

STEEL
HECTOR
& DAVIS

REGISTERED LIMITED LIABILITY PARTNERSHIP

ORIGINAL

RECEIVED-FPSC

27 AUG 27 PM 3:07

RECORDS AND
REPORTING

Steel Hector & Davis LLP
215 South Monroe, Suite 601
Tallahassee, Florida 32301-1804
850.222.2300
850.222.8410 Fax
www.steelhector.com

Matthew M. Childs, P.A.

August 27, 1998

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
4075 Esplanade Way, Rm.110
Tallahassee, FL 32399-0850

RE: DOCKET NO. 981042-Eu

Dear Ms. Bayó:

Enclosed for filing please find an original and fifteen (15) copies of Florida Power & Light Company's Petition for Leave to Intervene in the above-referenced docket.

RECEIVED & FILED

[Signature]
FPSC-BUREAU OF RECORDS

Very truly yours,

[Signature]

Matthew M. Childs, P.A.

CK MMC:ml
FA 3 cc: All Parties of Record
PP
AF Enclosure
MU
TR
AG *Tutrell*
EG 2
N 5
PC
CH
EC 1
AS
TH orig to Brad

DOCUMENT AND DATE

19373 AUG 27 1998

Rio de Janeiro Santo Domingo

19373 AUG 27 1998

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Joint Petition for Determination)
of Need for an Electrical Power Plant in) DOCKET NO. 981042-EU
Volusia County by the Utilities) DATE: AUGUST 27, 1998
Commission, City of New Smyrna Beach,)
Florida, and Duke Energy New Smyrna)
Beach Power Company Ltd., L.L.P.)
_____)

FLORIDA POWER & LIGHT COMPANY'S
PETITION FOR LEAVE TO INTERVENE

Florida Power & Light Company ("FPL"), pursuant to Florida Administrative Code Rule 25-22.039, petitions the Florida Public Service Commission ("Commission") for leave to intervene in Docket No. 981042. As grounds for this requested relief, FPL states:

Introduction

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

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

2. The name and address of the petitioner are:

Florida Power & Light Company
9250 West Flagler Street
Miami, Florida 33174

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

RECORDED AND INDEXED

9373 AUG 27 000122

FLORIDA PUBLIC SERVICE COMMISSION

Matthew M. Childs, P.A.
Charles A. Guyton
Steel Hector & Davis LLP
215 South Monroe Street
Suite 601
Tallahassee, FL 32301

William G. Walker III
Vice President
Regulatory Affairs
Florida Power & Light Co.
9250 West Flagler St.
Miami, FL 33174

**FPL Has Substantial Interests Which Will
Be Determined And Affected In This Proceeding**

4. FPL is a public utility subject to the jurisdiction and regulation of this Commission under Chapter 366, Florida Statutes. Among FPL's duties as a public utility is to plan for and meet the demands of its customers for electric service. Meeting this obligation requires FPL to select the best cost-effective resource alternative consistent with system integrity and reliability. Detailed and comprehensive long range planning in a dynamic and complex environment is required for a utility to meet its long term service obligations.

5. Utility resource planning is subject to the continuing review and involvement of this Commission. This Commission has express jurisdiction over planning for a coordinated electric power grid in Florida:

The commission shall further have jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities.

Section 366.04(5), Florida Statutes. This jurisdiction complements the Commission's jurisdiction under the Florida Electrical Power Plant Siting Act, Sections 403.501 - 403.518, Florida Statutes.

6. The Commission's jurisdiction continues beyond the planning phase. For instance, Section 366.05(8), Florida Statutes provides:

If the commission determines that there is probable cause to believe that inadequacies exist with respect to the energy grids developed by the electric utility, it shall have the power, after proceedings as provided by law, and after a finding that mutual benefits will accrue to the electric utilities involved, to require installation or repair of necessary facilities, including generating plants and transmission facilities, with the costs to be distributed in proportion to the benefits received, and to take all necessary steps to ensure compliance. The electric utilities involved in any action taken or orders issued pursuant to this subsection shall have full power and authority, notwithstanding any general or special laws to the contrary, to jointly plan, finance, build, operate, or lease generating and transmission facilities and shall be further authorized to exercise the powers granted to corporations in chapter 361. This subsection shall not supersede or control any provision of the Florida Electrical Power Plant siting Act, ss. 403.501 - 403.518.

