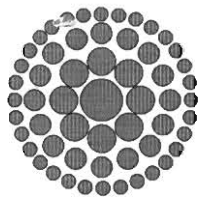


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**Florida
Power**
CORPORATION

JAMES A. MCGEE
SENIOR COUNSEL

May 5, 1995

Ms. Blanca S. Bayó, Director
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32399-0870

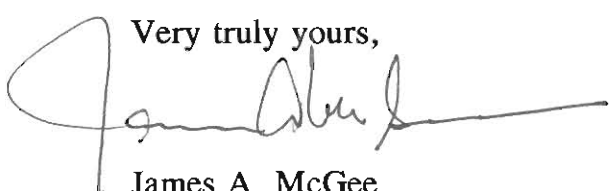
Re: Docket No. 950110-EI

Dear Ms. Bayó:

Enclosed for filing in the subject docket are fifteen copies of Florida Power Corporation's Answer in Opposition to Panda-Kathleen L.P.'s Motion for Declaratory Statement and Other Relief.

ACK _____ Please acknowledge your receipt of the above filing on the enclosed copy
AFA _____ of this letter and return to the undersigned. Also enclosed is a 3.5 inch diskette
APP Nelton containing the above-referenced document in WordPerfect format. Thank you for
CAF _____ your assistance in this matter.

- CMU _____
- CTR _____
- EAG Balinger
- LEG [initials]
- LIR 5
- CRD _____
- RJA _____
- SEL 1
- WCS _____
- OTH _____

Very truly yours,

James A. McGee

JAM/jb
Enclosures
cc: Parties of Record

man

DOCUMENT NUMBER-DATE
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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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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:
May 8, 1995

FLORIDA POWER CORPORATION'S ANSWER IN OPPOSITION TO PANDA-KATHLEEN, L.P.'S MOTION FOR DECLARATORY STATEMENT AND FOR OTHER RELIEF

Florida Power Corporation ("Florida Power"), pursuant to Rule 25-22.037, Florida Administrative Code, hereby files this Answer in Opposition to the March 14, 1995 Motion of Panda Kathleen, L.P. ("Panda") for Declaratory Statement and Other Relief ("Panda's Motion"). In support of this Answer, Florida Power submits the following:

1. On January 25, 1995, Florida Power filed its Petition for Declaratory Statement, seeking a ruling by the Commission on two fundamental issues relating to the 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 dated November 25, 1991 (the "Panda Standard Offer Contract"). First, Florida Power seeks a declaration that the Standard Offer Contract is not available to Panda because Panda now proposes to build a 115 MW facility in violation of Commission Rule 25-17.0832 and the Panda Standard Offer Contract itself. Second, Florida Power seeks a declaration that, if the Panda Standard Offer Contract is available to Panda for a 115 MW facility, Florida Power's capacity payment obligations terminate after

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20 years in accordance with Commission Rule 25-17.0832(3)(e)(6) because the economic life of the avoided unit is 20 years. Commission Rules 25-17.080 through 25-17.091 constitute Appendix E of Panda's Standard Offer Contract, and are expressly made part of that contract.

2. Rather than file an Answer to Florida Power's Petition, Panda instead filed the instant Motion which, in essence, asks the Commission to issue declaratory statements in the negative as to Florida Power's Petition. Panda's Motion also improperly attempted to interject miscellaneous additional issues into this Docket. At its May 2, 1995 Agenda Conference, however, the Commission rejected Panda's attempt to expand this Docket, and it limited the issues to the two raised in Florida Power's Petition.

3. The Commission should deny Panda's Motion for three fundamental reasons:

- (a) Panda's Motion seeks relief that violates the explicit provisions of the Commission's rules and the Standard Offer Contract;
- (b) the predicament which Panda complains about results from Panda's own failure to move its proposed project forward, coupled with its own decision less than a year ago -- without obtaining a ruling from the Commission -- to fundamentally increase the size and change the configuration of the cogeneration facility it now proposes to build; and
- (c) Panda's Motion attempts to convert its Standard Offer Contract into a negotiated contract despite (1) clear Orders from the

Commission disallowing such attempts and (2) the fact that Florida Power's need for QF capacity has been fully subscribed.

4. Specifically, Panda's Motion requests that the Commission take a number of actions, including the following:

- (a) make a determination that the new facility Panda has designed and configured is consistent with the Standard Offer Contract;
- (b) make a determination that Panda's Standard Offer Contract obligates Florida Power to make capacity payments for 30 years rather than for the 20-year life of the avoided unit; and
- (c) make a determination that the Standard Offer Contract provides for escalating capacity payments over the last ten years of its alleged 30-year term, as to which there is no express contractual provision for capacity payments.

5. In sum, by its motion, Panda urges the Commission to ignore its rules and rewrite the Standard Offer Contract to Panda's benefit. Panda does so by telling a glib (but largely irrelevant) story. In point of fact, Panda is conveniently attempting to use Florida Power as a scapegoat for the predicament in which Panda finds itself -- a predicament created by Panda's own failure to move the project forward and exacerbated by Panda's unilateral and unapproved decision to increase the size of its proposed facility and to proceed with a new configuration that does not comply with either Panda's original proposal, the Standard Offer Contract, or the Commission's rules.

A. Panda Cannot Alter The Standard Offer Contract and Violate the Commission's Rules Simply By Making a Newly-Proposed and Unilateral "Choice of Equipment and Configuration."

(Responding to Numbered Paragraphs 25-49 and Section III A of Panda's Motion)

6. In its Petition for Declaratory Statement, Florida Power seeks a declaration from the Commission that the Standard Offer Contract is not available to Panda because Panda's newly-proposed configuration would produce and deliver to Florida Power at least 115 MW, in violation of the 75 MW cap expressly imposed by both Rule 25-17.0832 and the Panda Standard Offer Contract itself. Florida Power will not reargue its position here and respectfully refers the Commission to its Petition.

7. Rather than address the express limitations of either Rule 25-17.0832 or the Standard Offer Contract, Panda ignores them both. Instead, Panda simply takes the curious and wholly self-serving position that "a cogenerator committing itself to providing 74.9 MW of capacity . . . must build a facility with a net capacity rating larger than 74.9 MW. . . ." (Panda's Motion at 2). (emphasis added).

8. Panda's position is circular. It starts with the premise that, in compliance with Rule 25-17.0832 and its Standard Offer Contract, both of which require the facility to be less than 75 MW in size, Panda could properly obligate itself to deliver 74.9 MW under the Standard Offer Contract. Panda then argues that since it has contractually bound itself to deliver 74.9 MW, it is now justified in enlarging the size of its facility to more than 75 MW so as to produce and deliver 115 MW.

(1) Rule 25-17.0832 Bars Panda's Newly-Proposed Configuration.

9. The Commission's rules regarding facility size are explicit. Rule 25-17.0832(3)(a) and (c) is limited to "small qualifying facilities less than 75 megawatts." The Panda Standard Offer Contract was entered into pursuant to this Rule, and the Rule is incorporated into Appendix E of the Contract. Therefore, in its Petition seeking a declaration that the Standard Offer Contract is not now available to Panda, Florida Power relied upon Rule 25-17.032(a) and (c), as well as the Commission's Order in Polk Power Partners, in which the Commission expressly ruled that the Rule prevents projects that have a total net generating capacity in excess of 75 MW from qualifying to take advantage of standard offer contracts. Order Granting Declaratory Statement In the Negative, No. PSC-92-0683-DS-EQ, dated July 21, 1992. Strikingly, Panda fails even to mention those controlling provisions of the Rule in its entire 30-page motion. Instead, Panda's only response on the issue of size limitation is to state lamely that in granting a Declaratory Statement in the Negative in Polk Power Partners, "the Commission used language in its Order that should not be applied here." However, the Polk Partners Order, and Rule 25-17.0832 on which it is based, are not so narrowly constrained. To the contrary, on their face, they bar Panda's newly-proposed 115 MW configuration.

10. Indeed, Panda's position would gut both the letter and the spirit of Rule 25-17.0832 by allowing a cogenerator to flaunt the Rule's express size limitation by (1) first committing itself to a contractual obligation it could not possibly fulfill under the size limitation in the Rule, and then (2) using that same self-induced contractual obligation itself as the sole reason why it should not be bound by the

terms of the Rule. The Commission should reject Panda's attempt to so avoid compliance with the Commission's rules.

