

ORIGINAL

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: OCTOBER 26, 1998
City of New Smyrna Beach, Florida,)	
and Duke Energy New Smyrna Beach)	
Power Company Ltd., L.L.P.)	

DUKE ENERGY NEW SMYRNA BEACH POWER COMPANY LTD., L.L.P.'S
OBJECTIONS TO FLORIDA POWER & LIGHT COMPANY'S SECOND
SET OF INTERROGATORIES (NOS. 38-111)

Duke Energy New Smyrna Beach Power Company Ltd., L.L.P. ("Duke New Smyrna") pursuant to the Order Establishing Procedures issued in this docket on September 4, 1998, hereby respectfully submits its objections to Florida Power & Light Company's ("FPL") Second Set of Interrogatories (Nos. 38-111) which were served on Duke New Smyrna on October 15, 1998.

GENERAL OBJECTIONS

Duke New Smyrna objects to FPL's Second Set of Interrogatories (Nos. 38-111) on the grounds set forth in paragraphs A-C below. Each of Duke New Smyrna's responses will be subject to and qualified by these general objections.

A. Duke New Smyrna objects to FPL's request that the answers to these interrogatories be provided on or before October 29, 1998. Rule 1.340, Florida Rule of Civil Procedure ("F.R.C.P."), which is made specifically applicable to this proceeding by Uniform Rule 28-106.206, Florida Administrative Code ("F.A.C."), requires that answers to interrogatories shall

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be served within 30 days of service of the interrogatories. However, in the spirit of compromise, Duke New Smyrna stated in its Response in Opposition to FPL's Motion to Expedite Discovery and Motion for Alternative Expedited Discovery Schedule, filed with the Commission on October 19, 1998, that Duke New Smyrna will agree to respond to discovery requests, including FPL's, within 20 days of service.

B. As set forth more specifically below, Duke New Smyrna objects to those FPL interrogatories that ask for confidential, proprietary business information. Moreover, Duke New Smyrna does not have a confidentiality agreement, nor does Duke New Smyrna believe that it would be possible to fashion such an agreement, that would be satisfactory to protect Duke New Smyrna's interests in such information.

C. As noted in Duke New Smyrna's specific objections stated below, Duke New Smyrna objects to numerous interrogatories propounded by FPL on the grounds that those interrogatories are beyond the scope of discovery permitted of testifying experts by the Florida Rules of Civil Procedure. Rule 1.280(b)(4)(A), F.R.C.P., which is made specifically applicable to this proceeding by Uniform Rule 28-106.206, F.A.C., provides as follows:

(4) Trial Preparation: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A)(i) By interrogatories a party may

require any other party to identify each person whom the other party expects to call as an expert witness at trial and to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(ii) Any person disclosed by interrogatories or otherwise as a person expected to be called as an expert witness at trial may be deposed in accordance with rule 1.390 without motion or order of court.

(iii) A party may obtain the following discovery regarding any person disclosed by interrogatories or otherwise as a person expected to be called as an expert witness at trial:

1. The scope of employment in the pending case and the compensation for such service.

2. The expert's general litigation experience, including the percentage of work performed for plaintiffs and defendants.

3. The identity of other cases, within a reasonable time period, in which the expert has testified by deposition or at trial.

4. An approximation of the portion of the expert's involvement as an expert witness, which may be based on the number of hours, percentage of hours, or percentage of earned income derived from serving as an expert witness; however, the expert shall not be required to disclose his or her earnings as an expert witness or income derived from other services.

An expert may be required to produce financial and business records only under the most unusual or compelling circumstances and may not be compelled to compile or produce nonexistent documents. Upon motion,

the court may order further discovery by other means, subject to such restrictions as to scope and other provisions pursuant to subdivision (b)(4)(C) of this rule concerning fees and expenses as the court may deem appropriate.

