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JOHNSON AND ASSOCIATES, P.A.
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**ORIGINAL
FILE COPY**

March 9, 1995

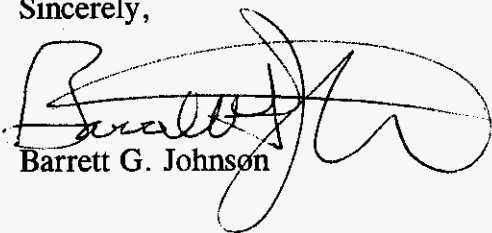
Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, FL 32399-0870

RE: Petition For Declaratory Statement
Regarding Eligibility For Standard Offer
Contract And Payment Thereunder By
Florida Power Corporation
Docket No. 950110-EL

Dear Ms. Bayo:

Enclosed for filing is the original and fifteen copies of Panda Kathleen L.P. and Panda Energy Company's Motion to Supplement.

Sincerely,


Barrett G. Johnson

Handwritten notes and markings on the left margin, including a checkmark, the word "Heltan", and a circled "6".

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL
FILE COPY

IN RE: Petition for declaratory statement
regarding eligibility for State Offer contract and
payment thereunder by Florida Power
Corporation

Docket No. 950110-EI
Filed: February 6, 1995

PETITION TO INTERVENE

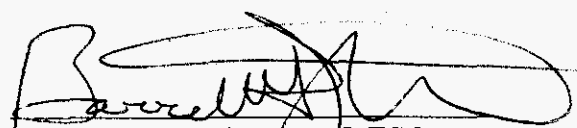
Pursuant to Rule 25-22.039, F.A.C., Panda-Kathleen L.P., and Panda Energy Company, a Texas corporation, whose address is 4100 Spring Valley, Suite 1001, Dallas, Texas 75244 (collectively "Panda"), by and through their undersigned attorneys, hereby submit this Petition to Intervene in the above-styled proceeding, and as grounds therefor state:

1. Florida Power Corporation, Petitioner in the above-styled proceeding, seeks to have this Commission interpret essential terms of Panda's Standard Offer contract with Florida Power Corporation in ways detrimental to Panda. Panda is therefore an affected party whose substantial interests are being determined in the above styled proceeding.

ACR _____ WHEREFORE, Panda respectfully requests the Commission to enter its order granting
APA _____ Panda intervention in this proceeding and directing that copies of all pleadings or other
APP 1 documents or communications, filed, given or entered herein to be furnished to the undersigned
CSE _____
CWA _____ attorney for Panda.

CYB _____ RESPECTFULLY submitted this 6th day of February, 1995.

ESC _____
LEB _____
LH 6
CJ 1
RJA _____
S 1
W _____
overington

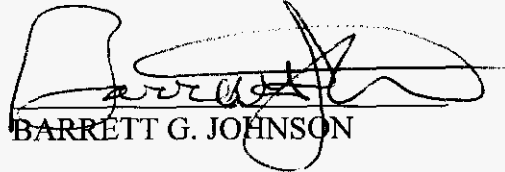


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DOCUMENT NUMBER-DATE
01349 FEB-69
FPSC-RECORDS/REPORTING 136

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by United States Mail to James A. McGee, Florida Power Corporation, P. O. Box 14042, St. Petersburg, FL 33733-4042 this 6th day of February 1995.



BARRETT G. JOHNSON

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Petition For Declaratory Statement
Regarding Eligibility For Standard Offer Contract
And Payment Thereunder By Florida Power
Corporation

Docket No. 950110-EI

MOTION TO SUPPLEMENT PETITION FOR DECLARATORY STATEMENT

Comes now, Panda Kathleen, L.P. a Delaware limited partnership ("Panda") by and through its undersigned attorney, and moves this Commission to supplement Florida Power Corporation's Petition for Declaratory Statement filed January 25, 1995 and as grounds therefore states:

1. On February 13, 1995, Panda telecopied FPC and sent by overnight express a clarification letter which is a prerequisite to financing the Panda-Kathleen Project (the "Project") with a response date of February 24, 1995. A true and complete copy of such letter is attached as Exhibit A (the "Clarification Letter").

