

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Standard offer contract) DOCKET NO. 950110-EI
for the purchase of firm) ORDER NO. PSC-96-0221-PHO-EI
capacity and energy from a) ISSUED: February 15, 1996
qualifying facility between)
Panda-Kathleen, L.P. and Florida)
Power Corporation)
_____)

PREHEARING ORDER

Pursuant to Notice, a Prehearing Conference was held on February 12, 1996, in Tallahassee, Florida, before Chairman Susan F. Clark, as Prehearing Officer.

APPEARANCES:

JAMES A. MCGEE, Esquire, and JEFFERY A. FROESCHLE, Esquire, Florida Power Corporation, Post Office Box 14042, St. Petersburg, Florida 33733-4042.
On behalf of Florida Power Corporation

DAVID L. ROSS, Esquire, LAWRENCE D. SILVERMAN, Esquire, and LORENCE JON BIELBY, Esquire, Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A. 1221 Brickell Avenue, Miami, Florida 33131.
On behalf of Panda-Kathleen, L.P..

MARTHA CARTER BROWN, Esquire, and LORNA WAGNER, Esquire, Florida Public Service Commission, Capital Circle Office Complex, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850,
On behalf of the Commission Staff.

I. CASE BACKGROUND

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

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resolution of the declaratory statement proceedings. On June 29, 1995, 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. The Commission granted Panda's Petition in Order No. PSC-95-0998-FOF-EI, issued August 16, 1995. A Prehearing Conference was held on February 12, 1996, to establish the issues and procedures for the evidentiary hearing. That hearing is scheduled for February 19, 1996.

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 366.093(2), Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. **The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.**

- 2) **Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.**
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

Post-hearing procedures

Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

III. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification.

After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

IV. ORDER OF WITNESSES

<u>Witness</u>	<u>Appearing For</u>	<u>Issues #</u>
<u>Direct</u>		
Robert D. Dolan	FPC	1,2,4
Ralph Killian	PANDA	1-6

J. Brian Dietz	PANDA	1
Darol Lindloff	PANDA	1,2
Joseph Brinson	PANDA	1,2

Rebuttal

<u>Witness</u>	<u>Appearing For</u>	<u>Issues #</u>
Robert D. Dolan	FPC	1-4
Brian A. Morrison	FPC	4
Edward R. Gwynn	FPC	1,2
Ralph Killian	PANDA	1-6
J. Brian Dietz	PANDA	1
Roy Shanker	PANDA	2,3

V. BASIC POSITIONS

FPC:

The two principle issues raised in the declaratory statement requests of both Panda and Florida Power can be resolved by a straight forward application of the Commission's standard offer rules regarding the limitation on the size of qualifying facilities and the maximum period for delivery of firm capacity. This is so because standard offer contracts cannot be utilized in a manner contrary to the rules that govern those contracts. These rules expressly provide that the availability of a standard offer contract is limited to "small qualifying facilities less than 75 MW and that the maximum period for delivery of firm capacity and energy under a standard offer contract is the life of avoided unit, which the Panda contract specifies as 20 years. These provisions, in

and of themselves, are dispositive of Panda's revised proposal for a 115 MW facility and its claim for 30 years* of capacity payments.

Yet the testimony of the Panda witnesses addressing these two issues conspicuously avoids any reference whatsoever to the Commission's rules. Instead, they attempt to raise a variety of factual issues that have no bearing on the rules that govern standard offer contracts. They claim that a 115 MW facility is necessary to meet Panda's 74.9 MW Committed Capacity obligation under the contract. This is irrelevant; the Commission has already ruled that the 75 MW limitation applies to the net capacity of the facility, not the Committed Capacity of the contract. If Panda desires to build a facility larger than 75 MW, for whatever reason, it should have sought a negotiated contract as provided for in the Commission's rules. Panda's witnesses claim that Florida Power representatives agreed that capacity payments were to be made for 30 years. Apart from being untrue, this too is irrelevant. Neither the representatives of Florida Power nor Panda have any authority to modify or waive the Commission's rules or the provisions of the standard offer contract.

