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March 14, 1995

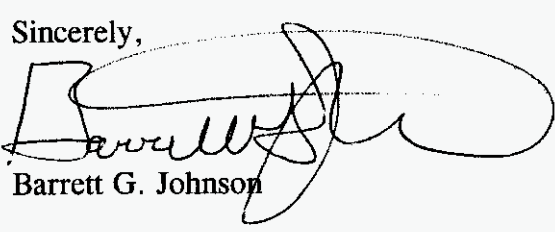
Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, FL 32399-0870

ORIGINAL
FILE COPY


RE: Petition For Declaratory Statement
Regarding Eligibility For Standard Offer
Contract And Payment Thereunder By
Florida Power Corporation
Docket No. 950110-EI

Dear Ms. Bayo:

Enclosed for filing is the original and fifteen copies of Panda Energy Company's Motion for Declaratory Statement and Other Relief. Also, enclosed is a disk containing the Motion and Brian Dietz's Affidavit, which is attached as an exhibit.. If you should have any questions, or need assistance please contact this office.

Sincerely,

Barrett G. Johnson

- ACK ✓
- AFA _____
- APP 1
- CAF _____
- CMU _____
- CTR _____
- ESP Ballinger
- LEA _____
- LIN 6
- OPC _____
- ROM _____
- SEC 1
- WAS _____
- OTH _____

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FPSC-BUREAU OF RECORDS

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

FILE COPY

In re: Petition for Declaratory
Statement Regarding Eligibility
for Standard Offer Contract and
Payment Thereunder by Florida
Power Corporation

Docket No. 950110-EI

Submitted for Filing: March 14, 1995

**MOTION FOR DECLARATORY
STATEMENT AND OTHER RELIEF**

Panda-Kathleen L.P. ("Panda") hereby moves that this Commission dispose of the Petition for Declaratory Statement dated January 25, 1995 (the "Petition") filed in the above-referenced proceeding by Florida Power Corporation ("FPC"), by entering its order as described specifically in the Prayer for Relief stating in substance that: (1) the facility Panda has designed is consistent with the Standard Offer Contract (the "Contract") Panda has with FPC as amended by the letter agreement from Panda to FPC dated April 29, 1993 (the "Letter Agreement"); and (2) the Contract, as stated on its face and as presented to this Commission by FPC in Docket 91-1142-EQ, has a 30-year term and, pursuant thereto, that the formula referred to in Appendix C to the Contract for escalating capacity payments under the Commission's value of deferral approach set out in FPC Rule 25-17.0832(5) applies to the last ten years of the 30-year Contract as well as to the first 20.

In the same vein Panda asks the Commission to order FPC to show cause why it should not be required expeditiously to provide Panda, for the benefit of its lenders, the necessary and straightforward assurances and clarifications sought by Panda's

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FPSC-RECORDS/REPORTING

February 13, 1995 letter to FPC attached hereto as Exhibit 1 (the "Clarification Letter"). Finally, Panda seeks relief from the deadlines or milestones in the Contract and other adjustments to the extent necessary to allow for, and keep Panda whole after, the delays caused by FPC's Petition; and seeks Commission confirmation that the monthly capacity and energy rates from the illustrative tables in Schedule 3 to Appendix C to the Standard Offer Contract that apply when the Panda facility (the "Facility") achieves commercial operation and thereafter are those shown on the tables for the calendar year in which the month occurs. Panda respectfully points out that it has every incentive to get its project into commercial service at the earliest possible date because the tolling here requested will keep Panda whole after its project goes into service but will not compensate for the timing delays in revenue streams on the front end.

I. SUMMARY

- A. Panda's choice of equipment and configuration reflects sound engineering judgment for a facility that is required by contract to make available 74.9 MW of capacity at the Point of Delivery under all conditions for 30 years.**

FPC claims that Panda's choice of equipment and configuration disqualify it for a standard offer contract. In its Petition, however, FPC does not appear to dispute the entitlement of a cogenerator to sign a Standard Offer Contract for Committed Capacity of up to 74.9 MW. "Committed Capacity" in the Contract is a defined term meaning generally the net electric generating capacity that the cogenerator commits to having available for FPC over the entire term of the contract, under all climatic and other conditions, net of satisfying parasitic loads (the electricity used in generating electricity) and transmission and transformer losses from the generator proper to the Point of Delivery (also a defined term). Therefore, a cogenerator committing itself to providing 74.9 MW of capacity to FPC in this manner must build a facility with a net capacity rating larger than 74.9 MW -- a facility that will necessarily be capable of generating above 74.9 MW of net

output under conditions more favorable than the worst that can be reasonably predicted to obtain over the term of its contract.

For this reason, FPC's interpretation of the Commission's Order Granting Declaratory Statement in the Negative in Polk Power Partners, Order No. PSC-92-0683-DS-EQ, dated July 21, 1992, is simply incorrect. Polk Power Partners involved an attempt by a cogenerator to "stack" contracts, including a standard offer contract, so as to provide committed capacity to two different utilities under three different contracts, for 123 MW in the aggregate, to be served from a facility with an average net output of 118.3 MW. By contrast, Panda has committed to provide capacity to FPC alone, in the amount of 74.9 MW, does not propose to charge FPC or anyone else for capacity above that level, and has simply exercised sound engineering judgment as to which equipment and configuration can be confidently predicted to provide that capacity reliably and efficiently under all conditions for the full contract term.

B. Panda and FPC have a 30-year Standard Offer Contract, which this Commission approved.

FPC asks to be relieved of any capacity or energy purchase obligation from Panda under the Contract after 20 years. In so doing, FPC claims that what it has been describing for four years as a 30-year contract is really only a 20-year contract. FPC's fallback position is that Panda should be conscripted into providing firm capacity for 30 years for compensation equal to only 20 years of FPC's avoided costs; that is, with the last ten years effectively provided free. FPC's ultimate position is that what FPC described to the Commission as a 30-year Standard Offer Contract is not effective at all, because if it is for 30 years, it cannot be a standard offer contract.

For this last proposition, FPC tries to rely on Order No. PSC-94-0488-FOF-EQ, involving Polsky Energy Corporation. Panda simply filled in a blank space in the Standard Offer Contract form, as it was supposed to do. See, Order No. PSC-94-1306-

FOF-EQ issued October 24, 1994, in Docket No. 94-0819-EQ, Auburndale Power Partners Limited Partnership, at p. 8 ("As the name implies, a standard offer contract is just that, an 'off-the-shelf' offering that has certain blank terms to be filled in when a particular QF executes the contract.") Polsky, on the other hand, changed the basic performance standard (monthly availability) from 90% to 80% in several places, and deleted the provisions providing for completion and performance security and liquidated damages.

All three of FPC's positions rest on the argument that because FPC specified the "economic life" of its avoided unit as being 20 years, or because the illustrative rate table in the rate appendix to the contract only runs for 20 years, the term of contract available to Panda is also limited to 20 years. FPC makes this claim even though Panda has committed to serve FPC for 30 years; even though FPC itself has described the Contract as a 30-year agreement to the Commission, Panda, and others; even though Panda has reasonably relied on those representations; and even though Panda's 30-year commitment allows FPC to defer installing its own capacity to meet the part of its load that will be served from the Facility for 30 years.

As the Commission knows, FPC has been describing the Panda Contract as a 30-year standard offer contract to the Commission and others since 1991. The Commission approved FPC's execution of the Contract on that basis, and Panda has reasonably relied on these representations, expending million of dollars to develop the project, which can only be financed with a 30-year contract. FPC should be estopped from changing its position on the document it drafted more than three years after FPC executed that document and represented that document as having a 30-year term. It may be stating the obvious, but part and parcel of Panda's detrimental reliance on the stated 30 year term of this contract is that the project is structured and financed as a 30-year project. To construe a 30-year agreement as a 20-year agreement is no agreement at all; the Facility is then simply not doable or financeable.

C. The Panda-FPC contract provides for escalation of the capacity payment in the same manner over the last 10 years as over the first 20.

FPC did not take its present positions at the time it evaluated and executed the Panda Contract and described and presented the Contract to the Commission. It is perfectly clear from the rate table on Schedule 3 to Appendix C, including, and most importantly, the formula in the Commission's rules (FPSC Rule 28-17.0832(5)) for calculating the value of capacity deferrals referenced in that appendix, what the capacity rates are for years 21 through 30. The Commission's regulations (FPSC Rule 28-17.0832(3)(e)) establish minimum specifications for standard offer contracts. Under subparagraph 3 of that Rule, FPC is required to provide an "illustrative calculation of firm capacity payments for a minimum of 10 years . . ." (emphasis added). The illustrative calculation in Panda's contract runs for 20 years. It starts with a base figure, and escalates it by 5.1% for the next 19 years. This simply provides the same payment, in real dollars (that is, adjusted for inflation) for each year that the cogenerator allows the utility to defer putting its own generator in its rate base. The formula provides compensation for the last 10 years consistent with the compensation for the first 20 years, in a manner that recognizes the additional 10 years of cost avoidance Panda affords FPC by providing firm capacity for years 21 through 30. To achieve this result, one simply continues the escalation at the same percentage. FPC acknowledged this conclusion in its early discussions with Panda. It agreed that Appendix C should be clarified to extend the tables for an additional ten years consistent with the formula; and it should be estopped from changing its position now. Contrary to FPC's assertions, it is not Panda that has sought or now seeks to modify the standard offer contract between them, it is FPC. Panda merely seeks to have the implicit made explicit by confirming what the Commission Rule's formula -- and FPC's Contract -- provides. An illustrative table that FPC agreed to correct cannot take this away, especially after the fact. In sum, the benefits to FPC and the ratepayers still continue in years 21 - 30; to be fair, so must the revenue streams.

D. Panda's performance obligations under the Contract must be tolled or extended to put Panda in the same position it would have been in had FPC not filed the Petition.

FPC has halted Panda's financing and construction schedule by filing its Petition raising the contract term issue (if there is an issue) over three years late and by raising the facility size and configuration issue (if there is an issue) after being advised that the Commission's staff believed that Panda's design in connection with a standard offer contract raised no question that required Commission review. FPC should not be allowed to claim Panda's security guarantee, terminate the Contract, shorten the contract term, or pay less for Panda's energy and capacity (in real dollar terms) due to, or on the grounds of, the delay that FPC has caused. To do otherwise would create a classic example of unjust enrichment.

FPC's filing has not only stopped Panda's progress towards financing but, more importantly for these purposes, it has also forced Panda out of the queue for the manufacture of the major components of its facility. Unfortunately, for this reason the delay in Panda's development of the project will be greater than the elapsed time from the filing of FPC's petition until final resolution. In other words, a day-for-day extension will not restore Panda to the position it occupied on the day prior to FPC's petition.

Neither will a simple extension of the milestones, and the preservation of Panda's security, be sufficient to keep Panda whole. By letter amendment to the Contract, Panda agreed to start service when the avoided unit would have otherwise gone into service, and the payments are calculated accordingly. It appears from the illustrative table in Appendix C that the capacity and energy rates are set out by calendar year, so that when Panda's unit does go into service (say, on July 1, 1997, after the January 1, 1997 start-up date assumed for the rate table), it will receive the capacity and energy rates shown on the table for 1997 only for the rest of calendar year 1997, then change to the 1998 rates on January 1, 1998. This is the right result. If it were otherwise (that is, the 1997 rates

applied to the initial 12 months of operation), Panda's payments would always lag inflation by six months, even though its costs will reflect that inflation. Thus, in order for Panda to be kept whole, the rates shown on Schedule 3 to Appendix C for the calendar year in which the unit enters service should apply, and they should simply stay on a calendar year schedule, as escalated, for 30 years from the commercial Contract-In-Service Date. This will simply reflect the consequences of FPC's petition and place neither party in any better or worse position after the unit goes into commercial operation. However, as noted above, Panda will still lose the cash flow and time value of money until the day the revenue stream begins.

E. The Commission should order FPC to show cause why it should not complete, execute and deliver the Clarification Letter.

On February 13, 1995, Panda sent the Clarification Letter to FPC. That Letter sought, on behalf of Panda's lenders, certain unexceptionable clarifications of the Contract (including the correction of some typographical errors). The Clarification Letter also presented as attachments the Transmission Agreement between the Lakeland Department of Electric and Water Utilities and Panda and a standard form of consent by FPC to Panda's assignment of the Contract to Panda's lenders as security for the loans necessary to construct the facility. FPC has not yet responded. Once the issues described above are resolved, FPC's agreement to the Clarification Letter and the attachments will be necessary to proceed with financing. Execution of such documents is absolutely standard in project financings. Panda asks the Commission to direct FPC to show cause why the Clarification Letter and its attachments should not be executed as presented to FPC and delivered to Panda. If FPC has neither shown cause nor executed by a date certain, Panda asks the Commission to declare the documents effective as presented to FPC.

II. STATEMENT OF FACTS

General

1. Panda executed a "Standard Offer Contract for the Purchase of Firm Capacity and Energy From a Qualifying Facility Less Than 75 MW or a Solid Waste Facility" on October 4, 1991. FPC executed the Contract on November 25, 1991. The Commission approved the Contract and rejected all others in Docket No. 91-1142-EQ by Order No. PSC-92-1202-FOF-EQ dated October 22, 1992.

2. The Contract is a standard offer contract under the rules of the Florida Public Service Commission (the "Commission") whose acceptance was the subject of docket #91-1142-EQ before this Commission. FPC petitioned the Commission to commence the Proceeding. FPC prepared all exhibits filed in its name in the Proceeding.

3. Panda intervened in the Proceeding and prepared all exhibits and other documents filed in its name.

The Term of the Contract

4. FPC sent Panda the form of standard offer contract in late September or early October, 1991. The form of agreement had a number of blank spaces to be filled in by Panda. One such blank space, in Section 4.1, was for the termination date. Panda filled in the blank space to provide for a contract term of 30 years.

5. In its evaluation of the Contract and its comparison of the Contract to those proffered on behalf of six other projects, FPC consistently described the Panda proposal (and that concerning one other project) as having a 30-year Contract Term. The other five projects proposed 20-year terms. See Exhibit 2.

6. In its presentation of the Panda Contract and the other projects to the Commission, FPC described the Contract as having a 30-year term. See Exhibit 2.

7. In valuing and comparing the seven standard offer proposals it received and considered, FPC neither penalized nor rewarded the two 30-year proposals as against the five 20-year proposals.

8. For so long as the QF's capacity is committed to FPC by contract and is available to FPC, FPC does not have to expend its capital to build or acquire a corresponding amount of FPC capacity (the avoided unit) to serve the load associated with that unit. A deferral for 30 years of utility investment to make available capacity and energy is thus worth more to FPC and its ratepayers than a 20-year deferral of the same investment and expense.

9. The Commission's approach to the calculation of the purchasing utility's avoided costs is to estimate the value to the utility's customers, year by year, of the deferral of the utility's putting the avoided unit into service and into rate base. See, FPSC Rule 25-17.0832(5).

10. The Commission's rules require that a utility's standard offer form of agreement must provide an "illustrative calculation of firm capacity payments for a minimum of 10 years . . ." (emphasis added). FPSC Rule 28-17.0832(3)(e).

11. Schedule 3 to Appendix C to the Contract sets out several payment options, each shown on the illustrative tables as running for 20 years from the assumed date of commercial operations of the avoided unit.

12. Two of the payment options, the "Normal Payment Option" and the "Levelized Payment Option," set out a capacity payment schedule for a facility anticipated to enter commercial service at the same time that the avoided unit was assumed to have done so. The Normal Payment Option sets out a first-year monthly payment figure, which is escalated each year by 5.1%. This option, due to its inflation adjustment (the escalation), is intended to pay the QF the same amount in real dollar terms for each year that it allows the utility to defer putting the avoided unit in service and rate base.

13. The "Levelized Payment Option" provides a uniform payment for each year of deferral without escalation. This option is intended to pay a QF the same nominal rate for each year of deferral.

14. In addition, there are tables in Appendix C providing for "Early Levelized Payment Options," which would permit the QF to begin service before the avoided unit would have, and receive capacity payments therefor, but receive lower capacity payments after the assumed in-service date of the avoided unit than under the Normal or Levelized options to compensate for the prepayment.

15. All three types of capacity payment options in the illustrative tables had the same lump-sum present value for service through the twentieth year after the date assumed for commercial operation of the avoided unit. An earlier version of Schedule 3 to Appendix C filed by FPC with the Commission (but not included in the final version) provided 30 years of capacity payments in the illustrative table for the Normal Payment Option. See Exhibit 3. The values for years 1 through 20 for the Normal Payment Option are identical to Schedule 3 to Appendix C to the Contract. In each case, the values for each year shown on the table simply results from the application of a 5.1% escalation factor to the previous year's value in a manner consistent with the formula in the Commission's rules. This clerical change in an illustrative table had never been described to Panda or, to Panda's knowledge, to the Commission, as having any substantive effect until FPC's Petition.

16. FPC's Petition states that: "Had the contract been for a term of 30 years, the monthly capacity payments would have been correspondingly reduced."

17. FPC appears to mean by this that, if it is held to its agreement to a 30-year contract, it would propose to reconfigure the capacity payment schedule shown in Appendix C so as to pay Panda FPC's avoided costs for 20 years of deferral, but pay it over 30 years. In this case, Panda would be providing the Committed Capacity for the last ten years free of charge (that is, for a payment stream with a present value the same as

Panda would have received for 20 years of service). The project is not possible in that case.

18. Panda initially elected the early payments option, under which Panda would have brought its unit into service and received capacity payments prior to the assumed in-service date of the avoided unit.

19. During discussions between FPC and Panda over the exact workings of the early payment option, FPC agreed with Panda that the tables in Schedule 3 to Appendix C had to be adjusted to reflect the 30-year period of service, and FPC agreed that the revised schedule would provide for 5.1% annual escalation for the years not shown on the table, in a manner consistent with the Commission's formula. See, Exhibit 4 hereto, Affidavit of Ralph Killian.

20. By a letter agreement, dated April 29, 1993, from FPC to Panda (the "Letter Agreement"), Panda waived the "early payments" under Section 8.2.1 of the Contract and elected instead to use the "(v)alue of deferral payments". See, Exhibit 5 hereto.

21. The Letter Agreement also provided corresponding extensions under the Contract including an extension of the Construction Commencement Date to January 1, 1996, the Commercial In-Service Date to January 1, 1997, and the Term of the Contract to December 31, 2026.

22. In the formula provided for the calculation of the capacity payments under the "value of deferral payments" approach, the value of I_n (the costs of the avoided unit adjusted for inflation) does not vary with the "economic life" of the avoided unit.

23. The Normal Payment Option provides that payment for the Committed Capacity for years 21 through 30 be calculated by continuing to apply the 5.1% annual escalation factor in exactly the same manner as for years 1 through 20.

24. This is appropriate because it accords the same value to a deferral of FPC's investment for each of the 30 years in real dollar terms.

The Design of the Facility

25. Consistent with the Commission's rules, the form of standard offer contract provided by FPC to Panda permitted the Committed Capacity (as defined in the Contract) to be set at any level up to 75 MW. As permitted by the form of standard offer contract, Panda selected 74.9 MW.

26. Sections 7.4 and 1.8 of the Contract require Panda throughout the Term (as defined in the Contract), among other things, to demonstrate its ability to produce and deliver "an hourly kW output, as metered at the Point of Delivery, equal to or greater than the Committed Capacity [74.9 MW]" (emphasis added) on 60 days' notice of a test from FPC.

27. There will be transmission and transformer losses between the generators and the Point of Delivery, which is at the substation connecting FPC with the City of Lakeland Department of Electric and Water Utilities.

28. Panda's Facility (as defined in the Standard Offer Contract), like all thermal generators, consumes electricity in order to run fans, pumps and other equipment in order to make electricity. This use is called "parasitic loads."

29. The test results are not based on standard climatic conditions, nor are the results adjusted to reflect variations in temperature, humidity or other ambient conditions, all of which affect the capability of the facility in accordance with the laws of thermodynamics. See Exhibit 6, Affidavit of J. Brian Dietz.

30. Like all thermal generating units, the Panda Facility will experience deteriorating performance between maintenance sessions, between major overhauls, and over the life of the Facility. This is called "degradation" in the industry.

31. The test results are not adjusted to add back efficiency (heat rate) degradation, and thus capacity degradation, depending on how long the unit has been operating since the last scheduled maintenance, since the last major overhaul, or since initial operation.

32. Since the Committed Capacity and delivered energy are measured at the Point of Delivery, the Facility must be capable of generating more than 74.9 MWH per hour at the generator to compensate for parasitic loads and line losses, including transformation losses, from the generator to the Point of Delivery. Between the generator and the Point of Delivery lie the Facility switchyard and its 13.8 KV to 69 KV (step-up) transformer, the transmission lines of the Lakeland Department of Electric and Water Utilities, and the 69 KV to 238 KV substation transformer where Lakeland interconnects with FPC. The Point of Delivery is the high side of this second transformer.

33. To produce the Committed Capacity of 74.9 MW measured at the Point of Delivery under all operating conditions, including the least favorable that may be anticipated, for the entire 30 year Term (as defined in the Contract), the Facility must be capable of producing more than 74.9 MW under more favorable conditions (i.e., lower ambient temperatures, newer or more recently maintained equipment, etc.).

34. Combustion turbines and other equipment of the type that may be used in the Facility (as defined in the Contract) are manufactured in standard frame sizes and generating capacity outputs that are predetermined by their manufacturers.

35. Neither the production schedule of such equipment nor the configuration of options thereof are under Panda's dominion or control.

36. The Facility must meet or exceed the requirements of all environmental and other permits throughout its life in order to comply with those permits and the Contract.

37. The GE 7EA and the ABB 11N1 are the smallest commercially available units that Panda and its lenders could confidently expect to reliably produce 74.9 MW at the Point of Delivery under all conditions for 30 years consistent with applicable environmental requirements. See Exhibit 6, Affidavit of J. Brian Dietz.

38. Under ideal operating conditions, the Facility, using a GE 7EA or an ABB 11N1 combustion turbine, may be capable of generating electric energy in the 115 MW range at the generator.

39. During the Term of the Contract Panda will receive capacity payments from FPC for up to, but not more than, the Committed Capacity.

40. Panda will sell electric capacity from the Facility only to FPC for the Term of the Contract.

41. Panda's proposed configuration of the GE 7EA or the ABB 11N1 will, as a technical/engineering matter, be capable of operating at the output level of 74.9 MW as measured at the Point of Delivery.

42. To the extent that Panda has available capacity in excess of 74.9 MW and FPC is not paying for that capacity, the ratepayers directly benefit from the enhanced reliability of FPC's service at no cost to FPC or its ratepayers.

43. Any energy sold to FPC above 74.9 MWH per hour will be priced at the "as-available" energy rates.

44. By letter dated August 10, 1994 to Robert D. Dolan, Manager of Cogeneration Contracts for FPC, Kyle Woodruff, Panda's Project Manager, advised that Panda intended to install either a GE Frame 7EA or an ABB 11 N1 combustion turbine in a combined cycle configuration, "since they are the only gas turbines commercially available which can produce at least 74.9 MW each day over the life of the 30 year contract term, taking into account equipment degradation, site weather conditions, steam host needs, and environmental requirements."

45. Mr. Woodruff's letter to Mr. Dolan also stated that "Panda plans to discuss equipment configuration with the Florida Public Service Commission (FPSC) to determine whether or not FPSC approval is required." (Emphasis added.)

46. By letter dated September 8, 1994, Mr. Dolan stated that ". . . FPC has expressed concerns about that configuration's ability to comply with the 75 MW

limitations . . . and, therefore, is pleased to see that Panda intends to consult with the Florida Public Service Commission"

47. On August 15, William Nordlund and J. Brian Deitz of Panda and Panda's counsel, Barrett G. Johnson, met with Joseph Jenkins, Director of the Electric and Gas Division, and Bob Trapp and Tom Ballenger of the FPSC staff on the issue of the capacity of the Facility.

48. On August 23, 1994, Mr. Johnson wrote to Mr. Jenkins to confirm the outcome of the meeting. Mr. Johnson's letter stated that "Since Panda-Kathleen's contractual requirement is to be able to produce 74.9 MW under worst case conditions, such as right before a major overhaul and during a heat wave, it is necessarily true that the unit be capable of more than 74.9 MW under best case conditions." Mr. Johnson's letter went on to review that they had discussed the fact that "under optimal conditions these units can produce in the 115 MW range." Finally, Mr. Johnson sought confirmation that "the operation of Panda-Kathleen in th[is] manner . . . is consistent with Panda's standard offer contract and is not a contract change that would require Florida Public Service Commission approval." See Exhibit 7.

49. By letter dated the next day, Mr. Jenkins replied "concerning Panda-Kathleen's plans to begin satisfying its contractual obligation [under the standard offer contract] with Florida Power Corporation by installing the units described in your letter." Mr. Jenkins said that "I foresee no reason why this is any type of contract change that should come before the Commission for approval. I discussed this briefly with Florida Power's Bob Dolan and he concurred." See Exhibit 7.

Extension of the Milestones; Holding Panda Harmless

50. Most cogeneration facilities are "project-financed;" that is, the developer borrows money through construction loans and long-term loans on a non-recourse basis.

51. Prior to execution of the Contract, FPC was familiar with the independent power industry, including its typical use of project financing (as described above).

52. Panda's regular quarterly reports, as well as less formal communications, kept FPC informed that Panda's construction schedule was such that it had to complete (or "close") construction financing not later than March 1, 1995 in order to have a reasonable opportunity to bring the Facility into commercial operation by January 1, 1997, as contemplated in the Contract as amended by the Letter Agreement.

53. Lenders will not make funds available if there is any serious risk that the power purchase agreement will be terminated by the utility for the QF's failure to meet a contract milestone.

54. FPC knew that Panda could not close its financing so long as its equipment choice and configuration were alleged to be inappropriate under the Contract.

55. FPC knew that Panda could not close its financing so long as there was uncertainty concerning either contract term or capacity payments over the life of the loans plus some safety period for lenders before the end of the contract term.

56. Some of the debt Panda has arranged to finance the Facility will extend more than 20 years after Panda's in-service date.

57. FPC is aware that major pieces of generating equipment with long lead times are built by the manufacturer only when there is a firm equipment order in place, and that if there is not a timely notice to proceed to the manufacturer, it normally means lengthy delays because the ordering company will have to "go back to the end of the

line;" and the lead time varies greatly depending upon the volume of orders received by the manufacturer from others at any given time.

58. As a result of the fact that FPC did not execute and deliver the Clarification Letter by the February 24, 1995 requested date, to give certainty to Panda and its lenders with respect to the size of the facility, the duration of the contract, the level of capacity payments, and the other, "housekeeping" items described in Panda's letter of February 13, 1995 to FPC (the "Clarification Letter"), appended hereto as Exhibit 1, Panda was prevented from giving notice to proceed to manufacturers of such major components, and has lost its place in line. Until the Commission and/or FPC gives Panda certainty with respect to these issues, Panda cannot secure a new place in line and develop a new construction schedule based thereon, and thus cannot close its financing. The Clarification Letter has, in fact, still not been delivered.

