

Florida Power
CORPORATION

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FLORIDA PUBLIC
SERVICE COMMISSION
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MAIL ROOM

JEFFERY A. FROESCHLE
CORPORATE COUNSEL

December 29, 1995

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 950110-EI

Dear Ms. Bayó:

Enclosed for filing in the subject docket are the original and fifteen copies of Florida Power Corporation's Motion Requesting Approval of Stipulation Confirming Agreement Regarding Discovery.

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 _____
- CAF _____
- CMU _____
- CTR _____
- EAG JAF/jb
- LEG _____ Enclosures
- LIN 5 cc: Parties of Records
- OPC _____ h:\jam\950110\bayo.jaf
- RCH _____
- SEC 1 _____
- WAS _____
- OTH _____

Very truly yours,

Jeffery A. Froeschle

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EPSC-BUREAU OF RECORDS

GENERAL OFFICE

DOCUMENT NUMBER-DATE

00011 JAN-2 96

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:
December 28 1995

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Florida Power Corporation's Motion Requesting Approval of Stipulation Confirming Agreement Regarding Discovery has been furnished to Ronald C. LaFace, Esq., and Lorence Jon Bielby, Esq., Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A., 101 East College Ave., Tallahassee, Florida 32301 and Martha Carter Brown, Division of Legal Services, Florida Public Service Commission, 2450 Shumard Oak Blvd., Tallahassee, Florida 32399-0892, this 29th day of December, 1995.

OFFICE OF THE GENERAL COUNSEL
FLORIDA POWER CORPORATION

By 

Jeffery A. Froeschle
James A. McGee
Post Office Box 14042
St. Petersburg, FL 33733-4042
Telephone: (813) 866-5786
Facsimile: (813) 866-4931

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DOCUMENT NUMBER-DATE

00011 JAN-28 1273

FLORIDA POWER CORPORATION

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:
January 2, 1996

MOTION REQUESTING APPROVAL OF STIPULATION CONFIRMING AGREEMENT REGARDING DISCOVERY

Florida Power Corporation ("Florida Power" or "the Company") hereby requests that the Florida Public Service Commission ("FPSC" or "the Commission") approve the attached Stipulation Confirming Agreement Regarding Discovery, and the Agreed Order for the Handling of Confidential Information, and as grounds states as follows:

1. On June 26, 1995, Panda-Kathleen, L.P. ("Panda"), filed a complaint against Florida Power in the United States District Court, Middle District of Florida, Tampa Division, entitled Panda-Kathleen, L.P. v. Florida Power Corporation, Case No. 95-992-CIV-T-24C ("Panda's Federal Case"). Panda's Federal Case arose from the same circumstances that gave rise to the issues before the Commission in the above-captioned proceeding ("the FPSC Proceeding").

2. Florida Power and Panda agreed in July 1995 that all discovery, written and oral, could be used by either Panda or Florida Power in both Panda's Federal Case and the FPSC Proceeding.

3. On August 3, 1995, the U.S. Magistrate Judge for Panda's Federal Case entered an Agreed Order for the Handling of Confidential Information (the Agreed Confidentiality Order). A copy is attached hereto as Exhibit A to Exhibit 1 to the herein motion. The Agreed Confidentiality Order set forth the

procedures which would govern the handling of all confidential documents and information produced or received by the parties in Panda's Federal Case.

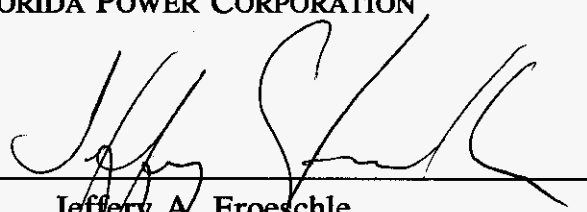
4. On December 7, 1995, Panda filed a Notice of Voluntary Dismissal of Panda's Federal Case.

5. Subsequent to Panda's voluntary dismissal of Panda's Federal Case, Panda and Florida Power confirmed the prior agreement that all discovery conducted in connection with Panda's Federal Case could be used by both Panda and Florida Power in the FPSC proceeding. A copy of the Stipulation Confirming Agreement Regarding Discovery ("Stipulation") is attached hereto as Exhibit 1. The parties further agreed that the Agreed Confidentiality Order should also apply in the FPSC proceeding.

