

3.31.05

FILED
MAY 31 PM 12:30
ADMINISTRATIVE

STATE OF FLORIDA
SITING BOARD

IN RE: NEW HOPE POWER PARTNERSHIP)
OKEELANTA COGENERATION FACILITIES))
POWER PLANT SITING APPLICATION))
NO. PA 04-46))

OGC CASE NO. 04-1594
DOAH CASE NO. 04-3209EPP

CAS
closed

AT

FINAL ORDER OF CERTIFICATION

On March 31, 2005, an administrative law judge with the Division of Administrative Hearings ("DOAH") submitted his Recommended Order of Certification in this proceeding. The Recommended Order indicates that copies were served upon counsel for the applicant, New Hope Power Partnership ("New Hope"), on the Florida Department of Environmental Protection ("DEP"), and on other designated state and regional agencies. A copy of the Recommended Order of Certification is attached as Exhibit A. The matter is now before the Governor and Cabinet, sitting as the "Siting Board," for action under the Florida Electrical Power Plant Siting Act ("PPSA"), §§ 403.501-403.518, Florida Statutes.

BACKGROUND

New Hope currently operates the Okeelanta Cogeneration Facility in Palm Beach County, Florida. The plant site ("Site"), approximately 82.1 acres in size, is located in an unincorporated area of western Palm Beach County, approximately six miles south of South Bay and two miles west of U.S. Highway 27. The Site is adjacent to Okeelanta Corporation's existing sugar mill, refinery, and sugar cane fields. It is surrounded by a large buffer area, which is used primarily to grow sugar cane. The nearest residence is over 3.5 miles from the Site. The existing facility primarily burns biomass, bagasse and clean wood waste with natural gas and low sulfur distillate oil as supplemental fuels. It supplies steam to the adjacent sugar mill and refinery. Excess steam

from the facility is used to generate 74.9 megawatts (net) of electricity, which is sold to utility companies, including Florida Power and Light Company.

On September 3, 2004, New Hope filed an application with DEP for authorization to construct and operate an expansion of the Okeelanta Cogeneration Facility. This application (the "Expansion Project") proposes to increase the electrical generating capacity of the existing facility by approximately 65 megawatts (net), creating a total generating capacity of approximately 140 megawatts (net). The Expansion Project will involve the installation of a new turbine/electrical generator, a cooling tower, and related equipment at the site. The Expansion Project will be constructed on approximately 0.5 acres of the Site, and will also be fueled by biomass.

The Florida Public Service Commission ("PSC") issued an order on November 18, 2004, determining there is a need for the Expansion Project.

DOAH PROCEEDINGS

DEP forwarded the matter of New Hope's requested site certification for the Expansion Project to DOAH for formal administrative proceedings, and Administrative Law Judge Charles A. Stampelos ("ALJ") was assigned to the case. On March 21, 2005, the ALJ conducted a land use hearing in this case as required by the PPSA. The ALJ subsequently entered a Land Use Recommended Order, concluding that the site of the Expansion Project is consistent and in compliance with the land use plans and zoning ordinances of Palm Beach County, Florida, with the Treasure Coast Regional Planning Council's regional policy plan, and with the State of Florida's state comprehensive plan. A proposed Land Use Order, adopting the ALJ's Land Use Recommended Order, is currently before the Siting Board for consideration.

On March 11, 2005, DEP issued its written Staff Analysis Report (revised) concerning the Expansion Project. DEP's Report contained a compilation of proposed Conditions of Certification for the Expansion Project. DEP's Report also included reports from other state, regional, and local agencies.

On March 9, 2005, a Joint Prehearing Stipulation executed by New Hope, DEP, the Florida Department of Community Affairs, the Florida Department of Transportation, the Florida Public Service Commission, the Florida Fish and Wildlife Conservation Commission, the South Florida Water Management District, the Treasure Coast Regional Planning Council and Palm Beach County was submitted to the ALJ. All of these parties either recommended certification, did not dispute that certification should be approved, or took no position with respect to certification of the Expansion Project.

