

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida) DOCKET NO. 911142-EQ
Power Corporation for Authority) ORDER NO. PSC-92-0492-FOF-EQ
to refuse Standard Offer) ISSUED: 04/11/92
Contracts)
_____)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
SUSAN F. CLARK
J. TERRY DEASON
LUIS J. LAUREDO

ORDER DENYING MOTION FOR SUMMARY JUDGEMENT

BY THE COMMISSION:

Florida Power Corporation's (FPC) standard offer contract was made available on September 13, 1991. In Docket 910004-EU (Order No. 24989) FPC's avoided unit for its standard offer contract was designated as 80 megawatts from a 150 megawatt 1997 combustion turbine. Instead of using a "first-in-time, first-in-line" criteria for selecting standard offers, FPC established a two week "open season" from September 20, 1991 to October 4, 1991 during which potential providers had an opportunity to submit standard offer contracts for evaluation. FPC received nine contracts during its "open season" and one after the "open season" concluded.

Pursuant to Rule 25-17.0832 (3) (d), FPC had 60 days to petition the Commission to reject a standard offer contract. Therefore, on November 19, 1991 FPC petitioned the Commission for authority to reject the first standard offer contract it had received on September 20, 1991 from Noah IV Power GP, Incorporated (Noah IV). Subsequently, on November 26, 1991 FPC filed a petition with the Commission for authority to refuse all standard offer contracts except the one submitted by Panda Kathleen L.P. This petition also included rejection of Noah IV's contract. The two petitions have been combined into this single docket.

On December 13, Noah IV and Ark Energy, Incorporated (Ark), jointly filed an Answer and Cross-Petition to FPC's petition. In the petition Noah IV and Ark requested the Commission to reject FPC's petition and either (1) order FPC to execute the standard offer contract submitted by Noah IV to FPC or (2) set the matter for hearing. Subsequently, counsel for Noah IV and Ark agreed to permit the petition by FPC to be treated as a Proposed Agency Action. On February 11, 1992 Noah IV and Ark filed a Motion for

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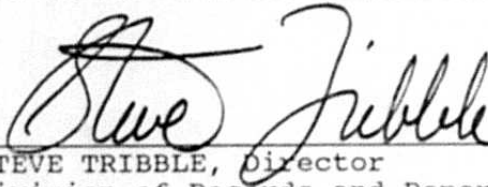
Summary Judgement, asking the Commission to "enter summary judgement in favor of NOAH IV in the above styled docket and to order Florida Power Corporation to execute the standard offer contract accepted by NOAH IV, Inc."

In its response filed on February 26, 1992, FPC alleges that NOAH has raised disputed issues of material fact in its motion, rather than showing no such dispute exists. A review of the record fails to demonstrate that there is no disputed issue of material fact, making the remedy of summary judgement inappropriate. Therefore, the Motion is denied.

Based on the foregoing, it is

ORDERED that the Motion for Summary Judgement filed by NOAH IV Power GP, Incorporated and ARK Energy, Incorporated is DENIED.

By ORDER of the Florida Public Service Commission, this 11th day of June, 1992.



STEVE TRIBBLE, Director
Division of Records and Reporting

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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 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.