6. Florida Power requests that the Commission grant approval of the Stipulation Confirming Agreement Regarding Discovery and the Agreed Order for the Handling of Confidential Information. Counsel for Panda has authorized Florida Power to file the attached Stipulation and Agreed Confidentiality Order.

OFFICE OF THE GENERAL COUNSEL
FLORIDA POWER CORPORATION

By



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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

STIPULATION CONFIRMING AGREEMENT REGARDING DISCOVERY

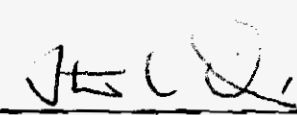
Florida Power Corporation ("Florida Power") and Panda-Kathleen, L.P. and its general partner Panda Kathleen Corporation (collectively, "Panda"), by their respective attorneys, hereby confirm their prior agreements (set forth below) and stipulate as follows:

1. All discovery conducted in connection with the recently dismissed federal court case entitled *Panda-Kathleen, L.P. v. Florida Power Corporation*, Case No. 95-992-CIV-T-24C filed in the United States District Court for the Middle District of Florida, Tampa Division (the "Federal Case") may be used in this proceeding as if conducted in both proceedings.

2. The Agreed Confidentiality Order entered on or about August 3, 1995, in the Federal Case, a copy of which is attached and incorporated as Exhibit A, applies with equal force to this proceeding.



David Roas, FB No. 270954
Greenberg, Traurig, Hoffman,
Lipoff, Rosen & Quentel, P.A.
1221 Brickell Avenue
Miami, FL 33131
(305) 579-0500
Attorneys for Panda-Kathleen, L.P.
by its general partner Panda Kathleen Corp.



Steven C. Dupré, FB No. 471860
Carlton, Fields, Ward, Emmanuel, Smith &
Cutler, P.A.
Post Office Box 2861
St. Petersburg, FL 33731
(813) 821-7000
An attorney for Florida Power Corporation

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

AUG 1995
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PANDA-KATHLEEN, L.P., a Delaware :
Limited Partnership, acting by and :
through Panda-Kathleen Corporation, :
its General Partner, :

Plaintiff, :

v. :

Case No. 95-992-CIV-T-24C

FLORIDA POWER CORPORATION, :
a Florida corporation, :

Defendant. :

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LEGAT'S OFFICE
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

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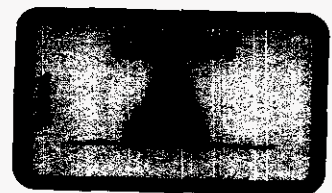
AGREED ORDER FOR THE HANDLING
OF CONFIDENTIAL INFORMATION

THIS CAUSE came before the Court upon the Joint Motion And
Stipulation of the parties; and the Court having been duly
advised in the premises*

IT IS HEREBY ORDERED that the following procedures will
govern the handling of all confidential documents and information
produced or received by the parties in this proceeding:

DEFINITIONS

1. When used in this Order:
 - A. "Communicate" (or variants of this verb) means to disclose, show, give, provide, make available, furnish or allow exposure of information in any fashion to any person;



T#380757.1

* The undersigned finds good cause for the issuance of this Protective Order
Rule 26(c), Fed. R. Civ. P.

ESG

- B. "Copy" or "Copies" means reproductions made through any process, including photostatic or photographic reproduction, manual recopying, microfilm, dictation, or mechanical or electronic duplication;
- C. "Document" or "Documents" means any written, printed, typed, recorded, or graphic matter, and copies thereof, including, without limitation, any drawing, graph, chart, photograph, data compilation, invoice, purchase order, contract, correspondence, note, memoranda, minutes, agendas, reports and recordings of telephone or other conversations, of interviews, conferences, or of other meetings, statements, summaries, opinions, reports, studies, analyses, evaluations, journals, statistical records, desk calculators, appointment books, diaries, tabulations, sound recordings, computer print-outs, data processing input and output, microfilms, other computer materials including, but not limited, to "e-mail" or similar correspondence using computer terminals or computer generated graphics or stored information, and all other records kept by electronic, photographic, or mechanical means, including without limitation, tapes, cassettes, discs and records or any written or other tangible thing

that constitutes or contains matters within the scope of discovery under the Federal Rules of Civil Procedure,

