

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. )  
\_\_\_\_\_ )

RECOMMENDED ORDER OF CERTIFICATION

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

APPEARANCES

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

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For the Florida Department of Environmental Protection:

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STATEMENT OF THE ISSUE

The issue to be determined in this case is whether the Governor and Cabinet, sitting as the Siting Board, should grant certification to New Hope for the expansion of the Okeelanta cogeneration facility to a total net steam electrical generating capacity of 140 megawatts ("MW").

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 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. (All statutory references are to the 2004 codification of the 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(3), Florida Statutes, the certification hearing (the "Certification 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 recommended certification of the Project, or did not dispute, or took no position concerning the certification of the Project, provided that the Project is constructed and operated in compliance with the Conditions of Certification. Prehearing Stipulation at 10-17.

On March 21, 2005, a Certification Hearing was conducted in compliance with Section 403.508(3), Florida Statutes. At the Certification Hearing, New Hope called one witness, Kennard Kosky (accepted as an expert concerning the permitting of electrical power plants and air pollution control). 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 Power Exhibit A, and New Hope was permitted to supplement the record with the transcript of the land use hearing in this case.

By Order dated March 3, 2005, the Administrative Law Judge granted New Hope's request to take official recognition of the "Amended Final Order Granting Determination of Need" (dated November 18, 2004) of the PSC. This document was included with the exhibits introduced into evidence at the Certification Hearing. Ex. 22.

The Department called one witness, Hamilton S. Oven (accepted as an expert concerning power plant site certification in the State of Florida). The Department introduced three exhibits (DEP Exhibits 1-3) into evidence, without objection.

No one contested the evidence presented by New Hope and DEP at the Certification Hearing. None of the signatories to the Prehearing Stipulation participated at the Certification Hearing, except New Hope and DEP. Except for New Hope and DEP, 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 Certification Hearing. However, no members of the public appeared or testified at the Certification Hearing. No one testified or proffered any exhibits in opposition to the Project at the Certification Hearing.

The one-volume Transcript (T) of the Certification 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.

#### 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.

5. The Facility is adjacent to an existing electrical substation (Florida Power & Light Company's Okeelanta Substation). See Ex. 1 at 1-2. An existing electrical transmission line connects the Facility to the substation. Ex. 1 at 3-1.

#### The Existing Facility

6. The Facility uses biomass fuels (e.g., bagasse from the sugar mill; clean wood waste) to generate steam and up to 74.9 MW of electricity (net). 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. 1-3; Ex. 4 at 7; See T 50-51.

7. 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

8. 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; Ex. 4 at 7; 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; T 19.

#### Construction of the Expansion Project

9. 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; T 19. The construction 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.

10. No new electrical transmission lines will need to be built to accommodate the additional electrical power generated by the Expansion Project. See Ex. 1 at 3-1, 6-1.

11. During construction, there will be a temporary increase in sound levels due to the heavy equipment associated with the construction process. Ex. 1 at 4-9 through 4-10; Ex. 5 at 9; T 42-43. Given the remote location of the Site, the sounds generated by the construction of the Expansion Project will not interfere with human activities or otherwise cause a nuisance at any residential locations. Id.

12. The construction of the Expansion Project will result in a temporary increase in traffic on some roads near the Site, but these roads will continue to operate at acceptable traffic levels. Ex. 1 at 4-8 through 4-9; Ex. 5 at 9; T 42.

#### Operation of the Expansion Project

13. The Facility currently operates at its full capacity during the sugarcane harvest. See Ex. 30, Technical Evaluation at 2. The Expansion Project will enable the Facility to operate at its full capacity year-round. See Ex. 1 at 3-1 through 3-2; Ex. 30, Technical Evaluation at 2. Although the Facility will generate more electricity after the Expansion Project is completed, the basic operation of the Facility will not change. Ex. 4 at 10; Ex. 5 at 6; T 22.

14. The Facility has a water use permit issued by the South Florida Water Management District, which authorizes the Facility to use water from the Miami/North New River Canal System, the surficial aquifer, and the Floridan aquifer. Ex. 1

at 3-11; Ex. 5 at 7; T 40-41. The Okeelanta Corporation also may provide water to the Facility, in accordance with the SFWMD water use permit for the Okeelanta Corporation's sugar mill. Ex. 5 at 7; T 41. After the Expansion Project is completed, the amount of water used by the Facility will increase, commensurate with the increased use of the Facility. Ex. 5 at 7; DEP Ex. 2, Staff Analysis Report at 3; T 41. The additional water will be obtained from the cooling pond/rock pit located at the adjacent sugar mill. Id. In March 2005, the SFWMD issued a water use permit that allows the Okeelanta Corporation to increase the amount of water provided to the Facility from 0.4 mgd to 2.0 mgd. Ex. 37; see T 41.