11. Moreover, in making its argument, Panda ignores several material facts. First, Panda specifically proposed to do exactly what it now claims it cannot do. Thus, the configuration Panda now seeks to implement is a recent change from Panda's original proposal, under which Panda represented that it would build a facility with a net maximum capacity of 74.9 MW. Second, Panda's Standard Offer Contract gives Panda the option of reducing its committed capacity by up to 10%. Such a reduction would give Panda the operating buffer it now claims it needs. Third, the energy losses Panda claims it will experience between point of generation and Point of Delivery are contradicted by Panda's own agreement with the City of Lakeland (see exhibit 7 to Panda's Motion) which specifies that there will be no line losses; and, in any event, Panda could simply pay the City of Lakeland to make up for any such losses that do occur and to make available at the Point of Delivery the amount of power called for by Panda's Standard Offer Contract.

12. As a factual matter, Florida Power strongly contests Panda's position that the units Panda now proposes to install "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. . . ." (Panda's Motion at 13). In any event, however, Panda's new position is irrelevant. The point is that if Panda needs to install a unit that delivers 115 MW in order "confidently" to deliver 74.9 MW to Florida Power, then Panda should not have committed itself to deliver 74.9 MW under a Standard Offer Contract in the first place. Plainly, if there are

no units that Panda could install to comply with both its contractual obligations and the size limitation imposed under the Standard Offer Contract and the Commission's rules, then Panda's facility as first proposed (and as selected by Florida Power and approved by the Commission) was not well designed and therefore was materially misrepresented.

**(2) Panda Initially Proposed to Build
A Facility It Represented Would
Comply With the 75 MW Limitation
in the Commission's Rules and
the Standard Offer Contract.**

13. Panda's lengthy new arguments about "sound engineering judgment" and "choice of equipment" fly in the face of the very proposal that Panda made to Florida Power in 1991, which Florida Power accepted in awarding Panda its Standard Offer Contract, and which the Commission accepted in approving Panda's Standard Offer Contract in March 1992.

14. As part of its solicitation and evaluation of proposals from cogenerators for standard offer contracts in October, 1991, Florida Power sent each bidder a questionnaire. The proposal submitted by Panda, including its responses to the questionnaire, describe a facility far different from the one Panda wishes the Commission to now force upon Florida Power. Panda's proposal -- the one that was expressly accepted by Florida Power -- was for a 74.9 MW facility (not 115 MW) configured with entirely different combustion turbine units than Panda now proposes to use. Thus, in 1991, Panda represented that it would install three General Electric LM 2500 units as its generator power plant (which could reasonably be expected to have a net generating capacity of approximately 74.9 MW). As Panda stated in response to Florida Power's questionnaire:

[Question] 8.d. Describe the status of your project's design, engineering and equipment procurement and any commitments that you have made for services or equipment in this regard. Provide documentation.

[Response] Major Equipment List
Stewart and Stevenson/General Electric LM 2500 -
Three (3) Generator Power Plant (See Exhibit 1).

Contrary to that proposal, Panda now claims it must install either a GE Frame 7 EA or an ABB 11 N1 combustion turbine in a combined cycle configuration. Either unit will have a net generating capacity of approximately 125.9 MW and will deliver at least 115 MW.

15. Apart from its representation to Florida Power that it would install a unit less than 75 MW, Panda made the same representation to regulators. In 1991, Panda filed with the FERC a Notice of Self-Certification As a Qualifying Cogeneration Facility. (Exhibit 2). That filing stated: "The Facility will have an estimated net maximum capacity at design conditions of 74.9 MW." Consistent with the generator power plant representations Panda had made to Florida Power regarding its proposed use of three GE LM 2500 units, Panda also represented to the FERC that its facility would incorporate "three (3) gas fired combustion turbine generators." Panda attached its Notice to the FERC in response to question 8.d of Florida Power's questionnaire, which requested that each bidder show how its facility will meet the qualifying facility criteria under the FERC. Now, Panda has filed a new application with the FERC. This time, rather than the 74.9 MW net maximum capacity it had stated in its 1991 application, Panda now describes its newly-proposed facility as having "one (1) combustion turbine generator" with a maximum net generation of 125.9 MW and a net electrical output of 115 MW. (Exhibit 3).

16. Additionally, in response to Florida Power's concerns regarding the type and amount of backup fuel each bidder's facility would have available in case of an emergency, Panda represented that because it was building a 75 MW facility, its proposed 500,000 gallons of backup fuel would provide that size facility with a full five days supply. In response to Florida Power's questionnaire, Panda stated:

[Question] 8.c. Describe your fuel supply and delivery plan and the status of any commitments you have in this regard. Provide documentation.

[Response] Panda will use No. 2 Fuel Oil as back up fuel. Panda will install 500,000 gallons of fuel oil storage. For a 75 MW facility, this will represent a 5-day supply. (emphasis added). (See Exhibit 4).

17. The representations in Panda's bid were not lightly made. Panda's proposal was submitted during a two-week "open season" provided for by Florida Power, rather than on a first in time, first in line basis. In its testimony before the Commission in Docket No. 911142 resulting from a challenge to that procedure, Panda acknowledged that: "We definitely knew the bid was to be evaluated on its merits" and, as a result, "We spent more effort on site and host selection and on bid content." (See Exhibit 5, excerpt from prefiled testimony of Stephen G. Argenbright, in-house counsel for Panda who was in charge of preparing Panda's proposal. (emphasis added)).

18. Moreover, Panda consistently represented to Florida Power after the contract was awarded that it would configure its facility at 74.9 MW. For example, in a January 22, 1992 letter to Florida Power regarding interconnection, Panda referenced "the Panda-Kathleen 74.9 MW combined cycle gas fired power plant." (See Exhibit 6). Indeed, even into 1994 Panda was uniformly

characterizing its plant as having a 74.9 MW capacity. See, e.g., Panda's revised milestone schedule sent to Florida Power on January 21, 1994 which is entitled "Panda-Kathleen L.P. 74.9 MW Cogeneration Facility - Milestone Schedule." (Exhibit 7).

19. Then, without notice to, or permission from, either Florida Power or the Commission, Panda abruptly, significantly, and unilaterally changed its proposed configuration. On June 23, 1994, Panda's project manager wrote to David Gammon of Florida Power setting forth Panda's proposed new configuration. (Exhibit 8). In addition to its being Panda's first notice to Florida Power of this drastic change, the June 23 letter is significant for two other reasons. First, it demonstrates that Panda recognized that its newly-proposed configuration created a situation that its Standard Offer Contract did not address: "The price that Panda-Kathleen, L.P. would be paid for power in excess of 74.9 MW." To cover this new situation created by Panda's reconfiguration, Panda improperly attempted to turn the Standard Offer Contract into a negotiated contract: It proposed a new payment term and sought to amend the Standard Offer Contract by providing a space where the new payment provision could be "Accepted and Agreed to" by Florida Power. However, Florida Power refused to alter the terms of the Standard Offer Contract. Second, Panda did not claim in June 1994, as it now does in its motion, that these newly proposed units were "the smallest commercially available units" Panda could use -- Panda claimed only that: "These machines are the most economical units" that it could use. (emphasis added).

20. Panda continued its efforts to negotiate an amendment to the Standard Offer Contract to allow it to produce in excess of 74.9 MW. On July 27, 1994, for example, Panda's project manager again wrote to Mr. Gammon, this time claiming that the newly proposed units "are the most environmentally attractive and technically feasible" units Panda could use. (See Exhibit 9). Again, Florida Power refused to "accept and agree to" the requested change to the Standard Offer Contract.

21. Instead, Florida Power, in Mr. Gammon's reply letter of August 3, 1994, expressly advised Panda that Florida Power could not agree to Panda's letter proposing contract amendments "for the very reason that it appears to alter [the Standard Offer Contract] obligations." Among other things:

First, the [July 27, 1994] letter recites that the output of Panda's facility "may reach 115 MW." I understand that you believe Panda may construct such a facility consistent with the Standard Offer contract between our companies. However, as you know, we are not in agreement with that position. (emphasis added). In fact, the Standard Offer Contract specifically states that it is for the purchase of capacity and energy by Florida Power "from a Qualifying Facility less than 75 MW." (emphasis in original letter). (See Exhibit 10).