FPL has not asked interrogatories that are permitted under this Rule and has propounded numerous -- approximately 38 -- interrogatories directed to Duke New Smyrna's experts that are clearly beyond the scope of discovery by interrogatories permitted under the applicable rules. Duke New Smyrna will, of course, produce its testifying experts for deposition as provided for in Rule 1.280(b)(4)(A)(ii), F.R.C.P.

SPECIFIC OBJECTIONS

Duke New Smyrna makes the following specific objections to FPL's Second Set of Interrogatories (Nos. 38-111). Duke New Smyrna's specific objections are numbered to correspond with the numbers of FPL's interrogatories.

38. Duke New Smyrna objects to this interrogatory to the extent that it seeks confidential, proprietary business information. Duke New Smyrna will attempt to answer this interrogatory to the extent possible with non-confidential, non-proprietary information.

46. Duke New Smyrna objects to this interrogatory on the grounds that it is beyond the scope of discovery permitted of non-testifying experts by the Florida Rules of Civil Procedure. Rule 1.280(b)(4)(B), F.R.C.P., which is made specifically applicable to this proceeding by Uniform Rule 28-106.206, F.A.C.,

provides that

[a] party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in rule 1.360(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

Mr. Blaha is, at this point in time, not expected to be called to testify at the hearing in this proceeding and, accordingly, discovery directed to him and his engagement on behalf of the Joint Petitioners is generally not permitted. (If Mr. Blaha were expected to testify in this proceeding, this interrogatory would be objectional on the grounds that it is beyond the scope of discovery permitted of testifying experts, by the Florida Rules of Civil Procedure). However, without waiving the above-stated objections, Duke New Smyrna states that it does intend to make Mr. Blaha available for deposition during the discovery period of this case.

47. Duke New Smyrna objects to this interrogatory on the grounds that it is beyond the scope of discovery permitted of testifying experts by the Florida Rules of Civil Procedure.

48. Duke New Smyrna objects to this interrogatory on the grounds that it is beyond the scope of discovery permitted of testifying experts by the Florida Rules of Civil Procedure.

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60. Duke New Smyrna objects to this interrogatory on the grounds that it is beyond the scope of discovery permitted of testimony by the Florida Rules of Civil Procedure.

61. Duke New Smyrna objects to this interrogatory on the grounds that it is beyond the scope of discovery permitted of testimony by the Florida Rules of Civil Procedure.

62. Duke New Smyrna objects to this interrogatory on the grounds that it is beyond the scope of discovery permitted of testimony by the Florida Rules of Civil Procedure.

63. Duke New Smyrna objects to this interrogatory on the grounds that it is beyond the scope of discovery permitted of testimony by the Florida Rules of Civil Procedure.

64. Duke New Smyrna objects to this interrogatory on the grounds that it is vague. Duke New Smyrna also objects to this interrogatory on the grounds that it is beyond the scope of discovery permitted of testimony by the Florida Rules of Civil Procedure.

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information. Duke New Smyrna also objects to this interrogatory on the grounds that it is beyond the scope of discovery permitted of testifying experts by the Florida Rules of Civil Procedure. Duke New Smyrna will attempt to answer this interrogatory to the extent possible with non-confidential, non-proprietary information that is available from persons other than Duke New Smyrna's testifying and non-testifying experts.

73. Duke New Smyrna objects to this interrogatory on the grounds that it is beyond the scope of discovery permitted of testifying experts by the Florida Rules of Civil Procedure.

76. Duke New Smyrna objects to this interrogatory on the grounds that the question posed is vague (as to the meaning of the term "average heat rate").

77. Duke New Smyrna objects to this interrogatory on the grounds that it is beyond the scope of discovery permitted of testifying experts by the Florida Rules of Civil Procedure.

78. Duke New Smyrna objects to this interrogatory on the grounds that it is beyond the scope of discovery permitted of testifying experts by the Florida Rules of Civil Procedure.

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89. Duke New Smyrna objects to this interrogatory on the grounds that it is beyond the scope of discovery permitted of testifying experts by the Florida Rules of Civil Procedure.