59. At best the effect of this delay is to force Panda to miss its contractual deadlines, or milestone dates, such as the commencement of construction, and, at the least, pay liquidated damages under the Contract, thereby providing a reward to FPC for delays it caused. At the worst, this delay could arguably authorize FPC to terminate the Contract and Panda to lose millions of dollars it has invested in good faith in this project.

60. Any delay beyond the expected date for commercial operations costs Panda money in real terms even if the milestone dates are extended, because Panda will not receive capacity payments or revenues from the sale of energy when they were expected pursuant to the Contract.

III. DISCUSSION

- A. **Panda's choice of equipment and configuration reflect sound engineering judgment for a facility that is contractually bound to make available 74.9 MW of capacity at the Point of Delivery under all conditions for 30 years.**

FPC seems to maintain that the 75 MW size cap for eligibility for a standard offer contract means that the Facility installed must be incapable of producing more than 75 MW net at the generator, even under optimal circumstances. The laws of physics, the requirements of the Contract, and the assurances of the Commission's staff that Panda's design is perfectly suitable for a standard offer contract at 74.9 MW, say otherwise. In practical terms, FPC's position would mean that the legal right of a QF to sign a contract with Committed Capacity of close to 75 MW is illusory. It is also noteworthy that the Commission's rules and precedent do not determine how capacity is to be determined. This supports the conclusion that sound engineering judgment must be applied. For the following reasons, a facility that will be available at the 74.9 MW level at the measuring point for the life of a long-term contract under all conditions must be larger than 74.9 MW:

1. Unlike some power purchase agreements in other jurisdictions, the Contract does not allow for adjusting the test results to standard climatic conditions. This means that the Facility must be capable of producing 74.9 MW when both temperature and humidity are very high. The laws of physics then dictate that under less extreme conditions, such a Facility will be capable of producing more. See Dietz Affidavit, Exhibit 6.

2. Any thermal unit's performance (output and efficiency) will deteriorate over time, although performance of maintenance, particularly major overhauls, will restore some of the lost performance for a while. This wear and tear degradation has two consequences: the cost of producing a kilowatt hour will increase; and the maximum output will also decline over time. This combined with any given set of ambient and

operational conditions (heat, humidity, steam load, etc.) will cause substantial reduction in rated output. The latter consideration for wear and tear degradation means that initially, and after maintenance, a facility unavoidably will be capable of producing more than the Committed Capacity if the QF is to perform its contractual responsibilities for the life of a long-term contract. The increasing cost of energy production means that, at the design and equipment purchase stage, the QF developer must seek equipment and a configuration that will keep both maintenance time and expense and production costs low, so that the QF is available as much as possible and so the operator does not have a perverse incentive not to run because energy payments don't cover variable costs.

3. Since energy is delivered and capacity is measured at the Point of Delivery as defined in the Contract, parasitic loads and transmission and transformer losses up to the Point of Delivery must be added to the Committed Capacity in order to determine necessary facility size. Losses and parasitic loads will also vary with ambient and other conditions.

In addition, of course, a facility must comply with all environmental permits over its useful life under a range of conditions. As explained in Exhibit 6, the Affidavit of J. Brian Dietz, compliance with environmental requirements, and the selection of equipment to do so, had a major influence on the ultimate choice of equipment.

In light of these considerations -- which would apply to all power facilities, and are not unique to Panda -- it is apparent that a 75 MW contract simply cannot equate to a facility that can never generate more than 75 MW. It is notable that of the six other projects proffering standard offer agreements to FPC along with Panda, three others were at 74 MW or more of Committed Capacity, one was at 70 MW, and two were at 65 MW. If each of the project sponsors were to have built a facility whose output net of parasitic loads, unit degradation, and other losses would never exceed 75 MW (which FPC now claims is necessary to qualify for a standard offer contract), then FPC could not rely on any of these projects to deliver the Committed Capacity for the entire term of the long-term

agreements, and all of the projects would have stood a good chance of defaulting in the first year depending upon climatic conditions at the time of testing.

It seems clear that FPC's present interpretation of the 75 MW limit is contradicted by the provisions of the Contract itself. For example, the definition of "Commercial In-Service Status" in Section 1.8 requires that "the Facility has maintained an hourly kW output as metered at the Point of Delivery, equal to or greater than the Committed Capacity . . ." (emphasis added). The periodic tests over the term of the Contract have the same requirement. Was it always FPC's understanding of its standard offer contract that a QF providing, say, 74 MW of Committed Capacity had to design and build a facility that was not capable of producing more than 75 MW net but would never test at less than 74 MW? Obviously not; to do so is physically impossible.

This makes it clear that, like the 30-year term versus 20-year term debate, FPC has come to this interpretation late in the day.

This new view of FPC's on the meaning of the 75 MW cap is, in FPC's petition, based on the Commission's order in Polk Power Partners, Order No. PSC-92-0683-DS-EQ, issued July 21, 1992. The facts in that case, however, were dramatically different: Polk proposed to stack on top of a standard offer contract two other contracts, so as to commit 123 MW of capacity to two utilities under three separate agreements. Panda, on the other hand, is committing capacity of just under 75 MW to a single utility, FPC, and employed sound engineering judgment to select equipment and a configuration that would enable it to meet its contractual obligations reliably and economically over the 30 years of that contract under the most adverse conditions. The stark and simple choice presented to the Commission by Polk Power Partners -- is 75 MW merely the limit on the committed capacity under a standard offer contract, or does it relate to the size of the facility -- is not presented here. Since it was that question, and only that question, which was presented in Polk Power Partners, the Commission used language in its Order that should not be applied here to a wholly different factual context.

The question here, however, is completely different. Given that a facility that can produce 74.9 MW at the Point of Delivery for 30 years under the most adverse conditions and comply with all environmental permits over that period must necessarily be able to produce more than 74.9 MW under more favorable conditions, how much more is too much? In other words, in light of the range of conditions likely to be encountered over 30 years, and the choice of equipment and configurations available to it in the marketplace, did Panda's selection of equipment and configuration reflect sound engineering judgment?

After reviewing the facts, the Commission's Electric and Gas Division decided that Panda's approach was reasonable. The test, as articulated in Polk Power Partners, is whether "the goal of preserving the standard offer for small qualifying facilities would be rendered nugatory" Unlike Polk Power Partners, Panda has one contract, to provide Committed Capacity of 74.9 MW and energy to one utility, and the choice of equipment was dictated only by consideration of how best to meet Panda's contractual obligations under the Contract.

Of course, size is not the only factor in this decision. As set out in Appendix C, the avoided unit is estimated to have a 90% on-peak capacity factor. This means that during the on-peak hours of each year, Panda is expected to produce a number of kilowatt hours equal to 74,900 times the number of on-peak hours times 90%. The required annual capacity factor is 42%. See Schedule 2 to Appendix C. Thus the equipment selected by Panda had to be very reliable. Further, Panda did not want to purchase equipment with high maintenance costs or excessive maintenance outages; to do so would degrade reliability. Nor did Panda want to purchase equipment that will suffer efficiency losses such that Panda would be generating and selling energy at a loss, nor would such equipment be good for FPC and its ratepayers, since it would give Panda an incentive to produce as little energy as possible over the contract minimums. Finally, Panda had to select equipment that would meet environmental standards over a wide range of operating scenarios for many years.

Taking all these considerations into account and exercising its engineering judgment in a conservative and prudent manner, Panda decided on two combustion turbines -- machines which are, in fact, the most similar in design and construction to the avoided unit, although smaller in size.

FPC's argument in its Petition is based solely on the fact that Panda's unit will be capable of producing more than 74.9 MW net under some conditions. That is true. In fact, under favorable conditions the Facility may be capable of producing 115 MW. But FPC and its ratepayers will not have to pay for capacity above 74.9 MW, and will get the reliability and other benefits that will flow from that free capacity.

B. Panda and FPC have a 30-year Standard Offer Contract, which this Commission approved.

FPC's standard offer contract has a blank space in Section 4.1 for the termination date. Panda filled in the blank space to indicate a 30-year agreement; and throughout the bid and evaluation process, FPC described and treated the project's contract as being for 30 years. Indeed, in its submission of the Contract and the bidding evaluation to this Commission, FPC described the Contract (and that of one of the unsuccessful bidders as well) as being for 30 years. See Exhibit 2. During the evaluation process, FPC neither penalized nor rewarded the two 30-year proposals as compared to the 20-year proposals on the basis of either contract term or price.

Now, at this late date, based on the fact that the illustrative capacity payment schedule only runs for 20 years, and that the "economic life" of the avoided unit was selected by FPC to be 20 years, FPC claims that it does not have a 30-year contract at the Normal Payment Option capacity rates escalated for 30 years.

In fact, FPC takes several different positions on the effect of the discrepancy between the illustrative 20-year payment schedule in Appendix C, Schedule 3 of the Panda contract and the 30-year term of that agreement. The first is to dispute that Panda claims to have a 30-year contract, even though FPC consistently described it as a 30-year contract

in both its bid process and its submissions to the Commission, and did not debate this point in its several discussions with Panda over the contract (see Exhibit 4, affidavit of Ralph Killian). This is simply not credible. In detrimental reliance on this consistent and unbroken stream of acts and references to the 30-year term of the Contract, Panda has fashioned its financing to fit the 30-year contract term, and FPC should be estopped from changing the contract term to 20 years at this very late date.

FPC's second position is that if the 30-year contract it signed should actually turn out to be a 30-year contract, it would have to recalculate the rates, in effect to spread 20 years of capacity payments over 30 years. The fundamental flaw in this position is that 30 years of dedicated capacity from Panda has a different and higher value to FPC than only 20 years of dedicated capacity. FPC's suggested recalculation would only mask the fact that Panda would be required to maintain and dedicate to FPC its capacity for the last ten years of the 30-year contract free. In other words, FPC is suggesting that it would be appropriate to take the present value of the payments Panda will earn for 20 years of performance (FPC's avoided cost for 20 years) and reschedule that value to pay the same amount of money (in present value) for 30 years of performance by Panda, even though FPC and its ratepayers still continue to avoid costs for 30 years due to Panda's performance. If that was FPC's understanding of the two 30-year proposals during the bid process, it should have awarded extra points to these proposals, and advised the Commission that those two projects offered ratepayers much greater value for the same equivalent dollars, or more realistically, advised the Commission that these two projects were too good to be true because they could not be financed on such terms and rejected the projects. FPC did neither, thus making it clear that this is a post hoc argument of convenience. In other words, for the 20-year and 30-year proposals to be equivalent from a price/value standpoint, Panda must be compensated for the additional ten years of service on the same basis as it (or the projects proposing 20-year terms) would have been compensated for the first 20 years.

Finally, FPC at least implies that Panda should be disqualified from its standard offer contract because it seeks compensation for the last ten years of service. This, like the first argument, is not credible; nor is it just. Again, FPC is in effect claiming that it did not notice that it repeatedly described the Panda contract as having a 30-year term, and presented the agreement to the Commission as a 30-year, standard offer contract; and again, FPC is making a late-discovered argument of convenience based on its misreading of another Commission order, Order No. PSC-94-0488-FOF-EQ, involving Polsky Energy Corporation. Panda merely filled in the blank space for the contract term, as it was required to do. See Auburndale. Polsky, by contrast, changed the primary performance standard (monthly availability) in several places to make it less rigorous, and deleted the provisions providing for completion and performance security and liquidated damages.

C. The Panda-FPC contract provides for escalation of the capacity payment in the same manner over the last 10 years as over the first 20.

The basic approach of the FPSC to valuing avoided capacity costs is to start with a base figure representing the levelized value to the purchasing utility's customers of a one-year deferral of the inclusion of the avoided (or deferred) unit in rate base, and then to provide various payment options of equal value. For the Normal Payment Option, this figure is then escalated with inflation to maintain its value in real dollar terms. Under the Levelized Payment Option, some future inflation is "borrowed" from the later years to increase the rates in the early years to produce uniform payments in nominal dollars. The Early Payment Options permit "borrowing" from later years to begin capacity payments prior to the time the avoided unit would have gone into service. All of these formats are based on the same basic principle: the recognition of the time value of money. Discounting techniques allow Florida utilities to offer several different rate formats, each with the same present value.

During the development of the FPC standard offer contract that Panda signed, FPC had prepared a table of rates (in Appendix C) based on a 30-year contract term (see Exhibit 3), but the final submission included a similar table based on 20 years. In both cases, the "economic life" of the avoided unit was 20 years. The formula for escalating the base year capacity payment throughout the term of the contract pursuant to the "[v]alue of deferral payments" approach under the "Normal Payment Option" (page 1 of Schedule 3 to Appendix C) is identical for both 20- and 30-year terms, and in each case a Note states that the "payments are calculated in accordance with formulas set forth in FPSC Rule 25-17.0832(5)."

The Capacity Payment Formula refers to a year-by-year deferral of the avoided unit: FPSC Rule 25-17.0832(3)(g) establishes that "[c]apacity payments under [the deferral] option shall consist of payments escalating annually . . . associated with the avoided unit and shall be equal to the year-by-year deferral of the avoided unit." As is explained above, a 30-year deferral has substantially greater value than a 20-year deferral. Although in discussions with Panda FPC has consistently treated the discrepancy between the 30-year contract term and the 20-year table of rates as a glitch that could easily be fixed by revising the table of rates, FPC now disputes that Panda can, under the Contract, sell capacity for 30 years to FPC at the Appendix C rates escalated over 30 years.

As described above, the method of correcting the apparent discrepancy of which FPC seeks to make so much is simply to run the illustrative table of rates in Schedule 3 of Appendix C out for an additional ten years. This is no more than making explicit what is already implicit in this schedule by applying the formula set out in the Commission's rules. Various economists might describe this as recognizing the value in a consistent manner of an additional ten years' deferral of the avoided (or deferred) unit (which could, of course, whatever its own useful life, be deferred indefinitely); or as the deferral for ten years of a replacement unit for the avoided unit (assuming the avoided unit in fact would have been in service for 20 years but that the load served by that unit would

still have to be served thereafter). Whichever conceptual justification might be advanced, the important fact is that this is the only way to recognize the value of the additional ten years of capacity commitment in a manner consistent with the explicit valuation for the first 20 years set out in the illustrative table in Schedule 3 of Appendix C. Contrary to FPC's several (and internally inconsistent) assertions, this is the only way to interpret the contract that is consistent with the Commission's approach to valuing avoided costs and consistent with FPC's evaluation of the several standard offer proposals from which it selected Panda's.

D. Panda's performance obligations under the Contract must be tolled or extended to put Panda in the same position it would have been in had FPC not filed the Petition.

As explained in Exhibit 7, Affidavit of J. Brian Dietz, FPC's filing of the Petition has brought Panda's progress on the development of the facility to a complete halt. Without certainty on term, price, or design, much less all three, obviously lenders will not commit to advancing the substantial sums of money necessary to begin construction. And without the lenders' commitment, Panda cannot hold its place in line for the major components of its cogeneration facility, the combustion turbine and heat recovery steam generator. These components are only manufactured on order, and have a long lead time. Neither Panda nor the manufacturers can know at this juncture what the length of the line, and thus the lead time, will be once Panda's project is back on track.

With respect to contract term and price, Panda was entitled to rely on FPC's description of the Contract to the Commission, and the formula for calculating the value of year-to-year capacity deferrals, backed up by FPC's statements to Panda. See Exhibit 4, Affidavit of Ralph Killian. With respect to the design of the Facility, Panda believes that it had ample authority under the Commission's rules to select major components and the configuration of the Facility in the exercise of its engineering judgment, and that the ratification of this judgment by the responsible Division of the Commission's staff should

have satisfied FPC. Indeed, it was Panda's understanding that this ratification by the Commission staff was sufficient for FPC, since Mr. Jenkin's letter to Barrett Johnson, Panda's counsel, said that "Florida Power's Bob Dolan . . . concurred."

Panda seeks merely to avoid being put into default for the delay occasioned by the filing of FPC's Petition; and to be kept reasonably whole in the face of those delays. Both problems have straightforward solutions.

With respect to the first concern, the Commission simply needs to provide that the commencement of construction date, the commercial in-service date, and all dates related thereto, will be adjusted to restore Panda to the position it was in on January 23, 1995, the day before FPC filed its petition, taking into account the new schedule for manufacture of the major components when such schedule is determined.

With respect to keeping Panda whole, fortunately it appears that, for the most part, the Contract already does that. The Capacity and energy payments are set out for 1997 and the subsequent 19 years, by calendar year, in Appendix C. All that is necessary on this point, then, is Commission confirmation that the capacity and energy payments apply, as stated, to payments in the respective calendar year, rather than on a contract year basis. For example, the 1997 payments apply in only those months following initial service that occur in 1997, rather than for 12 months following initial operation. This may mean that, in order to give effect to the full 30-year term of the Contract, it is necessary to go more than ten years beyond the table set out in Schedule 3 to Appendix C, but this would be done simply by continuing the 5.1% escalation for one more year.

This does not by any means keep Panda whole in the face of deferral of anticipated revenues and earnings for 30 years (since the lost sales are tacked on to the end of the contract); but since it permits Panda to avoid asking the Commission for any relief in this regard (other than confirmation that that is how the contract works), Panda will accept it. It is also important to note that this incomplete recovery gives Panda every incentive to achieve commercial operation as quickly as possible.

E. The Commission should order FPC to show cause why it should not complete, execute and deliver the Clarification Letter.

It is the nature of lenders to a project-financed facility to require that every ambiguity be clarified, every process spelled out, and every typographical error corrected. Lenders also require that the borrower (in this case, Panda) assign the power purchase agreement to the lenders as collateral for the loan, since the generating facility itself (on which the lenders hold a mortgage) is, by itself, of uncertain value, and it is the power purchase agreement that firms up the value over the financing term. Lenders also require (as does the Contract) that the utility (in this case, FPC) consent to that assignment. Finally, since Panda will not directly interconnect with FPC but rather will do so through the lines of Lakeland Department of Electricity and Water Utilities, FPC has to bless the agreement between Panda and Lakeland. All of these matters are standard in a project financing, in a number of which FPC has been involved.

To accomplish all of this, Panda sent the Clarification Letter to FPC on February 13, and asked for a response by February 24. To this day, FPC has not responded; so Panda does not know if FPC has issues other than those raised in its Petition in this Docket, although Panda knows of no other concerns.

Panda needs to know if there are any such issues and, as soon as the matters raised by FPC's Petition and Panda's response are resolved, Panda will need to give its lenders the clarifications, consent, and approval described in the Clarification Letter. Panda is very concerned that FPC has not responded at all to that Letter, which FPC has now had for a month, since, in Panda's view, there are not controversies about anything addressed in the letter. It is possible, of course, for FPC to delay or prevent the financing of the Facility simply by not responding, or by doing so very slowly. Therefore, Panda asks the Commission to order FPC to show cause why it should not complete, execute and deliver the Clarification Letter by April 15, 1995; and, if FPC fails to respond, to order that the Clarification Letter be deemed approved. Finally, because time is the essence of

the problem, Panda respectfully requests that the Commission dispose of this matter on the pleadings, motions and other documents now before it, supplemented by oral argument if deemed necessary.

PRAYER FOR RELIEF

WHEREFORE, for the foregoing reasons, Panda respectfully requests that the Commission enter its order in this proceeding finding and ordering that:

1. In the context of this case, neither of the two generating units Panda identified by Panda for its facility nor the exercise by Panda of its sound engineering judgment in making such identification is inconsistent with FPSC Rule 25-17.0832(3) or any other Commission rule governing standard offer contracts; and Panda may use either such unit in its facility under its standard offer contract.

2. As stated in the Contract and as previously approved by this Commission, the Contract provides for the delivery of energy and capacity to FPC for 30 years and the payment therefor by FPC over that 30-year period. The payments for "Committed Capacity" for years 21-30 of the Contract shall be calculated using the formula referenced in Schedule 3 to Appendix C by continuing to apply the 5.1% annual escalation factor in exactly the same manner as for years 1-20. All energy payments will be calculated under the Contract in the same manner throughout the 30-year term of the Contract. Such 30 years of payments shall commence as provided in paragraph 3 below.

3. The "Construction Commencement Date," the "Contract In-Service Date" and the "Term" of the Contract and all other dates in the Contract relating to the delivery of energy and/or capacity and the payment therefor shall be extended on written notice by Panda to FPC to place Panda in the same position that it would have occupied but for the filing of the Petition which commenced this Proceeding. The Commission notes that a day-for-day tolling will not necessarily accomplish this result and confirms that FPC will be bound by the dates stated by Panda in its notice unless and only to the extent

that FPC can show cause why any date selected by Panda is not reasonable under the circumstances and should not be accepted by this Commission.

4. Schedule 3 to Appendix C to the Contract shall be applied such that the monthly capacity and energy payments shown for each calendar year shall be paid for any month during that calendar year commencing with Commercial In-Service Status (as defined in the contract) and the same principle shall apply for the years during the Contract term not shown on the "Normal Payment Option" table in Schedule 3.

5. Florida Power Corporation shall complete, execute, and deliver the Clarification Letter no later than April 15, 1995; and direct the Clarification Letter shall be deemed approved by the Commission if it is not delivered by that date unless and only to the extent that Florida Power Corporation shows good cause to the contrary.

6. Such other relief or other measures as the Commission deems proper or expedient.

Respectfully submitted,



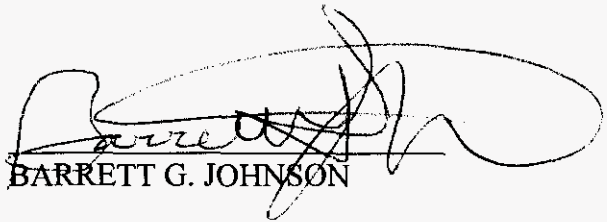
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Washington, D.C. 20005
Telephone: (202) 289-3000
ATTORNEYS FOR PANDA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by United States Mail to James A. McGee, Florida Power Corporation, P. O. Box 14042, St. Petersburg, FL 33733-4042 this 14~~th~~ day of March, 1995.



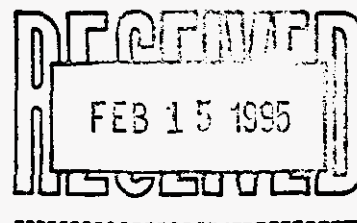
BARRETT G. JOHNSON

EXHIBIT 1



February 13, 1995

Mr. Robert D. Dolan
Florida Power Corporation
3201 Thirty-Fourth Street South
Post Office Box 14042
St. Petersburg, Florida 33733-4042



RE: Panda-Kathleen Cogeneration Facility

Dear Mr. Dolan:

As you are aware, Panda-Kathleen, L.P. ("Panda") has been proceeding with financing for the subject project since last December. Panda's lenders have requested that Panda provide them with clarifications of certain provisions of the Standard Offer Contract for the Purchase of Firm Capacity and Energy effective November 25, 1991, as amended (the "PPA"), between Florida Power Corporation ("FPC") and Panda. Therefore, we attach a letter (the "Clarification Letter") containing these provisions (including certain due diligence items) and ask that you confirm them. Many of these provisions have been discussed and agreed upon with FPC. The issues included in your "Petition for Declaratory Statement", filed with the Florida Public Service Commission on January 25, 1995, have not been included in the Clarification Letter and can be covered by a supplemental document.

In addition, White & Case sent to you by telephone modem a form of Consent and Agreement dated January 10, 1995. A copy of this Consent and Agreement is attached to the Clarification Letter as Exhibit C thereto (the "Consent"). Please comment on the Consent so we may complete it subject to final approvals of appropriate parties.

Finally, on December 28, 1994, I delivered to you the proposed Transmission Service Agreement between Panda and the City of Lakeland, dated December 15, 1994, attached to the Clarification Letter as Exhibit B thereto (the "Transmission Service Agreement"). Under Section 2.2 of Appendix D of the PPA, we anticipate that FPC will comment on this Transmission Service Agreement within 60 days of submission. That period elapses on February 28, 1995. We would like to complete the Transmission Service Agreement subject to final approvals of appropriate parties by February 28, 1995.

You will note that the Transmission Service Agreement and the Consent are referred to in

Mr. Robert D. Dolan
February 10, 1995
Page 2

Paragraphs 31 and 32 of the Clarification Letter, respectively.

Please provide us with your response to this letter by Friday, February 24, 1995. However, in the meantime, do not hesitate to call me at (214) 980-7159 if you have any questions.

Very truly yours,



J. Kyle Woodruff
Project Manager

JKW/sle

Enclosure

cc: David Gammon - FPC
Allen Honey
David Mayer
Thomas Horn
Ralph Killian
Ted Hollon

[LETTERHEAD OF FPC]

[Date]

Panda-Kathleen, L.P.
4100 Spring Valley, Suite 1001
Dallas, Texas 75244

Dear Sirs:

Reference is made to the Standard Offer Contract for the Purchase of Firm Capacity and Energy from a Facility, effective November 25, 1991 (the "PPA"), between Panda-Kathleen, L.P. (the "QF") and Florida Power Corporation (the "Company"), as amended by the letter agreement between the QF and the Company, dated April 29, 1993 and effective May 3, 1993 (the "Letter Agreement" and collectively with the PPA, the "Agreement").

We understand that in connection with the financing of the Facility, the QF has been requested by its lenders to obtain from the Company (i) certain clarifications of the Agreement and (ii) consents and agreements in connection therewith. This letter is intended to respond to those requests. Capitalized terms used in this letter and not defined herein have the respective meanings set forth in the Agreement.

A supplemental document will be prepared to the extent necessary to reflect the outcome of the Petition for Declaratory Statement, dated January 25, 1995 (the "Petition"), filed by the Company. Accordingly, the Company has not included any provision herein with respect to the matters explicitly covered by the Petition.

The Company hereby confirms the following:

- (1) Pursuant to the Letter Agreement, the Contract In-Service Date has been extended to January 1, 1997 and the Construction Commencement Date has been extended to January 1, 1996.
- (2) The normal capacity payments to the QF as specified in the PPA will not impose net income on the Company. The QF will not be assessed any charges under section 10.2 of the PPA under current law, rules or regulations or IRS rulings for these costs.
- (3) As a result of entering into the Letter Agreement, capacity payments will be based on "Value of deferral payments" under section 8.2.1 of the PPA, which is described as the "Normal Payment Option" on page 1 of Schedule 3 to Appendix C and, consequently, sections 8.2.2 and 8.6 of the PPA are not applicable.

