

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for
determination of need for Hines
Unit 2 Power Plant by Florida
Power Corporation.

DOCKET NO. 001064-EI
ORDER NO. PSC-00-1959-PCO-EI
ISSUED: October 24, 2000

ORDER GRANTING INTERVENTION BY PANDA ENERGY INTERNATIONAL, INC.
AND GRANTING IN PART AND DENYING IN PART PANDA'S EXPEDITED
MOTION TO PRODUCE CONFIDENTIAL INFORMATION

Petition For Leave to Intervene and Expedited Ruling

By Petition for Leave to Intervene and Expedited Ruling dated October 12, 2000, Panda Energy International, Inc. (Panda) has requested permission to intervene in this proceeding. On October 19, 2000, Florida Power Corporation (FPC) filed its response in opposition to Panda's request to intervene. On October 20, 2000, Panda filed its Reply to FPC's Response, but inasmuch as replies are not contemplated by the Uniform Rules of Procedure, that Reply has not been considered in this determination.

In support of its request to intervene, Panda asserts that it was a participant in FPC's request for proposal (RFP) process pursuant to Rule 25-22.082, Florida Administrative Code (the "Bidding Rule"), having timely submitted a bid containing a series of options to FPC to supply the need requested by FPC¹. Panda's bid was ultimately rejected by FPC. Panda asserts that FPC's Hines 2 Unit is not the most cost-effective alternative available², and

¹Rule 25-22.082(8), F.A.C., states, "The Commission shall not allow potential suppliers of capacity who were not participants to contest the outcome of the selection process in a power plant need determination proceeding."

²Section 403.519, Florida Statutes, provides in pertinent part:

In making its determination, the commission shall take into account the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available. The commission shall also expressly consider the conservation measures taken by or

that this proceeding is Panda's opportunity to challenge the outcome of the bidding process.

FPC argues that a "rejected bidder" does not automatically have a right to intervene. FPC states that Panda's proposal is no longer a viable alternative in light of the subsequent Florida Supreme Court decision in Tampa Electric Company, et al. v. Garcia, et al., 25 Fla.L.Weekly S294 (Fla. Apr. 20, 2000), revised, _____ Fla.L.Weekly _____ (Fla. Sept. 28, 2000) (hereinafter referred to as "TECO"). Consequently, FPC argues, Panda does not have a substantial interest in this proceeding. FPC asserts that Panda must demonstrate a substantial interest in the outcome of the proceeding by proving that FPC should have accepted its bid. FPC goes on to assert that because Panda's original bid could not now be accepted in light of TECO, Panda cannot demonstrate that its substantial interests will be affected.

Consistent with Florida law, this Commission will consider whether FPC's proposed plant is the most cost-effective alternative available. Accordingly, the Commission will consider issues regarding the RFP, the company's consideration of the bids received, the outcome of the bid process, and the competing alternatives presented. Since Panda made a bid to supply the need requested by FPC, and the Commission will review the bid process pursuant to Section 403.519, Florida Statutes, it is appropriate that Panda, as one of only two bidders, be allowed to question the methodologies used by FPC in evaluating the bids and making its decisions. Moreover, the issue and impact of TECO on the Bidding Rule and the need determination process has not yet been addressed by this Commission.

This Commission has allowed unsuccessful bidders to intervene in need determination proceedings. See In re: Petition to determine need for electrical power plant in St. Marks, Wakulla County, by City of Tallahassee, Order No. PSC-97-0299-PCO-EM, issued March 19, 1997, Docket No. 961512-EM; In re: Joint Petition to determine need for electric power plant to be located in Okeechobee County by Florida Power and Light Company and Cypress Energy Partners, Limited Partnership, Order No. PSC-92-0749-PCO-EQ,

reasonably available to the applicant or its members which might mitigate the need for the proposed plant and other matters within its jurisdiction which it deems relevant.

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issued August 5, 1992, and Order No. PSC-92-0830-PCO-EQ, issued August 18, 1992, Docket No. 920520-EQ. I therefore grant Panda's Petition for Leave to Intervene.

Expedited Motion to Produce Confidential Information

On October 18, 2000, Panda filed an Expedited Motion to Produce Confidential Information, and further requested that it be given leave to participate in depositions held prior to the entry of this Order granting intervention. Panda alternatively requested permission to depose witnesses after October 19, 2000, the end of the time for discovery set by the Order Establishing Procedure entered August 30, 2000. On October 18, 2000, FPC objected to Panda's participation in depositions and access to confidential information prior to Panda's intervention.

During the October 19, 2000, depositions of FPC's witnesses Crisp and Cicchetti, Panda was not yet a party to this proceeding. Therefore, Panda could not participate in depositions held on October 19, 2000³, but was allowed to attend those depositions. Consequently, Panda's request to participate in those depositions is denied as moot. As for Panda's request for extended discovery time, Rule 25-22.039, Florida Administrative Code, states that intervenors take the case as they find it. I do note, however, that the discovery cutoff period was established in Order No. PSC-00-1561-PCO-EI to expedite the processing of this case. I will exercise my discretion to allow the discovery cut off period to be extended until Wednesday, October 25, 2000, at 12:00 p.m., to allow Panda to conduct depositions.

I note that in its opposition to Panda's motion, FPC did not address whether Panda should have access to confidential information once granted party status. With regard to confidential information, Panda shall be provided access to confidential information filed with the Commission in this docket upon the execution of an appropriate nondisclosure agreement.

Based on the foregoing, it is therefore

ORDERED by Commissioner Lila A. Jaber as Prehearing Officer, that Panda Energy International, Inc.'s Petition to Intervene is granted. It is further

³Fla.R.Civ.Proc. 1.280 states that only parties can conduct discovery.

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ORDERED that Panda Energy International, Inc.'s request to participate in discovery depositions or have access to confidential materials prior to the granting of intervention is denied. It is further

ORDERED that Panda Energy International, Inc.'s motion to extend the time for discovery is granted, but limited to depositions upon oral examination conducted before 12:00 p.m., on Wednesday, October 25, 2000. It is further

ORDERED that Panda Energy International, Inc., shall be provided access to confidential information filed with the Commission in this docket upon Panda Energy International, Inc.'s execution of an appropriate nondisclosure agreement. It is further

ORDERED that all parties shall furnish copies of all testimony, exhibits, pleadings and other documents which may hereinafter be filed in this proceeding to:

Suzanne Brownless, Esquire
1311-B Paul Russell Road
Suite 201
Tallahassee, FL 32301

By ORDER of Commissioner Lila A. Jaber as Prehearing Officer,
this 24th Day of October, 2000.


LILA A. JABER
Commissioner and Prehearing Officer

(S E A L)

DDH

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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

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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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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 25-22.0376, 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.