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By Hand Delivery

**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**

Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light Company ("FPL") in Docket No. 000288-EU are the original and fifteen (15) copies of Florida Power & Light Company's Petition for Leave to Intervene.

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

Very truly yours,

Charles A. Guyton
Charles A. Guyton

AFA _____
APP _____
CAF _____
CMW _____ Enclosure
CTR _____ cc: Parties of Record
EAG *3* _____
LEG *15* _____
MAS *5* _____
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination)	
of Need for Electric Power Plant in)	Docket No. 000288-EU
St. Lucie County by Panda Midway)	Filed: March 27, 2000
Power Partners, L.P.)	

**FLORIDA POWER & LIGHT COMPANY'S
PETITION FOR LEAVE TO INTERVENE**

Florida Power & Light Company ("FPL"), pursuant to Florida Administrative Code Rules 25-22.039 and 28-106.205, petitions the Florida Public Service Commission ("Commission") for leave to intervene in Docket No. 000288-EU. As grounds therefor, FPL states:

Introduction

1. The name and address of the affected agency are:

Florida Public Service Commission
 2540 Shumard Oak Boulevard
 Tallahassee, Florida 32399-0850

2. The name and address of the petitioner are:

Florida Power & Light Company
 9250 West Flagler Street
 Miami, Florida 33174

3. All pleadings, motions, orders and other documents directed to the petitioner are to

be served on:

Matthew M. Childs, P.A.
 Charles A. Guyton
 Steel Hector & Davis LLP
 215 South Monroe Street
 Suite 601
 Tallahassee, Florida 32301

William G. Walker, III
 Vice President
 Regulatory Affairs
 Florida Power & Light, Co.
 9250 West Flagler Street
 Miami, Florida 33174

**FPL Has Substantial Interests That Will
Be Determined And Affected In This Proceeding**

4. FPL is entitled to intervene in this proceeding if an affirmative determination of need would cause injury to FPL in fact and the nature of the injury is one against which the need-determination process is intended to protect. *See, e.g., Agrico Chemical Co. v. Dep't of Env. Reg.*, 406 So.2d 478 (Fla. 2nd DCA 1981), *rev. denied*, 415 So.2d 1359 (Fla. 1982). For the reasons described below, granting Panda Midway's Petition for Determination of Need for an Electrical Power Plant (the "Need Petition") would cause FPL just such injury.

5. FPL is a public utility subject to the jurisdiction and regulation of this Commission under Chapter 366, Florida Statutes. Among FPL's duties as a public utility is to plan for and meet the demands of its customers for electric service. Meeting this obligation requires FPL to select the most cost-effective resource alternative consistent with system integrity and reliability. Detailed and comprehensive long range planning in a dynamic and complex environment is required for a utility to meet its long term service obligations.

6. The Need Petition states in Paragraph 13 that the Panda Midway Project "will be electrically interconnected to the Peninsular Florida bulk transmission grid at the existing Midway Substation owned by FPL." Interconnection of 1000 MW of additional generating capacity to FPL's transmission system will have a substantial impact on the planning of that system. FPL could be adversely affected by the Project's causing more use of FPL's transmission system than was planned by FPL. Only after the Project indicates the nature of transmission service it will seek and FPL undertakes detailed analyses will FPL be able to determine how severely those

impacts will adversely affect the future design and operation of the transmission system.¹ At present the request for interconnections creates uncertainty as to transmission planning and operation.

7. The Need Petition expressly declines to take a position as to whether Panda Midway will commit the capacity of the proposed Project to a particular utility and thus help meet Peninsular Florida's need for additional capacity, or instead will keep the proposed Project uncommitted and sell its output purely on a merchant-plant basis. See Need Petition at ¶17. According to Panda Midway, its proposed Project would have a substantial impact on reserve margins *if* it were committed to help meet Peninsular Florida's capacity needs. See Need Petition at ¶18 (If included as firm capacity, the Panda Midway and Panda Midway proposed Projects are alleged to increase the FRCC summer reserve margin 5.9% and the winter reserve margin 5.8%).