The third principle issue in this case, regarding extension of the contract milestone dates, was raised by Panda and it has utterly failed to meet its burden of proof. Panda has not offered anything to demonstrate that it would have met the contract milestone dates, in particular, that it would have obtained financing, if Florida Power had not initiated this proceeding. In fact, Panda does not even claim that it could have obtained financing, only that efforts were well under way before Florida Power filed its petition. No evidence of any kind is offered to show whether those efforts had any chance of success. On the other hand, the testimony Florida Power witness Morrison provides substantial evidence that Panda's project was not financially viable.

***Note:** The Panda contract originally provided for a Contract In-Service Date of April 1, 1995 and an expiration date of March 31, 2025, which amounted to a term of 30 years. In May 1993, the Contract In-Service Date was amended to January 1, 1997, with no change in the expiration date. Although the contract term is sometimes referred to as 30 years for convenience, it should be understood that the term is actually 28 years, three months.

PANDA:

It is the position of Panda that FPC's petition should be dismissed because this proceeding, and the relief requested by FPC, are preempted by federal law. In the alternative, it is the position of Panda that FPC's Petition should be answered in the negative. There is either no ambiguity in the standard offer contract between the parties (the "Contract"), or any ambiguity must be resolved against FPC's position. The Contract provides that FPC is obligated to make 30 years of capacity payments to Panda, and the Contract allows Panda to build a plant with a rating of 115 megawatts of net generating capacity (at ISO conditions) to meet Panda's 74.9 megawatt committed capacity obligation to FPC. This interpretation of the Contract is supported by the language of the contract, the legal principles of contract interpretation, and the parties' actions and discussions over the past four years. Furthermore, FPC and the Commission are barred by the doctrines of waiver, estoppel and administrative finality from asserting a contrary interpretation. Further, due to the delays caused by FPC's attempt to rewrite the Contract between the parties, and due to FPC's attempts to destroy Panda's ability to perform under the Contract, Panda requests that the Commission enter an Order extending the milestone dates contained in the Contract so as to allow Panda sufficient time to finance and build the plant.

STAFF:

Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record, and may differ from the preliminary positions.

VI. ISSUES AND POSITIONS

ISSUE 1: Does Panda Energy's proposed qualifying facility comply with both Rule 25-17.0832, F.A.C. and the standard offer contract with Florida Power Corporation in light of its currently proposed size?

POSITIONS

FPC:

No. Rule 25-17.0832(3)(a) and the Panda standard offer contract, which expressly incorporates the rule, limit the availability of standard offer contracts to "small cogeneration facilities less than 75 MW." Panda's claim that it needs to build a facility substantially larger than 75 MW (i.e., 115 MW) in order to satisfy the contract's Committed Capacity of 74.9 MW is both misplaced and wrong. It is misplaced because the 75 MW limitation in the rule has nothing to do with Committed Capacity; the Commission has already determined that the rule limitation applies to the size of the facility, not to the Committed Capacity specified in the contract. It is wrong because Panda itself acknowledged that it could satisfy its Committed Capacity obligation to FPC without the facility's additional capacity when it offered to sell 35 MW of firm capacity from the facility to another utility. Panda has used unrealistic design assumptions in an after-the-fact attempt to justify its oversized facility that was actually selected by Panda to enhance the economic viability of the project.

PANDA:

Panda's position is that this issue is framed in the wrong terms, in that the proper issue to be decided is limited to whether Panda's proposed plant complies with the Contract. Panda states that its proposed plant is in compliance with the Contract between the parties. This interpretation is supported by the language of the contract, the legal principles of contract interpretation, the parties' actions and communications over the past four years, and by the doctrines of waiver, estoppel and administrative finality. Panda states that no interpretation of Rule 25-17.0832 is necessary because the Contract has already been approved by the Commission on two separate occasions and the Commission is preempted and estopped from revisiting that approval. Panda will

put forth the testimony of Ralph Killian, J. Brian Dietz, Darol Lindloff and Joseph Brinson on this issue.

STAFF:

Yes. Panda's proposed qualifying facility will serve a 74.9 MW standard offer contract with FPC. Any excess output from the facility may be sold through a negotiated agreement for firm capacity, or as-available energy at prices determined in accordance with Commission rules.

