

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Standard offer Contract for
the purchase of firm capacity and
energy from a qualifying facility
between Panda-Kathleen, L.P.
and Florida Power Corporation.

Docket No. 950110-EI

Submitted for filing:
January 24, 1996

ORIGINAL
FILE COPY

**REBUTTAL TESTIMONY OF
BRIAN A. MORRISON**

**ON BEHALF OF
FLORIDA POWER CORPORATION**

Redacted Version

DOCUMENT NUMBER-DATE

00845 JAN 24 96

FPSC-RECORDS/REPORTING

FLORIDA POWER CORPORATION
DOCKET No. 950110-EI

**REBUTTAL TESTIMONY OF
BRIAN A. MORRISON**

1 **Q. Please state your name and business address.**

2 A. Brian A. Morrison, 800 Third Avenue, Suite 2300, New York, NY
3 10022.

4

5 **Q. By whom are you employed and in what capacity?**

6 A. I am employed by Morrison & Kibbey Ltd. as a Managing Director.

7

8 **Q. What type of an organization is Morrison & Kibbey, Ltd.?**

9 A. Morrison & Kibbey Ltd. is an investment banking firm.

10

11 **Q. What specifically do you do for Morrison & Kibbey?**

12 A. Like my other partners, I am responsible for assisting our clients in
13 developing new corporate financing strategies and the implementation
14 of these strategies.

15

16 **Q. Please describe your educational and business background.**

17 A. Education

18 1971-1975 Georgetown University BS - Mathematics

19 Scholarships: George F. Baker Trust

20 Francis Quimet Foundation

1 1977-1979 Harvard Business School MBA - Finance
2 Scholarships: George F. Baker Trust
3 Danforth Memorial Fellowship

4 Business

5 1993-Present Morrison & Kibbey Ltd. Managing Director
6 1986-1993 Hicks Morrison & Co. Managing Director
7 1985-1986 Amvest Capital Corp. Senior Vice President
8 1982-1985 Dean Witter Reynolds First Vice President
9 1979-1982 Shearson/American
10 Express Assist. Vice President
11 1976-1978 Citibank, N.A.

12 A copy of my resume is attached as Exhibit No. ___ (BAM-1).
13

14 **Q. Have you worked in the area of financing of cogeneration projects?**

15 **A. Yes extensively.**
16

17 **Q. In what capacity?**

18 **A. In our role acting as financial advisor and placement agent we have**
19 **developed and/or implemented financing plans for over 40 power**
20 **projects representing in excess of 1,350 MW of generating capacity.**
21

22 **Q. For how many cogeneration projects have you worked on financing?**

23 **A. 16, totalling over 540 MW.**
24

25 **Q. What is the purpose of your testimony?**

1 A. The purpose of my testimony is to rebut the direct testimony pre-filed
2 by Panda-Kathleen, L.P., that stated that "Panda's ability to meet the
3 construction start date of January 1, 1996, and the in-service date of
4 January 1, 1997, has been jeopardized solely as a result of Florida
5 Power's actions in attempting to disown the contract." (Emphasis
6 added.) Testimony of Ralph Killian, page 37, lines 9-13.

7
8 **Q. On what do you base the testimony contained herein?**

9 A. I based my testimony on my review of the Panda/Florida Power Standard
10 Offer Contract, the Commission's Rule 25-17.0832, F.A.C., documents
11 produced by Panda in discovery, and on my direct experiences in
12 representing numerous private power developers in assisting in the
13 development and implementation of various types of project financing
14 structures.

15
16 **Q. Are you familiar with Panda's corporate structure as it pertains to this**
17 **proceeding?**

18 A. Yes. Three corporate entities appear in the documents: Panda-Kathleen,
19 L.P.; Panda-Kathleen Corporation; and, Panda Energy Corporation.
20 Florida Power entered into a Standard Offer Contract with Panda-
21 Kathleen, L.P., a Delaware Limited Partnership. Panda-Kathleen
22 Corporation is the general partner to Panda-Kathleen, L.P. and is a
23 subsidiary of the parent corporation, Panda Energy Corporation. Except
24 where my testimony pertains specifically to one of these entities, I will
25 refer to these various Panda corporations as Panda.

