

ORIGINAL

IN RE: Petition for determination)
of need for electric power plant)
in St. Lucie County by Panda)
Midway Power Partners, L.P.)
_____)

DOCKET NO. 000289-EU
Filed: April 12, 2000

PANDA MIDWAY POWER PARTNERS, L.P.'S
OBJECTION TO FLORIDA POWER & LIGHT COMPANY'S
MOTION FOR SCHEDULING CONFERENCE AND ALTERNATIVE SCHEDULE
AND FLORIDA POWER CORPORATION'S JOINDER IN SUCH MOTION
AND MOTION TO STRIKE

Panda Midway Power Partners, L.P. (Panda Midway), pursuant to Rule 28-106.204(1), Florida Administrative Code, files this Objection to Florida Power & Light Company's (FPL) Motion For Scheduling Conference and Alternative Schedule (FPL Motion) and Florida Power Corporation's (FPC) Joinder in such motion, and in support thereof states as follows:

1. On April 5, 2000, FPL filed a Motion For Scheduling Conference and Alternative Schedule in this docket pursuant to Rule 28-106.204, Florida Administrative Code. FPL Motion at 1. In its Motion, FPL has requested that the Commission hold a "scheduling conference" and issue a procedural order which provides a "more reasonable schedule for this proceeding" than that set forth in the Case Assignment Scheduling Record (CASR) issued in this docket. FPL Motion at ¶ 4.

2. In its Joinder, filed on April 7, 2000, FPC also cites

Rule 28-106.204, Florida Administrative Code, as the authority for its similar request that a "prompt scheduling conference" be held which will discuss "anticipated evidence, witnesses, models and data" as well as set a "workable prehearing schedule". FPC Motion at 1.

AFA _____
APP _____
CAF _____
CMU _____
CTR _____
EAG _____
LEG _____
MAS _____
OPC _____
PRR _____
SEC _____
WAW _____
OTH _____

RECEIVED & FILED
MW

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
04488 APR 12 8

3. As of this date, neither FPL nor FPC have been granted intervenor status in this docket. This fact is acknowledged by FPL who urges that "[t]here is a need for an immediate ruling on intervention so that discovery may be initiated" and later that "there is not yet a ruling on the intervenor's party status facilitating discovery by the intervenors." FPL Motion at ¶¶ 5, 9.

4. Why is FPL so concerned about securing a ruling on its petition for intervention? Without intervention status, FPL cannot initiate discovery nor can it exercise any of the other "rights" of a party, i.e., proposing issues to be litigated in the docket; filing any type of motion; requesting a docket be rescheduled; taking depositions; filing a request for admissions; requesting procedural changes.

5. The power to exercise any of these "rights" is granted when intervention is granted. Not before. That is the clear unrefutable Florida case law in administrative proceedings. There is no such thing as "putative" parties who can exercise "putative" rights in administrative law.

6. FPL and FPC will undoubtedly argue that the Commission has routinely allowed this practice. This is a true statement. However, in the vast majority of the cases in which the Commission has followed this practice, the applicant or statutory parties to the docket did not object to the intervention of the participating "putative" party(ies). As noted by FPL, Panda Midway has vigorously objected to the intervention of both FPL and FPC in this docket and has requested oral argument on both intervention requests. FPL Motion at ¶ 3. The process of filing for

intervention and granting it is pointless if the Commission is going to let FPL and FPC exercise every right granted to a party before intervention is granted.

7. Allowing FPC and FPL to act as "putative" parties in this docket prior to granting intervention is a direct violation of Panda Midway's due process rights and is a fundamental departure from the essential requirements of law and reversible error.

8. Rule 28-106.204(1), Florida Administrative Code, allows "other parties" to file a written response in opposition to the motion within seven days of service of the motion. In this case, Panda Midway would have until Wednesday, April 12, 2000, to respond to FPL's Motion For Scheduling Conference and Alternative Schedule and until April 19, 2000, to respond to FPC's Joinder. These time limits apply if FPL and FPC have the right to file the motions. However, they do not.

9. Panda Midway does not have to file its objections to either FPL's or FPC's motions under the time line of Rule 28-106.204(1), Florida Administrative Code, because the motions are illegal. That is, the motions are void and should be stricken from the record in this docket since FPL and FPC don't have the current right to file them. Panda Midway will gladly respond to the issues raised in these motions in accord with the schedule set forth in Rule 28-106.204(1), Florida Administrative Code, when, and if, they are refiled after FPL and/or FPC is granted intervention in this docket.

10. The purpose of intervention in administrative proceedings is to restrict the participants in a docket to those whose

interests are substantially affected. Florida Society of Ophthalmology v. State Board of Optometry, 532 So.2d 1279, 1284 (Fla. 1st DCA 1988). Until the Commission determines that FPL's and FPC's substantial interests are affected by this proceeding, they have no right to file any motions nor to participate in any proceedings in this docket other than to address at oral argument or agenda conference their respective petitions for intervention.

WHEREFORE, Panda Midway Power Partners, L.P., requests that this Commission strike the Motions of Florida Power & Light Company For Scheduling Conference and Alternative Schedule and Florida Power Corporation for Joinder filed on April 5 and April 7, 2000, respectively, as untimely, or in the alternative, deny same.

Respectfully submitted this 12th day of April, 2000 by:


Suzanne Brownless, Esq.
Fla. Bar No. 309591
Suzanne Summerlin, Esq.
Fla. Bar No. 398586

1311-B Paul Russell Road
Suite 201
Tallahassee, Florida 32301
Phone: (850) 877-5200
FAX: (850) 878-0090

ATTORNEYS FOR PANDA MIDWAY
POWER PARTNERS, L.P.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Petition for determination)
of need for electric power plant)
in St. Lucie County by Panda)
Midway Power Partners, L.P.)
_____)

DOCKET NO. 000289-EU

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Panda Midway Power Partners, L.P.'s Objection To Florida Power & Light Company's Motion For Scheduling Conference and Alternative Schedule and Florida Power Corporation's Joinder In Such Motion and Motion To Strike has been provided by U.S. Mail or (*) Hand Delivery to the following on April 12, 2000:

Gary L. Sasso, Esq.
Jill H. Bowman, Esq.
Carlton, Fields Law Firm
P.O. Box 2861
St. Petersburg, FL 33731

Panda Midway Power
Partners, L.P.
Steve Crain, P.E.
4100 Spring Valley
Suite 1001
Dallas, Texas 75244

*Donna Clemons, Esq.
Legal Division
Florida Public Service Comm.
2540 Shumard Oak Blvd.
Room 370
Tallahassee, Florida 32399-0850

*Lee Colson
Division of Electric & Gas
Florida Public Service Comm.
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Robert W. Pass, Esq.
Carlton Fields Law Firm
P.O. Drawer 190
Tallahassee, FL 32302-0190

James A. McGee, Esq.
Senior Counsel
Florida Power Corp.
P.O. Box 14042
St. Petersburg, FL 33733-4042

Charles A. Guyton, Esq.
Steel Hector & Davis, LLP
215 South Monroe Street
Suite 601
Tallahassee, Florida 32301-1804


Suzanne Brownless, Esq.

c: 3108