

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Original

In re: Petition for determination of need for an electrical power plant in Okeechobee County by Okeechobee Generating Company, L.L.C.

DOCKET NO. 991462-EI

In re: Petition for determination of need for an electrical power plant in Lake County by Panda Leesburg Power Partners, L.P.

DOCKET NO. 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

In re: Petition for determination of need for an electrical power plant in St. Lucie County by Duke Energy St. Lucie, L.L.C.

DOCKET NO. 000612-EU
ORDER NO. PSC-00-2382-PCO-EU
ISSUED: December 12, 2000

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
E. LEON JACOBS, JR.
LILA A. JABER
BRAULIO L. BAEZ

ORDER HOLDING DOCKETS IN ABEYANCE PENDING EXPIRATION OF UNITED STATES SUPREME COURT APPELLATE TIME PERIOD

BY THE COMMISSION:

CASE BACKGROUND

On September 24, 1999, Okeechobee Generating Company, L.L.C. (OGC), filed a Petition for Determination of Need for an Electrical Power Plant. OGC proposed to construct a 550-megawatt (MW) natural gas-fired, combined cycle merchant power plant in Okeechobee

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County, Florida, to commence commercial operation in April, 2003. OGC's petition was assigned Docket No. 991462-EI.

On March 6, 2000, Panda Leesburg Power Partners, L.P. (Panda Leesburg) and Panda Midway Power Partners, L.P. (Panda Midway) filed petitions to determine the need for electrical power plants in Lake County and St. Lucie County, respectively. Panda Leesburg and Panda Midway both proposed to construct separate 1000-MW natural gas-fired, combined cycle merchant power plants to commence commercial operation by May, 2003. The petition filed by Panda Leesburg was assigned Docket No. 000288-EU, and the petition filed by Panda Midway was assigned Docket No. 000289-EU. By Order No. PSC-00-0685-PCO-EU, issued April 12, 2000, these dockets were consolidated.

On May 22, 2000, Duke Energy St. Lucie, L.L.C., (Duke) filed a Petition for Determination of Need for an Electrical Power Plant. Duke proposed a 608 MW natural gas-fired, combined cycle merchant plant, an associated natural gas lateral pipeline, and transmission facilities to connect the plant to the Florida grid. These facilities are to be located in St. Lucie County. The anticipated in-service date is June 1, 2003. Duke's petition was assigned Docket No. 000612-EU.

On April 20, 2000, the Florida Supreme Court issued its decision in Tampa Electric Co.; Florida Power Corp.; and Florida Power & Light Co., v. 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., L.L.P., 25 Fla. Law W. S294 (Fla. April 20, 2000). Therein, the Court reversed our prior decision to grant a need determination "for an electric power company's proposal to build and operate a merchant plant in Volusia County." Id. at 3. The Court also indicated that "[a] determination of need is presently available only to an applicant that has demonstrated that a utility or utilities serving retail customers has specific committed need for all of the electrical power to be generated at a proposed plant." Id. at 13. Docket Nos. 991462-EI, 000288-EU, and 000289-EU were placed in abeyance by Order No. PSC-00-1063-PCO-EU, issued June 5, 2000, pending a final decision by the Florida Supreme Court. The Court denied motions for rehearing on September 28, 2000, in Tampa Electric v. Garcia, thereby finalizing its initial opinion.

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Pursuant to Rule 28-106.204, Florida Administrative Code, the petitioning parties in all four of the merchant plant need determination dockets filed motions to abate the proceedings in each of the respective dockets until the conclusion of the 2002 Regular Session of the Florida Legislature.

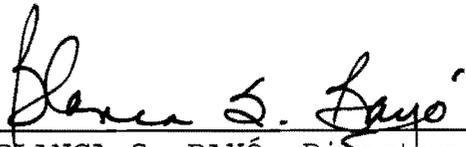
One more appellate opportunity exists for the appellants in Tampa Electric v. Garcia. Under the Federal Rules of Civil Procedure, an appeal of a state high court decision must be taken or applied for within ninety days after the order has been entered. 28 USCS §2101 (2000). The deadline for an appeal to the United States Supreme Court in Tampa Electric v. Garcia is December 27, 2000. Therefore, we hereby hold the above-referenced dockets in abeyance until the time period to appeal to the United States Supreme Court has expired in Tampa Electric v. Garcia. However, if no appeal is filed in Tampa Electric v. Garcia, the above-referenced dockets shall be administratively closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Docket Nos. 991462-EI, 000288-EU, 000289-EU, and 000612-EU shall be held in abeyance pending the expiration of the appellate time period to the United States Supreme Court in Tampa Electric v. Garcia. It is further

ORDERED that if no such appeal is filed in Tampa Electric v. Garcia, Docket Nos. 991462-EI, 000288-EU, 000289-EU, 000612-EU, shall be administratively closed.

By ORDER of the Florida Public Service Commission this 12th day of December, 2000.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.