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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL FILE COPY

CASE NO. 950110-EI

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

**PANDA'S OBJECTIONS TO THE
PREFILED TESTIMONY OF BRIAN
MORRISON**

Panda-Kathleen L.P. ("Panda") hereby files its objections to the amended prefiled rebuttal testimony of Brian Morrison, filed on behalf of Florida Power Corporation ("FPC"), and states:

FPC has sought to introduce the "rebuttal" testimony of Brian Morrison despite the fact that it does not rebut anything. FPC has chosen to file Mr. Morrison's testimony as rebuttal rather than direct in order to avoid any response from Panda. That attempt is a patent violation of the Commission's Order Establishing Procedure, and should not be permitted.

FPC has stretched a single sentence of Ralph Killian's testimony so as to create an excuse to file its expert's testimony as rebuttal rather than direct. Mr. Morrison states that the purpose of his testimony is to rebut Ralph Killian's statement that "Panda's ability to meet its [milestone dates] has been jeopardized solely as a result of Florida Power's actions ". Morrison Amended Prefiled Rebuttal Testimony at p. 3. However, Mr. Morrison's testimony does not in any way explore or discuss Florida Power's actions, but instead attempts to argue that it is his opinion that

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other factors¹ could have prevented Panda from meeting its target dates. Id. at p. 4. FPC has attempted to create a false issue so that it can put forth an argument which it failed to make in its direct testimony. FPC has done so in an attempt to avoid any rebuttal of its "expert" with the facts underlying this case.

In order to remedy FPC's untimely attempt at injecting new issues into this dispute, the Commission should not admit Mr. Morrison's testimony into evidence. If the Commission does not wish to exclude Mr. Morrison's testimony, then it should allow Panda to present testimony in rebuttal to Mr. Morrison. Such testimony would be supplied by Ralph Killian, who is already scheduled to provide rebuttal testimony. The testimony of Mr. Killian will allow the Commission to understand the facts regarding Panda's project, rather than the opinion of a third party who is familiar with only a selection of documents hand-picked by FPC. By allowing the testimony of Mr. Killian on this issue, the Commission could mitigate the prejudice to Panda caused by FPC's tardy filing of Mr. Morrison's testimony.

¹ Curiously, Mr. Morrison does conclude that the contract issues to be resolved in this case are a reason for Panda's loss of financing. See Morrison Rebuttal Testimony at p. 4-5, lines 23-25, 1-3. Thus, Mr. Morrison's testimony does not rebut Mr. Killian's testimony at all, but instead raises totally separate issues.

WHEREFORE, Panda requests that the Commission bar the introduction of the testimony of Brian Morrison into evidence, or, in the alternative, that the Commission allow Ralph Killian to present testimony rebutting the statements of Mr. Morrison.

Respectfully submitted,

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By: 

LORENCE JON BIELBY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail/~~Hand Delivery~~^{AND}/Telecopy to Donald R. Schmidt, Esquire, and Steven Dupre, Esquire, Post Office Box 2861, Saint Petersburg, Florida 33731, by U.S. Mail/~~Hand Delivery~~^{AND}/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/~~Hand Delivery~~^{AND}/Telecopy to James A. McGee, Esquire, and Jeffery A. Froeschloe, Esquire, Post Office Box 14042, St. Petersburg, Florida 33733-4042, this 16 day of FEB, 1996.


LORENCE JON BIELBY