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April 5, 2000

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**In re: Petition for Determination of Need for an Electrical Power Plant in St. Lucie County by Panda Midway Power Partners, L.P.
Docket No. 000289-EU**

**Petition for Determination of Need for Electric Power Plant in Lake County by Panda Leesburg Power Partners, L.P.
Docket No. 000288-EU**

Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light Company ("FPL") in Docket Nos. 000288-EU and 000289-EU are the original and fifteen (15) copies of Florida Power & Light Company's Motion for Scheduling Conference and Alternative Schedule.

If you or your staff have any questions regarding this filing, please contact me.

Very truly yours,

Charles A. Guyton

Enclosure
cc: Parties of Record
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination of)
Need for Electric Power Plant in Lake)
County by Panda Leesburg Power)
Partners, L.P.)

Docket No. 000288-EU

000288-EU

In re: Petition for Determination)
of Need for an Electrical Power Plant in)
St. Lucie County by Panda Midway)
Power Partners, L.P.)

Docket No. 000289-EU

Filed: April 5, 2000

FLORIDA POWER & LIGHT COMPANY'S
MOTION FOR SCHEDULING CONFERENCE
AND ALTERNATIVE SCHEDULE

Florida Power & Light Company ("FPL") pursuant to Rule 28-106.204 of the Florida Administrative Code ("F.A.C."), hereby moves for a scheduling Conference in this proceeding and a procedural order establishing dates that would allow FPL and the other interveners a meaningful opportunity to prepare for trial. In support of this motion FPL states:

I. INTRODUCTION

1. Panda Midway Power Partners, L.P. ("Panda Midway") and Panda Leesburg Power Partners, L.P. ("Panda Leesburg") (hereinafter both Panda Midway and Panda Leesburg will be referred to collectively as "Panda") initiated this proceeding with two petitions for a determination of need filed on March 6, 2000. In the petitions, Panda set forth as a basis for its determination of need "some basis in addition to or in lieu of capacity needs," within the meaning of Rule 25-22.081, Florida Administrative Code. However, Panda did not set forth the necessary "detailed analysis and supporting documentation of the costs and benefits" required by that rule.

2. On March 27, 2000, FPL petitioned to intervene in these proceedings and moved to dismiss the petitions on a number of grounds, including Panda's clear failure to file as part of its petition the "detailed analysis and supporting documentation of the costs and benefits" required by Rule 25-22.081(3), F.A.C.

3. Panda is contesting FPL's intervention and FPL's motion to dismiss and has requested oral argument on both. This request for oral argument, if granted, would have the effect of deferring a ruling on intervention and thereby unreasonably curtailing the time allowed for FPL to conduct discovery and prepare testimony. Both FPL's petition to intervene and motion to dismiss are ready for disposition; a prompt ruling on both would facilitate the efficient disposition or scheduling of the case.

4. Although there has not yet been a procedural order, a CASR with procedural dates has been issued in this proceeding. The dates set forth in the CASR would not (1) afford the interveners a meaningful opportunity to review Panda's cases, (2) provide the interveners with sufficient time to conduct discovery prior to filing testimony, (3) allow the interveners sufficient time to prepare testimony, or (4) give the interveners an adequate opportunity for preparation for trial. Therefore, FPL requests a scheduling conference at which the parties may discuss with the Prehearing Officer a more reasonable schedule for this proceeding.

THE TENTATIVE SCHEDULE IN THE CASR

5. The CASR does not set forth a date for ruling on intervention. This is a critically important date, for interveners may not initiate discovery without being granted party status. Thus, every day without a ruling is a day that the interveners may not use for discovery or trial preparation. There is a need for an immediate ruling on intervention so that discovery may be initiated.