But if the Commission were to allow Panda Midway to construct the proposed Project while coyly keeping its options open, FPL would be unable to predict whether the proposed Project will be committed to meet capacity needs or, if so, the needs of which utility. This uncertainty would substantially impair FPL's ability to conduct the long range system planning described in Paragraph 5 above.

¹ Panda Midway alleges that "To date, load flow studies *prepared independently for Panda Midway indicate* that the Peninsular Florida transmission grid will accommodate delivery of the net output of the Project. These load flow studies also *indicate* that the Project will not burden the transmission system or violate any transmission constraints or contingencies for Peninsular Florida in accordance with good utility practice." Need Petition at ¶14 (emphasis added). FPL has not seen these "independent" analyses and has no way of verifying at this point what they "indicate."

8. The Need Petition alleges in Paragraph 34 that the proposed Project "would displace approximately 6,300,000 MWh of electric energy produced from oil-fired and less-efficient gas fired generation facilities in 2003, and greater amounts in following years (more than 6,600,000 MWh in 2008)." It is clear from the Need Petition that the facilities being displaced will belong to the utilities of Peninsular Florida. *See* Need Petition at ¶26 ("The primary market for power produced by the proposed Project is wholesale sales to other utilities in Peninsular Florida."). FPL is one of those utilities; in fact, its system comprises roughly 45-50% of the demand and energy requirements of Peninsular Florida and it has more than half of Florida's capacity that burns oil at high heat rates. It is clear that Panda Midway contemplates displacing a substantial portion of FPL's existing generating capacity, but it makes no commitments as to when. This uncertainty would adversely affect FPL's ability to plan and operate its generating system effectively and efficiently.

9. Panda Midway suggests in the Need Petition that the Commission should approve the proposed Project even if it is not the most cost-effective alternative available, because Panda Midway will only be able to sell power from the proposed Project when the price is right. *See* Need Petition at ¶27. This is a sophistic deconstruction of the cost-effectiveness requirement in section 403.519, Florida Statutes. It presumes that Florida is indifferent to having excess, underutilized generating plants built around the state, so long as those plants do not sell power for more than the market-clearing price. But this ignores the very purpose of section 403.519: to ensure that the considerable environmental impacts of a new power plant are not imposed on the state unless there is a true need for that plant. It also clashes directly with the Commission's duty under the Grid Bill to avoid uneconomic duplication of generation facilities. *See* § 366.04(5), Fla.

Stat. FPL would be injured by the Commission's approving a project that is not the most cost-effective alternative, because the proposed Project would use up resources that otherwise would be available to support construction by FPL or others of cost-effective generating capacity.

10. The question of whether the Commission has statutory authority to grant a need determination for a "merchant plant" such as Panda Midway's proposed Project is presently pending before the Florida Supreme Court in *Tampa Electric Company, et al. v. Garcia, et al*, Case Nos. 95,444, 95,445, and 95,446. FPL has argued to the Supreme Court that the Commission lacks such authority. The Commission will necessarily reach the same issue here. FPL should be permitted to intervene in order to preserve its position in the event that the Supreme Court rules in FPL's favor.

11. The Commission has previously recognized that entities with which a proposed Project will compete to supply additional capacity and energy can and should intervene in need determination proceedings. *See, e.g., In re: Joint Petition to Determine Need for Electric Power Plant to be Located in Okeechobee County by Florida Power & Light Company and Cypress Energy Partners LP*, Order No. PSC-92-1355-FOF-EQ, 92 FPSC 11:363 ("[I]t is incumbent upon competing alternatives to come forward at a need determination."). Panda Midway's proposed Project would compete with the existing and planned resources of FPL and other utilities in Peninsular Florida, which makes FPL's intervention here appropriate. Moreover, the Commission has recognized in past decisions that the utility which will purchase output of a proposed Project is an indispensable party to a need determination. *See, e.g., In re: Petition of Florida Power and Light Company to Determine Need for Electrical Power Plant - Martin Expansion Project*, Order No. 23080, 90 FPSC 6:208, 284-85 ("In order for the specific mandates

of [the Siting Act] to be meaningful, they must be answered from the utility's perspective. ... Unless the utility which awards the bid is an indispensable party it is virtually impossible to develop the record in these areas."). It is clear from the Need Petition that Panda Midway intends FPL to be a principal market for the output of the proposed Project. Accordingly, FPL is an indispensable party to this proceeding.

