

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Joint Petition for)
Determination of Need for an)
Electrical Power Plant in Volusia)
County by the Utilities Commission,)
City of New Smyrna Beach, Florida,)
and Duke Energy New Smyrna Beach)
Power Company Ltd., L.L.P.)

DOCKET NO. 981042-EM

October 12, 1998

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REGULATORY AND
REPORTING

DIRECT TESTIMONY

OF

MICHAEL D. RIB

ON BEHALF OF

FLORIDA POWER CORPORATION

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FPSC-RECORDS/REPORTING

IN RE: JOINT PETITION FOR DETERMINATION OF NEED
FOR AN ELECTRICAL POWER PLANT IN VOLUSIA COUNTY
BY THE UTILITIES COMMISSION, CITY OF NEW SMYRNA
BEACH, FLORIDA AND DUKE ENERGY NEW SMYRNA BEACH
POWER COMPANY LTD., L.L.P.
DOCKET NO. 981042-EM

DIRECT TESTIMONY OF MICHAEL D. RIB

1 Q Please state your name and business address.

2

3 A My name is Michael D. Rib, and my address is One Power
4 Plaza, 263 13th Avenue South, St. Petersburg, FL 33701-
5 5511.

6

7 Q By whom are you employed and in what position?

8

9 A I am presently the Director of Resource Planning at
10 Florida Power Corporation (FPC), a regulated investor-
11 owned electric utility.

12

13

14 Q Please describe your duties and responsibilities with FPC.

15

16 A I am responsible for the development of energy resource
17 plans that combine fuel and generating resource
18 alternatives into cost-effective and flexible plans to
19 serve our customers. I am also responsible for reporting
20 these plans to the agencies in the State, as appropriate
21 under the current regulatory framework. In the course of

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1 carrying out my responsibilities, I have become generally
2 familiar with the regulatory framework applicable to
3 planning and siting new generation in Florida.
4
5

6 Q Please summarize your educational background and
7 experience.
8

9 A I earned a B.S. degree in Mechanical Engineering from the
10 Virginia Polytechnic Institute (VPI & SU) in 1981. I am
11 a member of Pi Tau Sigma, the national honor society for
12 Mechanical Engineering and a registered Professional
13 Engineer in Florida.
14
15

16 Q Please summarize your employment history and work
17 experience.
18

19 A Following several technical internship positions, I joined
20 FPC's staff in 1981. I worked for four years in the
21 Company's New Technology Department working on applied
22 technology development projects. From 1985 through 1993,
23 I worked in the Fossil Production area with varying
24 progressive responsibilities in plant engineering and

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1 maintenance as well as environmental management and
2 project construction. In 1994, I joined the planning
3 team, with progressive responsibilities leading to my
4 current position.

5

6

7 Q Have you previously appeared before regulatory
8 authorities?

9

10 A I routinely present Company plans and represent the
11 Company's position with the Florida Public Service
12 Commission (the Commission) and the Florida Reliability
13 Coordinating Council (FRCC).

14

15

16

PURPOSE AND SUMMARY OF TESTIMONY

17 Q What is the purpose of your testimony in this proceeding?

18

19 A I am testifying on behalf of FPC in opposition to the
20 Joint Petition for a determination of need. My testimony
21 describes the relationship between the statutory planning
22 responsibilities of retail utilities, such as FPC, and the
23 procedures for determining the need for new generation
24 capacity in this State. I also discuss how merchant

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1 plants fall outside this process and how their
2 introduction into this process will impair the ability of
3 the Commission and retail utilities to meet their
4 statutory responsibilities. Finally, I explain why the
5 petitioners have failed to demonstrate that the proposed
6 Project is "needed," as that term is understood in the
7 utility industry in Florida.

8

9

10 Q Please summarize your testimony.

11

12 A Retail utilities in Florida, like FPC, have the statutory
13 responsibility to plan for new generation capacity through
14 the 10-year site plan process and to engage in related
15 conservation planning under the Florida Energy and
16 Efficiency Conservation Act (FEECA). These planning
17 responsibilities are integrally related to siting new
18 generation capacity under Section 403.519 and the Electric
19 Power Plant Siting Act (the Siting Act) and to the
20 development of demand side management (DSM) and
21 conservation programs under FEECA. In fact, Section
22 403.519 is a part of FEECA, and the 10-year site plan
23 requirement was adopted as part of the same law that
24 included the Siting Act.

