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RECORDS AND  
REPORTING

September 18, 1998

HAND DELIVERED

Ms. Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: 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., L.L.P.  
FPSC Docket No. 981042-EU

Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Tampa Electric Company's Petition for Leave to Intervene.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

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FPSC-BUREAU OF RECORDS

Sincerely,

Lee L. Willis

LLW/pp  
Enclosures

cc: All parties of record (w/enc.)

DOCUMENT NUMBER-DATE

10305 SEP 18 98

FPSC-RECORDS/REPORTING

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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., L.L.P. )  
\_\_\_\_\_ )

DOCKET NO. 981042-EU  
FILED: September 18, 1998

**TAMPA ELECTRIC COMPANY'S  
PETITION FOR LEAVE TO INTERVENE**

Tampa Electric Company ("Tampa Electric" or "the company"), pursuant to Florida Administrative Code Rule 25-22.039, petitions the Florida Public Service Commission ("the Commission") for leave to intervene in the above docket and, as grounds therefor, says:

**Introduction**

1. The name and address of the affected agency are:

Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

2. The name and address of the petitioner are:

Tampa Electric Company  
Post Office Box 111  
Tampa, Florida 33601

3. All pleadings, motions, orders and other documents directed to the petitioner are

to be serve on:

Lee. L. Willis  
James D. Beasley  
Ausley & McMullen  
Post Office Box 391  
Tallahassee, FL 32302

Angela Llewellyn  
Regulatory Specialist  
Tampa Electric Company  
Post Office Box 111  
Tampa, FL 33601

DOCUMENT NUMBER-DATE  
10305 SEP 18 88  
000412  
FPSC-RECORDS REPORTING

**Tampa Electric has Substantial Interests Which  
Will be Determined and Affected in this Proceeding**

4. Tampa Electric is a public utility subject to the jurisdiction and regulation of this Commission under Chapter 366, Florida Statutes. Among Tampa Electric's duties as a public utility is to plan for and meet the demands of its customers for electric service. Meeting this obligation requires Tampa Electric to select the most viable and cost-effective resource alternatives consistent with system integrity and reliability and detailed and comprehensive long range plans.

5. Utility resource planning is subject to the continuing review and involvement of this Commission. The Commission has exercised jurisdiction over planning for a coordinated electric power grid in Florida under Section 366.04(5), Florida Statutes. This jurisdiction compliments the Commission jurisdiction under the Florida Electric Power Plant Siting Act, Section 403.501-403.518, Florida Statutes.

6. The Commission's jurisdiction extends beyond the planning phase. For instance, under Section 366.05(8), Florida Statutes, the Commission is empowered to take action to correct inadequacies which it may detect in the energy grids. In certain circumstances the Commission may require the installation of new facilities or the repair of existing utility facilities, including generating plant and transmission facilities.

7. Tampa Electric is subject to the exercise of the Commission's jurisdiction under Section 366.04(5) and 366.05(8). The Petitioner, Duke Energy New Smyrna Beach Power Company, Ltd., L.L.P. ("Duke") is not and will not be. Tampa Electric must fulfill its obligation subject to the Commission's jurisdiction and the company's ability to do so could be significantly affected by site certification of the proposed Project. If this proposed project is ill advised or does not operate successfully, a burden will be placed on Tampa Electric. Duke states in its

petition: "If the plant turns out not to be economic, customers will incur no financial harm" (Petition at paragraph 22). This is not the case, and Tampa Electric may have to meet at least some of the unfulfilled service needs under Sections 366.04 and 366.05, Florida Statutes.

8. Tampa Electric serves over 525,000 retail customers in Peninsular Florida and operates approximately 3,600 megawatts of generating capacity to serve their load. The company has over \$3.7 billion invested in plant in service and annual capital and non-fuel O&M budgets of hundreds of millions of dollars.

9. Tampa Electric has a service obligation and a concurrent and continuing planning responsibility which has resulted in and will continue to result in a significant investment devoted to serving its customers. The manner in which the company carries out its obligations as a public utility and serves its customers needs will be significantly affected by the uncertainty that would be created if the Commission were to grant the determination of need Duke seeks in this proceeding.

10. In its Petition Duke seeks authority to build a power plant "consistent with Peninsular of Florida" need. If Duke is granted the relief requested, the utilities over which the Commission retains Grid Bill authority face significant uncertainties in their planning processes owing to the lack of any commitment as to how Duke will operate its proposed plant and dispose of its output.

