

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Standard offer contract) DOCKET NO. 950110-EI
for the purchase of firm) ORDER NO. PSC-96-0133-FOF-EI
capacity and energy from a) ISSUED: January 29, 1996
qualifying facility between)
Panda-Kathleen, L.P. and Florida)
Power Corporation.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER DENYING MOTION FOR RECONSIDERATION OF PROCEDURAL ORDER

BY THE COMMISSION:

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.

On June 29, 1995, Panda filed a Petition for Formal Evidentiary Proceeding and Full Commission Hearing on the 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. 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

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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. We expedited consideration of Panda's Motion for Reconsideration and request for oral argument at our January 3, 1996, Agenda Conference. There we denied Panda's request for oral argument and its Motion for Reconsideration. Our reasons for that decision are explained below.

Oral Argument

Commission Rule 25-22.0376, Florida Administrative Code, "Reconsideration of Prehearing Officer Orders", provides, at subsection (5), that we may grant oral argument on a motion for reconsideration at our discretion. A request for oral argument under Rule 25-22.0376 is subject to the same criteria delineated in 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 us in evaluating the issues in the Motion for Reconsideration. Moreover, the motion for reconsideration itself does not raise any specific grounds for the Commission to reconsider the Prehearing Officer's Order, 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. We deny the request for oral argument.

Reconsideration

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 we should overturn the Prehearing Officer's decision. The purpose of a motion for reconsideration is to bring to our attention some material and relevant point of fact or law that 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. Because Panda's 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, we decline to reconsider the Prehearing Officer's decision, and we deny the motion.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the request for oral argument on its Motion for Reconsideration filed by Panda-Kathleen, L.P. is denied. It is further

ORDERED that Panda-Kathleen, L.P.'s Motion for Reconsideration of the Prehearing Officer's denial of its Motion for Continuance is denied. The hearing in this docket shall proceed as scheduled. It is further

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ORDERED that this docket shall remain open pending resolution of the substantive issues in the case.

By ORDER of the Florida Public Service Commission, this 29th day of January, 1996.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

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 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.