

ORIGINAL

BEFORE THE FLORIDA SERVICE COMMISSION

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In re: Petition for Determination)
Of Need of Hines Unit 2 Power Plant)

DOCKET NO. 001064-E.I.

00 OCT 24 AM 10:14

Submitted for filing October 24, 2000

RECORDS AND REPORTING

EMERGENCY MOTION FOR PROTECTIVE ORDER

Florida Power Corporation ("FPC") by and through undersigned counsel hereby files this Emergency Motion for Protective Order, for consideration by the prehearing officer **prior to 2:00 p.m., today, Tuesday, October 24, 2000**, and in support thereof states:

At 5:00 p.m. on Monday, October 23, 2000, counsel for FPC was served with an Order granting Panda Energy International, Inc.'s ("Panda") request to intervene in FPC's pending need proceeding. Apart from improperly granting intervention, however, the Order also extends the October 19, 2000, discovery cut-off to allow Panda to conduct deposition discovery up to noon (12 p.m.) on Wednesday, October 25, 2000 — the day before the Final Hearing. Panda has scheduled a deposition for today, Tuesday, October 24, 2000, at 3:00 p.m., and thus, FPC is without recourse unless the prehearing officer considers this motion and protects FPC from this discovery by 2:00 p.m. today.

As this Commission's rules and precedent makes clear, an intervenor, like Panda, takes the case as it finds it. Panda waited too long to seek intervention and foreclosed its own right to participate in discovery. FPC strenuously objects to the grant of discovery. It is unfair and imposes an undue hardship on FPC. FPC rightfully relied on the Prehearing Officer's scheduling order to plan its hearing preparation in this case. In addition, FPC's lead counsel must argue an appeal before the Second District Court of Appeal. The morning of Wednesday, October 25, 2000, in a case that has been previously rescheduled due to a conflict with this Commission's hearing docket and which may not be rescheduled again at this time. As such, FPC now asks for protection from this out-of-time discovery pursuant to a protective order providing that Panda

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may have no discovery but instead must take the case "as it finds it." See § 366.093(2), Fla. Stat. (1999); Fla. R. Civ. P 1.280(c); Rule 25-22.039, F.A.C.

To begin with, Panda should not have been permitted to intervene because Panda's substantial interests cannot be affected by the outcome of this proceeding. FPC intends to file a separate Motion for Reconsideration of the prehearing officer's order granting intervention. Thus, it is enough to say here that allowing discovery in connection with a decidedly inappropriate grant of intervention only magnifies the unfairness of the decision or discovery.

FPC filed its petition for need proceeding on August 7, 2000, after many months of preparation. On August 30, 2000, the Prehearing officer entered an Order Establishing Procedure which set a discovery cutoff date of October 19, 2000 and set the need proceeding hearing for October 26 and 27, 2000. As a self-proclaimed rejected-bidder, Panda has known about FPC's intention to file a need proceeding since at least February, 2000, when it submitted its bid. In any event, Panda clearly was on notice of the October 19, 2000, discovery cut-off as of August 30, 2000. Nonetheless, Panda appeared for the first time at the October 11, 2000, Prehearing Conference, not having even bothered to submit a Petition to Intervene. At the Prehearing Conference, counsel for Panda indicated that she would be filing a motion to intervene in the near future. Panda filed its petition on October 12, 2000, and FPC responded in the usual 7-day time frame — on October 19, 2000. At this point, discovery was closed.

While Panda is within its rights to file a motion to intervene up to five days before the final hearing, it has no right to discovery when it has waited until the 11th hour before the discovery cutoff date to file its motion. Panda offers no reason for why it waited so long to file its petition and offers no compelling reasons for why FPC should be inconvenienced by having to submit to discovery during the two days just prior to the final hearing.

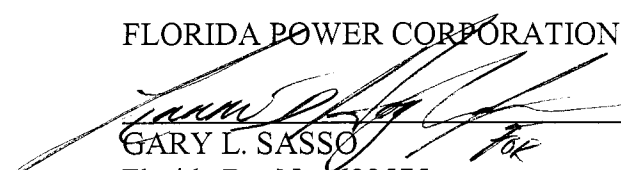
By allowing Panda to intervene and extending the discovery deadline, FPC's preparation for the hearing has been prejudiced. FPC should not have to contend with discovery depositions on the eve of its need hearing.

Importantly, allowing Panda to participate in discovery is contrary to the Commission's precedent and rule that an intervenor takes the case as he finds it. The Order gives no reason for why the prehearing officer exercised her discretion to extend the discovery cutoff date. Florida Rule of Administrative Procedure 25-22.039 expressly provides that "intervenors take the case as they find it" precisely to protect petitioners such as FPC from encountering such problems immediately before a final hearing. The purpose of rule 25-22.039 is to prevent the type of sandbagging that Panda has engaged in.

WHEREFORE, Florida Power Corporation requests that the prehearing officer issue an emergency protective order by 2:00 p.m., today, October 24, 2000, providing that Panda Energy International, Inc. shall have no discovery in this proceeding and prohibiting the currently scheduled deposition set for 3:00 p.m. today.

Respectfully submitted,

FLORIDA POWER CORPORATION



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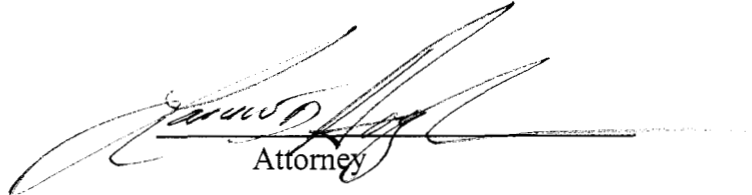
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true and correct copy of the foregoing have been furnished by facsimile to Deborah Hart, Esq., as counsel for the Florida Public Service Commission and to Suzanne Brownless, as counsel for Panda Energy International, Inc. and has been furnished by U.S. Mail to all other interested parties of record as listed below on this 24th of October, 2000.



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