

**Florida
Power**
CORPORATION

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FILE

JAMES P. FAMA
ASSISTANT GENERAL COUNSEL

March 20, 1995

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

Re: Docket No. 950110-EI

Dear Ms. Bayó:

Enclosed for filing in the subject docket are fifteen copies of Florida Power Corporation's Answer in Opposition to Panda Kathleen, L.P.'s Motion to Supplement Petition for Declaratory Statement.

Please acknowledge your receipt of the above filing on the enclosed copy of this letter and return to the undersigned. Also enclosed is a 3.5 inch diskette containing the above-referenced document in WordPerfect format. Thank you for your assistance in this matter.

- ACK _____
- AFA _____
- APP Netton
- CAF _____
- CMU _____
- CTR _____
- EAG Callinger
- LEA _____ IPF/jb
- LIN _____ Enclosure
- QAC _____ cc: Parties of Records
- EDS _____
- SJD _____
- WFS _____
- OTH _____

Very truly yours,

James P. Fama
James P. Fama

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MAR 21 1995
DIVISION OF RECORDS AND REPORTING

DOCUMENT NUMBER-DATE

03011 MAR 21 95

FPSC-RECORDS/REPORTING

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

Submitted for filing:
March 21, 1995

FLORIDA POWER CORPORATION'S ANSWER IN OPPOSITION TO PANDA KATHLEEN, L.P.'S MOTION TO SUPPLEMENT PETITION FOR DECLARATORY STATEMENT

Pursuant to Commission Rule 25-22.037, Florida Power Corporation ("Florida Power") hereby files this Answer In Opposition to the March 9, 1995 Motion of Panda Kathleen, L.P. ("Panda") to supplement Florida Power's Petition for Declaratory Order, which initiated this docket on January 25, 1995. In support of this Answer, Florida Power submits the following:

1. Florida Power objects to Panda's attempt to alter Florida Power's petition. Petitioners are free to seek the relief before the Commission that they so choose. There is no law or regulation providing intervenors the right to supplement or otherwise alter the relief requested by a petitioner. If Panda wants to bring a matter before the Commission, Panda can avail itself of the Commission's regulations and file its own petition. Apparently Panda has decided to do just that, by filing a Motion For Declaratory Statement And Other Relief in this docket on March 14, 1995, which among other things, asks the Commission to force Florida Power to execute a clarification letter. Florida Power will answer the March 14th motion in a separate pleading.

DOCUMENT NUMBER-DATE

03011 MAR 21 95

FLORIDA POWER CORPORATION FPSC-RECORDS/REPORTING

2. Florida Power's petition in this case presents the Commission with a narrow question which avoids any dispute as to material fact: whether Panda's standard offer contract is unavailable to Panda if Panda constructs a facility which produces 115 megawatts. In contrast, Panda's clarification letter raises disputed issues of material fact which should not be addressed in a declaratory statement proceeding.

3. Florida Power disagrees with the suggestion in paragraph 4 of Panda's motion that "judicial economy" dictates that Panda's disputed clarifications be made part of the instant docket. There is no administrative convenience or economy to be gained by turning the Commission's declaratory statement rules upside down in order to accommodate the schedule of Panda and its lenders.

4. Florida Power disagrees with Panda's suggestion in paragraph 4 that "FPC has left Panda with no choice" but to insert these issues into the instant docket. The development of the Panda project and its financing proceeds on a schedule made by Panda and its lenders, not by Florida Power. The fact that Panda apparently waited until the last minute to seek contract clarifications is not Florida Power's problem. The alleged urgency of Panda's request is a problem of its own making, not the result of any act or omission on the part of Florida Power.

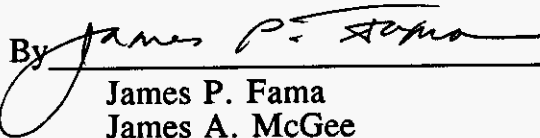
5. Florida Power does not agree with the suggestion in paragraphs 5 and 6 of Panda's motion that the clarification letter is a simple, straightforward matter that does not affect the rights and obligations of the parties. Florida Power assumes that when any party seeks "clarification" of a contract its purpose is to advance its own fortunes, which may in turn cause the fortunes of Florida Power

to suffer. Indeed, Panda's so-called clarifications could rise to the level of contract amendments, which would convert Panda's standard offer contract to a negotiated contract. The clarifications sought by Panda call for careful consideration, and Florida Power has limited resources to devote to the many qualifying facility matters currently being dealt with by the Company. As noted in paragraph 6. below, Florida Power has provided a response to Panda's clarification letter within approximately a thirty day period. This is not an unreasonable amount of time for a matter such as this. Panda's protestations to the contrary should be ignored.

