

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

FILED: November 13, 1998

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U. S. GENERATING COMPANY'S STATEMENT OF POSITIONS

Pursuant to Rule 25-22.038, Florida Administrative Code, and the ore tenus order iss at the Prehearing Conference held on November 5, 1998, U. S. Generating Company (hereinafter "USGEN"), files its position as to each issue set forth in the draft Prehearing Order as modified.

STATEMENT OF POSITIONS

BASIC POSITION: USGEN believes that the introduction of merchant plants into the State of Florida will enhance the State's competitive wholesale market for electricity, is in the best interest of the citizens of Florida and should be authorized by the Commission.

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?

Position of USGEN: No position at this time.

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?

Position of USGEN: No position at this time.

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In accordance with Rule 25-22.028(1), Florida Administrative Code, and the preference expressed by staff at the November 5, 1998 Prehearing Conference, a copy of this pleading has also been filed on diskette, formatted in Word Perfect 7.

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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?

Position of USGEN: No position at this time.

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?

Position of USGEN: No position at this time.

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?

Position of USGEN: No position at this time.

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?

Position of USGEN: No position at this time.

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?

Position of USGEN: No position at this time.

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?

Position of USGEN: No position at this time.

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?

Position of USGEN: No position at this time.

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

Position of USGEN: No position at this time.

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

Position of USGEN: No.

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?

Position of USGEN: No position at this time.

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?

Position of USGEN: No position at this time.

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)?

Position of USGEN: Yes.

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?

Position of USGEN: Yes.

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

Position of USGEN: No position at this time.

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?

Position of USGEN: Yes.

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?

Position of USGEN: Yes.

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

Position of USGEN: No position at this time.

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?

Position of USGEN: Yes.

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?

Position of USGEN: No position at this time.

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?

Position of USGEN: No position at this time.

ISSUE 23: *STIPULATED ISSUE* Will granting 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?

Position of USGEN: No position at this time.

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?

Position of USGEN: No position at this time.

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?

Position of USGEN: No position at this time.

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?

Position of USGEN: No position at this time.

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?

Position of USGEN: No position at this time.

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?

Position of USGEN: No position at this time.

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?

Position of USGEN: Yes.

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?

Position of USGEN: Yes.

ISSUE 31: Would granting the determination of need requested by the joint petitioners

be consistent with state and federal energy policy?

Position of USGEN: Yes.

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?

Position of USGEN: Yes.

ISSUE 33: Should this docket be closed?

Position of USGEN: Yes, after the Commission grants Duke's Petition.

Respectfully submitted this 13th day of November, 1998.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing U. S. Generating Company's Statement of Positions has been served by hand delivery (*) or by U. S. Mail on the following individuals this 13th day of November, 1998:

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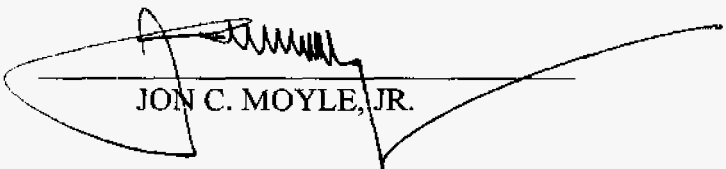
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