

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: FLORIDA MUNICIPAL POWER)
AGENCY TREASURE COAST ENERGY)
CENTER POWER PLANT SITING) Case No. 05-1492EPP
APPLICATION NO. PA05-48.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this matter on February 8, 2006, in Fort Pierce, Florida, before the Division of Administrative Hearings, by its assigned Administrative Law Judge, Donald R. Alexander.

APPEARANCES:

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For St. Lucie Heather Young, Esquire
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STATEMENT OF THE ISSUE

The issue to be resolved in this portion of the power plant site certification proceeding is whether the site for the proposed Treasure Coast Energy Center (TCEC) is consistent and

in compliance with the applicable land use plans and zoning ordinances of St. Lucie County (County), Florida, pursuant to Section 403.508(2), Florida Statutes (2005)¹.

PRELIMINARY STATEMENT

This proceeding was conducted pursuant to the Florida Electrical Power Plant Siting Act (PPSA), codified in Part II of Chapter 403, Florida Statutes, and Florida Administrative Code Chapter 62-17 to consider Florida Municipal Power Agency's (FMPA) application for power plant site certification of the TCEC Project. On April 14, 2005, FMPA filed with the Department of Environmental Protection (Department) an application for site certification for the Project. By agreement of the parties, this land use hearing was scheduled to be held on February 8, 2006, as part of the final certification hearing also held on the same date. However, separate Recommended Orders are being rendered as to the land use and certification portions of the hearing. This Recommended Order addresses the land use issues.

After appropriate notice by the Applicant and the Department, the consolidated land use and certification hearing was held on February 8, 2006, in Fort Pierce, Florida. The hearing was conducted, in part, for the purpose of receiving evidence as to whether the Project site was in compliance with the local land use plans and zoning regulations of the County.

On February 6, 2006, FMPA and the County filed a Stipulation addressing land use and zoning issues. The Stipulation indicated that the County and FMPA agreed that the site for the Project is consistent and in compliance with the County's future land use map designations and zoning ordinances and approvals.

At the hearing, FMPA presented four expert witnesses who offered testimony in the following areas: James Hay, Project overview; Stanley A. Armbruster, design of plant and associated facilities; J. Michael Soltys, Project site conditions; and Dennis J. Murphy, land use planning. Also, it offered FMPA Exhibits 1 through 15, which were received in evidence.

The Department presented Hamilton S. Oven, Jr., who is the Department Administrator for the Siting Coordination Office and was accepted as an expert. Also, it offered Department Exhibits 1 and 2, which were received in evidence.

A single set of exhibits was tendered and used at the hearing for both the land use and certification portions of the hearing; however, as noted above, separate Recommended Orders are being rendered.

The County presented no witnesses and no exhibits. No other party participated in this hearing.

Opportunity was afforded for members of the general public to appear. One member of the public, Elie J. Boudreaux, III, who is Director of the Fort Pierce Utilities Authority, offered sworn oral comments in support of the Project. No party or member of the public offered testimony or evidence contrary to the conclusion that the site for the Project is consistent and in compliance with local land use plans and zoning ordinances of the County.

Notice of the consolidated land use and site certification hearing was published by FMPA in the Fort Pierce Tribune, a local newspaper of general circulation, on December 22, 2005. Notice of the land use and certification hearing was also published by the Department on its Official Notices website on December 16, 2005, pursuant to Section 120.551, Florida Statutes.

The Transcript of the hearing was filed on March 1, 2006. On March 20, 2006, a Joint Proposed Recommended Order was filed by FMPA, the Department, and the County, and it has been substantially used in the preparation of this Recommended Order.

FINDINGS OF FACT

Based upon all of the evidence the following findings of fact are determined:

1. FMPA is a joint action agency created under Florida law and comprises twenty-nine municipal electric utilities across Florida. It was created to allow its member utilities to cooperate with each other on the basis of mutual advantage through the financing, construction, ownership, and operation of electrical generating resources. FMPA is governed by a Board of Directors consisting of one representative from each of the twenty-nine member cities. Within FMPA, the All-Requirements Project (ARP) was formed in 1986 and currently has fifteen municipal members serving approximately 280,000 customers. Under the ARP, both generating and non-generating members are required to purchase all of their capacity and electrical energy needs from the ARP. Additionally, ARP members with generating plants commit their capacity to FMPA. FMPA will own TCEC and act as the project manager for construction. The Fort Pierce Utilities Authority will operate the TCEC Unit 1 for FMPA.

2. FMPA filed with the Department a Site Certification Application (Application) for the TCEC on April 14, 2005. The Application seeks a certification under the PPSA for the construction and operation of a 300-megawatt natural gas-fired electrical generation facility, including accessory and ancillary facilities to be located in the County. The Application also seeks an ultimate site capacity determination

under the PPSA for 1,200 megawatts of electrical generating capacity on the proposed site.

3. TSEC is located in an unincorporated portion of the County. The site is located five miles southwest of Fort Pierce and eight miles northwest of Port St. Lucie and comprises approximately sixty-nine acres.

