

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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-EU

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 the
Osprey Energy Center by Calpine
Construction Finance Company,
L.P.

DOCKET NO. 000442-EI
ORDER NO. PSC-00-1063-PCO-EU
ISSUED: June 5, 2000

The following Commissioners participated in the disposition of
this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.
LILA A. JABER

ORDER HOLDING CURRENT MERCHANT PLANT PETITIONS IN ABEYANCE PENDING
OUTCOME OF FLORIDA SUPREME COURT'S DECISION IN DUKE-NEW SMYRNA

BY THE COMMISSION:

On September 24, 1999, Okeechobee Generating Company, L.L.C.
(OGC), filed a Petition for Determination of Need for an Electrical

DOCUMENT NUMBER-DATE

06784 JUN-58

FPSC-RECORDS/REPORTING

Power Plant. OGC proposed to construct a 550-megawatt (MW) natural gas-fired, combined cycle merchant power plant in Okeechobee County, Florida, to commence commercial operation in April, 2003. An administrative hearing on OGC's petition is set for October 18-20, 2000.

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. A hearing for the consolidated dockets is currently scheduled for July 12-14, 2000.

On March 30, 2000, Florida Department of Environmental Protection (DEP) filed a Notice of Receipt of Power Plant Siting Application and Request for Assignment of Administrative Law Judge regarding Calpine Construction Finance Company, L.P. (Calpine) Power Plant Siting. Calpine filed an application for power plant site certification with the DEP to construct a 527-MW natural gas-fired, combined cycle merchant power plant in Polk County, Florida, to be known as the Osprey Energy Center. A hearing is currently scheduled for August 14-16, 2000.

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., Case Nos. SC95444, SC95445, SC95446 (Order). Therein, the Court reversed the Commission's prior decision to grant a need determination "for an electric power company's proposal to build and operate a merchant plant in Volusia County." Order, p. 2. At page 13 of its Order, the Court 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."

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Accordingly, the pending merchant plant need determination dockets may be affected by the Florida Supreme Court's decision. Given the Court's initial opinion, it appears that allowing the events in Dockets Nos. 991462-EU, 000288-EU, and 000289-EU to continue as originally scheduled could result in the unnecessary expenditure of the parties' and the Commission's time and resources. Therefore, the current merchant plant need determination petitions (Dockets Nos. 991462-EI, 000288-EU, and 000289-EU) shall be held in abeyance pending the outcome of the Florida Supreme Court's final decision regarding Tampa Electric Co., et al. v. Garcia, et al., Case Nos. SC95444, SC95445, SC95446 ("Duke-New Smyrna").

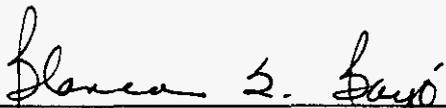
However, Calpine (Docket No. 000442-EI) is in a different procedural phase than the other dockets listed above. Calpine has not filed a petition for a need determination at this point and we believe it would be premature to decide that it is exactly like the other dockets. Instead, Calpine will be allowed to file its petition for need determination allowing us to make an informed decision.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Dockets Nos. 991462-EU, 000288-EU, and 000289-EU shall be held in abeyance pending the Florida Supreme Court decision in Tampa Electric Co., et al. v. Garcia, et al., Case Nos. SC95444, SC95445, SC95446. It is further

ORDERED that Docket Nos. 991462-EU, 000288-EU, 000289-EU, and 000442-EI shall remain open.

By ORDER of the Florida Public Service Commission this 5th day of June, 2000.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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.