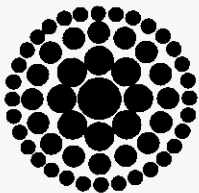


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FILE COPY



**Florida
Power**
CORPORATION

JAMES A. MCGEE
SENIOR COUNSEL

February 8, 1996

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

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

Dear Ms. Bayó:

Enclosed for filing in the subject docket are fifteen copies of the amended rebuttal testimony of Brian A. Morrison. Most of Mr. Morrison's exhibits are documents claimed by Panda-Kathleen L.P. to be confidential in their entirety and have therefore been omitted from these copies. In addition, those portions of Mr. Morrison's testimony containing information derived from these documents have been redacted.

Also enclosed in a sealed envelope is a copy of Mr. Morrison's testimony with the confidential information highlighted and the confidential exhibits included, as well as a 3.5 inch diskette containing the testimony in WordPerfect format. **This material should be held as Confidential Information in accordance with Rule 25-22.006, F.A.C.** Counsel for Panda-Kathleen L.P. has advised the undersigned that a Notice of Intent to Request Confidential Classification will be filed with the Commission on February 9, 1996, contemporaneously with this filing.

- ACK
- APA _____
- APP _____
- CAF _____
- CCO _____
- CTR _____
- ESP *Haff*
- LIR *5*
- LRK _____
- REC _____
- SEC *1*
- WAS _____
- OTH _____

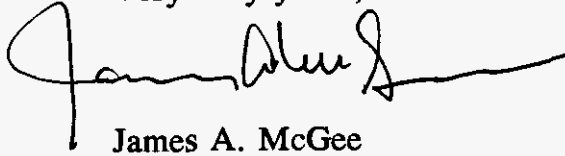
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[Signature]
EPSC-BUREAU OF RECORDS

Confidential
DOCUMENT NUMBER-DATE
01584 FEB-96
FPSC-RECORDS/REPORTING

AMENDED Morrison
DOCUMENT NUMBER-DATE
01583 FEB-96
FPSC-RECORDS/REPORTING

Please acknowledge your receipt of the above filing on the enclosed copy of this letter and return to the undersigned. Thank you for your assistance in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "James A. McGee", with a long horizontal flourish extending to the right.

James A. McGee

JAM/jb
Enclosure

cc: Parties of record

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.

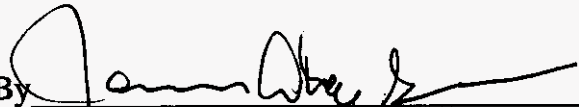
Docket No. 950110-EI

Submitted for filing:
February 9, 1996

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Amended Rebuttal Testimony of Brian A. Morrison 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, by express delivery this 8th 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

h:\jam\950110\cert.ser

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:
February 8, 1996

ORIGINAL
FILE COPY

AMENDED
REBUTTAL TESTIMONY OF
BRIAN A. MORRISON

ON BEHALF OF
FLORIDA POWER CORPORATION

Redacted Version

DOCUMENT NUMBER-DATE

01583 FEB-96

FPSC-RECORDS/REPORTING

FLORIDA POWER CORPORATION
DOCKET No. 950110-EI

**AMENDED
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 Ouimet 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. See Exhibit No. ___

10 (BAM-2); Exhibit No. ___ (BAM-3); Exhibit No. ___ (BAM-4); Exhibit

11 No. ___ (BAM-5); Exhibit No. ___ (BAM-6); Exhibit No. ___ BAM-7); Exhibit

12 No. ___ (BAM-8); Exhibit No. ___ (BAM-9); Exhibit No. ___ (BAM-10);

13 Exhibit No. ___ (BAM-11); Exhibit No. ___ (BAM-12); Exhibit No. ___ BAM-

14 13); Exhibit No. ___ (BAM-14); Exhibit No. ___ (BAM-15); Exhibit No. ___

15 (BAM-16); Exhibit No. ___ (BAM-17); Exhibit No. ___ (BAM-18); and,

16 Exhibit No. ___ (BAM-19).

17
18 **Q. Please describe the steps typically followed by the developer of a**
19 **cogeneration project in obtaining financing for the project.**

20 **A. Typically, a developer will have completely finalized the site acquisition,**
21 **the power purchase agreement, the outstanding permit issues, the fuel**
22 **supply, the equipment configuration, the Engineering Procurement &**
23 **Construction contract, the insurance policies and the thermal contract,**
24 **if any.**

1 Q. Based on the documents produced by Panda which you have reviewed,
2 at what stage in the process of obtaining financing was Panda-Kathleen,
3 L.P., on January 24, 1995?