- (4) The Facility will be located south of the latitude of the Company's Central Florida Substation and, consequently, section 2.2 of the PPA (other than the first sentence thereof) is not applicable to the Facility.
- (5) The Company is not required to obtain any order, permit, consent or waiver from the Florida Public Service Commission in respect of the Company's obligations under the PPA other than the orders, permits, consents and waivers that the Company has already obtained or may obtain as a result of filing the Petition.
- (6) In section 1.2 of the PPA, the heading "Avoided Unit Fuel Reference Plant" should read "Avoided Unit Reference Plant" and the word "is" in the third line of such section should be "as".
- (7) In section 1.3 of the PPA, the word "million" should be deleted.
- (8) In section 1.4 of the PPA, the reference to "section 8.2.1" should be to "Appendix C, Schedule 2".
- (9) In section 1.9 of the PPA, the reference to "Article VI" should be to "section 7.1".
- (10) The requirements set forth in section 3.2 of the PPA to the effect that the Facility be a "Qualifying Facility" will be determined solely by the Federal Energy Regulatory Commission in accordance with applicable laws, rules and regulations.
- (11) The requirements under section 3.3 of the PPA (that the Facility's ability to deliver its Committed Capacity shall not be encumbered by interruptions of fuel supply) has been satisfied by information described in the letter of J. Kyle Woodruff, Project Manager, of the QF, to Robert D. Dolan, Manager, Cogeneration Contracts and Administration, dated October 27, 1995, attached hereto as Exhibit A-1, in response to a letter from Mr. Dolan to Mr. Woodruff, dated September 19, 1994 and attached hereto as Exhibit A-2.
- (12) The reference in the third line of section 4.1 of the PPA to "section 4.2.4" should be to "section 4.2".
- (13) If the Contract In-Service Date is extended for up to 180-days by reason of a Force Majeure Event as provided in section 4.2 of the PPA, the Term of the Agreement will automatically be extended by the same number of days.
- (14) The word "Operational" should be inserted by "Event of Default" in the second line of section 9.1.1 of the PPA.

- (15) The QF will receive all of the payments described in clause (i) of section 9.1.2 of the PPA when the avoided unit would have been operating.
- (16) The QF has posted the Security Guaranty with the Company in accordance with section 13.1 of the PPA.
- (17) Section 14.1.2 of the PPA permits the QF to contest any proceedings before any governmental authority (provided that such contest is pursued in good faith by appropriate proceedings diligently conducted and such contest does not subject the Facility to a risk of forfeiture).
- (18) The Company shall make the payment to the QF as set forth in the first sentence of section 13.3 of the PPA at any time that the QF achieves Commercial In-Service Status.
- (19) The Point of Metering will be at the boundary limits of the Facility.
- (20) Exhibit B-1 of the PPA has been provided to the QF.
- (21) In the event of any Operational Event of Default under sections 15.3.1 or 15.3.3 of the PPA, the Company will apply section 15.4.1 of the PPA prior to applying sections 15.4.2 or 15.4.3 of the PPA.
- (22) The Company will not deem an Operational Event of Default to have occurred under section 15.3.1 of the PPA (which relates in part to sections 7.4 and 1.8(i) of the PPA) unless, in the case of non-compliance by the QF with any applicable Facility permit, such non-compliance (i) relates to a permit which is critical to the operation of the Facility and (ii) could reasonably be expected to have a material adverse effect on the ability of the QF to provide the Committed Capacity to the Company in accordance with the PPA.
- (23) Section 20.2 of the PPA applies only to Force Majeure Events declared by the QF.
- (24) The reference to "Schedule 8" in the note on Page 1 of Schedule 3 to Appendix C of the PPA should be to "Schedule 4".
- (25) The geographic location planned for the Facility satisfies the requirements of section 3.1 of the PPA.
- (26) The term "Committed O.P.C.F." as used in Schedule 4 to Appendix C of the PPA means _____%.

- (27) The references in section 27.3 of the PPA to "sections 28.1 or 28.2" should be to "sections 27.1 or 27.2".
- (28) The Point of Delivery will be at the City of Lakeland West Substation.
- (29) The events described in sections 15.1.5, 15.1.6 and 15.1.7 of the PPA will not constitute Pre-Operational Events of Default to the extent they are caused by Force Majeure Events (subject, in the case of section 15.1.6 of the PPA, to the limitation set forth in section 4.2 of the PPA).
- (30) The insurance requirements of Article XIX do not apply to the QF.
- (31) The Facility will not be directly interconnected with the Company and, consequently, Appendix A to the PPA and the "Operation, Maintenance and Repair Charges" section of Schedule 6 to Appendix C to the PPA are not applicable. The Transmission Service Agreement, dated as of _____, 1995, between the QF and the City of Lakeland, a copy of which is attached hereto as Exhibit B, was received by the Company on December 28, 1994 and has been reviewed the Company as required by section 2.2 of Appendix D to the PPA. Such agreement satisfies the requirements of Appendix D to the PPA. The QF will not, as contemplated by section 15.1.3 of the PPA, seek approval or acceptance for filing of such agreement with the FERC.
- (32) The Company received a draft, dated January 10, 1995, of a Consent and Agreement, dated as of _____, 1995, from White & Case, counsel for the lenders to the QF, a copy of which is attached hereto as Exhibit C, and such the form of the Consent and Agreement has been reviewed by, and is satisfactory to, the Company, subject to finalization by all parties thereto at the closing thereof.

FLORIDA POWER CORPORATION

By: _____

Name: _____

Title: _____

Panda Clarification Letter

_____, 1995

Page 5

ACKNOWLEDGED AND AGREED THIS
____ DAY OF _____, 1995:

PANDA-KATHLEEN, L.P.

By: Panda-Kathleen Corporation,
General Partner

By: _____

Title: _____

c:\wp51\kathleen\kat-4.doc

PANDA-KATHLEEN L.P.

A Panda Company



October 27, 1994

Robert D. Dolan
Manager, Cogeneration Contracts and
Administration
Florida Power Corporation
3201 34th Street South
St. Petersburg, FL 33733-4042

RE: Standard Offer Contract For Purchase of Firm Capacity and Energy from a Qualifying Facility Less than 75 MW or a Solid Waste Facility Between Panda-Kathleen, L.P. and Florida Power Corporation

Dear Mr. Dolan:

As requested in your letter of September 19, 1994, Panda will provide a 475,000 gallon fuel oil storage tank on site for back-up fuel. In addition, the facility is being permitted to allow firing of the combustion turbine on #2 fuel oil for 500 hours per year if required. Attached for your information are site arrangement drawings indicating the location of the fuel oil storage tank and an excerpt from the air permit regarding operation on fuel oil for 500 hours.

Contracts for firm transportation and gas supply are presently being negotiated and are not available at this time.

If you have any questions, do not hesitate to call me at (214)980-7159.

Sincerely,

A handwritten signature in black ink that reads "J. Kyle Woodruff". The signature is stylized and cursive.

J. Kyle Woodruff
Project Manager

JKW/em

Attachments

cc: T. Hollon
R. Killian
D.W. Gammon (FPC)

SYNOPSIS OF APPLICATION

I. GENERAL INFORMATION

A. Name and address of applicant

Panda-Kathleen, L.P.
4100 Spring Valley, Suite 1001
Dallas, TX 75244

B. Reviewing and Process Schedule

Date of Receipt of Application: June 6, 1994
Application Completeness Date: September 19, 1994

C. Facility Location

This facility is located at 800 McCue Road, Lakeland, Polk County, Florida. The UTM coordinates are Zone 17, 398.65 km east and 3101.45 km north.

Facility Identification Code (SIC)

Major Group No. 49 - Electric, Gas and Sanitary Services.

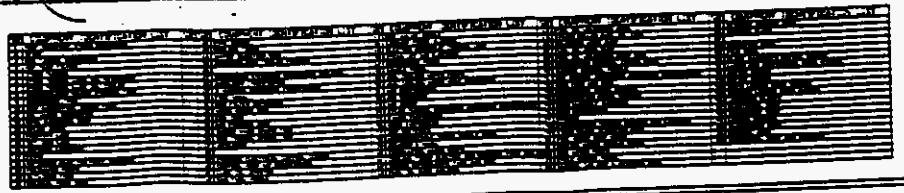
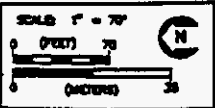
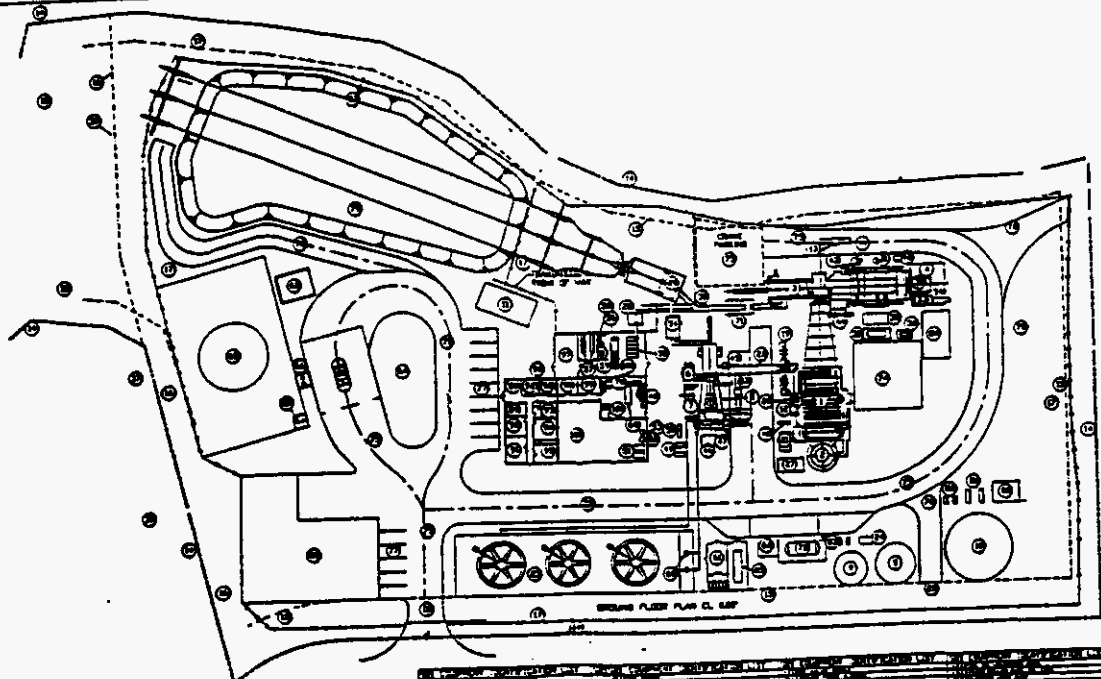
Industry Group No. 491 - Combination Electric, Gas and Other Utility Services.

Industry Group No. 4911 - Electric and Other Services Combined.

D. Project Description

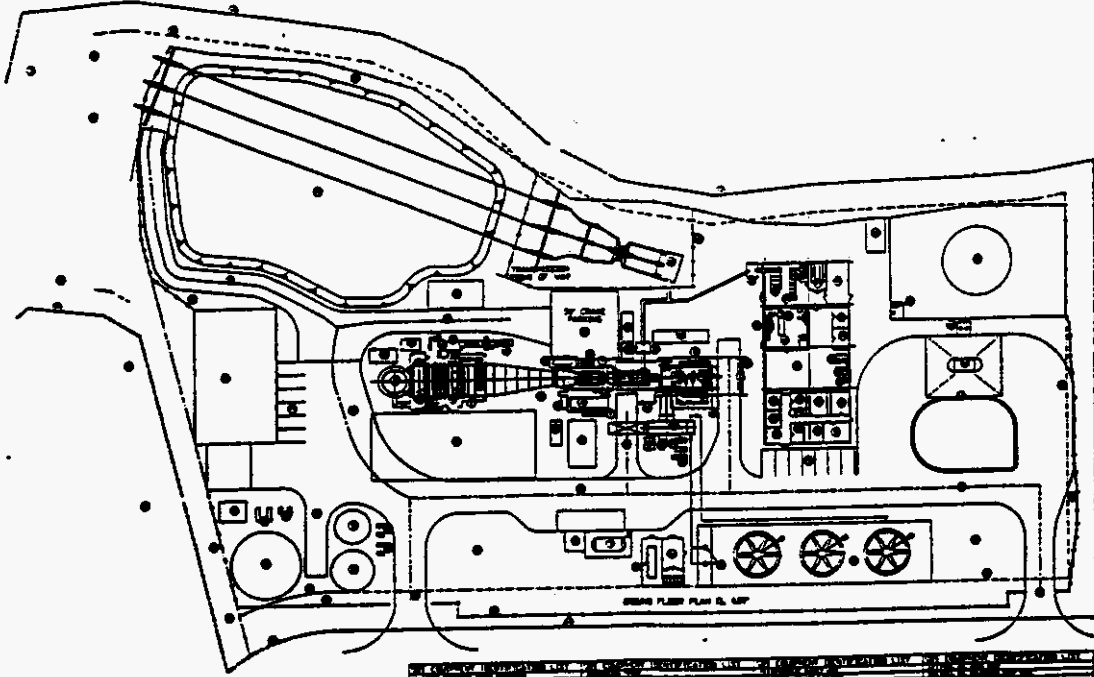
The proposed Panda-Kathleen, L.P., cogeneration facility in Polk County is classified as a major emitting facility. The proposed project will be capable of producing a nominal 115 megawatts (MW) of electricity. The combined cycle (CC) unit will consist of one nominal 75 MW combustion turbine (CT), one unfired and nominal 40 MW heat recovery steam generator (HRSG), and one steam turbine. The CT will be fired primarily on natural gas, with low sulfur fuel oil ($\leq 0.05\%$, by weight, sulfur) as back-up. Fuel oil combustion shall not exceed 500 hours per year.

The Panda-Kathleen cogeneration facility will include a host manufacturing operation, which will produce industrial grade distilled water. The host operation will utilize steam from the HRSG and wastewater from the cooling tower as its main ingredients. The steam will be used to transfer heat to the feed water (cooling tower blowdown), causing evaporation of the distillate to take place. The distillate (in vapor form) is then condensed to liquid form in a water-cooled condenser housed in the distilled water plant. The operation of the distilled water plant will produce no emissions of air pollutants.

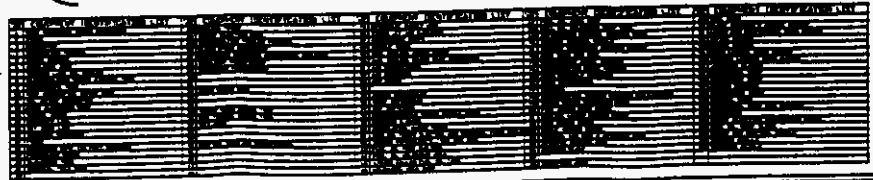
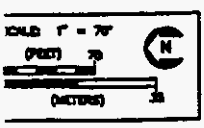


APPENDIX B (FIGURE 1 OF 2)
 SITE LAYOUT FOR GE CONFIGURATION
 UNDA-KATHLEEN COGENERATION FACILITY
 SUK COUNTY, FLORIDA





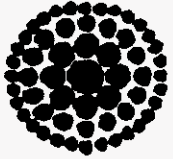
SECOND FLOOR PLAN 02.00P



SHEET 02 (FIGURE 2 OF 3)
 LAYOUT FOR ASB CONFIGURATION
 -KATHLEEN COGENERATION FACILITY
 COUNTY, FLORIDA

ECT
 Environmental Consulting & Technology, Inc.

EXHIBIT A-2



**Florida
Power**
CORPORATION

September 19, 1994

Mr. Kyle Woodruff
Project Manager
Panda-Kathleen L. P.
4100 Spring Valley, Suite 1001
Dallas, Texas 75244

Re: Standard Offer Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility Less Than 75 MW or a Solid Waste Facility between Panda-Kathleen, L. P. and Florida Power Corporation.

Dear Kyle:

Section 3.3 of the referenced contract states that Panda's "ability to deliver its Committed Capacity shall not be encumbered by interruptions in its fuel supply".

Panda's FERC application for QF status states that Panda will have standby "capability" for #2 Fuel Oil. Please provide FPC with a specific, detailed description of Panda's standby capability, along with supporting documentation. Please also provide all contracts and other documents pertaining to Panda's natural gas supply and transportation.

If you have any questions, please give me a call at (813) 866-4745.

Sincerely,

Robert D. Dolan
Manager, Cogeneration Contracts and
Administration

RDD/mag

cc: D. W. Gammon
J. P. Fama

DWG#4-woodruff#21c

GENERAL OFFICE: 3201 Thirty-fourth Street South • P.O. Box 14042 • St. Petersburg, Florida 33733 • (813) 866-5151
A Florida Progress Company

**TRANSMISSION INTERCONNECTION AGREEMENT
BETWEEN
PANDA - KATHLEEN, L.P.
AND
CITY OF LAKELAND**

THIS AGREEMENT, ("Agreement") is made and entered into this day of _____, 1994 by and between Panda - Kathleen, L.P., a partnership organized and existing under the laws of the State of Florida, herein referred to as "PANDA", and the City of Lakeland, a municipality organized and existing under the laws of the State of Florida, herein referred to as "LAKELAND." PANDA and LAKELAND may be individually referred to as a "PARTY" and collectively as "PARTIES," as the case may be.

WHEREAS, PANDA desires to interconnect the electric system of LAKELAND with Panda's Generating Station (PGS) located within LAKELAND's service territory, and,

WHEREAS, PANDA desires to sell electric capacity and energy to Florida Power Corporation ("FPC") from its PGS pursuant to the Agreement for the purchase of firm capacity and energy dated November 25, 1991 between PANDA and Florida Power Corporation (FPC) ("PANDA/FPC Agreement") as amended from time to time, and,

WHEREAS, the generation and transmission system of LAKELAND is interconnected and operating parallel with the generation and transmission system of FPC, and constitutes the only existing electrical path between the PGS and FPC, and

WHEREAS, under the Rules of the Florida Public Service Commission ("FPSC"), LAKELAND is required to make transmission service available, and,

WHEREAS, the PARTIES desire to establish the terms and conditions for coordinated and interconnected operation of the PGS and LAKELAND's electric system in such a manner that the electric capacity and energy generated by the PGS may be delivered to FPC consistent with Prudent Electric Practices.

WHEREAS, the PARTIES are entering into a Transmission Construction Agreement ("Construction Agreement") on even date herewith, pursuant to which Lakeland will construct, own, operate and maintain the necessary facilities to connect Lakeland's 69kv facilities to the PGS's 69kv facilities for delivery of electric capacity and energy generated by the PGS for delivery to FPC.

NOW, THEREFORE, in consideration of the foregoing premises and of the mutual benefits to be obtained from the covenants herein, the, PARTIES agree as follows:

ARTICLE 1 DEFINITIONS

The following terms shall have the meanings specified in this Article 1 when capitalized and used in this Agreement. The meanings specified are applicable to both the singular and plural.

1. **Avoided Energy Costs** - means LAKELAND's avoided energy costs as defined in Florida Public Service Commission (FPSC) Rule 25-17.0825 Section 2.
2. **Auxiliary Service** - means the capacity and energy available for use by PANDA for backup, supplemental and maintenance requirements to be supplied under one of LAKELAND's filed tariffs.
3. **Commercial Operation Date** - means the first day immediately following successful completion, operation and testing of the PGS as determined by PANDA or the date PANDA declares the PGS available for services under this Agreement, whichever is earlier.
4. **Firm Transmission or Firm Transmission Service** - means the transmission service for delivery of energy generated by the PGS to FPC through LAKELAND's transmission system as described in Section 5.1 hereof.
5. **Transmission Charge** - means LAKELAND's charge per mW, as set forth in Appendix A, for Firm Transmission Service for the delivery of capacity and energy from PANDA's PGS to FPC.
6. **Incremental Losses** - means the change in losses experienced on LAKELAND's transmission system as a result of additional energy flow from providing firm transmission service to PANDA as described in Section 5.4 and Appendix B.
7. **Incremental Loss Factor** - means the Incremental Losses divided by the total energy delivered by PGS to LAKELAND for delivery to FPC as determined by LAKELAND's load flow simulations times 100.
8. **Initial Term** - means the time period from execution of this Agreement until the end of the PANDA/FPC Agreement, unless extended pursuant thereto, or succeeded by another agreement between FPC and Panda.
9. **Nominated Transmission Service Level** - means the level of Transmission Service initially nominated or as revised by PANDA pursuant to Section 5.1 hereof.
10. **Interchange Meter Point** - means that point on LAKELAND's 69 kV system at which the power received from the PGS and the power provided to the PGS for standby and/or supplemental service requirements are measured.

11. **Interconnection Point** - refers to the point in the 69 kV system where LAKELAND's line terminates on PANDA's take-off structure.
12. **Fiscal Year** - The twelve month period from October 1 through September 30
13. **Facilities** - All 69 kV facilities being constructed by LAKELAND and PANDA pursuant to the Construction Agreement including but not limited to transmission lines, support structures breakers, transformers and protective equipment deemed necessary for the delivery of energy from the PGS to LAKELAND's system.
14. **Facilities Completion** - means the date on which LAKELAND provides written notice to PANDA that Firm Transmission capacity as described in Appendix C is available.
15. **Prudent Electrical Practices** - means LAKELAND's prudent practices, methods and equipment, that are commonly used and changed from time to time to provide electric capacity and energy to Lakeland's retail and wholesale customers. Such practices shall meet or exceed the National Electric Safety Code and other generally recognized utility practices.
16. **Start-Up Energy** - means energy generated by the PGS from the initiation of PGS operation until the Commercial Operation Date, excluding Test Energy.
17. **Test Energy** - means energy generated by the PGS for purposes of performance testing.
18. **Interim Period** - means the period of time between energization of the 69 kV LAKELAND/PANDA interconnection and the Commercial Operation Date.
19. **Qualifying Facility (QF)** - means a facility meeting the requirements defined in FPSC Rule 25-17.080.

ARTICLE 2
TERM OF CONTRACT

SECTION 2.1 - TERM

1. This agreement is in full force and effect as of the date first written above and shall continue throughout the Initial Term and thereafter shall automatically be extended for succeeding periods of three (3) years each, except that this Agreement may be canceled by either PARTY at the end of Initial Term or any such extension thereto, upon written notice to the other PARTY, two (2) years prior to the end of the Initial Term or any such extension thereto, or at any time thereafter upon mutual written agreement between the PARTIES.

SECTION 2.2 - TERMINATION

1. By LAKELAND Notwithstanding the above, this Agreement may be terminated at the sole option of LAKELAND upon thirty (30) days written notice to PANDA if (1) the PANDA/FPC Agreement is terminated and PANDA is unable to secure a replacement purchaser of its electric power within two (2) years, (2) for PANDA default as per Section 8.4 hereof, or (3) if there will be an adverse tax impact on LAKELAND's bond status as described in Section 2.3, and neither Party shall thereafter have any further liability or obligation hereunder, except as may have occurred or been incurred prior to such notice of termination.
2. By PANDA. Notwithstanding the above, this Agreement may be terminated at the sole option of PANDA upon thirty (30) days written notice to Lakeland (1) for LAKELAND default as per Section 8.4 hereof or (2) in the event PANDA is unable to obtain financing for the facility or otherwise cancels its plans to construct the PGS, and neither PARTY shall thereafter have any further liability or obligation hereunder, except as may have occurred or been incurred prior to such notice of termination.

SECTION 2.3 - UNDERSTANDING OF TAX IMPLICATIONS

Under Florida Public Service Commission Rule 25-17.088, paragraph (6), an electric utility, including municipally owned utilities, must provide transmission service to a Qualifying Facility (QF) provided:

- (6) An electric utility may deny, curtail, or discontinue transmission service to a qualifying facility if the provision of such service would adversely affect the adequacy, reliability or cost of providing electric service to the utility's general body of retail and wholesale customers.

This Agreement is being entered into by LAKELAND on the assumption that this Agreement and the transactions contemplated by this Agreement will not affect

LAKELAND's outstanding bonds, nor the ability of LAKELAND to issue bonds, the interest on which is excluded from gross income for federal income tax purposes.

LAKELAND is entering this Agreement based on an opinion from its Bond Counsel, included as Appendix D, that this Agreement and the transactions contemplated thereby may result in "private business use" of LAKELAND's electric system within the meaning of Section 141 of the Internal Revenue Code (the "Code"), but such private business use of LAKELAND's electric system is acceptable under said Code. However, in the event of a change in law or material fact, other than LAKELAND entering into subsequent transactions to transmit power for additional private generators, causes the private business use of LAKELAND's electric system contemplated herein to be unacceptable under the provisions of said Code, and LAKELAND's Bond Counsel is unable to render an unqualified opinion that interest on any bonds issued or to be issued by LAKELAND is excluded from gross income for Federal Income Tax purposes, LAKELAND agrees to continue to provide Firm Transmission Service to PANDA in accordance with the rates, terms and conditions of LAKELAND's published Firm Transmission Service Tariff then in effect for the service required. Bond Counsel's opinion shall take into account the use of LAKELAND's electric system by PANDA and any other persons, their successors and/or assigns (other than "exempt persons" within the meaning of Section 150 of the Code) using the electric system at the date of execution of this Agreement. This accounting shall exclude the use of the electric system by other persons who are not exempt persons who commence using the electric system subsequent to the date of execution of this Agreement. LAKELAND agrees to reinstate all applicable portions of this Agreement on such date as Bond Counsel is able to render an unqualified opinion. Further, LAKELAND agrees to immediately commence good faith negotiations with PANDA to incorporate and/or modify such provisions of this Agreement necessary to remedy such adverse circumstances. In the event of termination of this Agreement, this paragraph and the one immediately above shall survive and be in full force and effect.

ARTICLE 3 INTERCONNECTION

The PARTIES agree, pursuant to the terms of this Agreement, to interconnect their electrical systems at the Interconnection Point and to that end, each PARTY shall obtain the necessary permits and shall construct and/or have constructed (including the receipt of all permits necessary thereto), maintain and continue in operation its facilities and equipment necessary for the interconnected operation of the two systems.

PANDA will provide LAKELAND with any control and protective relay design for PANDA's system and/or changes thereto prior to the changes being made. LAKELAND will be informed with sufficient time to make any necessary changes to its system necessary to coordinate with changes made by PANDA.

The design, operation and maintenance of PGS's 69 kV control and protective equipment

shall conform with Prudent Electrical Practices as demonstrated by LAKELAND for its facilities.

LAKELAND shall provide kWh, Watt and Var telemetry signals for use by PANDA and FPC. PANDA shall provide reasonable and suitable space for LAKELAND's metering and associated equipment as required. PANDA shall also allow LAKELAND access to said equipment for routine maintenance and repair with reasonable notice.

ARTICLE 4 OPERATING COMMITTEE

Each PARTY shall appoint a member and an alternate to an operating committee (the "Operating Committee"), and so notify in writing the other PARTY. The Operating Committee shall hold an annual meeting in the first four months of the Fiscal Year and review the duties set forth herein. This committee shall hold other meetings at the request of either PARTY, at a time and place agreed upon by the members. Each PARTY's representative and alternate shall be a responsible person working with the day-to-day operations of said PARTY's respective power system. The Operating Committee shall represent the PARTIES in all matters arising under this Agreement which may be delegated to it by mutual agreement of the PARTIES.