22. Indeed, Florida Power does not have the ability to agree with the amendments urged by Panda. The Standard Offer Contract was approved by Order of the Commission in March 1992. It cannot be changed at the whim of the parties. Recognizing this fact, Florida Power, since it first became aware of Panda's proposed new configuration, repeatedly urged Panda to obtain a ruling from the Commission as to the availability of the Standard Offer Contract. It was Florida Power's understanding that Panda intended to seek such a ruling from the Commission. Panda failed to do so, however, and instead simply discussed the

matter on an informal basis with Commission staff. Accordingly, Florida Power filed its January 25, 1995 Petition in order to obtain a definitive ruling from the Commission on this issue.

23. The point is this: As part of its original proposal, Panda made unequivocal representations to Florida Power, to the Commission, and to the FERC as to the size and configuration of its proposed facility. These representations were made in a bid on which Panda spent "more effort" because it understood the bid would be evaluated on its merits. On the basis of those representations -- which showed the facility to be in conformance with the Standard Offer Contract and Rule 25-17.0832 -- Florida Power accepted Panda's proposal and the Commission approved Panda's Standard Offer Contract. For Panda to now say, as it repeatedly does in its motion, that its facility cannot be built in the manner set forth in its proposal means either (1) that Panda made material misrepresentations to Florida Power, to the Commission, and to the FERC in 1991, causing Florida Power to select, and the Commission to approve, a technologically unfeasible project, or (2) Panda's present claims are disingenuous. If the former, the Commission should nullify Panda's Standard Offer Contract in its entirety as void ab initio. If the latter, the Commission should deny Panda's Motion, grant Florida Power's Petition, and allow Panda to build its facility only in accordance with its original proposal.

(3) The Standard Offer Contract Allows Panda to Provide Itself With the Operating Buffer it Now Claims to Need.

24. Furthermore, Panda's claims that it cannot perform its Standard Offer Contract as it had previously agreed to do ignores two material provisions of that contract. First, the contract allows Panda to decrease its committed capacity by up to 10%. Second, the contract provides for an on-peak capacity factor of 90%. These provisions provide to Panda whatever reasonable operating buffer it now claims to need.

25. Specifically, § 7.2 of Panda's Standard Offer Contract allows Panda to "decrease the initial Committed Capacity by no more than ten percent (10%)." Thus, Panda has the ability to redesignate the committed capacity downward, build a plant with a net generating capability of less than 75 MW, and provide the operating buffer it claims it needs here. Moreover, Panda's concerns over the need for excess gross generation to offset plant load and transformation losses is misplaced. As the Commission recognized in its Polk Power Partners decision (Order No. PSC-92-0683-DS-EQ), the 75 MW limitation applies to a facility's net (not gross) generating capacity.

26. In addition, Schedule 2 to Appendix C of the Standard Offer Contract provides that the facility have a minimum on-peak capacity factor of 90%. In the on-peak hours, for example, except for occasional performance tests Panda need only produce either 100% of the committed capacity for 90% of the time, or 90% of the committed capacity for 100% of the time, or any combination thereof that averages 90%. Thus, the Standard Offer Contract already takes into account the variations inherent in producing power "under all operating conditions, including

the least favorable that may be anticipated." (Panda's Motion at 13). Nor should the potential of annual tests of the facility's ability to deliver committed capacity cause Panda a problem. (See Panda's Motion at 12). Despite the contrary impression Panda wishes to create, the tests can be no more frequent than once per year, Panda would have a full two months in which to run a requested test (at the time(s) of its own choosing), and Panda could run the test as many times as it wanted within the 60-day period until it passed. Moreover, as stated above, Panda could elect to decrease its committed capacity a full 10% to give itself a comfortable cushion.

27. In sum, Panda's Motion is nothing more than a last-ditch attempt to entice the Commission to ignore its own rules and precedent and allow Panda to build a fundamentally different facility from that which it agreed to construct in compliance with the Commission's rules for standard offer contracts. Instead of the net maximum capacity of 74.9 MW that Panda had represented to Florida Power, the Commission, and the FERC from the beginning, Panda now proposes to install a unit with a net maximum capacity of 125.9 MW. This unit will consistently deliver at the Point of Delivery at least 115 MW -- over 50% more than allowed by Commission rule -- and Panda wants to force Florida Power to take, and pay for, all of the energy produced by this much larger facility. This is so despite the fact that Panda has no contractual obligation to produce any more than 74.9 MW. Panda simply wants Florida Power to pay for whatever amount of power Panda chooses to produce above 74.9 MW, whenever Panda chooses to produce it. The Standard Offer Contract never contemplated such a result.

28. Panda's Motion provides no justification (other than self-serving pronouncements relating to its own choices and economic self-interest) for its

request to alter its Standard Offer Contract and violate Rule 25-17.0832. As stated above, the Commission should either nullify Panda's Standard Offer Contract because it was procured through material misrepresentations or deny Panda's Motion, grant Florida Power's Petition, and order Panda to proceed only in accordance with its original proposal.

B. Florida Power's Capacity Payment Obligations Terminate After 20 Years.

(Responding to Numbered Paragraphs 4-24 and Sections III B and C of Panda's Motion)

29. In its January 25, 1995 Petition, Florida Power showed that its capacity obligations terminate at the end of 20 years because the economic life of the avoided unit is 20 years. Florida Power will not reargue that position here and respectfully refers the Commission to its Petition.

30. Rather than respond to this argument, Panda instead claims that it is entitled to 30 years of capacity payments because (1) "Panda simply filled in a blank space in the Standard Offer Contract form" (Panda's Motion at 3), and (2) according to Ralph Killian, Senior Vice President of Panda Energy Corporation, Florida Power agreed to make capacity payments to Panda for 30 years. In light of the fact that the estimated life of the avoided unit is incontestably 20 years, neither of Panda's claims would entitle it to 30 years of capacity payments. Indeed, receipt of the capacity payments claimed by Panda would result in a windfall to Panda at the expense of Florida Power and its ratepayers. Moreover, Mr. Killian is simply wrong, and in truth and in fact, Florida Power has never agreed to make capacity payments for 30 years for an avoided unit having an estimated life of only 20 years. Thus, both versions of Mr. Killian's self-serving

affidavit (Exhibit 4 to Panda's Motion and "Amended Affidavit" filed March 23, 1995) should be discounted in their entirety.

(1) The Standard Offer Contract and the Commission Rules Negate Panda's Claim for Extended Capacity Payments.

31. Commission Rule 25-17.0832(3)(e)(6), in conjunction with Schedule 2 to Appendix C of Panda's Standard Offer Contract, completely negate Panda's claim to 30 years of capacity payments. The Rule provides that each standard offer contract shall state the period of time over which firm capacity and energy are to be delivered by the QF to the utility. The Rule then goes on to specify both the minimum and the maximum time periods for delivery of firm capacity and energy. The Rule states that such delivery shall be for a minimum of 10 years. The Rule then states:

At a maximum, firm capacity and energy shall be delivered for a period of time equal to the anticipated plant life of the avoided unit, commencing with the anticipated in-service date of the avoided unit. (emphasis added).

32. Schedule 2 to Appendix C of Panda's Standard Offer Contract clearly states that the economic life of the avoided unit is 20 years. There is no dispute on this point. Therefore, under Rule 25-17.0832(3)(e)(6), the maximum period of time for the delivery of firm capacity and energy is 20 years, and Florida Power calculated the capacity payments on that explicit basis. See Exhibit 7 to Florida Power's Petition.

33. Not surprisingly, Panda fails even to mention Rule 25-17.0832(3)(e)(6) in its Motion. It refers instead only to subsection (3)(e)(3) of the Rule which allows a standard offer contract to contain an "illustrative calculation of firm

capacity payments." (Panda's Motion at 9-10). Panda then attempts to characterize Schedule 3 to Appendix C of its Standard Offer Contract as merely "illustrative." Panda's argument is fatally flawed. In the first place, Panda misstates the Rule. The Rule, of course, does not require the payment calculations to be illustrative, it merely allows them to be illustrative. Thus, Panda's statement at page 9 of its motion that the Commission's rules require that a standard offer contract "must provide" an illustrative calculation of firm capacity payments (citing FPSC Rule 28(sic)-17.0832(3)(e)) (emphasis added) is flatly wrong. More fundamentally, however, whether the calculations are illustrative or actual have nothing to do with the overriding limitation set forth in subsection (3)(e)(6) of the Rule on the minimum and maximum length of time those payments can be made. Florida Power made the actual (not illustrative) 20-year calculations shown on Schedule 3 to Appendix C of Panda's Standard Offer Contract in conformity with Rule 25-17.0832(3)(e)(6), which controls this issue.