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1 Utilities like FPC -- which must plan for new
2 generation only on the basis of firm commitments that it
3 can count on -- may not rely on Duke's mere stated
4 intentions to market power in this State when and where it
5 chooses. Neither can the Commission. The future
6 intentions of merchant plant developers like Duke are not
7 foreseeable or enforceable. Allowing merchant plants to
8 intrude themselves into our regulatory system will serve
9 only to create confusion and to impair planning for new
10 generation capacity.

11
12 The "need" criteria in Section 403.519 are utility
13 specific. Only retail utilities like FPC have a need for
14 generating capacity since only such utilities have a
15 statutory duty to serve customers. A merchant plant does
16 not "need" generating capacity and certainly does not need
17 any particular amount of such capacity. A merchant plant
18 developer needs only profits, and can pursue them in many
19 ways. In essence, Duke's petition and testimony are based
20 on Duke's perception that marketing opportunities exist in
21 Florida. But this does not amount to a showing of need in
22 the sense that the term has been used by the industry in
23 this State. Accordingly, the Joint Petition should be
24 denied.

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10-YEAR SITE PLAN PROCESS

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Q You have indicated that you are responsible for developing FPC's plans for generation capacity as part of its 10-year site plan. Please describe FPC's responsibilities as a state-regulated utility to assess and plan for adequate generating capacity to meet its needs for electric power.

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A Florida law requires that FPC and other utilities like it submit to the Commission a 10-year site plan estimating the utility's power-generating needs and the general location of its proposed power plant sites. In recent years, FPC has submitted updated 10-year site plans to the Commission (and formerly the Department of Community Affairs) annually. To carry out this task, FPC must analyze its existing generating capacity and firm power purchase resources and evaluate whether it must secure additional capacity to serve its customers over the planning period.

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Q In addition to FPC's planning obligations under the 10-year site plan requirement, does FPC have other statutory planning obligations relevant to this proceeding?

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A Yes. Each investor owned utility in this State has important planning obligations under FEECA. Under FEECA, the Commission has developed goals for increasing the efficiency of energy consumption, development of cogeneration, increasing the conservation of expensive resources (such as petroleum fuels), reduction and control of the growth rates of electric consumption, and reduction of the growth rates of weather-sensitive peak demand. Each utility is required to develop plans and programs to meet the overall goals within its service area, subject to the Commission's approval.

13

14

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CONSERVATION PLANNING UNDER FEECA

16

Q Does the Commission have the authority to require merchant plant developers to prepare conservation plans under FEECA?

19

20

A No. FEECA applies only to retail utilities, such as FPC. In fact, in the Joint Petition, petitioners make a point of stating:

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As a federally-regulated public utility selling electricity only at wholesale, Duke New Smyrna does not engage directly in the implementation of end-use energy conservation programs.

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1 Moreover, Duke New Smyrna is not required to
2 have conservation goals pursuant to Section
3 366.82(2), Florida Statutes. (Jt. Pet., ¶ 35).

4
5 NEED PROCEEDINGS AND GENERATION PLANNING

6 Q Are a utility's obligations under the 10-year site plan
7 requirement and FEECA implicated in a need proceeding
8 under Section 403.519?

9
10 A Yes, they are. The 10-year site plan requirement, a
11 utility's planning obligations under FEECA, the Power
12 Plant Siting Act, and a need proceeding under Section
13 403.519 are all part of a unitary regulatory framework for
14 determining whether, when, and how state-regulated retail
15 utilities should add generating capacity. While there are
16 exemptions to certain of these statutory requirements
17 (e.g., for plants with smaller steam components), they do
18 not apply here.

19
20 The related nature of these requirements may be seen
21 from the fact that the site-plan law (Section 186.801)
22 says "All findings by the commission [in its review of a
23 utility's 10-year site plan] shall be made available to
24 the Department of Environmental Protection for its
25 consideration at any subsequent electrical power plant

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1 site certification proceedings." As far as FEECA is
2 concerned, the need provision, Section 403.519, directs
3 the Commission to consider conservation measures taken by
4 or reasonably available to the applicant.

