

504

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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IN RE: Petition for Declaratory Statement)	DOCKET NO. 95-0110 EI
Regarding Eligibility For)	FILED: JANUARY 12, 1995
DOCKET NO. 95-0110 EI Standard Offer Contract and)	
Payment Thereunder By Florida Power)	
Corporation)	

MOTION TO STAY THE PROCEEDINGS PENDING APPELLATE REVIEW

1. Panda-Kathleen, L.P. ("Panda") moves to stay this proceeding pending the Florida Supreme Court's consideration of a petition for writ of certiorari directed to the Commission's December 27 order denying Panda's motion to dismiss.

2. Florida Power Corporation filed a petition for a declaratory statement which seeks Commission review and construction of its contract with Panda. By order entered on December 27, the Commission denied Panda's motion to dismiss Florida Power's petition for lack of subject matter jurisdiction. In that Order, the Commission noted that it would be preferable for Panda to seek a stay (which Panda had previously requested) after Panda had sought judicial review of the Order. See Order at p. 10.

3. On January 11, 1996, Panda petitioned the Supreme Court for a writ of certiorari to set aside the Commission's order. A copy of that petition has been served on the Commission's staff.

4. A stay of further proceedings pending a decision by the Supreme Court is appropriate, in order to avoid unnecessary Commission activities and expense to the parties during the pendency of Panda's petition. In particular, there is a real possibility that the Parties, the Commission and its staff could go through the preparation and trial of this

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matter, and have that effort wasted by a Supreme Court decision quashing or modifying the scope of this proceeding.

5. Commission Rule 25-22.061(2) provides that, in determining whether to grant a stay, the Commission may, among other things, consider (1) the petitioner's likelihood of success in the appeal; whether the petitioner has demonstrated that it is likely to suffer irreparable harm; and whether the delay will cause substantial harm or be contrary to the public interest.

6. In the present case, the appeal involves issues of federal preemption and a claim of an infringement of federal rights, both of which weigh in favor of the issuance of a stay. If a stay is not entered, and Panda's appeal is successful, Panda will have been greatly prejudiced by having been obligated to expend substantial amounts of time and effort where federal law had provided an exemption.

7. The Supreme Court's decision of whether to accept jurisdiction over the appeal will enable the Commission to tailor the stay. If the Supreme Court accepts jurisdiction, that will be a strong signal that the appeal has some likelihood of success. If the Supreme Court declines jurisdiction, the Commission could then lift its stay. Thus, the issuance of a stay pending Supreme Court review will not cause undue delay.

WHEREFORE, Panda respectfully requests that the Commission enter an order staying all proceedings in this case pending Supreme Court review.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail/~~Hand Delivery~~/~~Telecopy~~ to Donald R. Schmidt, Esquire, and Steven Dupre, Esquire, Post Office Box 2861, Saint Petersburg, Florida 33731, by ~~U.S. Mail~~/~~Hand Delivery~~/~~Telecopy~~ to Robert Vandiver, Esquire, and Martha Carter-Brown, Esquire, Florida Public Service Commission, 2450, Shumard Oak Boulevard, Tallahassee, Florida 32399-0892, by U.S. Mail/~~Hand Delivery~~/~~Telecopy~~ to James A. McGee, Esquire, and Jeffery A. Froeschloe, Esquire, Post Office Box 14042, St. Petersburg, Florida 33733-4042, this 12th day of Jan., 1996.


RONALD C. LAFACE