**(2) Panda Seeks a Windfall of
Capacity Payments.**

34. As the Commission is well aware, Rule 25-17.0832(3)(e)(6) sets a maximum time period for delivery of firm capacity and energy equal to the life of the avoided unit because the capacity payments are based on the revenue requirements of the avoided unit. Obviously, the revenue requirements of a unit with a 20-year life end after 20 years. Revenue requirements calculations include the depreciation of the capital, taxes, and fixed O&M expenses, as well as profits. Depreciation, of course, is a function of the length of the economic life, making the revenue requirements dependent on the specific avoided unit's plant life.

Value of deferral is calculated to defer the net present value of the revenue requirements each year up to the end of the life of the avoided unit.

35. Hence, Panda's claims for capacity payments for 30 years at an annual escalation rate of 5.1% would result in a patent windfall to Panda. Had Florida Power invested in a plant with a life of 30 years instead of 20, there would have been only a relatively small additional initial investment. Because the initial investment costs would not vary greatly, the depreciation of the plant over a 30-year period would result in substantially lower annual payments than depreciating a 20-year plant over 20 years. Panda, however, does not want a 30-year value of deferral payments for a 30-year plant. Rather, it wants the equivalent of the value of deferral payments for a 20-year avoided unit (which would be completely depreciated after the 20 years), followed by 10 years of deferral payments for a second avoided unit. Panda, in short, wants 150% of the capacity payments provided by its Standard Offer Contract and Rule 25-17.0832(3)(e)(6). That is a windfall that should not be countenanced by this Commission.

36. Moreover, Panda's position that "the benefits to FPC and the ratepayers still continue in years 21-30; to be fair, so must the revenue streams" (Panda's Motion at 5) ignores the significance of the 20-year life of the avoided unit set forth in the Standard Offer Contract. At the end of that 20-year period, Florida Power would then be free to (1) choose from newer, more advanced technologies, (2) seek price improvements, and (3) take advantage of options allowing it to select the type of unit (e.g., peaking, intermediate, etc.) that would best fit Florida Power's needs at that time. Panda's position would deny Florida

Power all of these choices by locking it into the present payment terms and technology for 30 years instead of 20.

37. In addition, Panda's claims that it is entitled to capacity payments for 30 years because "Panda simply filled in a blank space in the Standard Offer Contract form, as it was supposed to do," ignores the distinction between the term of the contract and the length of time (and the value of the) capacity payments to be paid under the contract. Florida Power did not evaluate the filled-in-the-blank "term" of Panda's Standard Offer Contract as a pricing issue because the "term" would not -- and could not -- dictate the continuation of the capacity payments beyond the life of the avoided unit, as Panda now claims. Thus, even if the contract term is found to be 30 years, Florida Power would pay only the "as available" energy rate in years 21-30. To interpret Panda's Standard Offer Contract otherwise would violate Rule 25-17.0832(3)(e)(6) and result in a windfall to Panda at the expense of Florida Power and its ratepayers.

**(3) Florida Power Did Not, and
Could Not Agree to Make
Capacity Payments for 30 Years.**

38. Panda's claim that Florida Power agreed to make capacity payments is based solely on version no. 2 of the affidavit made by Ralph Killian (the first version of which Panda is attempting to withdraw because it contains "an inadvertent error").

39. Mr. Killian's first affidavit purports to report the results of a meeting on January 9, 1992 at which "[t]he leader of the FPC team in attendance was John Seelke." Mr. Killian claims that Mr. Seelke agreed at the meeting 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 [the final 10 years of the alleged 30-year contract] at 5.1% a year." However, Mr. Seelke had left the employment of Florida Power in June 1991 and has had no association with Florida Power in any capacity from that time on. Obviously, he was not the "leader of the FPC team" from whom Mr. Killian claims to have obtained this agreement some 6 months later.

40. It has apparently now been brought to Mr. Killian's attention that Mr. Seelke was not employed by Florida Power in 1992 and, therefore, could not have been at the meeting Mr. Killian claims to remember so distinctly. Thus, Mr. Killian now claims, in the second version of his affidavit, that it was Allen Honey who was the leader of the Florida Power team making the representations. Mr. Killian's earlier sworn statement that John Seelke handled this critical meeting is the "inadvertent error" that Panda now wants to fix.

41. It is telling, however, there is no documentation of this "agreement" anywhere. There is no follow-up letter, nor is there any reference to this alleged agreement of any kind. Indeed, both versions of Mr. Killian's affidavit are flatly contradicted by Panda's own letter of January 26, 1993, (a full year later) to Florida Power re: "Errors and Clarifications in Standard Offer Contract." (See Exhibit 11). The letter encloses a "list of items in the Standard Offer Contract which need to be addressed," ranging from "simple typographical errors to omissions of major points." Specifically as to Schedule 3 on Appendix C, Panda states its own position as follows:

Our contract is for a 30-year term. The tables for capacity payments only extend for twenty years. We need to specify what the capacity payments will be in years 21 through 30, or agree on the escalator to be applied to calculate them. Alternatively, we

may agree to utilize avoided cost for capacity on a ten-year basis in 2017. (emphasis added).

Clearly, the parties had reached no agreement on the issue.

42. Moreover, Mr. Killian's affidavits are contradicted by Allen J. Honey, Senior Cogeneration Engineer at Florida Power, who did attend a meeting with Mr. Killian and others on January 9, 1992, and who flatly denies that he or anyone else on behalf of Florida Power represented to Panda that capacity payments would extend for 30 years. (Exhibit 12).

C. Sections III D and III E of Panda's Motion Have been Mooted by the Commission's Order Striking From This Docket Issues Relating to Milestone Dates and the Clarification Letter.

43. At its May 2, 1995 Agenda Conference, the Commission struck from this Docket Panda's attempt to extend its milestone dates under the Standard Offer Contract and to force Florida Power to execute a "Clarification Letter" drafted by Panda. Florida Power, therefore, need not address the arguments asserted in Section III D (including numbered paragraphs 50-60) and Section III E of Panda's Motion.

WHEREFORE, for all of the reasons stated above, Florida Power respectfully requests that the Commission either (1) declare Panda's Standard Offer Contract to be void ab initio because Panda's initial proposal contained misrepresentations of material fact upon which Florida Power relied in accepting the proposal or (2) deny Panda's Motion, grant Florida Power's Petition, and direct Panda to proceed only in accordance with its initial proposal which formed the basis of Panda's Standard Offer Contract.

Respectfully submitted,

**OFFICE OF THE GENERAL COUNSEL
FLORIDA POWER CORPORATION**

By 

James P. Fama
James A. McGee
Post Office Box 14042
St. Petersburg, FL 33733-4042
Telephone: (813) 866-5184
Facsimile: (813) 866-4931

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

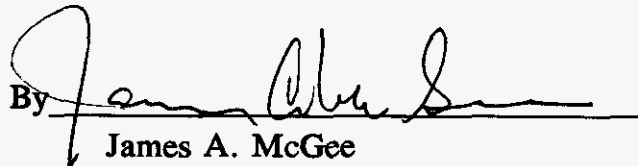
Submitted for filing:
May 8, 1995

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Florida Power Corporation's Answer in Opposition to Panda-Kathleen L.P.'s Motion for Declaratory Statement and Other Relief has been furnished to Barrett G. Johnson, Esquire, Johnson & Associates, P.A., P.O. Box 1308, Tallahassee, FL 32302, and Maryanne Helton, Division of Appeals, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, FL 32399-0870, this 5th day of May, 1995.

Respectfully submitted,

OFFICE OF THE GENERAL COUNSEL
FLORIDA POWER CORPORATION

By 

James A. McGee
Post Office Box 14042
St. Petersburg, FL 33733-4042
Telephone: (813) 866-5786
Facsimile: (813) 866-4931

8.d. EQUIPMENT COMMITMENTS AND DESIGN

The following is a list of a major equipment items and the anticipated vendors of those items. We have also attached letters from various vendors regarding their commitment to Panda for schedule delivery.

Major Equipment List

- Stewart and Stevenson/General Electric LM 2500 - Three (3)
Generator Power Plant

- Heat Recovery Steam Generator Three (3)
Nooter Erikson or
Deltak

- Steam Turbine Generator One (1)
Siemens Power Corporation or
Asea Brown Boveri

The above listed equipment are critical path delivery plant items. Scope of the GE LM 2500-33 Gas Turbine - Generator Plant is pre-packaged and available to meet Panda's proposed on steam date of April 1, 1995.