90. Duke New Smyrna objects to this interrogatory on the grounds that it seeks confidential, proprietary business information. Duke New Smyrna also objects to this interrogatory on the grounds that it is irrelevant, immaterial, and not likely to lead to the discovery of admissible evidence.

91. With respect to this interrogatory's request for information regarding the now-inoperative power plant project that was previously being developed by an affiliate of Duke New Smyrna and IMC-Agrico Company, Duke New Smyrna objects to this interrogatory on the grounds that it seeks confidential, proprietary business information. Duke New Smyrna also objects to this interrogatory on the grounds that it is irrelevant, immaterial, and not likely to lead to the discovery of admissible evidence. The Joint Petitioners have already filed, as an exhibit to the prefiled direct testimony of Mr. Larry A. Wall, a copy of the contract between Duke Energy Power Services, L.L.C. and Citrus Trading Corp. that shows the firm gas supply commitment for the New Smyrna Beach Power Project.

100. Duke New Smyrna objects to this interrogatory on the grounds that it is vague (as to the meaning of "documents that Duke New Smyrna or its affiliates have used to market the capacity and energy" from the New Smyrna Beach Power Project"). Duke New Smyrna also objects to this interrogatory on the grounds that it seeks confidential, proprietary business information. Duke New Smyrna will attempt to answer this interrogatory to the extent possible with non-confidential, non-proprietary

information.

102. Duke New Smyrna objects to this interrogatory to the extent that it seeks confidential, proprietary business information. Duke New Smyrna will attempt to answer this interrogatory to the extent possible with non-confidential, non-proprietary information.

103. Duke New Smyrna objects to this interrogatory to the extent that it seeks confidential, proprietary business information. Duke New Smyrna will attempt to answer this interrogatory to the extent possible with non-confidential, non-proprietary information.

104. Duke New Smyrna objects to this interrogatory to the extent that it seeks confidential, proprietary business information. Duke New Smyrna will attempt to answer this interrogatory to the extent possible with non-confidential, non-proprietary information.

106. Duke New Smyrna objects to this interrogatory on the grounds that it is beyond the scope of discovery permitted of testifying experts by the Florida Rules of Civil Procedure.

107. Duke New Smyrna objects to this interrogatory on the grounds that it is beyond the scope of discovery permitted of testifying experts by the Florida Rules of Civil Procedure.

108. Duke New Smyrna objects to this interrogatory on the grounds that it is beyond the scope of discovery permitted of testifying experts by the Florida Rules of Civil Procedure.

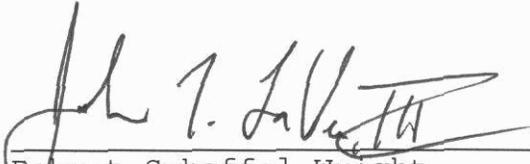
109. Duke New Smyrna objects to this interrogatory on the

grounds that it is beyond the scope of discovery permitted of
testifying experts by the Florida Rules of Civil Procedure.

110. Duke New Smyrna objects to this interrogatory on the
grounds that it is beyond the scope of discovery permitted of
testifying experts by the Florida Rules of Civil Procedure.

111. Duke New Smyrna objects to this interrogatory on the
grounds that it is beyond the scope of discovery permitted of
testifying experts by the Florida Rules of Civil Procedure.

Respectfully submitted this 26th day of October, 1998.



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and

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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 26th day of October, 1998:

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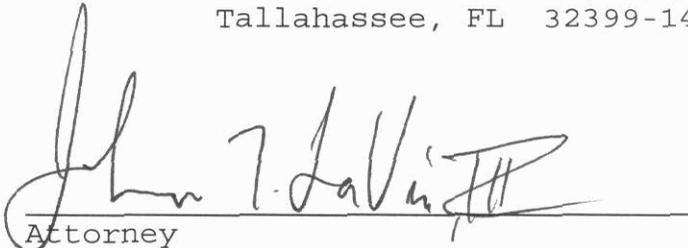
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