4 A. Based upon my review of the documents provided, there still seemed to
5 be a significant number of items to be resolved in all of the
6 aforementioned areas which would be of concern to any institutional
7 lender from a due diligence standpoint. [REDACTED]

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

15 See
16 Exhibit No. ___ (BAM-3); Exhibit No. ___ (BAM-4); Exhibit No. ___ (BAM-6);
17 Exhibit No. ___ (BAM-20); Exhibit No. ___ (BAM-21); Exhibit No. ___
18 (BAM-22); Exhibit No. ___ (BAM-23); Exhibit No. ___ (BAM-24); Exhibit
19 No. ___ (BAM-25); and, Exhibit No. ___ (BAM-26).

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

23 A. No. [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 [REDACTED] See Exhibit No. ___ (BAM-20); Exhibit No. ___ (BAM-21); Exhibit
2 No. ___ (BAM-22); Exhibit No. ___ (BAM-23); Exhibit No. ___ (BAM-24);
3 Exhibit No. ___ (BAM-25); and, Exhibit No. ___ (BAM-37).

4
5 Q. To your knowledge, was Panda-Kathleen, L.P.'s, financing for the
6 project in place by that date?

7 A. No. [REDACTED]

8 [REDACTED] See Exhibit No. ___ (BAM-20);
9 Exhibit No. ___ (BAM-21); Exhibit No. ___ (BAM-22); Exhibit No. ___
10 (BAM-23); Exhibit No. ___ (BAM-24); Exhibit No. ___ (BAM-25); Exhibit
11 No. ___ (BAM-26); and, Exhibit No. ___ (BAM-27).

12
13 Q. Do you believe that Panda-Kathleen, L.P., would have been able to
14 obtain financing after January 24, 1995, if Florida Power had not filed
15 the Petition for Declaratory Statement on January 25, 1995?

16 A. No. The regulatory issues concerning the size of the facility [REDACTED]

17 [REDACTED]
18 [REDACTED] had to be resolved before a lender would likely agree to
19 finance the project. Even before Florida Power filed its Petition, lenders
20 were aware of and concerned about those issues. The letter dated June
21 23, 1994, from Ted Hollon of Panda to David Gammon of Florida Power
22 outlines concern on behalf of prospective lenders regarding the issue of
23 what price, if any, Florida Power was going to pay for power delivered
24 by the project in excess of the 74.9 MW limit in the standard offer
25 contract. See Exhibit No. ___ (BAM-5); Exhibit No. ___ (BAM-6); Exhibit:

1 No. ___ (BAM-23); Exhibit No. ___ (BAM-24); Exhibit No. ___ (BAM-25);
2 and, Exhibit No. ___ (BAM-27).
3

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

6 A. Since this issue had still not been resolved prior to the January 25,
7 1995 filing by FPC, I would have to believe that this was still a major,
8 unresolved due diligence item for any of the prospective financial
9 institutions, since these excess power sales appear to represent
10 approximately [REDACTED] of the project's total revenue stream. See Exhibit
11 No. ___ (BAM-27); and, Exhibit No. ___ (BAM-28).
12

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

15 A. Definitely. Financial institutions would not close on non-recourse
16 financing of this magnitude without having satisfactory answers to these
17 questions.
18

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

20 A. Certainly.
21

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

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

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 Lenders
10 would have to have the [REDACTED] in hand to review, and would also have
11 to look even more carefully at Panda's financial structure before
12 approving the lending for Panda's enhanced needs. See Exhibit No. ___
13 (BAM-6); Exhibit No. ___ (BAM-7); Exhibit No. ___ (BAM-8); Exhibit
14 No. ___ (BAM-13); Exhibit No. ___ (BAM-14); Exhibit No. ___ (BAM-16);
15 and, Exhibit No. ___ (BAM-17).

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

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

21
22 Q. Do you often see developers "mothball" their projects as Panda-
23 Kathleen, L.P., did?

