



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: April 3, 2001

TO: Division of Records and Reporting (Moses)

FROM: Division of Safety and Electric Reliability (Futrell) *MF*
 Division of Legal Services (Elias) *RUE* *JDS*

RE: Docket No. 981042-EM - Joint petition for determination of need for an electrical power plant in Volusia County by the Utilities Commission, City of New Smyrna Beach, Florida, and Duke Energy New Smyrna Beach Power Company, Ltd., LLP.

Your memo of March 23, 2001 advised that the above listed docket had been restored to Active status. This docket should be closed as there are no pending issues that need to be addressed by the Commission regarding the petition.

On March 22, 1999, the Commission issued Order No. PSC-99-0535-FOF-EM approving the joint petition for determination of need. This order was subsequently appealed by Florida Power and Light Company, Florida Power Corporation, Tampa Electric Company, and the Florida Wildlife Federation. On April 20, 2000, the Florida Supreme Court issued its opinion reversing "the order of the PSC on the basis that the granting of the determination of need exceeds the PSC's authority pursuant to section 403.519, Florida Statutes (1997)."

Motions for Rehearing were submitted following the issuance of the Supreme Court opinion. On September 28, 2000, the Court issued its revised opinion in which one sentence was modified, but the reversal of the Commission's order was sustained and not remanded to the Commission, i.e. no further action required. Also, in December, the Utilities Commission, City of New Smyrna Beach, Florida filed an appeal of the Florida Supreme Court's Order with the United States Supreme Court. Subsequently, the Court did not accept the appeal for consideration.

No further action is required by the Commission in regards to this case, and it should be closed.

cc: Joe Jenkins
 Roland Floyd
 Tom Ballinger

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