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November 3, 1998

BY HAND DELIVERY

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

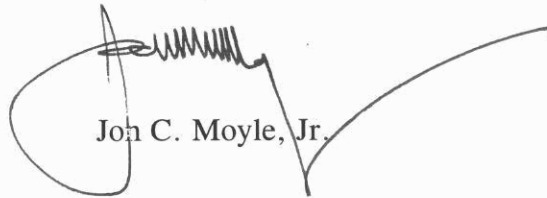
RECEIVED-FPSC
98 NOV -3 PM 4:15
RECORDS AND REPORTING

Re: 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-EM

Dear Ms. Bayo:

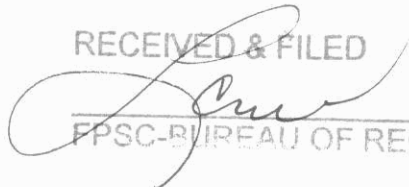
Enclosed is the original and fifteen (15) copies of U. S. Generating Company's Petition for Leave to Intervene in the above-referenced matter.

Sincerely,



Jon C. Moyle, Jr.

- ACK _____
- AFA 2
- APP _____
- CAF JCM/jd
- CMU _____
- CTR Enclosures
- EAG Futrell
- LEG 3
- LIN 5
- OPC _____
- RCH _____
- SEC 1
- WAS _____
- OTH _____

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

12284 NOV-3 88

FPSC-RECORDS/REPORTING

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-EM

FILED: November 3, 1998

U. S. GENERATING COMPANY'S
PETITION FOR LEAVE TO INTERVENE

U. S. Generating Company ("USGEN") files this Petition for Leave to Intervene in the subject cause, pursuant to Rule 25-22.039, Florida Administrative Code. In support of the instant request, USGEN states as follows:

I. Name and address of Agency and Petitioner

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

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

2. The name and address of the Petitioner is:

U. S. Generating Company
7500 Old Georgetown Road
Bethesda, MD 20814

3. All pleadings, motions, orders and other documents directed to the Petitioner are to be served on:

Jon C. Moyle, Jr.
Moyle, Flanigan, Katz, Kolins, Raymond & Sheehan, P.A.
210 South Monroe Street
Tallahassee, FL 32301

and

DOCUMENT NUMBER-DATE

12284 NOV-30 00866

FPSC-RECORDS/REPORTING

Stephen Herman, Esquire
General Counsel
U. S. Generating Company
7500 Old Georgetown Road
Bethesda, MD 20814

II. Explanation of How Substantial Interests of Petitioner will be Affected by Commission Determination

4. USGEN is a Bethesda, Maryland-based company which operates electrical generating plants in Florida and other locations throughout the United States. USGEN develops and manages electric power and cogeneration facilities which supply electricity to public utilities and steam to industrial firms.

5. The instant need determination proceeding substantially affects USGEN. The Petition filed by Duke Energy New Smyrna Beach Power Company, Ltd., L.L.P. ("Duke"), seeks a determination of whether a merchant power plant that will generate power for the Utilities Commission, New Smyrna Beach, and ultimately other utilities, is permissible pursuant to Section 403.519, Florida Statutes (1997). As a generator of electrical power and, more specifically, a provider of electric power to the Florida electric power grid, the outcome of Duke's Petition will significantly impact USGEN. Additionally, the determination rendered by the PSC in this case will impact USGEN's plants in Florida upon the expiration of its contracts to sell power to Florida Power & Light Company ("FPL"). The present impact resulting from this future occurrence affects USGEN's ability to plan for immediate and prospective power needs of public utilities to whom it supplies, or may supply, energy. This impact is similar in nature to the impact cited by FPL in its Petition for Leave to Intervene (See, FPL Petition, ¶11, pp. 5-6).

6. Moreover, there can be no question that the issues to be decided by the Commission in the instant matter will significantly affect USGEN's ability to develop additional projects in the State of Florida and market power generally to Florida-based utilities. USGEN's interests in this regard will be adequately represented only if it is permitted to intervene with full intervenor status.

