

RICHARD A. ZAMBO, P.A.
ATTORNEYS AND COUNSELLORS

598 S.W. HIDDEN RIVER AVENUE
PALM CITY, FLORIDA 34990
(407) 220-9163

211 SOUTH GADSDEN STREET
TALLAHASSEE, FLORIDA 32301
(904) 222-9445

ORIGINAL
FILE

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

RICHARD A. ZAMBO
PAUL SEXTON
PLEASE REPLY TO:
TALLAHASSEE

October 9, 1990

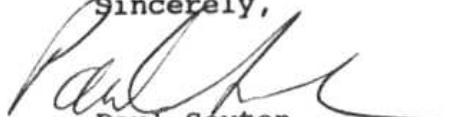
Mr. Steve Tribble
Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32399-0850

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

Dear Mr. Tribble:

Enclosed please find an original and ten (10) copies of my
Supplemental Brief of Panda/Live Oak Corporation for filing in the
above referenced docket.

- ACK
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR PS:lg
- EAG enclosures
- LEG 7 cc: All Parties
- LIN 6
- OPC _____
- RCH _____
- SEC 1
- WAS _____
- OTH _____

Sincerely,

Paul Sexton

RECEIVED & FILED


FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER DATE
09081 001-9 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.)

) October 9, 1990

SUPPLEMENTAL BRIEF OF PANDA/LIVE OAK CORPORATION

Panda/Live Oak Corporation (Panda) submits the following supplemental brief in response to the direction of the Commission at its October 2, 1990 Agenda Conference.

INTRODUCTION

At its September 11, 1990 Agenda Conference, the Commission directed interested parties to submit briefs addressing the issues raised in Order No. 23235, as well as the issue of how to determine the priority of QFs in the queue for the 500 MW 1996 statewide avoided unit. On September 25, 1990, briefs were submitted by Panda, Indiantown Cogeneration L.P. (Indiantown), Air Products and Chemicals, Inc. (Air Products), Florida Power & Light Company (FPL), Tampa Electric Company (TECO), Broward County (Broward), Seminole Fertilizer Corporation (Seminole) and Nassau Power Corporation (Nassau).

On October 2, 1990, the Commission determined that the following issues should be set for hearing:

1. The priority of QF's in the queue by date.
2. The methodology to be used to determine which QFs remain in the queue.

The Commission directed that the parties file supplemental briefs to address these two issues. The Commission also directed that the

DOCUMENT NUMBER DATE
09081 OCT -9 1990
FISC-RECORDS/REPORTING

parties be given an opportunity to discuss the facts and state whether there were disputed issues of material fact to be considered at hearing. This brief will address the two issues enumerated above, as well as the facts affecting Panda's location in the queue.

I. PRIORITY OF OFS IN THE QUEUE BY DATE

Order No. 23235 determined that, in applying the subscription limit, the priority of QFs should be established by the signature date of a negotiated contract or the date that a completed standard offer contract is tendered to a utility. Order No. 23235 further stated that, in the case of a negotiated and standard offer contract signed/tendered on the same day, the standard offer contract will take priority in the queue.

Panda's September 25th brief stated that it tendered a completed standard offer contract to Florida Power Corporation (FPC) on July 25, 1990, followed by a completed interconnection agreement, tendered to FPC on July 30, 1990. Although Panda's standard offer was not tendered to FPC until late July, it should be considered effective on June 13, 1990, the effective date of Commission approval of FPC's updated standard offer. Panda sought to submit a standard offer to FPC at an earlier date, but had been advised that there was a dispute over language in FPC's updated standard offer and that FPC's standard offer was not yet available.

FPC filed an updated standard offer on June 6, 1990, per the Commission's May 25, 1990 vote to revise the statewide avoided unit. However, FPC also added new language concerning transmission

costs. The Commission Staff had approved FPC's update to the avoided unit parameters on June 13, 1990 but advised FPC that the new transmission cost language was not approved. FPC advised the Staff that it would not accept a partial approval of its tariff filing. Panda was uncertain whether the Staff's approval of the update was truly effective but, ultimately, decided to tender a standard offer to FPC on July 25, 1990, based on the updated parameters.

On July 31, 1990 the Commission voted to approve FPC's updated standard offer, effective June 13, 1990, and to suspend FPC's newly proposed language on transmission costs. Panda's delayed submittal of a standard offer to FPC was caused by the dispute between FPC and the Commission Staff over approval of the new standard offer. Panda should not be prejudiced by the delay in resolving the dispute and its standard offer should be considered effective on the effective date of tariff approval, June 13, 1990.

