STATE OF FLORIDA

DIVISION OF RECORDS & REPORTING
BLANCA S. BAYÓ
DIRECTOR
(850) 413-6770

Public Service Commission

November 12, 1998

FPSC, CLK - CORRESPONDENCE
Administrative Parties Consumer
DOCUMENT NO. 16951-01
DISTRIBUTION:

John T. LaVia, III, Esquire
Landers & Parsons, P.A.
Post Office Box 271
Tallahassee, Florida 32302-0271

Re: 981042-EM -- 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. (Confidential Filing)

Dear Mr. LaVia:

Commission staff have advised that confidential Document No. 11603-98, filed on behalf of Duke Energy New Smyrna Beach Power Company Ltd., L.L.P., can be returned to the source.

Please do not hesitate to call if you have any questions concerning this matter.

Sincerely,

Kay Flynn

Kay Flynn, Chief
Bureau of Records

Enclosure
cc: Pete Lester/Eva Samaan, Division of Auditing and Financial Analysis

Received by: Robert Sheffield Wright Time: 4:15pm Date: 11/12/98

STATE OF FLORIDA

DIVISION OF RECORDS & REPORTING
BLANCA S. BAYÓ
DIRECTOR
(850) 413-6770

Public Service Commission

May 27, 1999

John T. LaVia, III
Landers Law Firm
P.O. Box 271
Tallahassee, Florida 32302

Re: Docket No. 981042-EM - Duke Energy New Smyrna Beach Power Company Ltd., L.L.P.
(Confidential Filing)

Dear Mr. LaVia:

Commission staff have advised that confidential Document No. 11600-98, filed October 16, 1998 on behalf of Duke Energy New Smyrna Beach Power Company Ltd., L.L.P. can be returned to the source.

Please do not hesitate to call if you have any questions concerning this matter.

Sincerely,

Kay Flynn

Kay Flynn, Chief
Bureau of Records

KF/abf
Enclosure
cc: Division of Legal Services

RECEIVED BY: Katrece Thompson DATE: 3:20 pm 5/27/99

Case Assignment and Scheduling Record

Section 1 - Division of Records and Repor (RAR) Completes

Docket No. 981042-EU Date Docketed: 08/19/1998 Title: Joint petition for determination of need for an electrical power plant in Volusia County by the Utilities Commission and Duke Energy New Smyrna Beach Power Company Ltd., L.L.P.

Company: Duke Energy New Smyrna Beach Power Company Ltd., L Utilities Commission

Official Filing Date: _____
Last Day to Suspend: _____ Expiration: _____

Referred to: ("()" indicates OPR)	ADM	AFA	APP	CAF	CMU	(EAG)	GCL	LEG	RAR	RRR	WAW
	___	___	___	___	___	X	___	X	___	___	___

Section 2 - OPR Completes and returns to RAR in 10 workdays.

Program/Module B2(a)

Staff Assignments

OPR Staff _____

Staff Counsel _____

OCRs ( ) _____

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Recommended assignments for hearing and/or deciding this case:

Full Commission ___ Commission Panel ___
Hearing Examiner ___ Staff ___

Date filed with RAR: _____

Initials: OPR _____
Staff Counsel _____

Time Schedule

WARNING: THIS SCHEDULE IS AN INTERNAL PLANNING DOCUMENT. IT IS TENTATIVE AND SUBJECT TO REVISION.
FOR UPDATES CONTACT THE RECORDS SECTION: (850) 413-6770
Current CASR revision level

0

		Due Dates	
		Previous	Current
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Section 3 - Chairman Completes

Assignments are as follows:

- Hearing Officer(s)

Commissioners						Hrg. Exam.	Staff
ALL	JN	DS	CL	GR	JC		

Where panels are assigned the senior Commissioner is Panel Chairman; the identical panel decides the case.
Where one Commissioner, a Hearing Examiner or a Staff Member is assigned the full Commission decides the case.

- Prehearing Officer

Commissioners					ADM
JN	DS	CL	GR	JC	

Approved: _____

Date: / /

DOCUMENT NO. 16951-01

PSC/RAR-15 (Rev. 1/98)

* COMPLETED EVENTS

Case Assignment and Scheduling Record

Section 1 - Division of Records and Reporting (RAR) Completes

Docket No. 981042-EM Date Docketed: 08/19/1998 Title: Joint petition for determination of need for an electrical power plant in Volusia County by the Utilities Commission and Duke Energy New Smyrna Beach Power Company Ltd., L.L.P.

Company: Duke Energy New Smyrna Beach Power Company Ltd., L
Utilities Commission

Official Filing Date: _____
Last Day to Suspend: _____ Expiration: _____

Referred to: ("()" indicates OPR)	ADM	AFA	APP	CAF	CMU	(EAG)	GCL	LEG	RAR	RRR	WAW
	___	X	___	___	___	X	___	X	___	___	___

Section 2 - OPR Completes and returns to RAR in 10 workdays.

Program/Module B2(a)

Staff Assignments

OPR Staff: M Futrell, R Bass, J Breman, C Bulecza-Banks, W Makin

Staff Counsel: L Paugh, G Jaye

OCRs (AFA): A Causseaux, P Lester, T Noriega, C Romig, E Samaan, J Sickel, P Stallcup

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Recommended assignments for hearing and/or deciding this case:

Full Commission X Commission Panel ___
Hearing Examiner ___ Staff ___

Date filed with RAR: 08/27/1998

Initials: OPR _____
Staff Counsel _____

Time Schedule

WARNING: THIS SCHEDULE IS AN INTERNAL PLANNING DOCUMENT. IT IS TENTATIVE AND SUBJECT TO REVISION.
FOR UPDATES CONTACT THE RECORDS SECTION: (850) 413-6770
Current CASR revision level: 0

		Due Dates Previous	Current
1.	Order Establishing Procedure	NONE	08/31/1998
2.	Preliminary List of Issues	NONE	09/04/1998
3.	FAW Notice Filed	NONE	09/10/1998
4.	Issue Identification	NONE	09/10/1998
5.	Notice of Prehearing and Hearing	NONE	09/10/1998
6.	Final List of Issues Sent to Parties	NONE	09/15/1998
7.	Testimony - Petitioner	NONE	09/21/1998
8.	Testimony - Intervenor	NONE	10/05/1998
9.	Testimony - Staff, if Any	NONE	10/12/1998
10.	Testimony - Rebuttal	NONE	10/19/1998
11.	Prehearing Statements	NONE	10/26/1998
12.	Draft Prehearing Order	NONE	11/02/1998
13.	Prehearing	NONE	11/05/1998
14.	Transcripts Due - Prehearing	NONE	11/12/1998
15.	Prehearing Order	NONE	11/18/1998
16.	Hearing 12/2-4/98	NONE	12/02/1998
17.	Transcripts Due - Hearing	NONE	12/11/1998
18.	Briefs Due	NONE	12/21/1998
19.	Staff Recommendation	NONE	01/21/1999
20.	Agenda - Regular	NONE	02/02/1999
21.	Standard Order	NONE	02/22/1999
22.	Close Docket or Revise CASR	NONE	03/24/1999
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Section 3 - Chairman Completes

Assignments are as follows:

- Hearing Officer(s)

Commissioners						Hrg. Exam.	Staff
ALL	JN	DS	CL	GR	JC		
X							

- Prehearing Officer

Commissioners					ADM
JN	DS	CL	GR	JC	
			X		

Where panels are assigned the senior Commissioner is Panel Chairman; the identical panel decides the case.
Where one Commissioner, a Hearing Examiner or a Staff Member is assigned the full Commission decides the case.

Approved: [signature] CSRA

Date: 08/27/1998

PSC/RAR-15 (Rev. 1/98)

* COMPLETED EVENTS

Case Scheduling/Rescheduling Advice

08/20/1998

To:

x	Commissioner Deason	x	Deputy Ex. Director/Technical	x	Electric & Gas Director
x	Commissioner Clark	x	Appeals Director	x	Records & Reporting Director
x	Commissioner Garcia	x	Legal Director	x	Research Director
x	Commissioner Jacobs	x	Auditing & Financial Analysis Director		Water & Wastewater Director
x	Executive Director		Communications Director	x	Court Reporter
x	Public Information Officer	x	Consumer Affairs Director	x	Staff Contact - **L. Paugh**

From: Office of Chairman Julia L. Johnson

Docket No. **981042-EU**

Title: **Joint petition for determination of need for an electrical power plant in Volusia County by the Utilities Commission and Duke Energy New Smyrna Beach Power ...**

1. Schedule Information

Event	Former Date	New Date	Location	Time
Prehearing Conference		11/05/1998	Tallahassee,148	09:30-12:00
Hearing		12/02/1998	Tallahassee,148	09:30-17:00
Hearing		12/03/1998	Tallahassee,148	09:30-17:00
Hearing		12/04/1998	Tallahassee,148	09:30-17:00

Remarks: **Involves docket(s) 981042**

2. Hearing/Prehearing Assignment Information:

Former Assignments

	Commissioners						Hrg. Exam.	Staff
Hearing	ALL	JN	DS	CL	GR	JC		

New or Changed Assignments

	Commissioners						Hrg. Exam.	Staff
	ALL	JN	DS	CL	GR	JC		
	X							

	Commissioners					
Prehearing Officer	JN	DS	CL	GR	JC	ADM

Commissioners					
JN	DS	CL	GR	JC	ADM
			X		

Reason for Reassignment: 1. Unavailability 2. Good Cause 3. Recused 4. Disqualified
Comments: Document ID is 98104201.CCS

Case Scheduling/Rescheduling Advice

09/14/1998

To:

x	Commissioner Deason	x	Deputy Ex. Director/Technical	x	Electric & Gas Director
x	Commissioner Clark	x	Appeals Director	x	Records & Reporting Director
x	Commissioner Garcia	x	Legal Director	x	Research Director
x	Commissioner Jacobs	x	Auditing & Financial Analysis Director		Water & Wastewater Director
x	Executive Director		Communications Director	x	Court Reporter
x	Public Information Officer	x	Consumer Affairs Director	x	Staff Contact - **L Paugh**

From: Office of Chairman Julia L. Johnson

Docket No. **981042-EM**

Title: **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 .**

1. Schedule Information

Event	Former Date	New Date	Location	Time
Oral Argument		10/01/1998	Tallahassee,152	12:00-13:00
Prehearing Conference		11/05/1998	Tallahassee,148	09:30-12:00
Hearing		12/02/1998	Tallahassee,148	09:30-17:00
Hearing		12/03/1998	Tallahassee,148	09:30-17:00
Hearing		12/04/1998	Tallahassee,148	09:30-17:00

Remarks: **Involves docket(s) 981042-EI ONLY COM. GR IS ASSIGNED TO THE ORAL ARGUMENT!**

2. Hearing/Prehearing Assignment Information:

Former Assignments

	Commissioners						Hrg. Exam.	Staff
	ALL	JN	DS	CL	GR	JC		
Hearing	X							

New or Changed Assignments

	Commissioners						Hrg. Exam.	Staff
	ALL	JN	DS	CL	GR	JC		
Hearing								

Prehearing Officer	Commissioners					
	JN	DS	CL	GR	JC	ADM
				X		

	Commissioners					
	JN	DS	CL	GR	JC	ADM

Reason for Reassignment: 1. Unavailability 2. Good Cause 3. Recused 4. Disqualified
Comments: Document ID is 98104202.CCS

Case Assignment and Scheduling Record

Section 1 - Division of Records and Repor .g (RAR) Completes

Docket No. 981042-EM Date Docketed: 08/19/1998 Title: 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.

Company: Duke Energy New Smyrna Beach Power Company Ltd., L Utilities Commission

Official Filing Date: _____
Last Day to Suspend: _____ Expiration: _____

Referred to: ("()" indicates OPR)	ADM	AFA	APP	CAF	CMU	(EAG)	GCL	LEG	RAR	RRR	WAW
	___	X	___	___	___	X	___	X	___	___	___

Section 2 - OPR Completes and returns to RAR in 10 workdays.

Program/Module B2(a)

Staff Assignments

OPR Staff: M Futrell, R Bass, J Breman, C Bulecza-Banks, W Makin

Staff Counsel: L Paugh, G Jaye

OCRs (AFA): A Causseaux, P Lester, T Noriega, C Romig, E Samaan, J Sickel, P Stallcup

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Recommended assignments for hearing and/or deciding this case:

Full Commission X Commission Panel ___
Hearing Examiner ___ Staff ___

Date filed with RAR: 09/16/1998

Initials: OPR _____
Staff Counsel _____

Time Schedule

WARNING: THIS SCHEDULE IS AN INTERNAL PLANNING DOCUMENT. IT IS TENTATIVE AND SUBJECT TO REVISION.
FOR UPDATES CONTACT THE RECORDS SECTION: (850) 413-6770
Current CASR revision level: 1

		Due Dates	
		Previous	Current
1.	Issue Identification Continued	NONE	09/18/1998
2.	Testimony - Petitioner	09/21/1998	09/28/1998
3.	Oral Argument	SAME	10/01/1998
4.	Testimony - Intervenor	10/05/1998	10/12/1998
5.	Testimony - Staff, if Any	10/12/1998	10/19/1998
6.	Testimony - Rebuttal	10/26/1998	10/28/1998
7.	Draft Prehearing Order	SAME	11/02/1998
8.	Prehearing Statements	10/26/1998	11/02/1998
9.	Prehearing	SAME	11/05/1998
10.	Transcripts Due - Prehearing	SAME	11/12/1998
11.	Prehearing Order	SAME	11/18/1998
12.	Hearing 12/2-4/98	SAME	12/02/1998
13.	Transcripts Due - Hearing	SAME	12/11/1998
14.	Briefs Due	SAME	12/21/1998
15.	Staff Recommendation	SAME	01/21/1999
16.	Agenda - Regular	SAME	02/02/1999
17.	Standard Order	SAME	02/22/1999
18.	Close Docket or Revise CASR	SAME	03/24/1999
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Section 3 - Chairman Completes

Assignments are as follows:

- Hearing Officer(s)

Commissioners						Hrg. Exam.	Staff
ALL	JN	DS	CL	GR	JC		
X							

- Prehearing Officer

Commissioners					ADM
JN	DS	CL	GR	JC	
			X		

Where panels are assigned the senior Commissioner is Panel Chairman; the identical panel decides the case.
Where one Commissioner, a Hearing Examiner or a Staff Member is assigned the full Commission decides the case.

Approved: [signature] PSC-98-1221-PCO-EM

Date: 09/18/1998

PSC/RAR-15 (Rev. 1/98)

* COMPLETED EVENTS

Case Assignment and Scheduling Record

Section 1 - Division of Records and Reporting (RAR) Completes

Docket No. 981042-EM Date Docketed: 08/19/1998 Title: 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.

Company: Duke Energy New Smyrna Beach Power Company Ltd., L
Utilities Commission

Official Filing Date: _____
Last Day to Suspend: _____ Expiration: _____

Referred to: ("()" indicates OPR)	ADM	AFA	APP	CAF	CMU	(EAG)	GCL	LEG	RAR	RRR	WAW
	___	X	___	___	___	X	___	X	___	___	___

Section 2 - OPR Completes and returns to RAR in 10 workdays.

Program/Module 82(a)

Staff Assignments

OPR Staff: M Futrell, R Bass, J Breman, C Bulecza-Banks, W Makin

Staff Counsel: L Paugh, G Jaye

OCRs (AFA): A Causseaux, P Lester, T Noriega, C Romig, E Samaan, J Sickel, P Stallcup

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Recommended assignments for hearing and/or deciding this case:

Full Commission X Commission Panel ___
Hearing Examiner ___ Staff ___

Date filed with RAR: 10/13/1998

Initials: OPR _____
Staff Counsel _____

Time Schedule

WARNING: THIS SCHEDULE IS AN INTERNAL PLANNING DOCUMENT. IT IS TENTATIVE AND SUBJECT TO REVISION.
FOR UPDATES CONTACT THE RECORDS SECTION: (850) 413-6770
Current CASR revision level: 1

		Due Dates	
		Previous	Current
1.	Testimony - Staff, if Any	10/12/1998	10/19/1998
2.	Prehearing Statements	10/26/1998	10/26/1998
3.	Testimony - Rebuttal	10/26/1998	10/28/1998
4.	Issue Identification	NONE	10/29/1998
5.	Draft Prehearing Order	SAME	11/03/1998
6.	Prehearing	SAME	11/05/1998
7.	Transcripts Due - Prehearing	SAME	11/12/1998
8.	Prehearing Order	SAME	11/18/1998
9.	Hearing 12/2-4/98	SAME	12/02/1998
10.	Transcripts Due - Hearing	SAME	12/11/1998
11.	Briefs Due	SAME	12/21/1998
12.	Staff Recommendation	SAME	01/21/1999
13.	Agenda - Regular	SAME	02/02/1999
14.	Standard Order	SAME	02/22/1999
15.	Close Docket or Revise CASR	SAME	03/24/1999
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Section 3 - Chairman Completes

Assignments are as follows:

- Hearing Officer(s)

Commissioners						Hrg. Exam.	Staff
ALL	JN	DS	CL	GR	JC		
X							

- Prehearing Officer

Commissioners					ADM
JN	DS	CL	GR	JC	
			X		

Where panels are assigned the senior Commissioner is Panel Chairman; the identical panel decides the case.
Where one Commissioner, a Hearing Examiner or a Staff Member is assigned the full Commission decides the case.

Approved: _____

Date: 10/13/1998

PSC/RAR-15 (Rev. 1/98)

* COMPLETED EVENTS

Case Scheduling/Rescheduling Advice

12/04/1998

x	Commissioner Deason	x	Deputy Ex. Director/Technical	x	Electric & Gas Director
x	Commissioner Clark	x	Appeals Director	x	Records & Reporting Director
x	Commissioner Garcia	x	Legal Director	x	Research Director
x	Commissioner Jacobs	x	Auditing & Financial Analysis Director		Water & Wastewater Director
x	Executive Director		Communications Director	x	Court Reporter
x	Public Information Officer	x	Consumer Affairs Director	x	Staff Contact - **L Paugh**

From: Office of Chairman Julia L. Johnson

Docket No. **981042-EM**

Title: **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 .**

1. Schedule Information

Event	Former Date	New Date	Location	Time
Oral Argument		10/01/1998	Tallahassee,152	12:00-13:00
Prehearing Conference		11/05/1998	Tallahassee,148	09:30-12:00
Hearing		12/02/1998	Tallahassee,148	09:30-17:00
Hearing		12/03/1998	Tallahassee,148	09:30-17:00
Hearing		12/04/1998	Tallahassee,148	09:30-17:00
Hearing		12/11/1998	Tallahassee,148	08:30-13:00

Remarks: **Involves docket(s) 981042-EM The 12/11/98 Hearing date is a Continuation date for this hearing if necessary.**

2. Hearing/Prehearing Assignment Information:

Former Assignments

	Commissioners						Hrg. Exam.	Staff
	ALL	JN	DS	CL	GR	JC		
Hearing	X							

New or Changed Assignments

	Commissioners						Hrg. Exam.	Staff
	ALL	JN	DS	CL	GR	JC		
Hearing								

	Commissioners						
	JN	DS	CL	GR	JC	ADM	
Prehearing Officer				X			

	Commissioners						
	JN	DS	CL	GR	JC	ADM	
Prehearing Officer							

Reason for Reassignment: 1. Unavailability 2. Good Cause 3. Recused 4. Disqualified

Comments: Document ID is 98104203.CCS

Case Scheduling/Rescheduling Advice

12/04/1998

To:

x	Commissioner Deason	x	Deputy Ex. Director/Technical	x	Electric & Gas Director
x	Commissioner Clark	x	Appeals Director	x	Records & Reporting Director
x	Commissioner Garcia	x	Legal Director	x	Research Director
x	Commissioner Jacobs	x	Auditing & Financial Analysis Director		Water & Wastewater Director
x	Executive Director		Communications Director	x	Court Reporter
x	Public Information Officer	x	Consumer Affairs Director	x	Staff Contact - **L Paugh**

From: Office of Chairman Julia L. Johnson

Docket No. **981042-EM**

Title: **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 .**

1. Schedule Information

Event	Former Date	New Date	Location	Time
Oral Argument		10/01/1998	Tallahassee,152	12:00-13:00
Prehearing Conference		11/05/1998	Tallahassee,148	09:30-12:00
Hearing		12/02/1998	Tallahassee,148	09:30-17:00
Hearing		12/03/1998	Tallahassee,148	09:30-17:00
Hearing		12/04/1998	Tallahassee,148	09:30-17:00
Hearing		12/11/1998	Tallahassee,148	08:00-13:00

Remarks: **Involves docket(s) 981042-EM**

2. Hearing/Prehearing Assignment Information:

Former Assignments

	Commissioners						Hrg. Exam.	Staff
	ALL	JN	DS	CL	GR	JC		
Hearing	X							

New or Changed Assignments

	Commissioners						Hrg. Exam.	Staff
	ALL	JN	DS	CL	GR	JC		
Hearing								

Prehearing Officer	Commissioners					
	JN	DS	CL	GR	JC	ADM
				X		

Commissioners					
JN	DS	CL	GR	JC	ADM

Reason for Reassignment: 1. Unavailability 2. Good Cause 3. Recused 4. Disqualified

Comments: Document ID is 98104204.CCS

Case Scheduling/Rescheduling Advice

12/14/1998

To:

x	Commissioner Deason	x	Deputy Ex. Director/Technical	x	Electric & Gas Director
x	Commissioner Clark	x	Appeals Director	x	Records & Reporting Director
x	Commissioner Garcia	x	Legal Director	x	Research Director
x	Commissioner Jacobs	x	Auditing & Financial Analysis Director		Water & Wastewater Director
x	Executive Director		Communications Director	x	Court Reporter
x	Public Information Officer	x	Consumer Affairs Director	x	Staff Contact - **L Paugh**

From: Office of Chairman Julia L. Johnson

Docket No. **981042-EM**

Title: **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 .**

1. Schedule Information

Event	Former Date	New Date	Location	Time
Oral Argument		10/01/1998	Tallahassee,152	12:00-13:00
Prehearing Conference		11/05/1998	Tallahassee,148	09:30-12:00
Hearing		12/02/1998	Tallahassee,148	09:30-17:00
Hearing		12/03/1998	Tallahassee,148	09:30-17:00
Hearing		12/04/1998	Tallahassee,148	09:30-17:00
Hearing		12/11/1998	Tallahassee,148	08:00-13:00

Remarks: **Involves docket(s) 981042**

2. Hearing/Prehearing Assignment Information:

Former Assignments

	Commissioners						Hrg. Exam.	Staff
	ALL	JN	DS	CL	GR	JC		
Hearing	X							

New or Changed Assignments

	Commissioners						Hrg. Exam.	Staff
	ALL	JN	DS	CL	GR	JC		
Hearing								

	Commissioners					
	JN	DS	CL	GR	JC	ADM
Prehearing Officer				X		

	Commissioners					
	JN	DS	CL	GR	JC	ADM
Prehearing Officer						

Reason for Reassignment: 1. Unavailability 2. Good Cause 3. Recused 4. Disqualified
Comments: Document ID is 98104205.CCS

Case Scheduling/Rescheduling Advice

12/14/1998

To:

x	Commissioner Deason	x	Deputy Ex. Director/Technical	x	Electric & Gas Director
x	Commissioner Clark	x	Appeals Director	x	Records & Reporting Director
x	Commissioner Garcia	x	Legal Director	x	Research Director
x	Commissioner Jacobs	x	Auditing & Financial Analysis Director		Water & Wastewater Director
x	Executive Director		Communications Director	x	Court Reporter
x	Public Information Officer	x	Consumer Affairs Director	x	Staff Contact - **L Paugh**

From: Office of Chairman Julia L. Johnson

Docket No. **981042-EM**

Title: **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 .**

1. Schedule Information

Event	Former Date	New Date	Location	Time
Hearing		12/18/1998	Tallahassee,148	13:30-17:00

Remarks: **Involves docket(s) 981042**

2. Hearing/Prehearing Assignment Information:

Former Assignments

	Commissioners						Hrg. Exam.	Staff
	ALL	JN	DS	CL	GR	JC		
Hearing	X							

New or Changed Assignments

	Commissioners						Hrg. Exam.	Staff
	ALL	JN	DS	CL	GR	JC		
Hearing								

	Commissioners					
	JN	DS	CL	GR	JC	ADM
Prehearing Officer				X		

	Commissioners					
	JN	DS	CL	GR	JC	ADM
Prehearing Officer						

Reason for Reassignment: 1. Unavailability 2. Good Cause 3. Recused 4. Disqualified
Comments:Document ID is 98104205.CCS

Case Scheduling/Rescheduling Advice

12/18/1998

To:

x	Commissioner Deason	x	Deputy Ex. Director/Technical	x	Electric & Gas Director
x	Commissioner Clark	x	Appeals Director	x	Records & Reporting Director
x	Commissioner Garcia	x	Legal Director	x	Research Director
x	Commissioner Jacobs	x	Auditing & Financial Analysis Director		Water & Wastewater Director
x	Executive Director		Communications Director	x	Court Reporter
x	Public Information Officer	x	Consumer Affairs Director	x	Staff Contact - **L Paugh**

From: Office of Chairman Julia L. Johnson

Docket No. **981042-EM**

Title: **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 .**

1. Schedule Information

Event	Former Date	New Date	Location	Time
Oral Argument		10/01/1998	Tallahassee,152	12:00-13:00
Prehearing Conference		11/05/1998	Tallahassee,148	09:30-12:00
Hearing		12/02/1998	Tallahassee,148	09:30-17:00
Hearing		12/03/1998	Tallahassee,148	09:30-17:00
Hearing		12/04/1998	Tallahassee,148	09:30-17:00
Hearing		12/11/1998	Tallahassee,148	08:00-13:00

Remarks: **Involves docket(s) 981042-EM**

2. Hearing/Prehearing Assignment Information:

Former Assignments

	Commissioners						Hrg. Exam.	Staff
	ALL	JN	DS	CL	GR	JC		
Hearing	X							

New or Changed Assignments

	Commissioners						Hrg. Exam.	Staff
	ALL	JN	DS	CL	GR	JC		
Hearing								

Prehearing Officer	Commissioners					
	JN	DS	CL	GR	JC	ADM
				X		

	Commissioners					
	JN	DS	CL	GR	JC	ADM

Reason for Reassignment: 1. Unavailability 2. Good Cause 3. Recused 4. Disqualified
Comments: Document ID is 98104207.CCS

Case Scheduling/Rescheduling Advice

12/18/1998

To:

x	Commissioner Deason	x	Deputy Ex. Director/Technical	x	Electric & Gas Director
x	Commissioner Clark	x	Appeals Director	x	Records & Reporting Director
x	Commissioner Garcia	x	Legal Director	x	Research Director
x	Commissioner Jacobs	x	Auditing & Financial Analysis Director		Water & Wastewater Director
x	Executive Director		Communications Director	x	Court Reporter
x	Public Information Officer	x	Consumer Affairs Director	x	Staff Contact - **L Paugh**

From: Office of Chairman Julia L. Johnson

Docket No. **981042-EM**

Title: **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 .**

1. Schedule Information

Event	Former Date	New Date	Location	Time
Hearing		12/18/1998	Tallahassee,148	13:30-17:00
Oral Argument		**01/28/1999**	**Tallahassee,148**	**09:30-17:00**
Special Agenda		**03/04/1999**	**Tallahassee,148**	**09:30-17:00**

Remarks: **Involves docket(s) 981042-EM**

2. Hearing/Prehearing Assignment Information:

Former Assignments

	Commissioners						Hrg. Exam.	Staff
	ALL	JN	DS	CL	GR	JC		
Hearing	X							

New or Changed Assignments

	Commissioners						Hrg. Exam.	Staff
	ALL	JN	DS	CL	GR	JC		
Hearing								

	Commissioners					
	JN	DS	CL	GR	JC	ADM
Prehearing Officer				X		

	Commissioners					
	JN	DS	CL	GR	JC	ADM
Prehearing Officer						

Reason for Reassignment: 1. Unavailability 2. Good Cause 3. Recused 4. Disqualified

Comments:Document ID is 98104207.CCS

Case Assignment and Scheduling Record

Section 1 - Division of Records and Reporting (RAR) Completes

Docket No. 981042-EM Date Docketed: 08/19/1998 Title: 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.

Company: Duke Energy New Smyrna Beach Power Company Ltd., L
Utilities Commission

Official Filing Date: _____
Last Day to Suspend: _____ Expiration: _____

Referred to: ("()" indicates OPR)	ADM	AFA	APP	CAF	CMU	(EAG)	GCL	LEG	RAR	RRR	WAW
	___	X	___	___	___	X	___	X	___	___	___

Section 2 - OPR Completes and returns to RAR in 10 workdays.

Program/Module B2(a)

Staff Assignments

OPR Staff: M Futrell, R Bass, J Breman, C Bulecza-Banks, W Makin

Staff Counsel: L Paugh, G Jaye

OCRs (AFA): A Causseaux, P Lester, T Noriega, C Romig, E Samaan, J Sickel, P Stallcup

( )

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( )

( )

Recommended assignments for hearing and/or deciding this case:

Full Commission X Commission Panel ___
Hearing Examiner ___ Staff ___

Date filed with RAR: 10/13/1998

Initials: OPR _____
Staff Counsel _____

Time Schedule

WARNING: THIS SCHEDULE IS AN INTERNAL PLANNING DOCUMENT. IT IS TENTATIVE AND SUBJECT TO REVISION.
FOR UPDATES CONTACT THE RECORDS SECTION: (850) 413-6770
Current CASR revision level: 1

		Due Dates Previous	Current
1.	Oral Argument	NONE	01/28/1999
2.	Staff Recommendation	01/21/1999	02/19/1999
3.	Special Agenda	02/02/1999	03/04/1999
4.	Standard Order	02/22/1999	03/24/1999
5.	Close Docket or Revise CASR	03/24/1999	04/26/1999
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Section 3 - Chairman Completes

Assignments are as follows:

- Hearing Officer(s)

Commissioners						Hrg. Exam.	Staff
ALL	JN	DS	CL	GR	JC		
X							

- Prehearing Officer

Commissioners					ADM
JN	DS	CL	GR	JC	
			X		

Where panels are assigned the senior Commissioner is Panel Chairman; the identical panel decides the case.
Where one Commissioner, a Hearing Examiner or a Staff Member is assigned the full Commission decides the case.

