

BEFORE THE GOVERNOR AND CABINET  
STATE OF FLORIDA  
SITTING AS THE SITING BOARD

AES CEDAR BAY, INC. and  
SEMINOLE KRAFT CORPORATION,

Petitioner,

vs.

DOAH CASE NO. 88-5740

DEPARTMENT OF ENVIRONMENTAL  
REGULATION,

Respondent,

Power Plant Site  
Certification Application  
PA-88-24

and

CITY OF JACKSONVILLE, DEPARTMENT  
OF COMMUNITY AFFAIRS, PUBLIC  
SERVICE COMMISSION, ST. JOHNS  
WATER MANAGEMENT DISTRICT,  
JACKSONVILLE ELECTRIC AUTHORITY,  
CHARLES L. BOSTWICK, WILLIAM C.  
BOSTWICK, BARNETT BANKS' TRUST  
COMPANY, IMESON INTERNATIONAL  
PARK, INC., INDUSTRIAL PARK  
DEVELOPMENT CORPORATION, and  
FLORIDA ELECTRIC POWER COORDINATING  
GROUP, INC.

Intervenors.

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ORDER APPROVING CERTIFICATION

On January 22, 1991, this matter came before the Governor and Cabinet, sitting as the Siting Board, pursuant to the Florida Electrical Power Plant Siting Act (PPSA), Section 403.501, et seq., Florida Statutes, (Supp. 1990), for final action concerning a Recommended Order dated May 29, 1990, attached as Exhibit 1, and a Supplemental Recommended Order

dated December 5, 1990, attached as Exhibit 2, which recommend certification of the Cedar Bay Cogeneration Power Plant site. The Board entered an order on July 27, 1989, adopting a previous Recommended Order of the Hearing Officer which found that the proposed site was consistent with all applicable zoning ordinances and land use plans. The Public Service Commission entered a final order certifying the need for the proposed project on June 30, 1989.

On June 12, 1990, the City of Jacksonville filed a Stipulated Motion for Extension of Time for Filing exceptions until June 22, 1990. The Motion for Extension of Time is hereby GRANTED. On July 31, 1990, the applicants and the Department filed a Joint Motion to Correct and Supplement the conditions of Certification appended to the Recommended Order of May 29, 1990 (Exhibit 3). The Hearing Officer recommended that the motion be granted in the Supplement Recommended Order of December 5, 1990, and, therefore, the Joint Motion is hereby GRANTED.

As to the Recommended Order of May 29, 1990, exceptions were filed by the St. Johns River Water Management District (SJRWMD or the District), the City of Jacksonville (the City), the Department of Environmental Regulation (DER or the Department) and the applicants/petitioners, AES Cedar Bay, Inc. and Seminole Kraft Corporation (AESCB). As to the Supplemental Recommended Order exceptions were filed by the District, the City, the Department, and the Petitioner. The exceptions of all parties as well as responses thereto have been considered by the Board.

Most of the parties' exceptions to the initial Recommended Order were rendered moot by the issuance of the Supplemental Recommended Order following the proceeding held pursuant to the Board's remand order of August 24, 1990. All but one of the exceptions which remain have been rendered moot either by the subsequent agreement of the parties or by the Board's ultimate disposition of the application for certification. All exceptions are rejected for the reasons stated below.

Under Section 403.502, Florida Statutes, the Siting Board is the agent of the people of the State of Florida to ensure that the location and operation of a new electrical power plant like the project at issue "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. . . . ." On remand, the DOAH hearing officer was specifically directed to answer the question of whether the project, as initially presented to the Board, would produce minimal adverse effects to health, the environment, and the ecology "based upon the design of the project and choice of fuels." After a careful analysis of the extensive record evidence in this case, the hearing officer was persuaded that the Cedar Bay project, as modified during the remand period, "strikes the reasonable balance" required by the PPSA between the need for an electric generating facility and its expected environmental impacts. §403.502(2), Fla. Stat. (Supp. 1990)

While the Board agrees with the hearing officer's recommended conclusion on this ultimate point of law, the Board deems it necessary to discuss at greater length its rationale for augmenting the approved conditions of certification for the facility. The Board expressly rejects the exception, registered by SJRWMD and joined in by DER, which suggests that the hearing officer misapplied the "minimal adverse effects" test in the context of the legal analysis expressed in the Supplemental Recommended Order.

SJRWMD erroneously contends that "the regulatory standards of the agency parties are the only measurable standards" by which to determine whether a new power plant complies with the "minimal adverse effects" test. SJRWMD expresses a fear that an applicant will be subject to "other invisible criteria more stringent than that which is required by the standards of the party agencies." The apparent rationale behind this exception evinces a misunderstanding of the decisional role the Siting Board plays in a power plant site certification proceeding.

First, it must be noted that, where nonprocedural agency standards are specific and quantifiable, an applicant for power plant site certification must demonstrate compliance with all such standards as a matter of course or face denial of certification. Yet many agency standards, such as those governing wetland alteration under Section 403.918, Florida

Statutes, necessarily involve discretionary decisions as to whether a proposed activity is "clearly in the public interest." These nonprocedural standards, albeit unquantifiable, must also be fulfilled by a certifiable application. Finally, under the PPSA, the Board, in each case and on a case-by-case basis, must identify and uphold "the broad interests of the public" in counterpoise to the need for the generating plant.