ARTICLE 5 TRANSMISSION AND OTHER SERVICES

SECTION 5.1 - TRANSMISSION SERVICE PROVIDED

Beginning on the Commercial Operation Date, LAKELAND shall provide Firm Transmission Service to PANDA in an initial Nominated Transmission Service Level of 115 megawatts of generation capacity from the PGS facility to FPC, provided Facilities Completion has occurred. PANDA shall have a one-time option to adjust the initial Nominated Transmission Service Level by a decrease of up to ten percent, i.e., to an adjusted Nominated Transmission Service Level. In the event the Commercial Operation Date occurs prior to Facilities Completion, LAKELAND shall, beginning on the Commercial Operation Date, provide Firm Transmission Service to PANDA up to the level of capacity available in accordance with Prudent Electric Practices and upon the date of Facilities Completion, provide Firm Transmission Service to PANDA for the Nominated Transmission Service Level of generation capacity and energy from the PGS to FPC. The service provided, "Firm Transmission Service" hereunder, shall be the reservation and/or use of transmission capacity for the receipt of electric capacity and energy generated by the PGS and for the delivery of the same quantity of electric capacity and energy to LAKELAND's interconnection points with FPC ("Delivery Point") that are operated pursuant to the contract for interchange service between Florida Power Corporation and

LAKELAND dated November 3, 1980, as amended ("LAKELAND/FPC Agreement"). Characteristics, terms and conditions of this service are described in Characteristics of Service, Appendix C, which is added hereto and made a part hereof.

Notwithstanding the above, if at any time in the future should LAKELAND offer "energy brokering services", PANDA may elect to convert a portion (not to exceed forty (40) megawatts) of the Nominated Transmission Service Level of 115 megawatts, from Firm Transmission Service to Non-Firm Transmission Service.

The charge for Firm Transmission Service provided pursuant to this Agreement will be the rate set forth on Appendix A, Transmission Charge; Rate for Delivery of Facility Output.

The Transmission Charge for Firm Transmission Service shall be based on the Nominated Transmission Service Level subject to the right of PANDA to decrease said capacity reservation in accordance with the term of the PANDA/FPC Agreement and will commence upon the Commercial Operation Date. LAKELAND will provide and PANDA will pay for Firm Transmission Service of a minimum of one hundred fifteen (115) megawatts at all times, except during a period of a scheduled outage or bona fide Force Majeure event.

SECTION 5.2 - ORDER OF TRANSMISSION SERVICE PRIORITY

LAKELAND shall provide Firm Transmission Service to PANDA with priority after wholesale and territorial retail customers and other existing firm commitments and ahead of future Firm Transmission Service, and all non-firm agreements. Priority within this general class of service will be based on the date of the executed agreement with earlier dates taking precedence.

SECTION 5.3 - INTERIM PERIOD TRANSMISSION SERVICE

During the Interim Period LAKELAND shall, at the request of PANDA, provide transmission service to PANDA up to the Nominated Transmission Service Level in accordance with Prudent Electrical Practices as limited by the maximum capacity reservation in Appendix C. Such service shall be provided in accordance with the charges, terms, and conditions of LAKELAND'S non-firm transmission rate schedule in effect at the time of the request.

Similarly, LAKELAND agrees not to impose a Transmission Charge on PANDA to the extent that a Force Majeure event, as defined in the PANDA/FPC Agreement, prevents either PARTY hereto from fulfilling its obligations thereunder.

SECTION 5.4 - CHARGES FOR TRANSMISSION LOSSES

PANDA will provide transmission losses for all energy delivered from PGS to FPC by LAKELAND. Energy supplied for losses will be determined as the product of Lakeland's Incremental Loss Factor divided by 100 and the respective energy delivered for FPC to the Interchange Meter Point. The Incremental Loss Factor shall never be less than 0 nor greater than 0.5%. Lakeland would expect Panda's actual charges for losses to be 0 for the foreseeable future, based on Lakeland's present system configuration and planned system additions.

The Incremental Loss Factor will be reviewed by LAKELAND at least annually and may be changed or amended upon at least 30 days notice to PANDA. LAKELAND will use the same load flow analysis to calculate Incremental Losses as it uses to calculate average transmission system losses for the purpose of its T-1 Transmission Tariff.

Should PANDA at some subsequent date choose to have LAKELAND provide for transmission losses LAKELAND, at its option may do so. Should LAKELAND agree to provide PANDA's transmission losses, except for during the Interim Period, LAKELAND shall provide its transmission losses under this Agreement, such that the energy delivered to LAKELAND from the PGS at the Interchange Meter Point is equal to the energy delivered by LAKELAND to FPC.

Should PANDA request and LAKELAND agree to provide for PANDA'S transmission losses the charge for making up said losses shall be the daily demand and energy charges as contained in Rate Schedule SS-1, Exhibit 1 as amended from time to time.

The Incremental Loss Factor will be reviewed by LAKELAND at least annually and may be changed or amended upon at least 30 days notice to PANDA. LAKELAND will use the same load flow analysis to calculate Incremental Losses as it uses to calculate average transmission system losses for the purpose of its T-1 Transmission Tariff.

SECTION 5.5 - START-UP AND TEST ENERGY

Prior to the Commercial Operation Date, LAKELAND will accept Start-up and Test Energy from the PGS as requested by PANDA upon reasonable notice provided such energy will not adversely affect the operation of LAKELAND's electrical system. During the period that the PGS is generating energy for purposes of determining completion under the construction contract for the PGS (performance testing), LAKELAND shall accept such Start up and Test Energy from the PGS unless PANDA adversely affects the operation of LAKELAND's electrical system. Energy supplied under start-up and testing will be purchased at LAKELAND's As-Available Energy Costs at the time energy is supplied.

SECTION 5.6 - AUXILIARY SERVICE

Upon Facilities Completion PANDA shall receive Auxiliary Service from the 69 kV meter point. PANDA may take Auxiliary Service from LAKELAND at any time in accordance with the rate tariff selected. PANDA at its option may select to receive service under provisions of applicable rate tariffs, as provided in Exhibit 1, or any other applicable tariff which may be offered.

ARTICLE 6 OPERATING ARRANGEMENTS

SECTION 6.1 - PARALLEL OPERATIONS

The PGS shall be operated in parallel with LAKELAND's electrical system in accordance with Prudent Electrical Practices necessary for the safe operation of the PARTIES' systems. Synchronization of the PGS with the LAKELAND electric system shall occur at the PGS 69 kV breaker on the PGS side of the Interconnection Point and shall be performed by PANDA.

PANDA will give LAKELAND at least 30 minutes notification prior to synchronization or breaker closing.

When capacity and energy are flowing from the Interconnection Point to the PGS the latter will be a LAKELAND load and such capacity and energy will be charged in accordance with Section 5.6. When capacity and energy are being delivered by the PGS to the Interconnection Point, the PGS will be operated within FPC's control area. LAKELAND's generation system will be controlled such that there is a net flow of PGS generated energy on LAKELAND's electrical system of zero (0) MW. Losses will be provided by PANDA in accordance with Section 5.4, unless LAKELAND is requested by PANDA to provide losses. LAKELAND will not bank or provide a storage account for PANDA. LAKELAND assumes no responsibility for generating capacity reserves on behalf of PANDA.

PANDA and LAKELAND shall each have control of the tripping of the breaker interconnecting the PGS to LAKELAND's electric system. LAKELAND shall also have the capability to block PANDA's closing of the breaker interconnecting the PGS to LAKELAND's electric system.

SECTION 6.2 - REACTIVE KVA

It is anticipated that the PGS will be operated at unity power factor at the Interchange Meter Point while the unit is running, unless otherwise agreed by the PARTIES.

SECTION 6.3 - MAINTENANCE SCHEDULES

Each PARTY will provide the other with operating and maintenance schedules which may affect this Agreement or the other PARTY'S operations and will provide timely notification of any changes, additions or modifications thereto. Each PARTY shall make a good faith effort to coordinate maintenance schedules which may adversely affect the other PARTY.

Responsibilities for setting and testing of metering and protective equipment is shown in Appendix E.

SECTION 6.4 - DISTURBANCES - SAFETY AND TECHNICAL STANDARDS

Each PARTY shall, insofar as practicable, protect, operate and maintain its system and/or facility in accordance with Prudent Electrical Practices as to avoid or minimize the likelihood of disturbances which might cause, impairment of, or jeopardy to, the other PARTY or to service of the customers of the other PARTY, or in systems interconnected therewith.

ARTICLE 7 METERING

SECTION 7.1 - METERING

Necessary metering equipment to permit determination of the amounts of electric capacity and energy transmitted over the Interconnection Point shall be owned and maintained by LAKELAND in the PGS switch yard. Metering for the 69 kV interconnection shall be located in accordance with LAKELAND's published rules and regulations for electric service as revised from time to time. Such meters shall be owned and maintained by LAKELAND. All meters included in said equipment shall be sealed and shall, except in an emergency, be opened only in the presence of authorized representative of both PARTIES hereto. LAKELAND shall inspect and test the meters and associated equipment annually in the presence of authorized PANDA personnel, unless otherwise mutually agreed. If any test or inspection shows any metering facilities to be inaccurate by more than one percent (1%) fast or slow, the meter or other equipment found to be inaccurate or defective shall be repaired, adjusted, or replaced promptly. Any billing adjustments shall be in accordance with Section 7.2 below.

At the written request of PANDA, LAKELAND shall make additional tests of any or all such meters in the presence of PANDA representatives. However, the cost for such tests shall be borne by PANDA unless the percentage of error is found to be greater than one percent (1%) fast or slow, in which case they shall be borne by LAKELAND.

SECTION 7.2 - METER READING

Telemetered meter readings of capacity and energy received by LAKELAND from the PGS shall be used to determine hourly, daily and monthly energy transfer from the PGS to LAKELAND/FPC interconnections and will be the basis for loss determination as per Section 5.4 hereof. Such readings shall be confirmed, and if necessary adjusted, no less than once each month by comparison with actual interconnection kWh readings.

Meter readings of capacity and energy delivered to PGS shall be used to determine the capacity and energy-flowing to the PGS from the Interconnection Point and will be the basis for charges as per the appropriate rate schedule selected by PANDA.

All meter readings related to billing accounts shall be recorded at 2400 (12 midnight) on the last day of each month as practical. A statement shall be assembled and summarized at the beginning of the following month for billing and recording purposes. Should billing meters fail to register accurately at any time, energy and capacity determinations during the period of failures shall be determined by the back-up metering installation.

Any adjustment shall be a credit or additional charge to the monthly billing statement for the following month.

ARTICLE 8 BILLING AND PAYMENT

SECTION 8.1 - PRESENTATION AND PAYMENT FOR ELECTRIC SERVICES

Upon the Commercial Operation Date, LAKELAND, shall submit to PANDA, as promptly as practicable after the first of each month, a monthly billing statement indicating the amount due for the Transmission Charge, Incremental Losses and Auxiliary Service.

The amount due for the Transmission Charge shall be due in advance and will be billed for the following month. The amount due for LAKELAND supplied Incremental Losses and Auxiliary Service shall be due in arrears and will be billed for the preceding month. As promptly as practicable after the Commercial Operation Date LAKELAND shall submit to PANDA an initial billing statement including Transmission Service Charges, prorated on a thirty day month, for the number of days such service is to be used during the month Commercial Operation occurs and Transmission Charges for the month following Commercial Operation.

All bills shall be due and payable within thirty (30) days from the date billing occurs as determined by the billing date indicated on the billing statement.

Bills not paid within thirty (30) days from the date of billing as indicated on the billing statement shall be termed delinquent and be assessed a late fee in accordance with

LAKELAND's credit and collection policy and procedure, as revised from time to time.

If utility industry practice regarding billing methods should change as a result of technological advances, the PARTIES shall cooperate to modify the billing methods described herein by mutual agreement to reflect such changed practices.

During the Interim Period, LAKELAND shall bill PANDA for Non-Firm Transmission Service in accordance with its published rate.

SECTION 8.2 - DISPUTED BILL

In case any portion of any bill is in bona fide dispute, the undisputed amount shall be payable when due in accordance with Section 8.1 and 8.3. Upon determination of the correct amount, the remainder, if any, shall become due and payable and subject to a late fee in accordance with Section 8.1 hereof. If within a reasonable period of time the PARTIES cannot agree, either PARTY may exercise all remedies available at law or equity.

SECTION 8.3 - OVERCHARGES AND REFUNDS

Any overcharges shall accrue interest at the same monthly rate (percentage) as does the late fee imposed in accordance with Section 8.1 hereof, and shall be refunded as soon as agreed upon or resolved through formal processes.

SECTION 8.4 - DEFAULT

Should PANDA be delinquent in paying any undisputed portion of its monthly bill, LAKELAND will provide notice by registered mail of non-receipt, and if PANDA should fail to make payment within ten (10) days of receipt of such notice PANDA shall be declared in default and service may be interrupted. Notice of such default will be served by registered mail to PANDA. Should PANDA remain in default for non-payment for a period of 60 days after the service of the notice pursuant to Section 13.4 hereof, this Agreement may be terminated at the sole discretion of LAKELAND.

Should LAKELAND fail to comply with any of the material terms and conditions of this Agreement and fail to conform to said material terms and conditions within sixty (60) days following a written demand by PANDA to do so, PANDA may declare LAKELAND in default. In the event of a LAKELAND default, PANDA may exercise all remedies available at law or in equity, subject to the limitations set out in Article 11.2.

ARTICLE 9 FORCE MAJEURE

SECTION 9.1 - FORCE MAJEURE EVENTS

Except for any pre-existing obligations of either PARTY to make payments to the other PARTY, should either PARTY be delayed in or prevented from performing or carrying out any of the agreements, covenants, or obligations made by and imposed upon the said PARTY by this Agreement, including all covenants and obligations made in the attached appendices by reason of or through strike, stoppage in labor, failure of contractors or suppliers of materials to the extent said failure is due to Force Majeure as described herein, riot, fire, flood, ice, storm, sinkholes, invasion, civil war, insurrection, military or usurped power, order of any court, order of any civil or military authority either de facto or da jure, explosion, act of God or the public enemies, failure or malfunction of system facilities, unscheduled outage or any other cause reasonably beyond its control and not attributable to its neglect; then and in such case or cases, the PARTY experiencing Force Majeure which cannot be eliminated by diligent effort by the experiencing PARTY, shall be relieved of its duty to perform under this contract to the extent caused by the Force Majeure and shall not be liable to the other PARTY for or on account of any loss, damage, injury, or expense (including but not limited to consequential damages and cost of replacement power) resulting from or arising out of such delay or prevention, provided, however, that the PARTY suffering such delay or prevention shall use all commercially reasonable efforts to remove the cause or causes thereof and provided, further, that neither PARTY shall be required by the foregoing provisions to settle a strike except when, according to its own best judgement, such a settlement is not to its detriment. The PARTY experiencing Force Majeure will promptly notify the other PARTY of Force Majeure events.

SECTION 9.2 - EXTENSIONS DUE TO DELAYS RESULTING FROM FORCE MAJEURE

Should one or more delays, resulting from Force Majeure as defined in Article 9, occur during the Initial Term of the Agreement, said term shall automatically be extended for a period of time equal to the sum of all such delays up to a maximum of two (2) additional years. Should one (1) or more such delays occur during any extension of the Initial Term of the Agreement, said extension shall automatically be extended for a period of time equal to the sum of all such delays up to a maximum of one (1) additional year.

Should one (1) or more delays resulting from an event of Force Majeure under the PANDA/FPC Agreement extend the Initial Term of the Agreement, said term shall be extended for the same period of time up to a maximum of five (5) years. This extension shall include, rather than be in addition to, any extension of the Initial Term in the paragraph next above.

Notwithstanding the foregoing, the PARTIES hereto agree and acknowledge that the Initial Term of this Agreement shall be coterminous with the term of the PANDA/FPC Agreement including any and all extensions thereto as provided and allowed therein.

ARTICLE 10
INSURANCE

SECTION 10.1 - INCEPTION OF INSURANCE

PANDA shall provide to LAKELAND evidence that it has in force insurance meeting the requirements specified herein before Firm Transmission Service is provided for PANDA. PANDA shall, at its sole expense, maintain such insurance throughout the duration of this Agreement.

SECTION 10.2 - EVIDENCE OF INSURANCE

Certificate of Insurance - certificates of insurance in triplicate evidencing the insurance coverage required by this Agreement shall be filed with LAKELAND before transmission service is provided to PANDA. Renewal certificates of insurance shall be furnished within 30 days prior to the expiration of the policy to be renewed.

SECTION 10.3 - INSURANCE REQUIREMENTS

1. **Comprehensive General Liability:** This insurance shall be an "occurrence" type policy written in comprehensive form and shall protect PANDA and the additional insureds against all claims arising from bodily injury, sickness, disease, or death of any person other than PANDA's employees or damage to property of LAKELAND or others arising out of any act or omission of PANDA or its agents, employees, or subcontractors. This policy shall also include protection against claims insured by usual personal injury liability coverage, a "protective liability" endorsement to insure the contractual liability assumed by PANDA under any Indemnification provided herein.

The liability limits shall not be less than:

Personal injury and property damage	\$1,000,000 combined single limit each occurrence
--	--

SECTION 10.4 - ADDITIONAL REMEDY

Compliance with the insurance requirements of this Agreement shall not limit the liability of PANDA to LAKELAND or its City Commission members, officials, officers or employees. Any remedy provided to LAKELAND or its City Commission members, officials, officers and employees by the insurance shall be in addition to and not in lieu of any other remedy available under this Agreement or otherwise.

SECTION 10.5 - UNAVAILABILITY OF INSURANCE

In the event it becomes commercially impracticable for PANDA to obtain insurance meeting the requirements of this Article 10, PANDA shall notify LAKE LAND and the PARTIES shall negotiate in good faith toward a temporary modification of this Article. LAKE LAND shall have no obligation to accept any modification which, in the reasonable opinion of LAKE LAND, would result in inadequate or inappropriate insurance. PANDA shall be considered in default under this Agreement any time PANDA is not in compliance with the insurance requirements of this section. PANDA shall have sixty (60) days from LAKE LAND's notice of inadequate or inappropriate insurance to obtain coverage in compliance with the requirements of this section.

SECTION 10.6 - LAKE LAND'S SELF-INSURANCE

PANDA understands that LAKE LAND is a self-insured municipality, and hereby accepts LAKE LAND'S self-insurance program as being sufficient for the Firm Transmission Service to be provided by LAKE LAND as outlined herein. LAKE LAND's self insurance program is set forth in City Ordinance No. 2734.

ARTICLE 11 INDEMNIFICATION AND LIMITATION OF PANDA REMEDIES

SECTION 11.1 - INDEMNIFICATION

Hold Harmless/Indemnification: To the fullest extent permitted by laws and regulations, each PARTY hereto shall defend, indemnify, and hold harmless the other PARTY, its officers, directors, agents, guests, invitees, and employees from and against all claims, damages, losses, and expenses, (including but not limited to fees and charges of engineers, architects, attorneys, and other professionals and court and arbitration costs) arising out of or resulting from any willful misconduct or negligence in the performance or nonperformance of this Agreement by said indemnifying PARTY, said PARTY's contractor, subcontractor, or any person or organization directly or indirectly employed by any of them to perform or furnish any of the work under this Agreement, or anyone for whose acts any of them may be liable.

This indemnification is intended to be solely for the benefit of the PARTIES hereto and their respective heirs, successors and assigns. It is not the intent of this Agreement that the right of an indemnitee to indemnity under this Agreement shall waive any defense, immunity or other limitation of liability which would be applicable to the indemnitee in the absence of this Agreement.

SECTION 11.2 - LIMITATION OF REMEDIES

Notwithstanding anything in the Agreement to the contrary, neither PARTY shall have any liability to the other PARTY, whether based on contract, warranty, tort, strict liability, contribution, indemnity or otherwise, for consequential, incidental, special, indirect, exemplary, or punitive damages of any other kind or nature whatsoever, resulting from the performance, non-performance or breach of the Agreement. Except with respect to direct damages resulting from willful misconduct or gross negligence, PANDA's sole remedy against LAKELAND shall be specific performance. For purposes of this Section, the terms "willful misconduct" and "gross negligence" shall be limited to action knowingly taken or not taken LAKELAND with either the intent to cause injury or damage to the person or tangible property of another or with the actual knowledge that such action or in-action is a material breach of the provisions of this Agreement. Willful misconduct or gross negligence shall not include action taken in good faith which is necessary to protect property, personnel or the public safety.

Notwithstanding anything in the Section 11.2 or any other provision in this Agreement which may be to the contrary, and regardless of the number of acts or omission, or the number of persons committing such acts or omissions, or the number of claims, demands, suits, proceeding or claimants, the maximum liability of LAKELAND to PANDA in those situations wherein Florida Statute Section 768.28 (or its successor) is applicable shall be the monetary limits set forth in said statute. For the purposes of this Section, all damages resulting from the same or substantially the same or a series of related accidents, happenings or events shall be considered as arising out of the same occurrence.

ARTICLE 12 MISCELLANEOUS

SECTION 12.1 - RATE SCHEDULE CHANGES

Rate Schedules GSLD, GSX-3, IS, SS-1 and SS-2 contained herewith as Exhibit 1 may be changed or amended at any time in accordance with LAKELAND's standard rate-changing procedures, provided that any revised rate making methodology adopted by LAKELAND and the rates resulting therefrom shall be consistent with standard industry practice, and that the rates as changed shall be just and reasonable and non-discriminatory. Such changes shall become effective, prospectively only, upon the date determined by LAKELAND. PANDA shall have the right to prior notice of any proposal by LAKELAND to increase the rates contained herein and the right to be heard in any proceeding to consider such a proposal.

SECTION 12.2 - WAIVERS

Any waivers at any time by either PARTY of its rights with respect to the other PARTY or with respect to any matter arising in connection with this Agreement shall not be considered a waiver with respect to any subsequent default or matter.

SECTION 12.3 - NOTICES

Except as otherwise specified herein, any notice, demand, or request required or authorized by the Agreement shall be deemed properly given if mailed postage prepaid, to City of Lakeland; 501 East Lemon Street; Lakeland, Florida 33801-5050 and Panda - Kathleen, L.P.; 4100 Spring Valley; Suite 1001; Dallas, Texas 75244.

Notices to LAKELAND should be directed to LAKELAND's Managing Director. Notices to PANDA should be directed to the Project Manager.

Either PARTY may amend its names and addresses for notice purposes hereunder by notifying the other PARTY pursuant to the notice procedures set out herein.

SECTION 12.4 - AMENDMENT OF AGREEMENT

Any amendment of or supplement to this Agreement shall be in writing, executed by the PARTIES hereto and shall specify the date such amendment or supplement shall become effective.

SECTION 12.5 - ASSIGNMENT

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of either of the PARTIES, and insofar as permitted by law, any receiver or trustee in bankruptcy, receivership or reorganization of either PARTY. This Agreement shall not be transferred or assigned by either PARTY without the written consent of the other PARTY which consent shall not be unreasonably withheld or delayed. Lakeland recognizing that this Agreement may be assigned in connection with (x) a financing or refinancing (including, without limitation, a sale/leaseback); (y) a sale of all or substantially all of the assets of PANDA or (z) certain mergers or other reorganizations, hereby consents to such assignments and further agrees that this Agreement shall inure to the benefit of any such assignee exercising any rights or remedies available to it by law or contract with respect to possession, control or operation of PANDA's Generating Facility, provided, however, (i) any such assignee agrees to adhere to the provisions of this Agreement; (ii) the assignment shall not relieve PANDA of its obligations or undertakings under this Agreement, and (iii) immediately following an assignment pursuant to (y) and (z), Panda Energy Corporation or one of its affiliates shall own a controlling interest in PANDA's Generating Facility and shall be the operator thereof. This Agreement shall not otherwise be transferred or assigned by either Party without the written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

SECTION 12.6 - CAPTIONS

All indices, titles, subject headings, section titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, descriptive, definitive or to affect the meaning of the contents or scope of this Agreement.

SECTION 12.7 - LAW GOVERNING

Subject to federal law, all questions concerning the validity and enforceability of this Agreement and its terms and conditions, as well as questions concerning the sufficiency or other aspects of performance under the terms and conditions of this Agreement, shall be governed by the laws of the State of Florida. Any litigation arising out of the operation or interpretation of this Agreement shall be instituted in the appropriate state or federal court in Florida.

SECTION 12.8 - COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

SECTION 12.9 - ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the PARTIES hereto with respect to the transmission of energy and capacity from PANDA's PGS to FPC. Each PARTY confirms that it is not relying upon any representations or warranties of the other PARTY, except as specifically set forth herein or as set forth in writing hereafter.

SECTION 12.10 - APPENDICES AND EXHIBITS

Appendices attached hereto are a part of this Agreement. Exhibits are attached hereto for informational purposes.

SECTION 12.11 - REPRESENTATIONS BY PANDA

As of the date of this AGREEMENT, the sole General Partners of PANDA are _____

_____.

IN WITNESS WHEREOF, the PARTIES have issued this Agreement to be executed by their duly authorized officers, and copies delivered to each PARTY, as of the day and year first above stated.

CITY OF LAKELAND, FLORIDA

Panda - Kathleen, L.P.

By: _____
Ralph L. Fletcher, Mayor

By: _____

Its: _____

Attest: _____
Paula K. Hoffer, City Clerk

Attest: _____

Its: _____

Approved as to form and correctness:

By: _____
Joseph P. Mawhinney, City Attorney

TRANSMISSION CHARGE
RATE FOR DELIVERY OF FACILITY OUTPUT

PANDA shall pay LAKELAND a transmission charge ("Transmission Charge") for each year during the Term of this Agreement. For the period beginning with the facility's commercial operation, and ending September 30, 1996, the Transmission Charge shall equal \$3,574.27 per megawatt per year. For each subsequent annual fiscal period beginning October 1, 1996, the Transmission Charge shall equal the product of PANDA's immediately preceding fiscal year's Transmission Charge and the Adjusted Escalation Factor not to exceed 103%, for said subsequent year.

Each year's "Escalation Factor" shall equal the percentage obtained by dividing the present year's Transmission Service Costs by the immediately preceding year's Transmission Service Costs. That portion of the Escalation Factor above 103% shall be carried forward cumulatively by the addition of that portion of the Escalation Factor above 103% to the preceding year's Cumulative Balance, said balance being zero (0) as of September 30, 1997.

The Adjusted Escalation Factor for each year shall be developed by reducing the Cumulative Balance; but never below zero, in the amount necessary to bring the subsequent year's escalation factor up to 103% or the Cumulative Balance to zero. The Cumulative Balance shall be carried forward through the term of this Agreement and be terminated.

