

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: NEW HOPE POWER )  
PARTNERSHIP OKEELANTA )  
COGENERATION FACILITIES POWER ) Case No. 04-3209EPP  
PLANT SITING APPLICATION NO. PA )  
04-46. )  
\_\_\_\_\_ )

LAND USE RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly-designated Administrative Law Judge, Charles A. Stampelos, held a land use hearing in the above-styled case on March 21, 2005, in Palm Beach County, Florida.

APPEARANCES

For Petitioner New Hope Power Partnership ("New Hope"):

David S. Dee, Esquire  
Landers & Parsons  
310 West College Avenue  
Tallahassee, Florida 32301

For the Florida Department of Environmental Protection:

Scott A. Goorland, Esquire  
Department of Environmental Protection  
3900 Commonwealth Boulevard, Mail Station 35  
Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

Pursuant to Section 403.508(2), Florida Statutes, the sole issue for determination in this case is whether the proposed site for New Hope's expansion of the Okeelanta cogeneration facility "is consistent and in compliance with existing land use

plans and zoning ordinances." (All statutory references are to the 2004 codification of the Florida Statutes.)

PRELIMINARY STATEMENT

On September 3, 2004, New Hope filed an application ("Application") with the Florida Department of Environmental Protection ("Department" or "DEP") for authorization to construct and operate a 65 megawatt ("MW") expansion (the "Expansion Project" or "Project") of the Okeelanta cogeneration facility in Palm Beach County, Florida. The Okeelanta cogeneration facility ("Facility") is an existing electrical power plant that burns biomass (e.g., bagasse and wood) to generate 74.9 MW of electricity. New Hope's application is subject to the requirements of the Florida Electrical Power Plant Siting Act ("PPSA"), Sections 403.501-.518, Florida Statutes. The Department transmitted New Hope's Application to the Division of Administrative Hearings for appropriate proceedings under the PPSA. In compliance with Section 403.508(1), the land use hearing (the "Land Use Hearing") in this case was scheduled for March 21, 2005.

On March 9, 2005, a "Prehearing Stipulation for Land Use and Certification Hearings" ("Prehearing Stipulation") was filed by New Hope, DEP, the Florida Department of Community Affairs ("DCA"), the Florida Department of Transportation ("DOT"), the Florida Public Service Commission ("PSC"), the Florida Fish and Wildlife Conservation Commission ("FFWCC"), the South Florida Water Management District ("SFWMD"), the Treasure Coast Regional

Planning Council ("TCRPC"), and Palm Beach County (the "County"). In the Prehearing Stipulation, all of the signatories either agreed with, did not dispute, or took no position concerning New Hope's assertion that the site of the proposed Project is consistent and in compliance with existing land use plans and zoning ordinances. Prehearing Stipulation at 10-17.

At the Land Use Hearing, New Hope called one witness, Richard Zwolak (accepted as an expert concerning zoning, land use planning and environmental planning). New Hope introduced Exhibits 1-39 (Ex.) into evidence without objection. New Hope's Amended Exhibit List was also admitted into evidence as New Hope's Power Exhibit A. New Hope also supplemented the record with the transcript of certain testimony given by Kennard Kosky during the certification hearing on March 21, 2005.

By Order dated March 3, 2005, the Administrative Law Judge granted New Hope's request to take official recognition of the following documents:

(1) Resolution No. R-93-340 (dated March 16, 1993) and attached Exhibits A, B and C, of the Board of County Commissioners of Palm Beach County, Florida, entitled "Resolution Approving Zoning Petition No. 92-14 Special Exception Petition of Okeelanta Corporation"; and

(2) Resolution No. R-2004-1372 (dated July 13, 2004) and attached Exhibits A, B and C, of the Board of County Commissioners of Palm Beach County, Florida, entitled "Resolution Approving Zoning Petition DOA 1992-014B Development Order Amendment Petition of New

Hope Power Partnership by Gary Brandenburg,  
P.A., Agent (Okeelanta Co-Gen Facility)."

These documents were included with New Hope's exhibits at the Land Use Hearing. See Ex. 23 and Ex. 24.

No one contested the evidence presented by New Hope at the Land Use Hearing. None of the signatories to the Prehearing Stipulation participated at the Land Use Hearing, except New Hope and DEP. Except for New Hope, the parties to this proceeding did not call any witnesses or proffer any exhibits.

