

M E M O R A N D U M

JUNE 29, 1992

TO: DIVISION OF RECORDS AND REPORTING  
FROM: DIVISION OF LEGAL SERVICES (ELIAS) RVE  
SUBJECT: DOCKET NUMBER 911142-EQ - PETITION OF FLORIDA POWER  
CORPORATION FOR AUTHORITY TO REFUSE STANDARD OFFER  
CONTRACTS

PSC-92-0575-PHO-ER

Attached is a Prehearing Order to be issued in the above  
referenced docket.

RVE  
911142po.rve

xc: Division of Electric and Gas Regulation (Silvestri)

DOCUMENT NUMBER-DATE  
06901 JUN 26 1992  
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power ) DOCKET NO. 911142-EQ  
Corporation for Authority to ) ORDER NO. PSC-92-0575-PHO-EQ  
refuse standard offer contracts ) ISSUED: 6-26-92  
)  
)  
)

Pursuant to Notice, a Prehearing Conference was held on June 17, 1992, in Tallahassee, Florida, before Commissioner Betty Easley, as Prehearing Officer.

APPEARANCES:

James P. Fama, Senior Counsel, P.O. Box 14042 St. Petersburg, Florida 32366-0203.  
On behalf of Florida Power Corporation.

Patrick K. Wiggins, Esquire, Wiggins and Villacorta, 501 East Tennessee Street, P. O. Drawer 1657, Tallahassee, Florida 32302  
On behalf of NOAH IV Power GP, Inc. and ARK Energy, Incorporated

Barrett G. Johnson, Esquire, P.O. Box 1308, Tallahassee, Florida 32302  
On behalf of Panda Kathleen, Inc.

Suzanne Brownless, Esquire, Oertel, Hoffman, Fernandez and Cole, P.A., 2700 Blair Stone Road, Suite C, Tallahassee, Florida 32301  
On behalf of Destec Energy, Inc.

Robert V. Elias, Esquire, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida 32399-0863  
On behalf of the Commission Staff.

David E. Smith, Esquire, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida 32399-0862  
On behalf of the Commissioners.

PREHEARING ORDER

I. CASE BACKGROUND

Florida Power Corporation's (FPC) standard offer contract tariff was made available on September, 13, 1991 providing for an effective date of September 20, 1991. In Docket 910004-EU (Order No. 24989) FPC's avoided unit for its standard offer contract was designated as 80 MW from a 150 MW 1997 combustion turbine. Instead

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of using a "first-in-time, first-in-line" mechanism 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. At the February 18, 1992 agenda conference, the Commission voted unanimously to approve the staff recommendation to approve FPC's petition, but to keep the standard offer open until the remaining 5.1 MW are subscribed. NOAH and Ark timely filed a protest to the Notice of Proposed Agency Action. The final hearing is set for June 29, 1992 before the full Commission.

## 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, 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.

### III. PREFILED TESTIMONY AND EXHIBITS

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.

### IV. ORDER OF WITNESSES

<u>Witness</u>	<u>Appearing For</u>	<u>Issues #</u>
<u>Direct</u>		
Allen J. Honey	Florida Power Corp.	2,5,6,7,10
Edward R. Gwynn*	Panda Energy	All
J. L. Seelke, Jr.	NOAH IV/ARK	All
J. F. Freeman	"	1,3,4,7
W. R. Malenius	"	5,6
W. Siderewicz	"	4,5,6,7

\* By agreement of the parties, Mr. Gwynn will be adopting the prefiled direct testimony of Steven Argenbreit

<u>Rebuttal</u>	<u>Appearing For</u>	<u>Issues #</u>
Alan J. Honey	Florida Power Corp.	Rebuttal to Seelke, Freeman, Malenius and Siderewicz

V. BASIC POSITIONS

FPC:

As a result of the most recent APH, Florida Power's 1997 avoided unit for its standard offer contract was designated as 80 MW of a 150MW combustion turbine. The Commission currently permits a utility to choose the method by which it decides which contracts to accept; either by an evaluation process or by means of "first-in-line, first-in-time" procedure. Instead of using a "first-in-time" mechanism for selecting standard offers, Florida Power established a two-week "open season" from September 20, 1991 through October 4, 1991, during which respondents submitted contracts for evaluation. Based on its evaluation, Florida Power selected the contract submitted by Panda as being the project with the highest likelihood of success and most likely to meet Florida Power's capacity need. Due to the size of the remaining projects, acceptance of another contract would greatly exceed the 80 MW limit. Therefore, pursuant to Commission Rule 25-170832(3)(d), Florida Power petitioned to reject all contracts received except that submitted by Panda.

