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PLEASE REPLY TO:
TALLAHASSEE

COGENERATION
ALTERNATIVE ENERGY
ENERGY REGULATORY LAW
PUBLIC UTILITY LAW
ADMINISTRATIVE LAW
APPELLATE LAW

September 25, 1990

Mr. Steve Tribble
Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32399-0850

**ORIGINAL
FILE COPY**

Re: Docket No. 900004-EU - Hearings On Load Forecasts,
Generation Expansion Plans and Cogeneration Prices for
Peninsular Florida's Electric Utilities.

Dear Mr. Tribble:

Enclosed please find an original and ten copies of both
Panda/Live Oak Corporation's Petition for Leave to Intervene and
Brief for filing in the above docket.

Sincerely,


Paul Sexton

ACK _____
AFA _____
APP _____ PS:lg
CAF _____ enclosures
CMU _____ cc: Parties of Record
CTR _____
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Petition
DOCUMENT NUMBER-DATE

08568 SEP 25 1990

FPSC-RECORDS/REPORTING

Brief
DOCUMENT NUMBER-DATE

00560 SEP 25 1990

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Hearings On Load Forecasts,) Docket No. 900004-EU
Generation Expansion Plans and)
Cogeneration Prices for Peninsular) Submitted for Filing:
Florida's Electric Utilities.)

) September 25, 1990

BRIEF OF PANDA/LIVE OAK CORPORATION

Panda/Live Oak Corporation (Panda) submits the following brief in response to the direction of the Commission at its September 11, 1990 Agenda Conference.

INTRODUCTION

The ratepayers of Florida deserve the economic and environmental benefits of cogeneration. The Commission has, consistent with these economic and environmental benefits, developed policies and rules to encourage cogeneration. These policies and rules must be applied on a consistent and even-handed basis to assure both a level playing field for all cogenerators and a dependable source of capacity and energy for Florida ratepayers.

THE FACTS

Panda filed its acceptance of the standard offer contract and the standard interconnection agreement with Florida Power Corporation (FPC) on July 25 and 30, 1990, respectively. Under the terms of the standard offer, Panda will construct a 230MW cogeneration facility in Suwannee County, Florida, with a scheduled in-service date of January 1, 1996. The facility will employ combined cycle combustion turbines which use clean-burning natural gas as their primary fuel. Panda has obtained QF status for its facility, which is located within FPC's service territory. Panda's

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acceptance of FPC's standard offer was complete, with an executed interconnection agreement. Based on information and belief, Panda may be the only QF to have executed an interconnection agreement and, thus, may be the only QF to have submitted a completed standard offer contract. Further, as discussed later, Panda questions whether other contracts meet the basic criteria for inclusion in the queue.

ARGUMENT

1. Negotiated Contracts That Do Not Match the In-Service Date and Unit Type of the 1996 Avoided Unit Should not be Counted Against the Subscription Limit.

Negotiated contracts based on units that do not match the in-service date of the designated statewide avoided unit should not be counted against the subscription limit for the avoided unit. Only if there is an exact match between the in-service dates of the avoided unit on which a negotiated contract was based and the designated statewide avoided unit should the negotiated contract be counted toward the subscription limit. Otherwise, the Commission will be ignoring the fact that a contract may actually be deferring a planned unit with an in-service date that precedes the 1996 statewide avoided unit.

Even if there is a match in in-service dates, unless there is a match in unit types there is no assurance that the contract is actually deferring the 1996 statewide avoided unit. The statewide avoided unit was designated by the Commission based on the FCG's plan, not that of a particular utility. Individual utility's have planned capacity additions that differ from the FCG study,

particularly if there is a need for more than 500MW of capacity in the state during 1996. If the unit type of the avoided unit used for the negotiated contract does not match the unit type of the statewide avoided unit, the Commission should assume that they are different avoided units and should not count the contract against the subscription limit for the 1996 statewide avoided unit.

2. A Negotiated Contract Signed Before May 25, 1990 cannot count against the 1996 coal unit.

A newly-designated statewide avoided unit cannot be retroactively applied to a negotiated contract that was signed before the unit was designated. A newly-designated avoided unit only applies to contracts that are signed after the unit is designated. This is exactly what the Commission intended when it designated the 1996 statewide avoided unit on May 25, 1990. At the May 25th Agenda Conference, the Commissioners and staff had an extensive discussion of what would happen if the designated statewide avoided unit was changed. Excerpts from the transcript of that discussion show that the Commission intended that only contracts signed after a change in the avoided unit would apply against the new unit:

COMMISSIONER EASLEY: I need a what happens next type question. Hypothetically, let's say we go along with Commissioner Beard's motion and we designate from this point forward the '96 coal unit as the avoided unit, my understanding is the current contracts remain in place because they were done under the combined cycle.

