

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

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PANDA MIDWAY POWER PARTNERS, L.P.'S MOTION TO ABATE

Petitioner, Panda Midway Power Partners, L.P.'s (Panda Midway), pursuant to Rule 28-106.204, Florida Administrative Code, files this motion to abate this proceeding until the conclusion of the 2002 Regular Session of the Florida Legislature or such earlier time as the Florida Legislature may act to address the issue of whether a need determination is available for wholesale power plants in the State of Florida, and in support thereof states as follows:

1. On March 6, 2000, Panda Midway filed a petition to determine the need for a 1,000 MW, natural gas fired, combined cycle electrical power plant to be located in St. Lucie County, Florida. This plant is a merchant power plant whose commercial in-service date is May, 2003.

2. On June 5, 2000, the Commission issued Order No. PSC-00-1063-PCO-EU holding this proceeding in abeyance based upon the Florida Supreme Court's ruling in Tampa Electric Co. v. Garcia (TECO), 25 Fla. Law Weekly S294 (Fla. April 20, 2000), which stated

that merchant power plants could not be "applicants" under the Florida Electrical Power Plant Siting Act, §§ 403.501-.518 and §403.519, Florida Statutes (Siting Act). The Commission held Panda Midway's petition in abeyance until the resolution of the pending

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petitions for rehearing which were before the Court at that time.

3. On September 28, 2000, the Court issued a Revised Opinion in the TECO case denying the petitions for rehearing. Notwithstanding this ruling, however, this proceeding should continue to be held in abeyance because of the very strong probability that the Florida Legislature will address the issue of whether a merchant power plant, like Panda Midway, should be an "applicant" under the Siting Act.

4. On May 3, 2000, Governor Jeb Bush issued Executive Order No. 00-127 (Executive Order) creating the Energy 2020 Study Commission for the purpose of determining "what Florida's electric energy needs will be over the next 20 years and how to best supply those needs in an efficient, affordable, and reliable manner that will ensure adequate electric reserves." Executive Order at ¶ 4. The Executive Order directs the Energy 2020 Study Commission to "recommend appropriate electric energy policies for this state, including statutory changes, if necessary." Executive Order at ¶ 4. These recommendations must be made on or before December 1, 2001, to the President of the Senate, the Speaker of the House of Representatives, and the Governor, in a written report containing legislative and other recommendations.

5. The Energy 2020 Study Commission is scheduled to hold monthly meetings each month until December of 2001. Two meetings have been held to date, on September 13 and the other on October 18, 2000. The detailed work plan which was developed at these meetings has identified the wholesale electric market in Florida as a major topic area to be addressed. The work plan also indicates

that the Energy 2020 Study Commission will consider the issue of wholesale market restructuring first, as a separate item from retail market restructuring. Additionally, the Energy 2020 Study Commission has indicated that, if possible, it will issue an interim report with its wholesale market recommendations as early as January, 2001.

6. In furtherance of this plan, the Energy 2020 Study Commission will devote its next scheduled meeting to be held on November 15, 2000, for the consideration of wholesale market issues. Issuance of an interim report on wholesale issues by January, 2001, would allow the 2001 Legislature to act upon the recommendations of the Energy 2020 Study Commission during the 2001 Legislative Session. The pressing need for approximately 11,000 MW of additional electrical generating capacity to be constructed in Florida over the next 10 years also enhances the likelihood that the Legislature will address the merchant power plant siting issue sooner rather than later. Even under the worst case scenario, however, the siting of merchant power plants will be addressed, one way or the other, by the Energy 2020 Study Commission and ultimately the Florida Legislature in the 2002 Legislative Session.

7. Panda Energy International, Inc. (PEII), the corporate parent of Panda Midway, has expended in excess of one million dollars on developing this project and that of its sister plant, Panda Leesburg. If the Legislature acts in 2001, both of these projects can meet their 2003 in-service dates and provide Florida with the additional electric capacity so desperately needed to continue to supply Florida's citizens with adequate, reliable and

affordable electricity. Valuable time will be lost if Panda Midway is forced to refile its petition and start the siting "clock" all over again.

8. Therefore, Panda Midway respectfully requests that the Commission hold this docket in abeyance until the consideration of the merchant power plant siting issue in the 2002 Regular Session of the Florida Legislature, or such earlier time as the Florida Legislature addresses the issue of whether a need determination is available for a wholesale power plant.

Respectfully submitted this 1st day of November, 2000 by:



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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 has been provided by U.S. Mail or (\*) Hand Delivery to the following on November 1, 2000:

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

  
Suzanne Brownless, Esq.

c: 3259