

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for declaratory)	DOCKET NO. 910376-EM
statement by City of Tallahassee)	
acknowledging that proposed)	ORDER NO. 24465
circulating fluidized bed)	
repowering project at Aarvah B.)	ISSUED: 5/2/91
Hopkins Unit No. 2 power plant is)	
not subject to a Florida Public)	
Service Commission determination)	
of need under sections)	
403.507(2)(a)2 And 403.519,)	
Florida Statutes)	

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
 BETTY EASLEY
 GERALD L. GUNTER
 MICHAEL WILSON

ORDER GRANTING CITY OF TALLAHASSEE'S
PETITION FOR DECLARATORY STATEMENT

BY THE COMMISSION:

By Petition filed March 14, 1991, the City of Tallahassee (City) asked that we issue a Declaratory Statement acknowledging that:

[T]he City's proposed Circulating Fluidized Bed (CFB) repowering project at its Arvah B. Hopkins Unit No. 2 power plant (Hopkins Unit No. 2) is not subject to a Commission determination of need under sections 403.507(2)(a)2 and 403.519, Florida Statutes (Supp. 1990), because said project will not result in additional electric generating capacity at Hopkins Unit No. 2. Petition, p. 1. [Emphasis supplied]

The Petition describes in detail the history of this power plant, including its certification by the State of Florida Pollution Control Board (Board) on May 20, 1975, for operation and construction as a "238 (Nominal) MW Oil/Gas Fueled Steam Electric Power Plant and ancillary facilities." In addition, the Petition describes various federal and state initiatives supporting conversion of oil/gas power plants to clean burning coal, the specific identification of Hopkins Unit No. 2 as a candidate for that conversion and the agreement between the City and the Department of Energy (DOE) on or about November 30, 1990, to construct and test a CFB boiler at Hopkins Unit No. 2.

DOCUMENT NUMBER-DATE

04297 MAY -2 1991

PSC-RECORDS/REPORTING

ORDER NO. 24465
 DOCKET NO. 910376-EM
 PAGE 2

In support of the theory that the repowering of Hopkins Unit No., 2 with coal instead of oil and gas does not trigger this Commission's determination of need procedures, section 403.519, Petitioner notes that the Florida Electrical Power Plant Siting Act (Act), sections 403.501-15, defines the term "site" as:

Any proposed location wherein an electrical power plant, or an electrical power plant alteration or addition resulting in an increase in generating capacity, will be located, including offshore sites within state jurisdiction. Subsection 403.503(25), Florida Statutes (Supp. 1990). [Emphasis supplied]

Thus, Petitioner reasons that:

Since the City's proposed repowering of Hopkins Unit No. 2 by the construction of a CFB boiler on site will not result in an increase in the electrical generating capacity, the City's project does not constitute an electrical plant "site" as defined by statute.

Citing a lack of "legal precedent or authority requiring the Commission to conduct need determination proceedings for an electrical power plant alteration which does not result in an increase in generating capacity," Petitioner asserts that:

The City is in doubt as to whether its proposed CFB repowering project is subject to a need determination proceeding before the Commission authorized by sections 403.507(2)(a)2 and 403.519, Florida Statutes (Supp. 1990).

DISCUSSION

In response to the Petition of the City of Tallahassee in this Docket, we grant the Declaratory Statement sought by the City because, as a matter of law, an electrical power plant alteration or addition resulting in no increase in generating capacity is not a "site" subject to this Commission's determination of need. Subsection 403.503(25), Florida Statutes. See, In re: Petition of Seminole Electric Cooperative and Tampa Electric Company for a determination of need for proposed electric power plant (Seminole), Docket No. 88-0309-EC; Order No. 22335; Issued: 12-22-89 (attached):

We find that need as used in the Siting Act encompasses only new capacity Seminole, p. 3. [Emphasis supplied]

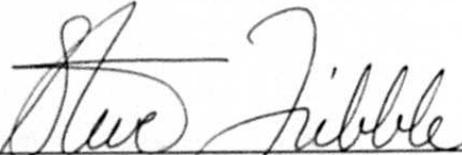
ORDER NO. 24465
 DOCKET NO. 910376-EM
 PAGE 3

In view of the above, it is

ORDERED by the Florida Public Service Commission that the Petition for Declaratory Statement by the City of Tallahassee is hereby granted. It is further

ORDERED that this docket be closed.

By ORDER of the Florida Public Service Commission this 2nd
 day of MAY, 1991.



 STEVE TRIBBLE, Director
 Division of Records and Reporting

(S E A L)

RCB

0082

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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 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 after the issuance

ORDER NO. 24465
DOCKET NO. 910376-EM
PAGE 4

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.