7. FPL is subject to the exercise of this Commission's jurisdiction pursuant to Sections 366.04(5) and 366.05(8). The petitioner Duke Energy New Smyrna Beach Power Company Ltd., L.L.P. ("Duke") is not and will not be. The Commission exercises, if it

so chooses, its jurisdiction under these two sections of Chapter 366 outside the context of a site certification proceeding. FPL too must fulfill its obligation subject to this Commission's oversight. Thus, FPL is affected by the proposal in this docket and will be more intensely affected if the requested certification is granted. FPL must respond to and react to this alternative in its own planning process. Moreover, if the proposed Project is ill-advised or if for some reason it does not operate successfully, that will result in an adverse burden being placed on FPL. The petition blithely asserts: "If the plant turns out not to be economic, customers will incur no financial harm." (Petition at paragraph 22). This is not the case, and as reference to Sections 366.04 and 366.05 show, it is FPL that will ultimately have a risk of meeting at least some of the unfilled service needs.

8. FPL's responsibilities in connection with providing service to its customers are huge. For instance, FPL serves over 3.6 million retail customers and operates approximately 17,000 MW of generating capacity to serve their load. FPL's generation is supplemented by, at least 2,280 MW of purchased power. FPL has over \$8 billion dollars invested in plant in-service and annual capital and non-fuel O&M budgets of hundreds of millions of dollars.

9. Simply stated, as a public utility FPL has a service obligation and concurrent and continuing planning responsibility

which has resulted in and will continue to result in a significant investment devoted to serving its customers. How FPL plans and operates its system to meet its service obligation and its customers' needs will be dramatically affected by the uncertainty which the Commission would create if it were to grant the determination of need sought in this proceeding.

10. Duke, an entity over which the Commission only has Siting Act jurisdiction and not "grid bill" jurisdiction, seeks authority to build a power plant "consistent with Peninsular Florida" need. This act alone creates great planning uncertainty for peninsular Florida utilities. If the relief Duke seeks is granted, then utilities over which the Commission retains grid bill authority will have to plan recognizing the uncertainty associated with (a) whether Duke will make the sales it contemplates, (b) the prices at which sales may be made, (c) the term of the sales which may be made, (d) the entities to which the power may be sold, (e) the transmission capacity tied up due to moving Duke's sales, and (f) each utility's continuing ability to make capacity and energy sales to other utilities.

11. The "determination of need" before the Commission in this docket is premised upon the purported need for power of FPL and 58 other Peninsular Florida utilities, including the Utilities Commission, New Smyrna Beach. Consequently, FPL's ability to plan, build and operate its generation and transmission systems to meet

its service obligations and the needs of its customers are subject to determination in this proceeding.

12. Duke proposes to build a 514 MW power plant. Duke has no firm contracts to sell any of its power.¹ It states that 30 MW of its capacity is committed to the Utilities Commission, New Smyrna Beach, so as to this 30 MW it files its determination of need application as a "co-applicant" with the Utilities Commission, New Smyrna Beach; however, given the absence of a final power purchase contract with the Utilities Commission, New Smyrna Beach, that may be misleading. However, what is clear and undisputed is that as to the vast majority of its capacity, 94% (484 out of 514 MW), Duke has no customers, no obligation to serve, and no co-applicant.

13. The statute under which the Commission must act to find that a power plant is needed, Section 403.519, Florida Statutes, requires specific findings regarding the need for the Project. Both the Commission and the Supreme Court of Florida have held that these findings are utility and unit specific.² Because Duke has no

¹ Duke freely acknowledges in its Petition that it does not have contracts in place to sell its merchant capacity and energy. However, it is also clear from the Exhibit filed with the Petition that Duke does not even have a firm contract with the Utilities Commission, New Smyrna Beach to sell it 30 MW. The Petition speaks of the Utilities Commission's "entitlement" to 30 MW, but as is made more clear at page 16 of the Exhibit to the Petition, a "final power purchase agreement" has not been negotiated, executed and filed with the FERC. See, Exhibit, p. 16, item 5. **Duke has no final contract for any of the power from its proposed unit.**

² "The Siting Act, and Section 403.519 require that this body make specific findings as to system reliability and integrity, need

statutory obligation to serve and because Duke lacks a contractual obligation to serve, at least as to 94% of its unit's capacity, Duke cannot demonstrate that it has a need for its power plant.

