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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 CONTINUE

COMES NOW, PANDA-KATHLEEN, L.P., [hereinafter "Panda"], by and through its undersigned counsel, and pursuant to Rule 25-22.041, Florida Administrative Code, and, to the extent applicable, Section 120.57, Florida Statutes, files this Motion to Continue the February 19, 1996 full Commission hearing in this matter, and, additionally, to continue all pre-hearing controlling dates leading up to such hearing for a period of ninety (90) days. In support thereof, Panda provides the following:

1. This docket was opened to consider the Petition for Declaratory Statement filed by Florida Power Corporation [hereinafter "Florida Power"], on January 25, 1995. On February 2, 1995, Panda petitioned to intervene in this docket and on March 6, 1995 was granted intervention as a substantially affected party.

On March 14, 1995, Panda filed a Motion for Declaratory Statement and Other Relief. On March 24, 1995, Florida Power filed a Motion to Strike Panda's Motion for Declaratory Statement and Other Relief. By its Order issued June 12, 1995, the Commission denied in part and granted in part Florida Power's Motion to Strike.

2. On or about June 29, 1995, Panda filed a Petition for Formal Evidentiary Proceedings and Full Commission Hearing. On August 16, 1995, the Commission granted Panda's Petition, and by

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Order dated August 22, 1995, the Commission established a procedure for such full administrative hearing, including the following controlling dates:

- | | |
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| a. Parties' direct testimony and exhibits | November 13, 1995 |
| b. Staff's direct testimony and exhibits, if any | November 27, 1995 |
| c. Parties' rebuttal testimony and exhibits | December 18, 1995 |
| d. Pre-hearing statements | January 12, 1996 |
| e. Pre-hearing conference | February 12, 1996 |
| f. Hearing | February 19, 1996 |
| g. Briefs | March 25, 1996 |

3. On November 13, 1995, the undersigned counsel entered its Notice of Appearance in this matter as new counsel for Panda. The undersigned have taken over full responsibility for this matter from prior counsel. During the several weeks surrounding November 13, 1995, undersigned new counsel acquired voluminous files, documents, and other items relevant and/or related to the issues and circumstances purported to be a part of this dispute. The sheer depth and breadth of the documents and items, at a minimum, require investigation and review and, thereafter, may require extensive discovery.

4. Upon information and belief, no exchange of discovery has occurred in this Public Service Commission matter, notwithstanding the fact that the controlling dates as set forth by the Commission's August 22, 1995 Order [see Paragraph 2., above],

states that the parties' direct testimony and exhibits are to be completed on or before November 13, 1995, and any rebuttal testimony and exhibits of the parties are to be completed on or before December 18, 1995. The pre-hearing statement is to be completed on or before January 12, 1996.

5. Counsel has reviewed the issues set forth in Panda's June 29, 1995 Petition for Formal Evidentiary Proceeding and Full Commission Hearing, and the issues and argument as set forth by Panda in its July 31, 1995 Memorandum in Support of Petition for Formal Evidentiary Proceedings and Full Commission Hearing. It is expected that it will take new counsel several weeks to assess the extensive discovery requirements of this action and to appropriately prepare the testimony and exhibits necessary to properly explicate the parties' positions before the Commission. Not only is the time period provided in the Commission Order inadequate to provide Panda's new counsel an appropriate opportunity to complete this task, but the intervening holidays make it particularly difficult for new counsel to properly conduct discovery and prepare testimony and exhibits in compliance with the presently controlling dates. It is the extensive amount of work required to properly prepare for this extensive evidentiary hearing that necessitates new counsel's request for this short continuance.

6. As an additional basis for a continuance, new counsel desires to explore the possibility of conducting settlement discussions with Florida Power, which at best would dispose of the

matter, and at the very least, may limit the issues requiring resolution at the final hearing.

7. Moreover, a delay of the evidentiary hearing set in this proceeding for ninety (90) days will not prejudice Florida Power. As Panda is the party that initially requested the evidentiary hearing in this proceeding, as well as the party seeking enforcement of the underlying contract between the parties, only Panda could be adversely affected by this brief delay.

8. Lastly, Panda maintains its position that the Commission has no jurisdiction either over Panda or over the claims asserted by Florida Power herein.¹ Accordingly, the participation by Panda in a full evidentiary hearing may be ineffectual and altogether unnecessary. Additionally, as noted in the Florida Public Service Commission Staff Recommendation on Panda's pending motion to dismiss, it is likely that Panda will file an appeal in the event the Public Service Commission denies Panda's motion to dismiss. The motion to stay that Panda would file attendant to the appeal is likely to delay the evidentiary hearing presently set in this proceeding in any event.

9. Panda respectfully requests a continuance of this matter extending the hearing date for a minimum of ninety (90) days following the presently scheduled hearing and, additionally, requests a comparable continuance of all pre-hearing and post-hearing controlling dates.

¹Legal position set forth by Panda in its September 12, 1995 Motion to Stay or Abate Proceedings, Motion to Dismiss, and Supporting Memorandum, adopted herein by reference.

WHEREFORE, **PANDA-KATHLEEN, L.P.**, respectfully requests that the Public Service Commission enter an order continuing the hearing date presently scheduled for February 19, 1996 herein for a minimum of ninety (90) days, and, additionally, continuing any and all controlling dates for such hearing for a comparable amount of time.

Respectfully submitted,

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RONALD C. LAFACE
(Fla Bar ID No. 098614)
LORENCE JON BIELBY,
(Fla Bar ID No. 0393517)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail/~~Hand Delivery/Telecopy~~ to Donald R. Schmidt, Post Office Box 2861, Saint Petersburg, Florida 33731, by ~~U.S. Mail/Hand Delivery/Telecopy~~ to Robert Vandiver, and Martha Carter-Brown, Florida Public Service Commission, 2450, Shumard Oak Boulevard, Tallahassee, Florida 32399-0892, by U.S. Mail/~~Hand Delivery/Telecopy~~ to James A. McGee, Esquire, Post Office box 14042, St. Petersburg, Florida 33733-4042, by U.S. Mail/~~Hand Delivery/Telecopy~~ to John Marks, III, Esquire, Post Office Box 1877, Tallahassee, Florida 32301, by U.S. Mail/~~Hand Delivery/Telecopy~~ to Ed Gwynn, Panda-Kathleen, L.P., 4100 Spring Valley Road, #1001, Dallas, Texas 75244, and by U.S. Mail/~~Hand Delivery/Telecopy~~ to Raymond C. Besing, Esquire, 1100 St. Paul Place, 750 North St. Paul, Dallas, Texas 75201, this 28th day of November, 1995.

Ronald C. LaFace
RONALD C. LAFACE