5
6 In this context, we can see that Section 403.519 is
7 the means by which the Commission and state-regulated
8 utilities (with a statutory obligation to serve retail
9 customers in this State) carry out plans that will enable
10 those utilities to discharge their obligations to provide
11 adequate generating capacity to serve their customers,
12 while meeting other regulatory obligations, such as those
13 under FEECA.

14
15
16 Q Has this understanding of the statutory framework entered
17 into your planning activities for FPC?

18
19 A Yes. In planning future capacity needs for FPC, I am able
20 to take into account and rely upon only matters within the
21 control and subject to the regulation of the Commission --
22 in short, what state-regulated utilities have done or are
23 likely to do (as reflected in their 10-year site plans and
24 FEECA programs). Planning for future capacity needs is

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1 difficult enough using these assumptions. To complicate
2 matters, generation planning may not be conducted without
3 regard to transmission system constraints. So, we must
4 factor in what we know and may reasonably predict about
5 both generation resources and, with assistance,
6 transmission system constraints, given existing generation
7 resources and disclosed plans for future construction.

8
9
10 Q As part of this planning process, do Florida utilities,
11 like FPC, plan to provide a reserve margin to ensure that
12 capacity will exist to cover contingencies?

13
14 A Yes. FPC plans for a reserve margin above the forecast
15 annual firm load peaks.

16
17
18 Q In developing its 10-year site plan and in calculating its
19 reserve margin, is FPC permitted to take into account
20 plans to purchase power that are not based upon an
21 agreement that provides for the sale to FPC of firm
22 capacity and energy?

23
24 A No, FPC may not take the capacity into account at all.

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2 Q Why not?

3

4 A The energy contributions would be speculative, at best.
5 Neither FPC nor the Commission can count on having
6 capacity available when FPC actually needs it absent a
7 power sales agreement.

8

9

10 Q Absent a power sales agreement providing for the sale to
11 FPC of firm capacity and energy, would FPC or the
12 Commission be able to rely upon prospective purchases of
13 electrical power from a merchant power plant located
14 anywhere in the State?

15

16 A No. Neither FPC nor the Commission would have any
17 assurance that when FPC actually needed the power, it
18 would be available. For example, in circumstances where
19 Northern or Central Florida may be experiencing unusually
20 cold (or hot) weather, it is possible if not probable that
21 states to the north would be experiencing the same or
22 worse conditions. This might provide market opportunities
23 or even business imperatives for a merchant plant to sell
24 its power outside the State. This past summer, the Mid-

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1 West experienced a severe heat wave leading to power
2 shortages and sky-high rates for wholesale power. In such
3 circumstances, neither FPC nor the Commission could expect
4 that a merchant plant located here would agree to market
5 its energy in this State on less favorable terms.
6

7 Because (1) the Commission has no regulatory
8 jurisdiction over sales by a merchant plant, (2) such
9 plants have no statutory duty to serve customers in this
10 State, and (3) utilities in this State, by hypothesis,
11 would have no contractual entitlement to firm capacity and
12 energy, there would be no mechanism to force merchant
13 plants to meet the needs of retail utilities in Florida
14 when those needs are most severe. In fact, relying on the
15 availability of merchant plant power may lull utilities
16 and the Commission into a false sense of security.
17

18 Of course, meeting the needs of utilities during
19 times of shortfall must be distinguished from situations
20 where an abundance of power exists but merchant plants may
21 simply take advantage of market opportunities to displace
22 the output from less modern generating plants in this
23 State. In such circumstances, it is not appropriate to
24 say that the purchasing utilities truly "need" this

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1 additional capacity to serve their customers since they
2 could meet their needs without it. In fact, displacement
3 may ultimately lead to the shut down of existing plants,
4 resulting in no net improvement in reliability.

