

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Petition for Determination of  
Need for Electrical Power Plant in  
St. Lucie County by Panda Midway Power  
Partners. L.P.

DOCKET NO. 000289-EU

PANDA MIDWAY POWER PARTNERS, L.P.'S RESPONSE  
IN OPPOSITION TO FLORIDA POWER LIGHT'S  
RESPONSE TO FLORIDA POWER CORPORATION'S  
SUGGESTION OF LACK OF JURISDICTION, SUPPLEMENT  
TO MOTION TO DISMISS AND MOTION  
FOR IMMEDIATE STAY PENDING DISMISSAL

Petitioner, Panda Midway Power Partners, L.P.'s (Panda Midway), pursuant to Rule 28-106.204(1), Florida Administrative Code, files this response in opposition to Florida Power & Light Company's (FPL) Response to Florida Power Corporation's (FPC) Suggestion of Lack of Jurisdiction, Supplement to Motion to Dismiss and Motion For Immediate Stay, and states as follows:

1. On April 26, 2000, FPC filed the Florida Supreme Court decision Tampa Electric Co., Florida Power Corp. and Florida Power & Light Co. v. Joe 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., LL (Duke), Supreme Court Case Numbers SC95444-95446, with the Commission and cited it for the proposition that the Commission is "without jurisdiction or power to entertain, hear, or grant" the petition for need determination in this docket. [FPC Motion at 2-4]. Based upon this case, FPC has urged the Commission to grant FPC intervention so that FPC can request dismissal of this petition or, in the alternative, impose an "immediate stay" of all procedural filing dates set by the existing CASR and Procedural Order No. PSC-00-

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0685-PCO-EU, issued on April 12, 2000. [FPC Motion at 4-5].

2. FPL filed its Response to FPC's Suggestion of Lack of Jurisdiction, Supplement to Motion to Dismiss, and Motion For Immediate Stay (FPL Response) on April 27, 2000. In its Response, FPL agreed with FPC's arguments and joined in FPC's requests for dismissal of this proceeding, granting of intervention to FPC and FPL or, in the alternative, imposition by the Commission of an immediate stay on all events scheduled in this docket. [FPL Response at 2-3].

#### Effect of Duke Decision

3. In response to FPL's and FPC's contention that the Duke decision is dispositive of the status of Panda Midway and its ability to use the Florida Electrical Power Plant Siting Act (Siting Act), Panda Midway would note that the decision of the Supreme Court does not become final until May 5, 2000.<sup>1</sup> For this reason alone, it would be inappropriate for the Commission to grant FPC its request to dismiss on the basis of the Duke decision.

#### Intervention

4. Although a bit unclear, it appears to be FPC's position, and that of FPL, that by virtue of the Duke decision, it should be granted intervenor status in this case. [FPL Response at 2]. This is simply wrong. Even if the Duke decision were final, which it is not, it cannot be read as addressing the question of intervention by FPC or FPL in this, or any other, need determination docket.

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<sup>1</sup> Rule 9.330(a), Florida Rules of Appellate Procedure.

Although the participation of FPC and FPL in the Duke need determination docket was originally contested by Duke New Smyrna Beach, that issue was not the subject of the appeal to the Supreme Court. The standard for intervention remains that of substantial interest as outlined in Panda Midway's previously filed Objection to FPL's Petition For Leave to Intervene. Intervention still should not be granted.

5. Nothing has been changed by the issuance of the Duke decision with regard to the status of FPC or FPL in this docket. FPL is not a party and has no standing to request that the Commission do anything. Likewise, FPL cannot be adversely affected by the failure of the Commission to grant a dismissal or stay the filing dates or any other dates set forth in the Procedural Order. As a nonparty to the suit, FPL does not have a right to file anything or to participate at all. FPL cannot be harmed in this case. It is not a party.

6. Because FPL is not a party, its Response should be stricken and disregarded by the Commission. Panda Midway is confident that the Commission will act appropriately with regard to the Duke decision when it becomes final. Until that time, Panda Midway will follow the filing requirements of the Procedural Order.

WHEREFORE, Panda Midway Power Partners, L.P., requests that this Commission Strike Florida Power & Light Company's Response to Florida Power Corporation's Notice of Supplemental Authority, Suggestion of Lack of Jurisdiction, Supplement to Motion to Dismiss, and Motion for Immediate Stay Pending Dismissal, or in the

alternative, deny the relief sought by same.

Respectfully submitted this 4th day of May, 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.

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CERTIFICATE OF SERVICE

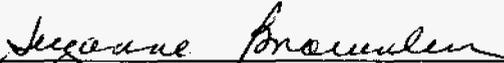
I HEREBY CERTIFY that a true and correct copy of the foregoing Panda Midway Power Partners, L.P.'s Response to Florida Power & Light Company's Response to Florida Power Corporation's Notice of Supplemental Authority, Suggestion of Lack of Jurisdiction, Supplement to Motion to Dismiss, and Motion for Immediate Stay Pending Dismissal has been provided by U.S. Mail or (\*) Hand Delivery to the following on May 4, 2000:

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

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

  
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Suzanne Brownless, Esq.

c: 3124