

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for)	DOCKET NO. 910759-EI
Determination of Need for)	ORDER NO. 25423
Proposed Electrical Power Plant)	ISSUED: 12/2/91
and related facilities Polk)	
County Units 1-4, by Florida)	
Power Corporation.)	
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The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 SUSAN F. CLARK
 J. TERRY DEASON
 BETTY EASLEY
 MICHAEL MCK. WILSON

BY THE COMMISSION:

ORDER DENYING RECONSIDERATION

Florida Power Corporation (FPC) filed a Notice of Intent to file a petition for determination of need in this docket on July 8, 1991. The petition itself was filed on August 16, 1991. FPC prefiled the testimony of its witnesses on September 16, 1991.

On October 8, 1991, the Florida Industrial Cogeneration Association (FICA) requested intervention. Also on October 8, 1991, FICA filed a Motion For Extension Of Time To File Prepared Testimony, and a Motion Regarding Discovery. The sole ground stated by FICA for an extension of time was that the thirty days scheduled between direct and intervenor testimony allowed insufficient time for meaningful discovery and preparation of intervenor testimony.

On October 15, 1991, Commissioner Easley, as prehearing officer, issued Order No. 25221, which, among other things granted FICA five additional days, until October 21, 1991, to file its direct testimony. While denying FICA's motion regarding discovery, the Order specified that 75 interrogatories would be allowed, not the 30 interrogatories anticipated by FICA (see FICA's motion regarding discovery at page 2, line 4). The Order also specified that discovery would be allowed until November 6, 1991, two days after the November 4, 1991 prehearing conference.

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On October 21, 1991, FICA filed direct testimony in accordance with Order No. 25221. Also on October 21, 1991, FICA filed a Motion For Reconsideration Of Order No. 24221.

FICA's Motion For Reconsideration fails to state a proper ground for reconsideration in that it does not assert a mistake or misapprehension that if viewed correctly would lead the Commission to reach a different result. The purpose of a motion for reconsideration is not merely to reargue matters which have been presented to the prehearing officer and resolved unfavorably to a particular party.

FICA in its previous motion for extension of time argued that additional time must be provided to file prepared testimony as a "matter of fairness and due process". In its Motion For Reconsideration, FICA argues:

Limiting FICA to 30 days within which to file responsive testimony to fifteen expert witnesses violates the requirements of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, the Procedural Due Process provisions of Article I, Section 9, of the Constitution of the State of Florida and the requirements of Section 120.75(1)(b)4, Florida Statutes. (Motion for Reconsideration at p.2)

This is the same fairness and due process argument previously made, but with the constitutional and statutory due process provisions specifically cited. It is not a different argument.

With regard to the merits of FICA's "due process" arguments we would point out that in most courts, parties are routinely required to respond to direct testimony moments after it is given. The luxury of "prefiled" testimony is virtually unheard of in a courtroom scenario. FICA is unable to cite a single case where 35 days to file responsive testimony is deemed to be a due process violation under any constitutional or statutory provision. As the prehearing officer stated in Order No. 25221.

FICA has not shown any credible extraordinary circumstances that would entitle it under any statute, rule, or constitutional principle to an extension of time that would delay the scheduled hearing and prehearing in this case. Nor has FICA demonstrated that it is in any way entitled to an expansion of the

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established discovery process in this case, while at the same time requesting a decrease in the time allowed to respond to that expanded discovery. (Order No. 25221 at p.2)

The time periods incorporated in Rule 25-22.080 are statutorily approved time periods considered by the Legislature to be reasonable for a determination of need proceeding, and the Commission certainly has the discretion to follow the provisions of its own rule, as it has chosen to do in this case. The intervenors have not demonstrated extraordinary circumstances, or irrevocable harm that would militate against adherence to the accepted time schedule for this docket. (Order No. 25221 at p.3)

With regard to FICA's request for additional time for discovery, the record indicates that, as of the date FICA filed its Motion For Reconsideration, FICA had not served a single request for discovery in this docket.

There is no due process violation here.

It is therefore

ORDERED that the Motion for Reconsideration filed by the Florida Industrial Cogeneration Association on October 21, 1991, is hereby denied.

By ORDER of the Florida Public Service Commission, this
2nd day of DECEMBER, 1991.



STEVE TRIBBLE, Director
Division of Records and Reporting

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NOTICE OF 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 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 sewer 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.