

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for declaratory) DOCKET NO. 950110-EI
statement regarding eligibility) ORDER NO. PSC-95-0692-FOF-EI
for Standard Offer contract and) ISSUED: June 12, 1995
payment thereunder by Florida)
Power Corporation)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER ON FPC'S MOTION TO STRIKE

BY THE COMMISSION:

On January 25, 1995, Florida Power Corporation (FPC) filed a petition for declaratory statement concerning the application of Rule 25-17.032(3)(a), Florida Administrative Code, to its standard offer contract with Panda-Kathleen L.P. (Panda). Panda filed a petition to intervene in the FPC declaratory statement proceeding on February 6, 1995, which was granted by Order No. PSC-95-0306-PCO-EI, on March 6, 1995. On March 10, 1995, Panda filed a Motion to Supplement Petition for Declaratory Statement, to which FPC responded on March 21, 1995. On April 14, 1995, Panda filed a withdrawal of the issues raised in its Motion to Supplement making this motion moot. Then on March 15, 1995, Panda filed a Motion for Declaratory Statement and Other Relief. On March 24, 1995, FPC filed a Motion to Strike Panda's motion, to which Panda responded on April 3, 1995. As discussed below, we grant in part and deny in part FPC's motion to strike.

FPC seeks a declaration that the FPC-Panda standard offer contract is not available to Panda "if it constructs a facility configuration, as it currently proposes to do, with the capacity to produce 115 megawatts." (FPC Petition for Declaratory Statement at p. 1) If the Commission declares the standard offer contract to be available to Panda, FPC also "seeks a further declaration that it has no obligation to make capacity or energy payments under the Standard Offer Contract after the . . ." year 2016. (FPC Petition for Declaratory Statement at p. 1) In its Motion for Declaratory

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Statement and Other Relief, Panda seeks competing declarations. That is, Panda's facility design is consistent with the FPC-Panda standard offer contract, and the standard offer contract has a 30-year term for which the formula to be used in the escalation of capacity payments applies to every year of the contract, not just the first 20 years. (Panda Motion for Declaratory Statement at p. 1) Panda also requests that the Commission toll the time for Panda to meet certain contract milestone dates so that Panda would be put in the same position as if FPC had never filed its Petition for Declaratory Statement. (Panda's Motion for Declaratory Statement at pp. 6, 26, and 29) In addition, Panda requests that the Commission order FPC to show cause why FPC should not be required to complete, execute, and deliver the lender's clarification letter. (Panda's Motion for Declaratory Statement at pp. 7, 28, and 30)

FPC filed a Motion to Strike Panda's Motion for Declaratory Statement arguing that declaratory statements "apply to the petitioner in his or her particular circumstances only." (FPC's Motion to Strike at p. 2, quoting Rule 25-22.021, Florida Administrative Code) (emphasis deleted) No rule, however, prohibits Panda from filing its own petition for declaratory statement. In the past, when there have been competing petitions for declaratory statement before the Commission at the same time, we have resolved them in the same docket. In re: Petition for Declaratory Statement of Lack of Jurisdiction of Florida Public Service Commission, or, Alternatively, Request for Formal Hearing Concerning Conduct of General Development Utilities, Inc., By Charlotte County, 94 F.P.S.C. 4:209 (1994). In the Charlotte County-GDU case, the Commission found that "[s]ince both petitions address the same issues, efficiency would be attained by consolidating them." Id. at 4:210. Efficiency would be gained here, as well, by resolving both petitions for declaratory statement in the same docket. Therefore, FPC's motion to strike the part of Panda's motion that seeks a declaratory statement is denied.

We agree with FPC, however, that the issue raised by Panda concerning extending the milestone dates is inappropriate for a declaratory statement proceeding. (FPC Motion to Strike at p. 2) We grant the part of FPC's motion that seeks to strike the portions of Panda's motion for declaratory statement dealing with tolling time or extending milestone dates.

Any issues relating to the clarification letter became moot by Panda's April 14, 1995, withdrawal of those issues. Therefore, we grant FPC's motion to strike those parts of Panda's Motion for Declaratory Statement dealing with the clarification letter.

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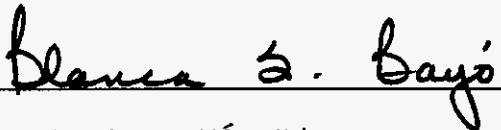
FPC shall file an answer to Panda's motion for declaratory statement by May 9, 1995. This docket shall remain open so that we can address the substantive issues raised by FPC's and Panda's petitions for declaratory statement.

It is therefore

ORDERED by the Florida Public Service Commission that Florida Power Corporation's motion to strike is granted in part and denied in part as discussed above. It is further

ORDERED that Florida Power Corporation shall file its response to Panda's motion for declaratory statement by May 9, 1995.

By ORDER of the Florida Public Service Commission, this 12th day of June, 1995.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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MAH

Commissioner Deason dissented from the Commission's decision because he believes the extension of milestone dates is an appropriate issue for a declaratory statement.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that

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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.

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 25-22.038(2), 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.