7. These substantial interests provide USGEN with standing to intervene in this matter. See, Florida Medical Center v. Department of Health and Rehabilitative Services, 484 So.2d 1292, 1294 (Fla. 1st DCA 1986) (health care facilities within same service area have right to intervene in certificate of need proceeding); Coalition of Mental Health Professions v. Department of Professional Regulation, 546 So.2d 27, 28 (Fla. 1st DCA 1989) (Motion to Intervene showing that members of profession would be regulated by a proposed rule sufficient to establish affected substantial interests). The Commission should apply a standard of inclusiveness and liberality in deciding whether intervenor status should be accorded proposed intervenors, and USGEN respectfully requests that this same standard be applied with respect to the instant Petition.

III. Statement of Disputed Issues of Material Fact

8. USGEN identifies the following issues of material fact, which it reserves the right to supplement as additional facts become known to it:

- (a) Whether the Florida Public Service Commission ("PSC") possesses statutory authority to render a need determination under Section 403.519, Florida Statutes (1997), for a project involving a merchant plant that does not have an agreement for the sale of firm capacity and energy to a state-

regulated utility?

- (b) Whether the Petition of the Utilities Commission, New Smyrna Beach and Duke New Smyrna for the need determination for the New Smyrna Beach power project should be granted?
- (c) Whether the proposed sale of energy from the New Smyrna Beach power project will affect other suppliers of energy into the Florida energy grid?
- (d) All issues raised by Duke, PSC staff and other intervenors and all issues raised by petitions to intervene filed and granted to date.

IV. A Concise Statement of Ultimate Facts Alleged

9. Duke's Petition, and the determination of the PSC of the aforementioned disputed issues of material fact, will affect other producers of energy who supply power to the Florida energy grid and will impact the future of cost effective and competitively priced energy production in this State. As such, USGEN's substantial interests, as a current supplier of electric power in the State, are affected and USGEN should be granted leave to intervene for the reasons set forth herein.

V. Rules/Statutes Which Entitle Petitioner to Relief

10. The following statutory sections provide USGEN with the authority to intervene in this proceeding: Chapters 120, 366 and 403, Florida Statutes.

11. The following administrative rules entitle USGEN to intervene as requested in this Petition: Rules 25-22.036(7), 28-106 and 25-22, Florida Administrative Code.

WHEREFORE, USGEN respectfully requests the entry of an order granting it leave to intervene into the instant proceeding and be afforded all rights and obligations of a party with

intervenor status.

DATED this 3rd day of November, 1998.

Respectfully submitted,

MOYLE, FLANIGAN, KATZ, KOLINS,
RAYMOND & SHEEHAN
210 South Monroe Street
Tallahassee, FL 32301
(850) 681-3828
Attorneys for Defendant

By: 

JON C. MOYLE, JR.
Florida Bar No. 727016

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing U. S. Generating Company's Petition for Leave to Intervene has been served by hand delivery (*) or by U. S. Mail on the following individuals this 3rd day of November, 1998:

Leslie J. Paugh, Esquire*
Legal Division
Florida Public Service Commission
2540 Shumard Oak Boulevard, Room 370
Tallahassee, FL 32399-0850

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Florida Power & Light Co.
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Miami, FL 33174

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John T. LaVia, III, Esquire
Landers & Parsons, P.A.
Post Office Box 271
Tallahassee, FL 32302

Ronald L. Vaden, Utilities Director
Utilities Commission
City of New Smyrna Beach
Post Office Box 100
New Smyrna Beach, FL 32170-0100

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Smith & Cutler
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Fla. Electric Cooperatives Association
Post Office Box 590
Tallahassee, FL 32302

Jeffrey A. Stone, Esquire
Beggs & Lane
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Pensacola, FL 32576-2950

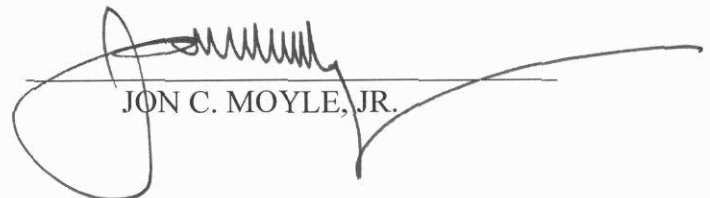
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JON C. MOYLE, JR.