2. Panda drafted the Clarification Letter so as to exclude the issues raised by FPC in its Petition. FPC could therefore execute the Clarification Letter without prejudice to its positions in the Petition.

3. To the best of Panda's knowledge and belief, FPC did not execute and return the Clarification Letter by the return date of February 24, 1995. To date, Panda has not received the Clarification Letter, despite assurances that it was forthcoming.

4. Accordingly, the matters addressed in the Clarification Letter are at issue between the parties. Considerations of judicial economy dictate that the matters at issue between FPC and Panda be dealt with in one proceeding to the greatest extent possible. FPC has left Panda with no choice but to place these issues on this Docket before the Commission.

5. The matters dealt with by the Clarification Letter must be agreed to by FPC and/or confirmed as written by order of this Commission, in order for Panda's lenders to proceed with financing the Project. The Clarification Letter does not try to improve Panda's or FPC's position but does clarify the meaning or application of selected provisions in said Standard Offer Contract.

6. Clarification letters are standard documents that are a routine part of financing, and such letters do not present new or unusual questions.

7. Time is of the essence, since the actual (and foreseeable) result of this proceeding has been to halt Panda's construction and financing until it is resolved. The delay caused by this

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proceeding alone has disrupted several time critical paths in constructing and financing the Project on a schedule consistent with the original Schedule planned by Panda to stay well within the deadlines in said Standard Offer Contract for commencement and competition of construction.

8. The Clarification Letter deals with matters which could be addressed quickly, if so ordered by the Commission. By adding the Clarification Letter matters to this Docket little, if any, delay would occur in the speedy resolution of this proceeding. Panda's overwhelming interest is in just such speedy resolution of all issues relevant to the Project.

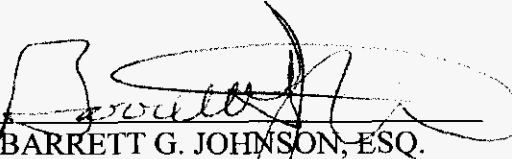
WHEREFORE, Panda respectfully requests that this Commission:

1. Add each item in the Clarification Letter as an issue in this Docket, confirm agreements, if any, reached by the parties as to these items and cause all other issues to be justly resolved.

2. Direct the parties to meet with staff and stipulate to all undisputed matters at the earliest possible date, thus leaving only a small number of remaining issues, if any, to be resolved as part of this Docket (with all resolved issues being so ordered by this Commission). Attached as Exhibit B is a list of suggested stipulations that have been previously furnished to FPC.

3. Establish the earliest feasible dates for submission of briefs and for any required hearing in order to expedite this proceeding to the greatest extent feasible. Panda is prepared to submit briefs March 14, which would permit a short hearing to be held during a recess of the March 21 agenda conference which in turn would allow the matter to be resolved by the Commission at its April 3 agenda conference.

Respectfully submitted this 9th day March of 1995.


BARRETT G. JOHNSON, ESQ.
Florida Bar No. 174115
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(904) 222-2693
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion has been served by United States Mail to James A. McGee, Florida Power Corporation, P. O. Box 14042, St. Petersburg, FL 33733-4042 and that a copy has been hand delivered to Mary Ann Helton, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, FL this 9th day of March, 1995.


BARRETT G. JOHNSON

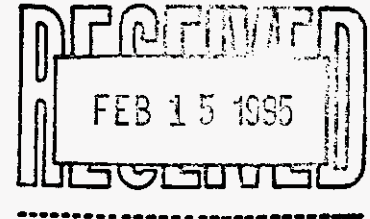
PANDA-KATHLEEN L.P.

