

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Standard Offer Contract) DOCKET NO. 950110-EI
for the purchase of firm) ORDER NO. PSC-95-0998-FOF-EI
capacity and energy from a) ISSUED: August 16, 1995
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 GRANTING APPROVAL TO CONDUCT
FORMAL EVIDENTIARY PROCEEDING

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, 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.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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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.

We grant Panda's petition. A formal evidentiary proceeding will permit us to hear all pertinent issues to the contract at the same time, including the milestone dates. Therefore, it will no longer be necessary for us to rule on either party's request for declaratory statement.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Panda Kathleen, LP/Panda Energy Company's Petition for Formal Evidentiary Proceeding and Full Commission Hearing is granted. The competing issues raised by the petitions for declaratory statement in this docket will be converted to a Section 120.57(1) proceeding and heard along with any issues surrounding the extension of the contract milestone dates. It is further

ORDERED that the docket remain open until the substantive issues of the case are resolved.

By ORDER of the Florida Public Service Commission, this 16th day of August, 1995.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Ferguson
Chief, Bureau of Records

(S E A L)

MTR

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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.