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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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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.)

RECORDS AND REPORTING
DOCKET NO. 981042-EM

FILED: NOVEMBER 23, 1998

LG&E CORP.'S MOTION FOR LEAVE TO FILE AN AMICUS CURIAE
MEMORANDUM OF LAW AND TO ADDRESS THE COMMISSION
REGARDING ISSUES POSED BY MOTIONS TO DISMISS
THE JOINT PETITION FOR DETERMINATION OF NEED
OF THE UTILITIES COMMISSION, CITY OF NEW
SMYRNA BEACH, FLORIDA, AND DUKE ENERGY NEW
SMYRNA BEACH POWER COMPANY LTD., L.L.P.

LG&E Energy Corp. ("LG&E Energy"), pursuant to Uniform Rule 28-106.204, Florida Administrative Code, respectfully moves the Florida Public Service Commission ("the Commission") for leave to file its *Amicus Curiae* Memorandum of Law and to address the Commission as *amicus curiae* on the issues discussed in that Memorandum.¹ LG&E Energy respectfully submits that its *Amicus Curiae* Memorandum of Law will facilitate the Commission's

consideration of the legal and policy issues raised by the motions to dismiss the joint petition for determination of need filed by the Utilities Commission, City of New Smyrna Beach,

¹ Undersigned counsel, Donald F. Santa, Jr., is a Senior Vice-President and Deputy General Counsel for LG&E Energy. He is a member of the Bar of the District of Columbia, and he is intimately familiar with electric utility regulation. This motion is submitted subject to LG&E Energy's simultaneously filed Request for Certification of Counsel.

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FPSC-RECORDS/REPORTING

Florida and Duke Energy New Smyrna Beach Power Company Ltd., L.L.P. ("the Joint Petitioners") in this proceeding.

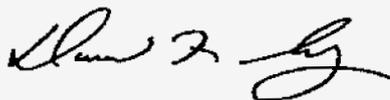
In the attached legal memorandum, LG&E Energy demonstrates that applicable state and federal law, including the Energy Policy Act of 1992 and the Commerce Clause of the United States Constitution, confirm the validity of merchant plant developers and operators as proper applicants for the necessary permits to build wholesale power plants in Florida. Accordingly, the Florida Public Service Commission ("the Commission") should reject the arguments filed by the Joint Petitioners'² opponents and allow the Joint Petitioners' application for a determination of need for the proposed New Smyrna Beach Power Project to proceed to the hearing on the merits of that application.

The Commission has allowed participation by *amici curiae* in Commission proceedings. See, e.g., In Re: Petition of Florida Power and Light Company for a Declaratory Statement Regarding Request for Wheeling, 89 FPSC 2:298; In Re: Investigation of the Ratemaking and Accounting Treatment for the Dismantlement of Fossil-Fueled Generating Stations, 91 FPSC 7:136; In Re: Complaint by Telcom Recovery Corp. Against TRANSCALL AMERICA, INC. d/b/a ATC LONG DISTANCE Regarding Billing Discrepancy,

² Florida Power Corporation ("FPC") and Florida Power & Light Company ("FPL") have both filed motions to dismiss the petition for determination of need filed in this docket by the UCNSB and Duke New Smyrna. These two investor-owned electric utility companies are referred to herein collectively as "the Opponents."

93 FPSC 8:447. LG&E Energy respectfully submits that the Commission should accept its *Amicus Curiae* Memorandum of Law and also permit LG&E Energy's representative to address the Commission at any oral argument or hearing that is held on the motions to dismiss the Joint Petition.

Respectfully submitted this 23rd day of November, 1998.



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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 23rd day of November, 1998:

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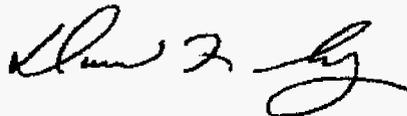
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