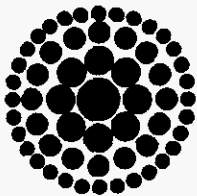


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**Florida  
Power**  
CORPORATION

**ORIGINAL  
FILE COPY**

**JAMES A. MCGEE**  
SENIOR COUNSEL

February 2, 1996

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

Re: Docket No. ~~950110-EL~~

Dear Ms. Bayó:

Enclosed for filing in the subject docket please find fifteen copies of Florida Power Corporation's Prehearing Statement.

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

- \_\_\_ HLO
- \_\_\_ SVM
- \_\_\_ SEC
- \_\_\_ RCH
- \_\_\_ OPC
- \_\_\_ LIN
- \_\_\_ LEG
- \_\_\_ EAG
- \_\_\_ CTR
- \_\_\_ CMU
- \_\_\_ CAF
- \_\_\_ APP
- \_\_\_ AFA
- \_\_\_ KAV

JAM/jb  
Enclosures

RECEIVED & FILED

cc: Parties of Record

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FPSC-BUREAU OF RECORDS

GENERAL OFFICE

3201 North Fourth Street South • Post Office Box 14042 • St. Petersburg, Florida 33733-4042 • (813) 866-5154 • Fax: (813) 866-4931

A Florida Progress Company

DOCUMENT NUMBER-DATE  
01223 FEB 2 1996  
FPSC-RECORDS/REPORTING

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.

---

Docket No. 950110-EI

Submitted for filing:  
February 2, 1996

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of Florida Power Corporation's Prehearing Statement 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 2nd day of February, 1996

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

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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.

---

Docket No. 950110-EI

Submitted for filing:  
February 2, 1996

**PREHEARING STATEMENT OF  
FLORIDA POWER CORPORATION**

Florida Power Corporation (FPC), pursuant to Rule 25-22.038, Florida Administrative Code, hereby submits its Prehearing Statement and represents as follows:

**A. APPEARANCES**

JAMES A. MCGEE, Esquire, and JEFFERY A. FROESCHLE, Esquire, Florida Power Corporation, Post Office Box 14042, St. Petersburg, Florida 33733-4042.

On behalf of Florida Power Corporation

**B. WITNESSES**

<u>Witness</u>	<u>Subject Matter</u>	<u>Issues</u>
<b>Direct</b>		
Robert D. Dolan	Discussion of FPC position regarding effect on Panda standard offer contract of Commission rules limiting the size of a cogeneration facility and the maximum duration of capacity payments, as well as Panda's failure to meet its construction milestone date.	1, 2, 4

DOCUMENT NUMBER-DATE

01223 FEB-2 1996

## Rebuttal

Robert D. Dolan	Rebuttal of Panda witnesses Dietz, Killian and Lindloff	1-4
Brian A. Morrison	Rebuttal of Panda witness Killian	4
Edward R. Gwynn	Rebuttal of Panda witnesses Dietz, Killian and Lindloff	1, 2

## C. EXHIBITS

<u>Exhibits</u>	<u>Witness</u>	<u>Description</u>
<b>Direct</b>		
<hr/> (RDD-1)	R. D. Dolan	Panda's Notice of Self-Certification filed with FERC on October 7, 1991.
<hr/> (RDD-2)	R. D. Dolan	Panda's response to FPC's QF Questionnaire in October 1991.
<hr/> (RDD-3)	R. D. Dolan	Letter from Wolf (Panda) to Wetherington (FPC) dated October 29, 1991.
<hr/> (RDD-4)	R. D. Dolan	Standard Offer Contract between Panda-Kathleen, L.P. and Florida Power Corporation.
<hr/> (RDD-5)	R. D. Dolan	Order No. PSC-92-1202-FOF-EQ, issued October 22, 1992 in Docket No. 911142-EQ.
<hr/> (RDD-6)	R. D. Dolan	Excerpt from <i>Southeast Power Report</i> and Rule 25-17.0832(3)(a) produced by Panda.