11. Duke premises its determination of need request on the need for power of all Peninsular Florida utilities including Tampa Electric. As such, Tampa Electric's ability to plan, build and operate its generation and transmission systems to meet its service obligations and the needs of its customers is subject to determination in this proceeding. Tampa Electric currently has approximately 9.3% of the total Peninsular Florida generating capacity, 9.1% of the summer

load for Peninsular Florida, 7.5% of the winter load for Peninsular Florida and 7.5% of Peninsular Florida's net energy for load.

12. Duke has requested authority to build a 514 megawatt power plant, yet its Petition makes it clear that Duke has no definitive contract to sell any of the power from its proposed unit. As to the vast majority of its capacity, 94% (484 out of 514 megawatts), Duke has no customers, no obligation to serve, and no co-applicant.

13. Section 403.519, Florida Statutes, requires specific findings regarding the need for the Project. Both the Commission and the Supreme Court of Florida have held that these findings are utility and unit specific. Because Duke has no statutory obligation to serve and because Duke lacks a contractual obligation to serve, at least as to 94% of its unit's capacity, Duke cannot demonstrate that it has a need for its proposed power plant.

14. Duke claims that its proposed Project is needed to meet the requirements of "Peninsular Florida." Duke is only premising its determination of need upon the need for power of Tampa Electric and the other 58 utilities comprising "Peninsular Florida" without commitments to serve any of the loads of these utilities.

15. If the Commission determines, premised upon "Peninsular Florida's" need, that Duke has met the statutory criteria under Section 403.519, Florida Statutes, then Tampa Electric's ability to (1) plan its transmission system to meet its customers' needs, (2) plan its generation additions to meet its customers' needs, (3) build and operate transmission facilities to meet customers' needs, (4) build and operate generation to meet its customers' needs, and (5) secure certification of transmission and generating facilities necessary to discharge its obligation to serve and meet its customers' needs may be adversely affected. An affirmative determination of need as sought by Duke will determine the substantial interest of every of Peninsular Florida

utility and could adversely affect the ability of every Peninsular Florida utility to plan, certify, build and operate transmission and generation facilities necessary to meet its obligation to serve.

16. This Commission's Rule 25-22.080 and 25-22.081, Florida Administrative Code, recognize this impact on Tampa Electric's interests. For instance, Rule 25-22.081 requires the Petition to include "a general description of the utility or utilities primarily affected." Here, even though Duke proposes that it will sell to utilities in Peninsular Florida, it fails to describe Tampa Electric. Similarly, Rule 25-22.080 requires notice of the commencement of the proceeding to the "affected utility or utilities, if appropriate."

17. The Petitioners' proposal may reduce natural gas availability within Florida, result in the uneconomic duplication of generating facilities, and utilize transmission facilities which will adversely affect the ability of Tampa Electric and other utilities to meet their service obligations. These consequences must be addressed and warrant Tampa Electric's intervention. Indeed, the Commission's responsibility to avoid the adverse impacts from the uneconomic duplication of facilities has been expressly recognized by the courts.

18. In a long and well developed line of cases, this Commission has previously recognized the substantial interest of a utility purchaser of wholesale power in a need determination proceeding. The Commission has held that the utility purchaser of wholesale power is an indispensable party in a need determination proceeding and that for the specific mandates of the Siting Act to be meaningful, they must be answered from the purchasing utility's perspective. Because Duke's Petition is premised upon Tampa Electric's and other Peninsular Florida utilities' need for power, Tampa Electric should be recognized as an indispensable party and permitted to intervene.

19. The Petition in this proceeding acknowledges that Tampa Electric has a substantial interest sufficient to support standing to intervene. For instance, the Petition states that the Project will displace significant amounts of electricity in 2002 and even greater amounts in the following year (Petition at page 26). According to the Petitioners, this generation in part is expected to displace gas-fired generation units (Petition at page 27). This displacement may have an adverse effect on Tampa Electric which owns and is planning to construct additional gas-fired generating capacity during the time frames addressed in the Petition.