Because a site certification is a lifetime, permanent state license to operate a power plant, the Siting Board must necessarily subject a proposed certification to scrutiny with an eye towards the long-term social and environmental effects, positive and negative, expected to be associated with power plant operations. This approach necessarily involves a broader perspective than the detail review of an application by the "party agencies" for the technical areas within the delegated jurisdiction of each. Only this broader perspective on certification issues properly reckons the "broad interests of the public" as required by law.

Professed fears of "invisible criteria" are not well-founded. The Siting Board is in fundamental agreement with the hearing officer's discussion, found at p. 34 of the Supplemental Recommended Order, concerning the need for pleading and proof of more stringent standards if a denial of certification is to be predicated on the application of such a standard. Florida Department of Transportation v. J.W.C. Co.,

Inc., 396 So.2d 778 (Fla. 1st DCA 1981) Nevertheless, after consideration of the special facts and circumstances of record in each site certification case, the Board intends to make an independent determination of whether, as a matter of law, an application for certification has demonstrated that its project not only meets minimum agency criteria for all aspects of power plant construction and operation, but also that the project, considered as a whole, can be said to have "minimal adverse effects" compared to the need for the electric generating capacity at issue. Whether a project displays "minimal adverse effects," as here, will depend on "available and reasonable methods." §403.502, Fla. Stat. (Supp. 1990).

Numerous exceptions bear on the topic of what source of water should be authorized as the permanent source of cooling water for the proposed power plant. In addition, pending motions related to a proposed Groundwater Mitigation Plan also require resolution. With respect to the issue of cooling water sources, the Board has determined that it is appropriate, in light of the stringent water use restrictions which apply in the Jacksonville community, that the utilization of ground water by the AES Cedar Bay facility should be minimized, if not eliminated altogether, in favor of the use for industrial purposes of reclaimed wastewater (which the Board prefers) or surface water.

The Board is mindful that, as is the case here, potable quality groundwater appears to be essential for certain

industrial processes. But for other industrial processes, like the cooling of turbines, where potable quality water is not technically required, potable water use should not ordinarily be authorized, if, as here, other water sources are reasonably available. This is especially important when serious water use restrictions are prevailing in many parts of Florida, restrictions expected to be in force for the foreseeable future. Industrial users must join with individual consumers to limit withdrawals from the vital drinking water aquifers without which our society cannot survive. A new power plant cannot be said to have "minimal negative effects" on state water resources if its withdrawals of potable quality groundwater for industrial purposes go beyond the degree of potable water usage which science and technology deems reasonably appropriate for environmentally safe plant operation.

Accordingly, the Board has concluded that as much of Condition XXV of the proposed Conditions of Certification as would allow the Cedar Bay plant to use groundwater for cooling purposes is contrary to Section 403.502(2), Florida Statutes, under the special circumstances of this case. As set forth below, amended Conditions of Certification IV, XXI and XXV must be incorporated into the certification approved herein to achieve the elimination of unnecessary groundwater utilization by the plant. In reaching this conclusion, the Board prefers not to alter the original DER-proposed configuration of Condition XXI, which is a standard PPSA certification condition,

although its amendment was recommended by the hearing officer by agreement of the parties in connection with the proposed Groundwater Mitigation Plan. Because groundwater will not be utilized for cooling, the proposed Groundwater Mitigation plan is no longer necessary. All exceptions and motions bearing on acceptance and/or modification of this Groundwater Mitigation Plan are, therefore, moot.

All exceptions not specifically mentioned above have been deemed non-substantive and therefore irrelevant to the outcome here. They are denied without separate discussion.

Accordingly, it is ORDERED that

1. The Recommended and Supplemental Recommended Orders issued by the Hearing Officer on May 29, 1990 and December 5, 1990, respectively, are approved and adopted except as specifically discussed in this order.

2. The Siting Board APPROVES certification of the location, construction, and operation of the AES Cedar Bay Cogeneration Project at the proposed site, subject to the attached Conditions of Certification. The additional language set forth below is substituted in Conditions IV, XXI, and XXV:

#### IV.

##### C. MAXIMUM ANNUAL WITHDRAWALS

AESCB's maximum annual withdrawals from the Floridan aquifer may not exceed 530.7 million gallons. Maximum daily withdrawals from the Floridan aquifer may not exceed 1.45 million gallons. The use of potable water from the Floridan aquifer for cooling purposes is prohibited. The use of potable water from the



Floridan aquifer for control of fugitive dust emissions is prohibited when alternative water sources are available, such as treated wastewater, shallow aquifer wells or stormwater. The use of Floridan aquifer potable water for the sole purpose of waste stream dilution is prohibited.