A Panda Company



February 13, 1995

Mr. Robert D. Dolan
Florida Power Corporation
3201 Thirty-Fourth Street South
Post Office Box 14042
St. Petersburg, Florida 33733-4042



RE: Panda-Kathleen Cogeneration Facility

Dear Mr. Dolan:

As you are aware, Panda-Kathleen, L.P. ("Panda") has been proceeding with financing for the subject project since last December. Panda's lenders have requested that Panda provide them with clarifications of certain provisions of the Standard Offer Contract for the Purchase of Firm Capacity and Energy effective November 25, 1991, as amended (the "PPA"), between Florida Power Corporation ("FPC") and Panda. Therefore, we attach a letter (the "Clarification Letter") containing these provisions (including certain due diligence items) and ask that you confirm them. Many of these provisions have been discussed and agreed upon with FPC. The issues included in your "Petition for Declaratory Statement", filed with the Florida Public Service Commission on January 25, 1995, have not been included in the Clarification Letter and can be covered by a supplemental document.

In addition, White & Case sent to you by telephone modem a form of Consent and Agreement dated January 10, 1995. A copy of this Consent and Agreement is attached to the Clarification Letter as Exhibit C thereto (the "Consent"). Please comment on the Consent so we may complete it subject to final approvals of appropriate parties.

Finally, on December 28, 1994, I delivered to you the proposed Transmission Service Agreement between Panda and the City of Lakeland, dated December 15, 1994, attached to the Clarification Letter as Exhibit B thereto (the "Transmission Service Agreement"). Under Section 2.2 of Appendix D of the PPA, we anticipate that FPC will comment on this Transmission Service Agreement within 60 days of submission. That period elapses on February 28, 1995. We would like to complete the Transmission Service Agreement subject to final approvals of appropriate parties by February 28, 1995.

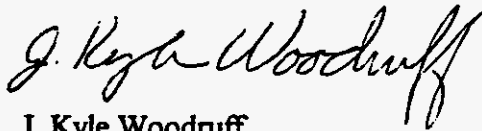
You will note that the Transmission Service Agreement and the Consent are referred to in

Mr. Robert D. Dolan
February 10, 1995
Page 2

Paragraphs 31 and 32 of the Clarification Letter, respectively.

Please provide us with your response to this letter by Friday, February 24, 1995. However, in the meantime, do not hesitate to call me at (214) 980-7159 if you have any questions.

Very truly yours,



J. Kyle Woodruff
Project Manager

JKW/sle

Enclosure

cc: David Gammon - FPC
Allen Honey
David Mayer
Thomas Horn
Ralph Killian
Ted Hollon

[LETTERHEAD OF FPC]

[Date]

Panda-Kathleen, L.P.
4100 Spring Valley, Suite 1001
Dallas, Texas 75244

Dear Sirs:

Reference is made to the Standard Offer Contract for the Purchase of Firm Capacity and Energy from a Facility, effective November 25, 1991 (the "PPA"), between Panda-Kathleen, L.P. (the "QF") and Florida Power Corporation (the "Company"), as amended by the letter agreement between the QF and the Company, dated April 29, 1993 and effective May 3, 1993 (the "Letter Agreement" and collectively with the PPA, the "Agreement").

We understand that in connection with the financing of the Facility, the QF has been requested by its lenders to obtain from the Company (i) certain clarifications of the Agreement and (ii) consents and agreements in connection therewith. This letter is intended to respond to those requests. Capitalized terms used in this letter and not defined herein have the respective meanings set forth in the Agreement.

A supplemental document will be prepared to the extent necessary to reflect the outcome of the Petition for Declaratory Statement, dated January 25, 1995 (the "Petition"), filed by the Company. Accordingly, the Company has not included any provision herein with respect to the matters explicitly covered by the Petition.

The Company hereby confirms the following:

- (1) Pursuant to the Letter Agreement, the Contract In-Service Date has been extended to January 1, 1997 and the Construction Commencement Date has been extended to January 1, 1996.
- (2) The normal capacity payments to the QF as specified in the PPA will not impose net income on the Company. The QF will not be assessed any charges under section 10.2 of the PPA under current law, rules or regulations or IRS rulings for these costs.
- (3) As a result of entering into the Letter Agreement, capacity payments will be based on "Value of deferral payments" under section 8.2.1 of the PPA, which is described as the "Normal Payment Option" on page 1 of Schedule 3 to Appendix C and, consequently, sections 8.2.2 and 8.6 of the PPA are not applicable.