All balance of plant items for combined cycle have been determined to have delivery schedules of six (6) to ten (10) months and will not adversely impact our scheduled construction and start up. A milestone schedule showing order, delivery and construction period is shown in answer to question 8.e.

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Panda-Kathleen
Limited Partnership

Docket No. QF _____

Amended and Restated
Notice of Self-Certification As a
Qualifying Cogeneration Facility

Pursuant to Section 292.207 of the regulations of the Federal Energy Regulatory Commission (the "Commission"), Panda-Kathleen Limited Partnership ("Panda") hereby files an amended and restated notice of self-certification as a qualifying cogeneration facility.

Location of the Facility And
Identification of the Applicant

The cogeneration facility (the "Facility") will be located at the plant site of Erly Juice, Inc., 4100 Frontage Road South, Lakeland, Florida 33802-2004.

The owner of the Facility will be Panda-Kathleen Limited Partnership, a partnership formed under the laws of the State of Delaware.

The address of Panda-Kathleen Limited Partnership is:

Panda-Kathleen Limited Partnership
4100 Spring Valley Road
Suite 1001
Dallas, Texas 75244

Description of the Facility

The Facility is a combined cycle cogeneration facility, incorporating three (3) gas fired combustion turbine generators, three (3) waste heat recovery steam generators and one (1) extraction induction steam turbine generator.

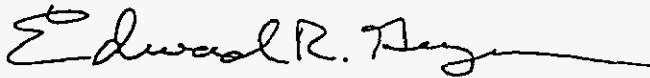
The Facility will have an estimated net maximum capacity at design conditions of 74.9 MW. The electrical output of the Facility will be sold to Florida Power Corporation ("FPC") with an interconnect directly into the FPC transmission system. The Facility will generate approximately 15,000 lbs. per hour of steam which will be sold to Erly Juice, Inc. for use in the processing of citrus juices.

Primary Energy Source

The Facility will be fueled by Natural Gas and is expected to commence operation in 1997 or before.

Panda-Kathleen Limited Partnership has submitted this notice of self-certification as a qualifying cogeneration facility to be executed by its general partner's corporate official and general counsel on this 7th day of October 1991.

Respectfully submitted,
Panda-Kathleen Corporation, for
Panda-Kathleen Limited Partnership

A handwritten signature in cursive script, reading "Edward R. Gwynn", with a long horizontal flourish extending to the right.

Edward R. Gwynn
General Counsel

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

FILED
OFFICE OF THE SECRETARY
94 AUG 23 PM 3:36
FEDERAL ENERGY
REGULATORY
COMMISSION

Panda-Kathleen, L.P.)

Docket No. QF94-

Application of Panda-Kathleen, L.P. for Commission
Certification of Qualifying Status of a Cogeneration Facility

This application is respectfully submitted to the Federal Energy Regulatory Commission (the "Commission") on behalf of Panda-Kathleen, L.P. ("Panda"), a Delaware Limited Partnership, for certification of the qualifying status of a cogeneration facility to be constructed on property owned by Panda near Lakeland, Florida in Polk County.

As owner and operator of the cogeneration facility, Panda will provide steam to Lakeland Water Company ("Lakeland Water"). Electricity will be sold to Florida Power Corporation. Lakeland Water is a Delaware Corporation.

INFORMATION REQUIRED IN APPLICATION FOR
CERTIFICATION OF QUALIFYING COGENERATION FACILITY STATUS

1. (a) NAME AND ADDRESS OF APPLICANT:

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

(b) LOCATION OF FACILITY:

The facility will be located on property owned by Panda.
The location is:

800 McCue Rd.
Lakeland, Florida

2. BRIEF DESCRIPTION OF FACILITY:

As defined under Section 292.202(d) of the Commission's Rules, the proposed facility will be a topping cycle cogeneration facility consisting of one (1) combustion turbine generator and a heat recovery steam generator, with low pressure (77 psia) process steam sold to Lakeland Water, an affiliate of Panda, for the production of distilled water and with electrical

139434

energy sold to Florida Power Corporation pursuant to a Florida PSC approved Standard Offer Contract. The cogeneration facility will have a net electrical output of 115 MW and a rated capacity of 118 MW gross at 72°F/60% R.H. ambient conditions. The site average annual temperature is 72.4°F; therefore, the 118 MW gross rating is used in the calculations below of annual electrical output.

3. PRIMARY ENERGY SOURCE

Natural gas will be the primary energy source for the facility. Panda will have standby capability for #2 Fuel Oil. Environmental permitting will reflect the facility's capability to burn fuel oil should the facility's gas supply be curtailed.

4. PRODUCTION CAPACITY OF FACILITY:

Maximum Gross Generation:	129,290 KW
Plant Load and Transformer Loss:	3,400 KW
Total Maximum Net Generation:	125,890 KW

5. PERCENTAGE OF OWNERSHIP BY ANY ELECTRIC UTILITY OR ELECTRIC UTILITY HOLDING COMPANY:

The Applicant is a Delaware Limited Partnership and will own and operate the cogeneration facility. The applicant is wholly-owned by Panda Energy Corporation, a privately-held company. Panda Energy Corporation is engaged in the business, through its subsidiaries, of developing, owning and operating qualifying facilities and exempt wholesale generators and in the development and exploration of hydrocarbons. The only individuals or entities who own 10% or more of the stock of Panda Energy Corporation are Mr. Robert W. Carter and Mr. Billy Huffman. Neither Applicant nor Panda Energy Corporation, nor any of their affiliates, is directly or indirectly engaged in the generation or sale of electric power other than from qualifying facilities ("QF's), or has any ownership or operating interest in facilities used for the sale of electric power other than QFs. No electric utility, utility holding company, or entity owned by either will have an ownership interest in the cogeneration facility.

6. FEDERAL REGISTER NOTICE

(Attached as Exhibit A)

7. ADDITIONAL INFORMATION FOR COGENERATION FACILITIES:

As defined by § 292.202 (d) of the Commission's Rules, the proposed facility will be a topping cycle cogeneration facility. The combustion turbine generator will produce 77,900 KW (gross, at 72°F/60% R.H. ambient conditions) of electricity. Utilizing the waste heat, the associated heat recovery steam generator will produce approximately 277,200 pounds per hour of 985 psia steam and 55,300 pounds per hour of 77 psia steam. Lakeland Water will utilize 20,000 pounds per hour of steam in their process. The steam produced in the waste

heat recovery boiler will be used in a steam turbine generator to produce an additional 40,740 KW (gross at 72°F/60% R.H. ambient conditions) of electricity. See Exhibit B for Cycle Diagram. Please note all cogeneration facility calculations herein are based on an ambient temperature of 72°F and a cogeneration facility annual plant operation of 8000 hours per year. Process steam and load calculations are based upon 8000 hours per year. As detailed in Exhibit C, the facility will have an operating standard of 5.1% and efficiency standard of 47.6%.

(a) Installation of the Facility:

Installation is expected to commence January, 1995.

(b) Annual Natural Gas and Oil Energy Input (LHV):

6789.6 X 10⁹ BTU/YR
(848.7 MM BTU/HR) (8000 HRS/YR)

(c) Net Electrical Output = 3145.6 X 10⁹ BTU/YR

(Gross Electrical Output) =	118,640 KW
<u>(Plant Load and Transformer Loss) =</u>	<u>3,400 KW</u>
Net Electrical Output =	115,240 KW

(115,240 KW) (8000 HRS/YR) (3412 BTU/KWHR)

(d) Annual Useful Thermal Output:

170.34 X 10⁹ BTU/YR

The useful thermal output is calculated as the value of thermal energy for 77 psia, saturated steam utilized in the process and for production of distilled water less the value of the condensate return from process at 180 °F.

+(20,000 LBS/HR) (1183 BTU/LB) X 8000 HRS/YR
-(16,000 LBS/HR) (148 BTU/LB) X 8000 HRS/YR

(e) Description of How Useful Thermal Output is Applied:

The Lakeland Water thermal load will be based upon an average of 20,000 pph, 77 psia saturated steam for process use. This load is based on 8000 hrs/yr to coincide with the cogeneration facility operation. Saturated steam is used to vaporize a portion of the water contained in the cooling tower blowdown. The vaporized water is condensed to produce a high quality distilled water for use in industrial processes. Cooling tower blowdown water is waste water that is discharged from the cooling tower during regular and routine operation of the cogeneration plant. Cooling tower blowdown is necessary and normal for all power generation

facilities in order to control the total dissolved solids contained in cooling water.

