

April 27, 2000

Charles A. Guyton
850.222.3423

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

By Hand Delivery

**In re: Petition for Determination of Need for an Electrical Power Plant in
St. Lucie County by Panda Midway/Leesburg Power Partners, L.P.
Docket Nos. 000289-EU and 000288-EU**

Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light Company ("FPL") in Docket Nos. 000289-EU and 000288-EU are the original and fifteen (15) copies of 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.

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

Very truly yours,



Charles A. Guyton

Enclosure
cc: Parties of Record

TAL_1998/34159-1

DOCUMENT NUMBER-DATE

05214 APR 27 8

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination of)	
Need for Electric Power Plant in Lake)	Docket No. 000288-EU
County by Panda Leesburg Power)	
Partners, L.P.)	

In re: Petition for Determination)	
of Need for an Electrical Power Plant in)	Docket No. 000289-EU
St. Lucie County by Panda Midway)	
Power Partners, L.P.)	Filed: April 27, 2000

**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**

Florida Power & Light Company ("FPL"), pursuant to Rule 28-106.204 of the Florida Administrative Code ("F.A.C."), hereby responds 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 filed in these proceedings on April 26, 2000. As a response FPL states:

1. The Commission should take notice of the Supreme Court's decision in Tampa Electric Co. v. Joe Garcia, 25 Fla. Law Weekly S294a (Fla. April 20, 2000). FPL agrees with FPC that the import of that decision is that the Commission is without jurisdiction to entertain, hear or grant either of the need petitions filed in these proceedings. Ideally, the petitioners would voluntarily dismiss their petitions without forcing the Commission or the petitioning interveners to expend

further resources. However, in the absence of such a voluntary dismissal, the Commission, on its own initiative, should dismiss the petitions.

2. FPL also agrees with FPC that the Duke decision reinforces the appropriateness of granting FPL's and FPC's petitions to intervene in these proceedings. Both FPC and FPL were granted intervener status in the Duke case, and on appeal the Supreme Court reversed the Commission's decision based upon appeals taken by those proper interveners. FPC is correct in its characterization of the Court's decision as holding that it was the interveners, not the purported applicant, that were the proper parties in Duke.

3. FPL is in agreement with FPC that it is not necessary for the Commission to even rule on FPL's and FPC's intervener status in this case. The Commission can and should read the Duke decision as clearly holding that the Commission does not have jurisdiction to entertain or grant a petition such as the Panda petitions. Granting such a petition would exceed the Commission's authority. Therefore, without ever reaching whether FPL and FPC should be allowed to intervene, the Commission could dismiss the infirm petitions on its own initiative.

4. The value of addressing the fundamental jurisdictional issue first is poignantly demonstrated by the Duke case. There, the interveners attempted to have the Commission address its lack of jurisdiction to entertain the proceeding before proceeding to trial. The Commission declined, resulting in an extensive trial and the expenditure of significant, unnecessary resources by both the parties and the Commission.

5. FPL is also in accord that a stay of the current proceedings is warranted. Given the Court's decision in Duke, it is clear that the Commission does not have authority to hear or decide this case under the existing statutory scheme. Any further expenditure of resources by the parties,

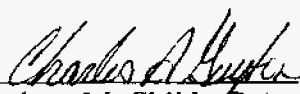
petitioning interveners or the Commission Staff, other than the processing of the dismissal of this case, cannot be justified. The preliminary schedule established in these proceedings did not afford interveners an opportunity for a fair trial. Racing to preserve such a schedule when it is clear that the Commission has no ultimate legal choice but to dismiss the petitions serves no legitimate purpose.

WHEREFORE, FPL respectfully responds to FPC's Notice of Supplemental Authority, Suggestion of Lack of Jurisdiction, Supplement to Motion to Dismiss, And Motion For Immediate Stay Pending Dismissal filed in these proceedings on April 26, 2000 by stating that it should be granted in its entirety.

Respectfully submitted,

Steel Hector & Davis LLP
Suite 601
215 South Monroe Street
Tallahassee, Florida 32301

Attorneys for Florida Power
& Light Company

By: 
Matthew M. Childs, P.A.
Charles A. Guyton

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing 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 furnished by hand delivery (*) or U.S. Mail, postage prepaid, to the following counsel for parties of record on this the 27th day of April, 2000.

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

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

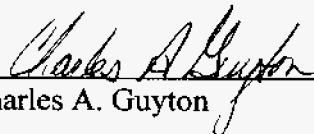
Donna Clemons, Esq. *
Marlene Stern, Esq. *
Florida Public Service Commission
2540 Shumard Oak Boulevard
Legal Division, Room 370
Tallahassee, FL 32399-0850

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

Suzanne Brownless, Esq. *
Suzanne Summerlin, Esq. *
1311-B Paul Russell Road, Suite 201
Tallahassee, Florida 32301

Florida Power Corporation
James McGee, Esq.
Post Office Box 14042
St. Petersburg, Florida 33733

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



Charles A. Guyton