24 A. Occasionally, but usually the project is "shelved" because of economic
25 reasons and these projects typically never get completed in the original

1 configuration. For instance, if fuel costs or availability became an issue,
2 a developer may shelve a project until they could resolve the
3 outstanding fuel issues. One resolution might take the form of changing
4 fuels or co-firing with another less expensive or readily available fuel.
5 This could also be done in the event that the project loses its thermal
6 host. This seemed to be the case with Panda-Kathleen, L.P., and its
7 negotiations with Erly Juice.

8
9 **Q. What does the fact that the project was mothballed for a period of time**
10 **indicate to you in terms of Panda-Kathleen, L.P., meeting its milestone**
11 **dates?**

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

15
16 **Q. In addition to the issues already discussed, did you see any evidence**
17 **that Panda-Kathleen, L.P., would not likely be able to obtain financing**
18 **for its project?**

19 **A. Yes.**

20
21 **Q. Please describe those issues.**

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

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25

• [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] See Exhibit

No. ___ (BAM-29); and, Exhibit No. ___ (BAM-30).

• [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] See

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Exhibit No. ___ (BAM-23); Exhibit No. ___ (BAM-24) and Exhibit No. ___ (BAM-25).

• [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

See Exhibit No. ___ (BAM-30); and, Exhibit No. ___ (BAM-31).

• [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

See Exhibit No. ___ (BAM-32); and, Exhibit No. ___ (BAM-33).

• [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

See Exhibit No. ___ (BAM-26).

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. See Exhibit No. ___ (BAM-
12 19).

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

15 A. No. [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]. See Exhibit
20 No. ___ (BAM-19).

21
22 Q. Have you analyzed the internal financial structure of Panda Energy
23 Corporation?

24 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] See Exhibit No. ___ (BAM-34); Exhibit
13 No. ___ (BAM-35); and, Exhibit No. ___ (BAM-36).

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

17 A. No. The project had gone through so many changes since the
18 "mothballing", [REDACTED] that it
19 appears that the Panda-Kathleen management team was grasping at
20 straws during the last quarter of 1994 in order to come up with some
21 structure that was bankable. This concludes with [REDACTED]
22 [REDACTED] a
23 [REDACTED] a highly unorthodox proposal
24 which indicated the desperate straits of Panda-Kathleen, L.P. in
25 obtaining financing. See Exhibit No. ___ (BAM-31).

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

**FPSC DOCKET NO. 950110-EI
EXHIBIT NOT. _____ (BAM-2)
CONSISTING OF FOUR PAGES**

**PANDA HAS ASSERTED A CLAIM OF
CONFIDENTIALITY FOR EACH
PAGE OF THIS EXHIBIT**

FPSC DOCKET NO. 950110-EI
EXHIBIT NO. _____ (BAM-3)
CONSISTING OF TWO PAGES

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CONFIDENTIALITY FOR EACH
PAGE OF THIS EXHIBIT**

**FPSC DOCKET NO. 950110-EI
EXHIBIT NO. _____ (BAM-4)
CONSISTING OF THREE PAGES**

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FPSC DOCKET NO. 950110-EI
EXHIBIT NO. _____ (BAM-5)
CONSISTING OF ONE PAGE

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CONFIDENTIALITY FOR EACH
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FPSC DOCKET NO. 950110-EI
EXHIBIT NO. _____ (BAM-6)
CONSISTING OF TWENTY-SIX PAGES

**PANDA HAS ASSERTED A CLAIM OF
CONFIDENTIALITY FOR EACH
PAGE OF THIS EXHIBIT**

FPSC DOCKET NO. 950110-EI
EXHIBIT NO. _____ (BAM-7)
CONSISTING OF FIVE PAGES

**PANDA HAS ASSERTED A CLAIM OF
CONFIDENTIALITY FOR EACH
PAGE OF THIS EXHIBIT**

FPSC DOCKET NO. 950110-EI
EXHIBIT NO. _____ (BAM-8)
CONSISTING OF TWO PAGES

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FPSC DOCKET NO. 950110-EI
EXHIBIT NO. _____ (BAM-9)
CONSISTING OF ONE PAGE

INTEROFFICE MEMORANDUM

DATE: September 9, 1992

TO: Ralph Killian
Robert Wolf
Tom Bagby
Mark Bentley

FROM: Joe Brinson

SUBJECT: Erly Juice Negotiations and Contacts

As you are all aware, we have reached an active and sensitive negotiation stage with Erly Juice. It is important that we maintain a single point of contact with Erly Juice during this stage. To do otherwise would afford Erly Juice multiple and unnecessary opportunities to elicit information and to gain negotiation advantages.