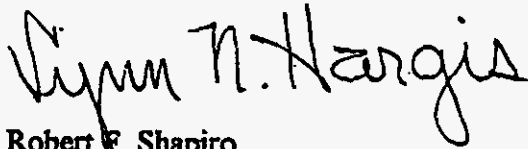
Distilled water from the project will be used for boiler makeup water in boilers used to produce process steam for vehicle maintenance, hospital uses, laundry processes, commercial beverage and food processing and for space heating. None of the process steam is used for any electric generation purposes.

The use of cogenerated steam in the production of distilled water is presumptively useful. See Kamine/Besicorp Allegany L.P., 63 FERC ¶61,320 (1993).

(f) Computations for Operating and Efficient Standards:

Attached as Exhibit C.

Respectfully submitted,



Robert F. Shapiro
Lynn Hargis
Lynne E. Gedanken
Chadbourne & Parke

Attorneys for Panda-Kathleen, L.P.

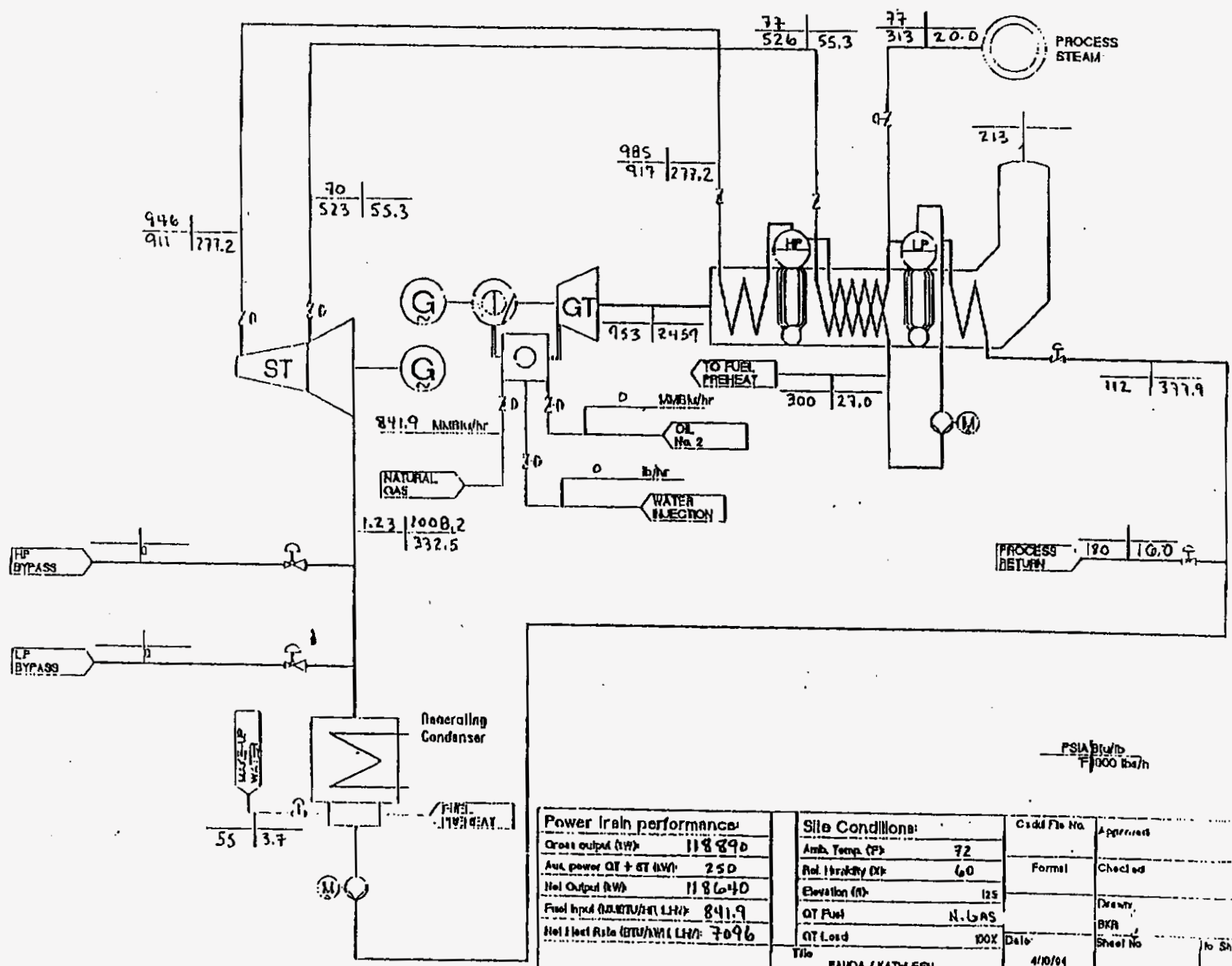
EXHIBIT A**NOTICE OF APPLICATION FOR COMMISSION
CERTIFICATION OF QUALIFYING STATUS OF A
COGENERATION FACILITY**

On _____, Panda-Kathleen, L.P. filed with the Federal Energy Regulatory Commission an application to be certified as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Rules.

As defined by § 292.202(d) of the Commission's Rules, the proposed facility will be a topping cycle cogeneration facility located on property to be owned by Panda-Kathleen, L.P. near Lakeland, Florida.

The primary source of fuel will be natural gas. The facility is designed to produce a net capacity of approximately 115 MW of electricity with 20,000 pph of 77 psia steam to Lakeland Distilled Water Company for production of distilled water.

Any person desiring to be heard, or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol St., N.E. Washington, D.C. 20426, in accordance with §§ 385.211 and 385.214 of this chapter. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.



Power Train performance:	
Gross output (MW)	118890
Aux power GT + ST (MW)	250
Net Output (MW)	118640
Fuel Input (MMBCU/hr LH)	841.9
Net Heat Rate (BTU/MW LH)	7096

Site Conditions:	
Amb. Temp (F)	72
Rel. Humidity (%)	60
Elevation (ft)	125
GT Fuel	N. GAS
GT Load	100%

Drawn	Checked	Approved
PKR		
Sheet No		
Total Sheets		

Title: PAIDA / KATHLEEN
 AVG. AMB. TEMP PERFORM.

Rev. 0

1394397

353

EXHIBIT C

Panda-Kathleen, L.P.
Operating/Efficiency Standards

HOST DATA

Host Steam Requirements - #s/hr	20,000
Host Steam PSIA	77
Host Steam Enthalpy Process - BTU/#	1183
Host Condensate Return Process - BTU/#	16,000
Host Condensate Enthalpy - BTU/#	148
Host Steam Delivered - Hours/yr	8,000

FACILITY DATA

Facility Electrical Net Output - KW	115,240
Fuel BTU/hr LHV	848.7 X 10 ⁶
Equivalent Full Load Operated Per Year	8,000

OPERATING STANDARD

Useful Thermal Output - BTU/yr	170.34 X 10 ⁹
Net Electrical Output - BTU/yr	3145.6 X 10 ⁹
Total Energy Output - BTU/yr	3315.94 X 10 ⁹
Useful Thermal Output/Total Energy Output - %	5.1%

EFFICIENCY STANDARD

Natural Gas Energy Input (LHV) - BTU/yr	6789.6 X 10 ⁹
Net Electrical Output + 1/2 Thermal Output - BTU/yr	3,230.77 X 10 ⁹
Net Electrical Output + 1/2 Thermal Output/Nat. Gas Input - %	47.6%

FUEL PLAN
PANDA LAKELAND PROJECT

Primary Fuel: Natural Gas
Backup Fuel: No. 2 Fuel Oil

Natural Gas Transportation

Panda will transport gas supplies from Louisiana and Texas on Florida Gas Transmission (FGT). Panda has requested firm transportation on FGT for 40 MMCFD. FGT accepted this request and included Panda's volumes in their Phase III expansion. Panda has executed a firm transportation service agreement and is in the process of returning same to FGT for their execution. A copy of this agreement is attached. FGT plans an in service date of July, 1994 for this expansion (see attached implementation schedule). FGT has designed a meter station at M.P. 44.0 on their St. Petersburg Lateral. Information on FGT's design is attached. From the FGT meter station to the proposed facility, Panda will construct a 4 mile pipeline.