6. The schedule set forth in the CASR gives a grossly unfair advantage to the petitioner and severely prejudices the interveners in preparing a case. The CASR sets the matters for hearing for July 12-14, 2000, essentially four months (some 128) days from the filing of clearly incomplete and infirm petitions and less than three months after the filing of direct testimony. This rush to hearing is not necessary. Need determination cases are often heard on an abbreviated schedule, but that is unnecessary here. Apparently, the petitioners have already waived the 90 day time line set forth in the Commission's rule. Moreover, the Commission has previously construed its rule as not being applicable to cases such as Panda's where there is not also a pending site certification application. Given that prior construction of the Commission's rule, Panda's apparent waiver of the rule, and Panda's incomplete filings, if the cases are not dismissed as they should be, more time should be allowed for the discovery necessary to provide the missing information that should have been filed with the petitions and to allow adequate time for development of intervener testimony and trial preparation. In addition, it appears that the three days tentatively scheduled is not sufficient time to try these cases.

7. Of even greater concern to FPL are the dates set forth in the CASR for the filing of testimony. Those dates could not be more prejudicial to the interveners.

8. Panda was given seven weeks (49 days) to file its direct testimony **after** filing its insufficient petitions; Panda is to file its direct case on April 24. If Panda wanted to press the Commission for an expedited hearing, it could and should have filed its testimony with its petitions, as other need petitioners have historically done. Instead, Panda chose not to file its testimony until well after its petitions, and it has been rewarded for this lack of diligence with an additional seven

weeks to put together its case. This is particularly egregious given that the petition clearly does not provide the minimum information required by Rule 25-22.081.

9. In sharp contrast is the extremely limited time allotted for interveners to develop and file their testimony. The interveners are given 14 days (two weeks) to review Panda's direct testimony and file responsive testimony. And, that filing date is little more than a month away, and there is not yet a ruling on the interveners' party status facilitating discovery by the interveners. This unacceptable situation is worsened by the fact that Panda has filed facially deficient petitions that do not set forth the detailed information necessary for the Commission to follow an expedited schedule in this proceeding. Of course, that should be a basis for dismissing the petitions without prejudice to re-file with the required information. However, if that alternative is not pursued as it should be, then much more time needs to be afforded the interveners for discovery to secure the information that Panda should have provided in the first instance.

PANDA'S CASES ARE DEMANDING AND REQUIRE MORE TIME FOR REVIEW

10. Panda has asked that its two need proceedings be consolidated. Together, these projects represent 2,000 MW of potential capacity. The size of these projects alone should heighten the Commission's scrutiny. Unlike other recent merchant plant need determination cases in which only one modeling expert and one model were offered, both of these cases rely upon two modeling experts and two different models, one of which the Commission has never had occasion to review, and the other of which, the North American Regional Electricity Model, was only superficially presented to the Commission in an earlier version. The case that Panda has hinted at in its petitions is extensive and will require more than twice as much analytical effort as prior merchant plant need determination cases.

11. To gauge the inadequacy of the procedural schedule set forth in the CASR, it is helpful to contrast that schedule with the schedule that has been followed to date in the Okeechobee Generating Company (“OGC”) need proceeding currently pending before the Commission. In the OGC case the Commission initially had a similar schedule for hearing. OGC filed on September 24, 1999, and the case was initially set for trial in early December 1999. Upon motions filed by FPC and FPL, the Commission recognized that such an abbreviated schedule allowing only a month for trial preparation (a similar circumstance presented by the CASR schedule in this case; if intervention were granted immediately the interveners would have only a month for discovery and trial preparation to develop their testimony) would not afford the interveners due process and a fair opportunity to prepare for trial. Order No. PSC-99-2438-FAA-EU at 27, 29 (“This matter is currently scheduled for hearing on December 6-8, 1999. FPC was not granted intervener status until November 4, 1999, leaving only a month for discovery and other trial preparation. We are concerned about whether FPC will be afforded due process under these conditions.”) The Commission also noted that the time limits of the Commission’s rule calling for a hearing within 90 days from filing of the petition “only apply to a need determination when a complete application for site certification has been made.” Id at 29.

12. The OGC case was rescheduled for trial in March, and even then with the discovery disputes and delays in access to the models, rebuttal testimony was being filed with virtually no time for review prior to trial. Ultimately, discovery conducted a week and half before hearing (because access to supporting documentation that should have been in the original petition was not provided until shortly before then), showed that there were flaws in OGC’s case, flaws so serious that OGC could not make a prima facie offer of proof, and OGC requested for a further continuance. It is not

yet scheduled for hearing, but it is unlikely to be heard before the dates for trial tentatively set for Panda.

