-PCO-EU  
ISSUED: July 6, 2000

The following Commissioners participated in the disposition of  
this matter:

JOE GARCIA, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
E. LEON JACOBS, JR.  
LILA A. JABER

ORDER HOLDING MERCHANT PLANT PETITION IN ABEYANCE PENDING OUTCOME  
OF FLORIDA SUPREME COURT'S DECISION IN DUKE-NEW SMYRNA

BY THE COMMISSION:

On May 22, 2000, Duke Energy St. Lucie, L.L.C. (Duke), filed a Petition for Determination of Need for an Electrical Power Plant. Duke proposes to construct a 608 megawatt (MW) natural gas-fired, combined cycle merchant plant, an associated natural gas pipeline, and transmission facilities to connect the plant to the Florida grid. These facilities are to be located in St. Lucie County. The anticipated in-service date is June 1, 2003.

On April 20, 2000, the Florida Supreme Court issued its decision in Tampa Electric Co.; Florida Power Corp.; and Florida Power & Light Co., v. Garcia, et al., as the Florida Public Service Commission; Utilities Commission, City of New Smyrna Beach; and Duke Energy New Smyrna Beach Power Co., Ltd., L.L.P., Case Nos. SC95444, SC95445, SC95446 [hereinafter Duke/New Smyrna]. Therein, the Court reversed the Commission's decision to grant a need determination "for an electric power company's proposal to build and operate a merchant plant in Volusia County." Order, p. 2. At page 13 of its Order, the Court indicated that "[a] determination of need is presently available only to an applicant that has demonstrated that a utility or utilities serving retail customers has specific committed need for all of the electrical power to be generated at a proposed plant."

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Based on the Court's April 20, 2000, opinion, a determination of need is not available for Duke's proposed plant in St. Lucie County. However, on May 5, 2000, we petitioned the Court for rehearing. The Court has not yet acted on the petition, and its decision in the Duke/New Smyrna case will not be final until it rules on our petition and any others that were filed.

The need determination in Docket No. 000612-EU could be affected by the Court's decision on the petition for rehearing. Proceeding with the docket at this time could result in unnecessary expenditure of Duke's and the Commission's resources. Therefore, Duke's petition for a need determination in Docket 000612-EU shall be held in abeyance until the Court issues its final decision in the Duke/New Smyrna case.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Docket No. 000612-EU shall be held in abeyance pending the Florida Supreme Court decision in Tampa Electric Co., et al. v. Garcia, et al., Case Nos. SC95444, SC95445, SC95446. It is further

ORDERED that Docket No. 000612-EU shall remain open.

By ORDER of the Florida Public Service Commission this 6th day of July, 2000.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

( S E A L )

MKS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.