

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination )  
of Need of Hines Unit 2 Power Plant. )  
\_\_\_\_\_ )

DOCKET NO. 001064-EI

Submitted for Filing: October 18, 2000

FPC'S RESPONSE IN OPPOSITION TO  
PANDA ENERGY INTERNATIONAL INC.'S EXPEDITED MOTION  
TO PRODUCE CONFIDENTIAL INFORMATION

Florida Power Corporation ("FPC") by and through undersigned counsel hereby files its response in opposition to Panda Energy International, Inc.'s, ("Panda") expedited motion to produce confidential information, which contains a request to participate in the Public Service Commission Staff's ("Staff") scheduled depositions of John B. Crisp<sup>1</sup> and Charles J. Cicchetti, Ph.D. on October 19, 2000 or to allow Panda to take discovery of Mr. Crisp's deposition out of time as follows:

To begin, Panda is not entitled to review confidential information (whether pursuant to a confidentiality agreement or not) or to participate<sup>2</sup> in the Staff scheduled depositions of John B. Crisp and Charles J. Cicchetti, Ph.D., on October 19, 2000, because Panda has not been granted intervenor status. This should be no surprise to Panda since Panda is the one that procrastinated until the eve of discovery before even filing its Petition to Intervene just six (6) days ago.

As Panda well knows, FPC is entitled to seven (7) days to respond to Panda's intervention petition. In Re: Application for amendment of Certificate No. 427-W to add territory to Marion County by Windstream Utilities Company, 97 FPSC 4:556 (FPSC 1997). FPC is

<sup>1</sup> Panda's motion refers Staff's October 17, 2000 notice of the deposition of John J. Flynn and Charles J. Cicchetti. However, Staff's October 17, 2000 notice clearly identifies the deponents as John B. Crisp and Charles J. Cicchetti, and FPC presumes Panda intended to reference Mr. Crisp and not Mr. Flynn whose deposition has never been scheduled in this proceeding.

<sup>2</sup> Contrary to Panda's assertion at ¶ 12, counsel for FPC was never asked to take a position on whether Panda could attend the depositions. If Panda or its counsel attend the depositions, they cannot participate and must be excluded during times when the depositions touch on confidential testimony, information, or exhibits.

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presently preparing its response and fully intends to file papers strongly opposing Panda's intervention petition tomorrow. Any intervening inability to participate in discovery in this proceeding is a problem of Panda's own creation.

Notably, Panda – better than most would-be intervenors – should understand the consequences of not having intervenor status. As Staff will recall, Panda and its counsel walked out of a Staff issues identification meeting in their now-abated need proceeding because Staff proposed to permit FPC and Florida Power & Light (“FP&L”) to participate prior to their having been granted intervenor status. This was true even though at that time FPC and FP&L had petitioned to intervene more than three weeks prior to the conference and were awaiting the ruling on their fully pending intervention petitions. Thus, Panda is in no position to ask FPC, the Staff, or the Prehearing Officer to expedite their efforts just because Panda delayed seeking to intervene until the eleventh hour.

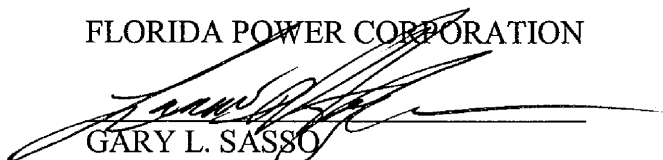
Nor is Panda entitled (even if granted intervenor status) to take Mr. Crisp's deposition out of time. The discovery cut-off in this proceeding is October 19, 2000 (wrongly identified by Panda as October 20, 2000). This cut-off has been in place since the August 30, 2000 procedural order issued in this docket nearly two months ago. As expressly set forth in Commission Rule 22-25.039, intervenors take the case as they find it. See In re: Petition for Determination of Need for a Proposed Electrical Power Plant and Related Facilities in Polk County by Tampa Electric Company, Order No. 25224, Docket No., 910883-EI, October 16, 1999, as amended October 23, 1991. This established limitation on intervention plainly means that even if Panda's petition is granted (which it should not be), Panda must abide by the schedule in place at that time. It is not violative of Panda's “due process” rights. To the contrary, it is only fair. FPC filed its need

petition – including its testimony and exhibits – on August 7, 2000. Panda has only itself to blame if it is now precluded from participating in discovery by the existing schedule.

Accordingly, FPC respectfully requests that Panda's request to gain expedited access to confidential filings and participate in Staff's scheduled depositions or take its own deposition of Mr. Crisp out of time be denied.

Respectfully submitted,

FLORIDA POWER CORPORATION




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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY THAT a true and correct copy of the foregoing has been furnished by facsimile to Deborah Hart, Esq., as counsel for the Public Service Commission; Suzanne Brownless, as counsel for Panda Energy International, Inc. and by U.S. Mail to all other interested parties of record as listed below on this 18<sup>th</sup> of October, 2000.



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