CHAIRMAN WILSON: That's right.

MS. BROWNLESS: Yes ma'am, the ones that have been signed.

TR 42

* * *

COMMISSIONER BEARD: Time out for a second. Let me ask a question. Do we have an idea approximately how many megawatts is signed and/or about negotiated or about to be signed, or however you all term it, against the '93 unit?

MR. DEAN: Against the '93 unit, I think the only contract we have seen so far is the Royster contract.

* * *

COMMISSIONER BEARD: But we have some other contracts floating right now against that?

COMMISSIONER GUNTER: Other negotiations.

MS. BROWNLESS: Yes, there are negotiations going on.

TR 44

* * *

COMMISSIONER EASLEY: If they are in the middle of negotiations under an existing avoided unit under an existing rule, if the contract was not signed, negotiations are finished?

MS. BROWNLESS: No -- for that unit, that is exactly what you did to Royster, if you remember. Royster was negotiating against a '95 coal unit, and we closed that out and said, I'm sorry, Royster, you don't get to do that. Now, you have to negotiate against the new one.

COMMISSIONER EASLEY: Well, now, wait a minute. If they've got a signed approved contract --

MS. BROWNLESS: No, that is different.

COMMISSIONER EASLEY: Okay.

MS. BROWNLESS: What I'm talking about is a cogenerator that is currently negotiating.

TR 46-47

It is clear from the transcript that any contract signed before May 25, 1990 was to be considered against the designated statewide avoided unit in effect at that time and that pending negotiations apply to the newly-designated avoided unit. However, if a negotiated contract signed before May 25, 1990 has an in-service date after the 1993 combined cycle unit, then it should be judged on the utility's avoided cost and should not apply against the subscription limit.

3. The Commission Should Determine Priority in the Queue Only After Considering the Validity of the Contracts.

Although the Commission has proposed to establish priority in the queue based primarily on execution/submittal date, due to the "special" circumstances facing the Commission in this instance, an essential element in determining each contract's rank in the queue is whether the contract and the basic elements essential to a valid cogeneration project exist.

Panda does not propose that the Commission, as a matter of course, take it upon itself to analyze each and every standard offer contract submitted to a utility. Panda's proposal is offered as a solution to a very extreme and unprecedented situation where the subscription limit appears to have been exceeded by a factor of five times. This has not occurred in the past and, hopefully, will not occur in the future, given the "new" rules recently adopted by the Commission and the change to individual utility

avoided units. Panda's proposal offers the Commission a one-time, special-use mechanism with which to logically and rationally distinguish among the many QFs presently in the "queue." Under Normal conditions, the execution and submittal date of a contract should be the appropriate ranking criteria.

While a precise list of criteria has not been established by the Commission, prior Commission action provides some guidance. The Commission addressed the basic validity of a standard offer contract in Order No. 17357, issued April 2, 1987. AES Jacksonville, Inc., had submitted a standard offer contract to FPL, which was refused by FPL. AES sought to have the Commission require FPL to accept the contract. Order No. 17357 granted FPL's motion to dismiss AES' petition, which asserted that AES:

1. did not have QF status;
2. did not have an interconnection agreement with the utility in whose service territory it was located (the "native utility"); and
3. had not alleged facts to establish a reasonable possibility of construction of the QF.

Panda suggests that two additional criteria be added:

4. has a wheeling agreement with the "native utility" (if not the same as the "purchasing utility") been executed; and
5. has security for early or levelized payments (if requested) been established.

A requirement for a wheeling agreement is just as essential to a standard offer contract as an interconnection agreement, because wheeling is as essential to delivery as is interconnection. Similarly, if early or levelized payments are requested, an

essential element of the contract is missing: the agreed-upon type of security for repayment.

In summary, Panda suggests that the following five criteria be considered:

1. whether the facility has QF status;
2. whether the QF has signed an interconnection agreement;
3. whether there is a wheeling agreement (if interconnected with another utility);
4. whether security for early or levelized payments have been agreed upon; and
5. whether there is evidence of likelihood of construction of the QF.

