

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Standard offer contract) DOCKET NO. 950110-EI
for the purchase of firm) ORDER NO. PSC-95-1563-PCO-EI
capacity and energy from a) ISSUED: December 15, 1995
qualifying facility between)
Panda-Kathleen, L.P., and)
Florida Power Corporation.)
_____)

**ORDER DENYING MOTION TO CONTINUE
AND REVISING SCHEDULE**

On January 25, 1995, Florida Power Corporation (FPC) filed a petition with the Commission for a declaratory statement regarding certain aspects of its Standard Offer cogeneration contract with Panda-Kathleen, L.P./Panda Energy Company (Panda). Panda intervened in the proceeding and filed its own declaratory statement petition on the issues FPC had raised. Panda also raised an additional issue regarding postponement of the significant milestone dates of the standard offer pending the Commission's resolution of the declaratory statement proceedings. FPC moved to strike Panda's petition, which the Commission denied on the common issues both parties had raised in their petitions, but granted on the milestone date issue. See Order PSC-95-0692-FOF-EI, issued June 12, 1995.

On June 29, 1995, after a status conference with Commission staff, at which Panda expressed its concern that material factual issues were in dispute in the case, Panda filed a Petition for Formal Evidentiary Proceeding and Full Commission Hearing on the issues raised by the declaratory statement petitions. Panda contended that disputed issues of material fact affected all issues, and should properly be resolved before the full Commission in a formal administrative proceeding. Panda asserted that the standard offer is established by tariff and approved by the Commission, and to the extent permitted by applicable law the Commission has jurisdiction to make determinations respecting the contract and to grant the appropriate relief requested. The Commission granted Panda's Petition in Order No. PSC-95-0998-FOF-EI, issued August 16, 1995.

On September 12, 1995, Panda filed a Motion to Dismiss and a Motion to Stay or Abate Proceedings in this case. Panda alleged that the Commission cannot consider the issues FPC has raised, because the Commission lacks jurisdiction over Panda, and it lacks jurisdiction over the subject matter of the case, the approved standard offer contract between Panda and FPC. FPC filed a Response in Opposition to Panda's motions on September 19, 1995.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

The Commission heard oral argument on the motions September 25, 1995. At the December 5, 1995, Agenda Conference, the Commission denied Panda's Motion to Dismiss and the Motion to Stay or Abate proceedings.

Panda has now acquired new counsel to take responsibility for this docket. On November 28, 1995, Panda filed a Motion to Continue the February 19, 1996 full Commission hearing, and continue all pre-hearing controlling dates for a period of ninety (90) days. On December 9, 1995, FPC filed a response in Opposition to Panda-Kathleen's Motion to Continue.

Panda states that its new counsel acquired voluminous files, documents, and other items relating to the issues in this docket. Panda alleges this dispute may require extensive discovery. Panda's new counsel expects that it will take several weeks to assess the extensive discovery requirements, and to appropriately prepare the testimony and exhibits necessary to explain the parties' positions before the Commission. Panda further suggests that the holidays make it particularly difficult for its new counsel to properly conduct discovery and prepare testimony and exhibits in compliance with the presently controlling dates.

In addition, Panda alleges that a continuance should be granted so that its new counsel can explore the possibility of conducting settlement discussions with FPC. Panda alleges that a delay of the evidentiary hearing for ninety days will not prejudice FPC. Panda argues that it is the only entity that could be adversely affected by the delay because it initiated the request for a evidentiary hearing and is the party seeking enforcement of the underlying contract between the parties.

Furthermore, Panda maintains its position in its September 12, 1995, Motion to Stay or Abate Proceedings, Motion to dismiss, and Supporting Memorandum, that the Commission has no jurisdiction either over Panda or the claims asserted by FPC.

FPC responds that Panda's request to postpone all pending dates, including the February 19, 1995, hearing date, by at least 90 days, should be denied. FPC maintains that extensive discovery has occurred and that Panda can conduct additional discovery within the remaining time frame. FPC alleges that a delay of the evidentiary hearing set in this proceeding for ninety days will impair FPC's planning process regarding Panda's generation capacity. Thereby, FPC argues it will be prejudiced if the Commission delays the evidentiary hearing.

Rule 25-22.041, Florida Administrative Code (F.A.C.), provides that the Prehearing Officer may grant a continuance of a hearing for good cause shown. In considering this motion to dismiss, it is important to note that under the current schedule, this case will be over 15 months old at conclusion. Because the Commission's hearing calendar is very crowded, rescheduling the hearing will likely cause a substantial delay. The delay will be more extensive than Panda's 90 days, and would more than likely be at least nine months. Delay is unwarranted and will adversely affect both the viability of Panda's project and FPC's generation planning. Panda has enough time to conduct discovery and prepare testimony and exhibits in compliance with the presently controlling dates. For these reasons, it is found that Panda has not shown good cause for continuing the hearing in this docket, and Panda must abide by the following schedule:

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|----------------------------|----------|
| Testimony Direct | 01/05/96 |
| Testimony Rebuttal | 01/24/96 |
| Prehearing Statements | 02/02/96 |
| Notice of Prehearing | 02/05/96 |
| Notice of Hearing | 02/05/96 |
| Prehearing | 02/12/96 |
| Discovery Actions Complete | 02/12/96 |
| Prehearing Order | 02/16/96 |
| Hearing | 02/19/96 |
| Transcripts Due | 03/06/96 |
| Briefs Due | 03/25/96 |
| Staff Recommendation | 04/18/96 |
| Agenda - Regular | 04/30/96 |
| Standard Order | 05/13/96 |

ORDER NO. PSC-95-1563-PC0-EI
DOCKET NO. 950110-EI
PAGE 4

In consideration of the foregoing, it is therefore

ORDERED by Chairman Susan F. Clark, as Prehearing Officer, that Panda Energy Company's Motion to Continue is denied, and the schedule is revised, as discussed herein.

By ORDER of Chairman Susan F. Clark, as Prehearing Officer, this 15th day of December, 1995.



SUSAN F. CLARK, Chairman and
Prehearing Officer

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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 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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.