<u>Exhibits</u>	<u>Witness</u>	<u>Description</u>
<u>(RDD-7)</u>	R. D. Dolan	Fax of <i>Polk Power Partners</i> order from FPC to Panda on November 12, 1992.
<u>(RDD-8)</u>	R. D. Dolan	Letter from Hollon (Panda) to Gammon (FPC) dated June 23, 1994.
<u>(RDD-9)</u>	R. D. Dolan	Letter from Hollon (Panda) to Gammon (FPC) dated July 27, 1994.
<u>(RDD-10)</u>	R. D. Dolan	Letter from Gammon (FPC) to Hollon (Panda) dated August 3, 1994.
<u>(RDD-11)</u>	R. D. Dolan	Letter from Woodruff (Panda) to Dolan (FPC) dated August 10, 1994.
<u>(RDD-12)</u>	R. D. Dolan	Letter from Dolan (FPC) to Woodruff (Panda) dated September 8, 1994.
<b>Rebuttal</b>		
<u>(RDD-13)</u>	R. D. Dolan	Proposal from Panda to City of Lakeland dated April 4, 1994.
<u>(BAM-1)</u>	B. A. Morrison	Résumé
<u>(ERG-1)</u>	E. R. Gwynn	Notes of January 9, 1992 meeting between Panda and Florida Power
<u>(ERG-2)</u>	E. R. Gwynn	Panda's Notice of Self-Certification filed with FERC on October 7, 1991.

#### **D. STATEMENT OF BASIC POSITION**

The two principle issues raised in the declaratory statement requests of both Panda and Florida Power can be resolved by a straight forward application of the Commission's standard offer rules regarding the limitation on the size of qualifying facilities and the maximum period for delivery of firm capacity. This is so because standard offer contracts cannot be utilized in a manner contrary to the rules that govern those contracts. These rules expressly provide that the availability of a standard offer contract is limited to "small qualifying facilities less than 75 MW" and that the maximum period for delivery of firm capacity and energy under a standard offer contract is the life of avoided unit, which the Panda contract specifies as 20 years. These provisions, in and of themselves, are dispositive of Panda's revised proposal for a 115 MW facility and its claim for 30 years of capacity payments.

Yet the testimony of the Panda witnesses addressing these two issues conspicuously avoids any reference whatsoever to the Commission's rules. Instead, they attempt to raise a variety of factual issues that have no bearing on the rules that govern standard offer contracts. They claim that a 115 MW facility is necessary to meet Panda's 74.9 MW Committed Capacity obligation under the contract. This is irrelevant; the Commission has already ruled that the 75 MW limitation applies to the net capacity of the facility, not the Committed Capacity of the contract. If Panda desires to build a facility larger than 75 MW, for whatever reason, it should have sought a negotiated contract as provided for in the Commission's rules. Panda's witnesses claim that Florida Power representatives agreed that capacity payments were to be made for 30 years. Apart from being untrue, this too is irrelevant. Neither the representatives of Florida Power nor Panda have any authority to modify or waive the Commission's rules or the provisions of the standard offer contract.

The third principle issue in this case, regarding extension of the contract milestone dates, was raised by Panda and it has utterly failed to meet its burden of proof. Panda has not offered anything to demonstrate that it would have met the contract milestone dates, in particular, that it would have obtained financing, if Florida Power had not initiated this proceeding. In

fact, Panda does not even claim that it could have obtained financing, only that "efforts were well under way" before Florida Power filed its petition. No evidence of any kind is offered to show whether those "efforts" had any chance of success. On the other hand, the testimony Florida Power witness Morrison provides substantial evidence that Panda's project was not financially viable.

## **E. STATEMENT OF ISSUES AND POSITIONS**

**ISSUE 1:** Does Panda Energy's proposed qualifying facility comply with both Rule 25-17.0832, F.A.C. and the standard offer contract with Florida Power Corporation in light of its currently proposed size?

**FPC:** No. Rule 25-17.0832(3)(a) and the Panda standard offer contract, which expressly incorporates the rule, limit the availability of standard offer contracts to "small cogeneration facilities less than 75 MW." Panda's claim that it needs to build a facility substantially larger than 75 MW (*i.e.*, 115 MW) in order to satisfy the contract's Committed Capacity of 74.9 MW is both misplaced and wrong. It is misplaced because the 75 MW limitation in the rule has nothing to do with Committed Capacity; the Commission has already determined that the rule limitation applies to the size of the facility, not to the Committed Capacity specified in the contract. It is wrong because Panda itself acknowledged that it could satisfy its Committed Capacity obligation to FPC without the facility's additional capacity when it offered to sell 35 MW of firm capacity from the facility to another utility. Panda has used unrealistic design assumptions in an after-the-fact attempt to justify its oversized facility that was actually selected by Panda to enhance the economic viability of the project.