5
6 As is explained more fully in FPC's testimony by Mr.
7 Vincent Dolan, under the existing regulatory framework,
8 utilities and the Commission have prudently anticipated
9 that existing plants would enjoy a long, useful life, and
10 they have provided for the recovery of costs for such
11 plants over a corresponding horizon. Switching approaches
12 to a short-term market-driven approach would raise serious
13 planning and regulatory issues that may not be adequately
14 addressed in the context of an ad hoc proceeding for one
15 merchant plant. These issues affect how all retail
16 utilities plan for and build generating capacity in this
17 State, and they involve policy and reliability
18 implications for utility customers.

19
20
21 Q If merchant plants were allowed to site plants under
22 Section 403.519 and the Siting Act, would this affect the
23 planning responsibilities of the Commission and utilities
24 like FPC?

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1

2 A Yes. This would impair the ability of the Commission and
3 a utility to conduct necessary planning under the Florida
4 regulatory requirements.

5

6 As I have explained, merchant plants are not
7 regulated by the Commission and have no statutory duty to
8 serve. Absent power sales agreements for the sale of firm
9 capacity and energy, they have no obligation to sell power
10 in this State whatsoever. This could have a number of
11 serious ramifications for planning by the Commission and
12 state-regulated utilities.

13

14 To name some of these considerations, merchant plants
15 would have no duty to participate in the 10-year site plan
16 process. In fact, merchant plant advocate representatives
17 stated in a Staff workshop that they would resist
18 disclosing development plans for merchant plants due to
19 competitive considerations. This means, of course, that
20 plans for merchant plants may be disclosed routinely only
21 at the eleventh hour, frustrating efforts by retail
22 utilities to anticipate their development, size, location,
23 characteristics, and contracting arrangements.

24

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1 I understand that Duke has now taken the position
2 that it is subject to the 10-year site plan requirement as
3 a "utility" falling within the definition of Section
4 366.02(2). But this definition applies only to utilities
5 that operate a generation "system" within the State of
6 Florida, and what Duke proposes to build and operate is
7 not a generation "system," but a single power plant like
8 many other investor owned non-utility generators (NUGs) in
9 the State. In any event, to say that this new power plant
10 may be covered by the 10-year site plan process after it
11 is built provides little comfort to planners. Duke did
12 not participate in the 10-year site planning process
13 before it developed its plans, and the Commission and the
14 utilities in this State were at the mercy of Duke's whim
15 about whether, when, or where it would seek to build a
16 plant. In fact, this is the second proposal Duke has
17 advanced in two years, having abandoned the first.

18
19 Further, Duke's new position gives little or no
20 assurance about whether plans for future plants would be
21 disclosed in a 10-year site plan. If the Commission
22 creates the precedent of granting a "need" for Duke's
23 merchant plant, other merchant plant developers --
24 including other subsidiaries of Duke's parent corporation

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1 -- could likewise enter the State, agreeing to participate
2 in the 10-year site planning process only after their
3 plants are built. This further frustrates the planning
4 process.

5
6 Allowing merchant plant developers to site plants
7 under Section 403.519 and the Siting Act would create
8 other problems as well. Even if the Commission determines
9 in a formal proceeding that a merchant plant is somehow
10 "needed," despite the fact that only firm power
11 commitments can satisfy a utility's need, the developer
12 may choose to abandon the project after the need
13 determination for any number of business reasons -- thus
14 frustrating planning expectations and wasting Commission
15 and utility planning resources -- or the developer may
16 choose to commit the plant's output to out-of-state
17 utilities and/or operate at partial capacity for extended
18 periods of time.

19
20
21 Q If we assume that a "need" does exist for additional
22 capacity, have Petitioners provided assurances in their
23 testimony and exhibits that Duke's Project would meet any
24 such need?

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A No, they have not. To the contrary, in its contract documents, Duke takes away with one hand what it purports to be giving with the other.

First, it is significant that the Petitioners have not yet entered into a power purchase agreement. They have submitted with their papers a "Participation Agreement." See RLV-1. The Participation Agreement contemplates that Duke may build a 240 MW power plant, not a 540 MW power plant as the Joint Petition states, and that Duke will provide an "entitlement" to the Utilities Commission, City of New Smyrna Beach (UCNSB) of 20 MW -- not the 30 MW set forth in the Joint Petition -- out of the 240 MW capacity. Duke retains as "Additional Development Rights" (see Sec. 6.0) the right to build in excess of 240 MW and then to provide some apportioned amount of an additional entitlement of 10 MW to UCNSB.