Accordingly, I have designated Mark Bentley of the Legal Department as our single contact point during the period of negotiations. All other Panda employees are requested to initiate no contacts (written, in person or by phone) with Erly Juice or their representatives without my prior approval or Mr. Bentley's prior approval.

I am not suggesting that such contacts should never be made. I'm only asking that they be cleared with me in advance. Neither am I suggesting that you refuse to talk if an Erly Juice representative contacts you or that you say you aren't the proper contact point. I am suggesting, (if information or your opinion on a negotiation point is sought) that you politely and adroitly promise that you will obtain the necessary response and that you then refer the request to me or to Mark.

I'd also appreciate (i) receiving copies of all of your correspondence from or concerning Erly Juice or the Erly Juice situation and (ii) having the opportunity to approve letters to Erly Juice before they are mailed.

I would like to maintain a similar control after negotiations are completed.

Your cooperation will be greatly appreciated.


Joe Brinson
Project Manager

cc: Robert Carter
Hans van Kuilenburg
Ed Gwynn

FPSC DOCKET NO. 950110-EI
EXHIBIT NO. _____ (BAM-10)
CONSISTING OF ONE PAGE

CC MARK B.

FPSC Docket No. 950110-EI
FPC Witness: MORRISON
Exhibit No. _____ (BAM-10)
Sheet 1 of 1

MEMORANDUM

DATE: March 19, 1993
TO: Ann Burgr
FROM: Ted Hollon *ted*
SUBJECT: Panda-Kathleen Cogeneration Plant - Lakeland, Florida

A trip report on Mark's and my recent visit to St. Petersburg and Lakeland is forthcoming. In the interim, there are several key issues that need to be resolved in an expeditious manner in order to move forward. These issues are FYI and are as follows:

- 1) FPC- While FPC and Panda informally agree that a 1997 COD is in the best interest of all concerned, our contractual obligation calls for a 4/1/95 COD. Clarifications and modifications to this agreement need to be formally resolved as soon as possible. Without a confirmed date, the EPC contract cannot be finalized.
- 2) Erly Juice - The energy supply agreement needs to be finalized. There is a possibility that action taken to modify the FPC agreement (see item 1) may leave Panda vulnerable, especially if we do not have a steam host under contract.

Additionally, it may be prudent to investigate possible alternate steam hosts in the area as a precautionary backup measure.

- 3) City of Lakeland - FPC indicated that the City is serious about Panda using their substation and that the City can be a formidable obstacle (and opponent) in our permitting and zoning efforts.

Panda owes the City of Lakeland a response to their 2/8/93 letter. This issue needs to be addressed and handled with kid gloves so that we do not provoke a conflict that would impact time and costs, not to mention goodwill. Mark feels we have a strong case for not utilizing the City's substation thus avoiding their "wheeling" charges. However, resolving this issue would eliminate the Gay property site and allow us to focus on one corridor.

These issues need Panda's immediate attention. Mark is knowledgeable of the above and is working toward their resolution.

P-K001133

FPSC DOCKET NO. 950110-EI
EXHIBIT NO. _____ (BAM-11)
CONSISTING OF TWO PAGES

**PANDA HAS ASSERTED A CLAIM OF
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FPSC DOCKET NO. 950110-EI
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MEMORANDUM

FPSC Docket No. 950110-EI
FPC Witness: MORRISON
Exhibit No. _____, (BAM-14)
Sheet 1 of 1

DATE: December 8, 1993
TO: Distribution
FROM: Ted Hollon *JQH*
SUBJECT: Panda-Kathleen Action Items

The following are action items identified in the Kathleen project status meeting (12/7/93):

- 1) Ruthven Property: Tom Bagby is to reach agreement on price and terms for the 7.53 acre Ruthven site by 12/10/93.
- 2) Development Budget: All department heads are required to provide development funding requirements (if applicable) to Ted Hollon by 12/10/93.
- 3) Permitting Strategy: Panda is not going to permit under the Power Plant Siting Act. ECT will direct permitting efforts. Engineering must commence soon to support permitting.
- 4) EPC Negotiations: Century is to come in 12/13/93 to discuss EPC contract. Terms directed by Panda management will be discussed with Century, ie. \$1.5 million development loan and at-risk engineering.
- 5) Steam Host: Ted Hollon shall be responsible for marketing the distilled water. Tom Bagby will pursue neighboring plant, Dynaplast, as a potential alternative host.
- 6) Project Budget: Bryan Urban and Ted Hollon are to update the proforma. Financial closing is now scheduled for December 1994. Financial markets need to be explored ASAP as the margins are tight.
- 7) Project Equipment: Brian Dietz to investigate the Frame 6/LM 6000 upgrade as alternatives to reducing capital plant expenditures.