- (4) The Facility will be located south of the latitude of the Company's Central Florida Substation and, consequently, section 2.2 of the PPA (other than the first sentence thereof) is not applicable to the Facility.
- (5) The Company is not required to obtain any order, permit, consent or waiver from the Florida Public Service Commission in respect of the Company's obligations under the PPA other than the orders, permits, consents and waivers that the Company has already obtained or may obtain as a result of filing the Petition.
- (6) In section 1.2 of the PPA, the heading "Avoided Unit Fuel Reference Plant" should read "Avoided Unit Reference Plant" and the word "is" in the third line of such section should be "as".
- (7) In section 1.3 of the PPA, the word "million" should be deleted.
- (8) In section 1.4 of the PPA, the reference to "section 8.2.1" should be to "Appendix C, Schedule 2".
- (9) In section 1.9 of the PPA, the reference to "Article VI" should be to "section 7.1".
- (10) The requirements set forth in section 3.2 of the PPA to the effect that the Facility be a "Qualifying Facility" will be determined solely by the Federal Energy Regulatory Commission in accordance with applicable laws, rules and regulations.
- (11) The requirements under section 3.3 of the PPA (that the Facility's ability to deliver its Committed Capacity shall not be encumbered by interruptions of fuel supply) has been satisfied by information described in the letter of J. Kyle Woodruff, Project Manager, of the QF, to Robert D. Dolan, Manager, Cogeneration Contracts and Administration, dated October 27, 1995, attached hereto as Exhibit A-1, in response to a letter from Mr. Dolan to Mr. Woodruff, dated September 19, 1994 and attached hereto as Exhibit A-2.
- (12) The reference in the third line of section 4.1 of the PPA to "section 4.2.4" should be to "section 4.2".
- (13) If the Contract In-Service Date is extended for up to 180-days by reason of a Force Majeure Event as provided in section 4.2 of the PPA, the Term of the Agreement will automatically be extended by the same number of days.
- (14) The word "Operational" should be inserted by "Event of Default" in the second line of section 9.1.1 of the PPA.

- (15) The QF will receive all of the payments described in clause (i) of section 9.1.2 of the PPA when the avoided unit would have been operating.
- (16) The QF has posted the Security Guaranty with the Company in accordance with section 13.1 of the PPA.
- (17) Section 14.1.2 of the PPA permits the QF to contest any proceedings before any governmental authority (provided that such contest is pursued in good faith by appropriate proceedings diligently conducted and such contest does not subject the Facility to a risk of forfeiture).
- (18) The Company shall make the payment to the QF as set forth in the first sentence of section 13.3 of the PPA at any time that the QF achieves Commercial In-Service Status.
- (19) The Point of Metering will be at the boundary limits of the Facility.
- (20) Exhibit B-1 of the PPA has been provided to the QF.
- (21) In the event of any Operational Event of Default under sections 15.3.1 or 15.3.3 of the PPA, the Company will apply section 15.4.1 of the PPA prior to applying sections 15.4.2 or 15.4.3 of the PPA.
- (22) The Company will not deem an Operational Event of Default to have occurred under section 15.3.1 of the PPA (which relates in part to sections 7.4 and 1.8(i) of the PPA) unless, in the case of non-compliance by the QF with any applicable Facility permit, such non-compliance (i) relates to a permit which is critical to the operation of the Facility and (ii) could reasonably be expected to have a material adverse effect on the ability of the QF to provide the Committed Capacity to the Company in accordance with the PPA.
- (23) Section 20.2 of the PPA applies only to Force Majeure Events declared by the QF.
- (24) The reference to "Schedule 8" in the note on Page 1 of Schedule 3 to Appendix C of the PPA should be to "Schedule 4".
- (25) The geographic location planned for the Facility satisfies the requirements of section 3.1 of the PPA.
- (26) The term "Committed O.P.C.F." as used in Schedule 4 to Appendix C of the PPA means _____%.