20. Contrary to the allegation of paragraph 23 of the Petition, the merchant plant will pose risk to Florida's electric customers and will likely impose obligations on Florida utilities. The Petitioners provide absolutely no information on terms or conditions of possible energy and capacity sales except to point out that they will not be cost based. There are no contracts for the sale of energy or capacity from the Project that have been described or provided. Under these circumstances, it is clear that Tampa Electric's ability to fulfill its obligation to serve will be adversely affected. Hence, Petitioners provide no assurance that their "competitively priced" capacity sales will not be used to displace existing capacity sales arrangements. Nor do Petitioners provide any discernable commitment to serve future identified needs.

21. This need determination proceeding is the only one where Tampa Electric can protect its interests. If the determination of need is entered, then there will be no necessary additional proceeding addressing Tampa Electric's interests. Even a proceeding before this Commission to address a potential purchase by Tampa Electric may be limited because of stare decisis or federal preemption. In any event, such a proceeding could not re-evaluate the underlying need determination.

**Notice of Agency Decision**

22. There has been no agency decision in this proceeding; therefore, Tampa Electric cannot provide a statement of when and how it received notice of the agency decision.

**Disputed Issues of Material Fact**

23. The Petition and Exhibit raise numerous disputed issues of material fact. Tampa Electric has analyzed the list of disputed issues of material fact contained in Attachment A to the Petition for Leave to Intervene filed by Florida Power & Light Company in this proceeding, believes them to be significant issues that must be resolved, and incorporates the same herein by reference. However, there well may be other disputed issues of material fact not readily apparent on the face of the filing, and Tampa Electric reserves the right to raise additional disputed issues of material fact.

**Ultimate Facts Alleged**

24. Duke has no obligation to provide service and cannot justify the needs for its Project based upon its own need. Duke is relying upon the need of the 59 Florida utilities comprising "Peninsular Florida" to attempt to demonstrate the need for its Project. As one of the 59 utilities Duke relies upon, Tampa Electric has substantial interests which will be determined in this proceeding. The relief sought in this case would injure Tampa Electric's ability to plan, certify, build and operate transmission and generation facilities necessary to meet its service obligation and the needs of its customers. The relief sought in this case would adversely affect Tampa Electric by reducing natural gas availability in Florida, creating uneconomic duplication of facilities, and making it unnecessarily burdensome to plan and provide transmission capacity



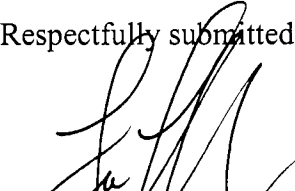
necessary to meet Tampa Electric's service obligations. The relief sought in this case would adversely affect Tampa Electric's planned reliance upon gas-fired generation. The relief sought in this proceeding would introduce tremendous uncertainty in the planning processes for Tampa Electric and other Florida utilities, adversely affecting their ability to plan their generation and transmission facilities. Because Tampa Electric has substantial interests which will be determined in this proceeding and because Tampa Electric has substantial interests which will be adversely affected by this proceeding, Tampa Electric has an interest which warrants intervention in this proceeding under Florida Administrative Code Rule 25-22.039 and Section 120.52(12), Florida Statutes.

25. The proposed Project has not been shown to be needed for electric system reliability and integrity. The proposed Project has not been shown to be needed for adequate electricity at a reasonable cost. The proposed Project has not been shown to be the most cost-effective alternative available. It has not been shown that there are not conservation measures reasonably available to the Utilities Commission, New Smyrna Beach to mitigate the alleged need for the Project.

WHEREFORE, Tampa Electric petitions for leave to intervene and participate as a party to this proceeding.

DATED this 19<sup>th</sup> day of September, 1998.

Respectfully submitted,



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LEE L. WILLIS  
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(850) 224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing Petition for Leave to Intervene, filed on behalf of Tampa Electric Company, has been furnished by U S. Mail or hand delivery (\*) on this 19<sup>th</sup> day of September, 1998.

Ms. Leslie J. Paugh  
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Division of Legal Services  
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Mr. Ronald L. Vaden, Utilities Director  
Utilities Commission  
City of New Smyrna Beach  
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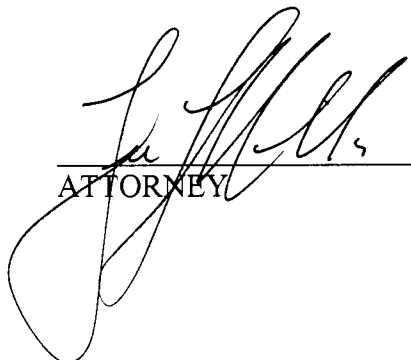
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