This entitlement is qualified by Duke's determination of what is in its own business interests. Under Section 1.1 of the Participation Agreement, Duke promises to afford the entitlement only for "the period during which the Facility . . . is technically capable . . . of

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1 producing electric energy at a cost that results in a
2 reasonable profit and cash flow to the owner of the
3 Facility when such energy is sold." (Emphasis added).
4 Under Section 1.2, the entitlement is further restricted
5 to such "hours during which the Facility is available."
6

7 The Participation Agreement contains other
8 qualifications and restrictions on the availability of
9 power from the proposed Project. For example, under
10 Section 3.4, Duke reserves the right to abandon the
11 Project based on its assessments of its business
12 interests. Specifically, its obligation to construct the
13 facility is subject to, among other things, "no
14 circumstance or event existing or having occurred that has
15 had or could reasonably be expected to have a material
16 adverse effect on the feasibility, prospects or business
17 of the Facility." (Emphasis added).
18

19 Significantly, nothing in the Participation Agreement
20 provides any assurances whatsoever that Duke would sell
21 power from the merchant component of the Project at any
22 time or on any terms to any utility in this State.
23 Although Petitioners' testimony suggests that Duke's
24 current intention is to sell power from the merchant plant

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1 in the State of Florida, it provides no guarantees, and
2 Duke nowhere represent that it has even a single firm
3 contract to sell power to any Florida utility. The only
4 assurance that Duke provides in this regard is its
5 unenforceable, current business intentions.
6
7

8 Q As a planner, when you are attempting to assess whether
9 generating capacity is needed for purposes of recommending
10 that FPC request a determination of need under Section
11 403.519, is it appropriate to consider merchant plant
12 development plans?
13

14 A Under the current statutory and regulatory framework, the
15 answer is no. To understand this from a planner's point
16 of view, it is important again to keep in mind that
17 Section 403.519 and the Siting Act do not exist in a
18 vacuum. They are an integral part of the regulatory tools
19 in this State for accomplishing the primary statutory
20 purpose of ensuring adequate electricity at reasonable
21 cost. In this State, this purpose is accomplished by the
22 Commission, as regulatory agency, and by the retail
23 utilities, as the regulated entities.
24

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1 From a planning point of view, the question whether
2 generating capacity is "needed," must be asked and
3 answered in this context. In our regulatory system, only
4 state-regulated utilities serve retail customers.
5 Therefore only state-regulated retail utilities can
6 possibly have a "need" for generating capacity for the
7 purpose of providing adequate electricity at a reasonable
8 cost to the consumers of this State. For this reason, it
9 is meaningless for a utility planner or the Commission to
10 say that a merchant plant is "needed" unless it is needed
11 by a particular utility.

12
13 For the same reasons, it makes no sense from the
14 point of view of utility or Commission planning or siting
15 to say that a merchant plant itself is ever "needed," when
16 one takes into account what a merchant plant is. By
17 definition, it has no obligation to sell its power to any
18 utility in this State. Therefore, even if a particular
19 utility or a collection of utilities may need generating
20 capacity, they certainly do not need another power plant
21 facility that has not committed its capacity to the retail
22 utilities in this State. (Even the merchant plant
23 developer does not "need" its own project; any given
24 project represents only a speculative business venture

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1 that may or may not generate profits for the developer.
2 In truth and in fact, nobody "needs" a merchant plant.)
3

4 I presume that this is the reason the Legislature,
5 the Commission, the Florida Supreme Court, and the
6 utilities have all recognized that it makes sense to talk
7 about "needing" an independent power producer's capacity
8 only in the sense of needing a firm commitment by such a
9 particular power producer -- as established by a signed
10 power purchase agreement -- to sell capacity and energy to
11 a particular state-regulated utility with an obligation to
12 serve the people of this State.
13

14 If the Commission were to permit Duke to build its
15 merchant plant based on Duke's stated intention to sell
16 power in this State on a merchant basis, FPC and other
17 utilities would have to reconcile this with their current
18 obligation not to rely on non-firm power in their capacity
19 assessments. There is no viable way to do this under the
20 current regulatory framework. FPC cannot rely on the
21 availability of Duke's proposed generating capacity in any
22 way. Neither can the Commission.
23
24