14. Of course, Peninsular Florida is not a utility with a need for power or a power plant. Peninsular Florida is not even a legal entity. It is a planning convention which reflects the aggregate need of 59 utilities within the geographic area which comprises Peninsular Florida. By invoking Peninsular Florida's need for power, Duke has premised its determination of need upon the need for power of FPL and the other 58 utilities comprising "Peninsular Florida."

15. FPL comprises roughly one half of Peninsular Florida. It currently has approximately 46% of the total Peninsular Florida generating capacity, 48% of the summer load for Peninsular Florida, 45% of the winter load for Peninsular Florida, 49% of Peninsular Florida's net energy for load, and 45% of the oil fired generating

for electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available. Clearly these are utility and unit specific." In re: Hearings on Load Forecasts, Generation Expansion Plans, and Cogeneration Prices for Peninsular Florida's Electric Utilities, 89 FPSC 12: 294, 318 (Order No. 22341); 'The Commission's interpretation of section 403.519 also comports with this Court's decision in *Nassau Power Corp. v. Beard*. In that decision, we rejected Nassau's argument that the "Siting Act does not require the PSC to determine need on a utility-specific basis." 601 So. 2d at 1178 n.9. Rather, we agreed with the Commission that the need to be determined under section 403.519 is "the need of the entity ultimately consuming the power," in this case FPL.' Nassau Power Corporation v. Deason, 641 So. 2d 396, 399 (Fla. 1994).

capacity in Florida. FPL's planned capacity additions from 1998 through 2007, the horizon chosen by Duke to justify its determination of need, comprise approximately 37% of the planned capacity additions for Peninsular Florida (48% of the capacity additions shown by Duke on its Table 11). By attempting to rely upon "Peninsular Florida's" need for power, Duke has relied upon FPL's and other utilities' need for power and corresponding cost-effectiveness.³

16. If the Commission determines, premised upon "Peninsular Florida's" need, that Duke has met the statutory criteria under Section 403.519, Florida Statutes, then FPL's ability to (1) plan its transmission system to meet its customers needs, (2) plan its generation additions to meet its customers needs, (3) build and operate transmission facilities to meet customer's needs, (4) build

³ Duke's reliance upon FPL and other Florida utilities to justify its Project is readily apparent from its Petition and Exhibits. It refers to FPL in an attempt to meet the need criteria under Section 403.519. In arguing that its Project "is consistent with Peninsular Florida's needs for generating capacity to maintain system reliability and integrity" (Petition at Paragraph 17), Duke cites to an Exhibit recapitulating an FRCC document which shows reserve margins for Peninsular Florida that include capacity additions FPL plans between 1998 and 2007-2008. See, Exhibits, Tables 8,9. When arguing that the "Project is consistent with Peninsular Florida's need for adequate electricity at a reasonable cost" (Petition at paragraph 19), Duke once again refers to the same Exhibits and FRCC report showing FPL capacity additions. In arguing that the Project "will be a cost-effective power supply source for Peninsular Florida" (Petition at paragraphs 27-32) Duke relies upon an Exhibit which shows a comparison of construction cost and heat rates of the Duke unit and several FPL units (as well as other utility units) (Petition paragraph 31, Exhibit, Table 11).

and operate generation to meets its customers' needs, and (5) secure certification of transmission and generating facilities necessary to discharge its obligation to serve and meet its customers needs will be adversely affected. An affirmative determination of need as sought by Duke will determine the substantial interest of every Peninsular Florida utility and will adversely affect the ability of every Peninsular Florida utility to plan, certify, build and operate transmission and generation facilities necessary to meet its obligation to serve.