Approved: [signature] CSBA

Date: ~~10/13/1998~~ 12/22/98

PSC/RAR-15 (Rev. 1/98) • COMPLETED EVENTS

Case Scheduling/Rescheduling Advice

01/27/1999

To:

x	Commissioner Deason	x	Deputy Ex. Director/Technical	x	Electric & Gas Director
x	Commissioner Clark	x	Appeals Director	x	Records & Reporting Director
x	Commissioner Johnson	x	Legal Director	x	Research Director
x	Commissioner Jacobs	x	Auditing & Financial Analysis Director		Water & Wastewater Director
x	Executive Director		Communications Director	x	Court Reporter
x	Public Information Officer	x	Consumer Affairs Director	x	Staff Contact - **L Paugh**

From: Office of Chairman Joe Garcia

Docket No. **981042-EM**

Title: **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 .**

1. Schedule Information

Event	Former Date	New Date	Location	Time
Oral Argument		10/01/1998	Tallahassee,152	12:00-13:00
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Hearing		12/02/1998	Tallahassee,148	09:30-17:00
Hearing		12/03/1998	Tallahassee,148	09:30-17:00
Hearing		12/04/1998	Tallahassee,148	09:30-17:00
Hearing		12/11/1998	Tallahassee,148	08:00-13:00

Remarks: **Involves docket(s) 981042-EM**

2. Hearing/Prehearing Assignment Information:

Former Assignments

	Commissioners						Hrg. Exam.	Staff
	ALL	GR	DS	CL	JN	JC		
Hearing	X							

New or Changed Assignments

	Commissioners						Hrg. Exam.	Staff
	ALL	GR	DS	CL	JN	JC		
Hearing								

	Commissioners					
	GR	DS	CL	JN	JC	ADM
Prehearing Officer	X					

	Commissioners					
	GR	DS	CL	JN	JC	ADM
Prehearing Officer						

Reason for Reassignment: 1. Unavailability 2. Good Cause 3. Recused 4. Disqualified
Comments: Document ID is 98104208.CCS

Case Scheduling/Rescheduling Advice

01/27/1999

To:

x	Commissioner Deason	x	Deputy Ex. Director/Technical	x	Electric & Gas Director
x	Commissioner Clark	x	Appeals Director	x	Records & Reporting Director
x	Commissioner Johnson	x	Legal Director	x	Research Director
x	Commissioner Jacobs	x	Auditing & Financial Analysis Director		Water & Wastewater Director
x	Executive Director		Communications Director	x	Court Reporter
x	Public Information Officer	x	Consumer Affairs Director	x	Staff Contact - **L Paugh**

From: Office of Chairman Joe Garcia

Docket No. **981042-EM**

Title: **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 .**

1. Schedule Information

Event	Former Date	New Date	Location	Time
Hearing		12/18/1998	Tallahassee,148	13:30-17:00
Oral Argument		01/28/1999	Tallahassee,148	**09:30-11:59***
Special Agenda		03/04/1999	Tallahassee,148	09:30-17:00

Remarks: **Involves docket(s) 981042-EM * SPECIAL INTERNAL AFFAIRS WILL BEGIN AT 12:00 or IMMEDIATELY FOLLOWING THIS ORAL ARGUMENT.**

2. Hearing/Prehearing Assignment Information:

Former Assignments

	Commissioners						Hrg. Exam.	Staff
	ALL	GR	DS	CL	JN	JC		
Hearing	X							

New or Changed Assignments

	Commissioners						Hrg. Exam.	Staff
	ALL	GR	DS	CL	JN	JC		
Hearing								

	Commissioners						
	GR	DS	CL	JN	JC	ADM	
Prehearing Officer	X						

	Commissioners						
	GR	DS	CL	JN	JC	ADM	
Prehearing Officer							

Reason for Reassignment: 1. Unavailability 2. Good Cause 3. Recused 4. Disqualified
Comments:Document ID is 98104208.CCS

STATE OF FLORIDA

DIVISION OF RECORDS & REPORTING
BLANCA S. BAYÓ
DIRECTOR
(850) 413-6770

Public Service Commission

August 20, 1998

Robert Scheffel Wright, Esquire
Landers & Parsons, P.A.
Post Office Box 271
Tallahassee, Florida 32302-0271

Re: Docket No. 981042-EU

Dear Mr. Wright:

This will acknowledge receipt of a joint petition for determination of need for an electrical power plant in Volusia County by the Utilities Commission and Duke Energy New Smyrna Beach Power Company Ltd., L.L.P., which was filed by this office on August 19, 1998 and assigned the above-referenced docket number. Appropriate staff members will be advised.

Mediation may be available to resolve any dispute in this docket. If mediation is conducted, it does not affect a substantially interested person's right to an administrative hearing. For more information, contact the Office of General Counsel at (850) 413-6078 or FAX (850) 413-6079.

Division of Records and Reporting
Florida Public Service Commission

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

98-0679 AUG 27

August 20, 1998

SENATOR CHARLIE CRIST
20th District

COMMITTEES:
Executive Business, Ethics and Elections,
Chairman
Criminal Justice
Governmental Reform and Oversight
Judiciary
Ways and Means,
Sub. D (Criminal Justice)

Julia Johnson, Chairman
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Dear Chairman Johnson:

It is my understanding that a subsidiary of Duke Energy Power Services has recently filed a petition with the Florida Public Service Commission to construct an electric generating station in Volusia County. I am writing to express my support for this project, for I believe that it will have a beneficial impact upon our state and Florida's consumers.

As you may recall, I filed legislation during the 1998 Legislative Session that called for the deregulation of our state's electric utilities industry. The intent of this bill was to provide competition in the marketplace, while giving consumers the ability to choose their provider of electric service. The time is long overdue for such a change in policy.

I have been informed that Duke Energy has agreed to incur the total cost of constructing this power plant, not burdening residents with the expense of the project. The construction and operation of such a plant, as well as the presence of another provider of electric utility service in Florida, will help in the ongoing effort to meet our state's ever-increasing demand for electricity, while providing increased competition in the marketplace, thus benefiting Florida's consumers by lowering their power rates.

Clearly, this is an excellent and exciting opportunity, and your decision on this matter could very well establish future policy for competition in Florida, while ensuring that our state's citizens will always have access to the highest quality electric service at the least possible cost. I am confident that you will keep the best interest of our state's citizens in mind while addressing this petition, and agree that providing increased competition in the electric utility marketplace is necessary and important.

Best wishes always, and thank you so much for your time.

Sincerely,

Charlie Crist
Florida Senator

REPLY TO:
- 360 Central Avenue, Suite 1210, St. Petersburg, Florida 33701 (813) 893-5463
- One Tampa City Center, Suite 1700, Tampa, Florida 33602 (813) 229-2859
- 304 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5075

LEAF
LEGAL ENVIRONMENTAL ASSISTANCE FOUNDATION

August 26,1998

Blanca Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 981042 - New Smyrna Beach and Duke Energy Partners Need Determination Petition

Dear Ms. Bayó:

LEAF requests that it be added to the list of interested parties and receive mailings related to the above-referenced docket. Thank you.

Sincerely,

Gail Kamaras

Gail Kamaras, Director
Energy Advocacy Program

rolled
8-27-98

A Public Interest Law Firm
1114-E NORTH GADSDEN STREET • TALLAHASSEE, FLORIDA • 32303-6327 • 850-681-2591 • FAX 850-224-1275 *Recycled Paper*
1114-E THOMASVILLE ROAD • TALLAHASSEE, FLORIDA • 32303-6290 • 850-681-2591 • FAX 850-224-1275 *Recycled Paper*

Law Offices
HOLLAND & KNIGHT LLP

315 South Calhoun Street
Suite 600
P.O. Drawer 810 (ZIP 32302-0810)
Tallahassee, Florida 32301
850-224-7000
FAX 850-224-8832

Atlanta
Boca Raton
Fort Lauderdale
Jacksonville
Lakeland
Miami
New York
Orlando
San Francisco
St. Petersburg
Tallahassee
Tampa
Washington, D.C.
West Palm Beach

August 27, 1998

D. BRUCE MAY
904-425-5605

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Fl. 32399-0850

Re: Joint Petition for Determination of Need for an Electrical Power Plant in Volusia County by the Utilities Commission and Duke Energy New Smyrna Beach Power Company, Ltd., Docket No. 981042-EM

Dear Ms. Bayo:

Holland & Knight has an ongoing interest in the docket referenced above. Please place the undersigned on the docket's mailing list.

Thank you for your continued consideration.

Sincerely,

HOLLAND & KNIGHT LLP

D. Bruce May

DBM/sms

RUTLEDGE, ECENIA, UNDERWOOD, PURNELL & HOFFMAN
PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

STEPHEN A. ECENIA
JOHN R. ELLIS
KENNETH A. HOFFMAN
THOMAS W. KONRAD
MICHAEL G. MAIDA
J. STEPHEN MENTON
R. DAVID PRESCOTT
HAROLD F. X. PURNELL
GARY R. RUTLEDGE
R. MICHAEL UNDERWOOD

POST OFFICE BOX 551, 32302-0551
215 SOUTH MONROE STREET, SUITE 420
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (850) 681-6788
TELECOPIER (850) 681-6515

OF COUNSEL:
CHARLES F. DUDLEY

GOVERNMENTAL CONSULTANTS:
PATRICK R. MALOY
AMY J. YOUNG

August 27, 1998

Ms. Blanca Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Florida 32399-0850

Re: Florida PSC Docket No. 981042-EM

Dear Ms. Bayo:

The undersigned represents the City of Tallahassee ("City"). The City is interested in the above-referenced docket. Please provide copies of all notices, CASRs, orders, staff recommendations, pleadings and other documents filed, served or issued in the above-referenced docket to the following:

Kenneth A. Hoffman, Esq.
John R. Ellis, Esq.
Rutledge, Ecenia, Underwood,
Purnell & Hoffman, P.A.
P. O. Box 551
Tallahassee, FL 32302-0551
(850) 681-6788 (phone)
(850) 681-6515 (fax)

Thank you for your assistance in this matter.

Sincerely,

Kenneth A. Hoffman

KAH/rl

Duke Energy Power Services SM
A Duke Energy Company

Michael C. Green
Vice President & General Manager
Florida and Southeast

Duke Energy Power Services, LLC.
Suite 100
615 Crescent Executive Ct.
Lake Mary, FL 32746
(407) 804-0280 OFFICE
(407) 804-0380 FAX
mgreen@duke-energy.com

PSC

August 19, 1998

Ms. Linda Loomis Shelley
Chief of Staff
Executive Office of the Governor
The Capitol PL05
Tallahassee, FL 32399-0001

981042-EM

Dear Ms. Loomis Shelley:

As one of Florida's opinion leaders, it is important you know that our company and the Utilities Commission, City of New Smyrna Beach (UCNSB) will file plans today with the Florida Public Service Commission to build a 500-megawatt, gas-fired electric generating station in Volusia County. I would like to explain our plans to you.

This will be Florida's first ever merchant power plant ... a plant designed to sell power through the wholesale electricity market. The project will provide 30 megawatts of low-cost energy to the UCNSB for resale to its customers, with the balance of the project's capacity to be sold on the wholesale electricity market to other utilities.

Duke Energy Power Services, LLC, a subsidiary of Duke Energy Corp., is assuming all financial and operational risks and is committed to ensuring that this project produces clean, reliable, cost-effective power. Unlike traditional power plants, that are put into the rate base with the costs passed on to customers, a merchant power plant's costs are paid by the developers of the project ... with no guarantee of a set rate of return. Local utilities are not required to buy the output of the plant. In a wholesale marketplace, utilities buy from the merchant plant only when it is cost effective.

Although this will be the first merchant plant in Florida, merchant plants are being successfully built and operated all over the nation. Besides Duke Energy, other companies that are building and operating merchant plants include Southern Co., Pacific Gas & Electric, FPL Group (the parent company of Florida Power & Light), Houston Industries, Dominion Resources and Florida Progress (the parent of Florida Power Corp.).

Florida's electricity needs are projected to grow significantly. A recent PSC report projected that capacity needs in Florida are growing at about 1,000 megawatts per year. Merchant plants are a viable option for meeting this growing power need, while imposing no risks or obligations on Florida utilities or electric customers.

–more–

With assets of more than $24 billion, Duke Energy has the financial strength, the proven energy expertise and the commitment to be a long-term partner in helping Florida meet its energy needs. The New Smyrna Beach Power Project will bring a reliable source of clean and cost-effective wholesale electricity to the marketplace, providing a valuable option to municipalities, cooperatives and investor-owned utilities that are striving to meet the growing needs of their customers.

If you have any questions, either now or in the future, feel free to give me a call. I will be opening an office in Orlando to manage Duke's Florida efforts, and will be moving my family here in the next few months. You can reach me in Florida at (407) 804-0280 or at my Charlotte, NC office at (704) 382-6268. I look forward to hearing from you.

Sincerely,

Michael C. Green
Vice President & General Manager
Florida and Southeast

Merchant Power Plant Activity In Florida

FACT SHEET

Duke Energy Power Services℠

A Duke Energy Company

Who is Duke Energy?

Duke Energy Corporation (NYSE:DUK) is a global energy company with more than $24 billion in assets. Duke Energy companies provide electric service to approximately 2 million customers; operate pipelines that deliver 12 percent of the natural gas consumed in the United States; and are leading marketers of electricity, natural gas and natural gas liquids. Globally the companies develop, own and operate energy facilities and provide engineering, management, operating and environmental services. Duke Energy is on the World Wide Web at http://www.duke-energy.com.

Who is Duke Energy Power Services?

Duke Energy Power Services, LLC, (DEPS), is the domestic power developer for Duke Energy Corp. DEPS develops, owns and operates electric generation across the United States and Canada. DEPS' plants are independent producers or merchant power plants (see explanation). DEPS is a wholly owned affiliate of Duke Energy, based in Charlotte, North Carolina.

What is a merchant plant?

A merchant power plant is an electric generating facility that produces power for the express purpose of selling electricity into the wholesale electricity market. This wholesale electricity market comprises municipalities, cooperatives, investor-owned utilities and power marketers. Currently, DEPS is seeking to build a gas-fired wholesale merchant power plant in Volusia County, Fla., to sell bulk wholesale power into this market. The customers of this plant will be public, cooperative and municipal utilities that need low-cost power to meet the needs of their retail customers.

How can Duke do this in another utility's territory?

A federal law, the Energy Policy Act of 1992 (EPAct), opened the national wholesale electricity market to competition. This wholesale market – which involves the buying and selling of electricity at high voltage on a bulk basis – is the market Duke Energy proposes to enter in Florida. DEPS' efforts are not related to, nor part of, any effort to deregulate the Florida retail electricity market.

Are other companies operating merchant plants?

Throughout the United States, merchant plants are proliferating. Companies such as Duke Energy, Atlanta's Southern Co., California's PG&E Corp., Houston Industries, FPL Group (the parent company of Florida Power & Light), Virginia's Dominion Resources and Florida Progress (the parent company of Florida Power Corp.) are participating in this emerging market. These, and other companies, are building new state-of-the-art power plants or are buying existing power plants formerly owned by utility companies. These activities underscore the fact that leading players in the power industry are routinely moving outside of their historical operating areas into the open wholesale power market across North America.

Who will pay for the cost of the Duke New Smyrna Power Project?

Duke Energy Power Services will be making the capital investment and taking the economic risks for this project. In order for this plant to be successful, it must produce electricity at or below the market price for electricity in the Florida wholesale market. It will deliver that energy in a reliable and environmentally sound manner.

Why Florida?

In December 1997, the Florida Public Service Commission (PSC) published its "Review of Electric Utility 1997 Ten-Year Site Plans." In it, the PSC said that the state would need an additional 8,000 megawatts of power generation and conservation efforts over the next 10 years to meet the state's growing energy demand. This growing energy demand is one of the main reasons that the New Smyrna Beach Power Project makes sense.

Will there be environmental impacts from the plants?

As with any power plant, the New Smyrna Power Project will have environmental impacts. This project will be constructed with state-of-the-art natural gas-fired technology. It will provide needed electricity efficiently and in an environmentally friendly manner. In fact, DEPS and the New Smyrna Beach Utilities Commission expect that the availability of the plant's clean, cost-effective power will result in a net improvement (reduction) in air emissions from electricity generation in Florida. Duke Energy is recognized for building and operating plants in the most efficient, cost-effective manner while maintaining safety and reliability.

What are the economic impacts to Florida?

The New Smyrna Beach Power Project proposed for Volusia County will have a positive economic impact to the State of Florida and the Volusia County area. According to the mayor of New Smyrna Beach, the proposed plant will save the city's electric customers about $3.5 million annually and will produce substantial tax revenues. In addition, the proposed plant will provide additional employment opportunities to the area and will provide a reliable and economic option to existing utilities, municipalities and cooperatives to meet the growing energy needs of the state.

Will merchant plants be reliable?

Yes. The projected reliability of the New Smyrna Beach Power Project will be very high – as good as is available with any new plant today. Duke Energy has nearly 100 years of experience in operating power plants – meeting the highest standards of safety and reliability. The economic framework of the electric power business is changing, but our commitment to excellence, the environment and the communities we serve remains unchanged.

Duke Energy Power Services℠
A Duke Energy Company

STATE OF FLORIDA

Public Service Commission

August 26, 1998

MEMORANDUM

TO: Ms. Blanca Bayo, Director
Records and Reporting

FROM: Curtis Williams
Executive Assistant to Chairman Johnson

SUBJECT: Intercepted Communication received from Senator Charlie Crist
re Docket No. 981042-EU

This office has received the attached correspondence from Senator Crist. The correspondence has not been viewed or considered in any way by Chairman Johnson. Under the terms of the advisory opinion from the Commission on Ethics (issued July 24, 1991, as CEO 91-31-July 19, 1991), this letter does not constitute an ex parte communication by virtue of the fact that it was not shown to the Chairman. Because it is not deemed to be an ex parte communication, it does not require dissemination to parties pursuant to the provisions of Section 350.042, F.S. However, in such cases Chairman Johnson has requested that such correspondence be placed on the record in the correspondence side of the docket file.

CJW:ssf

Attachment:

cc: Division of Legal Services (Bob Elias)

WILLIAMS, BRYANT & GAUTIER, P.A.
ATTORNEYS AT LAW

FREDERICK M. BRYANT
JOHN H. DELOACH
RUSSELL D. GAUTIER
Board Certified
Real Estate Lawyer
JAMES E. SORENSON
Also Admitted in Georgia
LINDA J. STALVEY
F. PALMER WILLIAMS
L. LEE WILLIAMS, JR.
Board Certified
Civil Trial Lawyer
Of Counsel
JOHN J. KABBOORD, JR.

2010 Delta Boulevard (32303)
Post Office Box 4128
Tallahassee, Florida 32315-4128

Telephone: (850) 386-3300
Facsimile: (850) 386-3663
E-Mail: wbgandd@aol.com

September 3, 1998

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Boulevard
Tallahassee FL 32399-0870

Re: FPSC Docket No. 981042-EM / Utilities Commission, City of New Smyrna Beach, Florida; Duke Energy New Smyrna Beach Power Company, Ltd., L.L.P.

Dear Ms Bayó:

This law firm would like to be listed as an interested party in the referenced case.

We hereby formally request to be provided with all information customarily furnished to entities with interested-party status.

Thank you for your courtesy.

Sincerely,

Frederick M. Bryant

FMB / eL

cc: Mr. Claude L'Engle, P.E.
General Manager, FMPA

wpdocs/DUKE/BLANCO.001

M E M O R A N D U M

September 4, 1998

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (PAUGH)

RE: DOCKET NO. 981042-EM - Joint petition for determination of need for an electrical power plant in Volusia County by the Utilities Commission and Duke Energy New Smyrna Beach Power Company Ltd., L.L.P.

Attached are a **Memorandum and Staff's Preliminary List of Issues**, to be filed in the above-referenced docket. Also, please fax to all addressees listed on the memo.

LJP/slh
Attachment
cc: Division of Electric & Gas (Bohrmann)
I:981042.isl

8/22

981042

GUNSTER, YOAKLEY, VALDES-FAULI & STEWART, P.A.
ATTORNEYS AT LAW

To: Records, Florida Public Service Commission

From: William L. Hyde

Date: Sept. 4, 1998

Subject: Duke Power/New Smyrna Beach application/petition for determination of need, Case 98-1042

I am hereby requesting pusuant to the Florida Public Records Act a copy of each the following documents and pleadings in the above matter:

1. The joint petition, w/ exhibits, filed by Duke Power and New Smyrna Beach;

2. Notice of Waiver;

3. Fla Power & Light's motion/petition to intervene;

4. The notice for the 12/2/98 hearing;

5. The notice of commencement;

6. Any and all Fla Admin Weekly notices;

7. The Commission's CASR for this matter;

8. Any other pleadings or orders.

Please provide me with information as to the reasonable costs of copying such documents by telephone, 222-6660, or by return facsimile, 222-1002. I would appreciate it greatly if you could do so as expeditiously as possible so that I can send a runner with a check made out to the Commission to pick up such documents.

Please call if you have any questions. Thanks for your assistance.

Completed 9/9/98
$21.80

215 South Monroe Street, Suite 830 • Tallahassee, FL 32301
(850) 222-6660 Fax (850) 222-1002 e-mail clientservices@gunster.com
FORT LAUDERDALE • MIAMI • PALM BEACH • STUART • TALLAHASSEE • VERO BEACH • WEST PALM BEACH

BLACK & VEATCH LLP

8400 Ward Parkway, P.O. Box No. 8405, Kansas City, Missouri 64114, (913) 458-2000

September 2, 1998

Florida Public Service Commission
Division of Records and Reporting
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Attn: Ms. Blanca S. Bayo
Director

Dear Gentlemen:

I would like to be placed on the mailing list for Docket No. 981042-EM – 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. since I'm providing services for clients with an active Need Petition.

My mailing address is:

Myron Rollins
Black & Veatch
PO Box 8405
Kansas City, MO 64114
(913) 458-7432

added 9/8/98 MR

Very truly yours,

BLACK & VEATCH

Myron R. Rollins

From: Kay Flynn Confirm receipt
To: Grace Jaye, Leslie Paugh
Subject: 981042 - Utilities Commission

===NOTE==========

CC: Linda Williams, Nonnye Grant

.....

Nonnye went back to her records concerning this entity's name. While we no longer have the paperwork (from 1991) concerning the change to "Utilities Commission", it appears the name SHOULD BE "Utilities Commission, City of New Smyrna Beach, Florida." We're basing this assumption on the entry made at the time of the change, and on the memory recall we have concerning the space available for names in MCD in 1991. MCD has been corrected, the docket title has been corrected, and I have advised Schef Wright of the corrections we made (and apologized to him for the confusion).

To see the correct docket title, pull up the docket in CMS. Apologies to each of you for the confusion over this name! Kay

---

RICHARD A. ZAMBO, P.A.
ATTORNEYS AND COUNSELLORS
598 S.W. HIDDEN RIVER AVENUE
PALM CITY, FLORIDA 34990
Phone (561) 220-9163
FAX (561) 220-9402

REGISTERED PROFESSIONAL ENGINEER
REGISTERED PATENT ATTORNEY

COGENERATION & ALTERNATIVE ENERGY
ENERGY REGULATORY LAW

FACSIMILE TRANSFER
September 9, 1998

added 9/9/98.

TO: Ms. Blanca S. Bayo, Director FAX No: (850) 413-7118
Division of Records & Reporting
Florida Public Service Commission
Capitol Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

RE: **FPSC Docket No. 981042-EM**
New Smyrna Beach/Duke Energy - Petition For Determination Of Need

This document consists of 1 page(s), including this cover page. If you have problems receiving this transmission, please call. For a FAX reply, our number is (561) 220-9402.

MESSAGE:

Please add Rich Zambo of the law firm of Richard A. Zambo, P.A. to the Commission's list of "interested parties" in the above referenced proceeding. If you have any questions or require any further information in this regard, please do not hesitate to contact this office.

BEGGS & LANE

A REGISTERED LIMITED LIABILITY PARTNERSHIP

ATTORNEYS AND COUNSELLORS AT LAW

POST OFFICE BOX 12950

PENSACOLA, FLORIDA 32576-2950

SEVENTH FLOOR BLOUNT BUILDING

3 WEST GARDEN STREET

PENSACOLA, FLORIDA 32501

TELEPHONE (850) 432-2451

TELECOPIER (850) 469-3330

ROBERT P. GAINES
W. SPENCER MITCHEM
JAMES M. WEBER
ROBERT L. CRONGEYER
JOHN F. WINDHAM
J. NIXON DANIEL, III
RALPH A. PETERSON
GARY B. LEUCHTMAN
JOHN P. DANIEL
JEFFREY A. STONE
JAMES S. CAMPBELL
RUSSELL F. VAN SICKLE
RUSSELL A. BADDERS
GARY W. HUSTON
MARY JANE THIES
DAVID L. McGEE
CHARLES T. WIGGINS

E. DIXIE BEGGS
Retired

BERT H. LANE
1917-1981

September 14, 1998

Ms. Blanca Bayo
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399

RE: Docket No. 981042-EM

Dear Ms. Bayo:

Please include Gulf Power Company as an interested party in the following docket:

981042-EM 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.

The addresses to which correspondence and pleadings regarding this docket can be mailed are:

JEFFREY A. STONE
RUSSELL A. BADDERS
Beggs & Lane
P. O. Box 12950
(700 Blount Building)
Pensacola, FL 32576-2950

Susan D. Cranmer
Assistant Secretary and Assistant Treasurer
Gulf Power Company
One Energy Place
Pensacola, FL 32520-0780

Thank you for your assistance in this matter.

Very truly yours,

Russell A. Badders
Russell A. Badders
For the Firm

cc: Parties of Record
Interested Persons

M.L. 9-17-98

STATE OF FLORIDA

DIVISION OF RECORDS & REPORTING
BLANCA S. BAYÓ
DIRECTOR
(850) 413-6770

Public Service Commission

(VIA FAX NO. 904-255-7840)

September 14, 1998

Daytona Beach News-Journal
ATTN: Anita Saunders
P.O. Box 2831
Daytona Beach, Florida 32120-2831

Re: Publication of notice of hearing concerning Docket No. 981042-EM

Dear Ms. Saunders:

Attached is a notice for publication as a quarter-page display ad in the **Sunday, September 20, 1998**, edition of the *Daytona Beach News-Journal*.

The **bill** for publication of the notice should be sent to our Division of Administration (ATTN: Fiscal Section) at the address printed below. The **proof of publication** should be sent directly to me.

Please fax a copy of the notice to me for proofing before it is published. My fax number is 850-413-7118. I understand I may expect a copy for proofing by Thursday afternoon, September 17.

Thank you for your assistance in this matter.

Sincerely,

Kay Flynn

Kay Flynn, Chief
Bureau of Records

Attachment

cc: Docket File 981042-EM
Leslie Paugh, Division of Legal Services
Grace Jaye, Division of Legal Services

Public Service Commission

State of Florida

-M-E-M-O-R-A-N-D-U-M-

DATE: October 6, 1998

TO: Blanca Bayó, Director, Records and Reporting

FROM: Joy Kelly, Chief, Bureau of Reporting

RE: DOCKET NO. 981042-TP, ORAL ARGUMENT, HELD IN 10-1-98

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.

DOCUMENT NO. 10872, 10-5-98

The transcript for the above transcribed hearing has been completed and is forwarded for placement in the docket file, including attachments.

Please note that Staff distribution of this transcript was made to:

LEGAL, AFAD, E&G, SOLD

Acknowledged by:

_____

JK/pc

PSC/RAR 28 (Rev7/94)

STATE OF FLORIDA

DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

October 8, 1998

Mr. Frank B. Hawes, Jr.
1418 N. Atlantic Avenue
New Smyrna Beach, Florida 32169

Re: Your letter dated September 23, 1998

Dear Mr. Hawes:

Thank you for your correspondence dated September 23, 1998. I am one of the attorneys handling the matter to which you refer, Docket No. 981042-EM, 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.

The Duke/New Smyrna Beach Joint Petition For Determination of Need was filed pursuant to Section 403.519, Florida Statutes, a copy of which is attached. Pursuant to the statute, the Florida Public Service Commission is the forum for determination of need for an electrical power plant. In making its determination, the Commission must consider: (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; (4)whether conservation measures have been taken which might mitigate the need for the proposed plant; and (5) any other matters within its jurisdiction.

The Duke/New Smyrna need determination has been set for hearing on December 2 - 4, 1998. At that time, the Commission will hear testimony and consider evidence on all matters relating to the need for the proposed plant. Thereafter, the Commission will render its decision to grant or deny the Petition. Thus, while the brochure enclosed with your letter speaks in the affirmative regarding construction of the plant, no decision to grant or deny the petition will be made by the Commission until after it has considered all the evidence.

With respect to the "Enabling Act of 1967" referenced in your letter, the Florida Public Service Commission has no jurisdiction over municipal ordinances. If you require additional information regarding the Enabling Act, you may wish to contact the City of New Smyrna Beach.

Yours truly,

Leslie J. Paugh
Senior Attorney

LJP:js

cc: Bill Talbott, Executive Director
Bob Trapp, Assistant Director, Division of Electric & Gas

STATE OF FLORIDA

DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

October 9, 1998

Mr. Frank B. Hawes, Jr.
1418 N. Atlantic Avenue
New Smyrna Beach, Florida 32169

Re: Docket No. 981042-EM - 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.

Dear Mr. Hawes:

Attached is a copy of Section 403.519, Florida Statutes, "Exclusion forum for determination of need", which was inadvertently omitted from Ms. Paugh's reply letter dated October 8, 1998. I regret any inconvenience this may have caused you.

Yours truly,

Jackie Schindler
Deputy Clerk

ACK
AFA
APP
CAF
CMU
CTR
EAG
LEG
LIN
OPC
RCH
SEC
WAS
OTH

js
Enclosure

cc: Leslie Paugh

403.519 Exclusive forum for determination of need.–

On request by an applicant or on its own motion, the commission shall begin a proceeding to determine the need for an electrical power plant subject to the Florida Electrical Power Plant Siting Act. The commission shall publish a notice of the proceeding in a newspaper of general circulation in each county in which the proposed electrical power plant will be located. The notice shall be at least one-quarter of a page and published at least 45 days prior to the scheduled date for the proceeding. The commission shall be the sole forum for the determination of this matter, which accordingly shall not be raised in any other forum or in the review of proceedings in such other forum. In making its determination, the commission shall take into account the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available. The commission shall also expressly consider the conservation measures taken by or reasonably available to the applicant or its members which might mitigate the need for the proposed plant and other matters within its jurisdiction which it deems relevant. The commission's determination of need for an electrical power plant shall create a presumption of public need and necessity and shall serve as the commission's report required by s. 403.507(2)(a)2. An order entered pursuant to this section constitutes final agency action.

History.–s. 5, ch. 80-65; s. 24, ch. 90-331.

STATE OF FLORIDA

DIVISION OF ELECTRIC & GAS
JOSEPH D. JENKINS
DIRECTOR
(850) 413-6700

Public Service Commission

October 12, 1998

Brown Ayres
Ocean Club North, #A-202
4821 Saxon Drive
New Smyrna Beach, FL 32169

Dear Mr. Ayres:

Thank you for your letter, dated October 12, 1998, regarding the proposed merchant plant in Volusia County. For future reference, the matter to which you refer is Docket No. 981042-EM, In re: Joint Petition For Determination Of Need For An Electrical Power Plant In Volusia County By The Utilities Commission Dity Of New Smyrna Beach, Florida, and Duke Energy New Smyrna Beach Power Company Ltd., L.L.P.

The Duke/New Smyrna Beach Joint Petition For Determination of Need was filed pursuant to Section 403.519, Florida Statutes. Pursuant to the statute, the Florida Public Service Commission is the forum for determination of need for an electrical power plant. In making its determination, the Commission must consider: (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; (4) whether conservation measures have been taken which might mitigate the need for the proposed plant; and (5) any other matters within its jurisdiction.