15. The Facility's stormwater and process water are routed to a 600-acre area that is divided into four percolation basins. Ex. 1 at 3-16; Ex. 5 at 8; T 41. Each basin is used on a rotating basis--i.e., the basin is used for percolation for one year and then it is used for growing sugarcane for three years. Ex. 5 at 8; T 41. Each percolation basin is designed to hold all of the Facility's process water, plus all of the contact and non-contact stormwater runoff from a 100-year, three-day storm event. Id. The Facility does not discharge any stormwater or process water to any surface water. Ex. 1 at 5-9; Ex. 5 at 8; T 41-42. The Facility's use of the percolation ponds has not caused and is not expected to cause any violations of any ground water quality standards. Ex. 5 at 8.



16. The Facility generates fly ash and bottom ash from the combustion of biomass fuels. Ex. 1 at 3-16, 5-10; Ex. 5 at 9; T 42. These materials are taken to a landfill for disposal. Id.

17. The operation of the Expansion Project will not have any significant impacts on traffic. Ex. 1 at 5-17; Ex. 5 at 9; T 42. The local roads will continue to operate at an acceptable level of service. Id.

#### Air Quality Regulations

18. The Facility must comply with New Source Performance Standards ("NSPS") and Best Available Control Technology ("BACT") requirements, both of which impose strict limits on the Facility's airborne emissions. See Ex. 1 at 3-5; Ex. 30, Technical Evaluation at 3. The Facility also must comply with Ambient Air Quality Standards ("AAQS") and Prevention of Significant Deterioration ("PSD") standards, which establish criteria for the protection of ambient air quality. Id. The Facility previously was reviewed and approved under the PSD program. Ex. 1 at 3-5; Ex. 5 at 6; Ex. 30, Technical Evaluation at 2; T 39-40.

19. The DEP has determined that the Expansion Project is not subject to PSD pre-construction review. Ex. 5 at 6; Ex. 30, Technical Evaluation at 5; T 38. The cooling towers will be the only new source of air pollution associated with the Expansion Project. Ex. 1 at 3-5; Ex. 5 at 6; T 38. The water droplets leaving the cooling tower will evaporate, causing small amounts of particulate matter to enter the atmosphere near the Site. Ex. 5 at 6; T 38. However, the emissions from the cooling tower

are so small that the cooling tower is exempt from the permitting requirements established by the DEP. Id.

Best Available Control Technology

20. A BACT determination is required for each pollutant for which PSD review is required. Ex. 1 at 3-5; Ex. 5 at 7; DEP Ex. 2, Staff Analysis Report at 15. BACT is a pollutant-specific emission limit that provides the maximum degree of emission reduction, after taking into account the energy, environmental, and economic impacts and other costs. Ex. 1 at 3-5; Fla. Admin. Code R. 62-210.200(38).

21. As part of its BACT analyses for the Facility, DEP determined that mechanical cyclone dust collectors and an electrostatic precipitator ("ESP") will control the Facility's emissions of particulate matter, a selective non-catalytic reduction system ("SNCR") will control oxides of nitrogen ("NOx"), use of low-sulfur fuels will control sulfur dioxide emissions, and proper facility design and operating methods will control other pollutants. Ex. 1 at 3-6 through 3-8; Ex. 30, Draft Permit at D-1; T 40. Accordingly, these air pollution control systems and techniques are utilized at the Facility. Id.

22. The Facility also uses an array of continuous emissions monitors to ensure that the Facility is continuously in compliance with the BACT emission limits. Ex. 1 at 5-14; Ex. 30, Draft Permit at E-1 through E-2.

### Protection of Ambient Air Quality

23. The EPA has adopted "primary" and "secondary" National Ambient Air Quality Standards ("NAAQS"). See Ex. 1 at 2-21. The primary NAAQS were promulgated to protect the health of the general public with an adequate margin of safety. See Ex. 1 at 2-21; see also 42 U.S.C.A. § 7409(b) (1997). The secondary NAAQS were promulgated to protect the public welfare, including vegetation, soils, visibility and other factors, from any known or anticipated adverse effects associated with the presence of pollutants in the ambient air. Id. Florida has adopted EPA's primary and secondary NAAQS, and has adopted some Florida AAQS ("FAAQS") that are more stringent than EPA's NAAQS. See id.

