

BEFORE THE GOVERNOR AND CABINET
OF THE STATE OF FLORIDA

IN RE: HARDEE POWER STATION)
POWER PLANT SITE CERTIFICATION)
APPLICATION, TECO POWER SERVICES,)
TAMPA ELECTRIC COMPANY, AND)
SEMINOLE ELECTRIC COOPERATIVE, INC.)
PA 89-25)

DOAH CASE NO. 89-3560
OGC FILE NO. 89-0703

FINAL ORDER

BY THE GOVERNOR AND CABINET

On November 27, 1990, this matter came before the Governor and Cabinet, sitting as the siting Board pursuant to the Florida Electrical Power Plant Siting Act, Section 403.501 et seq., Florida Statutes (1989), for final action concerning a Recommended Order dated October 15, 1990, attached as Exhibit A, which recommends certification of the Hardee Power Station. On November 8, 1990,¹ Intervenor Katzen and Slack filed exceptions to the Recommended Order, attached as Exhibit B. On November 16, 1990, Co-Applicants TECO Power Services Corporation (TPS), Tampa Electric Company (TECO) and Seminole Electric Cooperative, Inc. (SECI) filed a Response to those exceptions.

Intervenor's Exceptions 1-4 contest to findings of fact set forth in the Recommended Order. Section 120.57(1)(b)10., Florida Statutes, limits an agency's authority to reject or modify findings of fact to the situation when, based upon

¹Intervenor's exceptions were filed late with the consent of the Co-applicants.

review of the entire record, it can be concluded that such findings "were not based upon substantial competent evidence or the proceedings upon which the findings were based did not comport with the essential requirements of law." Heifetz v. Department of Business Regulation, 475 So.2d 1277 (Fla. 1st DCA 1985) Upon review of the record, it is clear in this case that the findings of fact contested by the Intervenor's' Exceptions are supported by competent substantial evidence. Therefore, Intervenor's' Exceptions Nos. 1-4 are denied.

Intervenor's' exception No. 5 objects to several conclusions of law contained in the Recommended Order. For the Board to adopt the Intervenor's' suggested conclusions of law, as proposed in paragraphs A through G under Exception No. 5, the Board would be required to disregard numerous findings of fact contained in the Recommended Order. As already noted, there is no basis for rejecting any findings of fact. It is settled that the Board may not reject well-supported findings of fact by treating them as conclusions of law. Leapley v. Board of Regents, 423 So.2d 431 (Fla. 1st DCA 1982)

The Intervenor's' contention that the procedure for alternate corridor consideration established in Section 403.527(5), Florida Statutes, pursuant to the Transmission Line Siting Act should be made available in this Power Plant Siting Act proceeding is rejected. The intention of the Florida Legislature is specifically articulated in each act. Had the

Legislature intended the same procedure to apply, it would have so stated. No provision was made for alternate corridor consideration under the Power Plant Siting Act.

The Intervenor's "denial of due process" claims are rejected as without legal foundation and contrary to the facts of this case, which demonstrate that the Co-Applicants have met or exceeded all statutory notice requirements. Moreover, Intervenor's were given full opportunity to be heard. Intervenor's have no entitlement to any process beyond that specified in the Act. Peoples State Bank of Indian River County v. State, Department of Banking and Finance, 395 So.2d 52 (Fla. 1980) Consequently, Intervenor's Exception No. 5 is rejected.

Pursuant to Sections 403.501-403.517, Florida Statutes (1989), having reviewed the Recommended Order, the Exceptions to Recommended Order, the Responses to the Exceptions, argument of counsel, and otherwise being fully advised herein, it is

ORDERED:

1. The Exceptions to the Recommended Order are rejected.
2. The Recommended Order (dated October 15, 1990) prepared by the Hearing Officer pursuant to Section 403.508(3), F.S., concerning the certification of the proposed Hardee Power Station is adopted in toto.
3. The Siting Board finds that the proposed Hardee Power Station should be certified subject to the conditions of certification included in the Recommended Order and attached hereto.

