

ORIGINAL

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 SEPTEMBER 17, 1998

RECORDS AND REPORTING

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REQUEST FOR CERTIFICATION OF COUNSEL AND NOTICE OF SPONSORSHIP

The Utilities Commission, City of New Smyrna Beach, Florida, and Duke Energy New Smyrna Beach Power Company, Ltd., L.L.P. (hereinafter "Petitioner") by and through undersigned counsel of record, Robert Scheffel Wright and John T. LaVia, III of the law firm of LANDERS AND PARSONS, P.A., and pursuant to Rules 25-22.008 and 28-106.106, Florida Administrative Code ("F.A.C.") hereby give notice of sponsorship and request certification by the Florida Public Service Commission ("Commission") of Steven G. Gey as a qualified representative, or in the alternative,

ACK  certification as a Class A Practitioner in Docket No. 981042-EM  
AFA   
APP  and in support thereof state.

CAF  1. Petitioners seek certification pursuant to Rule 28-  
CMU  106.106 Uniform Rules of Procedure, or in the alternative

CTR   
EAG  *Futrell*  
LEG

LIN   
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SEC   
WAS   
OTH

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*[Signature]*  
FPSC BUREAU OF RECORDS

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FPSC-RECORDS/REPORTING

pursuant to Rule 25-22.008 of the Commission, F.A.C.<sup>1</sup> Steven G. Gey is the John W. and Ashley E. Frost Professor of Law at Florida State University College of Law, Tallahassee, Florida, 32306 specializing in constitutional issues. His telephone number is (850)644-5467.

2. Pursuant to Rule 28-106.106, F.A.C., Petitioners hereby state that they are aware of the services that Professor Gey can provide and that they are also aware that they have a right to be represented by an attorney at their own expense. Based on full consideration of their rights, Petitioners hereby request that the Commission certify Professor Gey so that he may serve as co-counsel on behalf of Petitioners in Docket No. 981042-EM.

3. Pursuant to Rule 25-22.008, F.A.C., if applicable, undersigned counsel hereby aver to the Commission that Professor Gey is qualified to appear in this administrative proceeding, and

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<sup>1</sup> Section 120.54(5)(a)1., Florida Statutes, provides that the Uniform Rules of Procedure "shall be the rules of procedure for each agency subject to this chapter unless the Administration Commission grants an exception to the agency under this subsection." Rule 28-106.106, F.A.C., of the Uniform Rules of Procedure sets forth who may appear as a qualified representative in administrative proceedings. Rule 25-22.008, F.A.C., which sets forth the standards for the practice of law before the Commission, appears to conflict with Rule 28-106.106, F.A.C., in a number of ways including creating "Class A Practitioner" status and requiring sponsorship of a Class A Practitioner by a member of the Florida Bar. Because of this apparent conflict and because Petitioners are not aware of any request by the Commission to seek an exception to Rule 28-106.106, F.A.C., pursuant to Section 120.54(5)(a)2., F.S., Rule 28-106.106, F.A.C., of the Uniform Rules of Procedure would appear to control in this case. However, as of the date of this request, Rule 25-22.008, F.A.C., has not been repealed or amended. Accordingly, because of this inherent confusion, Petitioners have framed their request herein in the alternative.

capable of representing the rights and interests of the Petitioners. While Professor Gey has not practiced before the Florida Public Service Commission or other utility regulatory authorities, he is a member of the New York Bar and he has practiced in the courts of the State of New York, before the United States 11th Circuit Court of Appeals, and before the United States Supreme Court. Accordingly, Professor Gey is eminently qualified to address the constitutional issues raised in this proceeding.

4. Pursuant to Rule 28-106.106, F.A.C., Professor Gey affirms that he is qualified in light of the nature of the proceedings and the applicable law. Professor Gey also affirms that he has knowledge of jurisdiction; knowledge of the Florida Rules of Civil Procedure relating to discovery in administrative proceedings; knowledge regarding the rules of evidence, including the concept of hearsay in an administrative proceeding; knowledge regarding the factual and legal issues involved in the proceedings; and knowledge of and compliance with the Standards of Conduct for Qualified Representatives, Rule 28-106.107, F.A.C.

**RELIEF REQUESTED**


**WHEREFORE**, the Utilities Commission, City of New Smyrna Beach, Florida, and Duke Energy New Smyrna Beach Power Company Ltd., L.L.P. respectfully request the Commission determine that Professor Steven G. Gey is a qualified representative under Rule 28-106.106, F.A.C., or alternatively, a Class A Practitioner under Commission Rule 25-22.008, F.A.C., and that he is

authorized to practice before the Commission in Docket No.

981042-EM.

Respectfully submitted this 17th day of September, 1998.

  
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Steven G. Gey  
Member New York Bar  
Florida State University College of Law  
Tallahassee, Florida 32306

  
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Robert Scheffel Wright  
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Attorneys for the Utilities Commission,  
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 17th day of September, 1998:

Leslie J. Paugh, Esquire  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Gunter Building  
Tallahassee, FL 32399

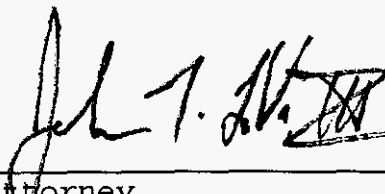
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Attorney

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