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September 24, 1998

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Ms. Blanca Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
4750 Esplanade Way, Room 110  
Tallahassee, Florida 32399

RE: Docket No. 981042-EM

Dear Ms. Bayo:

Enclosed for filing please find the original and fifteen (15) copies of Petitioners' Response in Opposition and Motion to Deny Tampa Electric Company's Petition for Leave to Intervene.

Sincerely,

RECEIVED & FILED

*[Signature]*  
FPSC-BUREAU OF RECORDS

*[Signature]*  
John T. LaVia, III

JTLIII:rjd

- ACK   ✓
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- APP
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- EAG   *Fidwell*
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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Joint Petition for )  
Determination of Need for an ) DOCKET NO. 981042-EM  
Electrical Power Plant in Volusia )  
County by the Utilities Commission,) FILED: SEPT. 24, 1998  
City of New Smyrna Beach, Florida, )  
and Duke Energy New Smyrna Beach )  
Power Company Ltd., L.L.P. )  
\_\_\_\_\_)

PETITIONERS' RESPONSE IN OPPOSITION AND MOTION TO DENY TAMPA  
ELECTRIC COMPANY'S PETITION FOR LEAVE TO INTERVENE

The Utilities Commission, City of New Smyrna Beach, Florida ("UCNSB" or "Utilities Commission") and Duke Energy New Smyrna Beach Power Company Ltd., L.L.P. ("Duke New Smyrna"), collectively referred to as "the Petitioners," pursuant to Commission Rule 25-22.037(2)(b), Florida Administrative Code ("F.A.C."), hereby respectfully submit this response in opposition and motion to deny the petition for leave to intervene filed herein by Tampa Electric Company ("TECO's Petition").

SUMMARY

On September 18, 1998, TECO filed with the Commission its Petition to Intervene in this proceeding. TECO's Petition to Intervene is an abbreviated version of Florida Power & Light Company's Petition for Leave to Intervene ("FPL's Petition to Intervene") which was filed with the Commission on August 27, 1998. In fact, the majority of the allegations in TECO's Petition to Intervene are identical to the allegations and argument presented in FPL's Petition to Intervene. Compare, e.g., TECO's Petition to Intervene at 4-5, ¶ 15 with FPL's Petition to Intervene at 8-9, ¶

16 (TECO quoting FPL verbatim except for the use of the terms "may" and "could" be adversely affected instead of "will" be adversely affected); compare also TECO's Petition to Intervene at 5-6, ¶ 16-21 with FPL's Petition to Intervene 8-11, 14-16, ¶¶ 17, 18, 21, 27, 28 and 16 respectively. The remainder of TECO's allegations closely paraphrase FPL's allegations. In sum, TECO raises no grounds in support of its intervention that were not raised in FPL's Petition to Intervene. Accordingly, in an attempt to avoid unduly cluttering the pleading file in this docket by filing a duplicative response, as their response to TECO's Petition to Intervene, Petitioners hereby adopt and incorporate by reference their Response in Opposition and Motion to Deny Florida Power & Light Company's Petition for Leave to Intervene and Accompanying Memorandum of Law filed in this proceeding on September 8, 1998.

**RELIEF REQUESTED**

WHEREFORE, based on the foregoing, the Utilities Commission, City of New Smyrna Beach, Florida, and Duke Energy New Smyrna Beach Power Company, Ltd., L.L.P. respectfully request that the Commission DENY the Petition to Intervene in this proceeding filed by Tampa Electric Company.<sup>1</sup>

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<sup>1</sup>In accord with In Re: Application for Amendment of Certificate No. 427-W to Add Territory in Marion County by Windstream Utilities Company, 97 FPSC 4:556, the Petitioners are responding to TECO's petition as a motion, and therefore are requesting denial thereof. Also, since TECO is not yet a party, but rather only a movant, the Petitioners are moving to deny the motion rather than to dismiss TECO. If TECO is granted intervention, the Petitioners reserve their rights to move to dismiss TECO at any time during these proceedings.

Respectfully submitted this 24th day of September, 1998.



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City of New Smyrna Beach, Florida,

and

Duke Energy New Smyrna Beach Power  
Company Ltd., L.L.P.

**CERTIFICATE OF SERVICE**  
**DOCKET NO. 981042-EM**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by hand delivery (\*) or by United States Mail, postage prepaid, on the following individuals this 24th day of September, 1998:

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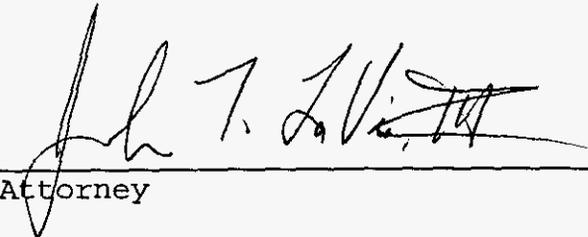
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