The Duke/New Smyrna need determination has been set for hearing on December 2-4, 1998. At that time, the Commission will hear testimony and consider evidence on all matters relating to the need for the proposed plant. Thereafter, the Commission will render its decision to grant or deny the Petition. Since this is a docketed matter set for hearing by the Commission, we cannot comment on the merits of the case.

In your letter you also suggested that the Florida Public Service Commission not bar retail electric competition. Please be advised that a bill to give this Commission authority to move forward with retail electric competition was defeated in the last State of Florida legislative session (Senate Bill 1888). We will, however, continue to monitor the restructuring activities of other states.

If we may be of further assistance, please to not hesitate to contact us.

Sincerely,

Roland Floyd

Roland Floyd
Bureau Chief
Bureau of Conservation/Systems Planning
and Electric Safety

RF:kt
cc: Joe Jenkins/Division of Electric & Gas
Bob Trapp/Division of Electric & Gas
Patsy White/Division of Electric & Gas
Blanca Bayo/Division of Records & Reporting - Docket No. 981042-EM

EXTERNAL CONTACT TRACKING FORM

CONTACT NO: 02874 CHAIRMAN'S NO: DATE OF CONTACT: 10/12/1998 DUE DATE: 10/21/1998

CONTACT TYPE: LETTER NATURE OF CONTACT: CONSUMER CONCERN

ENTERED BY: PATRICIA WHITE RECEIVED BY: EAG REFERRED BY:

LAST NAME	FIRST	MI
AYRES	BROWN	MR.

MAILING ADDRESS
4821 SAXON DRIVE

CITY
NEW SMYRNA BEACH

STATE
FL

ZIP: 32169

WORK PHONE: HOME PHONE: FAX:

NAME OF ORGANIZATION:

INTERNET/E-MAIL:

COMPANY NAME:

COMPANY CODE:

ACCT NO:

TYPE: ß□ SUBJECT: MERCHANT ELECTRIC PLANT FOR NEW SMYRNA BEACH

NOTES:

ASSIGNED TO: SYSTEM PLANNING

ACTION TAKEN	ACTION DATE

DIVISION ASSIGNED:

RESPONSE: RESPONSE DATE:

DATE CLOSED:

see attached letter to Hawes for suggested response to Ayres letter

BROWN AYRES
Ocean Club North, #A-202
4821 Saxon Drive
New Smyrna Beach, Florida 32169

October 12, 1998

Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

RE: Proposed 500 MW Gas Fired/Turbine Driven Merchant Electric Plant For New Smyrna Beach Area

Gentlemen:

I am a former investment banker from Knoxville, Tennessee who now has lived in Winter Park and New Smyrna Beach for seven years. I have followed the public discussions and reports on the above captioned project and wish to lend my support for your required approval.

In this era of open competition in the utilities field it makes little sense for a public regulatory body like FPSC to continue giving territorial protection to monopoly corporations such as FP&LC and FPC. I recently read where one of the above power companies proposes to enter the retail telephone service business which I think they should be permitted to do.

The Duke Power/New Smyrna Beach Utilities Commission plan is a well conceived plan distributing benefits to both the public and to a for-profit corporation. It is a forerunner of joint-agreements that will surely follow in other areas of the state as has occurred in many states of the union.

I would hope to see FPSC give unanimous approval to such a first for Florida project.

Very truly yours,

Brown Ayres

October 13th, 1998

Williaiam D. Talbott, Esq.
Executive Director,
'Public Service Commissiom,
@ Capitol Servicee Center,
# 2540 Shumard Oak Boulevard,
Tallahasssee,
Florida,
323999-0850.

FRe: LetterFBHjr/9/23/98,
with Enclosure.letter/1/24/98

Dear Mr. Exeauive Director:

The writer, recently recei ved correspondence from your Senior Attorney, in reply to my letter as cited, herabove, which, of cou rse I, appreciated, as it accorded m e, information, I, believe would meet his, concerns, e.g. NEEDs. of additi onal, suppliers and/or distributors of Power Services, Electric!

You would of co urse have to agree t at, adequacy/versus, in-adequacy accordin g to, that letter, would be the, d eciding factor, in allowing New Smyrna Uilities Commissiongalong wit Duke Power, to begranted their 'Joint Request, as sought, apparently by them, to be decided at your hearings on this matter, in December.

As, you, know, we had the Hottest 'summer 'on Record 'Weather Bureaus' figures will attest to that', despite that, thattemeratures were in th e 'Hundred Degree Areas' for over a week, the New Smyrna U tili ties Commissi on 'AdequatelY' met those needs, impressi ve wouldn't you agree. 'I, am enclosing data to support that, Utities Commisons own records, please 'Note for similar periods, Viz June 1997- 852, 1998, 1313, causedd by the temperatures as cited, herehove. Need, for, Duke Power, I, wond er, based on t he Utilties own, records. as enclosed, Adequate,

The old axiomtic, expression, applies here 'Figures Do n't Lie is apropos', I, belive.

Si ncerely,

Frank B. Rawes Jr.
1418 N. Atlantic Avenue
New Smyrna Beach, Fl.
32169
Encl(2)

Jun 23, 1998

0130[illegible] Payment is enclosed

UTILITIES COMMISSION
Billing Questions - (904)[illegible]

CUSTOMER STATEMENT

ACCOUNT NUMBER

METER READINGS
Present Read Date: 05/28/98
Approx. Next Read Date: 06/26/98

Electric

Meter No.	59284341
Current	74215
Previous	73363
kWh Used	852
Multiplier	

Water

Meter No	1332277
Current	1341
Previous	1341
1000 Gal Used	

Street Lights

Previous Statement Balance		89.50
Payment Received - Thank You		89.50
BALANCE BEFORE NEW CHARGES		0.00
Billing for Electric Use on Rate: RESIDENTIAL		
Billing Period: 04/28/98 to 05/28/98 30 Days		
Customer Charge		5.65
Energy Charge	852 kWh @ $0.06917	58.93
Fuel Adjustment	852 kWh @ $0.00000	0.00
Load Management Credit		4.50CR
ELECTRIC SERVICE		60.08
Water Service		11.65
Sewer Service		17.22
TOTAL UTILITIES SERVICE		88.95
FL Gross Rec Tax		1.54
City Tax		1.80
Garbage (Billed for City 424-2212)		12.50
TOTAL CURRENT CHARGES (Past Due After 06/24/98)		104.79
TOTAL AMOUNT DUE		**104.79**

JUN 26 1998

DEPOSIT AMOUNT ON ACCOUNT

CONSERVATION INFORMATION

	This Month	Same Mo Last Year
Energy Usage		
kWh Used	852	815
kWh/Day	28	27
Water		
1000 Gal Used		3
Service Days	30	30

Messages

#12492

UTILITIES COMMISSION
City of New Smyrna Beach, Fl
P.O. Box 100 - 200 Canal St.
New Smyrna Beach, Fl 32170
(904)427-1361
Billing Questions - (904)426-7717

CUSTOMER STATEMENT

Statement Date: Jul 02, 1998

FRANK B HAWES JR
1418 N ATLANTIC AVE
NW SMYRN BCH FL 32169-2208

ACCOUNT NUMBER
0130505000

SERVICE ADDRESS:
1418 N ATL AV

METER READINGS
Present Read Date: 06/26/98
Approx. Next Read Date: 07/28/98

Electric

Meter No.	59284341
Current	78528
Previous	74215
kWh Used	1313
Multiplier	

Water

Meter No	98336111
Current	
Previous	
1000 Gal Used	

Street Lights

DEPOSIT AMOUNT ON ACCOUNT

CONSERVATION INFORMATION

	This Month	Same Mo Last Year
Energy Usage		
kWh Used	1313	845
kWh/Day	45	30
Water		
1000 Gal Used		3
Service Days	29	28

Previous Statement Balance		104.79	
Payment Received - Thank You		104.79	
BALANCE BEFORE NEW CHARGES			0.00
Billing for Electric Use on Rate: RESIDENTIAL			
Billing Period: 05/28/98 to 06/26/98 29 Days			
Customer Charge		5.65	
Energy Charge	1313 kWh @ $0.06917	90.82	
Fuel Adjustment	1313 kWh @ $0.00000	0.00	
Load Management Credit		4.50CR	
ELECTRIC SERVICE		91.97	
Water Service		11.65	
Sewer Service		17.22	
TOTAL UTILITIES SERVICE			120.84
FL Gross Rec Tax			2.36
City Tax			2.69
Garbage (Billed for City 424-2212)			12.50
*TOTAL CURRENT CHARGES (Past Due After 07/23/98)			138.39
TOTAL AMOUNT DUE			**138.39**

Messages

Fra. B Hawes Jr,
1418 N.Atlantic Avenue,
New Smyrna Beach,
Florida,
32169

N ovember,16th,1998

James F.Murley,Esq:
Secretary,
Department of Community Affairs,
State of Florida,
@ # 2555 Shumard Oak Boulevard
Tallahassee,
Florida,
32399-2100

Dear Mr.Murley:

I,wish to express my thanks and appreciation,for your letter, of N ovember,2nd,1998,replying to my,correspondence to you, as,of October,15th,1998,regarding the subject,matter referenced therein,e.g.,"Proposed Power Plant Duke Energy/N .S.B. Utilities Commission of New Smyrna Beach,Fl.,"

In your very fine and informative letter,you stated in your concluding paragraph,and I,quote"Should youu have any additional questions and or comments you may wish to call or write (at this address) Apropos'of thatt,I,submit the following:

The nomenclature,asapplied by N ew Smyrna U tilities Commission, I,believe,is currently active and practicable,and,prevelant availa le,by,'Florida Power and Light,Florida Power'and too, Commonwealth,and others,whose power,is,'H ere',for immediate use on request,I,believe the term used,is''Free Wheeling and/or on line or in-line service,if my information is correct,if that is true,'Wh y then the need or necessity for another supplier, Viz(Duke Energy?????

I,am too,enclosing,data ,,believe is pertinent to this issue, dating from,January,24th,1998,to,October,14th,1998,for your review and use as you,deem,necessary,in this matter.Keeping in mind however,that,referenced in the 'Utility Topics' the residents were never made aware of these,proposals,either through,any,hearing'Public,or an y prior,Media advices.as is required,for ordinances,or change threrof,ie.the Enabling 'Act'as originally created,poses a question,don't you think?

Very sincerely
Encl( )
C.C: P.S.C(Tallahassee)

Public Service Commission

State of Florida

-M-E-M-O-R-A-N-D-U-M-

DATE: November 9, 1998

TO: Blanca Bayó, Director, Records and Reporting

FROM: Joy Kelly, Chief, Bureau of Reporting

RE: DOCKET NO. 981042-EM, PREHEARING CONFERENCE HELD 11-5-98.

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.

DOCUMENT NO. 12515, 11-6-98

The transcript for the above transcribed hearing has been completed and is forwarded for placement in the docket file, including attachments.

Please note that Staff distribution of this transcript was made to:

LEGAL, AFAD, E&G, SOLD.

Acknowledged by:

JK/pc

PSC/RAR 28 (Rev7/94)

STATE OF FLORIDA

Public Service Commission

November 18, 1998

MEMORANDUM

TO: Ms. Blanca Bayo, Director
Records and Reporting

FROM: Curtis Williams
Executive Assistant to Chairman Johnson

SUBJECT: Intercepted Communication received from Ms. Harriet Damesek
Acting Secretary, Volusia/Flagler Environmental Action Committee
re Docket No. 981042-EU

This office has received the attached correspondence from Ms. Harriet Damesek on November 10, 1998. The correspondence has not been viewed or considered in any way by Chairman Johnson. Under the terms of the advisory opinion from the Commission on Ethics (issued July 24, 1991, as CEO 91-31-July 19, 1991), this letter does not constitute an ex parte communication by virtue of the fact that it was not shown to the Chairman. Because it is not deemed to be an ex parte communication, it does not require dissemination to parties pursuant to the provisions of Section 350.042, F.S. However, in such cases Chairman Johnson has requested that such correspondence be placed on the record in the correspondence side of the docket file.

CJW:jbe

Attachment:

cc: Division of Electric and Gas

VOLUSIA/FLAGLER ENVIRONMENTAL ACTION COMMITTEE

November 10, 1998

Florida Public Service Commission, Julia L. Johnson, Chair
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Dear Ms. Johnson and Commissioners:

Re: 514 MW Natural Gas Plant Proposed by Duke Energy – New Smyrna Beach Utility Commission

The Volusia/Flagler Environmental Action Committee voted unanimously at its November 9 meeting to support the above project.

This power plant is a win-win situation for everyone – the people, the environment and the city. The benefits are impressive: cooling water would be treated effluent from the adjacent sewage plant; the cost of electricity which is less than half the average wholesale price is guaranteed for 10 years. The construction costs will be paid by Duke Energy, and the city would receive $750,000 per year in lieu of taxes.

Duke Energy will lead us into the twenty first century with clean energy giving less pollution, less carbon dioxide accumulation, and in cooperation with the New Smyrna Beach Utilities Commission, a solar energy demonstration project.

We urge the Commission to approve this project.

Please make this letter a part of the official PSC record on this issue.

Sincerely,

Harriet Damesek

Harriet Damesek
Acting Secretary

724 South Beach Street, Daytona Beach, Florida 32114
904-252-5711

STATE OF FLORIDA

Public Service Commission

November 18, 1998

MEMORANDUM

TO: Ms. Blanca Bayo, Director
Records and Reporting

FROM: Curtis Williams
Executive Assistant to Chairman Johnson

SUBJECT: Intercepted Communication received from Grayce K. Barck
President, North Beach Neighborhood Association, Inc.
re Docket No. 981042-EM

This office has received the attached correspondence from Ms. Grayce K. Barck on November 11, 1998. The correspondence has not been viewed or considered in any way by Chairman Johnson. Under the terms of the advisory opinion from the Commission on Ethics (issued July 24, 1991, as CEO 91-31-July 19, 1991), this letter does not constitute an ex parte communication by virtue of the fact that it was not shown to the Chairman. Because it is not deemed to be an ex parte communication, it does not require dissemination to parties pursuant to the provisions of Section 350.042, F.S. However, in such cases Chairman Johnson has requested that such correspondence be placed on the record in the correspondence side of the docket file.

CJW:jbe

Attachment:

cc: Division of Electric and Gas

North Beach Neighborhood Ass'n, Inc.

201 Riverview Place New Smyrna Beach, FL 32169
Tel. (904) 428-9596 Fax (904) 428-4299
President Grayce K. Barck Sec.Treas. Randy Richenberg

November 11, 1998

Julia L. Johnson, Chair
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Dear Ms Johnson:

The Utilities Commission of New Smyrna Beach is a forward looking organization that has the backing of our Mayor and City Commissioners.

They currently have two leading edge projects. One is a plan in conjunction with Duke Energy to create a natural gas fired electrical generating plant. This would result in considerable savings to our community while being kind to our environment. The other project involves the use of solar energy and plans call for a 150 kw solar photo voltaic (PV) cell demonstration scheme.

The officers and directors of our association request you support these two projects being proposed by the City of New Smyrna Beach.

Cordially,

Grayce K. Barck

Grayce K. Barck,
President

STATE OF FLORIDA

Public Service Commission

November 18, 1998

MEMORANDUM

TO: Ms. Blanca Bayo, Director
Records and Reporting

FROM: Curtis Williams CW
Executive Assistant to Chairman Johnson

SUBJECT: Intercepted Communication received from Lee Bidgood, Jr.
Conservation Chair, Southeast Volusia Audubon Society, Inc.
re Docket No. 981042-EM

This office has received the attached correspondence from Mr. Lee Bidgood, Jr. on November 6, 1998. The correspondence has not been viewed or considered in any way by Chairman Johnson. Under the terms of the advisory opinion from the Commission on Ethics (issued July 24, 1991, as CEO 91-31-July 19, 1991), this letter does not constitute an ex parte communication by virtue of the fact that it was not shown to the Chairman. Because it is not deemed to be an ex parte communication, it does not require dissemination to parties pursuant to the provisions of Section 350.042, F.S. However, in such cases Chairman Johnson has requested that such correspondence be placed on the record in the correspondence side of the docket file.

CJW:jbe

Attachment:

cc: Division of Electric and Gas

SOUTHEAST VOLUSIA AUDUBON SOCIETY, INC.
P.O. Box 46
New Smyrna Beach, FL 32170

Florida Public Service Commission, Julia L. Johnson, Chair
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Nov. 6, 1998

Dear Ms. Johnson and Commissioners,

Subject: 514 MW Natural Gas Plant Proposed by Duke Energy—New Smyrna Beach Utility Comm.

At its regular October meeting, Southeast Volusia Audubon Society, Inc., a chapter of Florida and National Audubon, voted unanimously to support the subject project. The proposed Duke—New Smyrna Utility Commission(UC) plant offers several important advantages to our environment, human health and local rate payers:

- Significantly less SO_2, particulates, and NOx emitted vs. coal or oil per MW.
- Significantly less CO_2 greenhouse gas emitted than coal or oil per MW – of high importance to Floridians because of projected sea level rise, more heat waves, droughts, fires and deluges and possibly more powerful hurricanes caused by atmospheric buildup of greenhouse gases. Many scientists believe that recent powerful El Nino's are one symptom of the warming climate.
- Using reclaimed sewage effluent from the adjacent new sewage plant for cooling water – effluent that otherwise may pollute the Indian River Lagoon or upset the estuary's saline balance.
- A 150 kW solar PV demonstration project planned by the UC – the ultimate clean power.
- Last but not least – a projected 10 to 15% rate reduction by the non-profit UC, because its 30 MW allocation will be priced at half the price of electricity it now purchases wholesale.

We conclude that these advantages far outweigh objections from utilities that apparently fear that an efficient, low-polluting "merchant" plant may shave their profit margins, even though the expected wholesale offering, 484 MW, is only 1% of the electricity on the statewide grid. We find it ironic that FP&L tried in vain over several years for approval to burn arguably the world's dirtiest fossil fuel, emulsified tar "Orimulsion", and now opposes this relatively clean power plant project.

Please make this letter a part of the official PSC record on this issue.

Sincerely,

Southeast Volusia Audubon Society, Inc.
Lee Bidgood, Jr.
Lee Bidgood, Jr., Conservation Chair

cc W. Clay Henderson, President, Florida Audubon society

The Florida State University
Tallahassee, Florida 32306-1601

College of Law

October 14, 1998

Monte Reddish
Florida Public Service Commission

Dear Mr. Reddish:

I am responding by FAX to your request for my mailing address, so that I can be notified of developments in docket number 981042-EM. My address is:

Professor Mark Seidenfeld
Florida State University College of Law
Tallahassee, FL 32306-1601

Please let me know if there is any other information that you need from me regarding my representation on behalf of Duke - New Smyrna in the above docket.

Sincerely,

Mark Seidenfeld

entered 10.14.98

ORIGINAL

STATE OF FLORIDA

DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

November 24, 1998

Mr. Hamilton S. Oven, Jr.
Siting Coordination Office
Florida Department of Environmental Protection
2600 Blair Stone Road, Mail Stop 48
Tallahassee, Florida 32399

Re: New Smyrna Beach Power Project

Dear Mr. Oven:

Section 403.5067, Florida Statutes, directs the Florida Public Service Commission (FPSC) to make a recommendation to your office on the sufficiency of the Site Certification Application (SCA) for the New Smyrna Beach Power Project. On August 19, 1998 the Utilities Commission, City of New Smyrna Beach, and Duke Energy New Smyrna Beach Power Company Ltd., L.L.P. filed a Joint Petition for Determination of Need with the FPSC, for the New Smyrna Beach Power Project (Docket No. 981042-EM). This petition is scheduled for a December 2-4, 1998 hearing before the FPSC.

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The sufficiency of information contained in the Joint Petition is a disputed issue of material fact in the need determination. This issue will be litigated by the parties to the docket at the hearing in December, along with other issues raised relating to the Joint Petition. A post-hearing decision on the sufficiency of information in the Joint Petition, along with the ultimate decision on the joint petition is scheduled for a February 2, 1999, FPSC agenda conference. An order reflecting the FPSC's decisions is scheduled to be issued February 22, 1999. This order will constitute the report, required by Section 403.507(2)(a)2, Florida Statutes, as to the present and future need for the electrical generating capacity to be supplied by the proposed electrical power plant, and the FPSC's determination pursuant to Section 403.519, Florida Statutes.

While the FPSC is a statutory party to Site Certification proceeding, the matters involving the FPSC's jurisdiction will not be decided at the Site Certification hearing. Given that the issue of sufficiency is pending before the FPSC, it is not appropriate to make a recommendation on the sufficiency of the information contained in section 1.0 of the SCA for the New Smyrna Beach Power Project. If you have any questions, please contact me at (850) 413-6189.

Sincerely,

for

Robert V. Elias
Chief Bureau of Electric and Gas
Division of Legal Services

RVE:js
Enclosure

cc: Joe Jenkins
Mark Futrell

CARLTON FIELDS

ATTORNEYS AT LAW

BARNETT TOWER, ONE PROGRESS PLAZA
200 CENTRAL AVENUE, SUITE 2300
ST. PETERSBURG, FLORIDA 33701-4352

MAILING ADDRESS:
P.O. BOX 2861, ST. PETERSBURG, FL 33731-2861
TEL (813) 821-7000 FAX (813) 822-3768

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

VIA FEDERAL EXPRESS

Replaced org affidavit

Re: Joint Petition for Determination of Need for an Electrical Power Plant in Volusia County by the Utilities Commission, City of New Beach, Florida and Duke Energy New Smyrna Beach Power Company Ltd., L.L.P.; DOCKET NO. 981042-EM

Dear Ms. Bayo:

Enclosed for filing in the above docket on behalf of Florida Power Corporation are the original and fifteen (15) copies of Florida Power Corporation's Notice of Filing the original affidavit of William Woodward Webb.

We request you acknowledge receipt and filing of the above by stamping the additional copy of this letter enclosed.

If you or your Staff have any questions regarding this filing, please contact me at (813) 821-7000.

Very truly yours,

Gary L. Sasso

Gary L. Sasso

jc

Enclosures
cc: Counsel of Record
GLS:jlc

981042-EM

December 17, 1998

Public Service Commissioners
Tallahassee, Florida

RE: **Duke Energy plant makes powerful sense**

EDITORIAL

PSC commissioners should do what clearly makes sense and let Duke flip the switch.

Dear Commissioners,

I agree whole heartedly with the above! Please do it!

Margaret S. Campbell
503 N Causeway #101
New Smyrna Beach
Florida 32169

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981042-EM

Florida Public Service Commission
2540 Shumark Oak Blvd.
Tallahassee, FL. 32399-0850

Re Duke-New Smyrna Merchant Power Plant

I've moved to Florida and bought a home in NSB in 1997. I've been intrigued by the proposed power plant since I first read about it.

There are over-whemling indications that the plant can only be of major benefit to the local area and to the entire power grid serving Florida, The 15% reduction expected on local electricity bills will be most welcome to everyone in the community. The additional available energy produced by the plant can certainly benefit the Florida economy, which continues to consume whatever supply of energy is available.

Beside the out-of-pocket savings, there will be significant environmental benefits. Duke and the NSB Utility Commission have combined sound planning and competitive engineering by using recycled water from the new municipal sewage plant nearby to meet the cooling requirements of the generating plant thus reducing the demand for cooling water from the seriously depleted water tables on this side of the state.

The reduction of carbon monoxide emissions from the plant by 30-40% cannot help but set an example to other communities and companies to use critical path planning in the battle against global warming caused in large part by emissions from utility generating plants. Natural gas is certainly the fuel of the future for utilities -- clean, cheap and highly efficient.

Compare this energy and environmental potential to the past record of Florida Power and Light which attempted to be the only utility in the U. S. to burn emulsified tar, the dirtiest, most polluting of all fossil fuels. Atomic energy plants are so prohibitively expensive to build, operate and decommission that they will probably turn out to be the most inefficient generating plants ever built.

It would appear that the only group against the Duke-NSB proposal now before the Public Service Commission are the existing utility companies and for good reason -- they don't want efficient competition forcing them to upgrade their planning and engineering and present generating plants in order to compete with the new guy on the block. They operate with the benefit of a monopoly umbrella first provided by the state many years ago when economic conditions perhaps required that sort of structure. But times have changed and Congress recognized that fact in 1992 when they provided for deregulation of the utility industry. Congress knew, just as any smart consumer knows

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that competition can only benefit the ultimate consumer of electricity by providing cheaper, cleaner and much more efficient electricity. We've seen the benefit of deregulation with the airlines, railroads and trucking. The competition provided by foreign car manufacturers forced U.S. auto companies to get lean and efficient in their manufacturing operations and provide better value for the consumer. Compare the performance, reliability, durability and safety of the cars of today with those of the '60's, '70's, and '80's. Without the competition from foreign car manufacturers that would never have happened. U.S. auto companies were never truly competitive with each other. Neither are the monopolistic utility companies in the state of Florida , or the nation, for that matter.

An interesting aspect of the non-competitive market place favored by the utilities, which operate under the aegis of the state authorized monopoly, is that they have expanded into other businesses not related to the generation of power. Florida Power and Light is engaged in the food business through Turner Foods, one of the larger citrus growers and producers. FP & L also provides electricity to 11 other state beside Florida.

Florida Progress, another utility which enjoys peculiar benefits from the monopoly structure, is engaged in coal mining, shipping, river barges, loans to airlines and through Echelon International, a real estate spin-off, multi-family housing and commercial real estate. They own 8 office buildings, 1 multi-family housing project, with another in the works, and 5 industrial properties. So much for their claim that out-of-state power companies should not be allowed build generating plants in the state, even in partnership with municipal utilities, because that competition would be detrimental to their interests.

Florida's utilities are supposed to build power plants under the strict regulation of the PSC and benefit by having their costs rolled into customer rates set by the PSC. The guaranteed return to the utility carries a legal obligation to provide customers with the cheapest power available. Those costs include a fat dividend yield to the shareholders of the utilities. The PSC should recognize it's responsibility and acknowledge the fact that their mission is public service and O.K. this plant proposed by Duke Power Company.

The PSC should also refrain from passing the buck to the legislature. Five intelligent people, each earning $100,000 a year, should certainly be able to make the decision about this plant and others without, by default, fostering the perception that the legislature is bowing to political clout from the powerful utility industry.

It would seem very obvious that Duke, spending $160 million of their own money, will have done their homework very well and perceive a market beyond that offered by the

22,000 customers of New Smyrna Beach Utilities, if not just in Florida, perhaps in surrounding states. This ought to be a "slam-dunk" project and the PSC should recognize that fact and endorse the plant. Every newspaper in central Florida has endorsed the plant. The benefits are so obvious.

There are presently 22 other merchant power plants being built or already operating and other states and municipalities generally welcome such investments with open arms in order to obtain additional power at reasonable rates from modern, highly efficient plants that can only attract new industry and other benefits.

My personal vote is for the proposed Duke-New Smyrna Beach plant. I hope yours vote will be unanimous in favor of this project, too.

Sincerely,

James B. Wooley

James B. Wooley
401 Faulkner
New Smyrna Beach, FL
32168

981042-EM

Florida Public Service Commission
2540 Shumark Oak Blvd.
Tallahassee, FL. 32399-0850

Re Duke-New Smyrna Merchant Power Plant

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Compare this energy and environmental potential to the past record of Florida Power and Light which attempted to be the only utility in the U. S. to burn emulsified tar, the dirtiest, most polluting of all fossil fuels. Atomic energy plants are so prohibitively expensive to build, operate and decommission that they will probably turn out to be the most inefficient generating plants ever built.

It would appear that the only group against the Duke-NSB proposal now before the Public Service Commission are the existing utility companies and for good reason -- they don't want efficient competition forcing them to upgrade their planning and engineering and present generating plants in order to compete with the new guy on the block. They operate with the benefit of a monopoly umbrella first provided by the state many years ago when economic conditions perhaps required that sort of structure. But times have changed and Congress recognized that fact in 1992 when they provided for deregulation of the utility industry. Congress knew, just as any smart consumer knows

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981042-EM

Attn:

Florida Public Service Commission
2540 Shumark Oak Blvd.
Tallahassee, Fl 32399-0850

As residents of New Smyrna Beach Fla, and as customers of New Smyrna Utilities Commission, we would like to rejoice our hearty support for the new Duke/New Smyrna Beach power plant. We believe that this merger would benefit all of the NSB citizens, and sincerely hope that you will agree and give your go-ahead to the proposal.

Robert G Duncan
Verbal M Duncan
802 Island Point Dr
New Smyrna Bch, Fl
32168

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12/16/98

Attention:

Florida Public Commissioners
2540 Shumark Oak Blvd
Tallahassee, FL 32399-0850

We would like to let you know that we support this new Duke-Smyrna power plant. As we are residents of New Smyrna Beach, FL and customers of NSB Utilities Commission, this would be of great benefit economically and environmentally. We sincerely hope that you give this venture your approval.

Thomas & Debbie Edwards
1515 Beacon Street
New Smyrna Beach, FL 32169

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981042-EM

From: JOHNSGOL @ SMTP (JOHN SHELBY) {johnsgolf@ucnsb.net} CONFIRMED
To: Susan Clark
Subject: fwd: NEW SMYRNA POWER PROJECT WITH DUKE

===NOTE==========12/16/98=10:10am==========

Return-Path: <johnsgolf@ucnsb.net>
Received: from smtp.ucnsb.net (207.203.248.75)
by mail.psc.state.fl.us (Connect2-SMTP 4.30A.1000128)
for <SCLARK@PSC.STATE.FL.US>; Wed, 16 Dec 1998 09:53:49 -0500
Received: from computer (208ppp034.ucnsb.net [208.6.208.34])
by smtp.ucnsb.net (8.8.8/8.8.8) with SMTP id KAA24835
for <SCLARK@PSC.STATE.FL.US>; Wed, 16 Dec 1998 10:12:19 -0500
Message-ID: <000701be2906$3794e500$12000003@computer>
From: "JOHN SHELBY" <johnsgolf@ucnsb.net>
To: <SCLARK@PSC.STATE.FL.US>
Subject: NEW SMYRNA POWER PROJECT WITH DUKE
Date: Wed, 16 Dec 1998 10:10:26 -0500
MIME-Version: 1.0
Content-Type: multipart/alternative;
boundary="----=_NextPart_000_0004_01BE28DC.4CF20C40"
X-Priority: 3
X-MSMail-Priority: Normal
X-Mailer: Microsoft Outlook Express 4.72.3155.0
X-MimeOLE: Produced By Microsoft MimeOLE V4.72.3155.0

THANK YOU AND YOUR COMMISSION FOR A GOOD LONG REVIEW OF THE DUKE/NEW SMYRNA POWER PROGRAM.
I HAVE NEVER WRITTEN TO A STATE TO SUPPORT A PROJECT WHICH IS IN THE "WIN WIN" CLASS FORBOTH BUSINESS AND THE ENVIRONMENT. THE ONLY NEGATIVES I HAVE READ TO DATE ARE FEAR CHANGE AND LOSS OF CONTROL. WE NEED COMPETITION NOT MONOPOLIES OR GOVERNMENT SUBSIDED BUSINESS.
THE DUKE/NEW SMYRNA BEACH POWER PROJECT GIVES THE STATE A METHOD TO PHASE IN COMPETITION ALLOWING TIME TO CONVERT THE CURRENT POWER COMPANIES TO A NEW WAY OF BUSINESS.
I AM A RESIDENT WHO RETIRED TO NEW SMYRNA A FEW YEARS AGO AND ONE OF MY FEARS IS THE NUMBER OF POWER UTILITIES SUBJECT TO SURGE EFFECTS. THE NEW DUKE PLANT IS FAR AWAY FROM THE COAST HIGH AND NOT SUBJECT TO FLOODING.