4. Pursuant to Section 403.509(3), F.S., this Final Order shall constitute approval for the granting of any necessary easements by the Game and Fresh Water Fish Commission over lands within the Cecil M. Webb Wildlife Management Area, in accordance with the Conditions of Certification.

Any party to this Order has the right to seek judicial review of the 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 Siting Board, the Department of Environmental Regulation in the Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within thirty (30) days from the date this Order is filed with the clerk of the Siting Board.

DONE and ENTERED this 27th day of November, 1990, in Tallahassee, Florida pursuant to the vote of the Governor and Cabinet, sitting as the Siting Board, at a duly constituted Cabinet meeting November 27, 1990.

FILING AND ACKNOWLEDGEMENT

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

Randy C. Carter
Clerk

11-27-90
Date

BY THE GOVERNOR AND CABINET
SITTING AS THE SITING BOARD

Bob Martinez
THE HONORABLE BOB MARTINEZ
GOVERNOR

I hereby certify that a true and correct copy of the foregoing Final Order and its attachments have been furnished by U.S. Mail to the following this 28th day of November, 1990:

Lawrence J. Curtin, Esq.
P.O. Drawer 810
Tallahassee, FL 32302

William H. Green, Esq.
James S. Alves, Esq.
P.O. Box 6526
Tallahassee, FL 32314

Michael P. Haymans, Esq.
P.O. Box 2159
Port Charlotte, FL 33949

James V. Antista, Esq.
Fla. Game & Fresh Water Fish Comm.
620 S. Meridian Street
Tallahassee, FL 32399-1600

Eugene E. McClellan, Jr., Esq.
Department of Natural Resources
3900 Commonwealth Blvd.
Tallahassee, FL 32399-3000

Gary Vorbeck, Esq.
207 East Magnolia Street
Arcadia, FL 33821

Beth Ann Sullivan, Esq.
Charlotte County
18500 Murdock Circle
Port Charlotte, FL 33948-1094

Mark F. Carpanini, Esq.
Polk County
P.O. Box 60
Bartow, FL 33830

H. Hamilton Rice, Esq.
Manatee County
P.O. Box 1000
Brandenton, FL 34205

Richard A. Lotspeich, Esq.
P.O. Box 271
Tallahassee, FL 32302

William Powell, Esq.
City of Cape Coral
P.O. Box 150027
Cape Coral, FL 33915-0027

Thomas W. Reese, Esq.
Manasota-88, Inc.
123 8th Street North
St. Petersburg, FL 33701

Harry R. Bishop, Esq.
Department of Transportation
605 Suwannee Street - M.S. #58
Tallahassee, FL 32399-0458

David E. Bruner, Esq.
S.W. Florida Regional Planning Council
1114-B North Collier Blvd.
Marco Island, FL 33937

Angela M. Anderson, Esq.
Lee County
P.O. Box 398
Fort Myers, FL 33902-0398

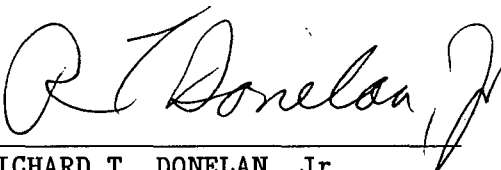
Ralph Artigliere, Esq.
Central Fla. Regional Planning Council
P.O. Box 3
LaKeland, FL 33802-0003

Frederick M. Karl, Esq.
Hillsborough County
P.O. Box 1110
Tampa, FL 33602

L. Kathryn Funchess, Esq.
S.W. Florida Water Management District
2379 Broad Street
Brooksville, FL 34609-6899

Sarah Nall, Esq.
South Fla. Water Management District
P.O. Box 24680
West Palm Beach, FL 33416-4680

David C. Holloman, Esq.
City of Arcadia
P.O. Drawer 592
Arcadia, FL 33821


RICHARD T. DONELAN, Jr.
Assistant General Counsel
Florida Department of Environmental
Regulation
2600 Blair Stone Road
Tallahassee, FL 32399-2400