#### IV F.

(5) During the seventh year following issuance of this certification order, AES Cedar Bay shall submit a report to SJRWMD, DER, and BESD demonstrating compliance with these conditions of certification, Chapter 373, Florida Statutes, and the Rules of SJRWMD and DER, applicable to the consumptive use of water. Compliance shall be demonstrated with rules and statutory provisions in effect at that time.

SJRWMD shall evaluate the report and notify DER in a report of any issues regarding compliance with this certification and applicable rules and statutory provisions, including whether the consumptive use of water for the CBCP complies with those provisions of Chapter of 272, Florida Statutes, and DER's and SJRWMD's rules applicable to consumptive use and whether any conditions of certification must be amended, added, or deleted in order insure that the referenced rules and statutory provisions. SJRWMD shall respond within 30 days of receipt of AESCB's report as to whether or not it contains information sufficient to make a determination as to compliance with the referenced rules and statutory provisions. Thereafter, DER shall notify AESCB and BESD within ninety (90) days after DER's determination that AESCB's report is sufficient. Section 40C-1.610, F.A.C., shall apply. An opportunity for hearing pursuant to Section 120.57, Florida Statutes, shall be afforded any party. In any hearing requested pursuant to this condition of certification, the burden of demonstrating compliance shall be on AESCB. The continued consumptive use of water for the CBCP shall be dependent upon AESCB demonstrating and presenting sufficient data to establish that its consumptive use meets the referenced rules on statutory provisions. The Board hereby delegates to the Secretary the authority to enter final orders regarding this condition in the event an administrative hearing is requested.

## XXI. MODIFICATION OF CONDITIONS

The conditions of this certification may be modified in the following manner:

A. The Board hereby delegates to the Secretary the authority to modify, after notice and opportunity for hearing, any conditions pertaining to consumptive use of water, reclaimed water, monitoring, sampling, ground water, surface water, mixing zones, or variances to water quality standards, zones of discharge, leachate control programs, effluent limitations, air emission limitations, fuel, or solid waste disposal, right of entry, railroad spur transmission line, access road, pipelines, or designation or agents for the purpose of enforcing the conditions of this certification.

B. All other modifications shall be made in accordance with Section 403.516, Florida Statutes.

## XXV. USE OF WATER FOR COOLING PURPOSES

### A. AESCB

The CBCP may use either surface water from the Broward or St. Johns River or reclaimed water provided either by the City of Jacksonville or by the Seminole Kraft Papermill as its source of cooling water makeup.

Within six months after issuance of certification, AESCB shall submit to DER an application for a modification containing information concerning the design and operation of the plant cooling system as appropriate for the cooling water source selected. The application shall also be submitted to SJRWMD and BESD, who may report concerning the AESCB cooling water application modification. The AESCB application shall contain all information necessary to demonstrate that operation of the cooling system using either reclaimed or surface water for the preferred cooling water source selected will comply with all relevant non-procedural agency standards, or that AESCB qualifies for a variance. The AESCB application shall also include an analysis of the reasons for the selection of the requested cooling water

source over the other preferred alternate sources referred to in the above paragraph. The participating agencies shall respond within 30 days of the receipt of the application modification as to whether or not it contains information sufficient to make a determination as to compliance with non-procedural agency standards. Thereafter, DER shall notify AESCB, BESD,, and SJRWMD as to its determination concerning the application and provide a copy to AESCB within 60 days after DER's determination that the application is sufficient. DER shall indicate its approval or disapproval of the selected cooling water system proposal within 90 days of its determination that the application is sufficient. Any modifications of the certification or the conditions of certification including variances, exceptions, or mixing zones shall be made pursuant to the procedures set forth in Section 403.516, Fla. Stat., and/or Fla. Admin. Code Rule 17-17.211.

Reclaimed domestic waste water used in the AESCB cooling tower shall be disinfected prior to use. Disinfectant levels in the cooling tower makeup water shall be continuously monitored, prior to insertion in the cooling tower. The reclaimed water shall be treated so as to obtain no less than a 1.0 mg/l free chlorine residual after fifteen (15) minutes' contact time or its equivalent. Chlorination shall occur at a turbidity of 5 Nephelometric Turbidity Units (NTU) or less, unless a lesser degree of disinfection is approved by the Department upon demonstration of successful viral kill.

#### NOTICE OF RIGHTS

Any party to this certification proceeding has the right to seek judicial review of this 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 Siting Board in the Department of Environmental Regulation Office of General Counsel, 2600 Blair Stone Road,

Tallahassee, Florida 32399-2400; and by filing a copy 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 Siting Board.

DONE AND ORDERED this 14 day of February, 1991, in Tallahassee, Florida, pursuant to the vote of the Governor and Cabinet sitting as the Siting Board, at a duly-noticed and constituted Cabinet meeting on January 22, 1991.

**FILING AND ACKNOWLEDGEMENT**

FILED, on this date, pursuant to S120.52 Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

Kathy C. Carter 2-20-91  
Clerk Date

**THE GOVERNOR AND CABINET  
SITTING AS THE SITING BOARD**

BY: Lawton Chiles  
THE HONORABLE LAWTON CHILES  
GOVERNOR

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following by U.S. Mail on this 18 day of February, 1991.



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