----------[Content-type: text/html]----------

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<DIV><FONT color=#000000 size=2>THANK YOU AND YOUR COMMISSION FOR A GOOD
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<DIV><FONT color=#000000 size=2>  I HAVE NEVER WRITTEN TO A STATE TO
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Fwd=by:=Susan=Clark===12/18/98==3:38pm==========
Fwd to: Billy Stiles
.....

Fwd=by:=Billy=Stiles==12/21/98=10:10am==========
Fwd to: Kay Flynn, Kay Posey
.....
Kay Flynn: Please place a copy of this message on the correspondence side of the docket file.

Kay Posey: Please file a copy of this with my response in our files.

From: Billy Stiles CONFIRMED
To: MAIL @ SMTP {johnsgolf@ucnsb.net}
Subject: Duke/New Smyrna Need Determination

===NOTE==========12/21/98=10:09am==========
CC: Kay Flynn, Kay Posey

Mr. Shelby,

Thank you for your E-mail message concerning the proposed Duke New Smyrna power plant. Since this is an active proceeding before the Commission, Commissioner Clark is unable to discuss her particular views of the case. I will make sure, however, that a copy of your e-mail message will be placed in the correspondence section of the docket file where it will be available for inspection by the other Commissioners and the parties to the proceeding.

To date, the Commission has heard over four days of legal arguments and sworn testimony. Because of the complexity of the issues, the Commission has asked the parties to provide additional written briefs. These briefs will be presented to the Commissioners at an oral argument scheduled for January 28, 1999. After reviewing the testimony and information gleaned from the oral arguments, the Commission staff will prepare a written recommendation. This recommendation will be presented to the Commissioners at a special agenda conference currently scheduled for March 4, 1999.

The staff's recommendation is scheduled to be filed on February 19, 1999. You may access the recommendation prior to the special agenda at the Commission's web site. The address for the Commission's web site is http://www2.scri.net/psc/index.html.

Again, thank you for your correspondence regarding this matter.

Billy Stiles
Assistant to Commissioner Clark
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
bstiles@psc.state.fl.us
850-413-6040

981042

December 17, 1998
New Smyrna Beach, Florida
VIA Facsimile

To the Members of the Florida Public Service Commission

Thanks in advance for taking the time to read my letter. I live in New Smyrna Beach, and I'm writing you about the plan for our Utilities Commission to cosponsor a new generating plant with Duke Energy.

You should know that I am just a common residential ratepayer. Though I take an interest in utilities, I am not associated in any way with one. I read that little public input has been offered in this case, and decided to write. As a ratepayer, I naturally wish to enjoy lower rates. But I have three other points to make in support of this application.

First, smaller utilities are enjoying a resurgence in many parts of the country, and I believe that you should generally be helping them. Economies of scale caused many of the municipal plants to fall out of favor with voters in the 70's and 80's, and some were dismantled. Now, however, local government has in many cases made efforts to streamline and improve such operations. Since the PSC is the agency which governs these monopolies (large and small), it should always be alert to protect the smaller members when necessary.

Second, our local utility has undergone some dramatic changes in the last few years. I do not know Mr. Vaden personally, but I've watched his moves in the press, and though there have been complaints involved with the streamlining due to jobs and pay issues, I can unequivocally say that he has done a brilliant job. Our rates have been cut, and he has contributed more to the city at the same time, *without sacrificing reliability.* As the owner of a computer software business, I am critically aware of power grid reliability, and in this our utility has performed very well. Its service is both well regulated (voltage) and responsive to outages. Ron has worked very hard on the Duke plan. I believe that his hard work and good planning and performance should be rewarded if at all possible. FPL, which supplies my business (just over the Edgewater line), by contrast, is poorly regulated, has poor response times and has treated Edgewater with unusual diffidence. This is an excellent example of local accountability, and a powerful argument in favor of the New Smyrna Beach Utilities Commission.

Lastly, it is abundantly clear that both political and economic pressures will produce competition in the Electric Utility industry. Wheeling is coming (and I will be one of its first customers as soon as it is available to me), and some are wiser than others in preparing for it, as the Maine case clearly shows. If you discourage what is obviously a well thought out, environmentally benign and locally desirable proposal, you will set free market influences in Florida back for years, and further increase the distance between the ratepayers and utility management. In short, if this proposal is shot down, why should any other even be considered? A more favorable set of circumstances is unlikely. Do not shuffle Florida to the back of the bus.

In closing, I must say I'm appalled that the legislature is taking such an interest in this case. It is precisely to insulate utility regulation from politics that the PSC is constituted. Do not waver, however you decide, in your commitment to decide. If the legislature senses an opportunity to micromanage utilities, the future of my electricity will become darker than FPL's worst scenarios.

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Peter Moncure
134 Sea Street
New Smyrna Beach, Florida 32168
904.426.2521 (W) 904.426.5040 (H) 904.423.0821 (Fax)

981042

Southeast Volusia Chamber of Commerce

Serving New Smyrna Beach, Edgewater & Oak Hill

December 17, 1998

Julia L. Johnson, Chairman
Florida Public Service Commission
2540 Shumark Oak Boulevard
Tallahassee, FL 32399-0850

Dear Chairman Johnson:

The Southeast Volusia Chamber of Commerce would like to take this opportunity to express its support of the Duke Power Plant Project proposed for the New Smyrna Beach area. The Chamber of Commerce currently represents 600 members, individuals and businesses large and small, who are affected by the proposed generating plant. The reduction in electrical costs will produce substantial savings that will be recycled in our community.

In addition, the proposed project creates a competitive environment in the power production market that will result in a more effective market for all customers. This is a proven concept that all businesses face on a daily basis, and the power production field should be no exception.

The project has had a profound effect on our economic development efforts. News of the proposed project has brought a number of large manufacturers who wish to be close to a power generating plant that provides power at a significantly lower cost, thus making them more competitive in the market place.

Lastly, the added benefit of a facility of this type that has a positive impact on the environment is significant. This project appears to combine the elements that protect our delicate environment with an efficient power generating system.

On behalf of our members and citizens of the community we urge you to approve this project.

Sincerely,

John Ascherl

John Ascherl
President

cc: Mayor James Vandergrifft
Ron Vaden, Director, Utilities Commission
John Green, Duke Power

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115 Canal Street, New Smyrna Beach, FL 32168 (904) 428-2449 (800)-541-9621 Fax (904) 423-3512
Website: sevchamber.com E-mail: nsbchamber@ucnsb.net

State of Florida

Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: December 23, 1998

TO: Blanca Bayo, Director, Division of Records and Reporting

FROM: Melinda Butler, Assistant to Commissioner Jacobs MAB

RE: Intercepted Communications From an Interested Party Received in Docket No: 981042

This office has received the attached correspondence of J. Walton Parker. The correspondence has not been viewed or considered in any way by Commissioner Jacobs. Under the terms of the advisory opinion from the Commission on Ethics (issued July 24, 1991 as COE 91-33-JULY 19, 1991), the following letter does not constitute an ex parte communication by virtue of the fact that it was not shown to the Commissioner. Because it is not deemed to be an ex parte communication, it does not require dissemination to parties pursuant to the provisions of Section 350.042, Florida Statutes. However; in such cases Commissioner Jacobs has requested that a copy of the correspondence and this memo, as a matter of routine, be placed in the correspondence side of the file in this docket.

12/7/98

6635 Ingram Rd.
New Smyrna Bch.
Fl 32169

Mr. E. Leon Jacobs, Jr., Commissioner
Fla. Public Svce Comm.
254 Shumard Oak Blvd.
Tallahassee, Fl 32399-0850

Dear Mr. Jacobs,

We respectfully ask for your support for the building of the co-generation plant by Duke Energy Co. here in New Smyrna Beach. This will provide lower cost energy for our community and it is an environmentally desirable project.

Thank you for your consideration,

J Walton Parker

State of Florida

Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: December 23, 1998

TO: Blanca Bayo, Director, Division of Records and Reporting

FROM: Melinda Butler, Assistant to Commissioner Jacobs MB

RE: Intercepted Communications From an Interested Party Received in Docket No: 981042

This office has received the attached correspondence of Barbara J. Herrin. The correspondence has not been viewed or considered in any way by Commissioner Jacobs. Under the terms of the advisory opinion from the Commission on Ethics (issued July 24, 1991 as COE 91-33-JULY 19, 1991), the following letter does not constitute an ex parte communication by virtue of the fact that it was not shown to the Commissioner. Because it is not deemed to be an ex parte communication, it does not require dissemination to parties pursuant to the provisions of Section 350.042, Florida Statutes. However; in such cases Commissioner Jacobs has requested that a copy of the correspondence and this memo, as a matter of routine, be placed in the correspondence side of the file in this docket.

FAX COVER SHEET

URGENT URGENT URGENT

FROM: BARBARA J. HERRIN
465 Wildwood Drive
New Smyrna Beach, Florida 32168
Phone:(904)427-3175
Fax:(904)424-0860

TO: FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumark Oak Boulevard
Tallahassee, Florida 32399-0850
Fax:(850)487-1716

Julia L. Johnson, Chairman
Susan F. Clark, Commissioner
J. Terry Deason, Commissioner
E. Leon Jacobs, Jr., Commissioner
Joe A. Garcia, Commissioner

RE: DUKE POWER/NEW SMYRNA BEACH UTILITIES COMMISSION PROJECT

DATE: December 17, 1998

Chairwoman and Commissioners:

IT IS IMPERATIVE TO THE PUBLIC INTEREST THAT YOU APPROVE THIS PROJECT!

Although living in the unincorporated area outside of the City limits, I am a UC customer as a result of a PSC negotiated territorial split with FPL in the 1980's.

Having lived and done business in the Southeast Volusia area for almost 30 years now, I have enjoyed the benefits of the Utilities Commission's SUPERIOR, local SERVICE, and SIGNIFICANTLY LOWER RATES!

If, approved, I hope to be able to participate in the pilot SOLAR photovoltaic PROJECT.

ENVIRONMENTally speaking, this project makes imminent good sense, and by water re-use in production, will help conserve Florida's most endangered resource. LESS POLLUTION by use of natural gas is equally important.

PLEASE VOTE APPROVAL - it's the ONLY RIGHT THING to do!

Barbara J. Herrin

Public Service Commission

State of Florida

-M-E-M-O-R-A-N-D-U-M-

DATE: 12/31/98

TO: Blanca Bayó, Director, Records and Reporting

FROM: Joy Kelly, Chief, Bureau of Reporting

RE: DOCKET NO. 981042-EM

RE: Duke Energy Hearing - 12/11+18/98

DOCUMENT NO: 13681, 13876, 13993, 14005, 14006, 14015
14007, 13994, 14008, 14709, 14704, 14705, 14703

The transcript for the above transcribed hearing has been completed and is forwarded for placement in the docket file, including attachments.

Please note that Staff distribution of this transcript was made to:

Acknowledged by:

JK/pc

PSC/RAR 28 (Rev7/94)

Wooley
Laura & John
204 Mary Avenue
New Smyrna Beach, FL 32168
EMail-Lodgecraft@AOL
(904)409-0700

Public Service Commission
12-16-98
2540 Shumark Oak Blvd.
Tallahassee, Fl. 32399
(850) 487-1716

981042

Dear Sir/Madam:

We would like to express our support of the New Smyrna Beach/Duke Power plant project. I don't understand how there could be any question about your support of this project. It will provide power More efficiently and in a cleaner manner. Period- nothing else needs to be said. Clearly the state is going to need the power.

If the Public Service Commission elects to turn down this project the people of Florida will begin to wonder just who the commission is serving.

Sincerely,

John and Laura Wooley

ACK
AFA 1
APP
CAF
CMU
CTR
EAG 1
LEG 1
LIN
OPC
RCH
SEC
WAS
OTH

981042-EM

Frank B. Hawes, Jr.
1418 N. Atlantic Avenue
New Smyrna Beach, Fla. 32169

December, 29th, 1998 DEC 31 1998

William D. Talbott, Esq:
Executive Director,
'Public Service Commission.
Capitol Service Center,
#2540 Shumaed Oak Boulevard,
Tallahassed,
Florida,
32399-0850

Re: Previous Correspondence, E.C. Duke Energy/N.S.B. Utilities Commission, & other interested parties, Decision 'Pending!

Dear Mr. Executive Director:

I, am enclosing herein, an article, from the Daytona Beach News Journal, Sunday, December, 27th, 1998, please note, 'italicized paragraph, which, in essence gives 'Chapter and Verse, if you will, to, my beliefs, in this matter as previously accorded, viz 'Need', as required, by the Commissioni n its decision.

I, too stress, that, consent assent, and/or dissent considerations, were, never accorded the, Citizens, of New Smyrna Beach, as, I, too, have cited to the Florida Department of Community affairs, too previously.

I, am still of the opinion, that the quote, of, President Abraham Lincoln still prevails, as we all remember it, do we not, as to Government, by, for, and of the people!

Sincerely, with 'Holiday Wishes to all!

Frank B. Hawes, Jr.

CC: Department of Community Affairs 'Encl(1)
" Utilities Commission, N.S.B. " "
" New Smyrna Beach City Commission. " "

...specialty chemicals company ...has changed. There are many now who ...00 employees and revenues last ...question whether TCE is a carcinogen.

Weather kept Florida residents guessing in 1998

By BRENDAN FARRINGTON
Of The Associated Press

MIAMI — Floods, droughts, hurricanes, a tropical storm, record heat waves, deadly tornadoes. At least there wasn't a blizzard.

Florida's weather went from one extreme to the next in 1998, a year that kept residents hunting for shelter, praying for rain — and praying for the rain to stop.

"Short of a snow component in there, you pretty much ran the gamut," said Colin Marquis, a senior meteorologist at The Weather Channel.

And snow could very well be right around the corner in 1999.

Meteorologists say the conditions are ripe for freezing temperatures to cover the peninsula from Pensacola to Miami. "Expect to see a few Arctic surges well into the southern U.S.," Marquis said.

Last year's wild weather played havoc on the state's farmers.

Just after they counted their losses from floods that hit during the dry season, they sustained more crop damages when drought struck at the beginning of the rainy season.

The floods cost farmers in South Florida about $150 million in vegetable crop damage. The droughts cost north Florida farmers about $100 million to $150 million in losses.

The early rains not only damaged

Tornadoes destroyed or damaged about 400 homes in Miami-Dade County on Groundhog Day. Even stronger tornadoes struck three weeks later in central Florida, killing 42 and damaging or destroying about 2,600 homes and businesses.

After the wet and wild winter, the rain stopped in spring and early summer and the temperatures rose to day-after-day record highs. The plants that thrived from the rain suddenly dried. The stage was set for disaster number three — seven weeks of wildfires.

A half-million acres burned and more than 375 homes and businesses were destroyed or damaged, primarily in north and central Florida.

Then came Hurricane Earl, which dumped nearly 2 feet of rain and created 12-foot storm surges on the Panhandle in early September.

Later that month, Hurricane Georges blasted through the Florida Keys.

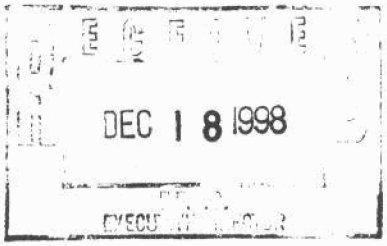
Last on the FEMA list was Tropical Storm Mitch, which spawned tornadoes in the Keys and drenched South Florida on Nov. 5 and 6.

It should be another busy hurricane season in 1999.

Hurricane forecaster William Gray predicts four intense hurricanes and greater chances the U.S. Atlantic Coast will be hit by a major storm during the season that runs from

December,18th,1998
Frank B.Hawes Jr.
1418.N.Atlantic Avenue,
New Smyrna Beach,
Florida,32169

William D.Talbott,Esq:
Executive Director,
'Public Service Commission,
@Capitol Service Cener
2540 Shumard Oak Boulevard
Tallahassee,
Florida,
32399-0850



Re:Correspondence .Viz N.S.B Utilities Commisssion,& Duke Energy,of prior dates.

Dear Mr.Executive Director:

As,you know,I,have always believedmthe Citizens'of New Smyrna were never,accorded the opportnity,of voicing their opinon,one wayor the other i n this issue,e.g,Duke Energy,except,as I,cited,in the U tilities 'Topics',a copy of which you have on files,'Sent to you in previous correspondence)re:this issue..

T e article,'P.S.C.wants to hear from Smyrnas'seems to,give credence to my,beliefs,it would appear. You will please note,that in pargraph three'3' of the Departmentof Community Affairs letter,of December,2nd,1998'a copy of which you have in your,file via a c/c of myletter,To Mr.Vaden,Director of the U/C,of New Sm yrna Beach it alludes to assertions,in view of this article,as referenced to,hereabove,&what other conclusion could be arrived at?

I,too,enclose,an article appearing,in the News-Journal,for your attention ,and too,a copyof myletter to the Editor of the News-Journal,as a reply to Lee Bidgood Jr,position,citing my beliefs,as to happenings that could possibly occur,if Duke Energy's application is approved,

Something to think about,wouldn'tyou agree?

Sincerely,

CC:s Department of Community Affairs'Encl(3)
Utilities Comm. N.S.B " "
New Smyrna Beach City Commission " "

Frank B. Hawes Jr
1418 N. Atlantic Avenue
New Smyrna Beach, Fl,
32169
Decem ber,16th,1998

The News-Journal,
@ P.O.Box 2831
Daytona Beach,
Florida,
32120-2831

Re: Letters to the Editor!

Dear Mr.Editor:

I,am writing,herewith to reply to the article,appearing captioned,Duke Power'Smyrna'plant would be good for our area'

I,am aghast that Mr.Bidgood is of the opinion,as expressed in his dissertation,all sounding li ke the,Duke Energy Company is the answer to our power problem,if that does exist,or is imminent,Which,on the present 'Horizon'does 't appear to evident,contrariwise,the Summer of 1998,was the hottes t Florida,ever experienced,accordi ng to official weather Bufreau,records,and we didn't need Duke energy,then,our curren t suppliers,met our urgen t needs,some might ask why 'Now Brown Cow????? He,too,says,it'Duke' would avail itself of selling'Electric Power'to others requiring that commodity sounds like his reasoni ng'Expressed by him,is rather,perplexing, puzzling,and confusing,to say the least,and too when the following would necessarily have to be recognized and addressed:

(1) What will be the destiny of the [illegible] plant?
(2) " " " " ",of Florida Power and Light's Power Plant?
(3) What would be the destiny of Florida Power'Plant
(4) " " " " " Tampa's Power Plant?
And there are others so effected,in like fashion.

By 'Dukes' assession,if allowed,it could cause a recession,or depression of severe magnitude,and accompanying consequences,the economi c fall'out' wouldbe disastrous,un-employment by'Obsolescence'would wreak havoc,and have a'Domino'Effect of serious proportions,did Lee Bidgood,realize that,that cou ld Happen? I,don't think he did,obviously. But he should have!

Si ncerely,

PSC wants to hear from Smyrnans

Utilities on-line

Genny Turano

The Public Service Commission (PSC) is anxious to hear from citizens concerning the New Smyrna Beach/Duke Power Plant project.

The PSC has heard testimony from corporate interest advocating and opposing the new plant, but has not heard from electric utility customers who have a major stake in the final outcome of the hearings. Customer input, however, must be made in writing and faxed to the PSC by Friday, December 18, 1998, the final day of hearings. The new Duke plant, if built, would become the first merchant plant in Florida. It would produce cleaner electricity more cheaply than other plants in the State and would lead to lower customer rates.

Environmentalists have been supportive of the project which is a combined cycle, gas-powered turbine plant. The more modern and efficient design will not only burn cleanly but will provide a means to utilize recycled water and avoid discharge in the Indian River Lagoon.

From an economic point of view, citizens should benefit from a rate reduction of up to 15%. The reason for this is that New Smyrna Beach would be guaranteed 30 megawatts of power at lower than current market prices. The remainder of the power would become an inexpensive source of electricity in the state grid and would compete with other utilities on the wholesale market.

If you wish to make your views known to the PSC, please fax your letter to:

Julia L. Johnson, Chairman
Susan F. Clark, Commissioner
J. Terry Deason, Commissioner
E. Leon Jacobs, Jr., Commissioner
Joe A. Garcia, Commissioner
Florida Public Service Commission
2540 Shumark Oak Boulevard
Tallahassee, Florida 32399-0850
Fax: (850)487-1716

***

Questions about this article should be addressed to Genny Turano, Public Information Officer, (904) 423-7124.

Duke-Smyrna power plant would be good for area

By LEE BIDGOOD JR.

COMMUNITY VOICE

The Public Service Commission should remember its mission *is* public service and OK the plant.

Giving a go-ahead to the proposed Duke-New Smyrna Beach power plant should be almost automatic by the Florida Public Service Commission. It's hard to conceive of an electric power plant with more public benefits than this one. Advantages of the proposed natural gas plant include:

■ Less health-threatening particulates (i.e. soot) and emissions that cause acid rain, compared to coal or oil-fired plants, especially older plants without effective pollution control.

■ At least 30 percent to 40 percent less carbon dioxide emissions vs. oil or coal. Heat-trapping carbon dioxide greenhouse gas may be wrecking the planet's climate stability. Industrial nations have recognized global warming dangers, but agreed to reduce greenhouse gas emissions only 5.2 percent.

Bidgood

■ Lower-priced electricity. Customers served by the nonprofit New Smyrna Utility Commission (UC) would enjoy a 10 percent to 15 percent rate reduction because Duke will supply part of the UC power needs at a steep discount. The rest of the plant's output would be offered on the wholesale market. Duke is betting $160 million of its own money (the plant's cost) that it can sell this power profitably to other Florida utilities. State law requires that wholesale electricity purchase savings be passed on to customers. All consumers would gain.

■ Over half the plant's cooling water would be treated sewage effluent from the nearby sewage plant under construction, reducing both the amount of effluent discharged to the Indian River Lagoon and demand for cooling water from new or existing wells.

■ New Smyrna UC will offer a solar photovoltaic (PV) pilot project in which PV shingles or roof tiles would be installed on homes of customers volunteering to pay a monthly fee to cover a third of the installation cost. When a customer is not using appliances on sunny days, the meter would run backward, reducing the bill. Experience with solar, the ultimate inexhaustible clean power source, would be valuable.

Despite compelling advantages for the Duke-NSB venture, PSC approval is uncertain. The project faces well-funded, politically savvy opposition from Florida public utilities, led by the big three, Florida Power and Light, Florida Power Corp. and Tampa Electric which have always enjoyed a virtually guaranteed profit for their stockholders.

That situation changed in 1992 when Congress opened the U.S. electric power market to wholesale competition. More than two dozen "merchant" plants have already been built or authorized in the nation, and Florida will get its share, eventually.

Florida public utilities argue that out-of-state power companies shouldn't be allowed to build plants here, even in partnership with a municipal utility. The public utilities' position contrasts starkly with that of state and many local governments offering fat financial inducements for out-of-state or foreign corporations to build plants in Florida.

Opponents of the Duke project apparently fear that competition from a highly efficient, clean power plant in New Smryna Beach would cut into public utility profits, even though Duke would sell power constituting only 1 percent of the total Florida supply.

A leading opponent, FPL, tried to become the first U.S. utility to burn emulsified tar, "Orimulsion," arguably the dirtiest, worst-polluting of all fossil fuels. Public outrage prompted the governor and Cabinet to deny FPL's proposal.

The Public Service Commission should remember that its mission *is* public service and OK the plant.

■ Bidgood, a retired chemist who lives in New Smyrna Beach, is president of the Volusia-Flagler Environmental Action Committee.

STATE OF FLORIDA

Public Service Commission

December 31, 1998

MEMORANDUM

TO: Ms. Blanca Bayo, Director
Records and Reporting

FROM: Curtis Williams
Executive Assistant to Chairman Johnson

SUBJECT: Intercepted Communication received from Jim "Buddy" Davenport
re Docket No. ~~980142~~-EM
981042-EM

This office has received the attached correspondence from Jim "Buddy" Davenport on December 17, 1998. The correspondence has not been viewed or considered in any way by Chairman Johnson. Under the terms of the advisory opinion from the Commission on Ethics (issued July 24, 1991, as CEO 91-31-July 19, 1991), this letter does not constitute an ex parte communication by virtue of the fact that it was not shown to the Chairman. Because it is not deemed to be an ex parte communication, it does not require dissemination to parties pursuant to the provisions of Section 350.042, F.S. However, in such cases Chairman Johnson has requested that such correspondence be placed on the record in the correspondence side of the docket file.

CJW:jbe

Attachment:

cc: Leslie Paugh (LEG)

Jim "Buddy" Davenport
Auto - Life - Health - Home and Business
K-Mart Plaza 1708 State Road 44
New Smyrna Beach, FL 32168 (904) 427-5237 fax 427-9245

98-0828 JAN-4

December 16, 1998

Public Service Commission
Attn: Julie Johnson, Chairman
2540 Shumark Oak Blvd.
Tallahassee, FL 32399-0850

Dear Julia,

As a State Farm Insurance Agent in New Smyrna Beach starting my 24th year, I want to tell you how much I would appreciate you supporting the Duke-Smyrna Power Plant idea, specifically for the following reasons:

1. It will be better for this area and all of Florida because of the 30% to 40% less carbon dioxide emissions versus the oil and coal. I can't tell you the times I have gone down Interstate 4 heading to Orlando, Florida and saw the power generating plant with that black silt going into the air.
2. Lower price of electricity - the customers served by this joint venture in New Smyrna Beach will receive lower power rates as well as other residents of Florida that appear to use this.
3. We are building a new sewage plant west of town and this water would be used at the sewage treatment plant for the cooling system.

Everything I have read and followed in the newspapers shows that this will only have a positive effect, especially on the residents of New Smyrna Beach served by the Utilities Commission, as well as all of the residents of Florida. Competition is good for everyone and this will definitely pose competition for the present utility services.

Thanks for your time and consideration.

Yours truly,

Buddy

Jim "Buddy" Davenport

cc: Susan F. Clark, Commissioner
J. Terry Deason, Commissioner
E. Leon Jacobs, Jr., Commissioner
Joe A. Garcia, Commissioner

ugar Mill Association, ic.
100 Clubhouse Circle
New Smyrna Beach, Florida 32168

January 7, 1999

Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Julia L. Johnson, Chairperson

I am President and represent approximately 650 homeowners at Sugar Mill Homeowners Association in New Smyrna Beach. The purpose of this letter is to urge your approval for the proposed gas turbine power plant to be built by Duke Power Corporation near the intersection of S.R. 44 and I-95. This type of gas turbine plant is environmentally more suitable for the atmosphere than either a coal or oil fired plant.

The new power plant will significantly reduce customers' electric bills. In addition to reducing the electric bills an estimated 15%, it will also increase the city's tax base by $750,000.

Please approve this better and much less expensive way to produce electric power for the customers of New Smyrna Beach Utilities Commission.

Sincerely,

Dr. Jack Funkey, President
Sugar Mill Association, Inc.

cc: Susan F. Clark, Commissioner
J. Terry Deason, Commissioner
E. Leon Jacobs, Commissioner
Joe A. Garcia, Commissioner

STATE OF FLORIDA

Public Service Commission

December 31, 1998

MEMORANDUM

TO: Ms. Blanca Bayo, Director
Records and Reporting

FROM: Curtis Williams
Executive Assistant to Chairman Johnson

SUBJECT: Intercepted Communication received from John Ascherl
President, Southeast Volusia Chamber of Commerce
re Docket No. 981042-EM

This office has received the attached correspondence from John Ascherl on December 17, 1998. The correspondence has not been viewed or considered in any way by Chairman Johnson. Under the terms of the advisory opinion from the Commission on Ethics (issued July 24, 1991, as CEO 91-31-July 19, 1991), this letter does not constitute an ex parte communication by virtue of the fact that it was not shown to the Chairman. Because it is not deemed to be an ex parte communication, it does not require dissemination to parties pursuant to the provisions of Section 350.042, F.S. However, in such cases Chairman Johnson has requested that such correspondence be placed on the record in the correspondence side of the docket file.

CJW:jbe

Attachment:

cc: Leslie Paugh (LEG)

Southeast Volusia Chamber of Commerce

Serving New Smyrna Beach, Edgewater & Oak Hill

98-0827 JAN -4

December 17, 1998

Julia L. Johnson, Chairman
Florida Public Service Commission
2540 Shumark Oak Boulevard
Tallahassee, FL 32399-0850

Dear Chairman Johnson:

The Southeast Volusia Chamber of Commerce would like to take this opportunity to express its support of the Duke Power Plant Project proposed for the New Smyrna Beach area. The Chamber of Commerce currently represents 600 members, individuals and businesses large and small, who are affected by the proposed generating plant. The reduction in electrical costs will produce substantial savings that will be recycled in our community.

In addition, the proposed project creates a competitive environment in the power production market that will result in a more effective market for all customers. This is a proven concept that all businesses face on a daily basis, and the power production field should be no exception.

The project has had a profound effect on our economic development efforts. News of the proposed project has brought a number of large manufacturers who wish to be close to a power generating plant that provides power at a significantly lower cost, thus making them more competitive in the market place.

Lastly, the added benefit of a facility of this type that has a positive impact on the environment is significant. This project appears to combine the elements that protect our delicate environment with an efficient power generating system.

On behalf of our members and citizens of the community we urge you to approve this project.

Sincerely,

John Ascherl

John Ascherl
President

cc: Mayor James Vandergrifft
Ron Vaden, Director, Utilities Commission
John Green, Duke Power

115 Canal Street, New Smyrna Beach, FL 32168 (904) 428-2449 (800)-541-9621 Fax (904) 423-3512
Website: sevchamber.com E-mail: nsbchamber@ucnsb.net

201 Riverview Place
New Smyrna Beach, FL 32169
8 January 1999

Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Fl 32399-0850

981042-EM

Dear Ms Johnson:

Recent newspaper articles report there has been little interest shown about the Duke Energy gas powered turbine proposal for New Smyrna Beach. I find that to be under-reported. Our Neighborhood Association has written to you as well as individual members in support of this environmentally safe proposal.

There have been numerous letters to the editor in the Orlando Sentinel, Daytona News-Journal and the New Smyrna Beach Observer, all in accord with this arrangement that will benefit all users of electrical power, not just New Smyrna Beach.

Behemoth utility companies are not considering their customers when they protest this win-win proposal.

Please consider the many benefits to the many citizens if you approve this less expensive way to produce power.