NOAH IV/ARK:

The language of the standard offer rule, the history of the standard offer rule, the wording of Florida Power's tariff, and the nature of tariffs in general establish, both collectively and individually, a "first in time" policy for subscription, acceptance, and prioritization. Specifically, this established first in time policy requires the following process:

- o **First**, based upon the order of receipt, the utility must decide whether to accept each contract or to petition for authority to reject it. The order of receipt is even maintained while the Commission considers the utility's petition to reject a contract.
- o **Second**, the rules require that each contract be judged against a viability standard, not by a comparative merit based standard. Contracts either pass or fail the viability standard; they do not receive a grade.
- o **Third**, the rules require that the utility base a petition to reject a contract on material evidence that because the project is not viable, the QF is unlikely to deliver



the committed capacity promised by its standard offer contract.

Pursuant to Florida Power Corporation's tariff and the Commission's rules and orders, NOAH IV was the first QF to accept Florida Power's Standard offer to purchase firm capacity and energy from a qualifying facility; indeed, NOAH IV was the only QF to accept FPC's standard offer tariff on September 20, 1991, the tariff's effective date as mandated by Order No. 24989. In petitioning to reject NOAH IV's contract, Florida Power made no attempt to present material evidence that NOAH IV's project was not viable. Rather, Florida Power petitioned to reject all contracts other than Panda Kathleen's based on a comparative evaluation that was neither allowed under the Rule nor provided for in FPC's tariff. For this reason, Florida Power's petition must be rejected.

That Florida Power's comparative evaluation approach was not contemplated under the rule or its tariff is not surprising: Florida Power hatched this scheme after its tariff had been filed (as required by Order No. 24989) and announced it only two days before responsible QFs were to file under the established first in time policy. Worse still, Florida Power's approach was so hurried that it had not even determined the evaluation criteria it would use. It decided these criteria after all QFs had filed their acceptances; QFs never knew what these criteria were until Florida Power released its report.

Florida Power was apparently concerned enough about the legitimacy of its comparative evaluation approach that it allegedly sought "approval" of the approach from the Commission staff. It remains unclear as to the level of detail provided staff about how Florida Power would implement such a plan. What is clear, however, is that Florida Power took no steps to seek formal approval of its "open season" scheme.

Florida Power created the problems now before the Commission, yet it refuses to accept responsibility for its actions. Rather, Florida Power attempts to shift the Commission's attention from its behavior to that of ARK/NOAH, portraying ARK/NOAH as "poor losers." ARK/NOAH rejects the proposition that this is a game, but welcomes scrutiny of their own conduct in this matter. The evidence will demonstrate that ARK/NOAH perfectly accepted and established their right to the standard offer contract and at every turn conducted themselves appropriately.

**PANDA KATHLEEN:** The basic position of Panda Kathleen L.P. is that the actions of Florida Power Corporation in providing a two week open season, evaluating proposed contracts submitted pursuant thereto, and awarding a contract to Panda Kathleen were actions within the scope of the Commission's rules, Florida Power's tariffs and common sense. Panda Kathleen L.P. has a valid contract which it is executing in good faith, including making substantial expenditures and other changes of position to its detriment. No ex

post facto decision can operate to divest Panda Kathleen of that contract.

**DESTEC:** Rule 25-17.0832, F.A.C., does permit the aggregation of standard offer contracts and their comparative evaluation where submitted pursuant to a widely publicized scheme and associated with the same avoided unit.

**STAFF:** Staff recognizes that this formal hearing is a de novo proceeding. The prior recommendation and Notice of Proposed Agency action prepared by staff are of no precedential value and should not be construed by any party as indicative in any way of the recommendation staff will make after considering the evidence and argument offered in the hearing process. Staff takes no basic position at this time.

#### VI. ISSUES AND POSITIONS

**ISSUE 1:** Do the Commission rules require a "first-in-time, first-in-line" prioritization of standard offer contracts submitted to a utility, or do the rules allow other methods of prioritizing contracts?

**Florida Power Corporation:** The rules do not mandate how a utility decides which standard offer contract to accept nor do they preclude any particular methodology.