Transmission Service Costs shall be based on Lakeland's revenue requirements for Transmission Service used for LAKELAND's Firm Transmission Tariff divided by the total of LAKELAND's available generating and contract long term (exceeding eleven months) capacity unless such contract long term capacity is purchased for reasons other than capacity requirements on LAKELAND's system.

While the PARTIES acknowledge that LAKELAND is not required to obtain approval of its transmission tariffs from the Federal Energy Regulatory Commission ("FERC"), the PARTIES nevertheless agree that the traditional standards utilized by FERC in its review and approval of embedded-cost transmission tariffs filed by electric utilities under Section 205 of the Federal Power Act, including FERC's Uniform System of Accounts (as indicated in Exhibit 2), may be used where applicable in the calculation of Transmission Service Costs for purposes of this Agreement. In addition, for the purposes of this Agreement, Transmission Service Costs shall exclude the costs associated with any transmission facilities placed in service by LAKELAND in advance of said facilities being used and useful for LAKELAND's customers; said exclusion to continue, except to the extent that said facilities become used and useful.

EXAMPLE OF LOSS CALCULATION

I. Energy Received by Lakeland from PANDA

Total Energy Delivered for FPC at the Interconnect Meter Point	29,760 MWH
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II. Energy Losses

A. Incremental Loss Factor	0.34%
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B. Determination of Energy for Losses	
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29,760 MWH X (0.0034)	= 101 MWH
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III. Energy Delivered

Total Energy Delivered to FPC	Received By Lakeland	29,760 MWH
	Less Losses	<u>101</u>

Energy delivered to FPC by Lakeland for PANDA =	29,659 MWH
--	------------

CHARACTERISTIC OF SERVICE
FOR
FIRM TRANSMISSION SERVICE

FIRM TRANSMISSION SERVICE

Capacity Reserved	74,900 KW \pm 10%
Voltage at Facility Interconnection Point	69 KV Nominal
Voltage At Other Lakeland/FPC Interconnection Points	2 - 230 KV (Additional Points as Lakeland deems necessary)
Phases	3
Frequency	60 Hertz Nominal

DEC 25 '94 05:54PM MUDGE ROSE TRX

P.2

MUDGE ROSE GUTHRIE ALEXANDER & FERDON

638 FIFTH AVENUE
SUITE 1600
NEW YORK, NEW YORK 10111
212-222-1000

MORRIS CORPORATE CENTER TWO
ONE UPPER BONS ROAD 8LD6, 0
PARLISBRAY, NEW JERSEY 07064
201-325-0000

17, RUE DE LA PAIX
75005, PARIS, FRANCE
(33) 42. 61. 57. 71

RICHARD H. NICHOLLS
PARTNER
DIRECT DIAL NUMBER
(212) 510-7616

180 MAIDEN LANE
NEW YORK, N.Y. 10038

212-510-7000

TELEFAX 127689
FACSIMILE 212-240-2695

2121 K STREET, N.W.
WASHINGTON, D.C. 20007
202-423-8388

SUITE 2000
333 SOUTH GRAND AVENUE
LOS ANGELES, CALIF. 90071
213-613-1112

SUITE 900, NORTHMOORE CENTRE
216 NORTH FLASLER DRIVE
WEST PALM BEACH, FL 33401
407-650-8100

TORANONON 37 HOKI BUILDING
3-1 TORANONON 3-ENOME, MINATO-KU
TOKYO 106, JAPAN
1031 3437-2061

December 5, 1994

David McLain
Lakeland Electric Water Utility
501 East Lemon Street
Lakeland, Florida 33801-5050

Dear David:

In accordance with our telephone conversation of this afternoon I am writing to confirm the views expressed regarding the Panda project to you in our January 1992 letter. I understand the transaction is the same as was described at the time.

As I indicated to you, the IRS is expected to issue Proposed Regulations affecting tax-exempt financing for municipal utilities at year end and our views are subject to such regulations, although we know of no reason to believe that such regulations will be inconsistent with this advice.

Very truly yours,


Richard H. Nicholls

MUDGE ROSE GUTHRIE ALEXANDER & FERDON

180 MAIDEN LANE
NEW YORK, N.Y. 10038

212-510-7000

CABLE ADDRESS: BALTUCHINS-NEW YORK
TELEX: WU 127889
TELECOPIER: 212-246-2653

RICHARD M. NICHOLLS
PARTNER
DIRECT DIAL NUMBER
(212) 510-7816

2121 K STREET, N.W.
WASHINGTON, D.C. 20037
202-429-9355
SUITE 2020
333 SOUTH GRAND AVENUE
LOS ANGELES, CALIF. 90071
213-613-1112
SUITE 900, NORTHERIDGE CENTER
515 NORTH FLAGLER DRIVE
WEST PALM BEACH, FL 33411
305-650-6100
12, RUE DE LA PAIX
75002, PARIS, FRANCE
(1) 42. 61. 57. 71

January 24, 1992

Mr. David McLain
Lakeland Electric & Water Utility
501 East Lemon Street
Lakeland, Florida 33801-5050

Dear David:

I am writing to confirm our discussion on various tax issues, including wheeling for cogenerators. We discussed three projects pursuant to which Lakeland would wheel power to Florida Power at your 230 kv interchange with Florida Power. The Panda project, a QF cogeneration facility is near the existing interchange. Both the Panda project and the Decker project discussed below will be connected to your system at 69 kv. The power being sold by these projects to Florida Power will actually be delivered at 230 kv. There will be a displacement effect in that the 69 kv power will tend to replace power that was reduced from 230 kv to 69 kv so that in effect there is more 230 kv power for sale to Florida Power.

Panda will pay all the costs necessary to connect to your system and will pay wheeling charges based on your T-1 wheeling tariff, which is regulated by FERC and filed with the Public Service Commission. We understand that although wheeling services have not previously been rendered under the tariff, a T-1 tariff has been in effect since 1982. It is expected that there will be a 20 year contract with the Panda project providing for firm transmission, but at the tariff established by Lakeland from time to time. "Firm transmission" means that the service will be firm unless it interferes with Lakeland's service to its native load. I think this arrangement is similar to the JEA wheeling arrangement covered by the IRS ruling and should not be considered to result in private use.

The Decker project will be a small producer facility burning wood waste and producing approximately 40 megawatts. This project is located near an existing distribution line which had previously been scheduled to be rebuilt. It is proposed that Lakeland rebuild the distribution line and at the same time install a 69 kv line. Decker will pay the cost of connecting to the 69 kv line. Decker may pay the incremental cost of the 69 kv line, or this cost may be financed by Lakeland from revenues. Lakeland will also construct a substation on the 69 kv line, but this substation will be for the purpose of serving Lakeland's customers rather than providing wheeling for Decker. This project will also be the subject of a 20-year contract providing firm transmission service at the cost specified in the T-1 tariff. For the reasons relating to Panda, I think this wheeling for this project should not result in private use of your transmission system.

You indicated that you may wish to increase the size of the 69 kv line above that necessary to serve Decker at a cost of \$250,000-\$500,000 in order to support a future interchange with Tampa Electric. I do not think this would affect our analysis of the Decker project.

The Mission project is a 103-150 megawatt gas-fired cogeneration QF located slightly outside your service area in Auburndale. Mission would pay all costs to interconnect their facility with your 230 kv line, including construction of a line from their facility to your existing 230 kv line. This contract will benefit your system because Mission will pay the cost of an \$800,000 circuit breaker, and the additional power flowing through your system will allow you to defer construction of an extension of your 230 kv line for some period of time. This project, unlike the other two, will make essentially no use of your 69 kv transmission because the power both enters and leaves at 230 kv.

Because of the benefits you expect to derive from this facility you are prepared to agree to a wheeling contract at a price which is less than the T-1 tariff and which would be fixed, subject to certain escalators, rather than subject to change like the tariff. While the answer is not clear, I think you should assume for planning purposes that this contract will result in private use of your 230 kv transmission facilities because the service would be provided on a basis other than a tariff available to others and also because the wheeling is not mandated by FERC since the project is not in your service area. You indicated that part of the cost of these facilities was financed with a \$5-7 million of a \$160 million 1982 bond issue and that the balance was financed with a \$5-6 million of a 1985 Sunshine Pool financing of approximately \$30 million from a total pool of

\$250 million. Since the allowable private use with respect to the proceeds of these issues is 25% and since you had no other private use of facilities financed with those issues there is no possibility that the treatment of this wheeling as private use would adversely affect those issues. Although it would be relevant to any advance refunding of those issues, you have indicated that there is no possibility of advance refunding those financings. It is possible, however, that the private use from this facility would be relevant in evaluating the private use of any addition to your 230 kv transmission facilities, although we understand you do not expect any such financing until some time after the year 2000. If future arrangements similar to Mission are entered into, they would also have to be taken into account.

There are no regulations dealing with measurement of private use of transmission. Pending issuance of any regulations, the best guidance is probably by analogy to the method of measuring private use for output. Under this methodology, the percentage of private use is based on the fraction described below. The dollar amount of private use would be determined by multiplying the dollar amount of bond financing for the project by the same fraction. The numerator of the fraction is the megawatts of capacity used by the private user multiplied by the number of years from the time service is first provided until the contract ends. The denominator of the fraction is the megawatts of capacity multiplied by the number of years from the time the line is placed in service until the last maturity of the bonds issued to finance it.

In applying this fraction to Lakeland, it appears that although there are arguments that very small amounts of actual capacity are used by Mission because of the displacement effect, nonetheless the numerator of the fraction should be based on the power actually sold to Florida Power, 103 or 150 megawatts. As to the denominator, you have indicated that 440 megawatts is the capacity that can be run through the line on a continuous basis without any conditions or limitations, and 440 megawatts therefore appears appropriate as the denominator.

You also asked about the effect of entering into an agreement with your largest customer who accounts for about 5% of your revenues whereby the customer would make a lump sum payment of, say, \$10 million and in turn you would give the customer a reduced rate with specified escalation provisions. The same arrangement would be made available to any other customer large enough to enter into such an arrangement. You believe that the lump sum payment is more than or equal to the present value of the difference between the rates under the proposed contract and your projected regular rates. Under this arrangement, once the contract is approved, the customer would have no obligation to

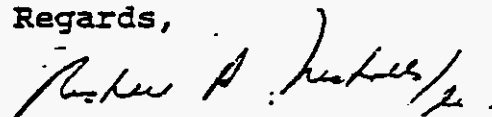
Mr. David McLain

January 24, 1992

continue to take power from you and would have no refund if the customer decided to use power from another source. Under existing regulations and rulings, I do not believe this contract would result in private use of your system, although future regulations or rulings could affect that conclusion.

I had a further conversation with Enron on Thursday in which they indicated they are working on a new contract type approach. I will be writing you further on gas shortly.

Regards,



Richard H. Nicholls

cc: Mr. Breen
Mr. Miller

EXHIBIT 1
RATE TARIFFS



RATE SCHEDULE GSLD

Rate GSLD
Page 1 of 3

GENERAL SERVICE LARGE DEMAND

Available:

In all territory served by the Electric Department.

Applicable:

To any general service customer whose highest 30-minute interval demand exceeds 499 KW three or more out of the twelve (12) most recent monthly billing periods, including the current billing period. All service hereunder will be supplied at one location through one point of delivery and measured through one meter.

Character of Service:

A-C; 60 Hertz; three phase; at any standard utility voltage level offered by the Electric Department.

Limitation of Service:

Not available for breakdown, standby, supplementary or resale service.

Net Rate Per Month:

Customer Charge:	\$376.30
Demand Charge:	\$ 7.25 per KW of Billing Demand
Energy Charge:	4.319¢ per KWH

High Load Factor Service:

To any general service customer eligible to receive service under this rate schedule that maintains a monthly load factor of not less than 70%, the energy charge shall be 4.060¢ per KWH.

Minimum Bill:

Customer charge, demand charge, plus adjustments.

Adjustments:

Fuel adjustment, as contained in Schedule BA-1
 Florida Gross Receipts and Regulatory Tax Adjustment, as contained in
 Schedule BA-2
 10% Utility Tax inside City limits
 10% Surcharge outside City limits

(Continued to Sheet No. 8.0.1)



RATE SCHEDULE GSLD

Rate GSLD

Page 2 of 3

GENERAL SERVICE LARGE DEMAND

(Continued from Sheet No. 8.0)

Payment:

Net bills are due when rendered and are payable within thirty (30) days thereafter.

Determination of Billing Demand:

The billing demand for the month shall be the maximum 30-minute integrated kilowatt demand in the month, but not less than 60% of the highest actual demand established during the most recent months of November, December, January, February or March.

Where charges specified in a rate schedule are based upon the measured maximum 30-minute integrated demand, it is intended that such demand shall fairly represent the capacity which the Department is required to stand ready to supply. In case of installations which use this service in a manner such that measurement over a 30-minute interval does not result in a fair or equitable measure of the supply capacity required to serve the customer's load, then the measured demand may be adjusted taking into account the known character of use and the rating data of the equipment connected, or from special tests, the intent being that the demand so determined shall fairly represent the customer's capacity requirement.

In cases where the Department elects to use connected load, instead of demand measurement, as the method for determining demand, it will take into account the known character of use and the rating data of the equipment connected, the intent being that the demand so determined shall fairly represent the customer's capacity requirement.

Primary Voltage Service:

Service at primary voltage, where available, will be supplied under this rate schedule upon request. When service is supplied at primary voltage the customer will own and maintain all substations, lines, transformer supporting structures, transformers and other equipment required for utilization of the delivery voltage. The Electric Department will own no equipment beyond the primary voltage metering point. A 5% discount on demand and energy charges will be allowed when service is delivered and metered at primary voltage.

Customers who were eligible to receive a 5% discount under the "Transformer Ownership Discount" provision which was in effect prior to

—
(Continued to Sheet No. 8.0.2)



RATE SCHEDULE GSLD

Rate GSLD

Page 3 of 3

GENERAL SERVICE LARGE DEMAND

(Continued from Sheet No. 8.0.1)

Primary Voltage Service: (Continued)

April 1, 1983, will continue to receive the 5% discount, but the Electric Department will make no additions to, and/or increases in capacity of, its lines, service drops, etc., beyond the metering point.

Secondary Service Metered at Primary Voltage:

In cases where secondary service is being supplied, but the Electric Department has elected to meter the service at primary voltage, there will be a discount of 1.2% applied to both the demand and energy charges. This discount may be changed on an individual customer basis if justified by special circumstances, equipment or operation of the customer's facilities. After the effective date of April 1, 1983, no new secondary service will be constructed with the metering at the primary voltage.

Facilities Charge:

When the customer requires the utility to furnish and install special facilities for the exclusive use of the customer, such customer will be required to pay a facilities charge in addition to the above demand and energy rate. The facilities charge will be based upon the cost of such excess facilities.

Terms and Conditions:

Power factor at the time of the monthly peak demand must be maintained above 90%. Service hereunder is subject to the rules and regulations for electric service as adopted by the Department of Electric & Water Utilities from time to time and on file with the City Clerk.



RATE SCHEDULE GSX-3
GENERAL SERVICE LARGE DEMAND
OPTIONAL TIME-OF-DAY

Rate GSX-3
Page 1 of 3

Available:

In all territory served by the Electric Department based on equipment availability.

Applicable:

To any general service customer whose highest 30-minutes interval demand exceeds 499 KW three or more out of the twelve (12) most recent monthly billing periods including the current billing period. All service hereunder will be supplied at one location through one point of delivery and measured through one meter.

Character of Service:

A-C; 60 Hertz; three phase; at any standard utility voltage level offered by the Electric Department.

Limitation of Service:

Resale not permitted under this rate schedule. Service hereunder available only after a twelve (12) month period of parallel billing on this schedule and rate GSLD has been completed. The Electric Department reserves the right to limit the number of new customers served hereunder and service is subject to the availability of Time-of-Day metering equipment.

Customers taking service hereunder will be required to remain on this rate for a minimum initial period of twelve (12) consecutive months which shall continue for successive periods of twelve (12) months until terminated by written notice given by customer or Department.

Net Rate Per Month:

Customer Charge:	\$382.21
Demand Charge:	\$ 7.25 per KW of Billing Demand
Energy Charge:	
On-Peak	8.497¢
Off-Peak	3.403¢

High Load Factor Service:

To any general service customer eligible to receive service under this rate schedule that maintains a monthly load factor of not less than 70%, the on-peak energy charge shall be 7.987¢ per KWH and the off-peak energy charge shall be 3.199¢ per KWH.

(Continued to Sheet No. 8.1.1)



RATE SCHEDULE GSX-3
GENERAL SERVICE LARGE DEMAND
OPTIONAL TIME-OF-DAY

Rate GSX-3
Page 2 of 3

(Continued from Sheet No. 8.1)

Definitions of the Time of Day Periods:

All time periods stated in prevailing time.

	<u>Summer</u>	<u>Winter</u>
On-Peak Hours (Monday-Friday)	<u>Apr. 1 - Oct. 31</u> 1:01 PM - 10:00 PM	<u>Nov. 1 - March 31</u> 6:01 AM - 12:00 Noon and 5:01 PM - 10:00 PM

Off-Peak Hours All other weekday hours, and all hours on Saturdays, Sundays, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day shall be off-peak.

Minimum Bill:

Customer charge, demand charge, plus adjustments.

Payment:

Net bills are due when rendered and are payable within thirty (30) days thereafter.

Adjustments:

- Fuel Adjustment, as contained in Schedule BA-1
- Florida Gross Receipts and Regulatory Tax Adjustment, as contained in Schedule BA-2
- 10% Utility Tax inside City limits
- 10% Surcharge outside City limits

Determination of Billing Demand:

Billing demand is the highest of (1) the maximum 30-minute interval demand established during the current on-peak period, (2) 50% of the highest 30-minute interval demand established during the current off-peak period, or (3) 60% of the highest actual demand established during the most recent months of November, December, January, February or March.

Where charges specified in a rate schedule are based upon the measured maximum 30-minute integrated demand, it is intended that such demand shall fairly represent the capacity which the Department is required to

(Continued to Sheet No. 8.1.2)



RATE SCHEDULE GSX-3
GENERAL SERVICE LARGE DEMAND
OPTIONAL TIME-OF-DAY

Rate GSX-3
Page 3 of 3

(Continued from Sheet No. 8.1.1)

Determination of Billing Demand: (continued)

stand ready to supply. In case of installations which use this service in a manner such that measurement over a 30-minute interval does not result in a fair or equitable measure of the supply capacity required to serve the customer's load, then the measured demand may be adjusted taking into account the known character of use and the rating data of the equipment connected or from special tests, the intent being that the demand so determined shall fairly represent the customer's capacity requirement.

In cases where the Department elects to use connected load, instead of demand measurement, as the method for determining demand, it will take into account the known character of use and the rating data of the equipment connected, the intent being that the demand so determined shall fairly represent the customer's capacity requirement.

Primary Voltage Service:

Service at primary voltage, where available, will be supplied under this rate schedule upon request. When service is supplied at primary voltage the customer will own and maintain all substations, lines, transformer supporting structures, transformers and other equipment required for utilization of the delivery voltage. The Electric Department will own no equipment beyond the primary voltage metering point. A 5% discount on demand and energy charges will be allowed when service is delivered and metered at primary voltage.

Facilities Charge:

When the customer required the utility to furnish and install special facilities for the exclusive use of the customer, such customer will be required to pay a facilities charge in addition to the above demand and energy rate. The facilities charge will be based upon the cost of such excess facilities.

Terms and Conditions:

Power factor at the time of the monthly peak demand must be maintained above 90%. Service hereunder is subject to the rules and regulations for electric service as adopted by the Department of Electric & Water Utilities from time to time on file with the City Clerk.

RATE SCHEDULE IS
GENERAL SERVICE
INTERRUPTIBLE RATE

Rate IS
Page 1 of 3

Applicable:

To any customer otherwise eligible for service under Schedule GSLD where the total continuous connected load is 500 kW or more and where service may be interrupted by the Electric Department to a maximum of 1200 hours per year for periods of duration of no greater than twelve (12) consecutive hours unless interruption of service is otherwise initiated automatically as a result of system disturbances or during emergency conditions.

Character of Service:

A-C; 60 Hertz; three phase; at any standard utility voltage level offered by the Electric Department.

Limitation of Service:

Resale not permitted under this rate schedule. Service hereunder is at the sole option of the Electric Department, and may be interrupted in part or full if electric power and energy is required to provide service to the Department's firm power customers. Each point of delivery served hereunder shall have installed special equipment to insure immediate discontinuance of service in the event of a system disturbance.

Net Rate Per Month:

Customer Charge: \$376.30
Demand and Energy Charge: 5.635¢ per kWh

Minimum Bill:

Customer charge, facilities charge, if any, plus adjustments.

Adjustments:

Fuel adjustment, as contained in Schedule BA-1
Florida Gross Receipts and Regulatory Tax Adjustment, as contained in
Schedule BA-2
10% Utility Tax inside City limits
10% Surcharge outside City limits

Payment:

Net bills are due when rendered and are payable within thirty (30) days thereafter.

(Continued to Sheet No. 8.3.1)



RATE SCHEDULE IS
GENERAL SERVICE
INTERRUPTIBLE RATE

Rate IS
Page 2 of 3

(Continued from Sheet No. 8.3)

Primary Voltage Service:

Service at primary voltage, where available, will be supplied under this rate schedule upon request. When service is supplied at primary voltage the customer will own and maintain all substations, lines, transformer supporting structures, transformers and other equipment required for utilization of the delivery voltage. The Electric Department will own no equipment beyond the primary voltage metering point. A 5% discount on demand and energy charges will be allowed when service is delivered and metered at primary voltage.

Customers who were eligible to receive a 5% discount under the "Transformer Ownership Discount" provision which was in effect prior to April 1, 1983, will continue to receive the 5% discount, but the Electric Department will make no additions to, and/or increases in capacity of, its lines, service drops, etc., beyond the metering point.

Secondary Service Metered at Primary Voltage:

In cases where secondary service is being supplied, but the Electric Department has elected to meter the service at primary voltage, there will be a discount of 1.2% applied to both the demand and energy charges. This discount may be changed on an individual customer basis if justified by special circumstances, equipment or operation of the customer's facilities. After the effective date of April 1, 1983, no new secondary service will be constructed with metering at the primary voltage.

Facilities Charge:

When the customer requires the utility to furnish and install special facilities for the exclusive use of the customer, such customer will be required to pay a facilities charge in addition to the above demand and energy rate. The facilities charge will be based upon the cost of such excess facilities.

Terms and Conditions:

Power factor at the time of the monthly peak demand must be maintained above 90%. Service hereunder is subject to the rules and regulations for electric service as adopted by the Department of Electric and Water Utilities from time to time and on file with the City Clerk.

(Continued to Sheet No. 8.3.2)



RATE SCHEDULE IS
GENERAL SERVICE
INTERRUPTIBLE RATE

Rate IS
Page 3 of 3

(Continued from Sheet No. 8.3.1)

Special Provisions:

1. When the customer increases his electrical load, which increase requires the Department to increase facilities installed for the specific use of the customer, a new Term of Service may be required under this rate at the option of the Department.
2. The Department may, under the provisions of this rate, at its option, require a special contract with the customer.
3. The Department will furnish service under this rate at a single voltage through one point of delivery and measured through one meter. Equipment to supply additional voltages or additional facilities for the use of the customer shall be furnished and maintained by the customer.
4. Customers taking service under this interruptible rate schedule who desire to transfer to a non-interruptible rate schedule will be required to give the Department written notice at least sixty (60) months prior to such transfer. Such notice shall be irrevocable unless the Department and the customer shall mutually agree to void the revocation.
5. Customers requesting service under this interruptible rate schedule must have a minimum of 500 KW of continuous demand that is available for interruption during the utility's peak or emergency conditions.

RATE SCHEDULE SS-1
FIRM SUPPLEMENTAL AND STANDBY

SS-1
Page 1 of 5

Available:

In all territory served by the Electric Department where system facilities are adequate and appropriate to provide service.

Applicable:

To any general service customer with electric generation facilities used to provide electricity for internal power requirements and requiring firm standby and supplemental electric service. This rate is not applicable for customers:

1. Whose electric generation is for emergency or testing purposes only.
2. Whose onsite generating capability is less than 20% of the total onsite load.
3. Onsite generating capability is less than 100 kW.

Service under this schedule is also available to any specific generation customer who does not satisfy the provisions above and to whom providing service, in the Electric Department's opinion would be beneficial to the Department's other customers.

Character of Service:

A-C; 60 Hertz; three phase, at any standard utility voltage level offered by the Electric Department.

Limitation of Service:

Customers provided service under this tariff must sign a tariff agreement for the purchase of firm standby and supplemental service.

Should supplemental and standby service be provided one under the firm rate, and the other under the interruptible rate, separate meters will be required for each.

Energy provided under this tariff is not available for resale.

(Continued to Sheet No. 11.2.1)

RATE SCHEDULE SS-1
FIRM SUPPLEMENTAL AND STANDBY

SS-1
Page 2 of 5

(Continued from Sheet No. 11.2)

Temporary Discontinuance of Service:

Where the use of energy is seasonal or intermittent, no adjustments will be made for a temporary discontinuance of service. Any customer prior to resuming service within 12 months after such service was discontinued will be required to pay all charges which would have been billed if service had not been discontinued.

Net Rate Per Month:

Supplemental Service

Will be served at the otherwise applicable rate.

Maintenance and Back-Up Charges

Customer Charge:	\$410.18
Reservation Charge: Monthly	\$1.73 per kW of Contract Standby Billing Demand
Daily Demand Charge:	\$0.57 per kW day of actual demand
Energy Charge:	4.688¢ per kWh 5.046¢ per kWh (On-Peak Time of Day) 4.514¢ per kWh (Off-Peak Time of Day)

Minimum Bill:

Customer charge, reservation charge plus adjustments.

The billing demand charge for all kW up to the maximum contracted standby requirements for each month will be billed at the maximum of:

\$1.73 per kW-month times the contracted standby demand requirements (reservation charge) or 0.57¢ per kW-day of actual standby demand delivered.

All kW between the actual standby demand and the contract demand will be billed at 1.73¢ per kW-month.

(Continued to Sheet No. 11.2.2)

RATE SCHEDULE SS-1
FIRM SUPPLEMENTAL AND STANDBY

SS-1
Page 3 of 5

(Continued from Sheet No. 11.2.1)

Determination of Billing Demand:

Contract Standby Demand - Established in the tariff agreement for electric service provided under Rate Schedule SS-1, the demand contracted shall not exceed the net dependable capability of the customer's generating equipment. This demand will remain constant unless agreed to by mutual consent and appropriate changes are made to the tariff agreement and the agreement executed by both parties.

