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**ORIGINAL
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

CASE NO. ~~95095-EI~~

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

PANDA'S PREHEARING STATEMENT
Filed: February 2, 1996

Pursuant to Fla. Admin. Code Rule 25-22.038(3) and Order No. PSC-95-1045-PCO-EI issued August 22, 1995 ("Order Establishing Procedure"), Panda-Kathleen L.P. ("Panda") hereby submits its Prehearing Statement to the Florida Public Service Commission ("Commission") in the above-captioned docket.

- ACK
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG Haff
- LEG 11
- LIN 5
- OPC _____
- RCH _____
- SEC 1
- WAS _____
- OTH _____

A. WITNESSES

Panda will sponsor the following witnesses in this proceeding:

1. Ralph Killian - Mr. Killian will testify regarding the matters contained in his prefiled direct testimony and his prefiled rebuttal testimony, including Panda's communications with Florida Power

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Corporation ("FPC") and the injury sustained by Panda as a result of FPC's actions. Mr. Killian's testimony pertains to Issues 1, 2, 3, 4, 5, and 6, discussed below.

2. J. Brian Dietz - Mr. Dietz will testify regarding the matters contained in his prefiled direct testimony and his prefiled rebuttal testimony, including the technical reasons why Panda chose the plant design at issue. Mr. Dietz's testimony pertains to Issue 1, discussed below.
3. Darol Lindloff - Mr. Lindloff will testify regarding the matters contained in his prefiled direct testimony, including Panda's communications with FPC. Mr. Lindloff's testimony pertains to Issues 1 and 2, discussed below.
4. Joseph Brinson - Mr. Brinson will testify regarding the matters contained in his prefiled direct testimony, including Panda's communications with FPC. Mr. Brinson's testimony pertains to Issues 1 and 2, discussed below.

5. Roy Shanker - Mr. Shanker is an expert retained by Panda who will testify regarding the matters set forth in his prefiled rebuttal testimony, which pertain to the computation of the capacity payments payable to Panda under the Contract. Mr. Shanker's testimony pertains to Issues 2 and 3, discussed below.

Panda reserves the right to seek to file supplemental rebuttal testimony in opposition to the testimony of Brian Morrison, FPC's expert witness. Panda believes that the substance of Mr. Morrison's testimony is not within the scope of rebuttal under the Commission's rules. FPC has stated that it will file revised prefiled rebuttal testimony in the next week, and the deposition of Mr. Morrison is scheduled for February 9, 1996.

B. EXHIBITS

Panda has filed exhibits with the pre-filed testimony of each of the witnesses listed above, and intends to use those exhibits in this proceeding. Those Exhibits will be identified with the same format and numbers used in the prefiled testimony. Copies of each of those exhibits are available for inspection at the offices of undersigned counsel. Panda reserves the right to offer exhibits at the hearing for the purposes of cross-examination.

C. STATEMENT OF BASIC POSITION

It is the position of Panda that FPC's petition should be dismissed because this proceeding, and the relief requested by FPC, are preempted by federal law. In the alternative, it is the position of Panda that FPC's Petition should be answered in the negative. There is either no ambiguity in the standard offer contract between the parties (the "Contract"), or any ambiguity must be resolved against FPC's position. The Contract provides that FPC is obligated to make 30 years of capacity payments to Panda, and the Contract allows Panda to build a plant with a rating of 115 megawatts of net generating capacity (at ISO conditions) to meet Panda's 74.9 megawatt committed capacity obligation to FPC. This interpretation of the Contract is supported by the language of the contract, the legal principles of contract interpretation, and the parties' actions and discussions over the past four years. Furthermore, FPC and the Commission are barred by the doctrines of waiver, estoppel and administrative finality from asserting a contrary interpretation. Further, due to the delays caused by FPC's attempt to rewrite the Contract between the parties, and due to FPC's attempts to destroy Panda's ability to perform under the Contract, Panda requests that the Commission enter an Order extending the milestone dates contained in the Contract so as to allow Panda sufficient time to finance and build the plant.

D. Panda's position on the factual and legal questions to be addressed in this Proceeding

Panda's position on the Preliminary Issues identified by FPC and by the Commission Staff (which mix legal and factual questions) are as follows:

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

Response: Panda's position is that this issue is framed in the wrong terms, in that the proper issue to be decided is limited to whether Panda's proposed plant complies with the Contract. Panda states that its proposed plant is in compliance with the Contract between the parties. This interpretation is supported by the language of the contract, the legal principles of contract interpretation, the parties' actions and communications over the past four years, and by the doctrines of waiver, estoppel and administrative finality. Panda states that no interpretation of Rule 25-17.0832 is necessary because the Contract has already been approved by the Commission on two separate occasions and the Commission is preempted and estopped from revisiting that approval. Panda will

put forth the testimony of Ralph Killian, J. Brian Dietz, Darol Lindloff and Joseph Brinson on this issue.

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 or the term of the standard offer contract?