ACK ____
AFA ____
APP ____
CAF ____
CMU ____
CTR ____
EAG 1
LEG 1
LIN ____
OPC ____
RCH ____
SEC 1
WAS ____
OTH ____

Cordially,

Grayce K. Barck

Grayce K. Barck

MEMORANDUM

TO: Blanca Bayó
Director, Division of Records and Reporting

FROM: Jorge Cruz-Bustillo
Executive Assistant to Commissioner Garcia

RE: Written Communication Regarding Docket No. 981042-EM
Pursuant to Section 350.042, Florida Statutes

DATE: January 7, 1998

This office has received the attached correspondence. The correspondence has not been viewed or considered in any way by the Commissioner. Under the terms of the advisory opinion from the Commission on Ethics (issued July 24, 1991, as CEO 91-31-July 19, 1991) this letter does not constitute an *ex parte* communication by virtue of the fact that it was not shown to the Commissioner. Because it is *not* deemed to be an *ex parte* communication, it does not require dissemination to parties pursuant to the provisions of Section 350.042, Florida Statutes. In cases such as this, the Commissioner has requested, however, that such correspondence be placed on the record in the correspondence side of the docket.

Note: This communication was received via U.S. mail.

jcb

Lee Bidgood, Jr.
310 Quay Assisi
New Smyrna Beach, FL 32169-5113
phone and fax (904) 423-4682

Jan. 4, 1999

Julia L. Johnson, Chair
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Dear Ms. Johnson, Re.: Duke-New Smyrna

Enclosed are two recent clippings from local newspapers concerning New Smyrna Beach Utility Commission, Duke Energy and the Duke-NSB power plant proposal.

We citizens of New Smyrna Beach are very excited about this proposed natural gas plant and look foreward to the Commissions approval.

We want the lower-priced cleaner energy that the new plant would produce!

Sincerely

Lee Bidgood, Jr.

STATE OF FLORIDA

DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

January 14, 1999

Representative Joseph Arnall
428 House Office Building
402 S. Monroe Street
Tallahassee, Florida 32399-1300

Re: Docket No. 981042-EM - 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.

Dear Representative Arnall:

Thank you for your letter dated December 10, 1998, to former Chairman Julia L. Johnson. I am responding to your letter because Commissioner Johnson is prohibited by Section 350.042, Florida Statutes, from commenting on the merits of matters pending before the Commission.

As you are aware, the Joint Petition for Determination of Need for an Electrical Power Plant was filed with the Commission pursuant to Florida Statutes Section 403.519, Exclusive forum for determination of need. Pursuant to its statutory duties, the Commission will consider all appropriate criteria set forth in the statute. These criteria include the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available. Under the statute, the Commission shall also consider the conservation measures taken by or reasonably available to the applicant which might mitigate the need for the plant.

In your letter you state that the issues regarding merchant plants in Florida should be addressed by the Legislature prior to Public Service Commission consideration. Issues relative to merchant plants, and a number of other policy and legal issues, have been addressed by the parties in their Motions To Dismiss and Responses in Opposition. The Commission held a full day of oral argument on those matters on December 2, 1998, and has scheduled a second oral argument for

January 28, 1999, following submission of briefs by the parties. Please be assured that the Commission has and will continue to consider all issues relevant to Docket No. 981042-EM in discharging its statutory duties under Section 403.519, Florida Statutes.

We will place your letter as a comment letter in the docket file for this case. If you have any additional comments or questions, please contact me at (850) 413-6183, or Mark Futrell of the Commission's Division of Electric and Gas at (850)413-6692. Thank you again for your interest in this matter.

Sincerely,

Leslie J. Paugh
Senior Attorney

cc: Curtis Williams
Mark Futrell

MEMORANDUM

TO: Blanca Bayó
Director, Division of Records and Reporting

FROM: Jorge Cruz-Bustillo
Executive Assistant to Commissioner Garcia

RE: Written Communication Regarding Docket No. 981042-EM
Pursuant to Section 350.042, Florida Statutes

DATE: January 19, 1999

This office has received the attached correspondence from Mr. Richard W. Ross, in favor of the proposed Duke power plant. The correspondence has not been viewed or considered in any way by the Commissioner. Under the terms of the advisory opinion from the Commission on Ethics (issued July 24, 1991, as CEO 91-31-July 19, 1991) this letter does not constitute an *ex parte* communication by virtue of the fact that it was not shown to the Commissioner. Because it is *not* deemed to be an *ex parte* communication, it does not require dissemination to parties pursuant to the provisions of Section 350.042, Florida Statutes. In cases such as this, Chairman Garcia has requested, however, that such correspondence be placed on the record in the correspondence side of the docket.

Note: This communication was received via U.S. mail.

jcb

Thursday, January 1999

JULIA I. JOHNSON,CHAIRPERSON
Florida Public Service Commission
2540 Shumad Oak Blvd.
Tallahassee,Fl. 32399-0850

With all due respect I would like to voice my opinion and appeal for approval of the proposed Duke Power plant under consideration for approval in the New Symrna Beach , Fl. area. Simply put,I feel certain that you have heard the proposed benefits to the tax paying consumer. Other than that,my question relates to the opposing utility companies,who alledgedly use regulated profits from our rates to purchase non related companies such as insurance companies which do not turn out favorably as investmets,and other attempts i.e Rinker cement or concrete company. Not to carry on , if I have made my point I beg you t to consider the benefits to our community.

sincerely,

Richard W. Ross 916 Clubhouse Blvd. New Smyrna Beach, Fl. 32168

cc:Susan F Clark,Cmm.

J.Terry Deason,Comm, E. Leon Jacobs,Comm.,Joe A-Garcia

RWR

Richard W. Ross

981042

STATE OF FLORIDA

DIVISION OF ELECTRIC & GAS
JOSEPH D. JENKINS
DIRECTOR
(850) 413-6700

Public Service Commission

January 15, 1999

Mr. John Wooley
204 Mary Avenue
New Smyrna Beach, Florida 32168

Dear Mr. Wooley:

Thank you for your letter on the proposed New Smyrna Beach Project. A public hearing on the proposed project was held in December and the Commission is scheduled to vote on March 4, 1999.

Your comments will be placed in the correspondence file for the case. Thank you again for taking time to express your opinion on this case.

Sincerely,

Mark Futrell

Mark Futrell
Economic Analyst

MF:kt
cc: Docket File

Name WOOLEY, JOHN

Company NA

Request No. 240560L

Address 204 MARY AVENUE

Attn.

By RF Time 3:19 PM Date 01/14/1999

Consumer's Telephone #

To Time BLANK Date 01/14/1999

City/Zip New Smyrna Beach 32168 County VOL

Can Be Reached

Type S Form FAX

Account Number

Note

Category

Caller's Name JOHN WOOLEY

Informal Conf. N Outreach OTHER

Infraction

Closed by Date / /

Reply Received

CONSUMER REQUEST

FLORIDA PUBLIC SERVICE COMMISSION

2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FL. 32399-0850
850-413-6100

PLEASE RETURN THIS FORM WITH REPORT OF ACTION TO:

ROLAND FLOYD

DUE: / /

W
Wooley
Laura & John
204 Mary Avenue
New Smyrna Beach, FL 32168
EMail-Lodgecraft@AOL
(904)409-0700

Public Service Commission
12-16-98
2540 Shumark Oak Blvd.
Tallahassee, FL 32399
(850) 487-1716

981042

Dear Sir/Madam:

We would like to express our support of the New Smyrna Beach/Duke Power plant project. I don't understand how there could be any question about your support of this project. It will provide power More efficiently and in a cleaner manner. Period- nothing else needs to be said. Clearly the state is going to need the power.

If the Public Service Commission elects to turn down this project the people of Florida will begin to wonder just who the commission is serving.

Sincerely,

John and Laura Wooley

ACK
AFA 1
APP
CAF
CMU
CTR
EAG 1
LEG 1
LIN
OPC
RCH
SEC 1
WAS
OTH

State of Florida

Joe Garcia
Chairman

Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0855
(850) 413-6042
Fax: (850) 413-6395

Public Service Commission

MEMORANDUM

TO: Blanca Bayó
Director, Division of Records and Reporting

FROM: Jorge Cruz-Bustillo
Executive Assistant to Commissioner Garcia

RE: Written Communication Regarding Docket No. 981042-EM
Letter from Sugar Mill Associates, Inc. to Chariman
Pursuant to Section 350.042, Florida Statutes

DATE: January 13, 1999

This office has received the attached correspondence from Dr. Jack Funkey, President, Sugar Mill Association, Inc. The correspondence has not been viewed or considered in any way by the Commissioner. Under the terms of the advisory opinion from the Commission on Ethics (issued July 24, 1991, as CEO 91-31-July 19, 1991) this letter does not constitute an *ex parte* communication by virtue of the fact that it was not shown to the Commissioner. Because it is *not* deemed to be an *ex parte* communication, it does not require dissemination to parties pursuant to the provisions of Section 350.042, Florida Statutes. In cases such as this, Chairman Garcia has requested, however, that such correspondence be placed on the record in the correspondence side of the docket.

Note: This communication was received via U.S. mail.

jcb

Sugar Mill Association, Inc.
100 Clubhouse Circle
New Smyrna Beach, Florida 32168

99-0019 JAN 14

January 7, 1999

Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Julia L. Johnson, Chairperson

I am President and represent approximately 650 homeowners at Sugar Mill Homeowners Association in New Smyrna Beach. The purpose of this letter is to urge your approval for the proposed gas turbine power plant to be built by Duke Power Corporation near the intersection of S.R. 44 and I-95. This type of gas turbine plant is environmentally more suitable for the atmosphere than either a coal or oil fired plant.

The new power plant will significantly reduce customers' electric bills. In addition to reducing the electric bills an estimated 15%, it will also increase the city's tax base by $750,000.

Please approve this better and much less expensive way to produce electric power for the customers of New Smyrna Beach Utilities Commission.

Sincerely,

Dr. Jack Funkey, President
Sugar Mill Association, Inc.

cc: Susan F. Clark, Commissioner
J. Terry Deason, Commissioner
E. Leon Jacobs, Commissioner
Joe A. Garcia, Commissioner

State of Florida

Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

1997

DATE: January 13, 1998

TO: Blanca Bayo, Director, Records and Reporting

FROM: Joy Kelly, Chief, Bureau of Reporting

RE: DOCKET NO. 981042-EM, HEARING HELD 12-2 - 4, 11 and 18-98

Attached for filing in the docket file of the captioned case are Exhibits 1 through 34 and 36 through 43, representing all exhibits admitted into evidence, except Exhibit No. Late-Filed Exhibit No. 35, which has not been received as of this date.

Acknowledged by:

Mont K.

JK:pc

CARLTON FIELDS

ATTORNEYS AT LAW

ONE PROGRESS PLAZA
200 CENTRAL AVENUE, SUITE 2300
ST. PETERSBURG, FLORIDA 33701-4352

MAILING ADDRESS:
P.O. BOX 2861, ST. PETERSBURG, FL 33731-2861
TEL (727) 821-7000 FAX (727) 822-3768

January 25, 1999

ATTENTION: Linda
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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

Dear Linda:

Enclosed for in the above docket on behalf of Florida Power Corporation is a disk of the Florida Power Corporation's Post Hearing Brief in Opposition to Determination of Need which I omitted from the filing package. I apologize for any inconvenience I may have caused.

Thank you for your assistance in this regard.

Very truly yours,

Jeanne Costello, Sec. to
Gary L. Sasso

Enclosure

STATE OF FLORIDA

DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

January 20, 1999

Mr. Mike Putnal
Florida Cracker Catering, Inc.
2450 State Road 44
New Smyrna Beach, FL 32168

Re: Docket No. 981042-EM - 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.

Dear Mr. Putnal:

Thank you for your letter dated December 16, 1998, to former Chairman Julia L. Johnson. I am responding to your letter because Commissioner Johnson is prohibited by Section 350.042, Florida Statutes, from commenting on the merits of matters pending before the Commission.

As you are aware, the Joint Petition for Determination of Need for an Electrical Power Plant was filed with the Commission pursuant to Florida Statutes Section 403.519. Pursuant to its statutory duties, the Commission will consider all appropriate criteria set forth in the statute. These criteria include the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available. Under the statute, the Commission shall also consider the conservation measures taken by or reasonably available to the applicant which might mitigate the need for the plant.

We will place your letter as a comment letter in the docket file for this case. If you have any additional comments or questions, please contact me at (850) 413-6183, or Mark Futrell of the Commission's Division of Electric and Gas at (850) 413-6692. Thank you again for your interest in this matter.

Sincerely,

Leslie J. Paugh
Senior Attorney

cc: Jorge Cruz-Bustillo
Curtis Williams
Mark Futrell

STATE OF FLORIDA

DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

January 20, 1999

Mr. Richard W. Ross
916 Clubhouse Blvd.
New Smyrna Beach, FL 32168

Re: Docket No. 981042-EM - 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.

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Sincerely,

Leslie J. Paugh
Senior Attorney

cc: Jorge Cruz-Bustillo
Curtis Williams
Mark Futrell

STATE OF FLORIDA

DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

January 20, 1999

Mr. Thomas M. Skove
209 Bromely Circle
New Smyrna Beach, FL 32168

Re: Docket No. 981042-EM - 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.

Dear Mr. Skove:

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Sincerely,

Leslie J. Paugh
Senior Attorney

cc: Jorge Cruz-Bustillo
Curtis Williams
Mark Futrell

STATE OF FLORIDA

DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

January 20, 1999

Mr. Peter Moncure
134 Sea Street
New Smyrna Beach, FL 32168

Re: Docket No. 981042-EM - 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.

Dear Mr. Moncure:

Thank you for your letter dated December 17, 1998, to former Chairman Julia L. Johnson. I am responding to your letter because Commissioner Johnson is prohibited by Section 350.042, Florida Statutes, from commenting on the merits of matters pending before the Commission.

As you are aware, the Joint Petition for Determination of Need for an Electrical Power Plant was filed with the Commission pursuant to Florida Statutes Section 403.519. Pursuant to its statutory duties, the Commission will consider all appropriate criteria set forth in the statute. These criteria include the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available. Under the statute, the Commission shall also consider the conservation measures taken by or reasonably available to the applicant which might mitigate the need for the plant.

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Sincerely,

Leslie J. Paugh
Senior Attorney

cc: Jorge Cruz-Bustillo
Curtis Williams
Mark Futrell

STATE OF FLORIDA

DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

January 20, 1999

Mr. John Ascherl, President
Southeast Volusia Chamber of Commerce
115 Canal Street
New Smyrna Beach, FL 32168

Re: Docket No. 981042-EM - 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.

Dear Mr. Ascherl:

Thank you for your letter dated December 17, 1998, to former Chairman Julia L. Johnson. I am responding to your letter because Commissioner Johnson is prohibited by Section 350.042, Florida Statutes, from commenting on the merits of matters pending before the Commission.

As you are aware, the Joint Petition for Determination of Need for an Electrical Power Plant was filed with the Commission pursuant to Florida Statutes Section 403.519. Pursuant to its statutory duties, the Commission will consider all appropriate criteria set forth in the statute. These criteria include the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available. Under the statute, the Commission shall also consider the conservation measures taken by or reasonably available to the applicant which might mitigate the need for the plant.

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Sincerely,

Leslie J. Paugh
Senior Attorney

cc: Jorge Cruz-Bustillo
Curtis Williams
Mark Futrell

STATE OF FLORIDA

DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

January 20, 1999

Mr. Jim Davenport
K-Mart Plaza
1708 State Road 44
New Smyrna Beach, FL 32168

Re: Docket No. 981042-EM - 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.

Dear Mr. Davenport:

Thank you for your letter dated December 16, 1998, to former Chairman Julia L. Johnson. I am responding to your letter because Commissioner Johnson is prohibited by Section 350.042, Florida Statutes, from commenting on the merits of matters pending before the Commission.

As you are aware, the Joint Petition for Determination of Need for an Electrical Power Plant was filed with the Commission pursuant to Florida Statutes Section 403.519. Pursuant to its statutory duties, the Commission will consider all appropriate criteria set forth in the statute. These criteria include the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available. Under the statute, the Commission shall also consider the conservation measures taken by or reasonably available to the applicant which might mitigate the need for the plant.

We will place your letter as a comment letter in the docket file for this case. If you have any additional comments or questions, please contact me at (850) 413-6183, or Mark Futrell of the Commission's Division of Electric and Gas at (850) 413-6692. Thank you again for your interest in this matter.

Sincerely,

Leslie J. Paugh
Senior Attorney

cc: Jorge Cruz-Bustillo
Curtis Williams
Mark Futrell

STATE OF FLORIDA

DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

January 20, 1999

Ms. Gwen Pallante Straub
315 N. Causeway B406
New Smyrna Beach, FL 32169

Re: Docket No. 981042-EM - 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.

Dear Ms. Straub:

Thank you for your electronic mail correspondences dated December 6, 1998 and December 10, 1998, to former Chairman Julia L. Johnson. I am responding to your letter because Commissioner Johnson is prohibited by Section 350.042, Florida Statutes, from commenting on the merits of matters pending before the Commission.

As you are aware, the Joint Petition for Determination of Need for an Electrical Power Plant was filed with the Commission pursuant to Florida Statutes Section 403.519. Pursuant to its statutory duties, the Commission will consider all appropriate criteria set forth in the statute. These criteria include the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available. Under the statute, the Commission shall also consider the conservation measures taken by or reasonably available to the applicant which might mitigate the need for the plant.

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Sincerely,

Leslie J. Paugh
Senior Attorney

cc: Jorge Cruz-Bustillo
Curtis Williams
Mark Futrell

STATE OF FLORIDA

DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

January 20, 1999

Ms. Barbara J. Herrin
465 Wildwood Drive
New Smyrna Beach, FL 32168

Re: Docket No. 981042-EM - 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.

Dear Ms. Herrin:

Thank you for your facsimile dated December 17, 1998, to former Chairman Julia L. Johnson. I am responding to your letter because Commissioner Johnson is prohibited by Section 350.042, Florida Statutes, from commenting on the merits of matters pending before the Commission.

As you are aware, the Joint Petition for Determination of Need for an Electrical Power Plant was filed with the Commission pursuant to Florida Statutes Section 403.519. Pursuant to its statutory duties, the Commission will consider all appropriate criteria set forth in the statute. These criteria include the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available. Under the statute, the Commission shall also consider the conservation measures taken by or reasonably available to the applicant which might mitigate the need for the plant.

We will place your letter as a comment letter in the docket file for this case. If you have any additional comments or questions, please contact me at (850) 413-6183, or Mark Futrell of the Commission's Division of Electric and Gas at (850) 413-6692. Thank you again for your interest in this matter.

Sincerely,

Leslie J. Paugh
Senior Attorney

cc: Jorge Cruz-Bustillo
Curtis Williams
Mark Futrell

STATE OF FLORIDA

DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

January 20, 1999

Mr. John Shelby
2756 Turnbull Estates
New Smyrna Beach, FL 32168

Re: Docket No. 981042-EM - 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.

Dear Mr. Shelby:

Thank you for your electronic mail and facsimile correspondence dated December 16, 1998, to former Chairman Julia L. Johnson. I am responding to your letter because Commissioner Johnson is prohibited by Section 350.042, Florida Statutes, from commenting on the merits of matters pending before the Commission.

As you are aware, the Joint Petition for Determination of Need for an Electrical Power Plant was filed with the Commission pursuant to Florida Statutes Section 403.519. Pursuant to its statutory duties, the Commission will consider all appropriate criteria set forth in the statute. These criteria include the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available. Under the statute, the Commission shall also consider the conservation measures taken by or reasonably available to the applicant which might mitigate the need for the plant.

We will place your letter as a comment letter in the docket file for this case. If you have any additional comments or questions, please contact me at (850) 413-6183, or Mark Futrell of the Commission's Division of Electric and Gas at (850) 413-6692. Thank you again for your interest in this matter.

Sincerely,

Leslie J. Paugh
Senior Attorney

cc: Jorge Cruz-Bustillo
Curtis Williams
Mark Futrell

STATE OF FLORIDA

DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

January 20, 1999

Ms. Grayce K. Barck
201 Riverview Place
New Smyrna Beach, FL 32169

Re: Docket No. 981042-EM - 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.

Dear Ms. Barck:

Thank you for your letter dated January 8, 1999, to former Chairman Julia L. Johnson. I am responding to your letter because Commissioner Johnson is prohibited by Section 350.042, Florida Statutes, from commenting on the merits of matters pending before the Commission.

As you are aware, the Joint Petition for Determination of Need for an Electrical Power Plant was filed with the Commission pursuant to Florida Statutes Section 403.519. Pursuant to its statutory duties, the Commission will consider all appropriate criteria set forth in the statute. These criteria include the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available. Under the statute, the Commission shall also consider the conservation measures taken by or reasonably available to the applicant which might mitigate the need for the plant.

We will place your letter as a comment letter in the docket file for this case. If you have any additional comments or questions, please contact me at (850) 413-6183, or Mark Futrell of the Commission's Division of Electric and Gas at (850) 413-6692. Thank you again for your interest in this matter.

Sincerely,

Leslie J. Paugh
Senior Attorney

cc: Jorge Cruz-Bustillo
Curtis Williams
Mark Futrell

STATE OF FLORIDA

DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

January 20, 1999

Mr. Lee Bidgood, Jr.
310 Quay Assisi
New Smyrna Beach, FL 32169-5113

Re: Docket No. 981042-EM - 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.

Dear Mr. Bidgood:

Thank you for your letter dated January 4, 1999, to former Chairman Julia L. Johnson. I am responding to your letter because Commissioner Johnson is prohibited by Section 350.042, Florida Statutes, from commenting on the merits of matters pending before the Commission.

As you are aware, the Joint Petition for Determination of Need for an Electrical Power Plant was filed with the Commission pursuant to Florida Statutes Section 403.519. Pursuant to its statutory duties, the Commission will consider all appropriate criteria set forth in the statute. These criteria include the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available. Under the statute, the Commission shall also consider the conservation measures taken by or reasonably available to the applicant which might mitigate the need for the plant.

We will place your letter as a comment letter in the docket file for this case. If you have any additional comments or questions, please contact me at (850) 413-6183, or Mark Futrell of the Commission's Division of Electric and Gas at (850) 413-6692. Thank you again for your interest in this matter.

Sincerely,

Leslie J. Paugh
Senior Attorney

cc: Jorge Cruz-Bustillo
Curtis Williams
Mark Futrell

STATE OF FLORIDA

DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

January 20, 1999

John and Laura Wooley
204 Mary Avenue
New Smyrna Beach, FL 32168

Re: Docket No. 981042-EM - 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.

Dear Mr. and Ms. Wooley:

Thank you for your letter dated December 15, 1998. I am responding to your letter because the Commissioners are prohibited by Section 350.042, Florida Statutes, from commenting on the merits of matters pending before them.

As you are aware, the Joint Petition for Determination of Need for an Electrical Power Plant was filed with the Commission pursuant to Florida Statutes Section 403.519. Pursuant to its statutory duties, the Commission will consider all appropriate criteria set forth in the statute. These criteria include the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available. Under the statute, the Commission shall also consider the conservation measures taken by or reasonably available to the applicant which might mitigate the need for the plant.

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Sincerely,

Leslie J. Paugh
Senior Attorney

cc: Jorge Cruz-Bustillo
Curtis Williams
Mark Futrell

STATE OF FLORIDA

DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

January 20, 1999

Mr. Mike Putnal
Florida Cracker Catering, Inc.
2450 State Road 44
New Smyrna Beach, FL 32168

Re: Docket No. 981042-EM - 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.

Dear Mr. Putnal:

Thank you for your letter dated December 16, 1998, to former Chairman Julia L. Johnson. I am responding to your letter because Commissioner Johnson is prohibited by Section 350.042, Florida Statutes, from commenting on the merits of matters pending before the Commission.

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Sincerely,

Leslie J. Paugh
Senior Attorney

cc: Jorge Cruz-Bustillo
Curtis Williams
Mark Futrell

STATE OF FLORIDA

DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

January 20, 1999

Mr. Richard W. Ross
916 Clubhouse Blvd.
New Smyrna Beach, FL 32168

Re: Docket No. 981042-EM - 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.

Dear Mr. Ross:

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Leslie J. Paugh
Senior Attorney

cc: Jorge Cruz-Bustillo
Curtis Williams
Mark Futrell

STATE OF FLORIDA

DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

January 20, 1999

Mr. Thomas M. Skove
209 Bromely Circle
New Smyrna Beach, FL 32168

Re: Docket No. 981042-EM - 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.

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We will place your letter as a comment letter in the docket file for this case. If you have any additional comments or questions, please contact me at (850) 413-6183, or Mark Futrell of the Commission's Division of Electric and Gas at (850) 413-6692. Thank you again for your interest in this matter.

Sincerely,

Leslie J. Paugh
Senior Attorney

cc: Jorge Cruz-Bustillo
Curtis Williams
Mark Futrell

STATE OF FLORIDA

DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

January 20, 1999

Mr. Peter Moncure
134 Sea Street
New Smyrna Beach, FL 32168

Re: Docket No. 981042-EM - 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.

Dear Mr. Moncure:

Thank you for your letter dated December 17, 1998, to former Chairman Julia L. Johnson. I am responding to your letter because Commissioner Johnson is prohibited by Section 350.042, Florida Statutes, from commenting on the merits of matters pending before the Commission.

As you are aware, the Joint Petition for Determination of Need for an Electrical Power Plant was filed with the Commission pursuant to Florida Statutes Section 403.519. Pursuant to its statutory duties, the Commission will consider all appropriate criteria set forth in the statute. These criteria include the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available. Under the statute, the Commission shall also consider the conservation measures taken by or reasonably available to the applicant which might mitigate the need for the plant.

We will place your letter as a comment letter in the docket file for this case. If you have any additional comments or questions, please contact me at (850) 413-6183, or Mark Futrell of the Commission's Division of Electric and Gas at (850) 413-6692. Thank you again for your interest in this matter.

Sincerely,

Leslie J. Paugh
Senior Attorney

cc: Jorge Cruz-Bustillo
Curtis Williams
Mark Futrell

STATE OF FLORIDA

DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

January 20, 1999

Mr. John Ascherl, President
Southeast Volusia Chamber of Commerce
115 Canal Street
New Smyrna Beach, FL 32168

Re: Docket No. 981042-EM - 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.

Dear Mr. Ascherl:

Thank you for your letter dated December 17, 1998, to former Chairman Julia L. Johnson. I am responding to your letter because Commissioner Johnson is prohibited by Section 350.042, Florida Statutes, from commenting on the merits of matters pending before the Commission.

As you are aware, the Joint Petition for Determination of Need for an Electrical Power Plant was filed with the Commission pursuant to Florida Statutes Section 403.519. Pursuant to its statutory duties, the Commission will consider all appropriate criteria set forth in the statute. These criteria include the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available. Under the statute, the Commission shall also consider the conservation measures taken by or reasonably available to the applicant which might mitigate the need for the plant.

We will place your letter as a comment letter in the docket file for this case. If you have any additional comments or questions, please contact me at (850) 413-6183, or Mark Futrell of the Commission's Division of Electric and Gas at (850) 413-6692. Thank you again for your interest in this matter.

Sincerely,

Leslie J. Paugh
Senior Attorney

cc: Jorge Cruz-Bustillo
Curtis Williams
Mark Futrell

STATE OF FLORIDA

DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

January 20, 1999

Mr. Jim Davenport
K-Mart Plaza
1708 State Road 44
New Smyrna Beach, FL 32168

Re: Docket No. 981042-EM - 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.

Dear Mr. Davenport:

Thank you for your letter dated December 16, 1998, to former Chairman Julia L. Johnson. I am responding to your letter because Commissioner Johnson is prohibited by Section 350.042, Florida Statutes, from commenting on the merits of matters pending before the Commission.

As you are aware, the Joint Petition for Determination of Need for an Electrical Power Plant was filed with the Commission pursuant to Florida Statutes Section 403.519. Pursuant to its statutory duties, the Commission will consider all appropriate criteria set forth in the statute. These criteria include the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available. Under the statute, the Commission shall also consider the conservation measures taken by or reasonably available to the applicant which might mitigate the need for the plant.

We will place your letter as a comment letter in the docket file for this case. If you have any additional comments or questions, please contact me at (850) 413-6183, or Mark Futrell of the Commission's Division of Electric and Gas at (850) 413-6692. Thank you again for your interest in this matter.

Sincerely,

Leslie J. Paugh
Senior Attorney

cc: Jorge Cruz-Bustillo
Curtis Williams
Mark Futrell

STATE OF FLORIDA

DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

January 20, 1999

Ms. Gwen Pallante Straub
315 N. Causeway B406
New Smyrna Beach, FL 32169

Re: Docket No. 981042-EM - 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.

Dear Ms. Straub:

Thank you for your electronic mail correspondences dated December 6, 1998 and December 10, 1998, to former Chairman Julia L. Johnson. I am responding to your letter because Commissioner Johnson is prohibited by Section 350.042, Florida Statutes, from commenting on the merits of matters pending before the Commission.

As you are aware, the Joint Petition for Determination of Need for an Electrical Power Plant was filed with the Commission pursuant to Florida Statutes Section 403.519. Pursuant to its statutory duties, the Commission will consider all appropriate criteria set forth in the statute. These criteria include the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available. Under the statute, the Commission shall also consider the conservation measures taken by or reasonably available to the applicant which might mitigate the need for the plant.

We will place your letter as a comment letter in the docket file for this case. If you have any additional comments or questions, please contact me at (850) 413-6183, or Mark Futrell of the Commission's Division of Electric and Gas at (850) 413-6692. Thank you again for your interest in this matter.

Sincerely,

Leslie J. Paugh
Senior Attorney

cc: Jorge Cruz-Bustillo
Curtis Williams
Mark Futrell

STATE OF FLORIDA

DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

January 20, 1999

Ms. Barbara J. Herrin
465 Wildwood Drive
New Smyrna Beach, FL 32168

Re: Docket No. 981042-EM - 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.

Dear Ms. Herrin:

Thank you for your facsimile dated December 17, 1998, to former Chairman Julia L. Johnson. I am responding to your letter because Commissioner Johnson is prohibited by Section 350.042, Florida Statutes, from commenting on the merits of matters pending before the Commission.

As you are aware, the Joint Petition for Determination of Need for an Electrical Power Plant was filed with the Commission pursuant to Florida Statutes Section 403.519. Pursuant to its statutory duties, the Commission will consider all appropriate criteria set forth in the statute. These criteria include the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available. Under the statute, the Commission shall also consider the conservation measures taken by or reasonably available to the applicant which might mitigate the need for the plant.

We will place your letter as a comment letter in the docket file for this case. If you have any additional comments or questions, please contact me at (850) 413-6183, or Mark Futrell of the Commission's Division of Electric and Gas at (850) 413-6692. Thank you again for your interest in this matter.

Sincerely,

Leslie J. Paugh
Senior Attorney

cc: Jorge Cruz-Bustillo
Curtis Williams
Mark Futrell

STATE OF FLORIDA

DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

January 20, 1999

Mr. John Shelby
2756 Turnbull Estates
New Smyrna Beach, FL 32168

Re: Docket No. 981042-EM - 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.