Panda has reviewed the Commission's records regarding other negotiated and standard offer contracts. Commission records show that Indiantown's negotiated contract was signed on May 21, 1990. This contract predates the Commission's designation of the statewide avoided unit and cannot qualify to be in the queue for that unit.¹ Commission records show that all of the other contracts were standard offer contracts. Although the signature dates are reflected in Commission records, the dates on which the contracts

¹ See Panda's September 25, 1990 brief, pages 3-5.

were actually tendered to the utility are not. Therefore, it is not possible to determine the actual priority of contracts in the queue by date at this time. It will be necessary to conduct discovery to resolve that issue.

Commission records reflect the following signature dates for standard offer contracts:¹

<u>SIGNATORY</u>	<u>DATE</u>	<u>UTILITY</u>
Nassau	6/13/90	FPL
Cypress I	6/18/90	FPL
Cypress II	6/18/90	FPL
Mockingbird	7/25/90	FPL
Indeck Lakeland	8/17/90	FPC
Indeck Frostproof	8/17/90	FPC
Telluride I	8/24/90	FPL
Telluride II	8/24/90	FPC

It is likely that these contracts were actually tendered to the utilities several days after their signature date.²

II. THE METHOD TO DETERMINE WHICH QFS REMAIN IN THE QUEUE

Panda's September 25th brief proposed five criteria to establish qualification for the queue:

1. Does the facility have QF status?
2. Has the QF signed an interconnection agreement?
3. Is there a wheeling agreement (if needed)?
4. Has security for early or levelized payments been agreed upon; and
5. Is there evidence of a reasonable possibility of construction of the QF?

¹Commission records reflect that Consolidated Minerals, Inc., withdrew its standard offer to FPL. Accordingly, that contract is no longer in the queue and will not be discussed herein.

²For instance, Panda's standard offer contract was signed on July 24, 1990 and tendered to FPC via courier on July 25, 1990.

As stated in its September 25th brief, Panda's proposal was offered as a solution to a very extreme and unprecedented situation and offered 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.

FPL has proposed that the determination of priority in the queue be delayed until need determination under the Power Plant Siting Act, where the "best" project would have priority in the queue. This proposal is inappropriate and should not be considered by the Commission. First of all, it would delay a determination of who is in the queue. This delay would generate uncertainty in the QF market, jeopardizing projects and chilling the development of new QF capacity. It will become more difficult for QFs to obtain financing and finalize development plans if they cannot obtain a basic understanding of their contractual rights in a reasonably short time frame.

Second, it jeopardizes the standard offer if applied to all QF contracts. The standard offer is a no-hassle option for QFs that lack the resources or the time to negotiate a contract with a utility. A QF can rely on the standard offer as a sure means of obtaining a contract to sell capacity and energy. If a standard offer contract is subjected to comparative scrutiny, as FPL has proposed, it is no longer a reliable means of obtaining a contract.

Third, a comparative review of QF contracts would jeopardize a QFs rights to sell capacity and energy under PURPA and state law. Under PURPA and Section 366.051, Florida Statutes, each utility is obliged to purchase QF capacity at full avoided cost. A QF that negotiates a contract or signs a contract to sell capacity at full avoided cost is entitled to enforcement of that contract. However, under FPL's approach, if the affected utility later negotiates a better contract, the subsequent contract could supercede the full avoided cost contract. This later contract need not even be with a QF. A QF's rights under PURPA would be subordinated to the negotiating policies of the utilities.

Finally, FPL's approach would lead to competitive need proceedings that would involve all pending contracts and projects in a single proceeding. Whether intended or not, FPL's approach requires that each need determination be gauged against all other pending contracts. Since the first need determination could fill all or part of the subscription limit, each competing QF would be compelled to intervene and attempt to prove that its project is the "best" choice. There are nine projects in the queue at this time. The first comparative review of any project would compel all of the others to intervene and attempt to prove that they should have priority in the queue as the "best" project. The Commission's goal of an orderly and predictable process of limiting the subscription to the avoided unit would be transformed into an open forum delving deeply into the relative merits of numerous QF projects.

The simple answer to the problem is to apply a basic queuing system relying on execution/submittal, coupled with a very limited review of each contract to establish which can remain in the queue. Panda's 5-part review is an appropriate mechanism. Once the final queue is established, need determinations should be held in the order of the final queue. Any QF contract to sell capacity and energy at or below full avoided cost should be approved per se, consistent with PURPA, §366.051 and §366.82. These laws establish that QF capacity is needed and that development of QF capacity is to be encouraged. Any contract that was not established under PURPA (such as a contract entered into under a competitive bid) would be subject to normal comparative review with all other capacity options.

