

**ORIGINAL  
FILE COPY**

**Florida  
Power**  
CORPORATION

**JAMES A. MCGEE**  
SENIOR COUNSEL

January 25, 1996

Ms. Blanca S. Bayó, Director  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

Re: Docket No. 950110-EI

Dear Ms. Bayó:

Enclosed for filing in the subject docket are the original and ten copies of Florida Power Corporation's Request for Confidential Classification. Also enclosed are two separate envelopes containing redacted and unredacted versions of the material for which Florida Power is seeking confidential classification.

Please acknowledge your receipt of the above filing on the enclosed copy of this letter and return to the undersigned. Also enclosed is a 3.5 inch diskette containing the above-referenced document in WordPerfect format.

Thank you for your assistance in this matter.

Very truly yours,

James A. McGee

JAM/jb  
Enclosures

cc: Parties of Record

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GENERAL COUNSEL  
PUBLIC SERVICE COMMISSION

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FPSC-RECORDS/REPORTING

GENERAL OFFICE

3201 Thirty-fourth Street South • Post Office Box 14042 • St. Petersburg, Florida 33733-4042 • (813) 866-5184 • Fax: (813) 866-4931

A Florida Progress Company

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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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.

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Docket No. 950110-EI

Submitted for filing:  
January 26, 1996

**FLORIDA POWER CORPORATION'S  
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

Florida Power Corporation ("FPC"), pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, F.A.C., requests confidential classification of certain information in an internal FPC document attached as Exhibit RK-5 to prepared direct testimony of Ralph Killian, filed January 5, 1996 on behalf of Panda-Kathleen L.P.. In support of its request, FPC states:

**BACKGROUND**

1. FPC filed its petition in this action with the Florida Public Service Commission ("PSC") seeking an order determining the legal status of its PSC approved Standard Offer Contract with Panda and the parties duties and obligations under that contract.

2. On January 5, 1996, FPC was advised that Panda intended to attach a certain internal, confidential FPC document to its prefiled testimony and use such documentation at the hearing scheduled for February 19, 1996. FPC and Panda signed a confidentiality agreement to protect confidential, proprietary business documents from disclosure outside the pending PSC and related court proceedings, and for purposes other than resolving the disputes in those proceedings. A copy of that agreement was filed on January 2, 1996, in conjunction with FPC's Motion Requesting Approval of Stipulation Confirming Agreement Regarding Discovery. Pursuant to the agreement, both parties agreed

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that documents considered confidential by the parties would be treated as such in the PSC and other proceedings. In the event Panda wanted to use a confidential FPC document in the PSC proceeding, as it now seeks to do, Panda was required to notify FPC and provide FPC the opportunity to invoke the procedures afforded by Rule 25-22.006, F.A.C.

3. FPC is required under the terms of the parties' confidentiality agreement to initiate the procedure afforded by Rule 25-22.006 to obtain confidential classification in the PSC proceeding of the documents Panda notified FPC it intends to use in furtherance of its arguments before the commission. On January 8, 1996, Panda filed a Notice of Intent to Request Confidential Classification of Exhibits RK-3 and RK-5, both of which are FPC documents. As required by Rule 25-22.006, F.A.C., FPC now requests confidential classification of certain information contained in RK-5, entitled COGENERATION REVIEW. (FPC waives any claim of confidentiality with respect to Exhibit RK-3.) In doing so, FPC does not concede that this document is relevant to any of the issues currently before the Commission in this proceeding. Instead, FPC continues to object to Panda's intended use of the document because the issues before the Commission relate solely to the duties and obligations of the parties under the Commission approved Standard Offer Contract. The document is irrelevant to the issues the PSC must decide in this matter.

#### REQUEST FOR CONFIDENTIAL CLASSIFICATION

4. FPC's internal document, Cogeneration Review, contains proprietary confidential information. Proprietary confidential information is not found on every page of the document and Panda has not represented that it is filing the document in its entirety. Panda has represented that it intends to submit pages 1 through 21 of the document. Of the pages purported to be being utilized by

Panda, FPC requests confidential classification of only one paragraph. The Bates page number on which the proprietary confidential information is found and highlighted is identified in the justification "matrix" attached as Attachment A to this request.

A copy of the document with the confidential information indicated by highlighting is submitted herewith in a separated, sealed envelope. Also separately submitted are two copies of the document with the confidential information redacted.