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1 Q You have described how "need" as used in Section 403.519
2 and in related planning activities is a utility-specific
3 concept. Are there other respects in which "need" from
4 the point of view of planning and siting must be utility-
5 specific, referring to state-regulated retail utilities?
6

7 A Certainly. As the Commission and the Florida Supreme
8 Court have recognized, the criteria in Section 403.519 are
9 utility-specific criteria, referring to state-regulated
10 utilities. The first concerns the need for "electric
11 system reliability and integrity." It is a truism that
12 the Commission oversees system reliability and integrity
13 under the Grid Bill through its authority to regulate the
14 activities of utilities such as FPC. It makes no sense to
15 talk about "reliability" in the context, for example, of a
16 merchant plant that cannot be directed to sell its output
17 in this State.

18
19 The next criterion is the "need for adequate
20 electricity at a reasonable cost." Again, it makes no
21 sense from a planning or regulatory point of view to
22 discuss the "need" for something neither the Commission
23 nor a utility (with the duty to serve customers) can count
24 on and, again, only a retail utility can possibly have a

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1 "need" for capacity, since only such utilities serve the
2 people in this state. Similarly, it makes no sense from a
3 planning or regulatory point of view to talk about
4 ensuring "reasonable cost" in the context of entities that
5 do not charge retail customers for power.

6
7 The next criterion is "whether the proposed plant is
8 the most cost-effective alternative available." This
9 simply may not be addressed without asking, "alternative"
10 to what? From the perspective of a merchant plant
11 developer, the developer is considering alternative ways
12 to make money. From the perspective of a state-regulated
13 retail utility, the utility is considering alternative
14 means to ensure sufficient generating capacity to meet its
15 statutory obligation to serve its customers. For planning
16 and regulatory purposes, the statutory criterion applies
17 to decisions made by utilities with the obligation to
18 serve and not to consideration of alternative
19 opportunistic ventures.

20
21 The next criterion is that the "commission shall also
22 expressly consider the conservation measures taken by or
23 reasonably available to the applicant or its members."
24 The petitioners concede that Duke New Smyrna does not take

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1 conservation measures required of state-regulated
2 utilities under FEECA. Accordingly, this criterion --
3 like all the others -- must be applied for planning and
4 regulatory purposes as a retail utility-specific
5 criterion.

6
7
8 PETITIONERS' FAILURE TO SHOW NEED

9 Q Have the Petitioners demonstrated that these "need"
10 criteria are satisfied as they are used in the statute?

11
12 A No. They have not and cannot, given the fact that the
13 "need" criteria of the statute are utility-specific
14 criteria. Petitioners have attempted to establish need
15 through the testimony of Dr. Dale M. Nesbitt basically by
16 redefining "need" and turning the statutory criteria
17 upside down.

18
19 Dr. Nesbitt is blunt in stating at the beginning of
20 his testimony that "I have not approached the question of
21 'need' simplistically by measuring peak Florida demand
22 (expressed in GW); adding up available installed capacity
23 (expressed in GW), and comparing the two using some
24 criterion such as reserve margin or loss-of-load

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1 probability." Nesbitt Direct, p. 14. He says that this
2 approach "misses the fundamental reality that some of the
3 old installed capacity in Florida is higher in cost than
4 the new capacity could be installed for." Id. He says
5 that "[i]nstalling new capacity will eliminate old,
6 uneconomic capacity, obviate the requirement to preserve
7 and/or run it, and reduce the intrinsic cost to generate
8 electricity in Florida." Id. pp. 14-15. He then proceeds
9 to demonstrate that "the Project will be inframarginal
10 relative to virtually all of the existing oil and gas
11 power plants in Florida and will operate in preference to
12 them." Id. p. 22 (emphasis added).

13
14 Thus, Dr. Nesbitt is frank in acknowledging that the
15 Project is not needed to meet any perceived or actual
16 shortfall in capacity in relation to projected load. To
17 put this another way, the Project is not needed to enable
18 any retail utility in Florida to serve its customers.
19 What he is contending is that there is a market
20 opportunity in this State for merchant plant developers
21 like Duke to build modern, more efficient plants that will
22 displace existing generating capacity.