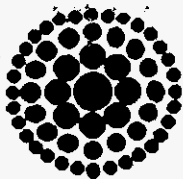
6. By letter dated March 17, 1995, a copy of which is attached to this Answer, Florida Power rendered clarifications with respect to 25 of the 32 clarifications sought by Panda. After these 25 clarifications are signed off on by Panda through its execution of the March 17th letter, the letter will be filed for approval in pending Docket No. 940797-EQ, *Petition for approval, to the extent required, of certain actions relating to approved cogeneration contracts by Florida Power Corporation*. Hence, most of the matters raised in Panda's motion are moot and will soon be before the Commission in another docket. As for the remaining 7 clarifications sought, Florida Power will continue to attempt to reach accommodation with Panda.

WHEREFORE, for all of the reasons stated above, Florida Power respectfully requests that Panda's motion be denied.

Respectfully submitted,
OFFICE OF THE GENERAL COUNSEL
FLORIDA POWER CORPORATION

By 

James P. Fama
James A. McGee
Post Office Box 14042
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Telephone: (813) 866-5184
Facsimile: (813) 866-4931



**Florida
Power**
CORPORATION

March 17, 1995

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 are not expected to 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, Docket 940797-EQ and 950110-EI.
 - (6) In section 1.3 of the PPA, the word "million" should be deleted.
 - (7) In section 1.4 of the PPA, the reference to "section 8.2.1" should be to "Appendix C, Schedule 2".
 - (8) In section 1.9 of the PPA, the reference to "Article VI" should be to "section 7.1".
 - (9) The requirements set forth in section 3.2 of the PPA to the effect that the Facility be a "Qualifying Facility" is currently determined solely by the Federal Energy Regulatory Commission in accordance with applicable laws, rules and regulations.
 - (10) 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 performing the obligations 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, 1994, 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.
 - (11) The reference in the third line of section 4.1 of the PPA to "section 4.2.4" should be to "section 4.2".
 - (12) 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 may be extended by the same number of days.
 - (13) The QF has posted the Security Guaranty with the Company in accordance with section 13.1 of the PPA.
 - (14) The Company shall make the payment, in accordance with the provisions of the PPA 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.

- (15) The Point of Metering will be at the boundary limits of the Facility. The metered value will reflect any applicable losses to the wheeling utility.
- (16) Exhibit B-1 of the PPA is not applicable.
- (17) 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, except 15.1.1 to the extent required or allowed by law and 15.1.2 as it applies to an Operational Event of Default.
- (18) Section 20.2 of the PPA applies only to Force Majeure Events declared by the QF.
- (19) 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".
- (20) The geographic location planned for the Facility satisfies the requirements of section 3.1 of the PPA.
- (21) The term "Committed O.P.C.F." as used in Schedule 4 to Appendix C of the PPA means 90%.
- (22) 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".
- (23) The Point of Delivery will be at the interface(s) between the City of Lakeland and FPC.
- (24) The insurance requirements of Article XIX do not apply to the QF.
- (25) 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.

FLORIDA POWER CORPORATION

By: Robert D. Dolan

Name: ROBERT D. DOLAN

Title: MANAGER, COGENERATION AND ADMINISTRATION

AJH#3:Panda.Lar



ACKNOWLEDGED AND AGREED THIS _____ DAY OF _____, 1995.

PANDA-KATHLEEN, L.P.

By: Panda-Kathleen Corporation,
General Partner

By: _____

Title: _____

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

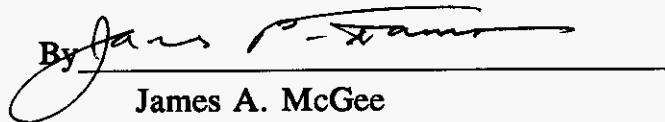
Submitted for filing:
March 21, 1995

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Florida Power Corporation's Answer in Opposition to Panda Kathleen, L.P.'s Motion to Supplement Petition for Declaratory Statement has been furnished to Barrett G. Johnson, Esquire, Johnson & Associates, P.A., P.O. Box 1308, Tallahassee, FL 32302, this 20th day of March, 1995.

Respectfully submitted,

OFFICE OF THE GENERAL COUNSEL
FLORIDA POWER CORPORATION

By 

James A. McGee
Post Office Box 14042
St. Petersburg, FL 33733-4042
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