III. APPLYING THE FACTS TO PANDA'S METHODOLOGY

The following discussion illustrates how the nine contracts currently in the queue would qualify to remain in the queue under Panda's methodology.

1. Does the Facility have QF status?

- | | | |
|---------------|---|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <u>Nassau</u> | - | Commission records do not show whether Nassau's proposed facility has QF status and, to date, Nassau has not alleged that it does. Nassau's standard offer contract may or may not qualify to remain in the queue under this criterion. |
| <u>Panda</u> | - | Panda has filed a notice of self-certification of its facility in accordance with FERC regulations. Panda's standard offer contract qualifies to remain in the queue under this criterion. |

- Cypress I - Commission records do not show whether Cypress' proposed facility has QF status and, to date Cypress has not alleged that it does. Cypress' standard offer contract may or may not qualify to remain in the queue under this criterion.
- Cypress II - Commission records do not show whether Cypress' proposed facility has QF status and, to date Cypress has not alleged that it does. Cypress' standard offer contract may or may not qualify to remain in the queue under this criterion.
- Mockingbird - Commission records do not show whether Mockingbird's proposed facility has QF status and, to date Mockingbird has not alleged that it does. Mockingbird's standard offer contract may or may not qualify to remain in the queue under this criterion.
- Indeck Lakeland - Commission records do not show whether Indeck's proposed facility has QF status and, to date Indeck has not alleged that it does. Indeck's standard offer contract may or may not qualify to remain in the queue under this criterion.
- Indeck Frostproof - Commission records do not show whether Indeck's proposed facility has QF status and, to date Indeck has not alleged that it does. Indeck's standard offer contract may or may not qualify to remain in the queue under this criterion.
- Telluride I - Commission records do not show whether Telluride's proposed facility has QF status and, to date Telluride has not alleged that it does. Telluride's standard offer contract may or may not qualify to remain in the queue under this criterion.
- Telluride II - Commission records do not show whether Telluride's proposed facility has QF status and, to date Telluride has not alleged that it does. Telluride's standard offer contract may or may not qualify to remain in the queue under this criterion.

Thus, to date, the only contract shown to qualify under this criterion is Panda.⁴

2. Has the OF signed an interconnection agreement?

- Panda - Panda signed and tendered FPC's standard interconnection agreement with no material change. Panda's standard offer contract qualifies to remain in the queue under this criterion.
- Nassau - Nassau signed and tendered FPL's standard interconnection agreement but made material changes to its text. These changes prevent a valid acceptance of FPL's standard interconnection agreement and Nassau's standard offer contract does not qualify to remain in the queue under this criterion.
- Cypress I - No standard interconnection agreement was signed and Cypress' standard offer contract does not qualify to remain in the queue under this criterion.
- Cypress II - No standard interconnection agreement was signed and Cypress's standard offer contract does not qualify to remain in the queue under this criterion.
- Mockingbird - Mockingbird signed and submitted FPL's standard interconnection agreement but omitted information on interconnection facilities required by the contract. This omission leaves the acceptance of FPL's interconnection contract incomplete and Mockingbird's standard offer contract does not qualify to remain in the queue under this criterion.
- Indeck Lakeland - Indeck signed and tendered FPC's standard interconnection agreement with no material change. Indeck's standard offer contract qualifies to remain in the queue under this criterion.

⁴ Commission records do not show that Indiantown's facility has QF status.

Indeck Frostproof - Indeck signed and tendered FPC's standard interconnection agreement with no material change. Indeck's standard offer contract qualifies to remain in the queue under this criterion.

Telluride I - No standard interconnection agreement was signed and Telluride's standard offer contract does not qualify to remain in the queue under this criterion.

Telluride II - No standard interconnection agreement was signed and Telluride's standard offer contract does not qualify to remain in the queue under this criterion.

Thus, to date the only standard offer contracts shown to qualify under this criterion are Panda, Indeck Lakeland, and Indeck Frostproof.⁵

3. Is there a wheeling agreement?

It appears that all of the contracts, except the Telluride contracts, are within the service area of the purchasing utility. The Telluride contracts each identify the same location for its two generating units, yet each unit is selling to a different utility. It is reasonable to assume, therefore, that one of the contracts will require wheeling. There is no evidence of a wheeling contract for either unit, so that one of these units may not qualify to remain in the queue under this criterion.