ISSUE 2: Do rule 25-17.0832 (3) (e) (6), Florida Administrative Code, and the standard offer contract require Florida Power Corporation to make firm capacity payments for the life of the avoided unit (20 years) or the term of the standard offer contract (30 years)?

POSITIONS

FPC:

Rule 25-17.0832(3)(e)(6) and the Panda standard offer contract, which expressly incorporates the rule, limit the delivery of firm capacity under a standard offer contract to a maximum period of time equal to the life of the avoided unit, which in the case of the Panda standard offer contract is specified as 20 years. Panda's witnesses do not even acknowledge the existence of the Commission's rule, much less attempt to reconcile their position with the rule's limitation. They simply claim that Florida Power representatives acknowledged that capacity payments were to be made for 30 years. While Florida Power emphatically denies that it ever agreed to make capacity payments beyond 20 years, this is completely irrelevant to the issue before the Commission. As the standard offer contract expressly provides, "The Parties representatives . . . shall not have the authority to amend, modify, or waive any provision of this Agreement." More importantly, representatives of Panda and Florida Power certainly have no authority to abrogate the Commission's rules regarding maximum period for capacity payments.

PANDA:

Panda's position is that this issue is framed in the wrong terms, in that the proper issue to be decided is

limited to an interpretation of the Contract. Panda states that, pursuant to the Contract, Panda is entitled to firm capacity payments for the full term of the Contract. This interpretation is supported by the language of the contract, the legal principles of contract interpretation, the parties' actions and communications over the past four years, and by the doctrines of waiver, estoppel and administrative finality. Panda states that no interpretation of Rule 25-17.0832(3)(e)(6) is necessary because the Contract has already been approved by the Commission on two separate occasions and the Commission is preempted and estopped from revisiting that approval. Panda will put forth the testimony of Ralph Killian, Darol Lindloff, Joseph Brinson and Roy Shanker on this issue.

STAFF:

Rule 25-17.0832 (3) (e) (6), Florida Administrative Code, requires Florida Power Corporation to make firm capacity payments to Panda for twenty (20) years, the life of the avoided unit. The standard offer incorporates that rule by reference.

ISSUE 3: If it is determined that Florida Power Corporation is required to make firm capacity payments to Panda Energy pursuant to the standard offer contract for 30 years, what are the price terms for that capacity?

POSITIONS

FPC:

If Florida Power were required to make capacity payments for the full term of the standard offer contract, the value of deferral calculation should be redone, in accordance with the Commission's rules, using an economic life equal to the term of the capacity payments.

PANDA:

Panda states that this issue should be reworded so as to decide the amount of firm capacity payments to be paid to Panda under the Contract. It is the position of Panda that Appendix "C" of the Contract provides the amount of firm capacity payments for years 1 through 20 of the Contract, and that the firm capacity payments to Panda for years 21 through 30 of the Contract should be

computed by escalating the payments due Panda at year 20 at a rate of 5.1% per year. Panda will put forth the testimony of Roy Shanker and Ralph Killian on this issue.

STAFF:

No position at this time.

ISSUE 4: Should the Commission grant Panda Energy's request to extend the milestone dates in its standard offer contract?

POSITIONS

FPC:

No, the Commission should not unilaterally modify the contract. Panda's difficulties in meeting the contract's construction commencement and in-service milestone dates is a predicament of its own making. Panda's attempt to place the blame on Florida Power for filing its petition for declaratory statement ignores the fact that it was Panda's decision to enlarge the size of its facility by over 50% that raised the question of Panda's compliance with the Commission's 75 MW limitation, and that it was Panda's failure to bring this question to the Commission for resolution that forced Florida Power to take the action that Panda now complains of. Moreover, Panda has offered nothing to satisfy its burden of showing that it could have secured financing for its project if Florida Power had not filed its petition. Panda witness Killian simply says that "efforts were well under way to obtain financing and an equity partner for the project" before the petition was filed. However, he provides no documentation or other evidence to suggest, much less demonstrate, that those "efforts" had any chance of success, while Florida Power witness Morrison offer substantial evidence to the contrary.