**ARK/NOAH:** The language of the standard offer rule, the history of the standard offer rule, the wording of Florida Power's tariff, and the nature of tariffs in general establish, both collectively and individually, a "first in time" policy for subscription, acceptance, and prioritization of standard offer contracts accepted pursuant to FPC's tariff and the Commission's rules. Specifically, this established first in time policy requires the following process:

- o **First**, based upon the order of receipt, the utility must decide whether to accept each contract or to petition for authority to reject it. The order of receipt is even maintained while the Commission considers the utility's petition to reject a contract.
- o **Second**, the rules require that each contract be judged against a viability standard, not by a comparative merit based standard. Contracts either pass or fail the viability standard; they do not receive a grade.
- o **Third**, the rules require that the utility base a petition to reject a contract on material evidence that because the



project is not viable, the QF is unlikely to deliver the committed capacity promised by its standard offer contract.

Panda: Commission rules do not require a "first-in-time, first in-line" prioritizing. The rules allow other methods, including that used here.

Destech: No, the rules do not require a "first-in-time, first-in-line" prioritization where standard offer contracts are submitted pursuant to a publicized scheme and all involve the same avoided unit.

Staff: No position at this time.

**ISSUE 2:** If the rule requires a "first-in-time, first-in-line" methodology, did FPC meet its burden under the rule?

Florida Power Corporation: Yes. Florida Power has provided adequate justification for its refusal to accept the Ark contract.

ARK/NOAH: No. NOAH IV was the first QF to accept Florida Power's standard offer to purchase firm capacity and energy from a qualifying facility; indeed, NOAH IV was the only QF to accept FPC's standard offer tariff on September 20, 1991, the tariff's effective date as mandated by Order No. 24989. In petitioning to reject NOAH IV's contract, Florida Power made no attempt to present material evidence that NOAH IV's project was not viable. Rather, Florida Power petitioned to reject all contracts other than Panda Kathleen's based on a comparative evaluation that was neither allowed under the Rule nor provided for in FPC's tariff. For this reason, Florida Power's petition must be rejected.

Panda: Not relevant. See Issue 1.

Destec: Yes, in this circumstance.

Staff: No position at this time.

**ISSUE 3:** Did Florida Power Corporation violate its tariff by either petitioning for the Commission's authority to reject NOAH IV's standard offer contract on the basis of a comparative evaluation or by executing the standard offer contract delivered to FPC by Panda Kathleen on October 4, 1991?

Florida Power Corporation: No. Nothing in the tariff prohibits the actions taken by Florida Power with regard to the standard offer contract.

ARK/NOAH: Yes. Florida Power's tariff contained no provisions allowing it to vary from the order of receipt of the qualified acceptances of its standard offer. ARK/NOAH qualified under the tariff's terms and conditions and is entitled to the tariffed service. Moreover, once NOAH IV accepted FPC's standard offer contract on September 20, only 10 MW remained to be subscribed in accordance with FPC's Commission-approved subscription limit, both by the terms of the Commission's Rule and by the terms of FPC's own tariff. Therefore, FPC's executions of any other standard offer contract for more than 10 MW violated both the Rule and FPC's tariff.

Panda: No. Neither the rules nor the tariff prohibits Florida Power from taking the actions it took.

Destec: Not in this particular circumstance.

Staff: No position at this time.

**ISSUE 4:** Did Ark/Noah waive its right to object to Florida Power's evaluation process by failing to notify Staff, other respondents to the standard offer or Florida Power of Ark/Noah's position that a first-in-time acceptance was required?

Florida Power Corporation: Yes. All respondents to Florida Power's standard offer, including Ark/Noah, were advised of the evaluation process and the two-week open season for receipt of proposals. Ark/Noah fully participated in the evaluation process which did not result in a final decision until two months after the effective date of the contract. Moreover, Ark/Noah waited almost three months before objecting to Florida Power's procedure. In short, Ark/Noah seeks to change the rules of the game after it has lost the game.

ARK/NOAH: No. Moreover, ARK/NOAH objects to this issue on the ground that it is irrelevant. This issue is an attempt by Florida Power to divert attention from its violations of the standard offer rule and its own tariff, rather than accept responsibility for creating the problems now before the Commission. ARK/NOAH perfectly accepted and established their right to the standard offer contract and at every turn conducted themselves reasonably and appropriately. ARK/NOAH were under no duty to protest FPC's violations until they were afforded a point of entry by the Commission to do so.