The public was given an opportunity to provide oral and written comments at the Land Use Hearing. However, no members of the public appeared or testified at the Land Use Hearing. No one testified or proffered any exhibits in opposition to the Project at the Land Use Hearing.

The one-volume Transcript (T) of the Land Use Hearing was filed with the Division of Administrative Hearings on March 25, 2005, and the parties were allowed until March 28, 2005, to submit proposed recommended orders. New Hope and DEP timely filed a joint proposed recommended order on March 28, 2005. No other party filed a proposed recommended order.

Based on all of the evidence of record, the following findings of fact are determined.

#### FINDINGS OF FACT

##### The Applicant

1. The Applicant, New Hope Power Partnership, is a Florida partnership that owns the existing Okeelanta cogeneration

Facility. Ex. 1 at 1-1, 3-1. New Hope will also own the Project. See id.

#### The Site

2. The Facility is located in an unincorporated area in western Palm Beach County, Florida. Ex. 1 at 2-1; Ex. 4 at 6; T 17. It is approximately six miles south of South Bay and two miles west of U.S. Highway 27. Id. The Facility is located on a site (the "Site") that is approximately 82.1 acres in size. Ex. 1 at 2-1; Ex. 4 at 8; T 19. The Site is adjacent to Okeelanta Corporation's existing sugar mill, sugar refinery, and sugarcane fields. Ex. 1 at 2-1; Ex. 4 at 6; T 17, 20.

#### The Surrounding Area

3. There are large buffer areas around the Site. See Ex. 1 at 2-1, 2-2, 2-4; Ex. 4 at 6; T 17-18. Almost all of the land within five miles of the Site is used for agricultural purposes (sugarcane farming). Id.

4. The community nearest the Site is South Bay. Ex. 1 at 2-2; Ex. 4 at 6; T 17. The nearest home is more than 3.5 miles northeast of the Site. Ex. 1 at 2-4; Ex. 5 at 9; T 17-18.

#### The Existing Facility

5. The Facility uses biomass fuels (e.g., bagasse from the sugar mill; clean wood waste) to generate 74.9 MW (net) of electricity. Ex. 1 at 1-1, 3-1; Ex. 4 at 6-7; T 18. The Facility supplies steam to the sugar mill during the sugarcane harvest (October through March) and it supplies steam to the refinery throughout the year. Ex. 1 at 1-2, 3-1; Ex. 4 at 7; see T 18. Excess steam from the Facility is used to generate

electricity, which is sold to utility companies, including Florida Power & Light Company. Ex. 1 at 1-3; Ex. 4 at 7; see T 50-51.

6. The existing Facility includes three steam boilers, one steam turbine/electrical generator, a cooling tower, an electrical switchyard, materials handling and storage facilities for biomass fuels, and ancillary equipment. Ex. 1 at 2-1, 3-1; Ex. 4 at 7; T 20-21.

#### The Expansion Project

7. The Expansion Project will increase the Facility's electrical generating capacity by 65 MW (net), creating a total generating capacity of 140 MW (net). Ex. 1 at 1-1, 1-3, 2-1; DEP Ex. 2, Staff Analysis Report at 1; T 18. The Expansion Project will involve the installation of a new turbine/electrical generator, a cooling tower, and related equipment at the Site. Ex. 1 at 1-3, 2-1; Ex. 4 at 8; DEP Ex. 2, Staff Analysis Report at 1; T 19.

8. Approximately 0.5 acres of the Site will be occupied by the new equipment that will be installed for the Expansion Project. Ex. 1 at 2-1; Ex. 4 at 8; DEP Ex. 2, Staff Analysis Report at 1; T 19. The construction and operation of the Project will occur in disturbed upland areas that already are used for industrial operations. Ex. 1 at 3-2, 4-1; Ex. 4 at 9; T 20. No construction will take place in any wetland, wildlife habitat, environmentally sensitive area, or 100-year flood plain. Ex. 1 at 2-2, 2-18, 4-1; Ex. 4 at 9; T 20.

9. The Facility will operate more and will create more electricity after the Expansion Project is completed, but the basic operation of the Facility will not change. Ex. 4 at 10; Ex. 5 at 6; T 22.