4. Has security for early or levelized payments been agreed upon?

This criterion applies if early or levelized payments are requested by the QF. The standard offer contracts themselves do not indicate whether early payments have been requested. However,

⁵Indiantown's contract indicates that an interconnection agreement will be negotiated in the future.

early payments can be excluded by inference if the in-service date identified in the interconnection contract is the same as the delivery date under the standard offer. Panda is not seeking early payments and the following other contracts do not appear to seek early payments either:

Nassau
Mockingbird
Indeck Lakeland
Indeck Frostproof

The Telluride contracts each expressly request early payments but there is not evidence that the utilities have agreed to Telluride's proposed security. The Cypress contracts lack interconnection agreements, so it is not possible to infer whether early payment are requested.

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

Panda - Panda has identified its facility site as Goldkist, Inc., in Suwannee County and has signed a letter of intent with Goldkist. This demonstrates that Panda has a bona fide project and that its standard offer qualifies to remain in the queue under this criterion.

Nassau - Nassau's standard offer identifies its facility site as "Amelia Island" and its interconnection agreement provides a description of the facilities needed to interconnect with FPL. This is one indication that Nassau has a bona fide project, but until more detailed information is presented, it cannot be stated that Nassau's standard offer contract qualifies to remain in the queue under this criterion.

Cypress I - There is little information available about the proposed site, except that it will be located in Medley, Florida. Until such time as additional information is presented, it cannot be stated that Cypress' standard offer contract qualifies to remain in the queue under this criterion.

Cypress II -

There is little information available about the proposed site, except that it will be located in Medley, Florida. Until such time as additional information is presented, it cannot be stated that Cypress' standard offer contract qualifies to remain in the queue under this criterion.

Mockingbird -

There is little information available about the proposed site, except that it will be located in on Taylor Road, near Dania, Florida. Until such time as additional information is presented, it cannot be stated that Mockingbird's standard offer contract qualifies to remain in the queue under this criterion.

Indeck Lakeland -

The only information available about the proposed site that it is "by Lakeland." Unless more specific information is presented, it appears that Indeck's standard offer contract does not qualify to remain in the queue under this criterion.

Indeck Frostproof -

The only information available about the proposed site that it is "in Frostproof." Unless more specific information is presented, it appears that Indeck's standard offer contract does not qualify to remain in the queue under this criterion.

Telluride I -

The only information available about the proposed site that it is "in Putnam County." Unless more specific information is presented, it appears that Telluride's standard offer contract does not qualify to remain in the queue under this criterion.

Telluride II -

The only information available about the proposed site that it is "in Putnam County." Unless more specific information is presented, it appears that Telluride's standard offer contract does not qualify to remain in the queue under this criterion.

SUMMARY OF RESULTS

The following summary of the above analyses shows that one contract qualifies to remain in the queue and eight contracts appear not to qualify:

	CRITERIA					
<u>OF Name</u>	<u>No. 1</u>	<u>No. 2</u>	<u>No. 3</u>	<u>No. 4</u>	<u>No. 5</u>	<u>Summary</u>
Panda	yes	yes	N/A	N/A	yes	yes
Nassau	maynot	no	N/A	N/A	maynot	no
Cypress I	maynot	no	N/A	maynot	maynot	no
Cypress II	maynot	no	N/A	maynot	maynot	no
Mockingbird	maynot	no	N/A	N/A	maynot	no
Indeck Lakeland	maynot	yes	N/A	N/A	no	no
Indeck Frostproof	maynot	yes	N/A	N/A	no	no
Telluride I	maynot	no	maynot	no	no	no
Telluride II	maynot	no	maynot	no	no	no

Thus, until evidence is provided that the other contracts qualify to remain in the queue, Panda's contract would be the only contract in the queue under the proposed criteria.


CONCLUSION

Additional information is needed to determine the queueing of contracts by date. Panda's methodology should be employed to determine which contracts remain in the queue. Under Panda's proposed methodology, based on the facts available, Panda's contract is the only one that qualifies to remain in the queue.

Dated: October 9, 1990

Respectfully submitted

Richard A. Zambo, Esquire
Richard A. Zambo, P.A.
205 North Parsons Avenue
Brandon, Florida 33511
(813) 681-322


Paul Sexton, Esquire
Richard A. Zambo, P.A.
211 South Gadsden Street
Tallahassee, Florida 32301
(904) 222-9445

Attorneys for Panda/Live Oak Corporation

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 9th day of October, 1990.