23

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1 Whether or not this is a good idea, it does not
2 address the criteria of Section 403.519. To begin with,
3 as I have explained, the statutory criteria are utility-
4 specific. Petitioners do not even attempt to make a
5 utility-specific showing for the merchant plant component
6 of the Project. Further, Petitioners do not even attempt
7 to show a need for additional capacity by looking at the
8 need of any particular group of retail utilities and
9 demonstrating a shortfall in capacity in relation to
10 projected load. Rather, they start with a showing that
11 Duke can produce energy more cheaply with its Project than
12 some existing plants and reason from this premise that the
13 plant is "needed."

14
15 This could be viewed as an unabashed argument in
16 favor of an un-checked proliferation of new power plants
17 in this State, and for a regime that contemplates waves of
18 new construction every several years when entrepreneurs --
19 or state utilities -- perceive that new technology creates
20 market opportunities. This is confirmed by the direct
21 testimony of Martha O. Hesse, who anticipates the
22 introduction in this State of a "fleet of gas-fired
23 combined cycle plants." Hesse Direct, p. 19.

24

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1 Of course, the construction of any new plant will
2 have an environmental impact. For this reason, the Siting
3 Act contemplates that none (over a certain size) will be
4 built unless the Commission first determines that the
5 impact is worth it, i.e., that the generating capacity is
6 really "needed." Like it or not, this is a very
7 deliberate, regulatory approach to plant construction, not
8 a market-driven free-for-all. Petitioners are seeking to
9 circumvent this regulatory approach and have this
10 Commission permit a virtually unrestrained market approach
11 to the issue. Indeed, Dr. Nesbitt relies on models and
12 analyses that assume market deregulation. See, e.g., DMN-
13 15, p. 13 (demonstrating "the way the world will work"
14 "after deregulation").

15
16 As explained more fully in FPC's testimony by Mr.
17 Dolan, Petitioners' request raises serious policy issues
18 that cannot be adequately addressed in this proceeding and
19 that, in fact, require legislative amendments to Section
20 403.519. In this same vein, Ms. Hesse admits:

21 Economic efficiency would be served [by merchant
22 plants] as long as the standard assumptions of
23 competitive markets were met. The chief of these in
24 this case is that externalities must be appropriately
25 valued and incorporated into the price of
26 electricity. Whether that would be the case with a
27 fleet of gas-fired combined cycle plants would be an

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1 empirical exercise beyond the scope of this testimony

2

3 Hesse Direct, p. 19 (Emphasis added). The point I wish
4 to make is that whether or not the Florida Legislature
5 would be receptive to Petitioners' arguments after
6 appropriate hearings, Petitioners' testimony does not
7 prove the existence of "need" under Section 403.519, as
8 the statute has been interpreted and applied by the
9 Commission, the Florida Supreme Court, and the regulated
10 utilities in this State.

11
12
13 **UNECONOMIC DUPLICATION OF RESOURCES**

14 **Q** Assuming it had the power to do so, if the Commission
15 allowed merchant plants to be built in this State without
16 power purchase agreements with state-regulated utilities
17 for firm capacity and energy sales, would this lead to the
18 uneconomic duplication of generation and transmission
19 facilities?

20
21 **A** Yes, this would occur. At the recent Staff workshop on
22 merchant plant issues, representatives of various merchant
23 plant developers stated that there was a wide-spread
24 perception that Florida provided significant economic
25 opportunities for merchant plant development due to its

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1 demographic and geographic characteristics. I am aware
2 that such a perception exists, and it is borne out by
3 Petitioners' own testimony in this case, as discussed
4 above. Currently available planning information, however,
5 demonstrates that the retail utilities have plans in place
6 to meet their needs in their respective service
7 territories over the appropriate planning horizon --
8 without relying on merchant plants -- accounting together
9 for all the retail customers in Florida.

10
11 Although Dr. Nesbitt contends that Florida utilities
12 are currently planning to meet only half of a projected
13 load of 6000 MW, he does not clearly indicate the
14 timeframe over which he is projecting this load, and he
15 appears to be relying on the utilities' 1997 plans.

