

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Joint Petition for )  
 Determination of Need for an ) DOCKET NO. 981042-EM  
 Electrical Power Plant in Volusia )  
 County by the Utilities Commission, ) FILED: OCTOBER 26, 1998  
 City of New Smyrna Beach, Florida, )  
 and Duke Energy New Smyrna Beach )  
 Power Company Ltd., L.L.P. )

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DUKE ENERGY NEW SMYRNA BEACH POWER COMPANY LTD., L.L.P.'S  
OBJECTIONS TO LEAF'S INTERROGATORIES (NOS. 1-7)

Duke Energy New Smyrna Beach Power Company Ltd., L.L.P.  
 ("Duke New Smyrna") pursuant to the Order Establishing Procedures  
 issued in this docket on September 4, 1998, hereby respectfully  
 submits its objections to LEAF's Interrogatories (Nos. 1-7) which  
 were served by U.S. Mail on Duke New Smyrna on October 13, 1998.

GENERAL OBJECTIONS

Duke New Smyrna objects to LEAF's Interrogatories (Nos. 1-7)  
 on the grounds set forth in paragraph A below. Each of Duke New  
 Smyrna's responses will be subject to and qualified by this  
 general objection.

A. As noted in Duke New Smyrna's specific objections  
 stated below, Duke New Smyrna objects to several interrogatories  
 propounded by LEAF on the grounds that those interrogatories are  
 beyond the scope of discovery permitted of testifying experts by  
 the Florida Rules of Civil Procedure ("F.R.C.P."). Rule  
 1.280(b)(4)(A), F.R.C.P., which is made specifically applicable  
 to this proceeding by Uniform Rule 28-106.206, F.A.C., provides  
 as follows:

(4) Trial Preparation: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A)(i) By interrogatories a party may require any other party to identify each person whom the other party expects to call as an expert witness at trial and to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(ii) Any person disclosed by interrogatories or otherwise as a person expected to be called as an expert witness at trial may be deposed in accordance with rule 1.390 without motion or order of court.

(iii) A party may obtain the following discovery regarding any person disclosed by interrogatories or otherwise as a person expected to be called as an expert witness at trial:

1. The scope of employment in the pending case and the compensation for such service.

2. The expert's general litigation experience, including the percentage of work performed for plaintiffs and defendants.

3. The identity of other cases, within a reasonable time period, in which the expert has testified by deposition or at trial.

4. An approximation of the portion of the expert's involvement as an expert witness, which may be based on the number of hours, percentage of hours, or percentage of earned income derived from serving as an expert witness; however, the expert shall not be required to disclose his or her

earnings as an expert witness or  
income derived from other services.

An expert may be required to produce financial and business records only under the most unusual or compelling circumstances and may not be compelled to compile or produce nonexistent documents. Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and other provisions pursuant to subdivision (b)(4)(C) of this rule concerning fees and expenses as the court may deem appropriate.

LEAF has not asked interrogatories that are permitted under this Rule and has propounded several interrogatories directed to Duke New Smyrna's experts that are clearly beyond the scope of discovery by interrogatories permitted under the applicable rules. Duke New Smyrna will, of course, produce its testifying experts for deposition as provided for in Rule 1.280(b)(4)(A)(ii), F.R.C.P.

#### SPECIFIC OBJECTIONS

Duke New Smyrna makes the following specific objections to LEAF's Interrogatories (Nos. 1-7). Duke New Smyrna's specific objections are numbered to correspond with the numbers of LEAF's interrogatories.

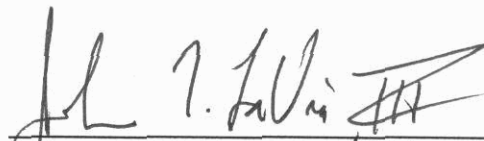
4. Duke New Smyrna objects to this interrogatory on the grounds that it is beyond the scope of discovery permitted of testifying experts by the Florida Rules of Civil Procedure.

5. Duke New Smyrna objects to this interrogatory on the grounds that it is beyond the scope of discovery permitted of testifying experts by the Florida Rules of Civil Procedure.

6. Duke New Smyrna objects to this interrogatory on the grounds that it is beyond the scope of discovery permitted of testifying experts by the Florida Rules of Civil Procedure.

7. Duke New Smyrna objects to this interrogatory on the grounds that it is beyond the scope of discovery permitted of testifying experts by the Florida Rules of Civil Procedure.

Respectfully submitted this 26th day of October, 1998.



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and

Duke Energy New Smyrna Beach Power  
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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 26th day of October, 1998:

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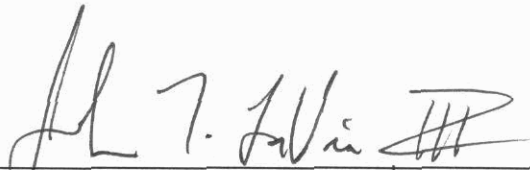
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