17. This Commission's Rule 25-22.080 and 25-22.081, F.A.C., recognize this adverse impact on FPL's interests. For instance, Rule 25-22.081 requires the Petition to include **"A general description of the utility or utilities primarily affected."** Here, even though Duke proposes that it will sell to utilities in Peninsular Florida, it fails to describe FPL. Similarly, Rule 25-22.080 requires notice of the commencement of the proceeding to the **"affected utility or utilities, if appropriate."**

18. There are not infinite resources available to support the Petitioners' desires to operate what it calls a "Merchant Plant." The Petitioners' proposal will reduce natural gas availability within Florida, result in the uneconomic duplication of generating facilities, and tie up transmission facilities which will adversely affect the ability of FPL and other utilities to meet their service obligations. These adverse consequences should be addressed so

that FPL's interests will not be adversely affected. These adverse impacts on FPL's substantial interests warrant FPL's intervention.

19. The Florida Supreme Court has plainly recognized this Commission's clear responsibility to avoid the adverse impacts from the duplication of facilities. In Lee County Elec. Co-Op v. Marks, 501 So. 2d 585, 587 (Fla. 1987), the Court held:

Second, the ruling establishes a policy which dangerously collides with the entire purpose of territorial agreements, as well as the PSC's duty to police "the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure...the avoidance of further uneconomic duplication of generation, transmission and distribution facilities."

(Emphasis added). Moreover, the Court in Lee County reminded the Commission of the Court's past support of the PSC's efforts, stating:

This Court has repeatedly approved the PSC's efforts to end the economic waste and inefficiency resulting from utilities "racing to serve."

(Emphasis added). *Id.* at 587.

20. The Commission's responsibility to avoid uneconomic duplication of facilities must be considered in this "determination of need proceeding." The "waste and inefficiency" inherent in the Duke proposal in this Docket should be addressed because it will adversely affect FPL's (and others') interests by creating an uneconomic duplication of facilities.

21. In a long and well developed line of cases, this

Commission has previously recognized the substantial interest of a utility purchaser of wholesale power in a need determination proceeding. The Commission has held that the utility purchaser of wholesale power is an indispensable party in a need determination proceeding and that for the specific mandates of the Siting Act to be meaningful, they must be answered from the purchasing utility's perspective. Because Duke's petition is premised upon FPL's and other Peninsular Florida utilities' need for power, FPL should be recognized as an indispensable party and permitted to intervene.

22. The Commission's recognition that the need for a power plant must be from the perspective of the purchasing utility (which is a necessary party to a need determination proceeding) began in Docket No. 881472-EQ, which was a need determination proceeding involving AES Cedar Bay, Inc. There, the Commission Staff filed a motion to implead FPL as an indispensable party and argued that findings in the so-called annual planning hearings should not be used as a surrogate for statutory findings required by rule and Section 403.519, Florida Statutes, and that the "need" petitioner (AES Cedar Bay, Inc.) had no independent need for the electricity its proposed unit will produce. Finally, Staff pointed out that "rubber stamping" of QF construction would mean that the Commission would "...effectively loose the ability to regulate the construction of an increasingly significant amount of generating capacity built in the future by unregulated QFs." Although the

Commission ultimately denied Staff's motion, it stated:

...we find that the motion to implead should be denied. This decision should not be interpreted to mean that the arguments raised by our staff do not have merit. They do. However, the appropriate place to resolve these issues is in the planning dockets for Peninsular and Northwest Florida which will soon be before us.

Order No. 20671, 89 FPSC 1:368, 370 (1989).

23. In the planning dockets referred to in the AES docket, the Commission expressly overruled its prior precedent that annual planning hearing findings could serve as a surrogate in later "need" proceedings and held that capacity must be evaluated from the perspective of the need of the purchasing utility stating:

In so doing we take the position that to the extent that a proposed electric power plant constructed as a QF is selling its capacity to an electric utility pursuant to a standard offer or negotiated contract, that capacity is meeting the needs of the purchasing utility. As such, that capacity must be evaluated from the purchasing utility's perspective in the need determination proceeding, i.e. a finding must be made that the proposed capacity is the most cost-effective means of meeting purchasing utility X's capacity needs in lieu of other demand and supply side alternatives.

Order No. 22341, Docket No. 890004-EU.

