

ORIGINAL

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May 4, 2000

VIA HAND DELIVERY

Blanca Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

RECEIVED-FPSC
MAY -4 PM 3:30
RECORDS AND REPORTING

RE: Dockets Nos. 000288-EU and 000289-EU
In re: Petition for determination of need for electric power plant in Lake County by Panda Leesburg Power Partners, L.P.;
In re: Petition for determination of need for electric power plant in St. Lucie County by Panda Midway Power Partners, L.P.

Dear Ms. Bayo:

Attached please find the original and fifteen (15) copies each of Panda Leesburg Power Partners, L.P.'s and Panda Midway Power Partners, L.P.'s Responses to Florida Power & Light Company's Response to Florida Power Corporation's Notice of Supplemental Authority, Suggestion of Lack of Jurisdiction, Supplement to Motion to Dismiss and Motion for Immediate Stay Pending Dismissal to be filed in the above styled dockets. Also enclosed are copies of each of these pleadings to be stamped as filed and returned to our office for our files.

Thank you for your attention to this matter. Please contact me if there are any questions or if I can provide further assistance.

Very truly yours,

Suzanne Brownless

AFA
APP
CAP
CMJ
CTR
EAG
LEG
MAS
OFC
RRR
SEC
WAW
OTH

c: 3125
cc: Steve Crain, P.E.
Bill Lamb, Esq.

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Petition for Determination of
Need for Electrical Power Plant in
Lake County by Panda Leesburg Power
Partners, L.P.

DOCKET NO. 000288-EU

PANDA LEESBURG POWER PARTNERS, L.P.'S RESPONSE
IN OPPOSITION TO FLORIDA POWER LIGHT'S
RESPONSE TO FLORIDA POWER CORPORATION'S
SUGGESTION OF LACK OF JURISDICTION, SUPPLEMENT
TO MOTION TO DISMISS AND MOTION
FOR IMMEDIATE STAY PENDING DISMISSAL

Petitioner, Panda Leesburg Power Partners, L.P.'s (Panda Leesburg), pursuant to Rule 28-106.204(1), Florida Administrative Code, files this response in opposition to Florida Power & Light Company's (FPL) Response to Florida Power Corporation's (FPC) Suggestion of Lack of Jurisdiction, Supplement to Motion to Dismiss and Motion For Immediate Stay, and states as follows:

1. On April 26, 2000, FPC filed the Florida Supreme Court decision Tampa Electric Co., Florida Power Corp. and Florida Power & Light Co. v. Joe Garcia, et al., as the Florida Public Service Commission; Utilities Commission, City of New Smyrna Beach; and Duke Energy New Smyrna Beach Power Co., Ltd., LL (Duke), Supreme Court Case Numbers SC95444-95446, with the Commission and cited it for the proposition that the Commission is "without jurisdiction or power to entertain, hear, or grant" the petition for need determination in this docket. [FPC Motion at 2-4]. Based upon this case, FPC has urged the Commission to grant FPC intervention so that FPC can request dismissal of this petition or, in the alternative, impose an "immediate stay" of all procedural filing dates set by the existing CASR and Procedural Order No. PSC-00-

DOCUMENT NUMBER-DATE

05618 MAY-48

0685-PCO-EU, issued on April 12, 2000. [FPC Motion at 4-5].

2. FPL filed its Response to FPC's Suggestion of Lack of Jurisdiction, Supplement to Motion to Dismiss, and Motion For Immediate Stay (FPL Response) on April 27, 2000. In its Response, FPL agreed with FPC's arguments and joined in FPC's requests for dismissal of this proceeding, granting of intervention to FPC and FPL or, in the alternative, imposition by the Commission of an immediate stay on all events scheduled in this docket. [FPL Response at 2-3].

Effect of Duke Decision

3. In response to FPL's and FPC's contention that the Duke decision is dispositive of the status of Panda Leesburg and its ability to use the Florida Electrical Power Plant Siting Act (Siting Act), Panda Leesburg would note that the decision of the Supreme Court does not become final until May 5, 2000.¹ For this reason alone, it would be inappropriate for the Commission to grant FPC its request to dismiss on the basis of the Duke decision.

Intervention

4. Although a bit unclear, it appears to be FPC's position, and that of FPL, that by virtue of the Duke decision, it should be granted intervenor status in this case. [FPL Response at 2]. This is simply wrong. Even if the Duke decision were final, which it is not, it cannot be read as addressing the question of intervention by FPC or FPL in this, or any other, need determination docket.

¹ Rule 9.330(a), Florida Rules of Appellate Procedure.

Although the participation of FPC and FPL in the Duke need determination docket was originally contested by Duke New Smyrna Beach, that issue was not the subject of the appeal to the Supreme Court. The standard for intervention remains that of substantial interest as outlined in Panda Leesburg's previously filed Objection to FPL's Petition For Leave to Intervene. Intervention still should not be granted.

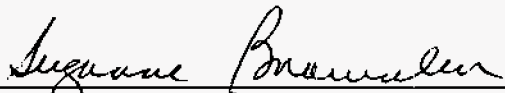
5. Nothing has been changed by the issuance of the Duke decision with regard to the status of FPC or FPL in this docket. FPL is not a party and has no standing to request that the Commission do anything. Likewise, FPL cannot be adversely affected by the failure of the Commission to grant a dismissal or stay the filing dates or any other dates set forth in the Procedural Order. As a nonparty to the suit, FPL does not have a right to file anything or to participate at all. FPL cannot be harmed in this case. It is not a party.

6. Because FPL is not a party, its Response should be stricken and disregarded by the Commission. Panda Leesburg is confident that the Commission will act appropriately with regard to the Duke decision when it becomes final. Until that time, Panda Leesburg will follow the filing requirements of the Procedural Order.

WHEREFORE, Panda Leesburg Power Partners, L.P., requests that this Commission Strike Florida Power & Light Company's Response to Florida Power Corporation's Notice of Supplemental Authority, Suggestion of Lack of Jurisdiction, Supplement to Motion to

Dismiss, and Motion for Immediate Stay Pending Dismissal, or in the alternative, deny the relief sought by same.

Respectfully submitted this 4th day of May, 2000 by:



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ATTORNEYS FOR PANDA LEESBURG
POWER PARTNERS, L.P.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Panda Leesburg Power Partners, L.P.'s Response to Florida Power & Light Company's Response to Florida Power Corporation's Notice of Supplemental Authority, Suggestion of Lack of Jurisdiction, Supplement to Motion to Dismiss, and Motion for Immediate Stay Pending Dismissal has been provided by U.S. Mail or (*) Hand Delivery to the following on May 4, 2000:

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