**ISSUE 2:** Does Rule 25-17.0832(3)(e)(6), F.A.C. and the standard offer contract require Florida Power Corporation to make firm capacity payments for the life of the avoided unit (20 years) or the term of the standard offer contract (30 years)?

**FPC:** Rule 25-17.0832(3)(e)(6) and the Panda standard offer contract, which expressly incorporates the rule, limit the delivery of firm capacity under a standard offer contract to a maximum period of time equal to the life of the avoided unit, which in the case of the Panda standard offer contract is specified as 20 years. Panda's witnesses do not even acknowledge the existence of the Commission's rule, much less attempt to reconcile their position with the rule's limitation. They simply claim that Florida Power representatives acknowledged that capacity payments were to be made for 30 years. While Florida Power emphatically denies that it ever agreed to make capacity payments beyond 20 years, this is completely irrelevant to the issue before the Commission. As the standard offer contract expressly provides, "The Parties' representatives . . . shall not have the authority to amend, modify, or waive any provision of this Agreement." More importantly, representatives of Panda and Florida Power certainly have no authority to abrogate the Commission's rules regarding maximum period for capacity payments.

**ISSUE 3:** If it is determined that Florida Power Corporation is required to make firm capacity payments to Panda Energy pursuant to the standard offer contract for the contract's full term, what are the price terms for that capacity?

**FPC:** If Florida Power were required to make capacity payments for the full term of the standard offer contract (*i.e.*, 28 years, three months), the value of deferral calculation should be redone, in accordance with the Commission's rules, using an economic life equal to the term of the capacity payments.

**ISSUE 4:** Should the Commission grant Panda Energy's request to extend the milestone dates in its standard offer contract?

**FPC:** No, the Commission should not unilaterally modify the contract. Panda's difficulties in meeting the contract's construction commencement and in-service milestone dates is a predicament of its



own making. Panda's attempt to place the blame on Florida Power for filing its petition for declaratory statement ignores the fact that it was Panda's decision to enlarge the size of its facility by over 50% that raised the question of Panda's compliance with the Commission's 75 MW limitation, and that it was Panda's failure to bring this question to the Commission for resolution that forced Florida Power to take the action that Panda now complains of. Moreover, Panda has offered nothing to satisfy its burden of showing that it could have secured financing for its project if Florida Power had not filed its petition. Panda witness Killian simply says that "efforts were well under way to obtain financing and an equity partner for the project" before the petition was filed. However, he provides no documentation or other evidence to suggest, much less demonstrate, that those "efforts" had any chance of success, while Florida Power witness Morrison offer substantial evidence to the contrary.

**ISSUE 5:** If the Commission grants Panda Energy's request to extend the contractual milestone dates, how long should these dates be extended?

**FPC:** If the Commission determines it has authority to unilaterally modify the contract, the construction commencement and in-service milestone dates should not be extended any longer than the period of time required to conduct this proceeding, which has already extended too long because of Panda's delay tactics.

**ISSUE 6:** If Panda Energy's qualifying facility commences commercial operation after the contractual in-service date, how should the applicable capacity and energy rates be determined?

**FPC:** The failure of Panda to meet the contract in-service date would be a material breach of the contract which the Commission should not attempt to cure. However, if an adjustment were to be made, capacity payments specified in Schedule 3, Appendix C of the contract should be escalated for the period between the contract in-service date and the actual in-service date using the *current* inflation rate.

**F. STIPULATED ISSUES:**

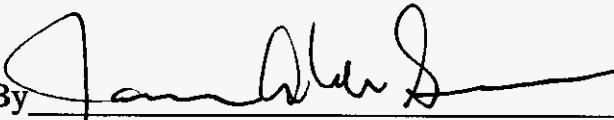
None at this time.

**G. PENDING MOTIONS:**

None.

Respectfully submitted,

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

By 

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