Distribution:

Tom Bagby
Ralph Killian
Brian Dietz
Bryan Urban

cc: Bob Carter
Pete Wright

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4. RUTHVEN PROPERTY

- Panda plans to purchase 60' addition to property on the south side of the present site.

Will a permit to cut trees be required from the County?

Action: Kyle to pursue with Mike Roddy at ECT.

5. FLORIDA GAS

- Signing of contract delayed.

**FPSC DOCKET NO. 950110-EI
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CONSISTING OF FOUR PAGES**

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Panda-Kathleen, L.P.)	Docket No. QF94-150-000
Small Power Production and)	FPSC Docket No. 950110-EI
Cogeneration Facilities)	FPC Witness: MORRISON
-- Qualifying Status)	Exhibit No. _____, (BAM-17)
		Sheet 1 of 4

ORDER GRANTING APPLICATION FOR CERTIFICATION
AS A QUALIFYING COGENERATION FACILITY
(Issued October 20, 1994)

Summary:

On August 23, 1994, Panda-Kathleen, L.P. (Panda-Kathleen) filed an application for certification of a cogeneration facility as a qualifying facility (QF) pursuant to Section 292.207(b) of the Commission's Regulations. The facility will be located in Lakeland, Florida, and will consist of a combustion turbine generator, an unfired heat recovery boiler and a steam turbine generator. The primary energy source will be natural gas. The maximum net electric power production capacity of the facility will be approximately 125.9 MW. Steam recovered from the boiler will be used for the production of high quality distilled water. Electric power produced by the facility will be sold to Florida Power Corporation. Installation of the facility is scheduled to commence in January of 1995.

Based on these facts, the facility is a topping-cycle cogeneration facility within the meaning of Section 292.202(d) of the Commission's Regulations.

Notice of the application was published in the Federal Register with comments, protests or motions to intervene due on or before October 11, 1994. 1/ No responses were received.

Discussion:

A. Ownership:

Section 292.206 of the Commission's Regulations requires that no more than 50% of the equity interest in a QF be held, directly or indirectly through subsidiaries, by electric utilities and/or electric utility holding companies (collectively, electric utility entities). Panda-Kathleen, which will own and operate the facility, is a wholly-owned subsidiary of Panda Energy Corporation, a privately-held company. Panda

1/ 59 Fed. Reg. 46,408 (1994).

Energy Corporation is engaged in the business, through its subsidiaries, of developing, owning, and operating QFs and exempt wholesale generators (EWGs), 2/ and development and exploration of hydrocarbons. Neither Panda-Kathleen nor Panda Energy Corporation, nor any of their affiliates, is engaged in the generation or sale of electric power, or has any ownership or operating interest in any electric facilities other than QFs and EWGs. Since no electric utility entities have any ownership interests in the facility, it satisfies the Commission's QF ownership criteria.

B. Use of Thermal Output:

According to Panda-Kathleen, the thermal output from the facility will be used by Lakeland Water Company, an affiliate of Panda-Kathleen, to produce high quality distilled water for use in industrial processes. Panda-Kathleen's application of the thermal energy output for this purpose is common and, thus, is presumptively useful under the criteria set forth in Electrodyns Research Corporation, 32 FERC ¶ 61,102 (1985), as clarified in LaJet Energy Company (LaJet), order denying rehearing, 44 FERC ¶ 61,070 (1988). 1/

2/ An EWG is not considered an electric utility company under Section 2(a)(3) of the Public Utility Holding Company Act of 1935 (PUHCA), as amended by the Energy Policy Act of 1992, and ownership of an EWG does not result in primary engagement in the generation or sale of electric power under Sections 3(17)(C)(ii) and 3(18)(B)(ii) of the Federal Power Act (See Sections 32(e) and 32(j) of PUHCA).