Dear Mr. Shelby:

Thank you for your electronic mail and facsimile correspondence dated December 16, 1998, to former Chairman Julia L. Johnson. I am responding to your letter because Commissioner Johnson is prohibited by Section 350.042, Florida Statutes, from commenting on the merits of matters pending before the Commission.

As you are aware, the Joint Petition for Determination of Need for an Electrical Power Plant was filed with the Commission pursuant to Florida Statutes Section 403.519. Pursuant to its statutory duties, the Commission will consider all appropriate criteria set forth in the statute. These criteria include the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available. Under the statute, the Commission shall also consider the conservation measures taken by or reasonably available to the applicant which might mitigate the need for the plant.

We will place your letter as a comment letter in the docket file for this case. If you have any additional comments or questions, please contact me at (850) 413-6183, or Mark Futrell of the Commission's Division of Electric and Gas at (850) 413-6692. Thank you again for your interest in this matter.

Sincerely,

Leslie J. Paugh
Senior Attorney

cc: Jorge Cruz-Bustillo
Curtis Williams
Mark Futrell

STATE OF FLORIDA

DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

January 20, 1999

Ms. Grayce K. Barck
201 Riverview Place
New Smyrna Beach, FL 32169

Re: Docket No. 981042-EM - 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.

Dear Ms. Barck:

Thank you for your letter dated January 8, 1999, to former Chairman Julia L. Johnson. I am responding to your letter because Commissioner Johnson is prohibited by Section 350.042, Florida Statutes, from commenting on the merits of matters pending before the Commission.

As you are aware, the Joint Petition for Determination of Need for an Electrical Power Plant was filed with the Commission pursuant to Florida Statutes Section 403.519. Pursuant to its statutory duties, the Commission will consider all appropriate criteria set forth in the statute. These criteria include the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available. Under the statute, the Commission shall also consider the conservation measures taken by or reasonably available to the applicant which might mitigate the need for the plant.

We will place your letter as a comment letter in the docket file for this case. If you have any additional comments or questions, please contact me at (850) 413-6183, or Mark Futrell of the Commission's Division of Electric and Gas at (850) 413-6692. Thank you again for your interest in this matter.

Sincerely,

Leslie J. Paugh
Senior Attorney

cc: Jorge Cruz-Bustillo
Curtis Williams
Mark Futrell

STATE OF FLORIDA

DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

January 20, 1999

Mr. Lee Bidgood, Jr.
310 Quay Assisi
New Smyrna Beach, FL 32169-5113

Re: Docket No. 981042-EM - 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.

Dear Mr. Bidgood:

Thank you for your letter dated January 4, 1999, to former Chairman Julia L. Johnson. I am responding to your letter because Commissioner Johnson is prohibited by Section 350.042, Florida Statutes, from commenting on the merits of matters pending before the Commission.

As you are aware, the Joint Petition for Determination of Need for an Electrical Power Plant was filed with the Commission pursuant to Florida Statutes Section 403.519. Pursuant to its statutory duties, the Commission will consider all appropriate criteria set forth in the statute. These criteria include the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available. Under the statute, the Commission shall also consider the conservation measures taken by or reasonably available to the applicant which might mitigate the need for the plant.

We will place your letter as a comment letter in the docket file for this case. If you have any additional comments or questions, please contact me at (850) 413-6183, or Mark Futrell of the Commission's Division of Electric and Gas at (850) 413-6692. Thank you again for your interest in this matter.

Sincerely,

Leslie J. Paugh
Senior Attorney

cc: Jorge Cruz-Bustillo
Curtis Williams
Mark Futrell

STATE OF FLORIDA

DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

January 20, 1999

John and Laura Wooley
204 Mary Avenue
New Smyrna Beach, FL 32168

Re: Docket No. 981042-EM - 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.

Dear Mr. and Ms. Wooley:

Thank you for your letter dated December 15, 1998. I am responding to your letter because the Commissioners are prohibited by Section 350.042, Florida Statutes, from commenting on the merits of matters pending before them.

As you are aware, the Joint Petition for Determination of Need for an Electrical Power Plant was filed with the Commission pursuant to Florida Statutes Section 403.519. Pursuant to its statutory duties, the Commission will consider all appropriate criteria set forth in the statute. These criteria include the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available. Under the statute, the Commission shall also consider the conservation measures taken by or reasonably available to the applicant which might mitigate the need for the plant.

We will place your letter as a comment letter in the docket file for this case. If you have any additional comments or questions, please contact me at (850) 413-6183, or Mark Futrell of the Commission's Division of Electric and Gas at (850) 413-6692. Thank you again for your interest in this matter.

Sincerely,

Leslie J. Paugh
Senior Attorney

cc: Jorge Cruz-Bustillo
Curtis Williams
Mark Futrell

Video Tape
of
01/28/1999
Oral Argument
(981042-EM)
Archived at SRC

Public Service Commission

State of Florida

-M-E-M-O-R-A-N-D-U-M-

DATE: February 4, 1999

TO: Blanca Bayó, Director, Records and Reporting

FROM: Joy Kelly, Chief, Bureau of Reporting

RE: DOCKET NOS. 981042-TI, Hearing Held 1-28-99

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.

DOCUMENT NO. 01317, 2-2-99

The transcript for the above transcribed hearing has been completed and is forwarded for placement in the docket file, including attachments.

Please note that Staff distribution of this transcript was made to:

LEGAL, AFAD, E&G, SOLD

Acknowledged by:

_____

JK/pc

PSC/RAR 28 (Rev7/94)

State of Florida

Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: February 4, 1999
TO: Blanca Bayo, Director, Records and Reporting
FROM: Joy Kelly, Chief, Bureau of Reporting
RE: DOCKET NO. 981042-EM, HEARING HELD 12-2-98

Attached for filing in the docket file of the captioned case is Late-Filed Composite Exhibit No. 35 Exhibits. With the filing of this exhibits, all exhibits identified and admitted during the hearing in this docket will have been filed.

Acknowledged by:

JK:pc

State of Florida

Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: February 5, 1999

TO: Blanca Bayo, Director, Division of Records and Reporting

FROM: Melinda Butler, Assistant to Commissioner Jacobs MB

RE: Intercepted Communications From an Interested Party Received in Docket No: 981042-EM

This office has received the attached correspondence of Dr. Jack Funkey, President, Sugar Mill Association, Inc. The correspondence has not been viewed or considered in any way by Commissioner Jacobs. Under the terms of the advisory opinion from the Commission on Ethics (issued July 24, 1991 as COE 91-33-JULY 19, 1991), the following letter does not constitute an ex parte communication by virtue of the fact that it was not shown to the Commissioner. Because it is not deemed to be an ex parte communication, it does not require dissemination to parties pursuant to the provisions of Section 350.042, Florida Statutes. However; in such cases Commissioner Jacobs has requested that a copy of the correspondence and this memo, as a matter of routine, be placed in the correspondence side of the file in this docket.

STATE OF FLORIDA

DIVISION OF ELECTRIC & GAS
JOSEPH D. JENKINS
DIRECTOR
(850) 413-6700

Public Service Commission

February 10, 1999

981042

Mr. Frank Evangelist
2725 East Orange Road
Deland, Florida 32724-3095

Dear Mr. Evangelist:

Thank you for your letter on the proposed New Smyrna Beach Project. A public hearing on the proposed project was held and the Commission is scheduled to vote on March 4, 1999.

Your comments will be placed in the correspondence file for the case. Thank you again for taking time to express your opinion on this case.

Sincerely,

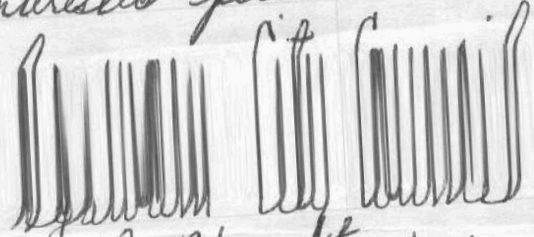
Mark Futrell

Mark Futrell
Economic Analyst

MF:kb
cc: Docket File

Dear Comm.

I would like to make a suggestion. Learn by the experiences of others. Forewarned is forearmed. I would further submit a similar situation, although not in this area. In Agawam, Mass. a similar situation is occuring. There is a water/coolant problem - the city has largely been ignored/by passed by the Power Co. - in fact it is presently be sued by the Co. If interested please contact



W. Pheault, pres.
36 Main St.
Agawam, MA 01001

1/31/99

Frank L. Evangelist
2725 East Orange Road
Daytona Park Estates
DeLand, FL 32724 - 3095

just a real concerned citizen

STATE OF FLORIDA

DIVISION OF ELECTRIC & GAS
JOSEPH D. JENKINS
DIRECTOR
(850) 413-6700

Public Service Commission

981042

February 10, 1999

Mr. Frank B. Hawes, Jr.
1418 N. Atlantic Avenue
New Smyrna Beach, Florida 32169

Dear Mr. Hawes:

Thank you for your additional comments on the proposed New Smyrna Beach Project.

Your comments will be placed in the correspondence file for the case. Thank you again for taking time to express your opinion on this case.

Sincerely,

Mark Futrell
Economic Analyst

MF:kb
cc: William Talbott, Executive Director
Docket File

981042

*

Frank B. Hawes, Jr.
1418 N. Atlantic Avenue
New Smyrna Beach, Fla. 32169

February,16th,1999

Mr.Ron Vaden,
Director,
New Smyrna Beach Utilities Commission,
@ P.O.Box # 100
c/o N.S.B.P.O.,
New Smyrna Beach,
Florida,32170

Dear Mr.Vaden:

You,will please find a copy of,a letter from the Public Service Commission'in keeping with mypractice of advices' self explanatory,viz'proposed New Smyrna Beach Project!

Copies,too,will,be accprded,those,shown hereinbelow, **

Sincerely,

Frank B Hawes Jr,
Public Service Commission. **
New Smyrna Beach,City Commission **
Depatment of Community Affairs, **
'I.B.E.W, # 756 **

CC:'s **

ACK
AFA
APP
CAF
CMU
CTR
EAG 1
LEG 1
LIN
OPC
RCH
SEC
WAS
OTH

ALAN CARL SUNDBERG

February 19, 1999

981042

Mr. Frank B. Hawes, Jr.
1418 N. Atlantic Avenue
New Smyrna Beach, Florida 32169

Dear Mr. Hawes:

I have been favored with a copy of your letter to Mr. Talbott of February 3, 1999, a copy of which was directed to the New Smyrna Beach Utilities Commission. In that letter you suggest that my representation of a client before the Public Service Commission creates a possible conflict of interest. You indicate that this conflict may be created because I serve as General Counsel to Florida State University (FSU) and, hence, a "State Employee" is arguing a matter before a "State Tribunal."

The instance of state lawyers appearing before other state regulatory agencies is quite common. For example, if the Department of Environmental Protection were to cite FSU for violation of a regulation of that agency, it would be quite appropriate for me to represent FSU in that proceeding. That is because state regulatory agencies regulate other agencies of state government, as well as the private sector, which sometimes results in disputes between the two agencies. In that case, the attorneys for both agencies are "state employees."

With respect to my representation of Duke Energy New Smyrna Beach Power Company (Duke) in the proceeding to which you refer, that representation was rendered only during non-business hours or during annual leave to which each state employee is entitled. In short, I was not on the "state payroll" while representing Duke.

The President of FSU encourages lawyer members of the faculty and professional staff to engage in outside activity related to their profession so long as it is done on

their own time and does not interfere with the performance of their duties at the university. My representation of Duke in this instance was approved in advance by the president in accordance with the rules and regulations of the university with respect to outside employment.

Yours sincerely,

Alan C. Sundberg

ACS:lw

cc: William D. Talbott
R. Scheffel Wright

Public Service Commission

State of Florida

-M-E-M-O-R-A-N-D-U-M-

DATE: March 8, 1999

TO: Blanca Bayó, Director, Records and Reporting

FROM: Joy Kelly, Chief, Bureau of Reporting

RE: DOCKET NOS. 981042-EM, SPECIAL AGENDA CONFERENCE held 3-4-99

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.

DOCUMENT NO. 02940, 3-8-99

The transcript for the above transcribed hearing has been completed and is forwarded for placement in the docket file, including attachments.

Please note that Staff distribution of this transcript was made to:

LEGAL, AFAD, E&G, SOLD

Acknowledged by:

JK/pc

PSC/RAR 28 (Rev7/94)

STATE OF FLORIDA

DIVISION OF RECORDS & REPORTING
BLANCA S. BAYÓ
DIRECTOR
(850) 413-6770

Public Service Commission

April 21, 1999

Clerk of the Court
Supreme Court of Florida
Supreme Court Building
Tallahassee, Florida 32301

Re: Florida Power Corporation vs. Florida Public Service Commission (Docket No. 981042-EM)

Dear Clerk:

Enclosed is a certified copy of a Notice of Appeal, filed in this office on April 19, 1999, on behalf of Florida Power Corporation. Also enclosed is a copy of Order No. PSC-99-0535-FOF-EM, the order on appeal.

It is our understanding that the index is due to be served on the parties to this proceeding on or before June 6, 1999.

Sincerely,

Kay Flynn

Kay Flynn, Chief
Bureau of Records

Enclosure
cc: Sylvia H. Walbolt
David E. Smith
Other Parties of Record

STATE OF FLORIDA

DIVISION OF RECORDS & REPORTING
BLANCA S. BAYÓ
DIRECTOR
(850) 413-6770

Public Service Commission

April 21, 1999

Clerk of the Court
Supreme Court of Florida
Supreme Court Building
Tallahassee, Florida 32301

Re: Florida Power & Light Company vs. Florida Public Service Commission (Docket No. 981042-EM)

Dear Clerk:

Enclosed is a certified copy of a Notice of Appeal, filed in this office on April 19, 1999, on behalf of Florida Power & Light Company. Also enclosed is a copy of Order No. PSC-99-0535-FOF-EM, the order on appeal.

It is our understanding that the index is due to be served on the parties to this proceeding on or before June 7, 1999.

Sincerely,

Kay Flynn

Kay Flynn, Chief
Bureau of Records

Enclosure
cc: Charles A. Guyton
David E. Smith
Other Parties of Record

STATE OF FLORIDA

DIVISION OF RECORDS & REPORTING
BLANCA S. BAYÓ
DIRECTOR
(850) 413-6770

Public Service Commission

April 21, 1999

Clerk of the Court
Supreme Court of Florida
Supreme Court Building
Tallahassee, Florida 32301

Re: ~~Florida Wildlife~~ Federation vs. Florida Public Service Commission (Docket No. 981042-EM)

Dear Clerk:

Enclosed is a certified copy of a Notice of Appeal, filed in this office on April 21, 1999, on behalf of Florida Wildlife Federation.

It is our understanding that the index is due to be served on the parties to this proceeding on or before June 8, 1999.

Sincerely,

Kay Flynn

Kay Flynn, Chief
Bureau of Records

Enclosure
cc: David J. White
David E. Smith
Parties of Record

STATE OF FLORIDA

DIVISION OF RECORDS & REPORTING
BLANCA S. BAYÓ
DIRECTOR
(850) 413-6770

Public Service Commission

April 21, 1999

Clerk of the Court
Supreme Court of Florida
Supreme Court Building
Tallahassee, Florida 32301

Re: Tampa Electric Company vs. Florida Public Service Commission (Docket No. 981042-EM)

Dear Clerk:

Enclosed is a certified copy of a Notice of Appeal, filed in this office on April 21, 1999, on behalf of Tampa Electric Company. Also enclosed is a copy of Order No. PSC-99-0535-FOF-EM, the order on appeal.

It is our understanding that the index is due to be served on the parties to this proceeding on or before June 8, 1999.

Sincerely,

Kay Flynn

Kay Flynn, Chief
Bureau of Records

Enclosure
cc: James D. Beasley
David E. Smith
Other Parties of Record

STATE OF FLORIDA

DIVISION OF RECORDS & REPORTING
BLANCA S. BAYÓ
DIRECTOR
(850) 413-6770

Public Service Commission

April 22, 1999

Jon S. Wheeler, Clerk
First District Court of Florida
District Court of Appeal Building
Tallahassee, Florida 32301

Re: Florida Power & Light Company vs. Florida Public Service Commission (Docket No. 981042-EM)

Dear Mr. Wheeler:

Enclosed is a certified copy of a Notice of Administrative Appeal, filed in this office on April 21, 1999, on behalf of Florida Power & Light Company.

It is our understanding that the index is due to be served on the parties to this proceeding on or before June 8, 1999.

Sincerely,

Kay Flynn, Chief
Bureau of Records

Enclosure
cc: Charles A. Guyton
David Smith
Other Parties of Record

 98104 2-EM

From: JANFREDL @ SMTP {JANFREDLAN@aol.com}
To: CAF Internet E-mail
Subject: fwd: Florida Power & Light-Duke Energy, New Smyrna Beach Plant

===NOTE==========5/02/99==4:25pm==========

Return-Path: <JANFREDLAN@aol.com>
Received: from imo26.mx.aol.com (198.81.17.70)
by mail.psc.state.fl.us (Connect2-SMTP 4.30A.1000128)
for <contact@psc.state.fl.us>; Sun, 2 May 1999 16:26:28 -0400
Received: from JANFREDLAN@aol.com (7817)
by imo26.mx.aol.com (IMOv20) id cUXVa20662
for <contact@psc.state.fl.us>; Sun, 2 May 1999 16:25:07 -0400 (EDT)
From: JANFREDLAN@aol.com
Message-ID: <6f8da4b2.245e0ea2@aol.com>
Date: Sun, 2 May 1999 16:25:06 EDT
Subject: Florida Power & Light-Duke Energy, New Smyrna Beach Plant
To: contact@psc.state.fl.us
MIME-Version: 1.0
Content-Type: text/plain; charset="us-ascii"
Content-Transfer-Encoding: 7bit
X-Mailer: AOL 4.0 for Windows 95 sub 13

Gentlemen:
Florida Power & Light has asked the First District Court of Appeals to overturn your decision to permit Duke Energy to build a plant at New Smyrna Beach. We agree that you have made the proper decision to permit builiding of this power plant for the following reasons:

1. FPL electrical cost is very expense and an outside supplier would help reduce total electrical cost in Florida.
2. FPL is building a plant in Texas and we believe that these funds should have been used for improvements in the State of Florida.

Consequently, we cannot accept FPL's complaint regarding Duke Energy's desire to enter the State of Florida and build a new plant here.
Please continue to support Duke Energy's proposal to erect a new power plant in Florida. Sincerely, Janice & Fred Lannert, 10645 Royal Caribbean Circle, Boynton Beach, FL 33437,

Fwd=by:=CAF=Internet==5/03/99==8:38am==========
Fwd to: Jennifer Erdman-Bridges, Pamela Johnson, Ruth McHargue

AFA
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STATE OF FLORIDA

dkt file

DIVISION OF RECORDS & REPORTING
BLANCA S. BAYÓ
DIRECTOR
(850) 413-6770

Public Service Commission

May 27, 1999

John T. LaVia, III
Landers Law Firm
P.O. Box 271
Tallahassee, Florida 32302

Re: Docket No. 981042-EM - Duke Energy New Smyrna Beach Power Company Ltd., L.L.P.
(Confidential Filing)

Dear Mr. LaVia:

Commission staff have advised that confidential Document No. 11600-98, filed October 16, 1998 on behalf of Duke Energy New Smyrna Beach Power Company Ltd., L.L.P. can be returned to the source.

Please do not hesitate to call if you have any questions concerning this matter.

Sincerely,

Kay Flynn

Kay Flynn, Chief
Bureau of Records

KF/abf
Enclosure
cc: Division of Legal Services

RECEIVED BY: Katrece Thompson DATE: 3:20 pm 5/27/99

State of Florida

Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: June 8, 1999

TO: Lee L. Willis, James D. Beasley, Sylvia H. Walbolt, Robert Pass, Gary L. Sasso, Joseph H. Lang, Charles A. Guyton, and David J. White, Attorneys at Law

FROM: Kay Flynn, Chief of Records KF

RE: Docket No. 981042-EM - Tampa Electric Company, Florida Power Corporation, Florida Power & Light Company, and Florida Wildlife Federation vs. Florida Public Service Commission (Supreme Court Case Nos. 95,444, 95,445, 95,446, and 95,447)

The index to the above-referenced docket on appeal is enclosed for your review. Please look the index over and advise if you have questions or concerns regarding the contents of the record. I can be reached at (850) 413-6744.

The record will be filed in the Supreme Court of Florida on or before August 8, 1999.

Enclosure
cc: Richard Bellak

INDEX TO RECORD

Tampa Electric Company, Florida Power Corporation, Florida Power & Light Company, and Florida Wildlife Federation vs. Florida Public Service Commission
Supreme Court Case Nos. 95,444, 95,445, 95,446, and 95,447
Florida Public Service Commission Docket No. 981042-EM

VOLUME 1

VOLUME 2

VOLUME 3

VOLUME 4

VOLUME 5

VOLUME 6

VOLUME 7

VOLUME 8

VOLUME 9

VOLUME 10

VOLUME 11

VOLUME 12

VOLUME 13

VOLUME 14

HEARING TRANSCRIPTS AND EXHIBITS

Volume 9 of transcript of hearing held December 4, 1998, in Tallahassee, pages 1158 - 1236.

Volume 10 of transcript of hearing held December 11, 1998, in Tallahassee, pages 1237 - 1420.

Volume 11 of transcript of hearing held December 11, 1998, in Tallahassee, pages 1421 - 1543.

Volume 12 of transcript of hearing held December 11, 1998, in Tallahassee, pages 1544 - 1594.

Volume 13 of transcript of hearing held December 18, 1998, in Tallahassee, pages 1595 - 1687.

Exhibits 1 - 34 and 36 - 43 from hearing held in December 1998 in Tallahassee.

From: RICHZAMB @ SMTP {Richzambo@aol.com}
To: Chip Orange
Subject: fwd: email address of Richard A. Zambo

===NOTE==========6/24/99==8:22am==========
Return-Path: <Richzambo@aol.com>
Received: from imo27.mx.aol.com (198.81.17.71)
by mail.psc.state.fl.us (Connect2-SMTP 4.30A.1000128)
for <corange@psc.state.fl.us>; Thu, 24 Jun 1999 08:22:36 -0400
Received: from Richzambo@aol.com
by imo27.mx.aol.com (IMOv20.21) id cZZRa24184 (367)
for <corange@psc.state.fl.us>; Thu, 24 Jun 1999 08:22:06 -0400 (EDT)
From: Richzambo@aol.com
Message-ID: <801557f8.24a37cee@aol.com>
Date: Thu, 24 Jun 1999 08:22:06 EDT
Subject: email address of Richard A. Zambo
To: corange@psc.state.fl.us
MIME-Version: 1.0
Content-Type: text/plain; charset="us-ascii"
Content-Transfer-Encoding: 7bit
X-Mailer: AOL 3.0 for Windows 95 sub 18

My firm is listed among the "interested parties" on quite a few FPSC proceedings involving electric utility matters. We noticed recently that the email address for the firm, which is included with our address and phone, is incorrect. We would greatly appreciate it if you can correct this problem.

The correct email address is richzambo@aol.com.

Thanks for your help. Rich Zambo

Fwd=by:=Chip=Orange===6/28/99==7:58am==========
Fwd to: RICHZAMB @ SMTP {Richzambo@aol.com}
CC: Hong Wang, Kay Flynn, Nonnye Grant
.....
I am forwarding your request on to our records and reporting division for further processing. You may contact them directly at (850) 413-6770.

950110
980569
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Done 6/29/99

STATE OF FLORIDA

DIVISION OF RECORDS & REPORTING
BLANCA S. BAYÓ
DIRECTOR
(850) 413-6770

Public Service Commission

August 6, 1999

Ms. Debbie Causseaux, Clerk
Supreme Court of Florida
Supreme Court Building
Tallahassee, Florida 32301

Re: Case Nos. 95,444, 95, 445, and 95,446 - Tampa Electric Company, Florida Power Corporation, and Florida Power & Light Company vs. Florida Public Service Commission (Docket No. 981042-EM)

Dear Ms. Causseaux:

The record in the above-referenced proceeding, contained in 14 bound volumes, 13 hearing transcripts, and Exhibits 1 - 34 and 36 - 43, is forwarded for filing with the Court. Please acknowledge receipt of this material on the attached transmittal letter copy.

Do not hesitate to contact me at 413-6744 if you have any questions concerning the contents of this record.

Sincerely,

Kay Flynn, Chief
Bureau of Records

Enclosure
cc: Lee L. Willis and James D. Beasley
Sylvia Walbolt
Charles Guyton
Richard C. Bellak

CLERK_____**DATE**_____

STATE OF FLORIDA

DIVISION OF RECORDS & REPORTING
BLANCA S. BAYÓ
DIRECTOR
(850) 413-6770

Public Service Commission

August 6, 1999

Ms. Debbie Causseaux, Clerk
Supreme Court of Florida
Supreme Court Building
Tallahassee, Florida 32301

Re: Case Nos. 95,444, 95, 445, and 95,446 - Tampa Electric Company, Florida Power Corporation, and Florida Power & Light Company vs. Florida Public Service Commission (Docket No. 981042-EM)

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Do not hesitate to contact me at 413-6744 if you have any questions concerning the contents of this record.

Sincerely,

Kay Flynn

Kay Flynn, Chief
Bureau of Records

Enclosure
cc: Lee L. Willis and James D. Beasley
Sylvia Walbolt
Charles Guyton
Richard C. Bellak

IN THE SUPREME COURT OF FLORIDA

Tampa Electric Company, Florida Power Corporation, and Florida Power & Light Company,	)	
APPELLANTS,	)	
vs.	)	CASE NOS. 95,444, 95,445, and 95,446
Florida Public Service Commission,	)	
APPELLEE.	)	

TRANSCRIPT OF RECORD

IN THE MATTER OF:

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

Lee L. Willis
James D. Beasley
Ausley & McMullen
P.O. Box 391
Tallahassee, Florida 32301

Sylvia H. Walbolt
Carlton Law Firm
P.O. Box 2861
St. Petersburg, Florida 33731

Charles A. Guyton
Steel Hector and Davis
215 South Monroe St., Suite 601
Tallahassee, Florida 32301

ATTORNEYS FOR APPELLANTS

David Smith
Richard C. Bellak
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

ATTORNEYS FOR APPELLEE

INDEX TO RECORD

Tampa Electric Company, Florida Power Corporation, and Florida Power & Light Company
vs. Florida Public Service Commission
Supreme Court Case Nos. 95,444, 95,445, and 95,446
Florida Public Service Commission Docket No. 981042-EM

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**

Frank B. Hawes, Jr.
1418 N. Atlantic Avenue
New Smyrna Beach, Fla. 32169

August, 24th, 1999

The Public Service Commission,
@ Capitol Circle Office Center,
2540 Shumard Oak Blv'd,
Tallahassee
Florida,
32399-0850

981042-EM

Att: William D. Talbott, Esq: Executive Director.

Re: Enclosure (Legal Fight may raise power rates, News Journal-8/21/'99

Dear Mr. Talbott:

You, will please find herein, two other, articles. pertaining &f, you will, to Duke Energy, self explanatory at best, as you will ascertain.

I, believe, the enclosure, cit ed above, should have particular attentio accorded, by the Public Servicde Commission, bleieving that, in my opinion, Mr. Vaden has transcended, areas not within his province, i.e, as to possible rate changes, as alluded to in the article.

He is obviously, making an attempt, to 'Sandbag' if you will the consu ers, into believing that, Electricity, would not be available, and by that, establish, a 'Trauma' of, what could be termed, possibly a 'fear psyche', to occur, by his, remarks, paragraph (10) of the article, could cause this, fear to occur.

I, firmly, believe that the 'Commission' is, required to, censure, Mr. Vade for these remarks, and that they too, should cause those remarks, to be corrected by him, in the Media, so as to, relieve the, consumer, of such, fears, and, thst that only the Public Service Commission can, set, adjust and/or correct rates, see enclosure, '3', please

My sincere appreciation, is extended for your courteous attention, to this, in the interests of the, Consumers,

Sincerely,

CC: 's, Florida State Supreme Court,
Department of, Community affairs,
Encl (3) to all above.

AFA
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Duke project set back a year

NEW SMYRNA BEACH — Duke Energy's plans to build a $150 million gas-fired electricity generating plant on State Road 44 west of Interstate 95 have been set back a year.

The projected completion date for the project is now 2002, rather than 2001, Duke spokesman Kenny Bryant said Friday.

Florida Power & Light and Florida Power Corp. have challenged Duke's right to construct the plant in partnership with the Utilities Commission of New Smyrna Beach.

With that challenge now before the Florida Supreme Court, and the uncertainty of when the legal issues would be resolved, Bryant said the schedule had to be adjusted.

All of Florida's regulatory agencies have sided with the Duke project.

"We are confident the Supreme Court will rule in our favor," Bryant said.

—JIM JONES

THE OBSERVER, SATURDAY, AUGUST 21, 1999

go ahead with their own combination.

PSC position up for appointment

TALLAHASSEE — Gov. Jeb Bush will get a chance to appoint someone to one of the state's best-paying and most powerful jobs.

Julia Johnson, who has been a member of the Public Service Commission since 1992, said Friday she will give up her job within the next month to become head of a new task force that is being set up to help and attract high-tech businesses to Florida.

Johnson's departure means that Bush will select a new member to the PSC, the five-member panel that regulates Florida's electric, gas, water and telephone companies. Commissioners, who earn $113,833 a year, vote on electric rates, area codes and whether new power plants should be built.

3 11A

Saturday, August 21, 1999

Daytona Beach, Florida

R

See Plane / Page 3A

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See Plane / Page 3A

11A
Saturday, August 21, 1999
Daytona Beach, Florida
R

THE NEWS-JOURNAL

Area/Florida

Section C
Saturday, August 21, 1999
Daytona Beach, Florida

Legal fight may raise power rates

By GARY FINEOUT
Tallahassee Bureau Chief

ALLAHASSEE — The battle over a new ver plant for New Smyrna Beach could d up in rate hikes for 20,000 electric tomers.

uke Energy Co., the North Carolina npany that plans to build a plant with Utilities Commission of the city of New yrna Beach, has conceded its power nt won't be ready to operate until 2002 ne earliest.

he c any had wanted to start con- ction this fall on a site near the inter- ion of Interstate 95 and State Road 44 southeast Volusia. But it could be ths before any work actually starts.

ne delay is due to the prolonged legal le that Florida's other utilities have ed in order to stop the construction of state's first merchant power plant. The is now before the Florida Supreme rt.

ut the delay also means that New Smyr- Beach customers will pay higher rates er than expected.

"he bottom line is that what we are ing up with is a six-month delay," said Utilities Director Ronald Vaden. "It's not going to have much of an effect other than a more expensive power supply."

> "The bottom line is that what we are coming up with is a six-month delay (in building a plant). It's not going to have much of an effect other than a more expensive power supply."
>
> **New Smyrna Beach Utilities Director Ronald Vaden**

New Smyrna Beach currently purchases most of its electricity from Florida Power Corp. and Tampa Electric Co. But agreements to buy power from the two investor-owned utilities expire in May 2000.

