

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

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

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

Filed: April 14, 2000

FPC'S RESPONSE TO PANDA'S REQUEST FOR ORAL ARGUMENT ON FPC'S PETITIONS TO INTERVENE

Florida Power Corporation ("FPC") submits this response to Panda Leesburg Power Partners L.P.'s and Panda Midway Power Partners, L.P.'s, (collectively hereinafter "Panda") requests for oral argument on FPC's Petitions For Leave to Intervene in this proceeding. FPC agrees that oral argument is desirable. However, as set forth herein, FPC further urges that its Petition For Leave to Intervene is a prehearing matter now ripe for determination and should be ruled on expeditiously.

Specifically, FPC respectfully suggests that, if not considered by the full Commission at the April 18, 2000, Agenda Conference, as originally anticipated by the Prehearing Officer, the intervention petition be ruled on by the Prehearing Officer as soon as a noticed oral argument may be scheduled before him. If the full Commission cannot determine this threshold question prior to the need for a determination of a formal schedule for discovery and related, critical

FPC filed separate intervention petitions in Docket No. 000288-PCO-EU (Panda Leesburg) and Docket No. 000289-PCO-EU (Panda Midway), on March 24, 2000. These two dockets were consolidated by Order No. PSC-00-0685-PCO-EU, entered by the Prehearing Officer on April 12, 2000. Panda Midway and Panda Leesburg have each requested oral argument on those petitions.

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events, it is appropriate for the Prehearing Officer to do so in exercise of his express powers to issue “all orders necessary to prevent delay and promote the just, speedy, and inexpensive determination of all aspects of the case” Rule 28-106.211.

In support of this response, FPC further states as follows:

On April 12, 2000, during the previously scheduled Issue Identification Conference, the Commission Staff advised counsel that Prehearing Officer Deason had requested that FPC’s Petitions For Leave to Intervene, along with Florida Power and Light’s (“FP&L”) similar Petitions, (and Panda’s accompanying Requests for Oral Argument) be scheduled for consideration by the full Commission during the Commission’s April 18, 2000 Agenda Conference. Staff further advised that Prehearing Officer Deason would hold a Scheduling Conference on April 19, 2000, subject to the Commission’s determination on intervention. This action by the Prehearing Officer is reflected in his April 12, 2000, Order Consolidating Dockets and Establishing Procedure.

During the April 12, 2000 Issue Identification Conference, Panda voiced no concern or objection to having oral argument on the petitions for intervention scheduled for April 18th. To the contrary, counsel for Panda vigorously recommended that, in light of the Commission’s intention to consider and determine FPC’s and FP&L’s intervention rights promptly, the Issue Identification Conference should be deferred until Wednesday April 19, 2000, during the announced Scheduling Conference, so that FPC’s and FP&L’s right to participate in such matters could first be determined (on April 18th).

Importantly, counsel for Panda also refused to participate in an issues identification – as to Staff’s Proposed Issues list or those of FPC and FP&L – if FPC and FP&L were allowed to

participate. Indeed, Panda abruptly walked out of the conference, announcing that they would not address or consider the filings or comments of FPC or FP&L until their respective intervention rights were determined.

Later that same afternoon (and unknown to FPC)², Panda requested that Chairman Garcia remove FPC's and FP&L's intervention requests from the April 18, 2000 Agenda Conference, based on the assertion that representatives of Panda (but not counsel of record) were unable to attend the Agenda Conference, and asked that the intervention petitions be deferred to the "next available agenda," which is obviously the May 16, 2000, agenda, nearly 5 weeks away.

FPCs' right and ability to participate meaningfully in this proceeding, currently set for hearing on July 12-14, 2000, will be severely prejudiced if such a delay in ruling on FPC's intervention is permitted. Indeed, the May 16, 2000, Agenda Conference is more than a week after the existing deadline for filing Intervenor testimony, and leaves less than eight weeks for the completion of all written discovery, the subsequent analysis of two independent economic models, and the completion of a yet undisclosed number of depositions. On the other hand, all parties, including Panda, would benefit from a prompt ruling on intervention, as it will necessarily impact consideration of pending Motions to Dismiss, discovery, scheduling, and the like.

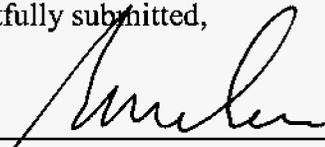
As set forth in his April 12, 2000 Order, under Rule 28-106.211 Prehearing Officer Deason has the authority to issue such Orders as are necessary to " . . . prevent delay, and

² Even though the effect of Panda's request would, if granted, be to dramatically delay disposition of FPC's intervention petitions, Panda's contact with the Chairman's office to seek this delay was done without notice to FPC or its counsel. FPC obtained a copy of the request after the fact by requesting it from Staff after FPC learned, fortuitously, that the request had already been made. A copy of the memorandum that counsel for Panda apparently submitted to the Chairman in this regard is attached hereto.

promote the just, speedy, and inexpensive determination of all aspects of the case” (Order No. PSC-00-0685-PCO-EU). As Prehearing Officer Chairman Garcia did in the Duke merchant plant case (Order No. PSC-98-1305-PCO-EM), Prehearing Officer Deason may rule on this prehearing matter himself. FPC’s Petition to Intervene is ripe for determination and, if not scheduled for determination by the full Commission at the April 18, 2000 Agenda Conference, as intended, then it is appropriate and proper that it be heard and determined by Prehearing Officer Deason at the nearest possible date on which a noticed oral argument may be scheduled before him – well before the May 16, 2000 Agenda Conference.

Given the obvious material prejudice that FPC will suffer from a lengthy delay of a ruling on intervention, and given Panda’s clearly evidenced unwillingness to even acknowledge FPC’s (and FP&L’s) participation in this docket until then, FPC submits that (absent the denial of Panda’s deferral request and consideration of intervention at the April 18, 2000 Agenda Conference) a prompt ruling by Prehearing Officer Deason is the most sensible means of ensuring the effective and efficient progress of this docket toward the earliest feasible hearing date.

Respectfully submitted,



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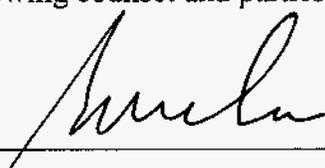
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing FPC'S RESPONSE TO PANDA'S REQUEST FOR ORAL ARGUMENT ON FPC'S PETITIONS TO INTERVENE has been furnished by facsimile transmission and U. S. Mail, postage prepaid, to the following counsel and parties of record this 14th day of April, 2000.



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