12. FPL has sought and been granted the right to intervene in two recent need-determination proceedings involving proposed merchant plants: Docket No. 981042-EU (Duke New Smyrna Beach) and Docket No. 991462-EU (Okeechobee Generating Company). The same circumstances that entitled FPL to intervene in those proceedings exist here.

Notice of Agency Decision

13. There has been no agency decision in this proceeding; therefore, FPL cannot provide a statement of when and how it received notice of the agency decision.

Disputed Issues of Material Fact

14. The Petition and Exhibit raise numerous disputed issues of material fact. Those which are apparent from the filing are shown on Attachment A, which is incorporated herein by reference. However, there may well be other disputed issues of material fact not readily apparent on the face of the filing, and FPL reserves the right to raise additional disputed issues of material fact.

Ultimate Facts Alleged

15. Panda Midway has no obligation to provide service and cannot justify the need for its proposed Project based upon its own need. An entity without a service obligation or need of its own, Panda Midway must rely on the need of a purchasing utility. Instead of identifying such

a utility, however, Panda Midway is relying upon the collective and undifferentiated "need" of the 59 Florida utilities comprising the planning convention designated "Peninsular Florida" to attempt to demonstrate the need for its proposed Project. As one of the 59 utilities upon which Panda Midway relies and as the utility comprising roughly 50% of Peninsular Florida, FPL has substantial interests which will be determined in this proceeding. The relief sought in this case would injure FPL by (i) adversely affecting FPL's ability to plan, certify, build and/or operate transmission and generation facilities necessary to meet its service obligation and the needs of its customers, (ii) creating uneconomic duplication of facilities, (iii) making it unnecessarily burdensome to plan and provide transmission and generation capacity necessary to meet FPL's service obligations, (iv) displacing oil-fired and gas-fired generation on the FPL system, to the detriment of FPL's ability to operate its generating units and make off-system sales of energy and capacity, and (v) introducing tremendous uncertainty in the planning processes for FPL and other Florida utilities. Because FPL is an indispensable party and because it has substantial interests which will be determined in, and adversely affected by, this proceeding, FPL's intervention in this proceeding is warranted pursuant to Florida Administrative Code Rule 25-22.039 and section 120.52(12), Florida Statutes.

16. Panda Midway has not demonstrated either an individual-utility or Peninsular Florida need for its proposed Project. Panda Midway's proposed Project has not been shown to be needed for electric system reliability and integrity. The proposed Project has not been shown to be needed for adequate electricity at a reasonable cost. The proposed Project has not been shown to be the most cost-effective alternative available. It has not been shown that there are no


conservation measures reasonably available to Peninsular Florida to mitigate the alleged need for the proposed Project.

WHEREFORE, FPL respectfully petitions for leave to intervene and participate as a party to this proceeding.

DATED this 27th day of March 2000.

Respectfully submitted,

STEEL HECTOR & DAVIS LLP
215 S. Monroe St., Suite 601
Tallahassee, FL 32301
Attorneys for Florida Power &
Light Company

By: 
Charles A. Guyton

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that a true and correct copy of this FPL's Petition for Leave to Intervene in Docket No. 000288-EU was served by Hand Delivery (*) or mailed this 27th day of March, 2000 to the following:

Blanca S. Bayó, Director *
Records and Reporting
Florida Public Service Commission
4075 Esplanade Way, Room 110
Tallahassee, Florida 32399-0850

Marlene Stern, Esq. *
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Suzanne Brownless, Esq. *
1311-B Paul Russell Rd., #201
Tallahassee, Florida 32301

Panda Leesburg Power Partners, L.P.
Steven W. Crain, P. E.
4100 Spring Valley
Suite 1001
Dallas, Texas 75244

