

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.)
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DOCKET NO. 981042-EM

FILED: AUGUST 19, 1998

SAVE THE MANATEE CLUB INC.'S PETITION TO INTERVENE

COMES NOW SAVE THE MANATEE CLUB, INC., by and through its undersigned attorney, and hereby requests leave to intervene in the above matter pursuant to F.A.C. Rule 25-22.039, and in support thereof would state as follows:

1. The name of the Intervenor is SAVE THE MANATEE CLUB, INC., whose address for the purposes of this matter is that of its attorney listed below and upon whom all papers and pleadings should be served.

2. The Petitioners are those listed in the heading above whose addresses for the purposes of those proceedings are as stated in their Joint Petition For

Determination of Need heretofore filed in this matter.

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

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

ACK _____
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APP _____
CAF _____
CMU _____
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EAG Futrell
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OPC _____
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FPSC-RECORDS/REPORTING

SUBSTANTIAL INTEREST OF INTERVENORS

4. Save the Manatee Club, Inc. (SMC) is a non-profit Florida corporation with approximately 40,000 members and whose main purpose is to protect and preserve Florida's remaining endangered West Indian manatee population, for the benefit of the manatees, SMC and its members. Numerous members of the organization observe, study and photograph manatees for educational and recreational purposes throughout the state. Any action by a regulatory agency that could cause a reduction in manatee populations as alleged hereinbelow will have a substantial effect on SMC and its members to their detriment.

DISPUTED ISSUES OF MATERIAL FACT

5. Over many years, many of Florida's manatees have become habituated to using warm water discharges from certain power plants to protect them from cold weather during the winter months. These discharge areas have become a substitute for natural habitats that have been degraded by Florida's rapid development. Should these discharges be curtailed or terminated during cold periods, the manatees who use them could die or be weakened and the manatee populations in Florida may decline as a result.

6. Duke Energy New Smyrna Beach Power Company Ltd., L.L.P. (Duke) has alleged in its Petition and other documents that the approval and construction of the New Smyrna Beach power plant will allow the generation of power from this cleaner and more efficient plant to offset power generation from older, less efficient plants presently being operated by other utilities in the state. If this is true, the other plants may curtail or

discontinue generation of power from these facilities, many of which provide the warm water refuges essential for manatee survival in Florida. Because the power from Duke will be sold wholesale on the grid with no preregulatory determination of destination other than New Smyrna Beach there may be no mechanism available to require these older plants that choose to shut down or curtail power to continue to provide warm water to manatees. If the decision in this matter becomes a precedent that allows other "merchant" plants to locate in Florida, these problems will be greatly magnified to such an extent that manatees could decline in Florida.

POSITION OF INTERVENORS

7. The Intervenor opposes the application for Determination of Need by the Joint Petitioners.

STATUTES AND RULES ENTITLING INTERVENORS TO RELIEF

8. The following rules and statutes entitle SMC to relief: Rules 28-106 and 25-22, Florida Administrative Code, and Chapters 120, 366, 370 and 403, Florida Statutes. SMC reserves the right to rely on additional legal authority.

LIMITATION ON INTERVENTION

9. SMC does not intend to present testimony or evidence at the final hearing in this matter, but requests that it be permitted to submit a written position statement to the Commission and present comments as part of the public comment portion of the Commission agenda.

REQUEST FOR RELIEF

WHEREFORE SMC requests that it be permitted to intervene in opposition to the above application.

Respectfully submitted,

Robert E. Goodwin, Jr.

Robert Goodwin
Florida Bar No. 935689
Save the Manatee Club, Inc.
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Maitland, FL 32751
(407) 539-0990

Attorney for Intervenor Save the Manatee Club, Inc.

I hereby certify that a true copy of the above has been delivered by U.S. Mail to Robert Schefel Wright, Esq., Landers and Parsons, P.A., P.O. Box 271, Tallahassee, Florida 32303 (for Duke Energy New Smyrna Beach Power Company,) William B. Willingham, Esq., P.O. Box 14042, St. Petersburg, Florida 33733, Gary L. Sasso, Esq., Carlton Fields Ward Emmanuel Smith & Cutler, P.A., P.O. Box 2861, St. Petersburg, Florida 33731 (for the Florida Electric Cooperatives Association, Inc.,) James A. McGee, Esq., P.O. Box 14042, St. Petersburg, Florida 33731 (for Florida Power Corporation,) Charles A. Guyton, Esq. and Matthew M. Childs, Esq., Steel Hector & Davis, 215 S. Monroe St., Suite 601, Tallahassee, Florida 32301 (for Florida Power and Light,) Lee L. Willis, Esq., and James Beasley, Esq., Ausley & McMullen, P.O. Box 391, Tallahassee, Florida 32302 (for Tampa Electric Company,) Gail Kamaras, Esq. and Debra Swim, Esq., 1114 Thomasville Rd., Suite E, Tallahassee, Florida 32303 (for Legal Environmental Assistance Foundation, Inc.) and Leslie J. Paugh, Esq. and Grace A. Jaye, Esq., Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0850 on this 13th day of November, 1998.

Robert E. Goodwin, Jr.

Robert Goodwin