1/ If the use of a cogeneration facility's thermal output constitutes a common industrial or commercial application, it is presumptively useful and the Commission performs no further analysis regarding the usefulness of the thermal output. If, on the other hand, the use of the thermal output involves a technology which is not common, separate standards apply depending upon whether the user is or is not an affiliate of the cogenerator. In the case of a thermal host that is not affiliated with the cogenerator, plausible evidence of either an arm's-length market for the thermal output or an end product produced with the aid of that thermal output establishes usefulness. In the case of a thermal host that is an affiliate of the cogenerator or where the thermal host is the cogenerator itself, quantitative economic justification established usefulness.
See LaJet.

FPSC Docket No. 950110-EI
FPC Witness: MORRISON
Exhibit No. _____, (BAM-17)
Sheet 2 of 4

C. Operating and Efficiency Standards:

Based on the information provided by Panda-Kathleen, the facility satisfies the operating and efficiency standards established in Section 292.205 of the Commission's Regulations.

Finding:

The topping-cycle cogeneration facility, as described in the application submitted by Panda-Kathleen, meets the requirements established in Section 292.203(b) of the Commission's Regulations regarding certification as a qualifying cogeneration facility.

The Director:

Grants certification of qualifying status to the facility referenced in the submittal filed on August 23, 1994, by Panda-Kathleen pursuant to Section 292.207(b) of the Commission's Regulations and Section 3(18)(B) of the Federal Power Act, as amended by Section 201 of the Public Utility Regulatory Policies Act of 1978 (PURPA), provided that the facility is owned and operated in the manner described in the application and this order. 4/ To the extent that facts or representations which form the basis for this order change, this order cannot be relied upon. While the facility might still be a QF under the changed circumstances, self or Commission recertification at that point will be necessary. 5/

4/ Certification as a QF serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's Regulations, 18 C.F.R. Part 292. It does not relieve a facility of any other requirements of local, state or federal law, including those regarding siting, construction, operation, licensing and pollution abatement. Certification does not establish any property rights, resolve competing claims for a site, or authorize construction.

5/ See Citizens for Clean Air and Reclaiming our Environment v. Newbay Corporation, 56 FERC ¶ 61,428 (1991), and Midland Cogeneration Venture Limited Partnership and CMS Midland, Inc., 56 FERC ¶ 61,361 (1991).

Authorities:

Authority to act on this matter is delegated to the Director, Division of Applications, pursuant to Section 375.308 of the Commission's Regulations.

This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. Section 385.713.



Donald J. Galinas, Director
Division of Applications

FPSC DOCKET NO. 950110-EI
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5.3.1 ✓

MEMORANDUM

FPSC Docket No. 950110-EI
FPC Witness: MORRISON
Exhibit No. _____, (BAM-18)
Sheet 1 of 1

DATE: April 7, 1993
TO: Ann Burgr
FROM: Ted Hollon *Jed*
SUBJECT: Panda-Kathleen
Lakeland, Florida

Due to the in-service date election granted by FPC, the 74.9 MW facility in Florida is in the process of being "mothballed."

A new project schedule is being formulated to depict a 1/1/97 Commercial Operation Date to FPC. Correspondingly, a new "drop-dead" construction date (to be included in the revised FPC rate agreement) shall be 1/1/96. However, Panda will need to start 3 or 4 months earlier to allow for testing, training, etc, before coming on line.

Whilst most project related development activities are being slowed or postponed, there are several activities that would be prudent and cost effective for Panda to continue. These activities include air and water use/discharge permitting and right of way surveying, environmental audit, and land options.

ECT has advised that new, more stringent regulations for emissions are being considered for Florida, especially in the Polk County area due to heavy concentrations of industrial emissions. Should Panda delay this permit to coincide with the in-service date slippage, our air permit may be more difficult (and costlier) to obtain. Additionally, the water use/discharge permit is critical activity that needs to be determined at an early stage of the project to avoid surprises, later on.

Panda has previously approved a \$47,000 NTE agreement with ECT for the above permitting effort. We need to continue this effort as it corresponds to the revised FPC schedule and the validity of the permits ensuring that they are in effect before construction begins.

Unless otherwise instructed, I will proceed in this direction.

cc: R. Carter
M. Bentley
D. Lindloff
B. Dietz

Jed
AB 4/14/93

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