State of Florida

Public Service Commission

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

DATE: November 6, 1998

TO: Mr. Gary Sasso, Esquire
Mr. Robert Scheffel Wright, Esquire
Ms. Michelle Herschel, Esquire
Ms. Gail Kamaras, Esquire
Mr. James D. Beasley, Esquire
Mr. James A. McGee, Esquire
Mr. Charles A. Guyton, Esquire

FROM: Leslie J. Paugh, Senior Attorney, Division Of Legal Services
Grace A. Jaye, Attorney, Division of Legal Services

RE: FINAL LIST OF ISSUES -- DOCKET NO. 981042-EM

VIA FACSIMILE

Attached are the revised issues for Docket No. 981042-EM as finalized by the Prehearing Officer at the Prehearing Conference on November 5, 1998. If you have any questions, please call either Leslie Paugh at 850-413-6183 or Grace Jaye at 850-314-6191.

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

DOCKET NO. 981042-EM
RENUMBERED ISSUES

ISSUE 1: Is there a need for the proposed power plant, taking into account the need for electric system reliability and integrity, as this criterion is used in Section 403.519?

ISSUE 2: Does Duke New Smyrna have an agreement in place with the UCNSB, and, if so, do its terms meet the UCNSB's needs in accordance with the statute?

ISSUE 3: Does the Commission have sufficient information to assess the need for the proposed power plant under the criteria set forth in Section 403.519, Fla. Statutes?

ISSUE 4: Does Duke New Smyrna have a need by 2001 for the 484 MW of capacity (476 MW summer and 548 MW winter less 30 MW) represented by the proposed facility?

ISSUE 5: Can or should the capacity of the proposed project be properly included when calculating the short-term operating and long-term planning reserve margin of an individual Florida utility or the State as a whole?

ISSUE 6: What transmission improvements and other facilities are required in conjunction with the construction of the proposed facility, and were their costs adequately considered?

NEED FOR ADEQUATE ELECTRICITY AT A REASONABLE COST

ISSUE 7: Is there a need for the proposed power plant, taking into account the need for adequate electricity at a reasonable cost, as this criterion is used in Section 403.519?

MOST COST EFFECTIVE ALTERNATIVE AVAILABLE

ISSUE 8: Is the proposed power plant the most cost-effective alternative available, as this criterion is used in Section 403.519?

ISSUE 9: Has Duke New Smyrna provided adequate assurances regarding available primary and secondary fuel to serve the proposed power plant on a long- and short-term basis?

ISSUE 10: What impact, if any, will the proposed power plant have on natural gas supply or transportation resources on State regulated power producers?

ISSUE 11: Will the proposed project result in the uneconomic duplication of transmission and generation facilities?

ISSUE 12: Is the identified need for power of the Utilities Commission, New Smyrna Beach ("UCNSB") which is set forth in the Joint Petition met by the power plant proposed by Florida Municipal Power Association in Docket No. 980802-EM?

CONSERVATION MEASURES

ISSUE 13: Are there any conservation measures taken by or reasonably available to the petitioners which might mitigate the need for the proposed power plant?

LEGAL ISSUES

ISSUE 14: Does the Florida Public Service Commission have the statutory authority to render a determination of need under Section 403.519, Florida Statutes, for a project that consists in whole or in part of a merchant plant(i.e., a plant that does not have as to the merchant component of the project, an agreement in place for the sale of firm capacity and energy to a utility for resale to retail customers in Florida)?

ISSUE 15: Does the Public Service Commission have jurisdiction under the Power Plant Siting Act, Sections 403.501 - 403.518, and Section 403.519, Florida Statutes, to determine "applicant" status?

ISSUE 16: As to its project's merchant capacity, does Duke New Smyrna have a statutory or other legally enforceable obligation to meet the need of any electric utility in Peninsular Florida for additional generating capacity?

ISSUE 17: As to the project's merchant capacity, is either Duke New Smyrna or UCNSB an "applicant" or "electric utility" within the meaning of the Siting Act and Section 403.519, Florida Statutes?

ISSUE 18: If the Commission were to grant an affirmative determination of need to Duke New Smyrna as herein requested, when the utilities in peninsular Florida had plans in place to meet reliability criteria, would the Commission be meeting its responsibility to avoid uneconomic duplication of facilities?

ISSUE 19: Does the Joint Petition meet the pleading requirements of Rule 25-22.081, Florida Administrative Code?

ISSUE 20: Does the Joint Petition state a cause of action by not alleging that the proposed power plant meets the statutory need criteria and instead alleging that the proposed power plant is "consistent with" Peninsular Florida's need for power?

ISSUE 21: If the Commission were to permit Duke New Smyrna to demonstrate need on a "Peninsular Florida" basis and not require Duke New Smyrna to have a contract with purchasing utilities for its merchant plant capacity, would the more demanding requirements on QFs, other non-utility generators and electric utilities afford Duke New Smyrna a special status?

POLICY ISSUES

ISSUE 22: If Duke New Smyrna premises its determination of need upon Peninsular Florida without contracts from individual purchasing utilities, how would the Commission's affirmative determination of need affect subsequent determinations of need by utilities petitioning to meet their own need?

ISSUE 23:

STIPULATED ISSUE Will granting a determination of need as herein requested relieve electric utilities of the obligation to plan for and meet the need for reasonably sufficient, adequate and efficient service?

ISSUE 24: Will granting a determination of need as herein requested create a risk that past and future investments made to provide service may not be recovered and thereby increase the overall cost of providing electric service and/or future service reliability?

ISSUE 25: If Duke New Smyrna premises its determination of need upon Peninsular Florida without contracts from individual purchasing utilities, how would the Commission's affirmative determination of need affect subsequent determinations of need by QFs and other non-utility generators petitioning to meet utility specific needs?

ISSUE 26: If the Commission abandons its interpretation that the statutory need criteria are "utility and unit specific," how will the Commission ensure the maintenance of grid reliability and avoid uneconomic duplication of facilities in need determination proceedings?

ISSUE 27: Will granting a determination of need as herein requested result in electric utilities being authorized to similarly establish need for additional generating capacity by reference to potential additional capacity

needs which the electric utility has no statutory or contractual obligation to serve?

ISSUE 28: What effect, if any, would granting a determination of need as herein requested have on the level of reasonably achievable cost-effective conservation measures in Florida?

ISSUE 29: Would granting the determination of need requested by the joint petitioners be consistent with the public interest and the best interests of electric customers in Florida?

ISSUE 30: Would granting the determination of need requested by the joint petitioners be consistent with the State's need for a robust competitive wholesale power supply market?

ISSUE 31: Would granting the determination of need requested by the joint petitioners be consistent with state and federal energy policy?

FINAL ISSUES

ISSUE 32: Based on the resolution of the foregoing issues, should the petition of the UCNSB and Duke New Smyrna for determination of need for the New Smyrna Beach Power Project be granted?

ISSUE 33: Should this docket be closed?