The highlighted portion of this document is proprietary and confidential to FPC. The highlighted portion satisfies the general requirements of the definition of proprietary and confidential business information in Sections 366.093(3), and 366.093(3)(e), Florida Statutes. That statute provides, in relevant part, that proprietary confidential business information is:

Information, regardless of form or characteristic, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public. Proprietary confidential business information includes but is not limited to:

(e) information relating to competitive interest, disclosure of which would impair the competitive business of the provider of the information.

§ 366.093(3)(e), Fla. Stat. (1993).

6. The document contained in Exhibit RK-5 is FPC's analysis of cogenerated power. In it FPC reviews its present and projected purchases of cogenerated power and discusses the financial and strategic import of cogenerated power to FPC. Certain of that information, specifically, financial and strategic

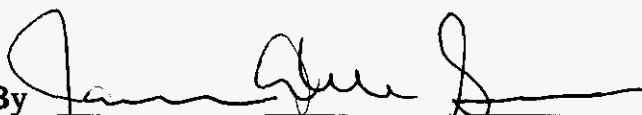
forecasts related the cogenerated power purchased by FPC, is confidential and proprietary information. Disclosure of FPC's financial forecasts would impair FPC's ability to negotiate and obtain favorable terms in the financial and equity markets in the future.

7. As a matter of corporate policy, FPC treats this type of financial and strategic planning information as confidential and proprietary and has not publicly disclosed it. As such, the information constitutes proprietary confidential business information entitled to protection from disclosure pursuant to Section 366.093, Florida Statutes. FPC, then, requests that the highlighted information identified as confidential in the enclosed envelope be designated confidential for the reasons set forth herein and in Attachment A.

WHEREFORE, Florida Power Corporation requests that the highlighted information in its Cogeneration Review, Exhibit RK-5 to the direct testimony of Ralph Killian, be classified confidential.

Respectfully submitted,

OFFICE OF THE GENERAL COUNSEL  
FLORIDA POWER CORPORATION

By 

James A. McGee  
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**ATTACHMENT A**

**FLORIDA POWER CORPORATION  
DOCKET NO. 950110-EI**

**Justification Matrix for**

**REQUEST FOR CONFIDENTIAL CLASSIFICATION  
COGENERATION REVIEW**

<b>BATES NUMBER</b>	<b>LINE</b>	<b>JUSTIFICATION</b>
400189	16-19	Information at line 16 through 19 projects the cost to FPC and its parent company of any downgrades in various bond and commercial paper ratings over the next 5 years. Disclosure of these non-public financial forecasts would provide lenders information they would not otherwise have in determining their charges to FPC. As a result, disclosure would subject FPC to an increase in the charges and fees to FPC for bonds and commercial paper.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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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.

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Docket No. 950110-EI

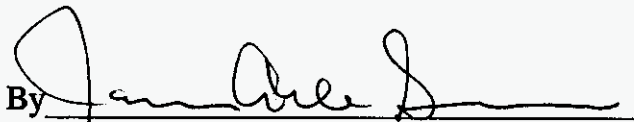
Submitted for filing:  
January 24, 1996

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of Florida Power Corporation's Request for Confidential Classification has been furnished to David L. Ross, Esq., Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A., 1221 Brickell Avenue, Miami, Florida 33131 and Martha Carter Brown, Division of Legal Services, Florida Public Service Commission, 2450 Shumard Oak Blvd., Tallahassee, Florida 32399-0892, this 25th day of January, 1996

OFFICE OF THE GENERAL COUNSEL  
FLORIDA POWER CORPORATION

By



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

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Standard offer contract ) DOCKET NO. 950110-EI  
for the purchase of firm ) ORDER NO. PSC-96-0133-FOF-EI  
capacity and energy from a ) ISSUED: January 29, 1996  
qualifying facility between )  
Panda-Kathleen, L.P. and Florida )  
Power Corporation. )  
\_\_\_\_\_)

The following Commissioners participated in the disposition of this matter:

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

ORDER DENYING MOTION FOR RECONSIDERATION OF PROCEDURAL ORDER

BY THE COMMISSION:

On January 25, 1995, Florida Power Corporation (FPC) filed a petition with the Commission for a declaratory statement regarding certain aspects of its Standard Offer cogeneration contract with Panda-Kathleen, L.P./Panda Energy Company (Panda). Panda intervened in the proceeding and filed its own declaratory statement petition on the issues FPC had raised. Panda also raised an additional issue regarding postponement of the significant milestone dates of the standard offer pending the Commission's resolution of the declaratory statement proceedings.

On June 29, 1995, Panda filed a Petition for Formal Evidentiary Proceeding and Full Commission Hearing on the issues raised by the declaratory statement petitions. Panda contended that disputed issues of material fact affected all issues, and should properly be resolved before the full Commission in a formal administrative proceeding. We granted Panda's Petition in Order No. PSC-95-0998-FOF-EI, issued August 16, 1995. A hearing was set for February 19, 1995.