Natural Gas Supply

Panda will purchase natural gas under long term contract from one or more suppliers. Proposals for this location from Sunrise Energy and Brymore Energy Ltd. are attached. Additionally, Panda has been negotiating with Citrus Marketing for a supply of gas for a project in Vero Beach, Florida. Citrus is also willing to supply gas to this facility.

Back Up Fuel

Panda will use No. 2 Fuel Oil as back up fuel. Panda will install 500,000 gallons of fuel oil storage. For a 75 MW facility, this will represent a 5 day supply.

10/29/91

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

TESTIMONY OF STEPHEN G. ARGENBRIGHT

ON BEHALF OF

PANDA-KATHLEEN, L.P.

DOCKET NO. 911142

Q. Please state your name, profession and address.

A. My name is Stephen G. Argenbright. I am an attorney on the legal staff of Panda-Kathleen, L.P. Panda Energy Corporation is engaged in the development and operation of Cogeneration Facilities. My office is located at Suite 1001, 4100 Spring Valley Road in Dallas, Texas. Panda-Kathleen, L.P. is engaged in the development of a cogeneration facility in Lakeland, Florida for Florida Power Corporation.

Q. State briefly your educational and professional background.

A. I am a 1985 graduate of the University of Texas in Austin, Texas. I hold a Bachelor of Business Administration degree with majors in Accounting and Business Administration. I received a Doctor of Jurisprudence Degree from Southern Methodist University in Dallas, Texas in 1988. I am licensed as a Certified Public Accountant and am a member of the State Bar of Texas. I have been employed as a staff attorney by Panda Energy Corporation since February 1990.

1 Q. On whose behalf are you appearing in this proceeding?

2 A. I am appearing on behalf of Panda-Kathleen, L.P.

3 Q. Please describe your duties with Panda Energy
4 Corporation.

5 A. I assist in the preparation and negotiation of bid
6 proposals and contracts and in other corporate legal
7 tasks.

8 Q. Did you participate in the preparation and submittal of
9 the Panda standard offer proposal to Florida Power
10 Corporation between September 20 and October 4, 1992.

11 A. Yes I did.

12 Q. Please describe your participation.

13 A. I was in charge of preparing and submitting Panda's
14 proposal. In this capacity I reviewed the proposed
15 contract form, obtained the necessary bid data from
16 appropriate staff personnel, and prepared and submitted
17 Panda's proposal.

18 Q. Did you make a determination, prior to submitting Panda's
19 bid as to whether or not the Florida Power Corporation
20 bid process was a "first in time, first in line" process?

21 A. I did.

Q. What did you determine?

A. I determined that FPC intended to evaluate bids on their merits, not on a first in time, first in line basis.

Q. How did you determine this?

A. I determined this in telephone conversations with (i) Susan Brownless, who performed various legal services for us at the time, (ii) Tom Wetherington of Florida Power Corporation, and (iii) members of the Florida Public Service Commission staff.

Q. Do you recall who you spoke to at the Public Service Commission?

A. I spoke to several people including, as best I recall, Martha Brown and Mike Half. I don't recall which staff member informed me as to the nature of the bid process, but I very clearly recall that they informed me that the bid would be evaluated on its merits or on a value basis as opposed to a first in time, first in line basis.

Q. Are you absolutely sure that Florida Power Corporation and the Public Service Commission staff so informed you?

A. Yes I am.

Q. Why are you so certain?

A. My immediate supervisor, Edward R. Gwynn, General Counsel

1 of Panda questioned me on this and insisted that I
2 contact all of the people mentioned above to verify the
3 process being used. I transmitted the fact that a merit
4 evaluation was being used to Mr. Gwynn and to Mr. Robert
5 Carter, Chairman of Panda Energy Corporation, at least a
6 week in advance of the commencement of the bidding period
7 on September 20, 1991. We definitely knew the bid was to
8 be evaluated on its merits and understood that other
9 bidders knew this as well.

10 Q. Did this affect your bid preparation and submittal?

11 A. Yes it did. We spent more effort on site and host
12 selection and on bid content. We made no effort to be
13 first in time.

14 Q. Would you have made an effort to be first in time if that
15 had been the criteria for selection?

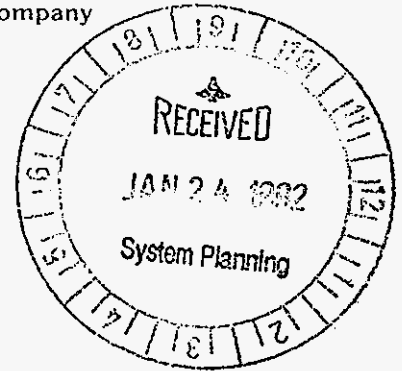
16 A. Absolutely, but we had been told the process involved a
17 merit selection.

18 Q. Did Panda receive a standard offer award?

19 A. Yes, we were selected by Florida Power Corporation on our
20 merits and were awarded a standard offer contract.

21 Q. What is the state of contract performance by Panda?

PANDA ENERGY CORPORATION
The Independent Power Company



January 22, 1992

Mr. David W. Gammon, P.E.
Senior Cogeneration Engineer
Florida Power Corp.
3201 34th Street South
St. Petersburg, FL 33711

REF: Interconnection Information Required by Section 2.1 of Appendix "A" to the Standard Offer Contract between Panda-Kathleen L.P. and Florida Power Corporation, Executed by Florida Power Corporation on or about November 25, 1991.

Dear Mr. Gammon:

The following information is furnished in compliance with Section 2.1 of Appendix "A" of subject Standard Offer Contract:

1. Interconnection Facility should be available for the receipt of electric energy no later than January 1, 1995.
2. Construction of such Facilities should commence no later than April 1, 1994 or such earlier date as is required to meet the January 1, 1995 completion date specified above.

Preliminary Description of the Interconnect Facility

The Interconnect Facility shall consist of a 230 kv transmission line extending northeast from the Panda-Kathleen 74.9 MW combined cycle gas fired power plant site (Erly Juice), some 4,500 feet to the proposed 230 kv switching station to be located under/adjacent to the existing Florida Power Corporation 230 kv wood H-frame transmission line. The interconnect 230 kv switching station is to be located south of Highway I-4 and west of Galloway road. The interconnect metering would be included in the proposed 230 kv switching station.

4100 Spring Valley, Suite 1001 Dallas, Texas 75244
214/980-7159 FAX 214/980-6815

Mr. David W. Gammon, P.E.
Page 2

Preliminary Engineering Authorization

Panda has enclosed an executed copy of your letter dated December 13, 1991, wherein you request authorization to begin preliminary engineering study at a cost not to exceed \$15,000. Panda understands that we shall be billed only for the engineering expenses incurred and that these engineering expenses could be less than \$15,000.

Sincerely,

PANDA ENERGY CORPORATION

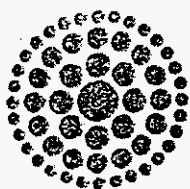
A handwritten signature in black ink that reads "D.L. Kinney". The signature is written in a cursive style and is positioned above the typed name and title.

D.L. Kinney
Manager, Project Development

DLK/em

cc: Hans R. van Kuilenburg, President

118248361



**Florida
Power**
CORPORATION

December 11, 1991

DEC 13 1991

Mr. Darol Lindloff
Panda Energy
4100 Spring Valley, Suite 1001
Dallas, Texas 75244

Dear Mr. Lindloff:

In order to provide a preliminary cost estimate of Panda's interconnection at the Erly Juice location with Florida Power Corporation (FPC), some costs will be incurred. FPC is hereby requesting approval to spend a maximum of \$15,000 for the preliminary engineering study. Please sign this letter below to indicate authorization to begin the preliminary engineering at a maximum cost of \$15,000. Panda will be billed only for expenses incurred and these expenses may be less than \$15,000.

Sincerely,

David W. Gammon
Senior Cogeneration Engineer

DWG/kdh

cc: R. D. Dolan

DWG:#2:Lindlof.Ltr

Darol Lindloff

1-21-92

PANDA-KATHLEEN L.P.

A Panda Company



June 23, 1994

Mr. David Gammon, P.E.
Senior Cogeneration Engineer
Florida Power Corporation
3201 34th Street South
St. Petersburg, FL 33711

Dear David:

As we discussed in our meeting on June 22, 1994, Panda-Kathleen, L.P. is permitting two equipment configurations- a GE 7EA and an ABB11N for its Lakeland project. These machines are the most economical units that allow Panda-Kathleen, L.P. to supply the committed capacity of 74.9 MW at all times. The net output of the selected turbine will be 100-115 MW under certain conditions.