PANDA:

Panda's position is that the milestone dates should be extended based on FPC's actions. Panda will put forth the testimony of Ralph Killian on this issue.

STAFF:

Yes.

ISSUE 5: If the Commission grants Panda Energy's request to extend the contractual milestone dates, how long should these dates be extended?

POSITIONS

FPC:

If the Commission determines it has authority to unilaterally modify the contract, the construction commencement and in-service milestone dates should not be extended any longer than the period of time required to conduct this proceeding, which has already extended too long because of Panda's delay tactics.

PANDA:

Panda believes that the milestone dates should be extended by at least 18 months, in order to restore Panda to its position prior to FPC's actions. Panda will put forth the testimony of Ralph Killian on this issue.

STAFF:

No position at this time.

ISSUE 6: If Panda Energy's qualifying facility commences commercial operation after the contractual in-service date, how should the applicable capacity and energy payments be determined?

POSITIONS

FPC:

The failure of Panda to meet the contract in-service date would be a material breach of the contract which the Commission should not attempt to cure. However, if an adjustment were to be made, capacity payments specified in Schedule 3, Appendix C of the contract should be escalated for the period between the contract in-service date and the actual in-service date using the current inflation rate.

PANDA:

Panda's position is that the milestone dates under the contract should be extended, and that the payments to

Panda under the Contract should be made pursuant to the existing terms of the Contract. Panda will put forth the testimony of Roy Shanker and Ralph Killian on this issue.

STAFF:

No position at this time.

VII. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
FPC Direct			
Dolan	FPC	_____ (RDD-1)	Panda's Notice of Self-Certification filed with FERC on October 7, 1991
Dolan	FPC	_____ (RDD-2)	Panda's response to FPC's QF Questionnaire in October 1991.
Dolan	FPC	_____ (RDD-3)	Letter from Wolf (Panda) to Wetherington (FPC) dated October 29, 1991.
Dolan	FPC	_____ (RDD-4)	Standard Offer Contract between Panda-Kathleen, L.P. and Florida Power Corporation.
Dolan	FPC	_____ (RDD-5)	Order No. PSC-92-1202-FOF-EQ, issued October 22, 1992 in Docket No. 911142-EQ.
Dolan	FPC	_____ (RDD-6)	Excerpt from <i>Southeast Power-Report</i> and Rule 25-17.0832(3)(a) produced by Panda.
Dolan	FPC	_____ (RDD-7)	Fax of Polk Power Partners order from FPC to Panda on November 12, 1992.

Dolan	FPC	<u> </u> (RDD-8)	Letter from Hollon (Panda) to Gammon (FPC) dated June 23, 1994.
Dolan	FPC	<u> </u> (RDD-9)	Letter from Hollon (Panda) Gammon (FPC) dated July 27, 1994.
Dolan	FPC	<u> </u> (RDD-10)	Letter from Gammon (FPC) to Hollon (Panda) dated August 3, 1994.
Dolan	FPC	<u> </u> (RDD-11)	Letter from Woodruff (Panda) to Dolan (FPC) dated August 10, 1994.
Dolan	FPC	<u> </u> (RDD-12)	Letter from Dolan (FPC) to Woodruff (Panda) dated September 8, 1994.

PANDA Direct

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Killian	Panda	<u> </u> (RK-1)	Standard Offer Contract Questionnaire Panda received from Florida Power in September 1991.
Killian	Panda	<u> </u> (RK-2)	Panda's response to FPC questionnaire, delivered to Florida Power in October 1991.
Killian	Panda	<u> </u> (RK-3)	Florida Power's "Evaluation of Standard Offer Proposals," dated November 1991.
Killian	Panda	<u> </u> (RK-4)	FPC's "Negotiated Contract For The Purchase Of Firm Capacity And Energy From A Qualifying Facility," provided to Panda in February 1991.