4. The site is a greenfield site currently used as active pasture for cattle and horses. It is located in the Midway Industrial Park near Fort Pierce. The site is bordered on the north and west by a rail line along Glades Cut Off Road, and to the south by an existing electrical transmission line right-of-way. Land to the east is the undeveloped industrial park. A wastewater treatment plant is proposed for a land parcel to the north of the site. Lands surrounding the site are zoned for industrial uses.

5. The TCEC will consist initially of one nominal 300-megawatt combined cycle electrical generating unit and accessory and ancillary facilities. These additional facilities include control and maintenance buildings, water treatment and storage facilities, ultra low-sulfur light oil storage tanks, cooling tower, and electrical switchyard. An additional 900 megawatts of electrical generation facilities and accessory and ancillary facilities may be constructed on the site in the future subject

to necessary approvals under the PPSA. The proposed units will be fueled primarily with natural gas with ultra low-sulfur fuel oil as a backup fuel.

6. The County has adopted its Comprehensive Plan (Plan) pursuant to the requirements of Chapter 163, Florida Statutes, and Florida Administrative Code Chapter 9J-5. That Plan has been determined to be in compliance with the requirements of Florida law. No portion of that Plan material to the Project and the site is subject to challenge in any proceeding.

7. The site has a future land use designation on the Plan's Future Land Use Map (FLUM) of Transportation/Utilities. Electrical generation facilities are an allowed use within that future land use designation.

8. The site is zoned Utilities under the Zoning District Use Regulations in the County's Land Development Code and is shown in the Utilities Zoning District on the official Zoning Map of the County. Electric generation plants are a Conditional Use in the Utilities Zoning District.

9. Conditional Uses are defined in Section 2.00.00 of the Land Development Code as a "use that is generally compatible with the use characteristics of a zoning district, but that requires individual review of its location, design, potential effect on nearby properties, and configuration in accordance

with Section 11.07.00 [of the Land Development Code] to determine the appropriateness of the use on any particular site in the district."

10. On November 1, 2005, by County Resolution 05-388, the St. Lucie County Board of County Commissioners (Commissioners) granted a Conditional Use Permit and Major Site Plan Approval for the site. That Resolution approved the use of the site for electrical generating facilities. As part of its approval of the Conditional Use Permit and Major Site Plan Approval, the Commissioners determined that the site and its use for electrical generating facilities were consistent with the adopted Plan, including the Future Land Use Element (FLUE) and accompanying FLUM.

11. During that same meeting, FMPA agreed to, and the Commissioners approved, a Conditional Use Permit and Major Site Plan Approval for only two of the originally proposed four units, thereby reducing the Project from a 1200-megawatt, four-unit Project to a 600-megawatt, two-unit Project for purposes of the County's zoning approvals. FMPA also agreed to obtain additional zoning reviews and approvals prior to the construction of the third and fourth units proposed at the site. By its zoning action, the Commissioners did not disapprove additional future units.

12. Resolution 05-388 contains certain conditions related to the Project and the site and a site plan for the use of the site. These conditions relate to an updated landscape plan, construction traffic mitigation plans, a limitation on the fuels to be used at the site without further approval by the Commissioners, and annual contributions by FMPA toward environmental protection in the County.

13. FMPA is able to design, construct, and operate the Project in full compliance with the conditions contained in the Conditional Use Permit and Major Site Plan Approval.

CONCLUSIONS OF LAW

14. The Division of Administrative Hearings has jurisdiction of the parties and the subject matter of this proceeding pursuant to Sections 120.569, 120.57 and 403.508(2), Florida Statutes.

15. In accordance with Chapter 403, Florida Statutes, and Florida Administrative Code Chapter 62-17, proper public notice was accorded all persons, entities, and parties entitled to such notice. All necessary and required governmental agencies, as well as members of the public, either participated in or had the opportunity to participate in the land use hearing.

16. The applicable land use plans and zoning ordinances for the Project and its site are those adopted by the County.

For purposes of the land use hearing, under Section 403.508(2), Florida Statutes, the applicable "land use plan" is the Plan's FLUE and the accompanying FLUM. The applicable zoning ordinances for the Project and its site are contained in the Land Development Code and in the Conditional Use Permit issued by the Commissioners.

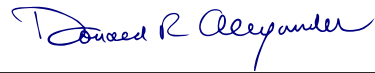
17. Unrebutted evidence at the hearing demonstrates that the Project and its site are consistent and in compliance with the County's Plan and are consistent and in compliance with the Land Development Code. Additional zoning reviews will be necessary prior to the certification of generating capacity above the initial 600 megawatts.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Siting Board enter a final order determining that the Treasure Coast Energy Center Project and its site, as described by the evidence presented at the hearing, are consistent and in compliance with existing land use plans and zoning ordinances and site-specific zoning approvals of the County, pursuant to Section 403.508(2), Florida Statutes.

DONE AND ENTERED this 30th day of March, 2006, in
Tallahassee, Leon County, Florida.



DONALD R. ALEXANDER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of March, 2006.

ENDNOTE

1/ All subsequent references are to the 2005 version of the
Florida Statutes.

COPIES FURNISHED:

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NOTICE OF RIGHT TO FILE EXCEPTIONS

All parties have the right to submit written exceptions within 15 days of the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will render a final order in this matter.