By: 
Charles A. Guyton

ATTACHMENT A
FPL's Disputed Issues of Material Fact

1. Whether the vast majority of Panda Midway's wholesale sales will be made to utilities in Peninsular Florida?
2. Whether the proposed Project can be constructed at a cost of \$386 million?
3. Whether the proposed Project's estimated costs reflect all costs of construction, including the costs of associated facilities and transmission lines?
4. Whether there is a contract in place for Gulfstream to deliver sufficient firm gas to operate the Project at full capacity for an initial term of 20 years?
5. Whether there is or will be a gas pipeline system in place for Gulfstream?
6. Whether the Peninsular Florida transmission grid will accommodate the net output of the proposed Project?
7. Whether the proposed transmission additions will allow the Peninsular Florida transmission grid to accommodate the delivery of the net output of the proposed Project?
8. Whether the proposed Project will tie up transmission capacity which would otherwise be available to FPL to meet its service obligation to retail customers?
9. Whether the cost of the transmission facilities alleged to be necessary for the Florida transmission grid to accommodate the net output of the proposed Project are reasonable and reflected in the projected cost of the proposed Project?
10. Whether the proposed Project will burden FPL's or other utilities' transmission systems or violate any transmission constraints or contingencies in Peninsular Florida or elsewhere?
11. Whether the projected heat rate values for the proposed Project are reasonable?
12. Whether the projected Equivalent Forced Outage Factor of less than 1.5 percent is reasonable?
13. Whether the proposed Project will produce low emissions of sulfur dioxide, nitrogen oxide, carbon monoxide, carbon dioxide and particulate matter and no emission of heavy metals?

14. Whether the operation of the proposed Project is reasonably likely to result in measurable reductions in emissions of SO₂, NO_x, CO, CO₂, particulate matter, and heavy metals in Florida?
15. Whether the proposed Project, without any contracts for its output, is needed for system reliability and integrity by Peninsular Florida?
16. Whether Peninsular Florida, with a projected coincident peak reserve margin in excess of 20% when the proposed Project is scheduled to come into service needs the proposed Project's capacity for system reliability and integrity?
17. Whether the proposed Project, without any contracts for its output, is needed for adequate electricity at a reasonable cost by Peninsular Florida?
18. Whether the proposed Project will provide additional reliability protection to Peninsular Florida utilities if the proposed Project's capacity remains uncommitted?
19. Whether utility ratepayers will bear the capital and operating costs of the proposed Project?
20. If Panda Midway signs contracts with utilities for its output, will utility customers face operating risks associated with the plant?
21. Whether the proposed Project will provide power with no risk to Florida electric customers?
22. Whether the proposed Project will impose no obligation on Florida utilities?
23. Whether the proposed Project, without a contract for its capacity and energy, will contribute to the reduction of consumption of petroleum fuels for electricity generation in Florida?
24. Whether the proposed Project is demonstrably cost-effective relative to virtually all other gas-fired combined cycle power plants for Florida over the next ten years?
25. Whether the proposed Project, without a firm contract to sell its capacity and with Florida utilities already having plans in place which show that their capacity needs are met through the winter of 2008-2009, is the most cost-effective alternative to meet the need of Peninsular Florida?
26. Whether projections showing that the proposed Project will operate at capacity factors ranging from 72 percent to 94 percent are reasonable given that Panda Midway has no contract to sell capacity or firm energy?

27. Whether there are conservation measures reasonably available to the Peninsular Florida utilities to whom Panda Midway may sell which would mitigate the alleged need for the proposed Project?
28. Whether the proposed Project, without a contract to sell power and with Florida utilities already having plans in place to meet their need for capacity, would displace less efficient gas-fired and oil-fired generation in Peninsular Florida?
29. Whether the proposed Project would reduce wholesale energy prices in Florida by an average of \$0.27 per MW over the period 2004-2008?
30. Whether the models and model inputs relied upon by Panda Midway to demonstrate the proposed Project's projected generation, fuel displacement, economic viability and impact on wholesale prices are reasonable and reliable?
31. Whether the proposed Project could decrease fuel diversity in Peninsular Florida?
32. Whether the proposed Project is economically viable?

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