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**Florida
Power**
CORPORATION

JAMES A. MCGEE
SENIOR COUNSEL

March 31, 1995

Ms. Blanca S. Bayó, Director
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32399-0870

Re: Docket No. ~~941101-EO~~

Dear Ms. Bayó:

Enclosed for filing in the subject docket are fifteen copies of Florida Power Corporation's Motion to Compel.

Please acknowledge your receipt of the above filings 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 Word Perfect format. Thank you for your assistance in this matter.

Very truly yours,

James A. McGee

- ACK ✓
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG 5
- LEG 1
- LIN 5
- CPC _____
- RCH _____
- SEC 1
- WAS _____

JAM/jb
Enclosures
cc: Parties of Record

OTH RECEIVED & FILED

DOCUMENT NUMBER - DATE
03369 APR-30
FPSC-RECORDS/REPORTING

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Florida Power Corporation's Motion to Compel has been furnished by regular U.S. Mail on the 3rd day of April, 1995 to the following:

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Ir re: Petition of Florida Power Corporation for determination that its plan for curtailing purchases from Qualifying Facilities in minimum load conditions is consistent with Rule 25-17.086, F.A.C.

Docket No. 941101-EQ

Submitted for filing:
April 3, 1995

**FLORIDA POWER CORPORATION'S
MOTION TO COMPEL**

Pursuant to Rule 1.380, Florida Rules of Civil Procedure, and Commission Rule 25-22.034, Florida Administrative Code, Florida Power Corporation ("FPC"), by and through its undersigned attorneys, hereby files this Motion to Compel answers to certain interrogatories from, and certain requests for production of documents from, Panda-Kathleen, L.P. and Panda Energy Company ("Panda"). Specifically, FPC moves to compel answers to the interrogatories numbered 16-19, 25-26, 28-29, and 30 in FPC's First Set of Interrogatories to Panda. In addition, FPC moves to compel inspection of documents that were requested by paragraphs numbered 4-16 of FPC's First Request for Production of Documents to Panda. In support of its motion, FPC submits the following:

1. On October 14, 1994, FPC filed its Petition seeking a determination by the Commission that its plan for curtailing purchases from Qualifying Facilities in minimum load conditions (the "Curtailement Plan") is consistent with and permitted under Commission Rule 25-17.086, F.A.C.

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FLORIDA POWER CORPORATION

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2. FPC developed its Curtailment Plan because it had begun to experience a condition where the total energy on its system exceeded the demand of its customers during minimum load periods of certain days (sometimes referred to as minimum load conditions), usually during (but not limited to) the mild-weather period from mid-October through May. As set forth in its Petition, FPC is taking a number of actions to alleviate the problem of excess generation at times of minimum load, including the reduction of capacity payments from other utilities, increasing off-system sales, and reducing FPC's own generation. Despite these actions, however, FPC is still faced with the necessity of curtailing more QF generation when load falls to minimum levels.

3. As one of the QFs affected by the Curtailment Plan, Panda filed its Petition to Intervene in this docket on November 29, 1994. The Commission issued its Order granting Intervention on December 6, 1994.

4. A number of the QFs have repeatedly asserted to FPC that they have been injured because they are discriminated against and treated unfairly by the Curtailment Plan. Panda may raise these claims before the Commission. In addition, the Commission Staff recognized the importance of this issue of fairness and injury in the instant docket, and has identified the following as two of its five preliminary issues:

Has Florida Power Corporation adequately demonstrated that the procedures for curtailment outlined in its plan are reasonable and appropriate with respect to QF's or any group of QF's? (Staff preliminary Issue No. 2)

Has Florida Power Corporation adequately demonstrated that the procedures for curtailment outlined in its plan are not unduly discriminatory against QF's or any group of QF's? (Staff preliminary Issue No. 3)

5. In light of the complaints by QFs and in light of the above-delineated issues that likely will become part of the Commission's inquiry in this docket, FPC needs to know whether and, if so, how and to what extent, its Curtailment Plan injures QFs. Thus, FPC propounded interrogatories and document requests to Panda and the other QFs seeking that information.

6. In propounding interrogatories, FPC has requested that Panda specify whether it contends that it has been harmed in any manner by the Curtailment Plan or any incidents of curtailment under it and, if so, how. In connection with this probing of alleged harmful effects, FPC also seeks information as to consultants retained by Panda and whether Panda has communicated with other entities regarding the Curtailment Plan.

7. Florida Rules of Civil Procedure provide that "parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter . . . whether it relates to the claim or defense of the party seeking discovery" Fla.R.Civ.P. Rule 1.280(b)(1) [Emphasis added]. Unless FPC can acquire information relating to alleged injuries or harmful effects caused by the Curtailment Plan, FPC will be unable to defend itself against such claims and will risk being "sandbagged" at the hearing by QF claims of injury or unfair treatment.

8. Similarly, FPC has requested documents from Panda pertaining to the Curtailment Plan and curtailment events, including financial records, analyses of impacts on equipment and energy sales, documents dealing with communications with the Commission and others relating to the Curtailment Plan, contingency plans relating to curtailment, and documents relating to alleged damages from curtailment. As with the interrogatory information sought by FPC, these documents are needed by FPC to defend itself and to determine whether its Curtailment Plan avoids undue discrimination and provides for fair treatment of the affected QFs.

9. Panda has objected to almost all of the propounded discovery on the grounds that: 1) the facility is under construction and is not yet in operation; and 2) the information sought is not relevant to any issue in this action and that the only issue before the Commission in this docket is "whether FPC's curtailment plan is consistent with the requirements of Commission Rule 25-17.086, Florida Administrative Code, and the applicable rules of the Federal Energy Regulatory Commission."

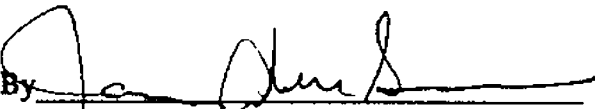
10. In its good faith effort to resolve this discovery dispute, and in the spirit of compromise, FPC has agreed to eliminate fully 22 of the 30 interrogatories to which Panda made objection, and 3 of the 16 document requests to which Panda made objection. Panda, however, has refused to supply answers to any of the remaining interrogatories or to produce documents responsive to any of the remaining requests.

11. Instead, Panda has maintained its narrow and restrictive position that information relating to the effects of the Curtailment Plan on the QFs (i.e., injury to the QFs) is not an issue before the Commission in this docket. Panda, therefore, has refused to compromise in any way to resolve this discovery dispute.

WHEREFORE, FPC respectfully requests the Commission to order Panda to serve complete answers to interrogatories 16-19, 25-26, 28-29, and 30 in FPC's First Set of Interrogatories to Panda and to produce for inspection all documents responsive to requests numbered 4-16 in FPC's First Request for Production of Documents to Panda.

Respectfully submitted,

OFFICE OF THE GENERAL COUNSEL
FLORIDA POWER CORPORATION

By 

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