24. The Facility's potential impacts on ambient air quality were evaluated by DEP, based on the continuous operation of the Facility at full load, following completion of the Project. Ex. 30, Technical Evaluation at 4. DEP concluded that the maximum impacts from the Facility will not cause or contribute to any violations of AAQS. Ex. 1 at 5-10 through 5-14; Ex. 5 at 6-7; Ex. 30, Technical Evaluation at 4; Ex. 5 at 6; T 39.

### Other PSD Analyses

25. The PSD program provides protection for those areas that have good air quality. See Ex. 1 at 2-22; Ex. 30, Technical Evaluation at 3-4. Different areas of Florida have been designated as PSD "Class I" or "Class II" areas, depending upon the level of protection that is to be provided under the PSD program. Id. In this case, the Project is located in a PSD

Class II area. Id. The nearest PSD Class I area is the Everglades National Park ("Everglades"), which is approximately 92 kilometers ("km") south of the Site. Ex. 1 at 2-22.

26. The DEP's analyses demonstrate that the Facility's impacts on ambient air quality will not violate any applicable PSD requirement for the Class I and Class II areas. Ex. 1 at 5-14; Ex. 5 at 6; Ex. 30, Technical Evaluation at 4; DEP Ex. 2, Staff Analysis Report at 16-17; T 39.

#### Compliance With Air Standards

27. New Hope has provided reasonable assurance that the Expansion Project and the Facility will comply with all of the applicable air quality standards and requirements. Ex. 5 at 7; Ex. 30; DEP Ex. 2, Staff Analysis Report at 17; T 38-40.

#### Environmental Benefits of the Project

28. The Expansion Project will provide environmental benefits. Ex. 1 at 7-3 through 7-4; Ex. 5 at 10; T 43-44. For example, the Project will be capable of producing approximately 65 MW (net) of electricity in Southeast Florida, which needs new electrical generating capacity. Ex. 1 at 7-3 through 7-4; Ex. 5 at 10; T 43-44. The Expansion Project will also enhance fuel diversity by using renewable biomass fuels to generate electricity. Id. Over 20 years, the Project may displace the use of approximately 5,600,000 barrels of oil worth nearly \$170,000,000 (assuming oil prices of \$30 per barrel). Id. In addition, the Expansion Project will beneficially reuse clean wood waste, which otherwise would likely be placed in a landfill for disposal. Ex. 1 at 7-4; Ex. 5 at 10; T 44. The Facility

receives wood waste and biomass materials from Miami-Dade County, the Palm Beach County Solid Waste Authority, and approximately 25 private recycling companies, thus assisting them with their solid waste management programs. Ex. 5 at 10; T 44. The Facility also burns melaleuca trees that have been removed pursuant to land clearing programs for the eradication of this nuisance species. Ex. 5 at 10.

#### Socioeconomic Benefits of the Project

29. The Expansion Project will provide jobs for an average of 70 construction workers during the 12-month construction phase of the Project. Ex. 1 at 7-1 through 7-2; Ex. 5 at 10; T 43. Approximately \$3.5 million will be paid in wages for construction employees working on the Expansion Project. Id.

#### Consistency with Land Use Plans and Zoning Ordinances

30. The proposed use of the Site is consistent and in compliance with 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 28-29. The Facility and Project have both been reviewed and approved by the Palm Beach County Board of County Commissioners. Ex. 4 at 11-12; Ex. 23; Ex. 24; T 23-25.

#### Compliance with Environmental Standards

31. New Hope has provided reasonable assurance that the Facility and Project will comply with all of the nonprocedural land use and environmental statutes, rules, policies, and requirements that apply to the Project, including but not limited to those requirements governing the Project's impacts on

air quality, water consumption, stormwater, and wetlands. Prehearing Stipulation at 24, paragraph 5.B.3.; Ex. 5 at 11; DEP Ex. 2, Staff Analysis Report at 22; T 44-45, 60. The location, construction and operation of the Facility and Project will have minimal adverse effects on human health, the environment, the ecology of the State's lands and wildlife, and the ecology of the State's waters and aquatic life. Ex. 5 at 12; DEP Ex. 2, Staff Analysis Report at 20; T 45-46, 61-62. The Facility and Project will not unduly conflict with any of the goals or other provisions of any applicable local, regional or state comprehensive plan. Ex. 4 at 16; Ex. 23; Ex. 24; Ex. 38; Ex. 39; T 28-29. The Conditions of Certification establish operational safeguards for the Facility and Project that are technically sufficient for the protection of the public health and welfare. Ex. 5 at 13; T 46-47, 61.

