

FLORIDA PUBLIC SERVICE COMMISSION
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M E M O R A N D U M

December 29, 1995

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (BROWN) *MCB RVE*
DIVISION OF ELECTRIC AND GAS (*MAA* HAFF, BALLINGER) *JDJ*

RE: DOCKET NO. 950110-EI, IN RE: STANDARD OFFER CONTRACT FOR
THE PURCHASE OF FIRM CAPACITY AND ENERGY FROM A
QUALIFYING FACILITY BETWEEN PANDA-KATHLEEN, L.P., AND
FLORIDA POWER CORPORATION

AGENDA: JANUARY 3, 1996, REGULAR AGENDA
EXPEDITED FULL COMMISSION REVIEW OF PREHEARING OFFICER'S
DENIAL OF PANDA'S MOTION TO CONTINUE. PARTIES MAY
PARTICIPATE IF THE COMMISSION GRANTS PANDA'S REQUEST FOR
ORAL ARGUMENT. IF THE COMMISSION DENIES PANDA'S REQUEST
FOR ORAL ARGUMENT, PARTIES' PARTICIPATION WILL BE LIMITED
TO ANSWERING QUESTIONS.

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\950110A.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. Panda also raised an additional issue regarding postponement of the significant milestone dates of the standard offer pending the Commission's resolution of the declaratory statement proceedings. FPC moved to strike Panda's petition, which we denied on the common issues both parties had raised in their petitions, but granted on 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

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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. Panda asserted that the standard offer is established by tariff and approved by the Commission, and to the extent permitted by applicable law the Commission has jurisdiction to make determinations respecting the contract and to grant the appropriate relief requested. We granted Panda's Petition in Order No. PSC-95-0998-FOF-EI, issued August 16, 1995. A hearing was set for February 19, 1995.

Panda has now retained its fifth different counsel to take responsibility for this case, and on November 28, 1995, new counsel filed a Motion to Continue the hearing and all prehearing controlling dates for a period of ninety (90) days. Panda asserted that its new counsel would need the additional time to prepare for the hearing and to explore a settlement with FPC. Panda also contended that the holidays would make it difficult to conduct discovery and prepare direct testimony due January 5, 1995. The Prehearing Officer denied Panda's motion by Order No. PSC-95-1563-PCO-EI, issued December 16, 1995. Thereafter, on December 22, 1995, Panda filed its Motion for Reconsideration by the Full Commission and Request for Expedited Review. Panda also asked for oral argument on its motion. Florida Power Corporation filed a Response in Opposition to Panda's Motion on December 28, 1995. This is staff's recommendation that Panda's motion for reconsideration should be denied.

DISCUSSION OF ISSUES

ISSUE: 1 Should the Commission deny Panda's request for oral argument on its Motion for Reconsideration?

RECOMMENDATION: Yes. The Commission should deny the request for oral argument. Panda does not provide any reason why oral argument will assist the Commission in its review of the Prehearing Officer's order.

STAFF ANALYSIS: Commission Rule 25-22.0376, Florida Administrative Code, "Reconsideration of Prehearing Officer Orders", provides, at subsection (5), that the Commission may grant oral argument on a motion for reconsideration at its discretion.

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A request for oral argument under Rule 25-22.0376 is subject to the same criteria delineated in the Commission's general oral argument rule, Rule 25-22.058, Florida Administrative Code. That rule provides, in subsection (1):

The Commission may grant oral argument upon request of a party to a section 120.57, F.S. formal hearing. A request for oral argument shall be contained on a separate document and must accompany the pleading upon which the argument is requested. The request shall state with particularity why oral argument would aid the Commission in comprehending and evaluating the issues before it (emphasis supplied)

Panda's Motion for Reconsideration, paragraph 5, "respectfully requests for the Commission to allow Panda to provide oral argument to the Full Commission regarding this Motion for Reconsideration." Panda does not provide any explanation at all why oral argument is necessary to aid the Commission in evaluating the issues in the Motion for Reconsideration. As staff will discuss in Issue 2, the motion for reconsideration itself does not raise any specific grounds for the Commission to reconsider the Prehearing Officer's Order denying Panda's Motion to Continue, and thus there would be nothing for Panda to address on oral argument. An attempt to raise new issues to support or elaborate upon the Motion for Reconsideration would be inappropriate. Therefore, staff recommends that the request for oral argument should be denied.

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ISSUE: 2 Should the Commission deny Panda's Motion for Reconsideration of the Prehearing Officer's Order No. PSC-95-1563-PCO-EI denying Panda's motion for continuance?

RECOMMENDATION: Yes. The Commission should deny Panda's Motion for Reconsideration. The Motion does not set forth any mistake of fact or law, any abuse of discretion, or any grounds whatsoever for reconsidering the Prehearing Officer's order denying the motion for continuance.

STAFF ANALYSIS: Rule 25-22.0376, Florida Administrative Code, provides:

(1) Any party who is adversely affected by an order of a prehearing officer may seek reconsideration by the Commission panel assigned to the proceeding by filing a motion in support thereof within 10 days after issuance of the order. . . .

(4) Any motion or response filed pursuant to this rule shall contain a concise statement of the grounds therefor
(emphasis supplied)

Panda's Motion for Reconsideration of the Prehearing Officer's order denying its motion to continue simply asks that the full Commission reconsider the order. It provides no grounds for reconsideration or any other reason why the Commission should overturn the Prehearing Officer's decision. Thus Panda's motion has not met the standard for reconsideration. The purpose of a motion for reconsideration is to bring to the attention of the Commission some material and relevant point of fact or law which the Prehearing Officer overlooked or failed to consider when she denied the motion for continuance. See Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962). Panda has not raised any such grounds in its Motion for Reconsideration. Staff recommends that the Motion should be denied.

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ISSUE: 3 Should this docket be closed?

RECOMMENDATION: No. The Docket should remain open.

STAFF ANALYSIS: This docket should remain open pending resolution of the substantive issues in the case.