24. The Commission further elaborated upon the indispensable nature of the purchasing utility in a need determination in FPL's Martin need determination order. There the Commission stated:

In order for the specific mandates of the statute [the Siting Act] to be meaningful, they must be answered from the utility's perspective.

Order No. 23080, 90 FPSC 6:208, 284. The Commission then observed that:

Unless the utility which awards the bid is an indispensable party it is virtually impossible to develop the record in these areas.

Id. at 285.

25. In this case, in stark contrast to these (and other) prior Commission decisions, the approach taken by the petitioners is to offer to the Commission tautological arguments concerning "utilities only contracting to buy when it is reasonable to do so" as a surrogate for the process of evaluating the power plant proposal from the purchasing utilities' perspective. Duke makes no attempt to identify individual purchasing utilities. Instead, there is an effort to rely on the proposal being "consistent with" the need of a planning artifice called "Peninsular Florida." As already pointed out, FPL is a substantial part of Peninsular Florida load, and the failure of Duke to comply with this Commission's rules and name the "primarily affected" utilities cannot avoid the result that FPL has a right to intervene.

26. Obviously, in this proceeding there is no standard offer contract or negotiated contract. The decisions and rationales of the Commission in Order Nos. 20671 and Order 22341 in Docket No.

890004-EU, Order No. 23792 in Docket No. 900004-EU, and Order No. 23080 in Docket No. 890974-EG, where the Commission addressed the utility's necessary and proper role in need determination proceedings involving actual contracts with non-utility generators, are even more compelling under the circumstances in this proceeding where there are no contracts. Not only does FPL have standing as an intervenor, it is a necessary or indispensable party. FPL's role is not a mere informational role. Both Duke and the Utilities Commission have recognized this. The Utilities Commission, New Smyrna Beach, also has no contract to purchase power from the facility, but it has been named as a petitioner under the Commission's rules. Clearly, FPL, a utility also without a contract but upon whose need the plant is premised, has interest sufficient to intervene.

27. The Petition in this proceeding acknowledges that FPL has a substantial interest sufficient to support standing to intervene. For instance, it is represented that the Project will "displace approximately 3,720,000 MWH of electric energy... in 2002, and greater amounts in following years (more than 4,200,000 MWH in 2012)." (Petition at p. 26). According to the Petitioners, this generation is expected to displace "heavy-oil-fired and gas-fired generation units." (Petition at p.27). This displacement will have an adverse effect on FPL which owns significant amounts of "Peninsular Florida's" oil-fired and gas-fired generating capacity.

Not only will it adversely affect the economics of future capacity additions by FPL, but also it will adversely affect how FPL operates its existing generating units and makes sales of capacity and energy.

28. Contrary to the allegation of paragraph 23 of the petition, the merchant plant will pose risk to Florida electric customers and will likely pose obligations on Florida utilities. The Petitioners provide absolutely no information on terms or conditions of possible energy and capacity sales except to point out that they will not be cost based. There are no contracts for the sale of energy or capacity from the Project that have been described or provided. Petitioners provide no assurance that their "competitively priced" capacity sales will not be used to displace existing capacity sales arrangements. The Petitioners' device of asserting that there will be no adverse impacts does not make the adverse impacts simply disappear. FPL submits that an absence of information and a willingness to rely on rhetoric should not be used to deny potentially interested parties essential information about the Project. For instance, no information about the contract term is provided. This lack of specificity will adversely affect FPL. The Petitioners apparently want complete freedom to market where they choose. This Commission will have no jurisdiction over the owner/operator of the facility as it does over Florida utilities. Simply put, the Project's capacity has absolutely no

discernable commitment associated with its future availability. These factors combine to place even greater obligations on FPL because of its obligation to provide service.

29. This proceeding is intended to consider and address the substantial interests of FPL and the adverse impact thereon. Implicit in the Commission's decisions that the purchasing utility is the proper applicant for a determination of need or an indispensable party to that proceeding is the recognition that the interests of the purchasing utility will be addressed.

30. This need determination proceeding is the only one where FPL can protect its interests. If the determination of need is entered, then there will be no necessary additional proceeding addressing FPL's interests. Even a proceeding before this Commission to address a potential purchase by FPL may be limited because of stare decisis or federal pre-emption. In any event, such a proceeding could not re-evaluate the underlying need determination.