Existing Land Use Designations and Zoning Ordinances

10. The Site and all adjacent lands are designated "Agricultural Production" on Palm Beach County's Future Land Use Map, which is part of the County's comprehensive land use plan. Ex. 1 at 2-2, Ex. 4 at 10; T 22. Land uses allowed in the Agricultural Production areas include "[f]acilities associated with, and dependent upon a principal agricultural activity including but not limited to transportation, storage or processing of agricultural products or by-products." Ex. 1 at 2-2, 2-3, and App. 10 at 95-FLUE; Ex. 4 at 10; see T 22. The Facility is consistent with this definition because it is dependent upon an agricultural activity (sugarcane farming) for the production of bagasse, which is one of the Facility's primary fuels. Ex. 1 at 2-3; Ex. 4 at 10; T 22-23. The Agricultural Production designation also specifically allows "Utilities", including electrical power plants. Ex. 1 at 2-3, and App. 10.2 at 95-FLUE, 97 FLUE; Ex. 4 at 11; T 23.

11. The Site is zoned "Agricultural Production." Ex. 1 at 2-3; Ex. 4 at 11; T 23. The Agricultural Production zoning designation corresponds with the Agricultural Production land use designation in the County's comprehensive land use plan.

Id.

## Consistency With Land Use Plans and Zoning Ordinances

12. In 1993, in Resolution No. R-93-340, the Board of County Commissioners ("Board") of Palm Beach County approved the construction and operation of the Facility under the County's comprehensive land use plan and zoning ordinances. Ex. 23; Ex. 4 at 11; T 23-24. In 2004, in Resolution No. R-2004-1372, the Board approved the construction and operation of the Project under the County's comprehensive land use plan and zoning ordinances. Ex. 24; Ex. 4 at 12; T 24-25. Among other things, the Board found that the Project: "is consistent with the Palm Beach County Comprehensive Plan"; "is consistent with the requirements of the Palm Beach County Unified Land Development Code"; and "is compatible . . . and generally consistent with the uses and character of the land surrounding and in the vicinity of" the Project. Ex. 24.

13. On November 22, 2004, the TCRPC issued a report concerning the Project, as required under the PPSA. Ex. 38; Ex. 4 at 13; T 25-26, 62. The TCRPC concluded that the Expansion Project is "not in conflict or inconsistent with the [TCRPC's] Strategic Regional Policy Plan." Ex. 38; Ex. 4 at 13; T 26. The TCRPC expects "minimal" regional impacts from the Expansion Project. Id. The TCRPC noted that the Project advances the TCRPC's policy of supporting "the development of new power generating facilities that incorporate high efficiency cogeneration technologies." Id.

14. On January 18, 2005, the DCA issued a report concerning the Project, as required by the PPSA. Ex. 39; Ex. 4



at 14; T 27, 62. The DCA concluded that "the proposed construction and operation of the expansion project on the existing New Hope site does not raise any land use issues of concern to the Department." Id.

15. In the Prehearing Stipulation, the County, the DCA, the DEP, the DOT, the FFWCC and the SFWMD either agreed with or did not dispute New Hope's assertion that the Site is consistent and in compliance with existing land use plans and zoning ordinances. Prehearing Stipulation at 10, 12, 13, 14, 16, 17, 23. The PSC and the TCRPC took no position concerning New Hope's assertion that the Site is consistent and in compliance with existing land use plans and zoning ordinances. Prehearing Stipulation at 12, 15.

16. The expert testimony and other evidence presented in the Land Use Hearing demonstrate that the Site and Project are consistent and in compliance with the County's Comprehensive Plan, the County's zoning ordinances, the TCRPC's regional policy plan, and Florida's state plan. Ex. 1 at 2-2 through 2-4; Ex. 4 at 16; Ex. 23; Ex. 24; Ex. 38; Ex. 39; T 29.

#### Public Notice of the Land Use Hearing

17. On September 29, 2004, New Hope published a "Notice of Filing of Application for Electrical Power Plant Site Certification" in the Palm Beach Post, which is a newspaper of general circulation published in Palm Beach County, Florida. Ex. 31; see also Ex. 5 at 16; T 49.