Panda has now retained its fifth different counsel to take responsibility for this case, and on November 28, 1995, new counsel filed a Motion to Continue the hearing and all prehearing controlling dates for a period of ninety (90) days. Panda asserted that its new counsel would need the additional time to prepare for

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the hearing and to explore a settlement with FPC. Panda also contended that the holidays would make it difficult to conduct discovery and prepare direct testimony due January 5, 1995. The Prehearing Officer denied Panda's motion by Order No. PSC-95-1563-PCO-EI, issued December 16, 1995.

Thereafter, on December 22, 1995, Panda filed its Motion for Reconsideration by the Full Commission and Request for Expedited Review. Panda also asked for oral argument on its motion. Florida Power Corporation filed a Response in Opposition to Panda's Motion on December 28, 1995. We expedited consideration of Panda's Motion for Reconsideration and request for oral argument at our January 3, 1996, Agenda Conference. There we denied Panda's request for oral argument and its Motion for Reconsideration. Our reasons for that decision are explained below.

#### Oral Argument

Commission Rule 25-22.0376, Florida Administrative Code, "Reconsideration of Prehearing Officer Orders", provides, at subsection (5), that we may grant oral argument on a motion for reconsideration at our discretion. A request for oral argument under Rule 25-22.0376 is subject to the same criteria delineated in Rule 25-22.058, Florida Administrative Code. That rule provides, in subsection (1):

The Commission may grant oral argument upon request of a party to a section 120.57, F.S. formal hearing. A request for oral argument shall be contained on a separate document and must accompany the pleading upon which the argument is requested. The request shall state with particularity why oral argument would aid the Commission in comprehending and evaluating the issues before it . . . . (emphasis supplied)

Panda's Motion for Reconsideration, paragraph 5, "respectfully requests for the Commission to allow Panda to provide oral argument to the Full Commission regarding this Motion for Reconsideration." Panda does not provide any explanation at all why oral argument is necessary to aid us in evaluating the issues in the Motion for Reconsideration. Moreover, the motion for reconsideration itself does not raise any specific grounds for the Commission to reconsider the Prehearing Officer's Order, and thus there would be nothing for Panda to address on oral argument. An attempt to raise

new issues to support or elaborate upon the Motion for Reconsideration would be inappropriate. We deny the request for oral argument.

Reconsideration

Rule 25-22.0376, Florida Administrative Code, provides:

(1) Any party who is adversely affected by an order of a prehearing officer may seek reconsideration by the Commission panel assigned to the proceeding by filing a motion in support thereof within 10 days after issuance of the order. . . .

(4) Any motion or response filed pursuant to this rule shall contain a concise statement of the grounds therefor . . . .  
(emphasis supplied)

Panda's Motion for Reconsideration of the Prehearing Officer's order denying its motion to continue simply asks that the full Commission reconsider the order. It provides no grounds for reconsideration or any other reason why we should overturn the Prehearing Officer's decision. The purpose of a motion for reconsideration is to bring to our attention some material and relevant point of fact or law that the Prehearing Officer overlooked or failed to consider when she denied the motion for continuance. See Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962). Panda has not raised any such grounds in its Motion. Because Panda's Motion does not set forth any mistake of fact or law, any abuse of discretion, or any grounds whatsoever, for reconsidering the Prehearing Officer's order denying the motion for continuance, we decline to reconsider the Prehearing Officer's decision, and we deny the motion.

Based on the foregoing, it is, therefore,

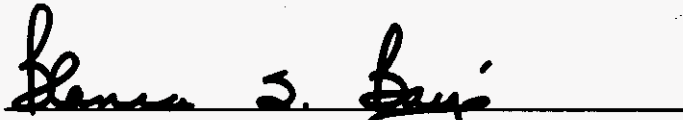
ORDERED by the Florida Public Service Commission that the request for oral argument on its Motion for Reconsideration filed by Panda-Kathleen, L.P. is denied. It is further

ORDERED that Panda-Kathleen, L.P.'s Motion for Reconsideration of the Prehearing Officer's denial of its Motion for Continuance is denied. The hearing in this docket shall proceed as scheduled. It is further

ORDER NO. PSC-96-0133-FOF-EI  
DOCKET NO. 950110-EI  
PAGE 4

ORDERED that this docket shall remain open pending resolution of the substantive issues in the case.

By ORDER of the Florida Public Service Commission, this 29th day of January, 1996.



BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

MCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.