

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power )	DOCKET NO. 910759-EI
Corporation for Determination of )	ORDER NO. 25221
Need for Proposed Electrical )	ISSUED: 10/15/91
Power Plant and Related Facilities )	

ORDER GRANTING INTERVENTION, GRANTING PARTIAL EXTENSION  
OF TIME TO FILE TESTIMONY, DENYING MOTION REGARDING  
DISCOVERY, DENYING MOTION FOR CONTINUANCE, AND  
GRANTING ADMISSION TO PRACTICE BEFORE THE COMMISSION

Since October 8, 1991, the Commission has received several petitions by interested parties to intervene in this proceeding. Several other procedural motions have been filed concurrently with the petitions to intervene, including a motion to expedite the decision on the petitions and other motions. To accommodate the request for expedited treatment of these matters, this order will include the prehearing officer's decision on all outstanding procedural motions in the case.

The Commission has received petitions to intervene from the following entities:

Florida Industrial Cogeneration Association (FICA),  
October 8, 1991;

Floridians for Responsible Utility Growth, October 10,  
1991;

Panda Energy Corporation, October 10, 1991;

The petitions to intervene are hereby granted. Under our Rule 25-22.039, Florida Administrative Code, persons who can demonstrate a constitutional or statutory right to participate, or persons who can demonstrate that their substantial interests will be affected or determined through Commission proceedings, are entitled to participate as intervenors in those proceedings. The petitioners have demonstrated that their substantial interests will be affected by the Commission's action in this need determination proceeding and thus they should be granted intervenor status. As Rule 25-22.039 clearly states, however, "[i]ntervenors take the case as they find it", and this principle will control the decisions on the motions described below.

Concurrently with their petitions to intervene, the following parties filed the following motions:

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10212 OCT 15 1991

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Florida Industrial Cogeneration Association (FICA);  
Motion for Extension of Time to File Prepared  
Testimony,  
Motion Regarding Discovery (containing a three  
part request for changes to the Commission's  
usual discovery timetables and procedures);

Floridians for Responsible Utility Growth;  
Motion for Continuance,  
Request for Oral Argument on Motion for  
Continuance,  
Motion for Admission to Practice before the  
Commission by Terry R. Black, attorney for  
Floridians for Responsible Utility Growth.

Florida Power Corporation (FPC) has filed a response in  
opposition to FICA's motions. FPC has also filed a response in  
opposition to Floridians for Responsible Utility Growth's Motion  
for Continuance and request for Oral Argument. FPC has not  
opposed the requests for intervention.

FICA's Motion for Extension of Time to File Testimony is  
granted to the limited extent that it does not require changes to  
the schedule of major events in this case. FICA's Motion Regarding  
Discovery is denied in toto.

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 established  
discovery process in this case, while at the same time requesting  
a decrease in the time allowed to respond to that expanded  
discovery.

Florida Power Corporation filed a Notice of Intent to File its  
Petition for Determination of Need on July 8, 1991. The case  
schedule for the case was approved on July 26, 1991, and the  
petition itself was filed on August 16, 1991. FICA was fully aware  
of all of these events, but delayed requesting intervention until  
October 8. Discovery in this case has been proceeding for over  
seven weeks. The number of interrogatories permitted in this case  
has already been expanded greatly beyond the usual 25 permitted by  
Rule 1.340, Florida Rules of Civil Procedure.

FICA and Floridians for Responsible Utility Growth argue that  
an extension of time or continuance of this case would not be  
inconsistent with the time provisions of the Power Plant Siting

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Act, section 403.509, Florida Statutes, or Rule 25-22.080, Florida Administrative Code. Florida Power Corporation, they argue, has not yet filed its application for certification under the Act, and therefore the time periods are not yet mandatory.

The argument may be correct, but it simply supports the legal conclusion that the decision to adhere to the time periods established by the rule is within the Commission's reasonable discretion. 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.

In light of the fact that section 403.508(3) of the Electrical Power Plant Siting Act provides that ". . . an affirmative determination of need shall be a condition precedent to the conduct of the certification hearing" required by the Act, the practice of filing a Petition for Determination of Need well in advance of an Application for Power Plant Certification has become a common and well-accepted one. It is clearly contemplated by Rule 25-22.080(1), Florida Administrative Code, which states that, "[p]roceedings may begin prior to the filing of an application for site certification of the proposed electrical power plant."

In any event, the Commission would certainly require a significant reason to contravene the provisions of its own rule when the parties requesting the waiver have themselves failed to intervene promptly in the proceeding.

Nevertheless, a limited extension of time to October 21, 1991 will be granted to file staff and intervenor testimony. An extension of time to November 4, 1991, the date of the prehearing conference, will be granted to file rebuttal testimony. No party will be prejudiced by such an extension. The dates of the hearing and prehearing, however, will remain as scheduled. The date for completion of discovery will remain November 6, 1991, and the number of interrogatories allowed will remain at 75.

The Motion for Admission to Practice is granted, because the movant has complied with the provisions of our Rule 25-22.008(2)(b), Florida Administrative Code.

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Therefore, it is

ORDERED by the Florida Public Service Commission that the Petitions to Intervene filed by The Florida Industrial Cogeneration Association, Floridians for Responsible Utility Growth, and Panda Energy Corporation are hereby granted. It is further

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

RICHARD A. ZAMBO, ESQ.  
Richard A. Zambo, P.A.  
598 S.W. Hidden River Ave.  
Palm City, Florida 34990  
(407) 220-9163

PAUL SEXTON, ESQ.  
Richard A. Zambo, P.A.  
211 South Gadsden Street  
Tallahassee, Florida 32301  
(904) 222-9445

TERRY R. BLACK, ESQ.  
Pace University Energy Project  
Center for Environmental Legal Studies  
78 N. Broadway  
White Plains, NY 10603

STEPHEN ARGENBRIGHT, ESQ.  
Panda Energy Corporation  
4100 Spring Valley  
Suite 1001  
Dallas, TX 75244

It is further

ORDERED that the Motion for Extension of Time to File Prepared Testimony is granted to the extent that the date for filing staff and intervenor testimony will be extended from October 16, 1991 to October 21, 1991. The date for filing company rebuttal testimony will be extended from October 28, 1991 to November 4, 1991. It is further


ORDERED that the Motion for Continuance is denied. It is further

ORDERED that the Motion Regarding Discovery is denied. All parties are expected, however, to make every effort to accommodate the reasonable discovery requests of the other parties as expeditiously as possible. It is further

ORDERED that the Motion for Admission to Practice is granted.

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By ORDER of Commissioner Betty Easley, as Prehearing Officer,  
this 15th day of OCTOBER, 1991.

  
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BETTY EASLEY, Commissioner  
and Prehearing Officer

( S E A L )

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FICA.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 sewer 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.