Panda is not prepared at this time to argue whether each of the contracts in the queue meets all of these criteria. Based on information and belief, however, Panda does not believe that all of the contracts meet these criteria. However, Panda's contract does meet all of these criteria, as applicable. The following is a brief outline of how Panda's contract meets these criteria and how the Commission should apply these criteria to all contracts:

1. Does the facility have QF status?

A standard offer or negotiated contract is not valid for purposes of the queue unless the generator has QF status. A non-QF cannot "bump" a QF off the subscription. Only QFs are entitled to contracts under Rule 25-17.083 and only contracts with QFs should occupy the queue ahead of other QFs. If the owner or operator of the facility does not have QF status, the contract should be removed from the queue. Panda Energy has QF status for

its facility. Panda has filed notice of self-certification of its facility in accordance with FERC regulations.)

2. Has the OF signed an interconnection agreement?

A standard offer or negotiated contract is not valid for purposes of the queue unless an interconnection agreement with the native utility has been signed. This agreement can be the utility's standard agreement or a negotiated substitute. According to the terms of the standard offer, no contract exists unless an interconnection agreement has been signed. (Unless the QF is interconnected with another utility and will deliver power via wheeling.) Likewise, fairness dictates that a negotiated contract also include an interconnection agreement, as applicable. If an interconnection agreement is necessary and has not been signed, the contract should be removed from the queue. Panda submitted a standard interconnection agreement to FPC on July 30, 1990.

3. Does the OF have a wheeling agreement (if applicable)?

A standard offer or negotiated contract (negotiated against the same avoided unit) is not valid for purposes of the queue if the purchasing utility is not the native utility and no wheeling agreement has been signed with the native utility. If a wheeling agreement has not been signed, the contract should be bumped from the Queue. Panda's facility will be within the service territory of FPC and no wheeling agreement is required.

4. If early or levelized payments have been requested, has security been agreed upon?

If early or levelized payments have been requested by the QF, then an essential element of the contract is the provision for security for repayment. If a contract calls for early or levelized payments but the parties have not agreed to the security for repayment, then the contract should be bumped from the queue. Panda's standard offer contract does not call for early payments and, therefore, agreement on security is not required.

5. Is there evidence of a reasonable possibility of construction of the QF?

One essential consideration in ranking a QF in the queue is whether there is a reasonable possibility of construction of the QF. Panda does not advocate a close scrutiny of a QF project, because the business environment may contain too many elements for the Commission to make a reasoned judgement whether the QF will be built. Further, too close an analysis will invite after-the-fact QFs to challenge legitimate projects in hopes of looking "better" and usurping the earlier QF/s rank. Panda, instead, proposes a basic "bona-fide project" standard that tests whether the QF is "real" or just a paper project designed to allow the QF to broker a contract.

A basic test for "bona-fide project" status is whether the QF has identified a site and has an agreement (even if tentative) with an energy source or energy user. A letter of intent between an existing industrial "host" and an operator/constructor is one basis to establish "bona-fide project" status. Panda's proposed site is

at the facilities of Goldkist, Inc., in Suwannee County. Panda and Goldkist have signed a letter of intent to construct a 230MW cogeneration unit to serve Goldkist's thermal requirements and provide FPC with 230 MW of firm capacity.

The Commission should apply this five-part test to determine the eligibility of standard offer and negotiated contracts to remain in the queue and should find that Panda has met all five criteria. Panda cannot allege with certainty whether all other contracts meet these criteria, but based on information and belief, believes that some contracts have not met all of these criteria. Only a Commission review of the facts surrounding each potential contract can resolve the issue.

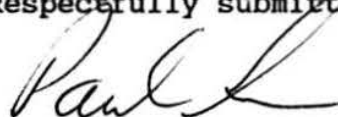
CONCLUSION

Negotiated contracts that were signed before may 25, 1990 and/or do not match the in-service date and unit type of the 1996 statewide avoided unit should not be counted against the subscription limit for that unit. The Commission should consider the validity of each potential contract before placing it in the queue. Panda's contract meets the basic criteria for a valid contract and may be the only contract that does so.

Dated: September 25, 1990

Respectfully submitted

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to the following persons by U.S. Mail (Hand-delivery)*, this 25th day of September, 1990.

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