Standby Billing Demand - Is the summation of the maximum integrated thirty (30) minute standby demand delivered by Lakeland each day of the billing period. Standby demand for each thirty (30) minute period is the integrated thirty (30) minute demand delivered by Lakeland, but not exceeding the difference between the contract standby demand and the thirty (30) minute integrated kW output of the customer's generating unit(s), but never less than zero.

Supplemental Demand - Determined for each 30-minute interval as the net 30-minute integrated demand delivered by the Electric Department minus the standby demand for the 30-minute period.

Supplemental Billing Demand - Supplemental billing demand for the month shall be the maximum 30-minute integrated "Supplemental Demand" for the month but not less than 60% of the highest supplemental billing demand established during the most recent months of November, December, January, February or March. It is intended that this demand shall fairly represent the capacity which the Department is required to stand ready to supply in excess of the customer's generating capacity.

Installations which use this service in a manner such that measurement of a 30-minute interval does not result in fair or equitable measure of the supply capacity required to serve the customer's load, then the measured demand may be adjusted taking into account the known character of use and the rating data of the equipment connected or from special tests. It is the intent of this provision that the demand billed shall fairly represent the customer's capacity requirement. In cases where the Department elects to use connected load instead of demand measurement as the method for determining demand, it will take into account the known character of use and the rating data of the equipment connected.

(Continued to Sheet No. 11.2.3)

RATE SCHEDULE SS-1
FIRM SUPPLEMENTAL AND STANDBY

SS-1
Page 4 of 5

(Continued from Sheet No. 11.2.2)

Definitions of the Time-of-Day Periods:

All time periods stated in prevailing time.

	<u>Summer</u>	<u>Winter</u>
On-Peak Hours (Monday - Friday)	<u>Apr. 1 - Oct. 31</u> 1:01 PM-10:00 PM	<u>Nov. 1 - March 31</u> 6:01 AM-12:00 Noon and 5:01 PM-10:00 PM

Off-Peak Hours All other weekday hours, and all hours on Saturdays, Sundays, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day shall be off-peak.

Primary Voltage Service:

Service at primary voltage, where available, will be supplied under this rate schedule upon request. When service is supplied at primary voltage, the customer will own and maintain all substations, lines, transformer supporting structures, transformers and other equipment required for utilization of the delivery voltage. The Electric Department will own no equipment beyond the primary voltage metering point. A 5% discount on demand and energy charges will be allowed when service is delivered and metered at primary voltage.

Facilities Charge:

When the customer requests and the utility agrees to furnish and install special facilities for the exclusive use of the customer, such customer will be required to pay monthly a facilities charge in addition to the above demand and energy rate. The facilities charge will be based upon the cost of such excess facilities.

Terms and Conditions:

Power factor at the time of the monthly peak demand must be maintained above 90%. Service hereunder is subject to the rules and regulations for electric service as adopted by the Department of Electric & Water Utilities from time to time and on file with the City Clerk.

(Continued to Sheet No. 11.2.4)

RATE SCHEDULE SS-1
FIRM SUPPLEMENTAL AND STANDBY

SS-1
Page 5 of 5

(Continued from Sheet No. 11.2.3)

Terms and Conditions: (continued)

Service hereunder will be supplied at one location through one point of delivery and measured through one meter unless otherwise deemed necessary by the Electric Department.

Customers electing to receive service under this rate tariff are required to provide a 60-month notice, in writing, prior to transferring from this firm supplemental and standby service to any of the Department's firm full requirements service.

Adjustments:

Fuel adjustment, as contained in Schedule BA-1
Florida Gross Receipts and Regulatory Tax Adjustment, as contained in
Schedule BA-2
10% Utility Tax inside City limits
10% Surcharge outside City limits applied consistent with the 10%
Utility

Payment:

Net bills are due when rendered and are payable within 30 days thereafter.

RATE SCHEDULE SS-2
INTERRUPTIBLE SUPPLEMENTAL AND STANDBY

SS-2
Page 1 of 5

Available:

In all territory served by the Electric Department where system facilities are adequate and appropriate to provide service.

Applicable:

To any general service customer with electric generation facilities used to provide electricity for internal power requirements and requiring non-firm standby and supplemental electric service. This rate is not applicable for customers:

1. Whose electric generation is for emergency or testing purposes only.
2. Whose onsite generating capability capacity is less than 20% of total load.
3. Whose onsite generating capability is less than 100 kW.

Service under this schedule is also available to any self generating customer who does not satisfy the provisions above and to whom providing service, in the Electric Department's opinion would be beneficial to the Department's other customers.

Character of Service:

A-C; 60 Hertz; three phase, at any standard utility voltage level offered by the Electric Department.

Limitation of Service:

Customers provided service under this tariff must sign a tariff agreement for the purchase of non-firm standby and supplemental service.

Energy provided under this tariff is not available for resale.

Service hereunder may be interrupted in part or fully without prior notice if electric power and energy are required to provide service to the Department's customers served under firm rate tariffs. Each point of delivery hereunder shall have installed special equipment to insure immediate discontinuance of service in the event of a system disturbance.

— (Continued to Sheet No. 11.3.1)

RATE SCHEDULE SS-2
INTERRUPTIBLE SUPPLEMENT AND STANDBY

SS-2
Page 2 of 5

(Continued from Sheet No. 11.3)

Temporary Discontinuance of Service:

Where the use of energy is seasonal or intermittent, no adjustments will be made for a temporary discontinuance of service. Any customer prior to resuming service within 12 months after such service was discontinued will be required to pay all charges which would have been billed if service had not been disconnected.

Net Rate Per Month:

Supplemental Service

Will be supplied at the otherwise applicable rate.

Maintenance and Back-Up Charges

Customer Charge:	\$410.18
Reservation Charge: Monthly	\$0.47 per kW of Contract Standby Billing Demand
Daily Demand Charge:	\$0.16 per kW day of actual demand
Energy Charge:	4.688¢ per kWh
	5.046¢ per kWh (On-Peak Time of Day)
	4.514¢ per kWh (Off-Peak Time of Day)

Minimum Bill:

Customer Charge, reservation charge plus adjustments.

The billing demand charge for all kW up to the maximum contracted standby requirements for each month will be billed at the maximum of:

\$0.47 per kW-month times the contracted standby demand requirements (reservation charge) of 0.16¢ per kW-day.

All kW between the maximum standby demand and the contract demand will be billed at \$0.47 per kW-month.

(Continued to Sheet No. 11.3.2)

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RATE SCHEDULE SS-2
INTERRUPTIBLE SUPPLEMENTAL AND STANDBY

SS-3
Page 3 of 5

(Continued from Sheet No. 11.3.1)

Determination of Billing Demand:

Contract Standby Demand - Established in the tariff agreement for electric service provided under Rate Schedule SS-2, the demand contracted shall not exceed the net dependable capability of the customer's generating equipment. This demand will remain constant unless agreed to by mutual consent and appropriate changes made to the tariff agreement and the agreements executed by both parties.

Standby Billing Demand - Is the summation of the maximum integrated thirty (30) minute standby demand delivered by Lakeland each day of the billing period. Standby demand for each thirty (30) minute period is the integrated thirty (30) minute demand delivered by Lakeland, but not exceeding the difference between the contract standby demand and the thirty (30) minute integrated kW output of the customer's generating unit(s), but never less than zero.

Supplemental Demand - Determined for each 30-minute interval as the net 30-minute integrated demand delivered by the Department minus the standby demand for the 30-minute period.

Supplemental Billing Demand - Supplemental billing demand for the month shall be the maximum 30-minute integrated "Supplemental Demand" for the month but not less than 60% of the highest supplemental billing demand established during the most recent months of November, December, January, February or March is intended that this demand shall fairly represent the capacity which the Department, is required to stand ready to supply in excess of the customer's generating capacity.

In case of installations which use this service in a manner such that measurement of a 30-minute interval does not result in fair or equitable measure of the supply capacity required to serve the customer's load, then the measured demand may be adjusted taking into account the known character of use and the rating data of the equipment connected or from special tests. It is the intent of this provision that the demand billed shall fairly represent the customer's capacity requirement. In cases where the Department of Electric elects to use connected load instead of demand measurement as the method for determining demand, it will take into account the known character of use and the rating data of the equipment connected.

(Continued to Sheet No. 11.3.3)

RATE SCHEDULE SS-2
INTERRUPTIBLE SUPPLEMENTAL AND STANDBY

SS-2
Page 4 of 5

(Continued from Sheet No. 11.3.2)

Definitions of the Time-of-Day Periods:

All time period stated in prevailing time.

On-Peak Hours	<u>Apr. 1 - Oct. 31</u>	<u>Nov. 1 - March 31</u>
	1:01 PM-10:00 PM	6:01 AM-12:00 Noon and 5:01 PM-10:00 PM

Off-Peak Hours All other weekday hours, and all hours on Saturdays, Sundays, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day shall be off-peak.

Primary Voltage Service:

Service at primary voltage, where available, will be supplied under this rate schedule upon request. When service is supplied at primary voltage the customer will own and maintain all substations, lines, transformer supporting structures, transformers and other equipment required for utilization of the delivery voltage. The Electric Department will own no equipment beyond the primary voltage metering point. A 5% discount on demand and energy charges will be allowed when service is delivered and metered at primary voltage.

Facilities Charge:

When the customer requests and the utility agrees to furnish and install special facilities for the exclusive use of the customer, such customers will be required to pay a monthly facilities charge in addition to the above demand and energy rates. The facilities charge will be based upon the cost of such excess facilities.

Terms and Conditions:

Power factor at the time of the monthly peak demand must be maintained above 90%. Service hereunder is subject to the rules and regulations for electric service as adopted by the Department of Electric & Water Utilities from time to time and on file with the City Clerk.

Service hereunder will be supplied at one location through one point of delivery and measured through one meter unless otherwise deemed necessary by the Electric Department.

→ (Continued to Sheet No. 11.3.4)



SCHEDULE SS-2
INTERRUPTIBLE SUPPLEMENTAL AND STANDBY

SS-2
Page 5 of 5

(Continued from Sheet No. 11.3.3)

Terms and Conditions: (continued)

Customers electing to receive service under this rate are required to provide a 60-month notice, in writing, prior to transferring from this non-firm supplemental and standby service to any of the Department's firm full requirements service.

Adjustments:

Fuel Adjustments, as contain in Schedule BA-1
Florida Gross Receipts and Regulatory Tax Adjustments, as contained in
Schedule BA-2
10% Utility Tax inside City limits
10% Surcharge outside City limits

Payment:

Net bills are due when rendered and are payable within 30 days thereafter.

LAKELAND ELECTRIC & WATER UTILITIES
DEVELOPMENT OF REVENUE REQUIREMENT
FOR
TRANSMISSION SERVICE

1. Transmission O&M Expenses Established as 100% of Transmission O&M (Accounts 560 through 571)
2. Plus - A Portion of Administrative and General Maintenance Expenses (Accounts 921, 923, 924, 930, 931 and 935) based on Transmission Plant In-Service as a portion of Total Plant In-Service (Accounts 310 through 398) Less General Plant In-Service (Accounts 390 through 398) and a Portion of Administrative and General Expenses (Accounts 920, 922, 925, 926 and 928) based on Total Transmission O&M Expenses (Accounts 560 through 571) as a portion of Total System O&M Expenses (Accounts 500 through 935) Excluding Fuel (Accounts 500 and 514), Purchased Power (Account 555) and Administrative and General Expenses (Accounts 920 through 935).
3. Plus - Net Revenue Requirements for Transmission Construction Work in Progress (CWIP)
4. Plus - A Portion of Net Revenue Requirements Allocated to Transmission for Working Capital, Based on Transmission O&M Expenses (Accounts 560 - 571) as a Percentage of Total O&M Expenses (Accounts 500 - 935) Excluding Fuel (Accounts 500 and 514) Purchased Power (Account 555), and A&G Expenses (Accounts 920 through 935)
5. Plus - A Portion of Net Revenue Requirements¹ Allocated to Transmission Based on Depreciated Transmission Plant In-Service (Accounts 350 through 356) and a Portion of Depreciated General Plant (Accounts 390 through 398) Allocated to Transmission Based on Transmission as a Percentage of Plant In-Service (Accounts 310 through 398) Excluding General Plant (Accounts 390 through 398)

Net Revenue Requirements for Debt Service
Depreciation
Renewal and Replacement
City Dividends
Supplemental City Payments
Balance Available for Future Capital Additions
(In a Ratio of Each Items Percentage of
the Total Net Revenue Requirements)

¹ Net Revenue Required Equals: Net Revenue Available for Debt Service

EXHIBIT C

[Draft 1/10/95]

CONSENT AND AGREEMENT

This Consent and Agreement (the "Consent"), dated as of _____, 1995, by and among The Bank of Tokyo, Ltd., New York Agency, as Collateral Agent (together with its successors and assigns, the "Collateral Agent"), _____, as Trustee (together with its successors and assigns, the "Trustee"), Panda-Kathleen, L.P., a Delaware limited partnership (together with its successors and assigns, the "Borrower") and Florida Power Corporation, a private utility corporation organized under the laws of the State of Florida (together with its successors and assigns, the "Contracting Party").

W I T N E S S E T H :

WHEREAS, the Contracting Party and the Borrower have entered into a Standard Offer Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility Less Than 75 MW or a Solid Waste Facility, effective September 20, 1991 (as amended by _____ and as the same may be further amended, modified or supplemented from time to time, the "Agreement");

WHEREAS, in order to finance the development, acquisition, construction, equipping and start-up of the Facility (as defined in the Agreement) and certain related expenditures, the Borrower has entered into various agreements, including the Credit Agreement and the Indenture referred to in the Security Agreement (as defined below);

WHEREAS, as of the date of the execution of this Consent, the Borrower, the Collateral Agent and the Trustee are entering into a Security Agreement dated as of _____, 1995 (as amended, modified or supplemented from time to time, the "Security Agreement"), pursuant to which the Borrower is pledging, assigning and transferring to the Collateral Agent and the Trustee for the benefit of certain secured parties, and granting to the Collateral Agent and the Trustee a lien on, among other things, all of the

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Borrower's right, title and interest in and to the Agreement; and

WHEREAS, the Contracting Party is agreeable to consenting to such assignment of and lien on the Borrower's right, title and interest in the Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

Section 1. Receipt of Security Agreement. The Contracting Party acknowledges receipt of a copy of the Security Agreement.

Section 2. Collateral Assignment and Duties of the Borrower. (a) The Contracting Party acknowledges and consents to the collateral pledge and assignment by the Borrower to, and the creation by the Borrower of a Lien in favor of, the Collateral Agent and the Trustee pursuant to the Security Agreement, of all of the right, title and interest of the Borrower in, to and under (but, except as otherwise expressly provided below, not its obligations, liabilities or duties with respect to) the Agreement, as security for the payment and performance of all or any part of the [Secured Obligations].

(b) The Borrower hereby agrees that it shall remain liable to the Contracting Party for each and every duty, liability and obligation of the Borrower under the Agreement.

Section 3. Representations and Warranties. The Contracting Party represents and warrants as follows:

(a) Corporate Power and Authority. Each of this Consent and the Agreement has been duly authorized, executed and delivered by the Contracting Party, is in full force and effect and is a legal, valid and binding obligation of the Contracting Party enforceable against the Contracting Party in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally. There are no amendments, modifications or supplements (whether by waiver,

consent or otherwise) to the Agreement, either oral or written, other than _____.

(b) Corporate Status. The Contracting Party is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida and is qualified to do business in the State of Florida, the only jurisdiction in which the performance of its obligations under the Agreement makes such qualification necessary. The Contracting Party has the corporate power and authority to carry on its business as currently being conducted and to execute and deliver, and to perform its obligations under, this Consent and the Agreement.

(c) No Default. To the best knowledge of the Contracting Party, the Borrower is not in default under any material covenant or obligation under the Agreement, and no such default has occurred prior to the date hereof. The Contracting Party has duly performed and complied with all covenants, agreements and conditions contained in the Agreement, and, to the best knowledge of the Contracting Party, none of the Borrower's rights under the Agreement has been waived.

(d) Approvals. There are no consents, permits, licenses, approvals, tariffs, filings and similar authorizations and/or exemptions by or from any Governmental Authority required to be obtained by the Contracting Party after the date hereof in order for the Contracting Party to execute, deliver and perform its obligations under this Consent and the Agreement.

(e) No Violation. The execution, delivery and performance of this Consent and the Agreement by the Contracting Party will not result in any violation of any applicable law, rule, statute or regulation to which the Contracting Party is subject, which violation individually or in the aggregate could have a material adverse effect on the ability of the Contracting Party to perform its obligations under this Consent or the Agreement.

Section 4. Lender Cure Rights. (a) The Contracting Party agrees that it will not terminate or suspend the performance of its obligations under the Agreement without first giving the Collateral Agent notice as provided in paragraph 5(b) below. Notice of any such termi-

nation shall be given by the Contracting Party at least ten Business Days prior to the proposed date of termination.

(b) Following receipt of a notice of termination pursuant to Section 4(a), the Collateral Agent shall have the right to an additional period of time not to exceed 120 days from receipt of such notice of termination to cure the Borrower's default under the Agreement on the terms set forth in this Section 4(b), provided, however, that if the Collateral Agent shall require possession of the Facility to effect such cure (other than in respect of the payment of money), and the Collateral Agent shall be prevented by operation of law from obtaining such possession, such 120-day cure period shall commence from the date upon which the Collateral Agent successfully obtains possession of the Facility. Additional cure time may be obtained by the Collateral Agent in bi-weekly increments upon at least two Business Days' advance written notice to the Contracting Party prior to the date of termination identified in the termination notice (or prior to the end of the then current additional bi-weekly cure period, as the case may be). If the Collateral Agent elects to acquire such additional bi-weekly cure period, the Collateral Agent shall be obligated to pay the Contracting Party's Cost of Cover (to the extent that alternate supplies of power are available during such period) or the Contracting Party's Lost Profits from the Contracting Party's inability to resell the power required to be supplied under the Agreement (to the extent that replacement power is unavailable for any reason). "Cost of Cover" shall mean the difference between (A) the Contracting Party's real time replacement cost for equivalent amounts of power (the sum of all capacity, energy, transmission, scheduling, accounting and billing charges) incurred by the Contracting Party by either generating or purchasing power to replace the power that would have been supplied under the Agreement and (B) the amount that would have been required to be paid by the Contracting Party for the equivalent amount of energy and capacity payments under the Agreement. "Lost Profits" shall mean the lost non-fuel revenues associated with the Contracting Party's unserved firm load that would have been served had the Facility (as defined in the Agreement) been operating in accordance with the terms and provisions of the Agreement. In either event, Cost of Cover or Lost Profits shall be based on then prevailing prices and shall include the reasonable administrative and general expenses incurred in providing such additional cure periods (provided that such expenses shall be documented in reasonable detail). The Collateral Agent shall pay the

Contracting Party bi-weekly in advance the Contracting Party's reasonable good faith estimate of the amount that will be owing by the Collateral Agent in respect of such period of cure time pursuant to the foregoing provisions; at the end of each such cure period, the Contracting Party shall notify the Collateral Agent if additional amounts are due (giving the Contracting Party's calculation of such amounts in reasonable detail) and the Collateral Agent shall promptly pay such amounts or the Contracting Party shall rebate or credit against additional cure periods (if elected by the Collateral Agent) any excess amount previously paid.

Section 5. Notice. (a) The Contracting Party will deliver to the Collateral Agent in a timely fashion copies of all material notices it delivers to the Borrower under the Agreement (including all notices of the occurrence of any default under the Agreement (and, in the case of monetary defaults, the amount of such default) but excluding day-to-day operational notices that are delivered to the Borrower in the ordinary course). The costs associated with the delivery of all such notices shall be paid by the Borrower.

(b) Notices to the Collateral Agent hereunder may be given by hand delivery, by means of an independent commercial overnight courier, by tested or otherwise authenticated telex, telecopy or facsimile or by registered or certified mail, postage prepaid, return receipt requested. Notice to any party hereto shall be deemed to be delivered on the earlier of (a) the date of personal delivery or (b) if deposited in a United States Postal Service depository, postage prepaid, registered or certified mail, return receipt requested, or deposited with an independent commercial overnight courier in each case addressed to such party at the address indicated below (or at such other address as such party may have theretofore specified by written notice delivered in accordance herewith), upon delivery or refusal to accept delivery, in each case as evidenced by the return receipt. Notices hereunder shall be delivered to the following entities at the following addresses:

The Collateral Agent:

[The Bank of Tokyo, Ltd.]
[Address]
Attention: [_____]

The Trustee:

[Name of Trustee]
[Address]
Attention: [_____]

The Company:

Panda-Kathleen, L.P.
[Address]
Attention: [_____]

The Contracting Party:

[Address]
Attention: [_____]

Section 6. Bankruptcy. Subject to the receipt of any required regulatory or judicial approvals, in the event that (i) the Agreement is rejected by a debtor in possession or a trustee in bankruptcy in any bankruptcy or insolvency proceeding involving the Borrower, and (ii) the Collateral Agent is in possession and control of the Facility (as defined in the Agreement), then the Contracting Party shall, if requested by the Collateral Agent within thirty (30) days after the conditions set forth in the foregoing clauses (i) and (ii) are satisfied (provided, that the Collateral Agent shall have undertaken and certified in writing to the Contracting Party that (subject to the second sentence of Section 7(a) below) it will cure all defaults then existing under the Agreement (including the payment of damages for defaults that cannot be cured) and perform all of the obligations of the Borrower as specified in the Agreement), execute and deliver to the Collateral Agent or its designee a new standard offer Agreement (the "New Agreement") to be in effect (x) for the remainder of the term of the original Agreement and (y) with substantially the same terms as those contained in the original Agreement. References in this Consent to the "Agreement" shall be deemed also to refer to the New Agreement.

Section 7. No Obligations. (a) Except as expressly provided below, neither the Collateral Agent, the Trustee, any Co-Agent (as defined in the Credit Agreement) nor any [Secured Party] shall have any obligation to the Contracting Party for the performance of any obligations under the Agreement; provided, however, that if any of such

parties shall elect to assume the obligations of the Borrower under the Agreement, such parties must first provide written notice thereof to the Contracting Party, and such parties must comply in all respects with paragraph (b) below. If the Collateral Agent or its designee shall assume the Agreement, liability in respect of any and all obligations thereunder shall be limited solely to such party's interest in the Project following the assumption of liability under the Agreement (and no officer, director, employee, shareholder or agent thereof shall have any liability with respect thereto). The Contracting Party agrees that it will accept performance by the Collateral Agent or its successors or assigns or designees of the obligations of the Borrower under and in accordance with the Agreement. After the Collateral Agent shall give the Contracting Party notice that an Event of Default exists, the Contracting Party agrees that the Collateral Agent shall have the right to enforce directly against the Contracting Party all obligations of the Contracting Party under the Agreement and otherwise to exercise all rights and remedies of the Borrower thereunder.

(b) If, after the exercise of its remedies under the Security Agreement, the Collateral Agent intends to take ongoing advantage of the Agreement and to operate the Facility (as defined in the Agreement), then the Collateral Agent shall provide the Contracting Party with written notice thereof prior to undertaking such operation. In such event, the Collateral Agent agrees that in the event that it operates the Facility (as defined in the Agreement) directly, or indirectly through an agent or through a subsidiary, affiliate, or other entity in which it holds an ownership interest (provided, that the foregoing shall not include operation by a court appointed receiver or similar person during the pendency of foreclosure or similar proceedings), the Collateral Agent (or such subsidiary, affiliate or other entity, as aforesaid) shall (subject to the second sentence of Section 7(a) above) assume each and every duty and obligation of the Borrower arising out of or in connection with the Agreement, including but not limited to each and every such duty and obligation arising prior to the date of such assumption, and shall also at such time exercise and enjoy whatever right, title and interest in and to the Agreement as was assigned to it.

(c) The parties acknowledge and agree that operation of the Facility (as defined in the Agreement) must at all times be in the hands of a competent operator. In the event of a foreclosure or similar proceeding,

including the appointment of a receiver, the Collateral Agent agrees to seek the appointment by the court of such a competent operator.

Section 8. Payments to Lenders. (a) The Contracting Party has been informed that all revenues derived from the Project are to be deposited with the Depository (as defined in the Credit Agreement) for disbursement by the Depository in accordance with the provisions of the Disbursement Agreement (as defined in the Credit Agreement), and the Contracting Party hereby agrees to make all payments required to be made by it to the Borrower pursuant to the Agreement by wire transfer to the Depository at account # _____ at _____, ABA # _____, Attention: _____, or at such other account as the Collateral Agent shall reasonably from time to time notify the Contracting Party. All parties hereto agree that the deposit with the Depository of amounts due to the Borrower from the Contracting Party under the Agreement shall satisfy the Contracting Party's payment obligations under the Agreement.

(b) To the extent provided by law or under the terms of the Agreement, each of the parties hereto agrees that the Contracting Party shall have the right to set off or deduct from payments due to the Borrower each and every amount due the Contracting Party arising out of or in connection with the Agreement.

Section 9. Restriction on Further Assignment. Each of the Collateral Agent and the Trustee hereby agrees that it will not assign its rights, title or interest in and to the Agreement without the prior written consent of the Contracting Party, which consent shall not be unreasonably withheld; provided, that the Collateral Agent and the Trustee shall be entitled to assign the Agreement to a successor collateral agent or trustee, as the case may be, under the Loan Documents (as defined in the Credit Agreement) or the Indenture or to co-collateral agents or co-trustees appointed to satisfy the requirements of law; provided, however, that in each such case, such a successor Collateral Agent or Trustee shall be a bank or trust company organized under the laws of the United States or any political subdivision thereof having a combined capital and surplus of at least \$100,000,000.00 and willing, and legally qualified, to perform the duties of the Collateral Agent or Trustee, as the case may be, upon reasonable and customary terms. In the event of any such transfer reasonably consented to by the Contracting Party, the

Contracting Party agrees to negotiate in good faith a consent to assignment of the Agreement by such transferee to its financing parties (which consent shall be substantially in the form of this Consent).

Section 10. Amendments to Agreement. (a) Until the date on which the Collateral Agent notifies the Contracting Party in writing that the security interests created by the Security Agreement have been terminated and released, the Contracting Party will not, without the prior written consent of the Collateral Agent, agree to any amendment, modification or termination of the Agreement; provided, that the Collateral Agent's consent for the Contracting Party to enter into any such amendment, modification or termination shall be deemed given if the Collateral Agent has not given notice to the Contracting Party of objection to such action within ten Business Days after receipt of notice from the Contracting Party of such proposed action (provided that such notice from the Contracting Party states that the Collateral Agent's consent will be deemed given if such notice of objection has not been given within such period).

(b) This Consent and Agreement is neither a modification of nor an amendment to the Agreement.

Section 11. Non-Party. The Contracting Party is not a party to, has no obligation under, and has no knowledge of the existence or content of any of the documents referenced herein other than those which it has signed.

