

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

FILED

2007 APR -6 A 11:44

DIVISION OF
ADMINISTRATIVE
HEARINGS

In Re: SEMINOLE ELECTRIC)
COOPERATIVE SEMINOLE GENERATING)
STATION UNIT 3 POWER PLANT SITING)
APPLICATION NO. PA 78-10A2.)

OGC CASE NO. 06-0780
DOAH CASE NO. 06-0929EPP

ORDER OF REMAND

On February 23, 2007, the Administrative Law Judge ("ALJ") assigned by the Division of Administrative Hearings ("DOAH"), issued an order closing file that granted the parties' request to cancel the certification hearing in accordance with Section 403.508(6), Florida Statutes. The order was issued pursuant to a Joint Stipulation Between The Parties filed on February 22, 2007. Therefore, under Section 403.509(1)(a), Florida Statutes, the Department of Environmental Protection ("DEP" or "Department") is required to prepare and enter a written order determining whether an application should be approved in accordance with the terms of the Florida Electrical Power Plant Siting Act ("PPSA") and the stipulation of the parties in requesting cancellation of the certification hearing. The matter is now before the Secretary of DEP for agency action.

STATEMENT OF THE ISSUE

The issue to be decided in this proceeding is whether DEP, acting in lieu of the Siting Board, should approve certification in accordance with the PPSA, Sections 403.501, et seq., Florida Statutes, authorizing Seminole Electric Cooperative, Inc., ("Seminole" or "Applicant") to construct and operate a new electrical generating unit at Seminole's existing

Seminole Generating Station site (consisting of existing Units 1 and 2) in an unincorporated area of Putnam County.

PRELIMINARY STATEMENT

On March 9, 2006, Seminole filed a Site Certification Application ("SCA") to construct and operate a new electrical power plant unit ("Unit 3") at the existing Seminole Generating Station ("SGS") site in Putnam County, Florida. The existing site, which presently includes Units 1 and 2 and directly associated facilities, is located approximately five miles north of the city of Palatka.

The Department determined that Seminole's SCA was complete on March 24, 2006. DEP then issued a Notice of Insufficiency on May 15, 2006. Seminole filed its Response to the Department's Notice of Insufficiency on May 30, 2006, and then submitted a Response to Sufficiency Request for Information on June 30, 2006. On July 26, 2006, the Department determined that Seminole's SCA was sufficient.

Pursuant to Section 403.507, Florida Statutes, several reviewing agencies submitted agency reports and proposed Conditions of Certification on Seminole's Unit 3 SCA. On November 9, 2006, the Department issued its Staff Analysis Report ("SAR"), incorporating the reports and recommendations of the reviewing agencies. In the SAR, the Department recommended certification of the proposed Seminole Generating Station Unit 3, subject to a comprehensive set of Conditions of Certification.

On June 1, 2006, a land use hearing was held for the purposes of determining whether Seminole's Unit 3 project was consistent and in compliance with local land use plans and zoning ordinances of Putnam County. On August 31, 2006, the assigned ALJ entered a Recommended Order, which concluded that the Unit 3 project and site were

consistent and in compliance with Putnam County's land use plans and zoning ordinances. On December 5, 2006, the Siting Board unanimously approved a Final Order adopting the land use Recommended Order, and finding that the Unit 3 project was consistent and in compliance with applicable land use plans and zoning ordinances. The Siting Board's Final Order on Land Use was signed by the Governor and issued on December 8, 2006.

Public notice of the filing of the Site Certification Application was published by the Applicant in the Palatka Daily News on April 7, 2006, and by the Department on April 7, 2006, in the Florida Administrative Weekly ("FAW"). Pursuant to Section 403.5115(1)(e), Florida Statutes, notice of the certification hearing originally scheduled to begin on January 9, 2007, was published in the Palatka Daily News on November 25, 2006, and by the Department in the FAW on November 22, 2006. By Order of the ALJ dated January 8, 2007, the certification hearing was rescheduled to March 15, 2007. That notice was published in the Palatka Daily News on January 18, 2007.

On February 22, 2007, the Applicant, DEP, the Department of Community Affairs, the Department of Transportation, the Sierra Club, and the St. Johns River Water Management District filed a Joint Stipulation addressing certification issues. In the Joint Stipulation, all parties stipulated that they do not object to certification of Seminole's Unit 3 project subject to the Conditions of Certification included in the SAR.

The Joint Stipulation of February 22, 2007, also stipulated pursuant to Section 403.508(6)(a), Florida Statutes, that there are no disputed issues of fact or law to be raised at the certification hearing and requested that the ALJ relinquish jurisdiction. Sufficient time remained to publish public notices of the cancellation of the hearing at least three days prior to the scheduled hearing date, as required under Section 403.508(6)(a), Florida Statutes.

