

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for  
determination of need for an  
electrical 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

In re: Petition for  
determination of need for an  
electrical power plant in St.  
Lucie County by Duke Energy St.  
Lucie, L.L.C.

DOCKET NO. 000612-EU

In re: Petition for  
determination of need for an  
electrical power plant in  
Okeechobee County by Okeechobee  
Generating Company, L.L.C.

DOCKET NO. 991462-EU  
ORDER NO. PSC-01-1142-PCO-EU  
ISSUED: May 21, 2001

The following Commissioners participated in the disposition of  
this matter:

E. LEON JACOBS, JR., Chairman  
J. TERRY DEASON  
LILA A. JABER  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI

ORDER HOLDING DOCKETS IN ABEYANCE

On September 24, 1999, Okeechobee Generating Company, L.L.C.  
(OGC), filed a Petition for Determination of Need for an Electrical  
Power Plant. OGC proposed to construct a 550-megawatt (MW) natural  
gas-fired, combined cycle merchant power plant in Okeechobee  
County, Florida, to commence commercial operation in April, 2003.  
OGC's petition was assigned Docket No. 991462-EU.

DOCUMENT NUMBER-DATE

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PSC RECORDS/REPORTING

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On March 6, 2000, Panda Leesburg Power Partners, L.P. (Panda Leesburg) and Panda Midway Power Partners, L.P. (Panda Midway) filed petitions to determine the need for electrical power plants in Lake County and St. Lucie County, respectively. Panda Leesburg and Panda Midway both proposed to construct separate 1000-MW natural gas-fired, combined cycle merchant power plants to commence commercial operation by May, 2003. The petition filed by Panda Leesburg was assigned Docket No. 000288-EU, and the petition filed by Panda Midway was assigned Docket No. 000289-EU. By Order No. PSC-00-0685-PCO-EU, issued April 12, 2000, these dockets were consolidated.

On May 22, 2000, Duke Energy St. Lucie, L.L.C., (Duke) filed a Petition for Determination of Need for an Electrical Power Plant. Duke proposed a 608 MW natural gas-fired, combined cycle merchant plant, an associated natural gas lateral pipeline, and transmission facilities to connect the plant to the Florida grid. These facilities are proposed to be located in St. Lucie County. The anticipated in-service date for the proposed plant is June 1, 2003. Duke's petition was assigned Docket No. 000612-EU.

On April 20, 2000, the Florida Supreme Court issued its decision in Tampa Electric Co.; Florida Power Corp.; and Florida Power & Light Co., v. 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., L.L.P., 767 So.2d 428 (Fla. 2000) (revised) (reh'g denied) (cert. denied). Therein, the Court reversed this Commission's prior decision to grant a need determination "for an electric power company's proposal to build and operate a merchant plant in Volusia County." Id. at 3. The Court also indicated that "[a] determination of need is presently available only to an applicant that has demonstrated that a utility or utilities serving retail customers has specific committed need for all of the electrical power to be generated at a proposed plant." Id. at 13. Docket Nos. 991462-EU, 000288-EU, and 000289-EU were placed in abeyance by Order No. PSC-00-1063-PCO-EU, issued June 5, 2000, pending a final decision by the Florida Supreme Court. The Court denied motions for rehearing on September 28, 2000, in Tampa Electric v. Garcia, thereby finalizing its initial opinion.

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On December 12, 2000, we issued Order No. PSC-00-2382-PCO-EU holding all four dockets in abeyance pending the expiration of the appellate time period to the United States Supreme Court in the Tampa Electric case. The City of New Smyrna Beach Utilities Commission timely sought United States Supreme Court review of the Tampa Electric case, however the United States Supreme Court denied certiorari on March 5, 2001.

On March 20, 2001, Panda Leesburg, Panda Midway, and Duke filed a Joint Motion to Continue Abatement. The parties allege that in light of current legislative initiatives, Docket Nos. 000288-EU, 000289-EU, and 000612-EU should continue to be held in abeyance until the conclusion of the 2001 Regular Session of the Florida Legislature. No response to the motion was filed.

Panda Leesburg, Panda Midway, and Duke allege in their motion that Docket Nos. 000288-EU, 000289-EU, and 000612-EU should continue to be held in abeyance until the end of the 2001 Regular Session of the Florida Legislature "because of the possibility of legislative action that could affect the viability of the petitions in these dockets." Motion at p. 3. In the motion, the parties allege a possibility that legislation will be passed this session that addresses the issue of need determinations and the ability of exempt wholesale generators (EWGs), such as Panda and Duke, to either qualify as applicants in need determinations or be exempt from this requirement. The 2001 Regular Session of the Florida Legislature is scheduled to end on May 4, 2001. The parties allege that no harm will be caused by continuing the abatement of these dockets, yet serious harm has may occur if this Commission fails to continue abatement. The parties contend that valuable time will be lost if they are forced to refile their petitions and start the siting "clock" all over should the legislature keep the need determination process and allow EWGs to be applicants. -

Typically, speculation as to whether the Legislature will act on issues is not a sufficient reason to hold dockets in abeyance. As established in Tampa Electric v. Garcia, we currently lack statutory authority to grant the ultimate relief sought and did not have such authority when these petitions were filed. However, because there is little time remaining prior to the end of the 2001 Regular Session of the Florida Legislature and because there have been legislative developments which may impact merchant plants'

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ability to apply for a need determination, we hereby grant the Joint Motion for Continued Abatement.

In addition, although a motion was not filed on behalf of OGC in Docket No. 991462-EU, that docket is in the same procedural posture as the above mentioned dockets because it was also placed in abeyance by this Commission on December 12, 2000. Based on the prior similar treatment of these dockets, Docket No. 991462-EU shall also be held in abeyance until the end of the 2001 Regular Session of the Florida Legislature. Furthermore, in the event that no new legislation is passed during the 2001 Regular Session of the Florida Legislature which gives merchant plants applicant status under Section 403.519, Florida Statutes, this Commission orders that these dockets be administratively closed.

It is important to note that the passage of time involved from the filing of each of these petitions to the conclusion of the 2001 Regular Session of the Florida Legislature has likely rendered some of the information in these petitions stale. Therefore, this Order does not change the fact that these petitioners may have to amend their petitions if and when the law changes in Florida to allow a wholesale merchant power plant to come forward in a need determination proceeding.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Joint Motion to Continue Abatement for Docket Nos. 000288-EU, 000289-EU, and 000612-EU is hereby granted. It is further

ORDERED that Docket No. 991462-EU shall be held in abeyance until the end of the 2001 Regular Session of the Florida Legislature. It is further

ORDERED that Docket Nos. 000288-EU, 000289-EU, 000612-EU, and 991462-EU shall be administratively closed in the event that no legislation is passed during the 2001 Regular Session of the Florida Legislature as discussed in the body of this Order.

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By ORDER of the Florida Public Service Commission this 21st  
day of May, 2001.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

( S E A L )

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.