Killian	Panda	<u> </u> (RK-5)	Florida Power study, entitled "Cogeneration Review," dated December 1993.
Killian	Panda	<u> </u> (RK-6)	Panda's Quarterly Progress Report to Florida Power, dated June 20, 1994.
Killian	Panda	<u> </u> (RK-7)	June 23, 1994 letter from Ted Hollon to David Gammon.
Killian	Panda	<u> </u> (RK-8)	July 27, 1994 letter from Ted Hollon to David Gammon.
Killian	Panda	<u> </u> (RK-9)	August 3, 1994 letter from Ralph Killian to David Gammon.
Killian	Panda	<u> </u> (RK-10)	August 8, 1994 letter from Kyle Woodruff to Robert D. Dolan.
Killian	Panda	<u> </u> (RK-11)	August 10, 1994 letter from Kyle Woodruff to Robert D. Dolan.
Killian	Panda	<u> </u> (RK-12)	August 23, 1994 letter from Barrett G. Johnson to Joseph D. Jenkins of the Florida Public Service Commission.
Killian	Panda	<u> </u> (RK-13)	August 24, 1994 letter from Joseph Jenkins of the Florida Public Service Commission to Barett Johnson.

Killian	Panda	<hr/>	Robert D. Dolan, "Financial Incentives For Power Purchases: A Utility's View," presented at the Gulf Coast Cogeneration Association, 1992 Spring Meeting, held April 21, 1992.
Killian	Panda	<hr/>	April 29, 1993 letter from Robert Dolan to Mark Bentley, extending the milestone dates under the contract.
Lindloff	Panda	<hr/>	Standard Offer Contract between FPC and Panda
Lindloff	Panda	<hr/>	August 23, 1994 letter from Barrett G. Johnson to Joseph D. Jenkins of the Florida Public Service Commission.
Lindloff	Panda	<hr/>	August 24, 1994 letter from Joseph Jenkins of the Florida Public Service Commission to Barrett Johnson.
Lindloff	Panda	<hr/>	Memo from Darol Lindloff to Brian Dietz dated September 29, 1992
Lindloff	Panda	<hr/>	Darol Lindloff's notes of January 6, 1995 meeting
Brinson	Panda	<hr/>	Memo from Joseph Brinson to Bob Carter dated April 21, 1992
Brinson	Panda	<hr/>	Memo from Joseph Brinson to Bob Carter dated May 5, 1992

FPC Rebuttal

Dolan	FPC	<u> </u> (RDD-13)	Proposal from Panda to City of Lakeland dated April 4, 1994.
Morrison	FPC	<u> </u> (BAM-1)	Resume
Gwynn	FPC	<u> </u> (ERG-1)	Notes of January 9, 1992 meeting between Panda and Florida Power.
Gwynn	FPC	<u> </u> (ERG-2)	Panda's Notice of Self-Certification filed with FERC on October 7, 1991.

PANDA Rebuttal

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Shanker	Panda	(RS-1)	Resume of Roy Shanker

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

VIII. PROPOSED STIPULATIONS

FPC:

None at this time.

PANDA:

At this time, the parties have not agreed to stipulate as to any issues. Panda will engage in communications with FPC prior to the prehearing conference to determine if the parties can reach a stipulation on any issues.

STAFF:

None.

IX. PENDING MOTIONS

FPC:

None.

PANDA:

The only pending motions at the present time involve each party's requests for confidential treatment of certain exhibits and testimony prefiled by the other side. Panda takes no position on the requests for confidential treatment filed by FPC. Panda takes the position that its motions for confidential treatment should be granted.

STAFF:

Panda

Motion to Withdraw Clarification Letter
Motion for Protective Order
Motion to Stay Proceedings Pending Appellate Review

The Commission denied Panda's motion to stay proceedings at its February 6, 1996 Agenda Conference.

X. RULINGS

Motion to Withdraw Clarification Letter

The Motion to Withdraw Clarification letter is granted.


Motion for Protective Order

The Motion for Protective Order is denied as moot. The parties have resolved their discovery disputes.

It is therefore,

ORDERED by Chairman Susan F. Clark, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Chairman Susan F. Clark, as Prehearing Officer, this 15th day of February, 1996.



Susan F. Clark, Commissioner
and Prehearing Officer

(S E A L)

MCB

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,

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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.