A prospective lender has raised the question as to the price that Panda-Kathleen, L.P. would be paid for power in excess of 74.9 MW. The contract provides for payment of the as-available energy prices at times when the avoided unit would not have otherwise run. When the avoided unit would have run, two options exist . FPC would pay either (1) the as-available energy rate or (2) the avoided unit rate. FPC agrees that Panda-Kathleen L.P. shall be paid the "avoided unit rate" under the contract for all energy above 74.9MW during times when the "avoided unit" would have been dispatched, since Panda-Kathleen, L.P. did not elect the "Performance Adjustment" specified in Section 9.1.3 of the contract.

In order to clarify this question and maintain our development schedule, please signify your concurrence on this interpretation in the space provided below on or before July 8, 1994.

Yours truly,

Ted Hollon
Vice President
Project Management and Construction

Accepted and Agreed to as of _____, 1994

FLORIDA POWER CORPORATION

By: _____

Title: _____

J. Fama - A5C
 J. Hines - A5A
 R. Dolan - B3L
 A. Honey - B3L
 L. Schuster - BT2
 L. Brousseau - EC3
 Sylvia Walbolt

PANDA-KATHLEEN L.P.
 A Panda Company



July 27, 1994

Mr. David Gammon, P.E.
 Senior Cogeneration Engineer
 Florida Power Corporation
 3201 34th Street South
 St. Petersburg, FL 33711

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 David:

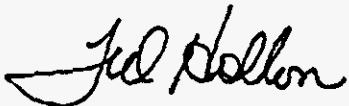
As we discussed in our meeting on June 22, 1994, Panda-Kathleen, L.P. is permitting two equipment configurations, a GE Frame 7EA and an ABB II N for the Lakeland cogeneration facility. These two gas turbines are the most environmentally attractive and technically feasible for supplying FPC 74.9 MW of capacity at all times, under all operating and site conditions, as we are obligated to do. The net output of the selected configuration may reach 115 MW under certain operating and site conditions. FPC will not be obligated to pay capacity payments above the committed capacity of 74.9 MW.

The referenced contract provides for payment of as-available energy prices at times when the avoided unit would not have otherwise run. When the avoided unit would have run, FPC agrees that Panda-Kathleen L.P. will be paid the "avoided unit rate" under the contract for all energy delivered to FPC above 74.9 MW during times when the "avoided unit" would have been dispatched.

Please confirm that the foregoing accurately reflects your understanding of the above referenced contract by signing in the space provided below and returning a signed counterpart. In order that Panda-Kathleen, L.P. maintain its project development schedule, I would very much appreciate your prompt response. Panda-Kathleen, L.P. has no objection to submitting this letter to the PSC if it is deemed necessary by FPC.

Mr. David Gammon, P.E.
July 27, 1994
Page 2

Sincerely,



Ted Hollon
Vice President
Project Management and Construction



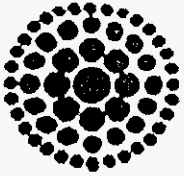
cc: Jim Fama

Accepted and Agreed to as of _____, 1994

FLORIDA POWER CORPORATION

By: _____

Title: _____



**Florida
Power**
CORPORATION

August 3, 1994

Mr. Ted Hollon
Vice President, Project Management and Construction
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 Ted:

This is in response to your letter of July 27, 1994. You have requested that I sign that letter if it "accurately reflects [my] understanding" of the above referenced contract. Since your letter does not reflect my understanding of that contract, I cannot and, therefore have not, signed it.

First, the letter recites that the output of Panda's facility "may reach 115 MW." I understand that you believe Panda may construct such a facility consistent with the Standard Offer contract between our companies. However, as you know, we are not in agreement with that position. In fact, the Standard Offer Contract specifically states that it is for the purchase of capacity and energy by Florida Power "from a Qualifying Facility less than 75 MW." (emphasis added)

Second, the letter uses language so broad (e.g., "at all times, under all operating and site conditions"), that I could not sign the letter under any circumstances. To agree to such language would suggest that I am capable of anticipating all possible scenarios that might be encompassed within such language. I am not so fortunate. Moreover, I can envision possible scenarios with which I would not agree. For example, the letter might be read to suggest that Florida Power is, "at all times, under all operating and site conditions," required to accept 74.9 MW of energy - or even more. As I'm sure you understand, that is not Florida Power's reading of the contract at all. We believe there are situations in which, consistent with the contract, Florida Power may refuse to accept even 74.9 MW or energy -- let alone more.

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Third, to the extent, if any, that Florida Power would decide to accept energy above 74.9 MW, we disagree that, in some instances, it would pay "avoided unit" prices for that energy. Simply stated, if Florida Power decided to accept energy above 74.9 MW, it would only pay "as available" energy prices, not "avoided unit" prices. Thus, we disagree with the contrary language of your letter.

Please understand that my refusal to sign your letter does not mean that Florida Power does not intend to abide by its contractual obligations. Rather, to the exact contrary, I cannot sign your letter for the very reason that it appears to alter those obligations.

If you have any questions, please give me a call at (813)866-4697.

Sincerely,



David Gammon
Senior Cogeneration Engineer

DWG/mag

cc: R. D. Dolan
J. B. Hines

DWG#4:Hollon.ltr

have had a unit with these characteristics operating" is meant to apply only to Avoided Unit Variable O & M or to the entire subsection (i); plain English construction would yield the former result.

ARTICLE X

Section 10.2 Reference to Section 10.1 in this Section is very confusing. Last sentence of this Section seems to make the entire section meaningless, since it prohibits the pass-through to QF of any charge or credit which is recovered or later paid by the Company. The effect of this is to disallow any charge which will be later recovered by the Company (FPC).

ARTICLE XIII

Section 13.3 This Section is defective in that it does not cover all possible circumstances. For example, termination of the Agreement for failure to achieve Commercial In-Service Status on or before the Contract In-Service Date is not automatic. If FPC did not elect to terminate the contract, and Commercial In-Service Status was achieved after the Contract In-Service Date, this contract does not address what would happen to the money. Note that § 25-17.0832(f)(1), Florida Administrative Code provides that the payment or surety shall be refunded upon completion of the facility and demonstration that the facility can deliver the amount of capacity and energy specified in the contract.

ARTICLE XXVII

Section 27.3 The references in this Section to sections 28.1 and 28.2 should be to sections 27.1 and 27.2.

APPENDIX C

Schedule 3 Our contract is for a 30-year term. The tables for capacity payments only extend for twenty years. We need to specify what the capacity payments will be in years 21 through 30, or agree on the escalator to be applied to calculate them. Alternatively, we may agree to utilize avoided cost for capacity on a ten-year basis in 2017.

Schedule 4 "Committed O.P.C.F" is used as a defined term, but never defined. It may or may not be the same as "Minimum O.P.C.F."

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 ALLEN J. HONEY

ALLEN J. HONEY, first being duly sworn, deposes and states as follows:

1. My name is Allen J. Honey and I am the Senior Cogeneration Engineer at Florida Power Corporation ("Florida Power"). I make this affidavit of my own personal knowledge.

2. In my capacity as Senior Cogeneration Engineer, I attended a meeting on January 9, 1992 with representatives of Panda-Kathleen, L.P. to discuss a number of matters relating to Panda's Standard Offer Contract. The meeting took place in Florida Power's offices in St. Petersburg, Florida.

3. At no time during the meeting did I or any other representative of Florida Power agree that (1) Panda would receive capacity payments after year 20; nor (2) that any such payments would escalate at 5.1% per year above those shown in Schedule 3 to Appendix C.

This ends my affidavit.


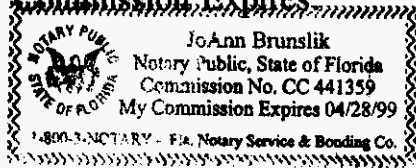

ALLEN J. HONEY

EXHIBIT 12

STATE OF FLORIDA
COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me this 4th day of May, 1995, by ALLEN J. HONEY, who is personally known to me or has produced _____ as identification and who did (did not) take an oath.

My Commission Expires:



JoAnn Brunsluk
(Signature)

Name: JoAnn Brunsluk
(Legibly Printed)

(AFFIX OFFICIAL SEAL)