1 **Q. Are you aware that Panda-Kathleen, L.P., has failed to meet the**
2 **construction start date of January 1, 1996?**

3 **A. Yes.**
4

5 **Q. Are you also aware that on January 25, 1995, Florida Power filed a**
6 **Petition for Declaratory Statement with the Florida Public Service**
7 **Commission raising issues of the interpretation and application of Rule**
8 **25-17.0832, F.A.C., with respect to the Panda/Florida Power Standard**
9 **Offer Contract?**

10 **A. Yes.**
11

12 **Q. Based on your review of documents and your experience in the financing**
13 **of the development of power facilities, was Panda-Kathleen, L.P.'s,**
14 **failure to meet the construction start date "solely the result of Florida**
15 **Power's actions?"**

16 **A. No.**
17

18 **Q. What reasons would you cite for Panda-Kathleen, L.P.'s failure to meet**
19 **its construction start date?**

20 **A. Panda was experiencing difficulty in a number of areas prior to January**
21 **25, 1995. I've outlined below some of the issues that lenders were**
22 **aware of and expressed concern about regarding the Panda-Kathleen**
23 **project. The first issues involved the regulatory issues of whether**
24 **Florida Power would be required to purchase power in excess of 74.9**
25 **MW under the Panda/Florida Power Standard Offer Contract and the**

1 Commission's Cogeneration Rules, and [REDACTED]

2 [REDACTED]
3 [REDACTED] Second, [REDACTED]
4 [REDACTED]
5 [REDACTED]

6 [REDACTED]. Finally, the economics of the project in general lead to
7 Panda-Kathleen, L.P., "mothballing" the project for a period of time.
8 These issues would lead any lender to more carefully analyze both the
9 project and the financial condition of the developer.
10

11 **Q. Please describe the steps typically followed by the developer of a**
12 **cogeneration project in obtaining financing for the project.**

13 **A. Typically, a developer will have completely finalized the site acquisition,**
14 **the power purchase agreement, the outstanding permit issues, the fuel**
15 **supply, the equipment configuration, the Engineering Procurement &**
16 **Construction contract, the insurance policies and the thermal contract,**
17 **if any.**

18
19 **Q. Based on the documents produced by Panda which you have reviewed,**
20 **at what stage in the process of obtaining financing was Panda-Kathleen,**
21 **L.P., on January 24, 1995?**

22 **A. Based upon my review of the documents provided, there still seemed to**
23 **be a significant number of items to be resolved in all of the**
24 **mentioned areas which would be of concern to any institutional**
25 **lender from a due diligence standpoint. [REDACTED]**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

[REDACTED]

Q. In terms of the time required to obtain financing, was this project on track to obtain the necessary financing in order to meet the contractual milestones for commencing construction and commencing operation?

A. No. [REDACTED]

Q. To your knowledge, was Panda-Kathleen, L.P.'s, financing for the project in place by that date?

A. No. [REDACTED]

Q. Do you believe that Panda-Kathleen, L.P., would have been able to obtain financing after January 24, 1995, if Florida Power had not filed the Petition for Declaratory Statement on January 25, 1995?

1 A. No. The regulatory issues concerning the size of the facility and [REDACTED]
2 [REDACTED]
3 [REDACTED] had to be resolved before a lender would likely agree to
4 finance the project. Even before Florida Power filed its Petition, lenders
5 were aware of and concerned about those issues. The letter dated June
6 23, 1994, from Ted Hollon of Panda to David Gammon of Florida Power
7 outlines concern on behalf of prospective lenders regarding the issue of
8 what price, if any, Florida Power was going to pay for power delivered
9 by the project in excess of the 74.9 MW limit in the standard offer
10 contract.

11
12 **Q. What does the concern of lenders expressed in Ted Hollon's letter**
13 **indicate to you?**

14 A. Since this issue had still not been resolved prior to the January 25,
15 1995 filing by FPC, I would have to believe that this was still a major,
16 unresolved due diligence item for any of the prospective financial
17 institutions, since these excess power sales appear to represent
18 approximately [REDACTED] of the project's total revenue stream.

19
20 **Q. Would the concern expressed by these prospective lenders be sufficient**
21 **to interfere with financing for the project?**

22 A. Definitely. Financial institutions would not close on non-recourse
23 financing of this magnitude without having satisfactory answers to these
24 questions.

1 Q. Would other lenders be likely to have similar questions?

2 A. Certainly.

3

4 Q. You stated previously in your testimony that [REDACTED]
5 [REDACTED] would have interfered with Panda-Kathleen, L.P.'s, meeting
6 its milestone dates. Please elaborate.

7 A. It is clear from the documents that Panda-Kathleen, L.P., had a problem

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED] Lenders

15 would have to have the [REDACTED] in hand to review, and would also have
16 to look even more carefully at Panda's financial structure before
17 approving the lending for Panda's enhanced needs.

18

19 Q. You referred previously to the fact that Panda-Kathleen, L.P.,
20 "mothballed" the project for a period of time. What does "mothballing"
21 the project mean to you?