Notice of Agency Decision

31. There has been no agency decision in this proceeding; therefore, FPL cannot provide a statement of when and how it received notice of the agency decision.

Disputed Issues of Material Fact

32. The Petition and Exhibit raise numerous disputed issues of material fact. Those which are apparent from the filing are shown on Attachment A, which is incorporated herein by reference. However, there may well be other disputed issues of material fact not readily apparent on the face of the filing, and FPL reserves the right to raise additional disputed issues of material fact.

Ultimate Facts Alleged

33. Duke has no obligation to provide service and cannot justify the need for its Project based upon its own need. Duke is relying upon the need of the 59 Florida utilities comprising "Peninsular Florida" to attempt to demonstrate the need for its Project. As one of the 59 utilities Duke relies upon and as the utility comprising roughly 50% of Peninsular Florida, FPL has substantial interests which will be determined in this proceeding. The relief sought in this case would injure FPL's ability to plan, certify, build and operate transmission and generation facilities necessary to meet its service obligation and the needs of its customers. The relief sought in this case would adversely affect FPL by reducing natural gas availability in Florida, creating uneconomic duplication of facilities, and making it unnecessarily burdensome to plan and provide transmission capacity necessary to

meet FPL's service obligations. The relief sought in this case would adversely affect FPL by displacing oil-fired and gas-fired generation on the FPL system, adversely affecting FPL's ability to operate its generating units and make sales of energy and capacity. The relief sought in this proceeding would introduce tremendous uncertainty in the planning processes for FPL and Florida utilities, adversely affecting FPL's ability to plan its generation and transmission facilities. Because FPL has substantial interests which will be determined in this proceeding and because FPL has substantial interests which will be adversely affected by this proceeding, FPL has an interest which warrants intervention in this proceeding. FPL's intervention is warranted under Florida Administrative Code Rule 25-22.039 and Section 120.52(12), Florida Statutes.

34. The proposed Project has not been shown to be needed for electric system reliability and integrity. The proposed Project has not been shown to be needed for adequate electricity at a reasonable cost. The proposed Project has not been shown to be the most cost-effective alternative available. It has not been shown that there are not conservation measures reasonably available to the Utilities Commission, New Smyrna Beach to mitigate the alleged need for the Project.

WHEREFORE, FPL respectfully petitions for leave to intervene and participate as a party to this proceeding.

DATED this 27th day of August, 1998.

Respectfully submitted,

STEEL HECTOR & DAVIS LLP
215 South Monroe Street
Suite 601
Tallahassee, FL 32301
Attorneys for Florida Power
& Light Company

By: 

Matthew M. Childs, P.A.

ATTACHMENT A

FPL's Disputed Issues Of Material Fact

1. Whether the Utilities Commission, New Smyrna Beach has an entitlement to 30 MW of the Project's capacity and has the contractual right to purchase energy associated with this capacity at specified rates for the economic life of the Project?
2. Whether the vast majority of Duke's wholesale sales will be made to utilities in Peninsular Florida?
3. Whether the Project can be constructed at a cost of \$160 million?
4. Whether the Project's estimated costs reflect all costs of construction, including the costs of associated facilities and transmission lines?
5. Whether there is a contract in place for Citrus to deliver sufficient firm gas to operate the Project at full capacity for an initial term of 20 years?
6. Whether the Project's use of natural gas will reduce the availability of natural gas to Peninsular Florida utilities?
7. Whether the Peninsular Florida transmission grid will accommodate the net output of the Project?
8. Whether the proposed transmission additions will allow the Peninsular Florida transmission grid to accommodate the delivery of the net output of the Project?
9. Whether the Project will tie up transmission capacity which would otherwise be available to FPL to meet its service obligation to retail customers?
10. Whether the cost of the transmission facilities alleged to be necessary for the Florida transmission grid to accommodate the net output of the Project are reasonable and reflected in the projected cost of the Project?
11. Whether the Project will burden FPL's or other utilities' transmission systems or violate any transmission constraints or contingencies in Peninsular Florida or elsewhere?

