

BEFORE THE GOVERNOR AND CABINET
OF THE STATE OF FLORIDA

In Re: FLORIDA CRUSHED STONE COMPANY)
POWER PLANT SITE CERTIFICATION)
APPLICATION)
PA 82-17)

The following persons were present and participated in
the disposition of this matter:

Honorable Bob Graham
Governor

Honorable George Firestone
Secretary of State

Honorable Jim Smith
Attorney General

Honorable Gerald A. Lewis
Comptroller

Honorable Ralph D. Turlington
Commissioner of Education

FINAL ORDER OF CERTIFICATION

BY THE GOVERNOR AND CABINET:

The Governor and Cabinet, sitting as the Siting Board,
having reviewed the Recommended Order (attached hereto as
Exhibit 1), the Exceptions thereto, and a Motion to Dismiss,
having heard argument of the Parties at the duly noticed
meetings of the Governor and Cabinet on February 21, 1984,
and March 6, 1984, and otherwise being fully advised herein,
issues this Final Order of Certification and therefore it is
ORDERED:

1. The Recommended Order is approved and adopted.

Ruling on Motion to Dismiss

2. On February 20, 1984, the Sierra Club filed a
Motion to Dismiss, alleging that this Board is without
jurisdiction to render a decision on Florida Crushed Stone
Company's (FCS) application because FCS is a private entity
which will not provide electricity at retail to the public.

As stated in the Hearing Officer's Findings of Fact, the proposed facility would generate 125 megawatts of electricity, with 100 megawatts to be sold to a utility.

3. The controlling definition is found in Subsection 403.503(4), Florida Statutes, which states:

(4) "Electric utility" means cities and towns, counties, public utility districts, regulated electric companies, electric cooperatives, and joint operating agencies, or combinations thereof, engaged in, or authorized to engage in, the business of generating, transmitting, or distributing electric energy.

4. Using the ordinary meaning of the words in this definition, this Board concludes that FCS constitutes an electric utility for the purposes of the Power Plant Siting Act because, upon approval of this certification and construction of the proposed cogeneration facility, FCS will be in the business of generating electricity.

5. Based on the foregoing, the Motion to Dismiss is denied.

Rulings on Exceptions

6. Florida Mining and Materials Corporation (FMM) filed, in accordance with Subsection 120.57(1)(b)4, Florida Statutes, exceptions to the Recommended Order filed by the Hearing Officer. In reviewing and ruling on these exceptions, the Board is constrained by Subsection 120.57(1)(b)9, Florida Statutes, which provides in pertinent part:

The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law and interpretation of administrative rules in the recommended order, but may not reject or modify the findings of fact unless the agency first determines from a review of the complete record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

7. FMM's request that the Board adopt two additional Findings of Fact is rejected because said proposed findings are not material to any ultimate conclusion in this proceeding.

8. FMM's exceptions to the Hearing Officer's Findings of Fact No. 13 and No. 14 are rejected because there is competent substantial evidence in the record to support the Hearing Officer's Findings.

9. FMM's exception to the condition of certification which delegates to the Department of Environmental Regulation (DER) the authority to modify emission standards for sulfur dioxide is rejected because such delegation is authorized by Subsection 403.516(1), Florida Statutes, and because the sulfur dioxide limitations are a matter in which the DER has special expertise. Therefore, it is appropriate to delegate the decision to modify the sulfur dioxide emission standards to that Department.

10. FMM's exception to the conclusions of law that the sulfur dioxide limitations recommended by the Hearing Officer constitute Best Available Control Technology (BACT) in accordance with Rules 17-2.100(22) and 17-2.630, F.A.C., is rejected because the determination of BACT as recommended by the Hearing Officer complies with the referenced rules.

11. At the meeting on March 6, 1984, FCS and FMM agreed to resolve these disputes by including herein the following paragraph which is approved by the Board and made a condition of certification:


Intervenor, FMM, continues to have standing in this proceeding to have the opportunity to reopen the certification upon a showing of circumstances, taking into account social, economic and environmental factors, which would require a reduction of emissions in order for other facilities on a comparable basis to receive permits in the vicinity.

THEREFORE, it is ordered that certification be granted subject to the conditions incorporated in the Hearing

Officer's Recommended Order and the condition set forth in paragraph 11 of this Final Order.

DONE AND ENTERED this 9th day of March, 1984, in Tallahassee, Florida, pursuant to the vote of the Governor and Cabinet sitting as the Siting Board at a duly constituted Cabinet meeting on March 7, 1984.

BY THE GOVERNOR AND CABINET
SITTING AS THE SITING BOARD:


Bob Graham
Governor

Copies furnished:
(See Attached List)

FILING AND ACKNOWLEDGEMENT
FILED, on this date, pursuant to §120.52 (9),
Florida Statutes, with the designated Depart-
ment Clerk, receipt of which is hereby acknow-
ledged.
Gloria M. Anderson 3/12/84
Clerk Date

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