Panda: Yes. Further, the two week open season was an integral, inseparable part of the offer Florida Power extended. By submitting a response to Florida Power's offer, each respondent, including Ark/Noah accepted all of its conditions.

Destec: With regard to Rule 25-17.0832, there can be no waiver by individual parties of whatever rights are granted. The question in this docket is not one of waiver, but concerns the nature of the rights given under the rule.

Staff: No position at this time.

ISSUE 5: As of November 19, 1991, was NOAH IV's Lake County Cogeneration Project technically viable with respect to fuel transportation capability?

Florida Power Corporation: No. Florida Power did not receive sufficient information during the evaluation process to establish the viability of the project's fuel supply.

ARK/NOAH: Yes. As of November 19, 1991, ample capacity remained in FGT's Phase III pipeline expansion to serve NOAH IV's fuel requirements. On June 20, 1991, the appropriate reservation deposit was made on behalf of ARK to reserve Phase III capacity for the NOAH IV project and other ARK projects in Florida.

Panda: No position.

Destec: No position.

Staff: No position at this time.

ISSUE 6: As of November 19, 1991, was NOAH IV's Lake County Cogeneration Project technically viable with respect to being able to develop and bring into commercial operation NOAH IV's planned thermal host, a food-grade carbon dioxide manufacturing facility?

Florida Power Corporation: No. Florida Power did not receive sufficient information during the evaluation process to establish the viability of the project's steam host.

ARK/NOAH: Yes. With more than five years remaining until the contractually promised in-service date (i.e., the in-service date of FPC's avoided unit), there is no doubt that a "very good" cogeneration developer can construct and bring into commercial operation a qualifying cogeneration facility including both a gas-fired combined cycle generating unit and a liquid carbon dioxide plant in the time available. Moreover, in proceedings before this Commission only a few months earlier, FPC itself had sought and obtained the PSC's approval of a negotiated contract with a similar design; at that time, FPC recognized that it is readily feasible to build such a cogeneration plant, with a carbon dioxide plant as its thermal host, in less than half the time available to NOAH IV.

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Accordingly, FPC's attempt to disparage NOAH IV's contract and project is inconsistent and plainly contradicted by FPC's representations to the Commission only a few months earlier.

Panda: No position.

Destec: No position.

Staff: No position at this time.

**ISSUE 7:** As of November 19, 1991, did NOAH IV's Lake County Cogeneration project have the highest likelihood of success relative to the other proposals received by Florida Power Corporation?

Florida Power Corporation: No. Of the proposals received, Noah was ranked fourth of seven.

ARK/NOAH: Unknown. Moreover, ARK/NOAH objects to this issue on the ground that it is irrelevant. FPC's assessment of "likelihood of success" was essentially a subjective exercise that could have been made more disciplined with objective ranking and weighing criteria. Based on the data that ARK/NOAH has seen, all that can be reasonably said is that several viable QFs responded to FPC's standard offer, and that differences in "likelihood of success" among the QFs are probably non-quantifiable.

Panda: No. Panda Kathleen, L.P. had the highest likelihood of success and it was on that basis, among others, that Florida Power awarded the contract to Panda. Other submittals also outranked Ark/Noah.

Destec: Although Destec does not totally agree with FPC's evaluation of its project, FPC's evaluation rates Destec's project as having a higher likelihood of success than NOAH IV and all other projects save one.

Staff: No position at this time.

**ISSUE 8:** Should FPC's Petition for authority to reject all standard offer contracts except that submitted by Panda Kathleen, L.P. be granted?

Florida Power Corporation: Yes. Based on its evaluation, Florida Power chose the best proposal to fulfill its capacity needs. Accepting an additional contract would greatly exceed the 80 MW limit.

ARK/NOAH: No. Please see basic position.

Panda: Yes.

Destec: Yes, for all contracts under consideration in this docket at this time.

Staff: No position at this time.

**ISSUE 9:** Did Panda detrimentally rely on Ark/Noah's failure to notify Staff, other respondents to the standard offer or Florida Power that a first-in-time acceptance was required and, if so, to what degree?

Florida Power Corporation: Yes. Panda's proposal, along with four others, was not submitted until the last day of the open season. Further, Panda has continued with the development of its project. Florida Power is unable to assess the impact of this reliance, but it appears that Panda's rights have been prejudiced.

ARK/NOAH: No. Moreover, ARK/NOAH objects to this issue on the ground that it is irrelevant. As with Issue 4, this issue is an attempt by Florida Power to divert attention from its violation of the standard offer rule and its own tariff, rather than accept responsibility for creating the problems before the Commission.