So far, no new power contracts have been lined up. That's because the most recent offers — from FPC and TECO — would have resulted in substantial rate hikes for New Smyrna Beach customers. The utilities were offering two-year contracts at rates 20 percent to 100 percent higher than what the companies charge the Utilities Commission.

"The rates were substantially higher ... so we rejected all of the bids," Vaden said. "We're now basically taking any offers that utilities might want us to look at.

"We knew this all along, that when we started to look for a long-term arrangement, we would have to take our contracts to termination," he said. "We did anticipate we would have an increase in costs. It's just extending that situation for us."

When the Utilities Commission signed a deal to build a plant with Duke, the idea was to provide cheaper power to New Smyrna Beach customers. Customers were told they would see an average decline of 15 percent on their electric rates. (The current electric bill is $74.82 based on an average monthly use of 1,000 kilowatt hours.)

But other Florida electric companies have waged a brutal fight against Duke because it wants to sell to other utilities any excess energy generated by the proposed 514-megawatt natural-gas power plant. Florida Power & Light Co., FPC and TECO contend that state laws do not permit out-of-state companies to operate so-called "merchant power plants" in Florida. The Public Service Commission disagreed but the utilities appealed that decision.

And even if the Supreme Court says the plant is legal, it still must pass muster with Gov. Jeb Bush and members of the Cabinet.

Friday, Duke had to notify Florida Gas Transmission Co. whether it would begin purchasing natural gas in 2001 as first predicted. Company officials concluded they could not commit to spending money in 2001 when there is no guarantee the plant will be finished by then.

"It has just become very apparent there's no way to (finish the plant construction by 2001) with the delays here," said Duke spokesman Bryant Kinney. "We will have to push it out. It's very unfortunate."

From: SMITHP @ SMTP (Smith, Paula) {SmithP@mail.ci.tlh.fl.us} CONFIRMED
To: CAF Internet E-mail
Subject: fwd: City of Tallahassee Contact Person change

===URGENT=NOTE========10/27/99=11:58am==========
CC: BRINKWOG @ SMTP ("Brinkworth, Gary") {BrinkwoG@mail.ci.tlh.fl.us}

Return-Path: <SmithP@mail.ci.tlh.fl.us>
Received: from tallahassee.ci.tlh.fl.us (199.44.65.2)
by mail.psc.state.fl.us (Connect2-SMTP 4.30A.1000128)
for <contact@psc.state.fl.us>; Wed, 27 Oct 1999 11:58:02 -0400
Received: from cotexchange2.ci.tlh.fl.us (cotexchange2.ci.tlh.fl.us
[167.75.228.50]) by tallahassee.ci.tlh.fl.us (8.6.10/8.6.10) with ESMTP id
MAA26934 for <contact@psc.state.fl.us>; Wed, 27 Oct 1999 12:09:55 -0400
Received: by cotexchange2.ci.tlh.fl.us with Internet Mail Service (5.5.2448.0)
id <VJTXTG3B>; Wed, 27 Oct 1999 11:58:03 -0400
Message-ID: <B1A7607C43CCD2118DFF00105AA2746C01BD4FBE@cotexchange2.ci.tlh.fl.us>
From: "Smith, Paula" <SmithP@mail.ci.tlh.fl.us>
To: "'contact@psc.state.fl.us'" <contact@psc.state.fl.us>
Cc: "Brinkworth, Gary" <BrinkwoG@mail.ci.tlh.fl.us>
Subject: City of Tallahassee Contact Person change
Date: Wed, 27 Oct 1999 11:58:00 -0400
Importance: high
X-Priority: 1
Return-Receipt-To: "Smith, Paula" <SmithP@mail.ci.tlh.fl.us>
X-Mailer: Internet Mail Service (5.5.2448.0)

I am sending this email in an attempt to change the contact person for the City of Tallahassee. Richard Feldman now receives a steady flow of mail from the PSC, but he is not the correct recipient. Please delete him from your mailing list and change the primary contact person for the City of Tallahassee to the following:

Mr. Gary S. Brinkworth
Utility Business & Customer Services
City Hall
300 South Adams Street A-36
Tallahassee, FL 32301

960789, ~~981042~~
981827

Phone number: (850) 891-8903
Fax number: (850) 891-8277

If you have any questions, please contact me at (850) 891-8161. Thank you for your assistance in this matter.

Thank you,

Paula J. Smith

Fwd=by:=CAF=Internet==10/27/99=12:35pm==========
Fwd to: Ruth McHargue

I can change this on the system for you, unless you want to handle it?
Fwd=by:=Ruth=McHargue=10/27/99=12:40pm==========
Fwd to: CAF Internet E-mail, Leroy Rasberry, Robby Cunningham, Samuel Gonzal

Sam, please update the CAF liaison list.
Robby, FYI in case you send out any correspondence to the City of Tallahassee.
Leroy, We may need to forward to Records and Reporting so MCD can be updated.

Fwd=by:=Leroy=Rasberr=10/29/99==6:09pm==========
Fwd to: Nonnye Grant

Done 11/01/99

CC: Ruth McHargue

.....

Nonnye,

fyi

Fwd=by:=Nonnye=Grant==11/01/99==9:40am==========

Fwd to: Leroy Rasberry

CC: Hong Wang, Robby Cunningham, Ruth McHargue

.....

Good morning! MCD already reflects Mr. Brinkworth for the City of Tallahassee. Spoke with Ms. Smith advised that his phone and fax numbers have changed so will update MCD with the new information. Appreciate you forwarding a copy of this to me and will let Hong know so that she can check the party of records mailing list in dkt. Thanks, Nonnye

---

BLACK & VEATCH

MEMORANDUM

Fax Number

January 13, 2000

To: Hong Wang

From: Sally Melms

Please note that the fax number for Black & Veatch has changed from 913-339-2934 to 913-458-2934. Hope you don't have any trouble reaching us in the future.

981042
991462
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992014

Post-it® Fax Note 7671	Date 1/13/00	# of pages ▶ 1
To Hong Wang	From Sally Melms	
Co./Dept. PSC	Co. B&V	
Phone # 850-413-6720	Phone # 913-458-7129	
Fax # 850-413-7118	Fax # 913-458-2934	

5914D 0030

Done 1/18/00

981042

State of Florida

Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: April 25, 2000

TO: JOE GARCIA, CHAIRMAN
J. TERRY DEASON, COMMISSIONER
SUSAN F. CLARK, COMMISSIONER
LILA A. JABER, COMMISSIONER
E. LEON JACOBS, COMMISSIONER
WILLIAM TALBOTT, EXECUTIVE DIRECTOR
JAMES WARD, DEPUTY EXECUTIVE DIRECTOR/ADM.
MARY BANE, DEPUTY EXECUTIVE DIRECTOR/TECH.
CATHY BEDELL, GENERAL COUNSEL
DAVID SMITH, DIRECTOR OF APPEALS
NOREEN DAVIS, DIRECTOR OF LEGAL SERVICES
TIM DEVLIN, DIRECTOR OF AUDITING & FINANCIAL ANALYSIS
BEV DEMELLO, DIRECTOR OF CONSUMER AFFAIRS
JOE JENKINS, DIRECTOR OF ELECTRIC & GAS
BLANCA BAYO, DIRECTOR OF RECORDS & REPORTING
CHUCK HILL, DIRECTOR OF POLICY ANALYSIS & INTERGOVERNMENTAL

RECEIVED-FPSC
00 APR 25 PM 3:55
RECORDS AND REPORTING

FROM: RICHARD C. BELLAK, DIVISION OF APPEALS RCB

RE: TAMPA ELECTRIC CO., FLORIDA POWER CORP., & FLORIDA POWER & LIGHT CO., CASE NOS. 95,444, 94,445 & 95,446

On April 20, 2000, the Florida Supreme Court issued its decision in Tampa Electric Co.; Florida Power Corp.; and Florida Power & Light Co., v. Joe 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 (Order). Therein, the Court reversed the Commission's decision to grant a determination "for an electric power company's proposal to build and operate a merchant plant in Volusia County." Order, p. 2. The Court based its determination on its previous decisions in Nassau Power Corp. v. Beard, 601 So. 2d 1175 (Fla. 1992) (Nassau I), and Nassau Power v. Deason, 641 So. 2d 396 (Fla. 1994)(Nassau II), as well as the definition of

"utility" in Section 366.82(1), Florida Statutes:

> For the purposes of ss. 366.80-366.85 [FEECA], and 403.519, 'utility' means any person or entity of whatever form which provides electricity or natural gas to the public.

The Court found the following rationale from Nassau II to be relevant to this case:

> The Commission reasoned that a need determination proceeding is designed to examine the need resulting from an electric utility's duty to serve customers. Non-utility generators, such as Nassau, have no similar need because they are not required to serve customers.

The foregoing, together with the previously mentioned definition of "utility" originally found in Section 403.519, led the Court to conclude 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.

Order, p. 13-14.

. . .

> Accordingly, we find that the statutory scheme embodied in the Siting Act and FEECA was not intended to authorize the determination of need for a proposed power plant output that is not fully committed to use by Florida customers who purchase electrical power at retail rates. Rather, we find that the Legislature must enact express statutory criteria if it intends such authority for the PSC.

Order, p. 17.

A copy of the Court's opinion is attached.

cc: Wanda Terrell
All Attorneys

DUKEOPN.RCB

Supreme Court of Florida

Nos. SC95444; SC95445; SC95446

TAMPA ELECTRIC CO.; FLORIDA POWER CORP.; and FLORIDA POWER & LIGHT CO.,
Appellants,

vs.

JOE 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., LLP.,
Appellees.

[April 20, 2000]

PER CURIAM.

These consolidated cases are before the Court on appeal from an order of the Public Service Commission (PSC or Commission). We have jurisdiction. Art. V, § 3(b)(2), Fla. Const. The issue presented concerns the statutory authority of the PSC to grant a determination of need under the Florida Electrical Power Plant Siting Act (Siting Act)[1] and the Florida Energy Efficiency & Conservation Act

[1] § 403.501-.518, Fla. Stat. (1997).

(FEECA)[2] for an electric power company's proposal to build and operate a merchant plant in Volusia County.[3] We reverse the order of the PSC for the reasons stated herein.

The construction of any new electrical power generating plant with a capacity greater than seventy-five megawatts is required to be certified in accord with the various requirements of the Siting Act in chapter 403, Florida Statutes.[4] As part of the process, an applicant seeks a determination of need from the PSC for a proposed power plant. See § 403.519, Fla. Stat. (1997).[5] The PSC's granting

---

[2]§§ 366.80-.85, 403.519, Fla. Stat. (1997).

[3]The PSC defines "merchant plant" as a power plant with no rate base and no captive retail customers.

[4]Section 403.506, Florida Statutes (1997), provides in relevant part:

> (1) The provisions of this act shall apply to any electrical power plant as defined herein, except that provisions of this act shall not apply to any electrical power plant or steam generating plant of less than 75 megawatts in capacity or to any substation to be constructed as part of an associated transmission line unless the applicant has elected to apply for certification of such plant or substation under this act.

[5]Section 403.519, Florida Statutes (1997), provides in relevant part:

> On request by an applicant or on its own motion, the commission shall begin a proceeding to determine the need for an electrical power plant subject to the Florida Electrical Power Plant Siting Act. . . . The commission shall be the sole forum for the determination of this matter, which accordingly shall not be raised in any other forum or in the review of proceedings in such other forum. In making its determination, the commission shall take into account the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available. The commission shall also expressly consider the

of a determination of need for a proposed power plant creates a presumption of public need. See § 403.519, Fla. Stat. (1997). This determination serves as the PSC's report required by section 403.507(2)(a)2, Florida Statutes (1997), as part of the permitting procedure.

On August 19, 1998, the Utilities Commission of the City of New Smyrna Beach (New Smyrna), and Duke Energy New Smyrna Beach Power Co., Ltd. (Duke) filed in the PSC a joint petition for determination of need for the New Smyrna Beach Power Project, a proposed natural gas fired combined cycle generating plant with 514 megawatts of net capacity to be built and operated by Duke in New Smyrna Beach. Duke is not presently subject to PSC regulation as a public utility authorized to generate and sell electric power at retail rates to Florida customers. Duke is a subsidiary of an investor-owned utility based in North Carolina. As a company offering electrical power for sale at wholesale rates, Duke is subject to the regulatory jurisdiction of the Federal Energy Regulatory Commission (FERC) and is classified as an exempt wholesale generator (EWG).[6] New Smyrna is a Florida municipal electric utility that directly serves retail

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conservation measures taken by or reasonably available to the applicant or its members which might mitigate the need for the proposed plant and other matters within its jurisdiction which it deems relevant.

[6]See 15 U.S.C. § 79z-5a (1994).

customers.[7] In the present petition for determination of need, Duke proposed to build a 514-megawatt plant, with thirty megawatts of that capacity and associated energy committed to be sold to New Smyrna and the remaining megawatts uncommitted and intended to be made available for sale at competitive wholesale rates to utilities that directly serve retail customers.

Prior to filing the present joint petition, Duke and New Smyrna entered into an agreement requiring Duke to finance, design, build, own, and operate the plant and to sell to New Smyrna thirty megawatts of Duke's proposed plant's capacity at a discount wholesale rate. New Smyrna agreed to provide the site for the plant, a wastewater treatment facility, water, and tax reductions. New Smyrna intends to sell to its retail customers the energy it has committed to purchase from Duke. The agreement also provides that Duke will make available for sale the remaining 484 megawatts of power in the competitive wholesale electrical power market primarily, but not exclusively, for ultimate use in Florida.

The seven intervenors as to the petition included present appellants Tampa Electric Co. (Tampa Electric), Florida Power Corp. (FPC), and Florida Power & Light Co. (FP&L). After a hearing in December 1998, three members of the Commission voted to deny motions to dismiss by FPC and FP&L and voted to

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[7]New Smyrna is regulated by the PSC pursuant to section 366.04(2), Florida Statutes (1997).

grant the joint petition. In re Joint Petition for Determination of Need, No. PSC-99-0535-FOF-EM (March 22, 1999) (Order). Commissioner Clark dissented, concluding that Duke was not a proper applicant. Commissioner Jacobs concurred and dissented, stating that he believed Duke was a proper applicant but that Duke had not proven its proposed plant to be the most cost-effective option.

In this appeal, appellants are public utilities that are regulated and authorized by the PSC to generate and sell electrical power to users of the power in Florida. Appellants designate themselves as Florida retail utilities. Appellants contend that section 403.519, Florida Statutes, from its initial adoption in 1980 through subsequent legislative changes and up to the present date, does not authorize the PSC to grant a determination of need to an entity other than a Florida retail utility regulated by the PSC whose petition is based upon a specified demonstrated need of Florida retail utilities for serving Florida power customers.

Appellants point out that the recent national movement toward the construction of power plants intended to generate power to be sold in competitive wholesale markets stems from recent federal legislative initiatives. This movement began with the Public Utilities Regulatory Policies Act of 1978

(PURPA).[8] Subsequent relevant federal legislation includes the Energy Policy Act of 1992,[9] which exempts certain wholesale generators from some regulatory requirements. Another milestone is a FERC order issued in 1996 which affects power distribution.[10] Appellants note that these federal initiatives occurred subsequent to the Legislature's enactment of the Siting Act of 1973. Appellants also emphasize that the Legislature has not amended section 403.519 to authorize the PSC to grant a determination of need for a power plant in Florida that would generate power intended to be sold in the competitive wholesale market which is developing as a result of these federal legislative and regulatory changes.

Appellants contend that Duke is not an authorized applicant under section 403.519 because Duke is not a Florida retail utility. Appellants contend that joining with New Smyrna, which is a proper applicant, does not cure the fact that Duke is not a proper applicant in view of the commitment to New Smyrna of just

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[8]Pub. L. No. 95-617, 92 Stat. 3117 (1978) (codified as amended at 16 U.S.C. §§ 2601-2645 (1994)). See also Jeffrey D. Watkiss & Douglas W. Smith, The Energy Policy Act of 1992–A Watershed for Competition in the Wholesale Power Market, 10 Yale J. on Reg. 447 (1993).

[9]Pub. L. 102-486, 106 Stat. 2776 (1992) (amending the Federal Power Act, codified at 16 U.S.C. §§ 791a-825u (1994)).

[10]Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (1996), [Regs. Preambles Jan. 1991-June 1996] F.E.R.C. Stats. and Regs. 31,036, clarified, 76 F.E.R.C. 61,009 & 76 F.E.R.C. 61,347 (1996) (known as Order 888).

thirty megawatts of the 514-megawatt capacity of the plant.[11] Appellants contend that the proposed plant is not authorized by section 403.519 because all but the thirty megawatts that New Smyrna has agreed to buy is uncommitted. Therefore, there is no demonstrated specific need committed to Florida customers who are intended to be served by this proposed plant.

In support of their position, appellants cite PSC orders in proceedings that led to this Court's decisions in Nassau Power Corp. v. Beard, 601 So. 2d 1175 (Fla. 1992) (Nassau I), and Nassau Power Corp. v. Deason, 641 So. 2d 396 (Fla. 1994) (Nassau II) (collectively, the Nassau cases).

In the proceedings below, the five members of the PSC were divided in their conclusions as to the decision to grant the determination of need. The three-member majority's rationale is presented by the PSC as an appellee in this Court. In the PSC order at issue here, the PSC majority finds that Duke and New Smyrna are proper applicants pursuant to the Siting Act, FEECA, and the Florida Administrative Code. Order at 18-29. The majority construes section 403.519 as requiring, pursuant to section 403.503(4), Florida Statutes (1997), that an applicant may be any "electric utility." Id. at 19. Utilities are defined in section

[11]New Smyrna's committed power purchase could be satisfied by a power plant that is exempt from obtaining a determination of need because a plant with a capacity of less than seventy-five megawatts is exempt from the need determination requirement. § 403.506, Fla. Stat. (1997).

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403.503(13), Florida Statutes (1997), as "regulated electric companies." Id. The majority finds that Duke is a regulated electric company pursuant to federal regulatory statutes because the statutes do not expressly provide that "regulated electric companies" are to be state-regulated. Id. at 20. The majority finds that even though Duke is not a Florida retail utility, it is a regulated electric company subject to federal regulation and certain other Florida regulation. Id. at 19, 22-24. The majority also finds that a determination of need properly could be based upon the projected needs of utilities throughout peninsular Florida rather than committed megawatt needs of specific retail utilities. Id. at 53-54. The majority finds the Nassau cases not to be on point here because those cases concerned a wholly different issue. Id. at 29-32. In the Nassau cases, the PSC was asked to determine the need and standing of qualified facilities under PURPA, the federal law regulating cogenerators. The PSC points out that it specifically limited its decision to the facts of those qualified-facilities cases. Id. at 32.

In her dissenting opinion, Commissioner Clark construes the Siting Act and FEECA to mean that a proper applicant under section 403.519 is defined for purposes of FEECA, of which section 403.519 is a part, as "any person or entity of whatever form which provides electricity or natural gas at retail to the public." Order at 58 (quoting Ch. 80-65, § 5 at 214, Laws of Fla.) (alteration in original).

She concludes that a utility's sale of electrical power must be a retail sale in order for that utility to be subject to PSC regulatory authority. Id. at 66. She notes that "wholesale sales are a matter within the sphere of federal regulation." Id. Commissioner Clark cites this Court's Nassau cases in support of her interpretation of the term "applicant" in section 403.519. Id. at 68. She finds those cases to be relevant in that this Court's rationale focused on the types of entities enumerated in section 403.503, Florida Statutes, and "concluded that the common denominator present in each was an obligation to serve customers." Id. at 68. Thus, "the need to be examined under section 403.519, Florida Statutes, was a need resulting from the duty to serve those customers." Id. Commissioner Clark concludes her dissenting opinion by stating:

> Our task in this case was to decide what the law is, not what it ought to be. In my view, the law is clear that Duke New Smyrna is not a proper applicant under section 403.519, Florida Statutes, and the petition must be dismissed. We should, however, move forward with our workshop so that we can make recommendations to the Legislature as to what the law ought to be.

Order at 71. In his dissenting opinion, Commissioner Jacobs agrees with the majority that Duke is a proper applicant but finds that Duke and New Smyrna "failed to provide the weight of evidence required to depart from the Commission's long-standing policy of relying on its own cost effectiveness

analysis of a proposed plant." Order at 74.

In this Court, Duke and New Smyrna, who are joint appellees with the PSC, argue that a need determination as part of the permitting process for the proposed Duke plant does fall within the parameters of section 403.519. They argue that the primary determinant as to Duke's applicant status is whether Duke is a regulated utility. The appellees maintain that Duke qualifies as a regulated utility because it is regulated under federal regulatory procedures, and if Duke receives permits to operate its proposed plant in Florida, the plant's operation will be regulated in part by the PSC. Duke and New Smyrna maintain that the Nassau cases were decided in the context of need for power demonstrated by cogenerators and that those cases do not apply here. The appellees also rely upon the fact that Duke has filed a joint application with New Smyrna.

New Smyrna additionally presents two constitutional arguments and argues that prohibiting Duke from applying directly for a need determination would violate the dormant Commerce Clause of the United States Constitution because such action would unconstitutionally discriminate against out-of-state commerce and burden interstate commerce. New Smyrna also argues that any state requirement that Duke first obtain a contract with a retail utility to build the project is preempted by the federal Energy Policy Act of 1992, which mandates a

robust competitive wholesale market.

We conclude that this case is resolved on the threshold legal issue of whether the PSC exceeded its statutory authority in granting the present determination of need. As we stated in United Telephone Co. of Florida v. Public Service Commission, 496 So. 2d 116 (Fla. 1986):

> We note preliminarily that 'orders of the Commission come before this Court clothed with the statutory presumption that they have been made within the Commission's jurisdiction and powers, and that they are reasonable and just and such as ought to have been made.' General Telephone Co. v. Carter, 115 So. 2d 554, 556 (Fla.1959) (footnote omitted). See also Citizens v. Public Service Commission, 448 So. 2d 1024, 1026 (Fla. 1984).
>
> Such deference, however, cannot be accorded when the commission exceeds its authority. At the threshold, we must establish the grant of legislative authority to act since the commission derives its power solely from the legislature. See Florida Bridge Co. v. Bevis, 363 So. 2d 799, 802 (Fla. 1978). As we said in Radio Telephone Communications, Inc. v. Southeastern Telephone Co., 170 So.2d 577, 582 (Fla.1965):
>
> > [O]f course, the orders of the Florida Commission come to this court with a presumption of regularity, Sec. 364.20, Fla. Stat., F.S.A. But we cannot apply such presumption to support the exercise of jurisdiction where none has been granted by the Legislature. If there is a reasonable doubt as to the lawful existence of a particular power that is being exercised, the further exercise of the power should be arrested.

496 So.2d at 118.

The precise question we consider here is:

> Does section 403.519, Florida Statutes, authorize the granting of a determination of need upon an application for a proposed power plant for which the owner and operator is not a Florida retail utility regulated by the PSC and for which only thirty megawatts of the plant's 514-megawatt capacity have been committed by contract to be sold to a Florida retail utility regulated by the PSC?

While we recognize that the PSC is correct in pointing out that the Nassau cases were decided upon different facts and were intended to resolve different issues, we conclude that our analysis of the Siting Act, articulated in those decisions, is applicable to the present case. In Nassau II, we stated:

> In Nassau Power Corp. v. Beard, 601 So. 2d 1175, 1176-77 (Fla.1992), we recently explained:
>
> > The Siting Act was passed by the legislature in 1973 for the purpose of minimizing the adverse impact of power plants on the environment. See § 403.502, Fla. Stat. (1989). That Act establishes a site certification process that requires the PSC to determine the need for any proposed power plants, including cogenerators, based on the criteria set forth in section 403.519, Florida Statutes (1989). Section 403.519 requires the PSC to make specific findings for each electric generating facility proposed in Florida, as to (1) electric system reliability and integrity, (2) the need to provide adequate electricity at a reasonable cost; (3) whether the proposed facility is the most cost-effective alternative available for supplying electricity; and (4) conservation measures reasonably available to mitigate the need for the plant.
>
> (Footnote omitted). . . .
>
> . . . .
>
> Only an "applicant" can request a determination of need under

section 403.519. Section 403.503(4), Florida Statutes (1991), defines the term "applicant" as "any electric utility which applies for certification pursuant to the provisions of this act." An "electric utility," as used in the Act,

> means cities and towns, counties, public utility districts, regulated electric companies, electric cooperatives, and joint operating agencies, or combinations thereof, engaged in, or authorized to engage in, the business of generating, transmitting, or distributing electric energy.

Sec. 403.503(13), Fla. Stat. (1991). The Commission determined that because non-utility generators are not included in this definition, Nassau is not a proper applicant under section 403.519. The Commission reasoned that a need determination proceeding is designed to examine the need resulting from an electric utility's duty to serve customers. Non-utility generators, such as Nassau, have no similar need because they are not required to serve customers.

The Commission's interpretation of section 403.519 also comports with this Court's decision in Nassau Power Corp. v. Beard. In that decision, we rejected Nassau's argument that "the Siting Act does not require the PSC to determine need on a utility-specific basis." 601 So. 2d at 1178 n.9. Rather, we agreed with the Commission that the need to be determined under section 403.519 is "the need of the entity ultimately consuming the power," in this case FPL. Id.

641 So. 2d at 397, 398-99 (footnote omitted). Based upon our Nassau analysis of the Siting Act, we conclude that the granting of the determination of need on the basis of the present application does exceed the PSC's present authority. 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.

Our decision is founded upon our continuing recognition that the regulation of the generation and sale of power in Florida resides in the legislative branch of government.[12] The PSC, successor to the Florida Railroad and Public Utilities Commission, is an arm of the legislative branch in that the Commission obtains all of its authority from legislation.[13] Originally, the Legislature did not include among the PSC's responsibilities the authority to approve the siting of new power plants but left such authority to local government entities. In 1973, the Legislature enacted the Florida Electrical Power Plant Siting Act,[14] to preempt local government action and to consolidate approval of most state agencies into a single license. Within that law was a requirement that each utility submit a ten-year site plan estimating the utility's power generating needs and the general location of its power plants.[15] In enacting the Siting Act, the Legislature recognized a need for statewide perspective in selecting sites for power plants because of the "significant

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[12]We find the historical context offered by Commissioner Clark in her dissenting opinion to be helpful. Order at 64-71. The record also contains a relevant discussion by FPC counsel Gary L. Sasso before the PSC in proceedings below. Record on Appeal, Vol. I of Hearing Transcript at 21-50.

[13]§ 350.001, Fla. Stat. (1997).

[14]Ch. 73-33, § 1 at 73, Laws of Fla.

[15]Ch.73-33, § 1 at 76 (codified at § 403.505, Fla. Stat. (Supp. 1974)).

impact upon the welfare of the population, the location and growth of industry and the use of the natural resources of the state." See Ch. 73-33, § 1 at 73, Laws of Fla. At that time, the role of the PSC was to prepare a "report and recommendation as to the present and future needs for electrical generating capacity in the area to be served by the proposed site." Id. at 77.

In 1980, as part of the Florida Energy Efficiency and Conservation Act (FEECA), the Legislature changed the PSC's requirement of a "report and recommendation" to "a proceeding to determine the need for an electrical power plant subject to the Florida Electrical Power Plant Siting Act." Ch. 80-65, § 5, at 214, Laws of Fla. (codified at section 366.86, Fla. Stat. (1981)). By this statutory revision, the PSC was directed to review the regulated utilities' proposed new plants, taking into account the need for system reliability and integrity, the need for adequate reasonable-cost electricity and whether a proposed plant was the most cost-effective alternative available. See Ch. 80-65, § 5 at 217, Laws of Fla. The need determination provision at issue in this case was originally codified at section 366.86, Florida Statutes (1981), which was part of FEECA. The same provision is now at section 403.519 but continues to be listed within FEECA, even though it is codified immediately following the Siting Act.

The term "utility" was expressly defined for purposes of FEECA, including

section 403.519, as "any person or entity of whatever form which provides electricity or natural gas at retail to the public." Ch. 80-65, § 5 at 214, Laws of Fla. Section 366.82(1), Florida Statutes (1997), provides: "For the purposes of ss. 366.80- 366.85 [FEECA], and 403.519, 'utility' means any person or entity of whatever form which provides electricity or natural gas at retail to the public." In 1990, statutory revisions included an amendment that changed the term "utility" to "applicant" in the first sentence of section 403.519.[16]

Our reading of this statutory history leads us to continue to conclude that the present statutory scheme was intended to place the PSC's determination of need within the regulatory framework allowing Florida regulated utilities to propose new power plants to provide electrical service to their Florida customers at retail rates. This need determination, pursuant to section 403.519, contemplates the PSC's express consideration of the statutory factors based upon demonstrated specified needs of these Florida customers. The need determination is part of the process that the Legislature intended by its plain language to balance "the pressing need for increased power generation facilities" with the necessity that the state

> ensure through available and reasonable methods that the location and operation of electrical power plants will produce minimal adverse effects on human health, the environment, the ecology of the land and

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[16]Ch. 90-331, § 24, at 2698, Laws of Fla.

its wildlife, and the ecology of state waters and their aquatic life.

§ 403.502, Fla. Stat. (1997).

Accordingly, we find that the statutory scheme embodied in the Siting Act and FEECA was not intended to authorize the determination of need for a proposed power plant output that is not fully committed to use by Florida customers who purchase electrical power at retail rates. Rather, we find that the Legislature must enact express statutory criteria if it intends such authority for the PSC. Pursuant only to such legislative action will the PSC be authorized to consider the advent of the competitive market in wholesale power promoted by recent federal initiatives. Such statutory criteria are necessary if the Florida regulatory procedures are intended to cover this evolution in the electric power industry.[17] The projected need of unspecified utilities throughout peninsular Florida is not among the authorized statutory criteria for determining whether to grant a determination of need pursuant to section 403.519, Florida Statutes. Moreover, we agree with appellants that the fact of Duke's joining with New Smyrna in this arrangement for a thirty-megawatt commitment does not transform

[17]Our conclusion is consistent with the conclusion of the North Carolina Utilities Commission, which dismissed a similar petition by an independent power producer that proposed a merchant plant in North Carolina that was opposed by Duke Power Company. The Commission's order was affirmed. Empire Power Co. v. Duke Power Co., 437 S.E. 2d 540 (N.C. Ct. App. 1993).

the application into one that complies with the Siting Act and FEECA.

We find no merit in the constitutional arguments advanced by New Smyrna. As to any alleged preemption or interference with interstate commerce, we find that power-plant siting and need determination are areas that Congress has expressly left to the states.[18]

Accordingly, we reverse the order of the PSC on the basis that the granting of the determination of need exceeds the PSC's authority pursuant to section 403.519, Florida Statutes (1997).

It is so ordered.

HARDING, C.J., and SHAW, WELLS, PARIENTE, LEWIS and QUINCE, JJ., concur.
ANSTEAD, J., dissents with an opinion.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

ANSTEAD, J., dissenting.