13. If the OGC case had proceeded to trial in March, that would have allowed six months from the filing of the case to trial, two more months than is currently scheduled in this proceeding. As noted before, even that schedule was rushed. Under the current schedule the OGC case may not be heard for ten months after the filing of the petition.

14. As noted earlier, the Panda Midway case and the Panda Leesburg case are far larger and more complex than the OGC case. There is at least twice the modeling review (and an apparently new version of the Altos models) and nearly four times the capacity (2000 MW instead of 550 MW). Discovery disputes and attendant delays can reasonably be anticipated. Much of the delays in the case OGC stemmed from a deficient petition with insufficient supporting documentation and discovery delays associated with one of Panda's experts in this case, Dr. Nesbitt, demanding unreasonable terms for intervenor access to the models and providing incomplete discovery responses that required timely and costly motions to compel. Perhaps that can be avoided in this case, but establishing a procedural schedule that assumes there are no such delays or problems in this case would be unrealistic.

RELIEF REQUESTED

15. In light of its experience in the OGC case and because the tentative schedule set forth in the CASR effectively precludes the interveners from a fair opportunity to present a meaningful case, FPL is requesting that the Prehearing Officer conduct a scheduling conference with all the parties, with the objective being a reasonable and manageable schedule for the conduct of this proceeding. The Commission will be served by allowing sufficient time for the full development

of a record in this proceeding, rather than being forced to rely on Panda's insufficient petition, which lacks the necessary and required supporting documentation. At the scheduling conference Panda can set forth how many witnesses it envisions calling, the models they plan to use, and its proposed terms for Commission and intervenor access to the models and their input and output data. The interveners and Commission Staff can then respond with an estimate of the time necessary to review this data, conduct the necessary discovery, and prepare a responsive case. Once that has been discussed, then a reasonable date for hearing can be established. Ground rules for discovery, such as whether expedited discovery is necessary, the terms for access to confidential data and computer models, and how motions to compel may be expedited should also be addressed. FPL respectfully suggests that such a procedure would facilitate the orderly and timely processing of this case.

16. In the alternative to a scheduling conference, FPL moves the Prehearing Officer to establish a hearing schedule that gives the interveners a fair and complete opportunity to prepare for trial and the Commission Staff sufficient time and opportunity to review these complex and new models they have not previously reviewed. FPL believes a trial date no sooner than late September would afford the time necessary for it to prepare its case, as set forth in more detail in the following paragraph.

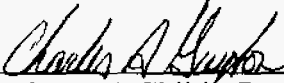
17. The case should be dismissed without prejudice for failure to provide the necessary information required by Rule 25-22.081(3), F.A.C. However, if that course is not pursued and the petitioner is given until April 24, 2000 to file its direct testimony, then the interveners should be given four months to conduct discovery and prepare a responsive case. The OGC case has shown that even four and a half months may not be sufficient, and it is not as complex or as large a case as is this case. However, FPL is guardedly optimistic that with an expeditious ruling on its intervention

it can review both models, conduct discovery of both the information that should already be filed as well as the petitioner's direct case, resolve any discovery disputes that may arise and prepare its responsive case within four months of the filing of Panda's direct case. That would place the interveners' testimony filing date somewhere around the end the beginning of the last week of August. If Panda needs two weeks for rebuttal, the case could be ready for trial by late September. Given the conduct of the OGC case, even this proposed schedule is ambitious.

WHEREFORE, FPL respectfully requests the Prehearing Officer to set a scheduling conference to facilitate the prompt but thorough disposition of this important case. In the alternative, FPL respectfully requests that the Prehearing Officer establish a procedural schedule that does not require the interveners to file testimony before late August and does not set the matter for hearing until late September at the earliest.

Respectfully submitted,

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By: 
Matthew M. Childs, P.A.
Charles A. Guyton

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of April, 2000 a copy of the foregoing in Docket Nos.000288-EU and 000289-EU was served by either hand delivery (*) or U.S. Mail on the following:

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