- (27) The references in section 27.3 of the PPA to "sections 28.1 or 28.2" should be to "sections 27.1 or 27.2".
- (28) The Point of Delivery will be at the City of Lakeland West Substation.
- (29) The events described in sections 15.1.5, 15.1.6 and 15.1.7 of the PPA will not constitute Pre-Operational Events of Default to the extent they are caused by Force Majeure Events (subject, in the case of section 15.1.6 of the PPA, to the limitation set forth in section 4.2 of the PPA).
- (30) The insurance requirements of Article XIX do not apply to the QF.
- (31) The Facility will not be directly interconnected with the Company and, consequently, Appendix A to the PPA and the "Operation, Maintenance and Repair Charges" section of Schedule 6 to Appendix C to the PPA are not applicable. The Transmission Service Agreement, dated as of _____, 1995, between the QF and the City of Lakeland, a copy of which is attached hereto as Exhibit B, was received by the Company on December 28, 1994 and has been reviewed the Company as required by section 2.2 of Appendix D to the PPA. Such agreement satisfies the requirements of Appendix D to the PPA. The QF will not, as contemplated by section 15.1.3 of the PPA, seek approval or acceptance for filing of such agreement with the FERC.
- (32) The Company received a draft, dated January 10, 1995, of a Consent and Agreement, dated as of _____, 1995, from White & Case, counsel for the lenders to the QF, a copy of which is attached hereto as Exhibit C, and such the form of the Consent and Agreement has been reviewed by, and is satisfactory to, the Company, subject to finalization by all parties thereto at the closing thereof.

FLORIDA POWER CORPORATION

By: _____

Name: _____

Title: _____

Panda Clarification Letter

_____, 1995

Page 5

ACKNOWLEDGED AND AGREED THIS

____ DAY OF _____, 1995:

PANDA-KATHLEEN, L.P.

By: Panda-Kathleen Corporation,
General Partner

By: _____

Title: _____

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JOHNSON AND ASSOCIATES, P.A.
ATTORNEYS AND COUNSELORS

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Facsimile Cover Sheet

To: Jim Fama & Jim McGee
Company: Florida Power
Phone:
Fax:

From: Barrett Johnson
Company: JOHNSON & ASSOCIATES, P.A.
Phone: 904-222-2693
Fax: 904-222-2702

Date: 2/28/95

**Pages including this
cover page:**

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Comments: Jim: Pursuant to our conversation and my recent letter, attached for your review is a set of draft stipulations in the declaratory statement docket. Please call me to discuss any points that concern you. This stipulation was drafted to be engineering verities in order to dispose of matters not really or reasonably in dispute. Accordingly, please feel free to send back ASAP any questions or points of disagreement so we can resolve them

We also need to wrap up the certification letter ASAP. Please call me on it.

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, collect, and return the original message to us at the above address via the United States Postal Service. Thank you.

Thank, Barrett

Exhibit B

PANDA DRAFT STIPULATION 2/28/95

COME NOW, Florida Power Corporation ("FPC") and Panda-Kathleen, L.P. ("Panda") and file this their joint stipulation of facts in the above styled proceeding (the "Proceeding"), by and through their undersigned attorneys.

1. Panda executed that certain "Standard Offer Contract for the Purchase of Firm Capacity and Energy From a Qualifying Facility Less Than 75 MW or a Solid Waste Facility" (the "Contract") on October 4, 1991. FPC executed the Contract on November 25, 1991. The Commission approved the contract and rejected all others in Docket #92-911142-EQ by Order No. PSC-92-1202-FOF-EQ.