Section 12. Counterparts. This Consent may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement.

Section 13. Complete Agreement. This Consent contains the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and undertakings among the parties hereto relating to the subject matter hereof.

Section 14. No Waiver. No term, covenant or condition hereof shall be deemed waived, and no breach excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have so waived or excused, and any such waiver shall be effective only with respect to the specific term, covenant or condition so

waived, and shall not constitute a continuing waiver of the same.

Section 15. Trustee. [Upon notice to the Contracting Party from the Collateral Agent, this Consent shall be deemed modified by replacing the term "Collateral Agent" appearing in paragraphs 4, 5, 6, 7 and 10 hereof with the term "Trustee".]

Section 16. Governing Law. The Consent shall be governed by and be construed in accordance with the laws of the State of Florida.

Dated: _____, 1995

FLORIDA POWER CORPORATION

By _____
Name:
Title:

Acknowledged and Agreed this
_____ day of _____, 1995

PANDA-KATHLEEN, L.P..

By: Panda-Kathleen Corporation,
its General Partner

By _____
Name:
Title:

THE BANK OF TOKYO, LTD., NEW YORK
AGENCY, as Collateral Agent

By _____
Name:
Title:

[NAME OF TRUSTEE],
as Trustee

By _____
Name:
Title:

nation shall be given by the Contracting Party at least ten Business Days prior to the proposed date of termination.

(b) Following receipt of a notice of termination pursuant to Section 4(a), the Collateral Agent shall have the right to an additional period of time not to exceed 120 days from receipt of such notice of termination to cure the Borrower's default under the Agreement on the terms set forth in this Section 4(b), provided, however, that if the Collateral Agent shall require possession of the Facility to effect such cure (other than in respect of the payment of money), and the Collateral Agent shall be prevented by operation of law from obtaining such possession, such 120-day cure period shall commence from the date upon which the Collateral Agent successfully obtains possession of the Facility. Additional cure time may be obtained by the Collateral Agent in bi-weekly increments upon at least two Business Days' advance written notice to the Contracting Party prior to the date of termination identified in the termination notice (or prior to the end of the then current additional bi-weekly cure period, as the case may be). If the Collateral Agent elects to acquire such additional bi-weekly cure period, the Collateral Agent shall be obligated to pay the Contracting Party's Cost of Cover (to the extent that alternate supplies of power are available during such period) or the Contracting Party's Lost Profits from the Contracting Party's inability to resell the power required to be supplied under the Agreement (to the extent that replacement power is unavailable for any reason). "Cost of Cover" shall mean the difference between (A) the Contracting Party's real time replacement cost for equivalent amounts of power (the sum of all capacity, energy, transmission, scheduling, accounting and billing charges) incurred by the Contracting Party by either generating or purchasing power to replace the power that would have been supplied under the Agreement and (B) the amount that would have been required to be paid by the Contracting Party for the equivalent amount of energy and capacity payments under the Agreement. "Lost Profits" shall mean the lost non-fuel revenues associated with the Contracting Party's unserved firm load that would have been served had the Facility (as defined in the Agreement) been operating in accordance with the terms and provisions of the Agreement. In either event, Cost of Cover or Lost Profits shall be based on then prevailing prices and shall include the reasonable administrative and general expenses incurred in providing such additional cure periods (provided that such expenses shall be documented in reasonable detail). The Collateral Agent shall pay the

The Trustee:

[Name of Trustee]
[Address]
Attention: [_____]

The Company:

Panda-Kathleen, L.P.
[Address]
Attention: [_____]

The Contracting Party:

[Address]
Attention: [_____]

Section 6. Bankruptcy. Subject to the receipt of any required regulatory or judicial approvals, in the event that (i) the Agreement is rejected by a debtor in possession or a trustee in bankruptcy in any bankruptcy or insolvency proceeding involving the Borrower, and (ii) the Collateral Agent is in possession and control of the Facility (as defined in the Agreement), then the Contracting Party shall, if requested by the Collateral Agent within thirty (30) days after the conditions set forth in the foregoing clauses (i) and (ii) are satisfied (provided, that the Collateral Agent shall have undertaken and certified in writing to the Contracting Party that (subject to the second sentence of Section 7(a) below) it will cure all defaults then existing under the Agreement (including the payment of damages for defaults that cannot be cured) and perform all of the obligations of the Borrower as specified in the Agreement), execute and deliver to the Collateral Agent or its designee a new standard offer Agreement (the "New Agreement") to be in effect (x) for the remainder of the term of the original Agreement and (y) with substantially the same terms as those contained in the original Agreement. References in this Consent to the "Agreement" shall be deemed also to refer to the New Agreement.

Section 7. No Obligations. (a) Except as expressly provided below, neither the Collateral Agent, the Trustee, any Co-Agent (as defined in the Credit Agreement) nor any [Secured Party] shall have any obligation to the Contracting Party for the performance of any obligations under the Agreement; provided, however, that if any of such

Contracting Party agrees to negotiate in good faith a consent to assignment of the Agreement by such transferee to its financing parties (which consent shall be substantially in the form of this Consent).

Section 10. Amendments to Agreement. (a) Until the date on which the Collateral Agent notifies the Contracting Party in writing that the security interests created by the Security Agreement have been terminated and released, the Contracting Party will not, without the prior written consent of the Collateral Agent, agree to any amendment, modification or termination of the Agreement; provided, that the Collateral Agent's consent for the Contracting Party to enter into any such amendment, modification or termination shall be deemed given if the Collateral Agent has not given notice to the Contracting Party of objection to such action within ten Business Days after receipt of notice from the Contracting Party of such proposed action (provided that such notice from the Contracting Party states that the Collateral Agent's consent will be deemed given if such notice of objection has not been given within such period).

(b) This Consent and Agreement is neither a modification of nor an amendment to the Agreement.

Section 11. Non-Party. The Contracting Party is not a party to, has no obligation under, and has no knowledge of the existence or content of any of the documents referenced herein other than those which it has signed.

Section 12. Counterparts. This Consent may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement.

Section 13. Complete Agreement. This Consent contains the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and undertakings among the parties hereto relating to the subject matter hereof.

Section 14. No Waiver. No term, covenant or condition hereof shall be deemed waived, and no breach excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have so waived or excused, and any such waiver shall be effective only with respect to the specific term, covenant or condition so

EXHIBIT 2



APPENDIX C
 STANDARD OFFER RATE FOR PURCHASE OF FIRM CAPACITY AND ENERGY
 FROM A QUALIFYING FACILITY
 LESS THAN 75 MW OR A SOLID WASTE FACILITY

SCHEDULE 6
 GENERAL INFORMATION FOR 1997 COMBUSTION TURBINE UNIT

Page 1 of 1

GENERAL

YEAR OF AVOIDED UNIT = 1997
 AVOIDED UNIT REFERENCE PLANT = BARTON CT UNITS

INVESTMENT DATA

TOTAL COST, DIRECT + AFLDC, IN 1/90 \$'s = \$356.35/KW
 ANNUAL ESCALATION RATE OF PLANT COSTS = 5.10%
 ECONOMIC PLANT LIFE = 20 YEARS

OPERATING DATA

AVOIDED UNIT FIXED O&M COSTS IN 1/90 \$'s = \$5.89/KW/YR
 AVOIDED UNIT VARIABLE O&M COSTS IN 1/90 \$'s = \$1.74/MWH
 ANNUAL ESCALATION RATE OF O&M COSTS = 5.10%
 MINIMUM ON-PEAK CAPACITY FACTOR = 90.0%
 MINIMUM TOTAL CAPACITY FACTOR = 42.0%
 SYSTEM VARIABLE O&M COSTS IN 1/90 \$'s = \$0.592/MWH
 AVOIDED UNIT HEAT RATE = 12,480 BTU/KWH
 TYPE OF FUEL = DISTILLATE

ON-PEAK HOURS

- (1) FOR THE CALENDAR MONTHS OF NOVEMBER THROUGH MARCH,
 ALL DAYS: 6:00 A.M. TO 12:00 NOON, AND
 5:00 P.M. TO 10:00 P.M.
- (2) FOR THE CALENDAR MONTHS OF APRIL THROUGH OCTOBER,
 ALL DAYS: 11:00 A.M. TO 10:00 P.M.

FINANCIAL DATA

K FACTOR (MID YEAR) = 1.4801
 UTILITY DISCOUNT RATE = 9.96%

ISSUED BY:

EFFECTIVE DATE:

261

SECTION NO. 12

ORIGINAL ISSUE SHEET NO. 9.770



**APPENDIX C
STANDARD OFFER RATE FOR PURCHASE OF FIRM CAPACITY AND ENERGY
FROM A QUALIFYING FACILITY
LESS THAN 75 MW OR A SOLID WASTE FACILITY**

**SCHEDULE 7
Payments for Avoided 1997 Combustion Turbine Unit**

Page 1 of 5

(1)	(2)	(3)	(4)
CAPACITY PAYMENT - \$/KW/MONTH			
CONTRACT YEAR	NORMAL PAYMENT OPTION		TOTAL
	GEN	CAPITAL	
1997	0.72	4.62	5.34
1998	0.75	4.86	5.61
1999	0.79	5.11	5.90
2000	0.83	5.37	6.20
2001	0.87	5.64	6.51
2002	0.91	5.93	6.84
2003	0.96	6.23	7.19
2004	1.01	6.55	7.56
2005	1.07	6.88	7.95
2006	1.11	7.24	8.35
2007	1.18	7.60	8.78
2008	1.23	7.99	9.22
2009	1.29	8.40	9.69
2010	1.36	8.83	10.19
2011	1.43	9.28	10.71
2012	1.50	9.75	11.25
2013	1.58	10.25	11.83
2014	1.66	10.77	12.43
2015	1.75	11.32	13.07
2016	1.83	11.90	13.73
2017	1.93	12.50	14.43
2018	2.03	13.14	15.17
2019	2.13	13.81	15.94
2020	2.24	14.52	16.76
2021	2.35	15.26	17.61
2022	2.47	16.04	18.51
2023	2.60	16.85	19.45
2024	2.73	17.71	20.44
2025	2.87	18.62	21.49
2026	3.01	19.57	22.58

NOTE: Above payments calculated in accordance with formulae set forth in FPSC Rule 25-17.0632(4)(5). Payment shall be adjusted by multiplying factor for On-Peak Capacity Factor determined in Schedule 3.

ISSUED BY:

EFFECTIVE DATE:

262

EXHIBIT 3



APPENDIX C
STANDARD OFFER RATE FOR PURCHASE OF FIRM CAPACITY AND ENERGY
FROM A QUALIFYING FACILITY
LESS THAN 75 MW OR A SOLID WASTE FACILITY

SCHEDULE 6
GENERAL INFORMATION FOR 1997 COMBUSTION TURBINE UNIT

Page 1 of 1

GENERAL

YEAR OF AVOIDED UNIT = 1997
AVOIDED UNIT REFERENCE PLANT = BARTOW CT UNITS

INVESTMENT DATA

TOTAL COST, DIRECT + AFUDC, IN 1/90 \$'s = \$356.35/KW
ANNUAL ESCALATION RATE OF PLANT COSTS = 5.10%
ECONOMIC PLANT LIFE = 20 YEARS

OPERATING DATA

AVOIDED UNIT FIXED O&M COSTS IN 1/90 \$'s = \$5.89/KW/YR
AVOIDED UNIT VARIABLE O&M COSTS IN 1/90 \$'s = \$1.74/MMH
ANNUAL ESCALATION RATE OF O&M COSTS = 5.10%
MINIMUM ON-PEAK CAPACITY FACTOR = 90.0%
MINIMUM TOTAL CAPACITY FACTOR = 42.0%
SYSTEM VARIABLE O&M COSTS IN 1/90 \$'s = \$0.592/MMH
AVOIDED UNIT HEAT RATE = 12,480 BTU/KWH
TYPE OF FUEL = DISTILLATE

ON-PEAK HOURS

- (1) FOR THE CALENDAR MONTHS OF NOVEMBER THROUGH MARCH,
ALL DAYS: 6:00 A.M. TO 12:00 NOON, AND
5:00 P.M. TO 10:00 P.M.
- (2) FOR THE CALENDAR MONTHS OF APRIL THROUGH OCTOBER,
ALL DAYS: 11:00 A.M. TO 10:00 P.M.

FINANCIAL DATA

K FACTOR (MID YEAR) = 1.4801
UTILITY DISCOUNT RATE = 9.96%

ISSUED BY:

EFFECTIVE DATE:



APPENDIX C
STANDARD OFFER RATE FOR PURCHASE OF FIRM CAPACITY AND ENERGY
FROM A QUALIFYING FACILITY
LESS THAN 75 MW OR A SOLID WASTE FACILITY

SCHEDULE 7
Payments for Avoided 1997 Combustion Turbine Unit

(1) CONTRACT YEAR	(2) CAPACITY PAYMENT - \$/KW/MONTH			(4) TOTAL
	NORMAL PAYMENT OPTION		CAPITAL	
	O&M			
1997	0.72	4.62	5.34	
1998	0.75	4.86	5.61	
1999	0.79	5.11	5.90	
2000	0.83	5.37	6.20	
2001	0.87	5.64	6.51	
2002	0.91	5.93	6.84	
2003	0.96	6.23	7.19	
2004	1.01	6.55	7.56	
2005	1.07	6.88	7.95	
2006	1.11	7.24	8.35	
2007	1.18	7.60	8.78	
2008	1.23	7.99	9.22	
2009	1.29	8.40	9.69	
2010	1.36	8.83	10.19	
2011	1.43	9.28	10.71	
2012	1.50	9.75	11.25	
2013	1.58	10.25	11.83	
2014	1.66	10.77	12.43	
2015	1.75	11.32	13.07	
2016	1.83	11.90	13.73	
2017	1.93	12.50	14.43	
2018	2.03	13.14	15.17	
2019	2.13	13.81	15.94	
2020	2.24	14.52	16.76	
2021	2.35	15.26	17.61	
2022	2.47	16.04	18.51	
2023	2.60	16.85	19.45	
2024	2.73	17.71	20.44	
2025	2.87	18.62	21.49	
2026	3.01	19.57	22.58	

NOTE: Above payments calculated in accordance with formulas set forth in FPSC Rule 25-17.0832(3)(g)(5). Payment shall be adjusted by multiplying factor for On-Peak Capacity Factor determined in Schedule 8.

ISSUED BY:

EFFECTIVE DATE:



APPENDIX C
STANDARD OFFER RATE FOR PURCHASE OF FIRM CAPACITY AND ENERGY
FROM A QUALIFYING FACILITY
LESS THAN 75 MW OR A SOLID WASTE FACILITY

SCHEDULE 7
Payments for Avoided 1997 Combustion Turbine Unit

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
CAPACITY PAYMENT - \$/KW/MONTH									
CONTRACT YEAR	STARTING 1/96			EARLY PAYMENT OPTION STARTING 1/95			STARTING 1/94		
	O&M	CAPITAL	TOTAL	O&M	CAPITAL	TOTAL	O&M	CAPITAL	TOTAL
1994	-	-	-	-	-	-	0.51	3.33	3.84
1995	-	-	-	0.58	3.71	4.29	0.54	3.50	4.04
1996	0.64	4.14	4.78	0.60	3.90	4.50	0.57	3.68	4.25
1997	0.67	4.35	5.02	0.63	4.10	4.73	0.59	3.87	4.46
1998	0.71	4.57	5.28	0.67	4.31	4.98	0.63	4.06	4.69
1999	0.74	4.81	5.55	0.70	4.53	5.23	0.66	4.27	4.93
2000	0.78	5.05	5.83	0.74	4.76	5.50	0.69	4.49	5.18
2001	0.82	5.31	6.13	0.78	5.00	5.78	0.73	4.72	5.45
2002	0.86	5.58	6.44	0.81	5.26	6.07	0.76	4.96	5.72
2003	0.90	5.87	6.77	0.85	5.53	6.38	0.81	5.21	6.02
2004	0.95	6.17	7.12	0.90	5.81	6.71	0.84	5.48	6.32
2005	1.00	6.48	7.48	0.94	6.11	7.05	0.89	5.76	6.65
2006	1.05	6.81	7.86	0.99	6.42	7.41	0.93	6.05	6.98
2007	1.10	7.16	8.26	1.04	6.74	7.78	0.98	6.36	7.34
2008	1.16	7.52	8.68	1.09	7.09	8.18	1.03	6.68	7.71
2009	1.22	7.91	9.13	1.15	7.45	8.60	1.08	7.03	8.11
2010	1.28	8.31	9.59	1.21	7.83	9.04	1.14	7.38	8.52
2011	1.35	8.73	10.08	1.27	8.23	9.50	1.20	7.76	8.96
2012	1.41	9.18	10.59	1.33	8.65	9.98	1.25	8.16	9.41
2013	1.49	9.65	11.14	1.40	9.09	10.49	1.32	8.57	9.89
2014	1.56	10.14	11.70	1.48	9.55	11.03	1.39	9.01	10.40
2015	1.64	10.66	12.30	1.55	10.04	11.59	1.46	9.47	10.93
2016	1.73	11.20	12.93	1.63	10.55	12.18	1.54	9.95	11.49
2017	1.82	11.77	13.59	1.71	11.09	12.80	1.61	10.46	12.07
2018	1.91	12.37	14.28	1.79	11.66	13.45	1.70	10.99	12.69
2019	2.01	13.00	15.01	1.89	12.25	14.14	1.78	11.55	13.33
2020	2.10	13.67	15.77	1.98	12.88	14.86	1.87	12.14	14.01
2021	2.22	14.36	16.58	2.09	13.53	15.62	1.97	12.76	14.73
2022	2.32	15.10	17.42	2.20	14.22	16.42	2.07	13.41	15.48
2023	2.44	15.87	18.31	2.30	14.95	17.25	2.17	14.10	16.27
2024	2.58	16.67	19.25	2.42	15.71	18.13	2.29	14.81	17.10
2025	2.71	17.52	20.23	2.55	16.51	19.06	2.40	15.57	17.97
2026	2.84	18.42	21.26	2.68	17.35	20.03	2.53	16.36	18.89

NOTE: Above payments calculated in accordance with formulas set forth in FPSC Rule 25-17.0832(3)(g)(5). Payment shall be adjusted by multiplying factor for On-Peak Capacity Factor determined in Schedule 8.

ISSUED BY:

EFFECTIVE DATE:



APPENDIX C
STANDARD OFFER RATE FOR PURCHASE OF FIRM CAPACITY AND ENERGY
FROM A QUALIFYING FACILITY
LESS THAN 75 MW OR A SOLID WASTE FACILITY

SCHEDULE 7
Payments for Avoided 1997 Combustion Turbine Unit

(1)	(2)	(3)	(4)
CAPACITY PAYMENT - \$/KW/MONTH			
CONTRACT YEAR	LEVELIZED PAYMENT OPTION		
	O&M	CAPITAL	TOTAL
1997	0.71	7.47	8.18
1998	0.75	7.47	8.22
1999	0.79	7.47	8.26
2000	0.83	7.47	8.30
2001	0.87	7.47	8.34
2002	0.91	7.47	8.38
2003	0.96	7.47	8.43
2004	1.01	7.47	8.48
2005	1.06	7.47	8.53
2006	1.11	7.47	8.58
2007	1.17	7.47	8.64
2008	1.23	7.47	8.70
2009	1.29	7.47	8.76
2010	1.36	7.47	8.83
2011	1.43	7.47	8.90
2012	1.50	7.47	8.97
2013	1.58	7.47	9.05
2014	1.66	7.47	9.13
2015	1.74	7.47	9.21
2016	1.83	7.47	9.30
2017	1.93	7.47	9.40
2018	2.02	7.47	9.49
2019	2.13	7.47	9.60
2020	2.24	7.47	9.71
2021	2.35	7.47	9.82
2022	2.47	7.47	9.94
2023	2.60	7.47	10.07
2024	2.73	7.47	10.20
2025	2.87	7.47	10.34
2026	3.01	7.47	10.48

NOTE: Above payments calculated in accordance with formulas set forth in FPSC Rule 25-17.0832(3)(g)(5). Payment shall be adjusted by multiplying factor for On-Peak Capacity Factor determined in Schedule 8.

ISSUED BY:

EFFECTIVE DATE:



APPENDIX C
STANDARD OFFER RATE FOR PURCHASE OF FIRM CAPACITY AND ENERGY
FROM A QUALIFYING FACILITY
LESS THAN 75 MW OR A SOLID WASTE FACILITY

SCHEDULE 7
Payments for Avoided 1997 Combustion Turbine Unit

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
CAPACITY PAYMENT - \$/KW/MONTH									
EARLY LEVELIZED PAYMENT OPTION - \$/KW/MONTH									
CONTRACT YEAR	STARTING 1/96			STARTING 1/95			STARTING 1/94		
	O&M	CAPITAL	TOTAL	O&M	CAPITAL	TOTAL	O&M	CAPITAL	TOTAL
1994	-	-	-	-	-	-	0.52	5.53	6.05
1995	-	-	-	0.57	6.11	6.68	0.54	5.53	6.07
1996	0.64	6.75	7.39	0.60	6.11	6.71	0.57	5.53	6.10
1997	0.67	6.75	7.42	0.63	6.11	6.74	0.60	5.53	6.13
1998	0.71	6.75	7.46	0.67	6.11	6.78	0.63	5.53	6.16
1999	0.74	6.75	7.49	0.70	6.11	6.81	0.66	5.53	6.19
2000	0.78	6.75	7.53	0.74	6.11	6.85	0.69	5.53	6.22
2001	0.82	6.75	7.57	0.77	6.11	6.88	0.73	5.53	6.26
2002	0.86	6.75	7.61	0.81	6.11	6.92	0.77	5.53	6.30
2003	0.91	6.75	7.66	0.85	6.11	6.96	0.81	5.53	6.34
2004	0.95	6.75	7.70	0.90	6.11	7.01	0.85	5.53	6.38
2005	1.00	6.75	7.75	0.94	6.11	7.05	0.89	5.53	6.42
2006	1.05	6.75	7.80	0.99	6.11	7.10	0.94	5.53	6.47
2007	1.11	6.75	7.86	1.04	6.11	7.15	0.98	5.53	6.51
2008	1.16	6.75	7.91	1.09	6.11	7.20	1.03	5.53	6.56
2009	1.22	6.75	7.97	1.15	6.11	7.26	1.09	5.53	6.62
2010	1.28	6.75	8.03	1.21	6.11	7.32	1.14	5.53	6.67
2011	1.35	6.75	8.10	1.27	6.11	7.38	1.20	5.53	6.73
2012	1.42	6.75	8.17	1.33	6.11	7.44	1.26	5.53	6.79
2013	1.49	6.75	8.24	1.40	6.11	7.51	1.32	5.53	6.85
2014	1.57	6.75	8.32	1.47	6.11	7.58	1.39	5.53	6.92
2015	1.65	6.75	8.40	1.55	6.11	7.66	1.46	5.53	6.99
2016	1.73	6.75	8.48	1.63	6.11	7.74	1.54	5.53	7.07
2017	1.82	6.75	8.57	1.71	6.11	7.82	1.61	5.53	7.14
2018	1.91	6.75	8.66	1.80	6.11	7.91	1.70	5.53	7.23
2019	2.01	6.75	8.76	1.89	6.11	8.00	1.78	5.53	7.31
2020	2.11	6.75	8.86	1.99	6.11	8.10	1.87	5.53	7.40
2021	2.22	6.75	8.97	2.09	6.11	8.20	1.97	5.53	7.50
2022	2.33	6.75	9.08	2.19	6.11	8.30	2.07	5.53	7.60
2023	2.45	6.75	9.20	2.30	6.11	8.42	2.18	5.53	7.71
2024	2.57	6.75	9.32	2.42	6.11	8.53	2.29	5.53	7.82
2025	2.71	6.75	9.46	2.55	6.11	8.66	2.40	5.53	7.93
2026	2.84	6.75	9.59	2.68	6.11	8.79	2.53	5.53	8.06

NOTE: Above payments calculated in accordance with formulas set forth in FPSC Rule 25-17.0832(3)(g)(5). Payment shall be adjusted by multiplying factor for On-Peak Capacity Factor determined in Schedule 8.

ISSUED BY:

EFFECTIVE DATE:



APPENDIX C
STANDARD OFFER RATE FOR PURCHASE OF FIRM CAPACITY AND ENERGY
FROM A QUALIFYING FACILITY
LESS THAN 75 MW OR A SOLID WASTE FACILITY

SCHEDULE 7
Payments for Avoided 1997 Combustion Turbine Unit

(1)	(2)	(3)	(4)
ENERGY PAYMENT - \$/MWH			
CONTRACT YEAR	(ESTIMATED)		TOTAL
	FUEL	OGM	
1997	52.63	1.03	53.66
1998	55.82	1.08	56.90
1999	53.70	1.13	54.83
2000	58.78	1.19	59.97
2001	56.42	1.25	57.67
2002	62.36	1.32	63.68
2003	66.46	1.38	67.84
2004	72.25	1.45	73.70
2005	79.70	1.53	81.23
2006	85.61	1.61	87.22
2007	91.97	1.69	93.66
2008	98.79	1.77	100.56
2009	106.12	1.86	107.98
2010	113.99	1.96	115.95
2011	122.45	2.06	124.51
2012	131.54	2.16	133.70
2013	141.30	2.27	143.57
2014	151.78	2.39	154.17
2015	163.05	2.51	165.56
2016	175.14	2.64	177.78
2017	188.14	2.78	190.92
2018	202.10	2.92	205.02
2019	217.10	3.07	220.17
2020	233.20	3.22	236.42
2021	250.51	3.39	253.90
2022	269.10	3.56	272.66
2023	289.06	3.74	292.80
2024	310.51	3.93	314.44
2025	333.55	4.13	337.68
2026	358.30	4.34	362.64

NOTE: Information provided above is estimated. Actual payment shall be determined in accordance with FPSC Rule 25-17.0832(3)(g)(4).

ISSUED BY:

EFFECTIVE DATE:

EXHIBIT 4

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Declaratory
Statement Regarding Eligibility
for Standard Offer Contract and
Payment Thereunder by Florida
Power Corporation

Docket No. 950110-EI

AMENDED AFFIDAVIT OF RALPH KILLIAN

The purpose of this affidavit is to relate the position taken by Florida Power Corporation ("FPC") in discussions with Panda concerning the term of the contract and the capacity payments for the last 10 years of the 30-year contract term. This Affidavit supersedes my Affidavit dated March 13, 1995 which contained an inadvertent error.

My name is Ralph Killian. My office address is 4100 Spring Valley, Dallas, Texas 75244. I am the Senior Vice President of Panda Energy Corporation. The groups reporting to me are responsible for business development, engineering and operations, and certain technical functions. Mr. J. Brian Dietz reports to me. I have overall responsibility for the development of the

Panda-Kathleen project, among other matters.