22 A. It means stopping all progress on the project until certain obstacles
23 could be surmounted.

1 **Q. Do you often see developers "mothball" their projects as Panda-**
2 **Kathleen, L.P., did?**

3 **A. Occasionally, but usually the project is "shelved" because of economic**
4 **reasons and these projects typically never get completed in the original**
5 **configuration. For instance, if fuel costs or availability became an issue,**
6 **a developer may shelve a project until they could resolve the**
7 **outstanding fuel issues. One resolution might take the form of changing**
8 **fuels or co-firing with another less expensive or readily available fuel.**
9 **This could also be done in the event that the project loses its thermal**
10 **host. This seemed to be the case with Panda-Kathleen, L.P., and its**
11 **negotiations with Erly Juice.**

12
13 **Q. What does the fact that the project was mothballed for a period of time**
14 **indicate to you in terms of Panda-Kathleen, L.P., meeting its milestone**
15 **dates?**

16 **A. While one cannot directly relate Panda-Kathleen, L.P.'s, mothballing of**
17 **the project to its failure to meet the construction start date, the**
18 **mothballing is an additional symptom of a troubled project.**

19
20 **Q. In addition to the issues already discussed, did you see any evidence**
21 **that Panda-Kathleen, L.P., would not likely be able to obtain financing**
22 **for its project?**

23 **A. Yes.**

24
25 **Q. Please describe those issues.**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A. The evidence that I saw that would indicate that Panda-Kathleen, L.P., would not be likely to obtain financing for the Panda-Kathleen project is as follows:

- [REDACTED]
- [REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

- [Redacted]
- [Redacted]
- [Redacted]

Any of these factors alone could cause any financial institution to pass on this transaction until such issues were resolved.

1 **Q. Are you familiar with the original configuration for the facility proposed**
2 **by Panda-Kathleen, L.P., at the time Panda-Kathleen, L.P., submitted its**
3 **standard offer?**

4 **A. Yes. The various documents indicated that Panda-Kathleen, L.P.,**
5 **considered several different equipment configurations in order to**
6 **generate a net capacity delivered of not more than 75MW.**

7
8 **Q. Have you analyzed those original configurations from a financial**
9 **perspective?**

10 **A. Yes. I reviewed a truncated spreadsheet analysis dated December 23,**
11 **1993 for the 75MW Panda-Kathleen project.**

12
13 **Q. Was the project as originally configured a viable project?**

14 **A. No. [REDACTED]**
15 **[REDACTED]**
16 **[REDACTED]**
17 **[REDACTED]**
18 **[REDACTED]**

19
20 **Q. Have you analyzed the internal financial structure of Panda Energy**
21 **Corporation?**

22 **A. Yes.**

1 Q. Did you find any problems with the internal financial condition of Panda
2 Energy Corporation which would make it unlikely that Panda-Kathleen,
3 L.P., would be able to obtain the necessary financing for the project?

4 A. Yes. [REDACTED]

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13
14 Q. In your opinion, was the Panda-Kathleen project a viable candidate for
15 financing on January 24, 1995?

16 A. No. The project had gone through so many changes since the
17 "mothballing", [REDACTED] that it
18 appears that the Panda-Kathleen management team was grasping at
19 straws during the last quarter of 1994 in order to come up with some
20 structure that was bankable. This concludes with [REDACTED]
21 [REDACTED]
22 [REDACTED] a highly unorthodox proposal
23 which indicated the desperate straits of Panda-Kathleen, L.P. in
24 obtaining financing.

1 **Q. Does this conclude your testimony?**

2 **A. Yes.**

FPSC DOCKET NO. 950110-EI
EXHIBIT NO. _____ (BAM-1)
CONSISTING OF ONE PAGE

BRIAN A. MORRISON

EXPERIENCE:

- 1993 - Present** **Morrison & Kibbey Ltd.**
Managing Director
Leasing and project finance specialists with industry focuses in power generation, environmental, natural resources, forest products, pulp and paper and food processing.
- 1986 - 1993** **Hicks Morrison & Company Inc.**
Managing Director
Leasing and project finance specialists with industry focuses in power generation, environmental, natural resources, forest products, pulp and paper and food processing.
- 1985 - 1986** **Amvest Capital Corporation**
Senior Vice President
Leasing, project finance and real estate finance.
- 1982 - 1985** **Dean Witter Reynolds, Inc.**
First Vice President
Investment banking with a focus on private placements of equity and debt.
- 1979 - 1982** **Shearson/American Express Inc.**
Assistant Vice President
Investment banking/Corporate finance.
- 1976 - 1978** **Citibank, N.A.**
International banking/Institutional investment.

EDUCATION:

- 1977 - 1979** **Harvard Business School**
MBA - Finance
- 1971 - 1975** **Georgetown University**
BS - Mathematics