Richard D. Melson, Esquire*
Hopping, Boyd, Green & Sams
Suite 420
First Florida Bank Building
P.O. Box 6526
Tallahassee, Florida 32301

James A. McGee, Esquire
Florida Power Corporation
3201 34th Street South
P.O. Box 14042
St. Petersburg, Florida 33733

James D. Beasley, Esquire*
Lee L. Willis, Esquire
Ausley, McMullen, McGehee,
Carothers & Proctor
227 S. Calhoun St.
P.O. Box 391
Tallahassee, Florida 32302

Matthew M. Childs, Esquire*
Charles Guyton, Esquire
Steel, Hector & Davis
310 West College Avenue
Tallahassee, Florida 32301

Joseph A. McGlothlin, Esquire*
Lawson, McWhirter, Grandoff
& Reeves
522 East Park Avenue
Suite 200
Tallahassee, Florida 32301

G. Edison Holland, Esquire
Beggs and Lane
P.O. Box 12950
Pensacola, Florida 32576

Frederick M. Bryant, Esquire*
William J. Peebles, Esquire
306 East College Avenue
P.O. Box 1169
Tallahassee, Florida 32301

Michael Palecki*
Staff Counsel
Division of Legal Services
Florida Public Service
Commission
101 East Gaines Street
Tallahassee, FL 32399-0850

Lee Rampey, Esquire
General Counsel
Department of Energy
Southeastern Power Adm.
Elberton, GA 30635

Susan Delegal, Esquire
Broward County General Counsel
115 South Andrews Avenue
Suite 406
Ft. Lauderdale, Florida 33301

Roy Young, Esquire*
Young, Van Assenderp, Vanadoes
and Benton, P.A.
225 South Adams Street
Post Office Box 1833
Tallahassee, FL 32302-1833

Barney L. Capehart
1601 N.W. 35th Way
Gainesville, Florida 32605

Yvonne Gsteiger*
Florida Rural Electric
Cooperatives
2916 Appalachee Parkway
P.O. Box 590
Tallahassee, Florida 32302

Jack Shreve*
Public Counsel
812 Claude Pepper Building
111 West Madison Street
Tallahassee, FL 32301

Gary Tipps
Seminole Electric Cooperative
P. O. Box 272000
Tampa, Florida 33688-2000

E. M. Grant
Florida Keys Electric Coop.
P.O. Box 377
Tavernier, FL 33070

Edward C. Tannen
Assistant Counsel
Jacksonville Electric
Authority
1300 City Hall
Jacksonville, Florida 32202

City of Chattahoochee
Attn: Superintendent
115 Lincoln Drive
Chattahoochee, FL 32324

Gail Fels
Assistant County Attorney
Metro-Dade Center
111 NW 1st Street, Suite 2810
Miami, Florida 33128-1993

John Blackburn
Post Office Box 405
Maitland, Florida 32751

Mike Peacock
Florida Public Utilities Co.
P. O. Box 610
Marianna, Florida 32302

Ray Maxwell
Reedy Creek Utilities Co.
P. O. Box 40
Lake Buena Vista, FL 32830

Ann Carlin, Esquire
Gainesville Regional Utilities
200 E. University Avenue
Gainesville, FL 32602

Alabama Electric Cooperative
P.O. Box 550
Andalusia, Alabama 37320

Quincy Municipal Electric
Light Department
P. O. Box 941
Quincy, Florida 32351

Terry O. Brackett
Associate General Counsel
Sunshine Natural Gas System
1899 L Street, N.W.
Suite 500
Washington, D.C. 20036


Guyte P. McCord, III, Esquire*
Macfarlane, Ferguson, Allison
& Kelly
215 South Monroe St.
Post Office Box 82
Tallahassee, Florida 32302

C.M. Naeve, Esquire
Shaheda Sultan, Esquire
Skadden, Arps, Slate, Meagher
& Flom
1440 New York Avenue, N.W.
Washington, D.C. 20005-2107

David Bruce May, Jr., Esquire*
Richard B. Stephens, Jr., Esq.
Holland & Knight
P.O. Drawer 810
Tallahassee, Florida 32302

Patrick K. Wiggins, Esquire*
Wiggins and Villacorta
501 East Tennessee Street
P.O. Box 1657
Tallahassee, Florida 32302

Terry Cole, Esquire*
Oertel, Hoffman, et al.
2700 Blainstone Road
Suite C
Tallahassee, FL 32301


Paul Sexton