

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center, 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

M E M O R A N D U M

July 20, 1995

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF APPEALS (HELTON) *nat DS*
DIVISION OF LEGAL SERVICES (BROWN) *NCB M P RZ RLT*
DIVISION OF ELECTRIC & GAS (BALLINGER, HAFF) *msw*
JTS

RE: DOCKET NO. 950110-EI - PETITION FOR DECLARATORY STATEMENT
REGARDING ELIGIBILITY FOR STANDARD OFFER CONTRACT AND
PAYMENT THEREUNDER BY FLORIDA POWER CORPORATION - REQUEST
FOR EVIDENTIARY PROCEEDING

AGENDA: 8/1/95 - REGULAR AGENDA - DECISION PRIOR TO HEARING -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\APP\WP\950110RE.RCM

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, as well as an additional issue regarding postponement of the significant milestone dates of the standard offer contract pending the Commission's resolution of the declaratory statement proceedings. FPC filed a motion to strike Panda's petition which the Commission denied as to the common issues both parties had raised in their petitions, but granted as to the milestone date issue. See Order PSC-95-0692-FOF-EI, issued June 12, 1995.

On June 29, 1995, after a status conference with Commission staff, at which Panda expressed its concern that material factual issues were in dispute in the case, Panda filed a Petition for Formal Evidentiary Proceeding and Full Commission Hearing on the issues raised by the declaratory statement petitions. FPC did not file an objection to the request for formal proceedings. A hearing date before the full Commission has been reserved and a case

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schedule has been established, if Panda's petition for hearing is granted.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Panda's Petition for Formal Evidentiary Proceeding?

RECOMMENDATION: Yes. Staff recommends that the competing issues raised by FPC's and Panda's petitions for declaratory statement be converted to a Section 120.57(1) proceeding and heard along with any issues surrounding the extension of the contract milestone dates.

STAFF ANALYSIS: In its petition Panda states that the competing requests for declaratory statements and other related filings demonstrate that Panda and FPC are asserting diametrically opposed positions regarding the terms and continuing validity of their standard offer contract. Panda contends that disputed issues of material fact bear on all issues and should properly be resolved before the full Commission in a formal administrative proceeding. Panda states that the standard offer contract is established by tariff and approved by the Commission, and Panda asserts that to the extent permitted by applicable law the Commission has jurisdiction to make determinations respecting the contract and to grant the appropriate relief requested.

Staff recommends that the Commission grant Panda's petition and conduct a Section 120.57(1), Florida Statutes, proceeding. A formal evidentiary proceeding will enable the Commission to hear all pertinent issues to the contract at the same time, including the milestone dates. If a hearing is held to consider all appropriate issues raised thus far, it will no longer be necessary for the Commission to rule on either party's request for declaratory statement.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No.

STAFF ANALYSIS: The declaratory statement proceeding should be transferred to an evidentiary proceeding and the docket should remain open until the substantive issues in the case are resolved.