18. On October 1, 2004, the Department published "Notice of Receipt of Application for Power Plant Certification" in the

Florida Administrative Weekly. Ex. 35; see also Ex. 5 at 16; T 49.

19. On February 2, 2005, New Hope published notice of the Land Use Hearing in the Palm Beach Post. Ex. 33; see also Ex. 5 at 16; T 49.

20. On February 4 and 11, 2005, the Department published notice of the Land Use Hearing in the Florida Administrative Weekly. Ex. 36; see also Ex. 5 at 16; T 49.

21. The public notices for the Land Use Hearing satisfy the informational and other requirements set forth in Section 403.5115, Florida Statutes, and Florida Administrative Code Rules 62-17.280 and 62-17.281(4). Prehearing Stipulation at 24, paragraph V. A.1,2; Ex. 5 at 17; T 49, 63-64.

#### CONCLUSIONS OF LAW

22. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding pursuant to Sections 120.569, 120.57(1), and 403.508, Florida Statutes.

23. New Hope and DEP published timely public notice of the Land Use Hearing, in compliance with the requirements contained in the PPSA and, Florida Administrative Code Chapter 62-17. Prehearing Stipulation at 26, paragraph VI. A.4.; Ex. 5 at 16-17; Ex. 31; Ex. 33; Ex. 35; Ex. 36; T 49, 63-64.

24. Pursuant to Section 403.508(2), Florida Statutes, the sole issue for determination in this proceeding is whether the proposed Site of New Hope's Expansion Project is consistent and in compliance with existing land use plans and zoning

ordinances. See Prehearing Stipulation at 25, paragraph VI.

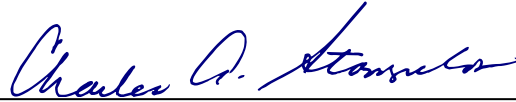
A.2.

25. The competent, substantial, and un rebutted evidence presented by New Hope at the Land Use Hearing demonstrates that the Site and the Expansion Project are consistent and in compliance with the applicable provisions of the existing land use plans and zoning ordinances, including but not limited to Palm Beach County's comprehensive land use plan and zoning ordinances. Ex. 1 at 2-2 through 2-4; Ex. 4 at 16; Ex. 23; Ex. 24; Ex. 38; Ex. 39; T 29.

#### RECOMMENDATION

Based on the foregoing Findings of Facts and Conclusions of Law, it is RECOMMENDED that the Governor and Cabinet, sitting as the Siting Board, enter a Final Land Use Order in this case finding that the Site and the proposed expansion of the Okeelanta cogeneration facility are consistent and in compliance with the existing land use plans and zoning ordinances.

DONE AND ENTERED this 31st day of March, 2005, in  
Tallahassee, Leon County, Florida.



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CHARLES A. STAMPELOS  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 31st day of March, 2005.

COPIES FURNISHED:

David S. Dee, Esquire  
Landers & Parsons  
310 West College Avenue  
Tallahassee, Florida 32301

Scott Goorland, Esquire  
Office of General Counsel  
Department of Environmental Protection  
3900 Commonwealth Boulevard  
Mail Station 35  
Tallahassee, Florida 32399-3000

James V. Antista, General Counsel  
Florida Fish and Wildlife Conservation  
Commission  
620 South Meridian Street  
Tallahassee, Florida 32399-1600

Roger Saberson, General Counsel  
Treasure Coast Regional Planning Council  
70 Southeast 4th Avenue  
Delray Beach, Florida 33483

Jennifer Brubaker, Esquire  
Public Service Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0863

Leslie Bryson, Esquire  
Department of Community Affairs  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399

Sheauching Yu, Esquire  
Department of Transportation  
605 Suwannee Street  
Mail Station 58  
Tallahassee, Florida 32399-0458

Sarah Nall, Esquire  
9341 Southeast Mystic Cove Terrace  
Hobe Sound, Florida 33455

Denise M. Nieman, Esquire  
Palm Beach County Attorney's Office  
302 North Olive Avenue  
Suite 601  
West Palm Beach, Florida 33401-4705

Raquel A. Rodriguez, General Counsel  
Office of the Governor  
The Capitol, Suite 209  
Tallahassee, Florida 32399-1001

Kathy C. Carter, Agency Clerk  
Department of Environmental Protection  
Office of General Counsel  
Mail Station 35  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.