#### Agency Positions and Conditions of Certification

32. On November 18, 2004, the PSC issued an Order (No. PSC-04-1105A-FOF-EI) granting New Hope's petition for determination of need for the Expansion Project. Ex. 22; DEP Ex. 2, Staff Analysis Report at 4-6, 12-13. The PSC determined, consistent with the criteria of Section 403.519, Florida Statutes, that the Expansion Project is needed. Id.

33. The DEP, DOT, DCA, and SFWMD all recommend certification of the Expansion Project, subject to the Conditions of Certification. Prehearing Stipulation at 10-11, 13-16. New Hope has accepted, and has provided reasonable assurance that it will comply with, the Conditions of

Certification. Prehearing Stipulation at 24-25, paragraph V.B.4; Ex. 5 at 11-12; T 45, 61-62.

Public Notice of the Certification Use Hearing

34. 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.

35. 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.

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

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

38. The public notices for the Certification 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.B.2,3; Ex. 5 at 17; T 49, 63-64.

CONCLUSIONS OF LAW

39. 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.

40. New Hope and DEP provided timely public notices concerning the Expansion Project and the Certification Hearing, which satisfied the notice requirements contained in the PPSA, Chapter 120, Florida Statutes, and Florida Administrative Code Chapter 62-17. Prehearing Stipulation at 26, paragraph VI.B.3.; Ex. 5 at 16-17; Ex. 31; Ex. 33; Ex. 35; Ex. 36; T 49, 63-64. All necessary and required governmental agencies participated in the certification process, and the required reports and studies were issued by the DEP and the other agencies in accordance with their statutory duties. DEP Ex. 2, Staff Analysis Report at 12-14, 21-22; T 56, 62.

41. The PSC determined there is a need for the electrical generating capacity to be supplied by the Expansion Project, as required by Sections 403.508(3) and 403.519, Florida Statutes. Ex. 22; DEP Ex. 2, Staff Analysis Report at 4-6, 12-13.

42. The issue for determination in this case is whether certification should be granted to New Hope to construct and operate the Expansion Project on the Site. Under Section 403.502, Florida Statutes, the Legislature provides in part:

It is the policy of this state that, while recognizing the pressing need for increased power generation facilities, the state shall ensure through available and reasonable methods that the location and operation of electrical power plants will produce minimal adverse effects on human health, the environment, the ecology of the land and its wildlife, and the ecology of state waters



and their aquatic life and will not unduly conflict with the goals established by the applicable local comprehensive plans. It is the intent to seek courses of action that will fully balance the increasing demands for electrical power plant location and operation with the broad interests of the public. Such action will be based on these premises:

(1) To assure the citizens of Florida that operation safeguards are technically sufficient for their welfare and protection.

(2) To effect a reasonable balance between the need for the facility and the environmental impact resulting from construction and operation of the facility, including air and water quality, fish and wildlife, and the water resources and other natural resources of the state.

(3) To meet the need for electrical energy as established pursuant to s. 403.519.

43. The competent, substantial, and uncontested evidence presented by New Hope and DEP at the Certification Hearing demonstrates that the Expansion Project has met all of the criteria required to obtain certification under the PPSA. New Hope has provided reasonable assurance that the Project, if constructed and operated in accordance with the Conditions of Certification, will comply with all of the non-procedural requirements that are applicable to the Project. Certification of the Project will serve and protect the interests of the public, and the benefits of the Project will outweigh the negative impacts. New Hope has accepted, and demonstrated that it will be able to comply with, the Conditions of Certification.

44. In the PPSA review process and the Conditions of Certification for the Project, the State of Florida has ensured through available and reasonable methods that the location, construction and operation of the Expansion Project will produce minimal adverse effects on human health, the environment, the ecology of the land and its wildlife, and the ecology of State waters and their aquatic life. If the Project is built and operated in accordance with the Conditions of Certification, the Project will not unduly conflict with the goals in any applicable local, regional or state comprehensive plan. The Conditions of Certification establish safeguards that are technically sufficient for the protection and welfare of Florida's citizens, and the Conditions of Certification ensure that the potential adverse effects of the Project will be minimized.

45. Certification of the Expansion Project is consistent with the legislative intent to balance the increasing demands for electrical power plant location and operation with the interests of the public. Certification of the Project reasonably balances the need for the Project, as determined by the PSC, with the environmental and other impacts resulting from the construction and operation of the Project.

#### 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 Order granting certification for the expansion of the Okeelanta Cogeneration Facility to a total

capacity of 140 MW (net), in accordance with the Conditions of Certification, DEP Exhibit 3.

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



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Filed with the Clerk of the  
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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.