Pursuant to § 403.508(3), Florida Statutes, the ALJ held a formal administrative hearing on site certification of the Expansion Project in Palm Beach County on March 21, 2005. New Hope and DEP presented expert testimony and other evidence in support of site certification. No other party presented testimony or evidence. No members of the general public testified at the certification hearing.

RECOMMENDED ORDER

On March 31, 2005, the ALJ entered his Recommended Order of Certification for the Expansion Project. Included in the Recommended Order is the ALJ's basic conclusion that New Hope met its burden of proof of demonstrating at the certification hearing that the Expansion Project complies with all of the criteria for certification under the PPSA. The ALJ specifically concluded that the un rebutted evidence at the hearing demonstrated that the construction and operational safeguards for the Expansion Project are sufficient to protect the public welfare. The

ALJ further concluded that the Project will result in minimal adverse affects on human health, the environment, the ecology of the land and its wildlife, and the ecology of state waters and their aquatic life. The ALJ ultimately recommended that the Siting Board grant certification for the expansion of the Okeelanta Cogeneration Facility to a total capacity of 140 megawatts (net) of electricity, in accordance with the application and the Conditions of Certification set forth in DEP's Certification Hearing Exhibit 3.

CONCLUSION

No Exceptions were filed in this administrative proceeding challenging any of the ALJ's findings or conclusions in the Recommended Order of Certification. Furthermore, the record in this proceeding is devoid of objections by any governmental agencies to site certification of the Expansion Project. Based on a review of the record and the governing law, the Siting Board concludes that New Hope's Expansion Project complies with the certification requirements of the PPSA and that site certification of the Project fully balances the increasing demands for electrical power plant location and operation with the broad interests of the public.

It is therefore ORDERED that:

A. The Recommended Order of Certification (Exhibit A) is adopted and incorporated by reference herein.

B. Certification of the location, construction, and continued operation of the New Hope Okeelanta Cogeneration Facility as described in New Hope's site certification application and by the evidence presented at the certification hearing is APPROVED, subject to the Conditions of Certification contained in DEP Exhibit 3.

C. Authority to assure and enforce compliance by New Hope and its agents with all of the Conditions of Certification imposed by this Final Order is hereby delegated to DEP, except

that any proposed modification to burn fuels other than biomass (bagasse and clean wood), with natural gas and low sulfur distillate oil as supplemental fuels, shall be reviewed by the Siting Board.

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 35, Tallahassee, Florida 32399-3000; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date this Final Order is filed with the clerk of the Department.

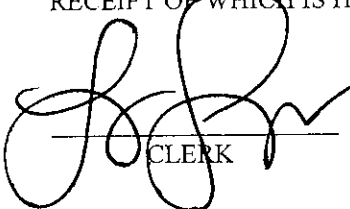
DONE AND ORDERED this 17th day of May, 2005, in Tallahassee, Florida, pursuant to a vote of the Governor and Cabinet, sitting as the Siting Board, at a duly noticed and constituted Cabinet meeting held on May 17, 2005.

THE GOVERNOR AND CABINET
SITTING AS THE SITING BOARD



THE HONORABLE JEB BUSH
GOVERNOR

FILING IS ACKNOWLEDGED ON THIS DATE,
PURSUANT TO § 120.52 FLORIDA STATUTES,
WITH THE DESIGNATED DEPARTMENT CLERK,
RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED



CLERK

5/26/05
DATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Final Order of Certification has been sent by United States Postal Service to:

James V. Antista, Esquire
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Conservation Commission
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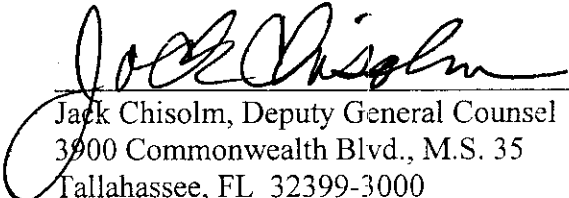
Sheauching Yu, Esquire
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and by hand delivery to:

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Department of Environmental Protection
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this 26th day of May, 2005.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



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