The ALJ timely issued an order closing file on February 23, 2007, granting the parties' request to cancel the certification hearing. DEP published notice of cancellation of the certification hearing in the FAW on March 9, 2007. The Applicant published a similar notice on March 10, 2007, in the Palatka Daily News.

AUTHORITY FOR REMAND

The authority of a state agency to remand an administrative case back to DOAH for further proceedings where additional findings of fact and related conclusions of law are critical to the issuance of a coherent final order is well established by the controlling case law of Florida. See, e.g., Dept. of Environmental Protection v. Dept. of Management Services, Div. of Adm. Hearings, 667 So.2d 369 (Fla. 1st DCA 1995); Collier Development Corp. v. State, Dept. of Environmental Regulation, 592 So.2d 1107 (Fla. 2d DCA 1991); Dept. of Professional Regulation v. Wise, 575 So.2d 713 (Fla. 1st DCA 1991); Manasota 88, Inc. v. Tremor, 545 So.2d 439 (Fla. 2d DCA 1989); Miller v. State, Dept. of Environmental Regulation, 504 So.2d 1325 (Fla. 1st DCA 1987); Cohn v. Dept. of Professional Regulation, 477 So.2d 1039, 1047 (Fla. 3d DCA 1985).

NECESSITY FOR REMAND

It is normally the duty of the ALJ to make basic findings of fact in a formal proceeding where agency action is being formulated. See, e.g., Putnam County Environmental Council v. Georgia Pacific Corp., 24 FALR 4674, 4685 (Fla. DEP 2002); Miccosukee Tribe of Indians v. South Florida Water Management District, 20 FALR 4482, 4491 (Fla. DEP 1998), *aff'd*, 721 So.2d 389 (Fla. 3d DCA 1998); Barringer v. Speer and Associates, 14 FALR 3660, 3667 n.8 (Fla. DER 1992); see also Save Anna Maria, Inc. v. Dept. of Transportation, 700 So.2d 113, 116 (Fla. 2d DCA 1997); 1800 Atlantic Developers v. Dept. of Environmental

Regulation, 552 So.2d 946, 955 (Fla. 1st DCA 1989), *rev. denied*, 562 So.2d 345 (Fla. 1990).

In PPSA cases Section 403.508(6)(a), Florida Statutes, permits the parties to request that the certification hearing be cancelled and the matter remanded to the Department when the parties stipulate that there are no disputed issues of fact or law to be raised at the certification hearing. If such a remand occurs, Section 403.509(1)(a), Florida Statutes, requires the Secretary to "act upon the application by written order in accordance with the terms of this act and the stipulation of the parties in requesting cancellation of the certification hearing." The PPSA requires that the Secretary consider how the location, construction, and operation of the proposed project will:

- (e) Effect a reasonable balance between the need for the facility as established pursuant to s. 403.519 and the impacts upon air and water quality, fish and wildlife, water resources, and other natural resources of the state resulting from the construction and operation of the facility.

- (f) Minimize, through the use of reasonable and available methods, the adverse effects on human health, the environment, and the ecology of the land and its wildlife and the ecology of state waters and their aquatic life.

- (g) Serve and protect the broad interests of the public.

The Joint Stipulation merely stipulated that there were no disputed issues of fact to be raised at the certification hearing. However, the Joint Stipulation did not contain specific findings of fact that would allow me to fulfill my obligations to consider and balance the factors listed above. It is therefore necessary to remand this matter to DOAH for the purpose of further developing a factual record through either further administrative proceedings or submittal of a stipulation that provides detailed facts addressing the factors set forth above.

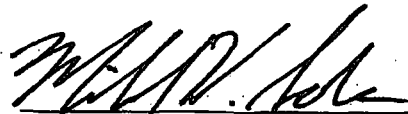
It is therefore ORDERED:

This proceeding is remanded to DOAH for the purpose of developing a factual record through either further administrative proceedings or submittal of a stipulation that provides detailed facts addressing the factors set forth above.

Any party to this proceeding has the right to seek judicial review of the Final 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 Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 35, Tallahassee, Florida 32399-3000; 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 30 days from the date this Final Order is filed with the clerk of the Department.

DONE AND ORDERED this 4th day of April, 2007, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



MICHAEL W. SOLE
Secretary

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

FILED ON THIS DATE PURSUANT TO § 120.52,
FLORIDA STATUTES, WITH THE DESIGNATED
DEPARTMENT CLERK, RECEIPT OF WHICH IS
HEREBY ACKNOWLEDGED.

Syndie Kinsey
CLERK

4-4-07
DATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Order of Remand has been sent by United States Postal Service to:

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this 5th day of April, 2007.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



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