12. Whether the Project will have a high availability with a Equivalent Availability Factor of 96 percent?
13. Whether the projected heat rate values for the Project are reasonable?
14. Whether the projected Equivalent Forced Outage Factor of 1 percent is reasonable?
15. Whether the Project will produce low emissions of sulfur dioxide, nitrogen oxide, carbon monoxide, carbon dioxide and particulate matter and no emission of heavy metals?
16. Whether the operation of the Project is reasonably likely to result in measurable reductions in emissions of SO₂, NO_x, CO, CO₂, particulate matter, and heavy metals in Florida?
17. Whether the Project, without a final purchased power agreement between Duke and the Utilities Commission, New Smyrna Beach, is needed for system reliability and integrity by the Utilities Commission, New Smyrna Beach?
18. Whether the Project, without a final purchased power agreement between Duke and the Utilities Commission, New Smyrna Beach, is needed for adequate electricity at a reasonable cost by the Utilities Commission, New Smyrna Beach?
19. Whether the load forecast developed by and relied upon by the petitioner's for the load of the Utilities Commission, City of New Smyrna Beach is reasonable?
20. Whether the Project, without a firm contract to sell its capacity and with Florida utilities already having plans in place which show that their capacity needs are met through the winter of 2007-2008, is needed for generating capacity to maintain system reliability for any peninsular Florida utility?
22. Whether the *1998 Regional Load and Resource Plan* prepared by the FRCC shows that more than 8,000 MW of new installed capacity is needed to maintain reserve margins and planning criteria?
23. Whether the Project will provide additional reliability protection to peninsular Florida utilities if the Project's capacity remains uncommitted?

24. Whether the Project, without a firm contract to sell its capacity and with Florida utilities already having plans in place which show that their capacity needs are met through the winter of 2007-2008, is needed for adequate electricity at a reasonable cost for any peninsular Florida utility?
25. Whether utility ratepayers will bear the capital and operating costs of the Duke plant if Duke signs contracts for its output with utilities?
26. If Duke signs contracts with utilities for its output, will utility customers face operating risks associated with the plant?
27. Whether the Project will provide power with no risk to Florida electric customers?
28. Whether the Project will impose no obligation on Florida utilities?
29. Whether the Project, without a contract for its capacity and energy, will contribute to the reduction of consumption of petroleum fuels for electricity generation in Florida?
30. Whether the Project is demonstrably cost-effective relative to virtually all other gas-fired combined cycle power plants for Florida over the next ten years?
31. Whether the Project, without a firm contract to sell its capacity and with Florida utilities already having plans in place which show that their capacity needs are met through the winter of 2007-2008, is the most cost-effective alternative to meet the need of any peninsular Florida utility?
32. Whether the Utilities Commission, New Smyrna Beach has a need for approximately 53 to 73 MW of additional power supply resources between 2000 and 2004?
33. Whether projections showing that the Project will operate at capacity factors in excess of 83 percent between 2002 and 2012 are reasonable given that Duke has no contract to sell capacity or firm energy?
34. Whether there are conservation measures reasonably available to the Utilities Commission, New Smyrna Beach to mitigate the alleged need for the Project?

35. Whether there are conservation measures reasonably available to the peninsular Florida utilities to whom Duke may sell which would mitigate the alleged need for the Project?
36. Whether the Project, without a contract to sell power and with Florida utilities already having plans in place to meet their need for capacity, would displace less efficient gas-fired and oil-fired generation in peninsular Florida?
37. Whether the Project will save the Utilities Commission of New Smyrna Beach \$3 million per year?

CERTIFICATE OF SERVICE
DOCKET NO. 981042-EU

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Petition for Leave to Intervene has been furnished by Hand Delivery (*), or U.S. Mail this 27th day of August, 1998, to the following:

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

Robert Scheffel Wright, Esq.
John T. LaVia, III, Esq.
Landers & Parsons, P.A.
P.O. Box 271
Tallahassee, FL 32302

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

Kelly J. O'Brien, Manager
Structured Transactions
Duke Energy Power Services LLC
5400 Westheimer Court
Houston, TX 77056

By: 

Matthew M. Childs, P.A.

000145