16 Specifically, he states:

17 The Altos North American Regional Electricity Model
18 projects economically viable and profitable new
19 additions of up to 6,000 MW of new gas-fired combined
20 cycle ("CC") power plants in Peninsular Florida,
21 which I use synonymously with the Florida Reliability
22 Coordinating Council ("FRCC") region, and several
23 tens of thousands of MW of new gas CC entry elsewhere
24 throughout North America. Our predicted substantial
25 quantity of new installed capacity in Peninsular
26 Florida -- 6,000 MW -- is approximately twice the
27 quantity of new capacity that FRCC itself reported to
28 NERC in FRCC's 1997 OE411 Annual Report.

29 Nesbitt Direct, p. 14. FRCC's 1997 10-year Plan, State of
30 Florida, projected installed capacity additions of 3,958

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1 MW for winter, and 3,692 MW for summer. By contrast,
2 FRCC's 1998 Regional Load and Resource Plan projected
3 installed capacity additions of 8,039 MW for winter and
4 7,611 MW for summer. The plans prepared this year
5 demonstrate that Florida utilities are planning to add
6 significant capacity beyond that projected in 1997.
7 Accordingly, Dr. Nesbitt is mistaken in his discussion of
8 aggregate statewide capacity and is potentially way off
9 the mark on the economic viability of merchant combined-
10 cycle plants in light of the planned generation additions
11 proposed by the regulated electric utilities in Florida.
12 Of course, each utility must assure that it has adequate
13 capacity to meet its own needs, and FPC is doing just that
14 without reliance on merchant plants.

15
16 Thus, merchant plant developers will not be supplying
17 power to meet any actual shortfall that the utilities may
18 be experiencing. As Ms. Hesse and Dr. Nesbitt essentially
19 concede, if merchant plants sell their power in this State
20 at all, it will be to utilities that already have
21 sufficient capacity to serve their customers. The net
22 result of this is that merchant plants would simply be
23 taking advantage of newer facilities to undercut
24 production costs from existing facilities that state-

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1 regulated utilities constructed -- under the auspices of
2 the Commission -- pursuant to their statutory obligations
3 in Florida, resulting in economic waste. The statutory
4 and regulatory framework in this State, however, is not
5 oriented toward encouraging a proliferation of
6 opportunistic short-term projects in Florida that are not
7 needed to enable state-regulated utilities to serve their
8 customers. Whether or not this may make sense in the
9 context of a regulatory framework that allows it and
10 adequately ameliorates its negative impacts, it is my
11 understanding that such a framework does not exist in
12 Florida at this time.

13
14
15 Q If the Commission has a concern about whether retail
16 utilities are taking sufficient steps to provide for
17 adequate generating capacity to serve the customers of
18 this State, what recourse does it have?

19
20 A To begin with, under the 10-year site plan process, the
21 Commission may and does interact directly with the
22 utilities to ensure that it is satisfied about the
23 planning of new generating capacity and the status of
24 utility reserve margins. If the Commission has concerns

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1 about utility planning, FPC has stood ready and continues
2 to stand ready to address these concerns through the site-
3 plan process, as outlined in the statutes, and through the
4 efforts of the FRCC, Florida's designated region of the
5 National Electricity Reliability Council (NERC), the
6 organization responsible for overseeing system reliability
7 in North America.

8
9 Further, under Section 366.05, if the Commission
10 determines that inadequacies exist with respect to the
11 energy grids developed by state-regulated utilities, the
12 Commission shall have the power, "after a finding that
13 mutual benefits will accrue to the electric utilities
14 involved, to require installation or repair of necessary
15 facilities, including generating plants . . . with the
16 costs to be distributed in proportion to the benefits
17 received" This provision goes on to direct that
18 the "electric utilities involved in any action taken . . .
19 pursuant to this subsection shall have full power and
20 authority . . . to jointly plan, finance, build, operate,
21 or lease generating . . . facilities," using, if
22 applicable, the provisions of Section 403.519 and the
23 Siting Act.

24

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1

CONCLUSION

2

Q Does this conclude your direct testimony?

3

4

A Yes, it does.

5

6