2. The form of agreement would have permitted the Committed Capacity (as defined in the Contract) of any amount up to 75 MW. As permitted by the form of agreement, Panda selected 74.9 MW

3. By a letter agreement, dated April 29, 1993, between FPC and Panda (the "Letter Agreement"), Panda waived the "Early payments" under Section 8.2.1 of the Contract and elected instead to use the "(v)alue of deferral payments".

4. The Letter Agreement also allowed corresponding extensions under the Contract including an extension of the Construction Commencement Date to January 1, 1996, the Commercial In-Service Date to January 1, 1997, and the Term of the Contract to December 31, 2026.

5. In the formula provided for the escalation of the capacity payments under the "value of deferral payments" approach, the value of I_n does not vary with the economic life of the avoided unit.

6. For so long as the QF's capacity is committed to FPC by contract and is available to FPC, FPC does not have to have in commercial operation a corresponding amount of FPC capacity (the avoided unit) to serve the load associated with that unit.

7. Sections 7.4 and 1.8 of the Contract require Panda throughout the Term (as defined in the Contract), among other

things, to demonstrate its ability to produce and deliver "an hourly KW output, as metered at the Point of Delivery, equal to or greater than the Committed Capacity [74.9 MW]" on 60 days' notice from FPC.

8. The test results are not based on standard climatic conditions, nor are the results adjusted to reflect variation in ambient conditions.

9. The test results are not adjusted to add back heat rate degradation (and thus capacity degradation) depending on how long the unit has been operating since the last scheduled maintenance, since the last major overhaul, or since initial operation.

10. Since the Committed Capacity and delivered energy are measured at the Point of Delivery, the Facility (as defined in the Contract) must be capable of generating more than 74.9 MWH per at the high side of the main transformer to compensate for parasitic loads and line losses, including transformation loss, from the generator to the Point of Delivery.

11. To produce the Committed Capacity (as defined in the Contract) of 74.9 MW measured at the Point of Delivery under all operating conditions, including the least favorably that may be anticipated, for the entire Term, the Facility must be capable of producing more that 74.9 MW under more favorable conditions (i.e., lower ambient temperatures, newer or more recently maintained equipment, etc.).

12. Combustion turbines and other equipment of the type that may be used in the Facility (as defined in the Contract) are manufactured in standard frame sizes and generating capacity outputs that are predetermined by their manufacturers.

13. Neither the production schedule of such equipment nor the configuration of options thereof are under Panda's dominion or control.

14. The Facility must meet or exceed the requirements of all environmental and other permits throughout its life in order to comply with those permits and the Contract.

15. The GE 7EA and the ABB 11N1 are commercially available units which, based on the assumptions set out in Paragraphs , 8,

9, 10 and 11 above, among others, meet all of the requirements set out in Paragraphs 7 and 14 above.

16. Under ideal operating conditions, the Facility, using a GE 7EA or an ABB 11N1 combustion turbine, may be capable of generating electric energy in the 115 MW range.

17. During the Term of the Contract Panda will receive capacity payments from FPC for up to, but not more than, the Committed Capacity (as defined in the Contract).

18. Panda will sell electric capacity from the Facility only to FPC for the term of the Contract.

19. FPC has no reason to believe Panda's proposed configuration of the GE 7EA or the ABB 11N1 will not, as a technical/engineering matter, be capable of operating at the output level of 74.9 MW as measured at the Point of Delivery.

20. To the extent that Panda has available capacity in excess of 74.9 MW and FPC is not paying for that capacity, the reliability of FPC's service to its customers is enhanced at no cost to FPC or its customers.

21. The Contract is a standard offer contract under the rules of the Florida Public Service Commission (the "Commission") whose acceptance was the subject of docket #92-911142-EQ before this Commission. FPC petitioned the Commission to commence the Proceeding. FPC prepared all exhibits filed in its name in the Proceeding.

22. Panda intervened in the Proceeding and prepared all exhibits filed in its name.

23. Most cogeneration facilities are "project-financed;" that is, the developer borrows money through construction loans and long-term loans on a non-recourse basis.

24. Prior to execution of the Contract, FPC knew that Panda intended to project finance (as described above) the Facility.