I attended a meeting with FPC on January 9, 1992 to discuss our standard offer contract and several areas that needed clarification. The leader of the FPC team in attendance was Allen Honey and others were also at the meeting.

One issue that was discussed concerned the fact that Panda has signed up for a 30-year contract term, but the tables in Appendix C to the Contract only showed 20 years. FPC said that this was an error and that it needed to be corrected. FPC agreed that (1) Panda would receive capacity payments for the entire 30-year term of the contract; and (2) the payments would escalate over the years of the contract term not shown on Schedule 3 to Appendix C at 5.1% a year.

We also discussed the price for sales above 74.9 MW. FPC told us that we would be paid for the energy, but not the capacity. Obviously, this bespeaks an acknowledgment of the engineering reality that a facility capable of performing at the 74.9 MW under all conditions during a 30-year contract will, much of the time, be capable of generating more than 74.9 MW.

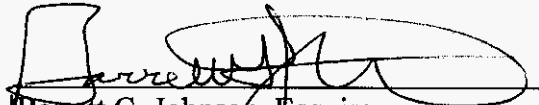
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL
FILE COPY

In re: Petition for Declaratory	:	
Statement Regarding Eligibility	:	Docket No. 950110-EI
for Standard Offer Contract and	:	
Payment Thereunder by Florida	:	Submitted for Filing: March 23, 1995
Power Corporation	:	

**AMENDED AFFIDAVIT OF RALPH KILLIAN
IN SUPPORT OF PANDA-KATHLEEN'S MOTION FOR
DECLARATORY STATEMENT AND OTHER RELIEF**

Panda-Kathleen L.P. ("Panda") hereby submits an Amended Affidavit of Ralph Killian, to correct an inadvertent error in the original affidavit, and requests that the clerk substitute this Affidavit for the Affidavit previously filed with Panda's Motion for Declaratory Statement and Other Relief filed March 14, 1995.

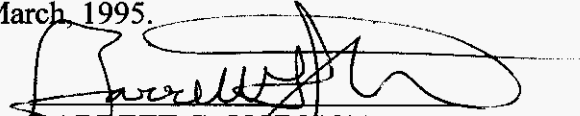

 Barrett G. Johnson, Esquire
 FL Bar No. 174115
 Johnson and Associates, P.A.
 315 South Calhoun Street, Suite 350
 Tallahassee, Florida 32301
 Telephone: (904) 222-2693

and

John B. O'Sullivan, Esquire
 Chadbourne & Parke
 1101 Vermont Avenue, N.W. - Tenth Floor
 Washington, D.C. 20005
 Telephone: (202) 289-3000
ATTORNEYS FOR PANDA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by United States Mail to James A. McGee, Florida Power Corporation, P. O. Box 14042, St. Petersburg, FL 33733-4042 this 23rd day of March, 1995.


 BARRETT G. JOHNSON
 DOCUMENT NUMBER-DATE

03213 MAR 27 1995

FPSC-RECORDS/REPORTING

274

EXHIBIT 5

**Florida
Power**
CORPORATION

April 29, 1993

Mr. Mark E. Bentley
Attorney
Panda-Kathleen, L.P.
4100 Spring Valley, Suite 1001
Dallas, Texas 75244

RE: Standard Offer Contract for the Purchase of Firm Capacity and Energy From a Qualifying Facility Less Than 75 MW or a Solid Waste Facility Between Panda-Kathleen L.P. and Florida Power Corporation

Dear Mark:

This letter concerns our earlier meetings and your letters dated January 26, 1993 and March 23, 1993. In consideration of Florida Power Corporation's (FPC) waiver of the early in-service date to January 1, 1997, Panda-Kathleen, LP waives early payments and thereby elects normal payments pursuant to Schedule 3, Page 1. In addition, FPC will allow a corresponding delay of the construction commencement date.

If the foregoing accurately reflects your understanding of our agreement with respect to the subject matter set out above, please so indicate by signing in the space provided below, and returning a signed counterpart hereof to me.

Very truly yours,

Florida Power Corporation

By: Robert D. Dolan
Robert D. Dolan

ACCEPTED AND AGREED TO THIS 3 DAY OF May, 1993.

Panda-Kathleen, L.P.

By: Robert W. Carter
Robert W. Carter

cc: M. B. Foley, Jr. A. J. Honey
 J. P. Fama D. W. Gammon

RDD:#4:Bentley.ltr

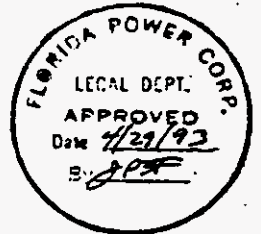


EXHIBIT 6

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Declaratory
Statement Regarding Eligibility
for Standard Offer Contract and
Payment Thereunder by Florida
Power Corporation

:
:
: Docket No. 950110-EI
:
:
:

AFFIDAVIT OF J. BRIAN DIETZ, P.E.

The purpose of this affidavit is to describe the basis for Panda's selection of the major power generation equipment (the plant configuration) for the Panda-Kathleen, L.P. cogeneration facility (the "Facility") to be built in Lakeland, Florida. In addition, this affidavit describes the status of the development for the Facility.

SUMMARY

The affidavit shows that the GE Frame 7EA and ABB11N1 combustion turbines in a combined cycle configuration are the only reasonable configurations that provide 74.9 MW at the Point of Delivery over the 30 year term of the contract under all conditions. These configurations are the lowest capacity units that meet all criteria. As a result of these proceedings, the project was forced to cancel its order for turbine equipment and bring to a halt Panda's financing arrangement causing serious doubt on Panda being able to meet the Contract sunset date.

CREDENTIALS

My name is J. Brian Dietz. My office address is 4100 Spring Valley, Dallas, Texas 75244. I am Director of Engineering and Operations for Panda Energy Corporation. As Panda's chief engineer, I have the responsibility for the direction of the design, analyses, selection and specification of all major equipment and systems for the Panda-Kathleen project

and the 230 MW Panda Brandywine project. These responsibilities also include participation in the negotiation of the turnkey engineer/procure/construction contracts for these cogeneration plants.

As Panda's chief of plant operations, I have total management responsibility for operation and maintenance of Panda's existing 165 MW cogeneration facility in North Carolina. The plant consists of one GE Frame 7 and one GE Frame 6 gas turbine in a combined cycle configuration. My responsibility also includes corporate management and administration of the power purchase contract and thermal sales contract, and responsibility for financial performance (profit and loss) of the plant.

I have thirty-five years of experience in management, engineering, development, and operations of energy systems and facilities. This experience includes: project management, project engineering, design and analysis of equipment and systems; specification and procurement of equipment and systems; direction of plant start-up and testing; and direction of energy plant operations and maintenance. I have experience with the design and application of gas turbines, diesel engines, industrial steam turbines, boilers, chilled water generators, heat exchangers, and auxiliary steam systems components.

I have prepared technical testimony presented to the Texas PUC for intervenor Coastal Corporation in a rate proceeding against Central Power and Light. I have prepared testimony presented to the Texas PUC for intervenor Petrolia Power Corporation against Brazos Electric Cooperative in a certificate of public convenience and necessity hearing for a new peaking plant. I was one of three arbitrators in an arbitration between LaRoche Chemicals and Calciner Industries. The arbitration decided twenty-one contractual issues regarding steam and power price, energy delivery, delivery quality, division of property, proper operating and maintenance charges, and labor charges.

I have a Bachelor of Science in Mechanical Engineering from the University of Maryland and a Master of Science in Mechanical Engineering from Rensselaer Polytechnic Institute. I am a registered professional engineer in Texas. I am active in the American

Society of Mechanical Engineers and have held numerous local chapter and regional offices. I was named ASME West Texas Section Engineer of the Year in 1992. I have also served on the Mechanical Engineering Advisory Committee for Texas Tech University.

THE FACILITY'S CONFIGURATION WAS LARGELY DRIVEN BY CONTRACT REQUIREMENTS

1. Panda must select a plant configuration which meets the performance and interconnection requirements set forth in the power purchase agreement (also called the "Contract") executed by Panda and Florida Power Corporation ("FPC"). These include requirements for the Facility to:

- A. Make available to FPC the contractually Committed Capacity of 74.9 MW at the Point of Delivery from the Contract In-Service Date through the entire term of the power agreement (30 years);
- B. Re-demonstrate, on a yearly basis, the Commercial In-Service Status of the Facility within 60 days of when FPC demands that demonstration;
- C. Maintain an hourly kW output, as metered at the Point of Delivery, equal to or greater than the Committed Capacity for a consecutive twenty-four hour period or during the on-peak hours for two consecutive days;
- D. Be in compliance with all applicable permits;
- E. Be a Qualifying Facility ("QF") delivering steam during all hours of plant operation (as opposed to the avoided or deferred unit which is a combustion turbine operating as a peaking unit in a simple cycle configuration);
- F. Be capable of delivering the Committed Capacity using back-up fuel; and
- G. Operate at 74.9 MWH per hour (or more) for 90% of the on-peak hours and 42% of the total hours in each year of the Contract term.

2. There are no constraints in the power agreement on the technology, equipment or plant configuration that may be utilized.

3. There are no provisions in the power purchase agreement that restrict the electrical generating capability of the plant. In fact, to fulfill the contractual requirement to

delivery 74.9 MW of Committed Capacity at the Point of Delivery at all times under all conditions of weather and state of maintenance requires an ultimate capability exceeding 75 MW at the generator because:

- A. The Committed Capacity is determined after parasitic electrical usage (the electricity needed to run auxiliary equipment and systems in the plant that are necessary to generate electricity) is subtracted;
 - B. The Committed Capacity is determined at, and must be delivered to, the Point of Delivery, after line and transformation losses have occurred;
 - C. The Committed Capacity must be delivered under all weather conditions and without regard to degradation occurring as a result of normal wear and tear;
 - D. The Committed Capacity must be deliverable using the back-up fuel; and
 - E. The Contract requires demonstrating this capability on 60 days notice throughout the term of the Contract, and prudence requires assuming such notice will take place under worst case conditions.
4. To satisfy all of these requirements requires the construction of a plant with a maximum total capability greater than the 74.9 MW Committed Capacity, as detailed below.

KEY DESIGN ISSUES FOR PLANT CONFIGURATION SELECTION

5. In order to meet its obligations under the Contract, Panda proposed to FPC a combustion turbine in a combined cycle configuration for this Facility. Under this configuration, the waste heat from the combustion turbine is captured to make steam, which in turn is used to generate more electricity with great efficiency, with steam extracted for process uses (which is what makes it a cogeneration facility). This is the only viable QF configuration that could be built such that the capacity and energy payment streams under the Contract will match up with the project's fixed and variable costs and that also will be in compliance with PURPA. Combined cycle technology has a number of characteristics that require the application of a unit with a maximum total capability greater than the Committed Capacity of 74.9 MW, as discussed in the sections that follow.

Temperature Degradation.

6. The output of a combined cycle plant varies significantly with changes in ambient temperature and relative humidity. The Contract does not set the ambient conditions for the plant design nor does it set any upper limit for temperature under which the 74.9 MW Committed Capacity performance requirements must be met. Since a combined cycle facility is subject to substantial performance degradation under conditions of high ambient temperature, the plant had to be sized to meet the Committed Capacity under the maximum expected ambient temperature. Temperatures of 100° F have been experienced in Lakeland in at least three different calendar months of the year. The maximum recorded temperature is 102° F. During the 30-year term of the Contract, a 102° F temperature can be anticipated.

7. At a temperature of 102° F, the performance of a combined cycle plant degrades from 15% to 19% of rated capacity (depending on the exact equipment selected) compared with the performance of the unit at 59° F. (Plant rated performance is typically quoted at 59° F.)

Other Performance Degradation.

8. A combined cycle facility also is subject to substantial, performance degradation, both non-recoverable and maintenance-recoverable, due to operational wear and tear on the plant. Maintenance-recoverable degradation is experienced between the major overhauls of the combustion turbine, steam turbine, and other plant auxiliary equipment. Published figures by major turbine suppliers show that non-recoverable and maintenance-recoverable degradation can be up to 6%.

9. In addition, a combined cycle facility experiences operationally-recoverable degradation. This degradation includes that due to combustion turbine compressor and air cleaner fouling. This can amount to 2% of rated capacity. This degradation can be recovered by thorough, off-line "washing" of the compressor and/or cleaning of the air filter. This can be accomplished when the combustion turbine is off-line.

Parasitic Loads.

10. The Facility will consume approximately 2% of its total output for internal purposes, including operating pumps, fans, controls, and other auxiliary equipment. The design capability must account for these parasitic loads.

Transformation and Line Losses:

11. The Facility's Point of Delivery of Committed Capacity will be at the high side of FPC's 230 kV to 69 kV West substation with the City of Lakeland. Additional capacity to compensate for transformation and transmission line losses experienced from Panda's plant through the City of Lakeland's 69 kV transmission line and substation must be allowed for in designing the plant. These losses have been estimated at 1/2% to 1-1/2% and will continue over the thirty year period of the agreement. The transmission contract with the City of Lakeland caps these losses at 1/2% of rated capacity. Transformation losses are estimated at 1/2%, giving a total of 1% for these losses that need to be reflected in the sizing of the plant.

Total Effects of Degradation, Parasitic Loads, and Transformation and Line Losses:

12. For the combined cycle facility to meet the Committed Capacity of 74.9 MW at the Point of Delivery at all times during the 30-year term of the power purchase agreement, the plant must be designed to include the cumulative effects of temperature degradation, non-recoverable degradation, recoverable degradation, and transformation and line losses to the Point of Delivery. These degradations in output do not include reduced plant output or degradation due to random auxiliary equipment failure over the 30 year term of the power agreement. These random equipment failures include such things as loss of a cooling tower fan, heat recovery steam generator tube failures, malfunctioning of combustion or steam turbine controls, valve failures, etc. Prudent engineering practice would include an extra margin of several percent above design rated plant output of the plant. Panda elected to use 2% for this number. In the aggregate, all of these factors, conservatively, can total 27% to 31% of the Facility's initial generation capability rated under standard conditions. As a result the plant must be designed conservatively with a minimum rated output of 100 MW at 59° F net of parasitic loads. This is the minimum size that the Facility must be capable of producing to be able to meet its contractual commitments for the entire 30-year term of the Contract.

Emissions:

13. At the time of permitting of the plant, NO_x emissions to the atmosphere were limited by the State of Florida to 15 PPM at 15% excess oxygen. Uncontrolled, most combustion turbine models emit well over 150 PPM NO_x at 15% excess oxygen. There are currently two methods to achieve compliance with NO_x emission standards for a combined cycle plant: (i) through the use of dry low NO_x combustors (DLN) in the combustion turbine; or (ii) through the injection of water or steam in the combustion turbine combustors in conjunction with injection of ammonia and catalytic reduction in Selective Catalytic Reduction equipment (SCR) located in the heat recovery steam generator.

14. Both the DLN and, to some extent, SCR technologies are sufficiently developed to be accepted by the engineering, regulatory, and financial communities. However,

application of SCR to combustion turbines has been primarily limited to natural gas fueled units. In California, out of 41 permitted SCR facilities only 11 have been permitted to fire oil as a backup fuel, as is required for the Facility. This is due to the fact that the SCR catalyst promotes the oxidation of flue gas SO_2 to SO_3 which in turn reacts with un-reacted ammonia to form compounds that foul equipment downstream, including the SCR catalyst, rendering it ineffective. Only one of these facilities has ever been fired on oil (resulting in catalyst failure) and it no longer operates with liquid fuels. This factor alone virtually disqualifies SCR technology, and any turbines that cannot meet environmental standards without it, for use by Panda-Kathleen.

15. In addition, there are certain inherent safety and environmental risks associated with the use of SCR technology. The safety risks include leaks in an urban environment during the transportation, storage, and handling of the ammonia required for the SCR. Ammonia is designated as an "Extraordinarily Hazardous Substance" under Federal Superfund Regulations. The environmental risks include malfunctioning of the SCR and its control system, ammonia slip (i.e. the mismatch between the ammonia injected and the ammonia needed for NO_x reduction during operation), and the disposal at the end of its useful life of spent SCR catalyst, which contains substantial amounts of heavy metals and metal oxides that are classified as hazardous (e.g., titanium, vanadium, platinum, and rhodium). These safety and environmental risks translate into financial risks for operator, owner, and lenders. In addition, a facility using SCR technology will have higher capital cost and substantially higher operating and maintenance costs than one using DLN technology.

16. Besides the advantages of DLN over SCR technology for safety, environmental protection, and cost, DLN technology also offers operability advantages. These include smoothness and reliability during combustor mode changes, gas turbine load changes, and system transients. In addition, unlike SCR equipment, the DLN system is transparent to the plant operator.

17. The use of SCR technology is not preferred by either engineers or regulators in several areas of the country for the aforementioned reasons. Many consider the use of SCR for control of NO_x emissions as "extraordinary means" or "heroic technology." The Panda-Kathleen project considered using SCR technology only as a last resort in the event that plant configurations using DLN could not be employed.

Plant Financeability:

18. Lending and equity participants in the Panda-Kathleen project will look not only at its financial strength but also at the plant design and selection of equipment. To be financeable, the plant must incorporate previously applied technology that has been thoroughly proven in other applications and must incorporate equipment that results in a plant with high reliability over the term of the power contract. The only viable plant option that would meet all these requirements and could be built and operated as a QF with the capacity and energy payment streams provided under the Contract is a combined cycle facility.

EQUIPMENT BRANDS AND MODELS EVALUATED

19. Based on the Contract performance requirements and design issues, Panda performed detailed evaluation of six combustion turbine alternatives for the combined cycle plant. (Several other configurations were evaluated on a preliminary basis.) The number of alternative combustion turbines is limited by equipment availability since, unlike conventional steam plants that custom-tailor the steam turbine performance, combustion turbines come only in standard sizes predetermined by the manufacturers. The six configurations evaluated cover a wide range of performance. These were the ABB8C, Siemens V64.3, GE LM2500, GE LM6000, GE Frame 7EA, and the ABB11N1 combustion turbines.

20. The ABB8C combined cycle facility was unable to produce the necessary minimum rated output of 100 MW at 59 F net of parasitic loads(to overcome expected degradation and line losses) without extensive supplemental firing of the heat recovery steam generator (HRSG) and the use of SCR technology for NO_x control to 15 PPM. Supplemental

firing of the HRSG is not the most efficient use of fuel for the QF concept. The disadvantages of SCR technology have already been discussed. This configuration was rejected for these reasons.

21. Similarly, the Siemens V64.3 combined cycle facility also was unable to produce the necessary minimum rated output of 100 MW at 59° F net of parasitic loads without supplemental firing of the HRSG. Further, NO_x emissions cannot be controlled to 15 PPM without the use of SCR. For these reasons, this configuration was rejected.

22. The GE LM2500 combined cycle facility also was unable to produce the necessary minimum rated output of 100 MW at 59° F net of parasitic loads without supplemental firing of the HRSG. NO_x emissions cannot be controlled to 15 PPM without the use of SCR. For these reasons, this configuration was rejected.

23. The GE LM6000 aero derivative combined cycle facility using two combustion turbines was determined to produce 109 MW net of parasitic loads at 59° F. This is 9 MW more than the necessary minimum rated output. However, the use of SCRs to control the NO_x emissions to 15 PPM is required. In addition, the capital and O&M costs for this configuration were greater than for more acceptable configurations. This configuration was rejected for these reasons.

24. The GE Frame 7EA combined cycle facility was rated to produce 118 MW net of parasitic loads at 59° F when new. Control of NO_x emissions to less than 15 PPM can be obtained using DLN technology. Thus, this unit was deemed to be acceptable.

25. The ABB11N1 combined cycle facility was rated to produce 116 MW net of parasitic loads at 59° F when new. Control of NO_x emissions to 15 PPM can be obtained using DLN technology. Therefore this unit also was deemed to be acceptable.

PLANT CONFIGURATIONS SELECTED

26. Based on the foregoing analysis, Panda determined that the GE Frame 7EA and ABB11N1 combustion turbines are the only reasonable plant configurations that could reliably provide the Committed Capacity of 74.9 MW at the Point of Delivery at all times over the 30-term of the Contract under all weather conditions with the expected degradation, parasitic loads, and losses. These configurations are the lowest capacity units that meet these criteria. The analysis indicated that both were equally capable from a technical and economic standpoint. Both combustion turbine manufacturers were willing to guarantee DLN technology to meet 15 PPM.

FPC AND RATE PAYER BENEFITS.

27. To the extent that the limited equipment choices, environmental standards, concerns about reliability and durability, and the views of project lenders on all of the above required us to choose equipment and a configuration that will give the project more than 75 MW of net capacity much of the time. This additional capacity enhances the reliability of FPC's service, which is a benefit to the rate payer at no cost to them since Panda is being paid only for 74.9 MW of capacity based on the per-KW cost of FPC's avoided simple-cycle combustion turbine for 74.9 MW of capacity.

FACILITY DESIGN AND DEVELOPMENT STATUS SINCE SELECTION

28. Panda applied for and obtained air emissions permits from the Florida Department of Environmental Protection ("FDEP") for both the GE Frame 7EA and ABB11N1 combustion turbine configurations to maintain the project schedule while additional evaluations and design studies were being performed to determine the best choice. The permit application was made to FDEP in mid-June. On October 10, 1994, FDEP issued a notice of intent to issue the permit. The final permit was issued on January 11, 1995.

29. The turnkey engineer/procurement/construction contractor made the final selection based on final performance guarantees, reliability, efficiency, price, and equipment

delivery schedules. The decision was made to select the ABB11N1 configuration, and a commitment to purchase the gas turbine and steam turbine equipment was made to ABB on December 16, 1994. One of the most important criteria in making this selection was equipment delivery date. ABB was able to meet the stringent delivery schedule for both the steam and combustion turbines to assure the plant would achieve Commercial In-Service Status by July 1, 1996. This date was deemed necessary to assure Panda and its potential lenders and investors that the "sunset" date of the Contract, January 1, 1997, would not be breached by potential delays in construction.

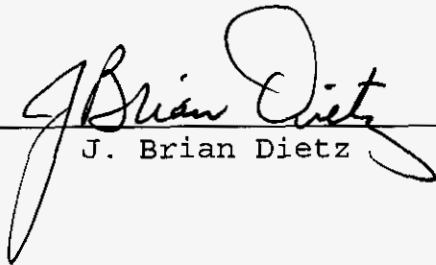
EFFECTS OF THESE PROCEEDINGS

30. When FPC filed its petition to begin this proceeding, it had the absolutely predictable result of bringing Panda's financing arrangements to a halt pending the outcome of this proceeding. In turn, since filing the Petition in this case deprived Panda of its financing, *filing the Petition also forced Panda to cancel its order with ABB and lose its place in the ABB production schedule.* Since each of these activities is part of a critical time path to commercial operation and to meeting the sunset date, Panda's ability to meet that date has been put in jeopardy through no act or omission of Panda's but solely as a result of FPC's commencing this proceeding. It should be emphasized that the equipment delivery schedule will not slip on a day-for-day basis. Like most large items manufactured in very limited quantities, combustion and steam turbine production schedules have discrete windows for the start of manufacture. In turn, what windows are open at any given point in time depends on what other orders are being placed at that point in time, a factor which is obviously totally outside Panda's control.

In sum, Panda will be unable to determine the final effect of the delay caused by these proceedings at least until the final order is obtained and the time for appeal has run, but *there is a distinct possibility that Panda will be unable to obtain project financing because of concerns by lenders and investors that there is a high probability of not meeting the sunset*

date. Accordingly, it may be necessary for the Florida Public Service Commission to address the issues raised by the fact that the actions of one party may well have the net result of forcing late performance by the other party in meeting the sunset date and for the Commission to order appropriate measures to address this problem.

I hereby certify that all of the information contained
in this Affidavit of March 13, 1995, is true and correct.

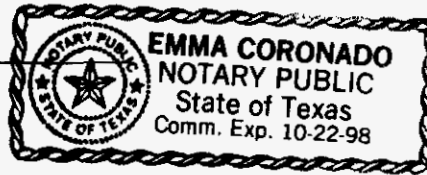


J. Brian Dietz

CITY OF Dallas)
STATE OF Texas)

Subscribed and sworn to before me
this 13th day of March, 1995.

Emma Coronado
NOTARY PUBLIC



My Commission expires on:

10-22-98

EXHIBIT 7

JOHNSON AND ASSOCIATES
ATTORNEYS AND COUNSELORS

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August 23, 1994

Joseph D. Jenkins
Director, Electric & Gas Division
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32399

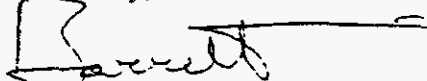
Dear Joe:

The purpose of this letter is to confirm the discussion on August 15, 1994 between you, Bob Trapp and Tom Ballenger of your staff and Bill Nordlund, Brian Dietz and myself regarding the Panda Kathleen cogeneration plant and Panda's standard offer contract with Florida Power Corporation.

As we discussed, Panda's contractual obligation is to be able to produce 74.9 MW under all site conditions for the life of the unit. Panda recently informed FPC by letter of the equipment configurations which will enable Panda to meet its contractual obligation while complying with its various environmental requirements. A copy is attached for your information. We also discussed the fact that under certain site conditions the ABB 11 N 1 and GE Frame 7EA will produce more than 74.9 MW. Since Panda Kathleen's contractual requirement is to be able to produce 74.9 MW under worst case conditions, such as right before a major overhaul and during a heat wave, it is necessarily true that the unit be capable of more than 74.9 MW under best case conditions. As we discussed, under optimal conditions these units can produce in the 115 MW range. Of course, this energy is quite a bargain for the rate payers since it carries no capacity costs to FPC under the Standard Offer Contract.

We also discussed the fact that the operation of Panda-Kathleen in the manner described in this letter and the attached letter to FPC is consistent with Panda's standard offer contract and is not a contract change that would require Florida Public Service Commission approval. Please advise immediately if this is incorrect or if you have any questions.

Sincerely,


Barrett G. Johnson

JOHNSON AND ASSOCIATES

292A

State of Florida

Commissioners:

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



DIVISION OF ELECTRIC & GAS
JOSEPH D. JENKINS
DIRECTOR
(904) 488-8501

Public Service Commission

August 24, 1994

Mr. Barrett G. Johnson
Johnson and Associates
315 South Calhoun Street
Suite 350
Tallahassee, Florida 32301

Dear Mr. Johnson:

This is to confirm receipt of your letter dated August 23, 1994 concerning Panda Kathleen's plans to begin satisfying its contractual obligation with Florida Power Corporation by installing the units described in your letter. Based on the representations, I foresee no reason why this is any type of contract change that should come before the Commission for approval. I discussed this briefly with Florida Power's Bob Dolan and he concurred.

Sincerely,

A handwritten signature in cursive script that reads "Joseph D. Jenkins".

Joseph D. Jenkins
Director
Division of Electric and Gas

JDJ/ms