ARK/NOAH had no communications with Panda or any other responding QF. Moreover, in the two days between the time ARK/NOAH learned about Florida Power's comparative evaluation approach and the effective date of the tariff, ARK/NOAH had neither the duty nor the opportunity to discuss infirmities of Florida Power's approach with potential responding QF's, even if it had known which QF's were going to respond. Further, during these two days, ARK/NOAH had neither the duty nor the opportunity to petition the Commission about Florida Power's informally announced approach.

Panda: Yes. Panda Kathleen has proceeded in good faith reliance throughout this process in submitting its proposal, executing its contract and proceeding to implement that contract. Panda has incurred substantial expenses and otherwise changed its position in negotiating contracts to meet its obligations.

Destec: No position.

Staff: No position at this time.

**ISSUE 10:** If the Commission determines that ARK and NOAH IV are entitled to a contract with Florida Power Corporation, does that



decision have any bearing on the existing contract between Panda Kathleen, L.P. and Florida Power Corporation? If so, what is the impact of that decision on the FPC-Panda Contract?

Florida Power Corporation: Yes. Due to the subscription limit and the size of the projects, only one contract can be accepted. If Ark is entitled to the contract with Florida Power, then Panda is automatically disapproved.

ARK/NOAH: Florida Power's execution of the standard offer contract submitted by Panda Kathleen violated both Rule 25-17.0832(3)(d) and Florida Power's own tariff. However, in view of the facts (1) that the Commission expressly determined that Florida Power's avoided unit for standard offer contract purposes was a 150 MW Combustion Turbine, and (2) that together the NOAH IV project (70 MW) and Panda's project (74.9 MW) would effectively displace Florida Power's need for its Commission-determined avoided unit, ARK/NOAH IV respectfully suggest that an appropriate resolution of this situation is for the Commission to require Florida Power to execute and perform its obligations under both contracts.

Panda: No. Panda has a valid contract which cannot be negated by ex post facto decisions.

Destec: No position at this time.

Staff: No position at this time.

#### VII. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Honey	FPC	_____ AJH-1	Evaluation of Standard Offer Proposals
Honey	FPC	_____ AJH-2	10/10/91 letter from William Siderewicz
S'wicz	NOAH IV/ARK	_____	Receipt for Standard Offer Contract Accepted and Delivered by NOAH IV to FPC on 09/20/91

In addition to the exhibits noted above, ARK/NOAH intend to introduce a composite exhibit, Record of Docket No. 891049-EU, In re: Amendment of Cogeneration Rules.



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

VIII. PROPOSED STIPULATIONS

None at this time.

IX. PENDING MOTIONS

NOAH IV/ARK's Motion for Continuance is denied.

By agreement of the parties, responses to NOAH IV/ARK's pending interrogatories shall be filed no later than Friday, June 26, 1992.

X. OTHER MATTERS

The transcript of this proceeding shall be filed no later than July 2, 1992.

XI. POST-HEARING PROCEDURES

Pursuant to Rule 25-22.056(3)(a), Florida Administrative Code, each party is required to file a post-hearing statement of issues and positions. You must include in that statement, a summary of each position of no more than 50 words, marked with an asterisk. In the absence of the summary statement, the prehearing position on that issue will be used in the staff recommendation. The rule also provides that any issue or position not included in the post-hearing statement is considered waived. If a party's position has not changed since the prehearing order was issued, the post-hearing statement can simply restate the prehearing position.

All post-hearing memoranda, including findings of fact, conclusions of law, statement of issues and positions, and briefs, shall total no more than 50 pages, and shall be filed simultaneously, on or before August 3, 1992. Arguments in briefs must be identified by issue number. Proposed findings of fact and conclusions of law are not required. If proposed findings of fact are submitted, each one must cite to the record, identifying transcript page and line. All proposed findings of fact which relate to a particular issue shall be grouped together and shall identify the issue number to which they relate. Each proposed finding of fact shall be separately and consecutively numbered. Any written statement which is not clearly designated as a proposed finding of fact shall be considered to be legal argument rather than a proposed finding of fact.

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It is therefore,

ORDERED by Commissioner Betty Easley, 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 Commissioner Betty Easley, as Prehearing Officer, this 26th day of June, 1992.

  
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Betty Easley, Commissioner  
and Prehearing Officer

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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.