Response: Panda's position is that this issue is framed in the wrong terms, in that the proper issue to be decided is limited to an interpretation of the Contract. Panda states that, pursuant to the Contract, Panda is entitled to firm capacity payments for the full term of the Contract. This interpretation is supported by the language of the contract, the legal principles of contract interpretation, the parties' actions and communications over the past four years, and by the doctrines of waiver, estoppel and administrative finality. Panda states that no interpretation of Rule 25-17.0832(3)(e)(6) is necessary because the Contract has already been approved by the Commission on two separate occasions and the Commission is preempted and estopped from revisiting that approval. Panda will put forth the testimony of Ralph Killian, Darol Lindloff, Joseph Brinson and Roy Shanker on this issue.

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, what are the price terms of that capacity.

Response: Panda states that this issue should be reworded so as to decide the amount of firm capacity payments to be paid to Panda under the Contract. It is the position of Panda that Appendix "C" of the Contract provides the amount of firm capacity payments for years 1 through 20 of the Contract, and that the firm capacity payments to Panda for years 21 through 30 of the Contract should be computed by escalating the payments due Panda at year 20 at a rate of 5.1% per year. Panda will put forth the testimony of Roy Shanker and Ralph Killian on this issue.

ISSUE 4: Should the Commission grant Panda Energy's request to extend the milestone dates in the Contract?

Response: Panda's position is that the milestone dates should be extended based on FPC's actions. Panda will put forth the testimony of Ralph Killian on this issue.

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

Response: Panda believes that the milestone dates should be extended by at least 18 months, in order to restore Panda

to its position prior to FPC's actions. Panda will put forth the testimony of Ralph Killian on this issue.

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?

Response: Panda's position is that the milestone dates under the contract should be extended, and that the payments to Panda under the Contract should be made pursuant to the existing terms of the Contract. Panda will put forth the testimony of Roy Shanker and Ralph Killian on this issue.

E. STATEMENT OF LEGAL ISSUES

As noted above, the Preliminary Issues identified by Commission staff mix legal and factual issues, and are addressed above.

F. STATEMENT OF POLICY ISSUES

As noted above, the Preliminary Issues identified by Commission staff mix legal and factual issues, and are addressed above. At this time, no policy issues have been identified.

G. STIPULATED ISSUES

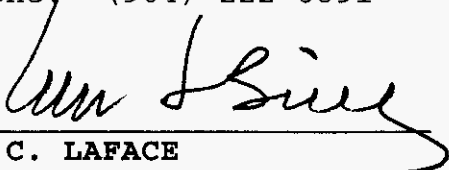
At this time, the parties have not agreed to stipulate as to any issues. Panda will engage in communications with FPC prior to the prehearing conference to determine if the parties can reach a stipulation on any issues.

H. PENDING MOTIONS

Panda has filed a motion to stay these proceedings pending the resolution of its appeal to the Florida Supreme Court. That issue is scheduled to be addressed on the Commission's February 6, 1996 docket. The only other pending motions at the present time involve each party's requests for confidential treatment of certain exhibits and testimony prefiled by the other side. Panda takes no position on the requests for confidential treatment filed by FPC. Panda takes the position that its motions for confidential treatment should be granted.

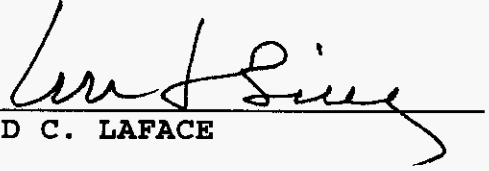
Respectfully submitted,

**GREENBERG, TRAURIG, HOFFMAN,
LIPOFF, ROSEN & QUENTEL, P.A.**
Attorneys for Panda Kathleen,
L.P.
101 East College Avenue
Tallahassee, Florida 32301
Telephone: (904) 222-6891

By: 
RONALD C. LAFACE
(Fla Bar ID No. 098614)
LORENCE JON BIELBY,
(Fla Bar ID No. 0393517)
DAVID L. ROSS
(Fla Bar ID No. 270954)
LAWRENCE SILVERMAN
(Fla Bar ID No. 0007160)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail/^{AND}~~Hand Delivery~~/Telecopy to Donald R. Schmidt, Esquire, and Steven Dupre, Esquire, Post Office Box 2861, Saint Petersburg, Florida 33731, by U.S. Mail/^{AND}~~Hand Delivery~~/Telecopy to Robert Vandiver, Esquire, and Martha Carter-Brown, Esquire, Florida Public Service Commission, 2450, Shumard Oak Boulevard, Tallahassee, Florida 32399-0892, by U.S. Mail/^{AND}~~Hand Delivery~~/Telecopy to James A. McGee, Esquire, and Jeffery A. Froeschloe, Esquire, Post Office Box 14042, St. Petersburg, Florida 33733-4042, this 2ND day of FEBRUARY, 1995.



 RONALD C. LAFACE