I cannot concur in the majority's conclusion that the Florida Legislature has clearly prohibited the proposed action of the Commission. Indeed, it appears to

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[18]The Energy Policy Act of 1992, Pub. L. 102-486, Title VIII, Subtitle C, State and Local Authorities, section 731, provides:

> Nothing in this title or in any amendment made by this title shall be construed as affecting or intending to affect, or in any way to interfere with, the authority of any State or local government relating to environmental protection or the siting of facilities.

me that the prohibition is based upon a strained and artificial construction of various provisions of the legislative scheme that have little bearing on the issue before us today. In fact, even under the strained construction of the majority the issue would be not whether the petitioning utilities were proper applicants, but whether the capacity required should be permitted.

I am especially concerned with the majority's conclusion that it will not find Commission authority to act absent "express statutory criteria" for the specific circumstances presented here. Clearly, the Commission was created to regulate utilities seeking to operate in Florida. In my view that is precisely what the Commission is doing here.

Three Consolidated Appeals from the Public Service Commission

Harry W. Long, Jr., pro hac vice, Tampa, Florida, and Lee L. Willis and James D. Beasley of Ausley & McMullen, Tallahassee, Florida, for Tampa Electric Company; Gary L. Sasso, Sylvia H. Walbolt, Robert Pass and Joseph H. Lang, Jr. of Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A., St. Petersburg, Florida, and James A. McGee and Jeff Froeschle, Senior Counsels, St. Petersburg, Florida, for Florida Power Corporation; Matthew W. Childs and Charles A. Guyton of Steel, Hector & Davis, Tallahassee, Florida, and Alvin B. Davis, Thomas R. Julin, Edward M. Mullins and Sandra K. Wolkov of Steel, Hector & Davis, Miami, Florida, for Florida Power and Light Company,

Appellants

Robert D. Vandiver, General Counsel and Richard C. Bellak, Associate General Counsel, Tallahassee, Florida, for the Florida Public Service Commission; Robert Scheffel Wright and John T. LaVia, III of Landers & Parsons, P.A., and Alan C. Sundberg, c/o Landers & Parsons, P.A., Tallahassee, and Steven G. Gey and Mark Seidenfeld, pro hac vice, Florida State University College of Law, Tallahassee, Florida, for Utilities Commission, City of New Smyrna Beach, Florida; Stephen H. Grimes, D. Bruce May, Karen D. Walker and Susan L. Kelsey of Holland & Knight, Tallahassee, Florida, Daniel S. Pearson of Holland & Knight, Miami, Florida, and Brent C. Bailey, pro se, Vice President and General Counsel, Houston, Texas, for Duke Energy New Smyrna Beach Power Co., Ltd., LLP; and Jon C. Moyle, Jr. and Robert J. Sniffen of Moyle, Flanigan, Katz, Kolins, Raymond & Sheehan, P.A., Tallahassee, Florida, for PG&E Generating (f/k/a/ U.S. Generating Company),

Appellees

State of Florida

Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: September 29, 2000

TO: J. TERRY DEASON, CHAIRMAN
E. LEON JACOBS, COMMISSIONER
LILA A. JABER, COMMISSIONER
BRAULIO L. BAEZ, COMMISSIONER
WILLIAM TALBOTT, EXECUTIVE DIRECTOR
JAMES WARD, DEPUTY EXECUTIVE DIRECTOR/ADM.
MARY BANE, DEPUTY EXECUTIVE DIRECTOR/TECH.
CATHY BEDELL, GENERAL COUNSEL
DAVID SMITH, DIRECTOR OF APPEALS
NOREEN DAVIS, DIRECTOR OF LEGAL SERVICES
TIM DEVLIN, DIRECTOR OF ECONOMIC REGULATION
BEV DEMELLO, DIRECTOR OF CONSUMER AFFAIRS
JOE JENKINS, DIRECTOR OF SAFETY & ELECTRIC RELIABILITY
DAN HOPPE, DIRECTOR OF REGULATORY OVERSIGHT
BLANCA BAYO, DIRECTOR OF RECORDS & REPORTING
CHUCK HILL, DIRECTOR OF POLICY ANALYSIS & INTERGOVERNMENTAL

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FROM: RICHARD C. BELLAK, DIVISION OF APPEALS RCB

RE: REVISED OPINION AND DENIAL OF MOTIONS FOR REHEARING FILED BY FPSC, DUKE POWER COMPANY AND THE CITY ON NEW SMYRNA BEACH - CASE NOS. 95,444, 95,445, 95,446

On September 28, 2000, the Florida Supreme Court issued its revised opinion in the above-styled appeals while denying motions for rehearing filed by the Commission, Duke Power Company and the City of New Smyrna Beach.

A comparison of the revised opinion with the Order issued on April 20, 2000 indicates that revision was limited to changes in the first sentence of paragraph 2 on page 2. The original Order dated April 20, 2000 stated:

> The construction of any new electrical power generating plant with a capacity greater than seventy-five megawatts...

The revised opinion changes that to:

> The construction of any new electrical power generating plant as defined by Section 403.503(12), Florida Statutes, that is not otherwise exempted by Florida law...

The effect of the change is to clarify that only steam or solar plants with larger capacity than 75 megawatts are encompassed by siting act review, not any plant larger than 75 megawatts. The remainder of the revised opinion is unchanged from the April 20, 2000 Order.

A copy of the revised opinion is attached.

RCB

Attachment

REVOP444.RCB

Supreme Court of Florida

THURSDAY, SEPTEMBER 28, 2000

CASE NOS.: SC95444; SC95445; SC95446

TAMPA ELECTRIC CO.; FLORIDA POWER CORP.; and FLORIDA POWER & LIGHT CO.,

vs.

JOE 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., LLP.,

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Petitioner(s) Respondent(s)

In light of the revised opinion, the Motions for Rehearing filed by Appellees Florida Public Service Commission, Duke Energy New Smyrna Beach Power Co., Ltd., L.L.P., the Utilities Commission, City of New Smyrna Beach, and Legal Environmental Assistance Foundation, are hereby denied.

SHAW, HARDING, PARIENTE, LEWIS and QUINCE, JJ., concur.
ANSTEAD, J., dissents.
WELLS, C.J., recused as of the date of the filing of the Motion for Leave to Appear as Amicus Curiae on Rehearing and Incorporated Motion for Rehearing by Enron North America ("Enron"), and did not participate in the Motion for Rehearing.

The Motion for Leave to Appear as Amicus Curiae on Rehearing filed by Enron North America ("Enron") is hereby granted.

HARDING, ANSTEAD, PARIENTE and LEWIS, JJ., concur
SHAW and QUINCE, JJ., dissent.
WELLS, C.J., recused as of the date of the filing of the Motion for Leave to Appear as Amicus Curiae on Rehearing and Incorporated Motion for Rehearing by Enron North America ("Enron"), and did not participate in the Motion for Rehearing.

The Motion for Rehearing filed by Amicus Curiae, Enron North America ("Enron"), is hereby denied in light of the revised opinion.

SHAW, HARDING, LEWIS and QUINCE, JJ., concur.

ANSTEAD and [illegible]IENTE, JJ., dissent.
WELLS, C.J., recused as of the date of the filing of the Motion for Leave to Appear as Amicus Curiae on Rehearing and Incorporated Motion for Rehearing by Enron North America ("Enron"), and did not participate in the Motion for Rehearing.

A True Copy
Test:

Thomas D. Hall
Clerk, Supreme Court

Served:
Richard C. Bellak
Stephen H. Grimes
D. Bruce May
Karen D. Walker
Susan L. Kelsey
Brent C. Bailey
Robert Scheffel Wright
John T. LaVia, III
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Donald F. Santa, Jr.
Edward M. Mullins
Sandra K. Wolkov
Sylvia H. Walbolt
Gary L. Sasso

Supreme Court of Florida

Nos. SC95444; SC95445; SC95446

TAMPA ELECTRIC CO.; FLORIDA POWER CORP.; and FLORIDA POWER & LIGHT CO.,
Appellants,

vs.

JOE 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., LLP.,
Appellees.

[April 20, 2000]
REVISED OPINION

PER CURIAM.

These consolidated cases are before the Court on appeal from an order of the Public Service Commission (PSC or Commission). We have jurisdiction. Art. V, § 3(b)(2), Fla. Const. The issue presented concerns the statutory authority of the PSC to grant a determination of need under the Florida Electrical Power Plant Siting Act (Siting Act)[1] and the Florida Energy Efficiency & Conservation Act

[1] § 403.501-.518, Fla. Stat. (1997).

(FEECA)[2] for an electric power company's proposal to build and operate a merchant plant in Volusia County.[3] We reverse the order of the PSC for the reasons stated herein.

The construction of any new electrical power generating plant as defined by section 403.503(12), Florida Statutes, that is not otherwise exempted by Florida law, is required to be certified in accord with the various requirements of the Siting Act in chapter 403, Florida Statutes.[4] As part of the process, an applicant seeks a determination of need from the PSC for a proposed power plant. See § 403.519, Fla. Stat. (1997).[5] The PSC's granting of a determination of need for a

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[2]§§ 366.80-.85, 403.519, Fla. Stat. (1997).

[3]The PSC defines "merchant plant" as a power plant with no rate base and no captive retail customers.

[4]Section 403.506, Florida Statutes (1997), provides in relevant part:

> (1) The provisions of this act shall apply to any electrical power plant as defined herein, except that provisions of this act shall not apply to any electrical power plant or steam generating plant of less than 75 megawatts in capacity or to any substation to be constructed as part of an associated transmission line unless the applicant has elected to apply for certification of such plant or substation under this act.

[5]Section 403.519, Florida Statutes (1997), provides in relevant part:

> On request by an applicant or on its own motion, the commission shall begin a proceeding to determine the need for an electrical power plant subject to the Florida Electrical Power Plant Siting Act. . . . The commission shall be the sole forum for the determination of this matter, which accordingly shall not be raised in any other forum or in the review of proceedings in such other forum. In making its determination, the commission shall take into account the need for

proposed power plant creates a presumption of public need. See § 403.519, Fla. Stat. (1997). This determination serves as the PSC's report required by section 403.507(2)(a)2, Florida Statutes (1997), as part of the permitting procedure.

On August 19, 1998, the Utilities Commission of the City of New Smyrna Beach (New Smyrna), and Duke Energy New Smyrna Beach Power Co., Ltd. (Duke) filed in the PSC a joint petition for determination of need for the New Smyrna Beach Power Project, a proposed natural gas fired combined cycle generating plant with 514 megawatts of net capacity to be built and operated by Duke in New Smyrna Beach. Duke is not presently subject to PSC regulation as a public utility authorized to generate and sell electric power at retail rates to Florida customers. Duke is a subsidiary of an investor-owned utility based in North Carolina. As a company offering electrical power for sale at wholesale rates, Duke is subject to the regulatory jurisdiction of the Federal Energy Regulatory Commission (FERC) and is classified as an exempt wholesale generator (EWG).[6] New Smyrna is a Florida municipal electric utility that directly serves retail

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electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available. The commission shall also expressly consider the conservation measures taken by or reasonably available to the applicant or its members which might mitigate the need for the proposed plant and other matters within its jurisdiction which it deems relevant.

[6]See 15 U.S.C. § 79z-5a (1994).

customers.[7] In the present petition for determination of need, Duke proposed to build a 514-megawatt plant, with thirty megawatts of that capacity and associated energy committed to be sold to New Smyrna and the remaining megawatts uncommitted and intended to be made available for sale at competitive wholesale rates to utilities that directly serve retail customers.

Prior to filing the present joint petition, Duke and New Smyrna entered into an agreement requiring Duke to finance, design, build, own, and operate the plant and to sell to New Smyrna thirty megawatts of Duke's proposed plant's capacity at a discount wholesale rate. New Smyrna agreed to provide the site for the plant, a wastewater treatment facility, water, and tax reductions. New Smyrna intends to sell to its retail customers the energy it has committed to purchase from Duke. The agreement also provides that Duke will make available for sale the remaining 484 megawatts of power in the competitive wholesale electrical power market primarily, but not exclusively, for ultimate use in Florida.

The seven intervenors as to the petition included present appellants Tampa Electric Co. (Tampa Electric), Florida Power Corp. (FPC), and Florida Power & Light Co. (FP&L). After a hearing in December 1998, three members of the Commission voted to deny motions to dismiss by FPC and FP&L and voted to

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[7]New Smyrna is regulated by the PSC pursuant to section 366.04(2), Florida Statutes (1997).

grant the joint petition. In re Joint Petition for Determination of Need, No. PSC-99-0535-FOF-EM (March 22, 1999) (Order). Commissioner Clark dissented, concluding that Duke was not a proper applicant. Commissioner Jacobs concurred and dissented, stating that he believed Duke was a proper applicant but that Duke had not proven its proposed plant to be the most cost-effective option.

In this appeal, appellants are public utilities that are regulated and authorized by the PSC to generate and sell electrical power to users of the power in Florida. Appellants designate themselves as Florida retail utilities. Appellants contend that section 403.519, Florida Statutes, from its initial adoption in 1980 through subsequent legislative changes and up to the present date, does not authorize the PSC to grant a determination of need to an entity other than a Florida retail utility regulated by the PSC whose petition is based upon a specified demonstrated need of Florida retail utilities for serving Florida power customers.

Appellants point out that the recent national movement toward the construction of power plants intended to generate power to be sold in competitive wholesale markets stems from recent federal legislative initiatives. This movement began with the Public Utilities Regulatory Policies Act of 1978

(PURPA).[8] Subsequent relevant federal legislation includes the Energy Policy Act of 1992,[9] which exempts certain wholesale generators from some regulatory requirements. Another milestone is a FERC order issued in 1996 which affects power distribution.[10] Appellants note that these federal initiatives occurred subsequent to the Legislature's enactment of the Siting Act of 1973. Appellants also emphasize that the Legislature has not amended section 403.519 to authorize the PSC to grant a determination of need for a power plant in Florida that would generate power intended to be sold in the competitive wholesale market which is developing as a result of these federal legislative and regulatory changes.

Appellants contend that Duke is not an authorized applicant under section 403.519 because Duke is not a Florida retail utility. Appellants contend that joining with New Smyrna, which is a proper applicant, does not cure the fact that Duke is not a proper applicant in view of the commitment to New Smyrna of just

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[8]Pub. L. No. 95-617, 92 Stat. 3117 (1978) (codified as amended at 16 U.S.C. §§ 2601-2645 (1994)). See also Jeffrey D. Watkiss & Douglas W. Smith, The Energy Policy Act of 1992–A Watershed for Competition in the Wholesale Power Market, 10 Yale J. on Reg. 447 (1993).

[9]Pub. L. 102-486, 106 Stat. 2776 (1992) (amending the Federal Power Act, codified at 16 U.S.C. §§ 791a-825u (1994)).

[10]Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (1996), [Regs. Preambles Jan. 1991-June 1996] F.E.R.C. Stats. and Regs. 31,036, clarified, 76 F.E.R.C. 61,009 & 76 F.E.R.C. 61,347 (1996) (known as Order 888).

thirty megawatts of the 514-megawatt capacity of the plant.[11] Appellants contend that the proposed plant is not authorized by section 403.519 because all but the thirty megawatts that New Smyrna has agreed to buy is uncommitted. Therefore, there is no demonstrated specific need committed to Florida customers who are intended to be served by this proposed plant.

In support of their position, appellants cite PSC orders in proceedings that led to this Court's decisions in Nassau Power Corp. v. Beard, 601 So. 2d 1175 (Fla. 1992) (Nassau I), and Nassau Power Corp. v. Deason, 641 So. 2d 396 (Fla. 1994) (Nassau II) (collectively, the Nassau cases).

In the proceedings below, the five members of the PSC were divided in their conclusions as to the decision to grant the determination of need. The three-member majority's rationale is presented by the PSC as an appellee in this Court. In the PSC order at issue here, the PSC majority finds that Duke and New Smyrna are proper applicants pursuant to the Siting Act, FEECA, and the Florida Administrative Code. Order at 18-29. The majority construes section 403.519 as requiring, pursuant to section 403.503(4), Florida Statutes (1997), that an applicant may be any "electric utility." Id. at 19. Utilities are defined in section

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[11]New Smyrna's committed power purchase could be satisfied by a power plant that is exempt from obtaining a determination of need because a plant with a capacity of less than seventy-five megawatts is exempt from the need determination requirement. § 403.506, Fla. Stat. (1997).

403.503(13), Florida Statutes (1997), as "regulated electric companies." Id. The majority finds that Duke is a regulated electric company pursuant to federal regulatory statutes because the statutes do not expressly provide that "regulated electric companies" are to be state-regulated. Id. at 20. The majority finds that even though Duke is not a Florida retail utility, it is a regulated electric company subject to federal regulation and certain other Florida regulation. Id. at 19, 22-24. The majority also finds that a determination of need properly could be based upon the projected needs of utilities throughout peninsular Florida rather than committed megawatt needs of specific retail utilities. Id. at 53-54. The majority finds the Nassau cases not to be on point here because those cases concerned a wholly different issue. Id. at 29-32. In the Nassau cases, the PSC was asked to determine the need and standing of qualified facilities under PURPA, the federal law regulating cogenerators. The PSC points out that it specifically limited its decision to the facts of those qualified-facilities cases. Id. at 32.

In her dissenting opinion, Commissioner Clark construes the Siting Act and FEECA to mean that a proper applicant under section 403.519 is defined for purposes of FEECA, of which section 403.519 is a part, as "any person or entity of whatever form which provides electricity or natural gas at retail to the public." Order at 58 (quoting Ch. 80-65, § 5 at 214, Laws of Fla.) (alteration in original).

She concludes that a utility's sale of electrical power must be a retail sale in order for that utility to be subject to PSC regulatory authority. Id. at 66. She notes that "wholesale sales are a matter within the sphere of federal regulation." Id. Commissioner Clark cites this Court's Nassau cases in support of her interpretation of the term "applicant" in section 403.519. Id. at 68. She finds those cases to be relevant in that this Court's rationale focused on the types of entities enumerated in section 403.503, Florida Statutes, and "concluded that the common denominator present in each was an obligation to serve customers." Id. at 68. Thus, "the need to be examined under section 403.519, Florida Statutes, was a need resulting from the duty to serve those customers." Id. Commissioner Clark concludes her dissenting opinion by stating:

> Our task in this case was to decide what the law is, not what it ought to be. In my view, the law is clear that Duke New Smyrna is not a proper applicant under section 403.519, Florida Statutes, and the petition must be dismissed. We should, however, move forward with our workshop so that we can make recommendations to the Legislature as to what the law ought to be.

Order at 71. In his dissenting opinion, Commissioner Jacobs agrees with the majority that Duke is a proper applicant but finds that Duke and New Smyrna "failed to provide the weight of evidence required to depart from the Commission's long-standing policy of relying on its own cost effectiveness

analysis of a proposed plant." Order at 74.

In this Court, Duke and New Smyrna, who are joint appellees with the PSC, argue that a need determination as part of the permitting process for the proposed Duke plant does fall within the parameters of section 403.519. They argue that the primary determinant as to Duke's applicant status is whether Duke is a regulated utility. The appellees maintain that Duke qualifies as a regulated utility because it is regulated under federal regulatory procedures, and if Duke receives permits to operate its proposed plant in Florida, the plant's operation will be regulated in part by the PSC. Duke and New Smyrna maintain that the Nassau cases were decided in the context of need for power demonstrated by cogenerators and that those cases do not apply here. The appellees also rely upon the fact that Duke has filed a joint application with New Smyrna.

New Smyrna additionally presents two constitutional arguments and argues that prohibiting Duke from applying directly for a need determination would violate the dormant Commerce Clause of the United States Constitution because such action would unconstitutionally discriminate against out-of-state commerce and burden interstate commerce. New Smyrna also argues that any state requirement that Duke first obtain a contract with a retail utility to build the project is preempted by the federal Energy Policy Act of 1992, which mandates a

robust competitive wholesale market.

We conclude that this case is resolved on the threshold legal issue of whether the PSC exceeded its statutory authority in granting the present determination of need. As we stated in United Telephone Co. of Florida v. Public Service Commission, 496 So. 2d 116 (Fla. 1986):

> We note preliminarily that 'orders of the Commission come before this Court clothed with the statutory presumption that they have been made within the Commission's jurisdiction and powers, and that they are reasonable and just and such as ought to have been made.' General Telephone Co. v. Carter, 115 So. 2d 554, 556 (Fla.1959) (footnote omitted). See also Citizens v. Public Service Commission, 448 So. 2d 1024, 1026 (Fla. 1984).
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> Such deference, however, cannot be accorded when the commission exceeds its authority. At the threshold, we must establish the grant of legislative authority to act since the commission derives its power solely from the legislature. See Florida Bridge Co. v. Bevis, 363 So. 2d 799, 802 (Fla. 1978). As we said in Radio Telephone Communications, Inc. v. Southeastern Telephone Co., 170 So.2d 577, 582 (Fla.1965):
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> > [O]f course, the orders of the Florida Commission come to this court with a presumption of regularity, Sec. 364.20, Fla. Stat., F.S.A. But we cannot apply such presumption to support the exercise of jurisdiction where none has been granted by the Legislature. If there is a reasonable doubt as to the lawful existence of a particular power that is being exercised, the further exercise of the power should be arrested.

496 So.2d at 118.

The precise question we consider here is:

> Does section 403.519, Florida Statutes, authorize the granting of a determination of need upon an application for a proposed power plant for which the owner and operator is not a Florida retail utility regulated by the PSC and for which only thirty megawatts of the plant's 514-megawatt capacity have been committed by contract to be sold to a Florida retail utility regulated by the PSC?

While we recognize that the PSC is correct in pointing out that the Nassau cases were decided upon different facts and were intended to resolve different issues, we conclude that our analysis of the Siting Act, articulated in those decisions, is applicable to the present case. In Nassau II, we stated:

> In Nassau Power Corp. v. Beard, 601 So. 2d 1175, 1176-77 (Fla.1992), we recently explained:
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> > The Siting Act was passed by the legislature in 1973 for the purpose of minimizing the adverse impact of power plants on the environment. See § 403.502, Fla. Stat. (1989). That Act establishes a site certification process that requires the PSC to determine the need for any proposed power plants, including cogenerators, based on the criteria set forth in section 403.519, Florida Statutes (1989). Section 403.519 requires the PSC to make specific findings for each electric generating facility proposed in Florida, as to (1) electric system reliability and integrity, (2) the need to provide adequate electricity at a reasonable cost; (3) whether the proposed facility is the most cost-effective alternative available for supplying electricity; and (4) conservation measures reasonably available to mitigate the need for the plant.
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> (Footnote omitted). . . .
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> . . . .
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> Only an "applicant" can request a determination of need under

section 403.519. Section 403.503(4), Florida Statutes (1991), defines the term "applicant" as "any electric utility which applies for certification pursuant to the provisions of this act." An "electric utility," as used in the Act,

> means cities and towns, counties, public utility districts, regulated electric companies, electric cooperatives, and joint operating agencies, or combinations thereof, engaged in, or authorized to engage in, the business of generating, transmitting, or distributing electric energy.

Sec. 403.503(13), Fla. Stat. (1991). The Commission determined that because non-utility generators are not included in this definition, Nassau is not a proper applicant under section 403.519. The Commission reasoned that a need determination proceeding is designed to examine the need resulting from an electric utility's duty to serve customers. Non-utility generators, such as Nassau, have no similar need because they are not required to serve customers.

The Commission's interpretation of section 403.519 also comports with this Court's decision in Nassau Power Corp. v. Beard. In that decision, we rejected Nassau's argument that "the Siting Act does not require the PSC to determine need on a utility-specific basis." 601 So. 2d at 1178 n.9. Rather, we agreed with the Commission that the need to be determined under section 403.519 is "the need of the entity ultimately consuming the power," in this case FPL. Id.

641 So. 2d at 397, 398-99 (footnote omitted). Based upon our Nassau analysis of the Siting Act, we conclude that the granting of the determination of need on the basis of the present application does exceed the PSC's present authority. 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.

Our decision is founded upon our continuing recognition that the regulation of the generation and sale of power in Florida resides in the legislative branch of government.[12] The PSC, successor to the Florida Railroad and Public Utilities Commission, is an arm of the legislative branch in that the Commission obtains all of its authority from legislation.[13] Originally, the Legislature did not include among the PSC's responsibilities the authority to approve the siting of new power plants but left such authority to local government entities. In 1973, the Legislature enacted the Florida Electrical Power Plant Siting Act,[14] to preempt local government action and to consolidate approval of most state agencies into a single license. Within that law was a requirement that each utility submit a ten-year site plan estimating the utility's power generating needs and the general location of its power plants.[15] In enacting the Siting Act, the Legislature recognized a need for statewide perspective in selecting sites for power plants because of the "significant

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[12]We find the historical context offered by Commissioner Clark in her dissenting opinion to be helpful. Order at 64-71. The record also contains a relevant discussion by FPC counsel Gary L. Sasso before the PSC in proceedings below. Record on Appeal, Vol. I of Hearing Transcript at 21-50.

[13]§ 350.001, Fla. Stat. (1997).

[14]Ch. 73-33, § 1 at 73, Laws of Fla.

[15]Ch.73-33, § 1 at 76 (codified at § 403.505, Fla. Stat. (Supp. 1974)).

impact upon the welfare of the population, the location and growth of industry and the use of the natural resources of the state." See Ch. 73-33, § 1 at 73, Laws of Fla. At that time, the role of the PSC was to prepare a "report and recommendation as to the present and future needs for electrical generating capacity in the area to be served by the proposed site." Id. at 77.

In 1980, as part of the Florida Energy Efficiency and Conservation Act (FEECA), the Legislature changed the PSC's requirement of a "report and recommendation" to "a proceeding to determine the need for an electrical power plant subject to the Florida Electrical Power Plant Siting Act." Ch. 80-65, § 5, at 214, Laws of Fla. (codified at section 366.86, Fla. Stat. (1981)). By this statutory revision, the PSC was directed to review the regulated utilities' proposed new plants, taking into account the need for system reliability and integrity, the need for adequate reasonable-cost electricity and whether a proposed plant was the most cost-effective alternative available. See Ch. 80-65, § 5 at 217, Laws of Fla. The need determination provision at issue in this case was originally codified at section 366.86, Florida Statutes (1981), which was part of FEECA. The same provision is now at section 403.519 but continues to be listed within FEECA, even though it is codified immediately following the Siting Act.

The term "utility" was expressly defined for purposes of FEECA, including

section 403.519, as "any person or entity of whatever form which provides electricity or natural gas at retail to the public." Ch. 80-65, § 5 at 214, Laws of Fla. Section 366.82(1), Florida Statutes (1997), provides: "For the purposes of ss. 366.80- 366.85 [FEECA], and 403.519, 'utility' means any person or entity of whatever form which provides electricity or natural gas at retail to the public." In 1990, statutory revisions included an amendment that changed the term "utility" to "applicant" in the first sentence of section 403.519.[16]

Our reading of this statutory history leads us to continue to conclude that the present statutory scheme was intended to place the PSC's determination of need within the regulatory framework allowing Florida regulated utilities to propose new power plants to provide electrical service to their Florida customers at retail rates. This need determination, pursuant to section 403.519, contemplates the PSC's express consideration of the statutory factors based upon demonstrated specified needs of these Florida customers. The need determination is part of the process that the Legislature intended by its plain language to balance "the pressing need for increased power generation facilities" with the necessity that the state

> ensure through available and reasonable methods that the location and operation of electrical power plants will produce minimal adverse effects on human health, the environment, the ecology of the land and

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[16]Ch. 90-331, § 24, at 2698, Laws of Fla.

its wildlife, and the ecology of state waters and their aquatic life. § 403.502, Fla. Stat. (1997).

Accordingly, we find that the statutory scheme embodied in the Siting Act and FEECA was not intended to authorize the determination of need for a proposed power plant output that is not fully committed to use by Florida customers who purchase electrical power at retail rates. Rather, we find that the Legislature must enact express statutory criteria if it intends such authority for the PSC. Pursuant only to such legislative action will the PSC be authorized to consider the advent of the competitive market in wholesale power promoted by recent federal initiatives. Such statutory criteria are necessary if the Florida regulatory procedures are intended to cover this evolution in the electric power industry.[17] The projected need of unspecified utilities throughout peninsular Florida is not among the authorized statutory criteria for determining whether to grant a determination of need pursuant to section 403.519, Florida Statutes. Moreover, we agree with appellants that the fact of Duke's joining with New Smyrna in this arrangement for a thirty-megawatt commitment does not transform

[17]Our conclusion is consistent with the conclusion of the North Carolina Utilities Commission, which dismissed a similar petition by an independent power producer that proposed a merchant plant in North Carolina that was opposed by Duke Power Company. The Commission's order was affirmed. Empire Power Co. v. Duke Power Co., 437 S.E. 2d 540 (N.C. Ct. App. 1993).

the application into one that complies with the Siting Act and FEECA.

We find no merit in the constitutional arguments advanced by New Smyrna. As to any alleged preemption or interference with interstate commerce, we find that power-plant siting and need determination are areas that Congress has expressly left to the states.[18]

Accordingly, we reverse the order of the PSC on the basis that the granting of the determination of need exceeds the PSC's authority pursuant to section 403.519, Florida Statutes (1997).

It is so ordered.

HARDING, C.J., and SHAW, WELLS, PARIENTE, LEWIS and QUINCE, JJ., concur.
ANSTEAD, J., dissents with an opinion.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

ANSTEAD, J., dissenting.

I cannot concur in the majority's conclusion that the Florida Legislature has clearly prohibited the proposed action of the Commission. Indeed, it appears to

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[18]The Energy Policy Act of 1992, Pub. L. 102-486, Title VIII, Subtitle C, State and Local Authorities, section 731, provides:

> Nothing in this title or in any amendment made by this title shall be construed as affecting or intending to affect, or in any way to interfere with, the authority of any State or local government relating to environmental protection or the siting of facilities.

me that the prohibition is based upon a strained and artificial construction of various provisions of the legislative scheme that have little bearing on the issue before us today. In fact, even under the strained construction of the majority the issue would be not whether the petitioning utilities were proper applicants, but whether the capacity required should be permitted.

I am especially concerned with the majority's conclusion that it will not find Commission authority to act absent "express statutory criteria" for the specific circumstances presented here. Clearly, the Commission was created to regulate utilities seeking to operate in Florida. In my view that is precisely what the Commission is doing here.

Three Consolidated Appeals from the Public Service Commission

Harry W. Long, Jr., pro hac vice, Tampa, Florida, and Lee L. Willis and James D. Beasley of Ausley & McMullen, Tallahassee, Florida, for Tampa Electric Company; Gary L. Sasso, Sylvia H. Walbolt, Robert Pass and Joseph H. Lang, Jr. of Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A., St. Petersburg, Florida, and James A. McGee and Jeff Froeschle, Senior Counsels, St. Petersburg, Florida, for Florida Power Corporation; Matthew M. Childs and Charles A. Guyton of Steel, Hector & Davis, Tallahassee, Florida, and Alvin B. Davis, Thomas R. Julin, Edward M. Mullins and Sandra K. Wolkov of Steel, Hector & Davis, Miami, Florida, for Florida Power and Light Company,

Appellants