- D. "FPSC proceeding" means the proceeding before the Florida Public Service Commission styled In re: Petition for declaratory statement regarding eligibility for Standard Offer contract and payment thereunder by Florida Power Corporation, Docket No. 950110-EI.
- E. "Information" means all or any part of Documents and Statements, or the contents thereof, however recorded, summarized or communicated;
- F. "Party" means any person or entity, and any of their affiliated persons or entities, named in the this action;
- G. "Person" means any natural person, any legal or business entity, or any governmental agency;
- H. "Qualified Person" means any of the following:
- (1) Attorneys of Record whose names appear on the pleadings filed in this action or the FPSC proceeding;
 - (2) Associates, legal assistants, or clerical personnel who are directly assisting lawyers described in subparagraph 1 above and court reporters taking testimony in connection with this action or the FPSC proceeding;

- (3) Judicial personnel and members of their staffs;
 - (4) Any outside consultant or expert employed by any party to assist in the preparation for this action or the FPSC proceeding to the extent necessary for such assistance;
 - (5) Authors, addressees/recipients, and persons copied on the Confidential Information as shown thereon or otherwise known to have received it in the normal course of business;
 - (6) Employees of a party directly involved in the prosecution or defense of this action or the FPSC proceeding to the extent access to the Confidential Information is necessary to their role in this action or the FPSC proceeding; and
- I. "Statement" means a communication effected by any means except the exclusive use of a document, and includes, without limitation, oral verbalizations, gestures, signs or signals.
- J. "Confidential" material means proprietary or confidential business or financial information, trade secrets or other confidential research, development, or commercial information.
- K. "Specially Restricted" material means proprietary or confidential business or financial information,

trade secrets or other confidential research, development, or commercial information, that, if disclosed, would subject the producing party to substantial competitive disadvantage or other business injury by assisting the receiving party in estimating or inferring the producing party's actual or expected system and/or unit production costs (including fuel costs), actual or expected load demand, actual or expected system and/or unit dispatch characteristics (including IleaL rates) and actual or expected system and/or unit operation.

CONFIDENTIAL INFORMATION

2. In recognition of the fact that there are different degrees of sensitivity for various pieces of information there will be two levels of confidential protection: "Confidential" material and "Specially Restricted" material (collectively referred to as "Confidential Information"). "Confidential" and "Specially Restricted" material shall be disclosed only to Qualified Persons; however, with respect to "Specially Restricted" material, the party making disclosure shall also promptly inform counsel for the party that is producing the "Specially Restricted" material of the identity (name, address, and occupation) of all such persons to whom disclosure is made, including identification of the "Specially Restricted" material that has been disclosed, and shall supply to counsel for the

party that is producing the "Specially Restricted" material the number of copies made. The Parties agree that consultants or experts receiving "Specially Restricted" material are not subject to deposition unless designated as testifying witnesses by the party hiring them.

For purposes of this Order, Confidential Information is any information which counsel for the requesting and producing parties agree is "Confidential" or "Specially Restricted." The producing party shall designate the material that it considers "Confidential" and "Specially Restricted" by affixing a marking on the document that it is "Confidential" or "Specially Restricted," respectively. If said parties cannot agree as to whether material is "Confidential" or "Specially Restricted" material, they shall bring the matter to the attention of the Court who will make a determination in camera as to what confidential classification, if any, such material should be given. All information as to which a dispute may arise shall be deemed to be "Confidential" or "Specially Restricted," in accordance with the original designation of the producing party unless and until the Court rules otherwise or the parties otherwise agree.

3. The following protections shall apply to all Confidential Information under this Order:

- A. No Person shall communicate Confidential Information to any Person other than a Qualified Person.

- B. No Person shall use Confidential Information for any business purpose, competitive purpose, or other purpose not directly connected with this action or the FPSC proceeding.
- C. Any Person receiving Confidential information in the course of this action or the FPSC proceeding will use reasonable care to safeguard and preserve the confidential character of such information and prevent it from being communicated.
- D. Except as otherwise ordered by the Court, Documents containing Confidential Information that are offered in evidence or filed with the Court or the Public Service Commission in connection with any motion, hearing or trial shall be filed in camera or under seal.

4. Any Confidential Information shall be disclosed initially only to counsel, and further disclosure thereof shall be made only to Qualified Persons under the terms and limitations provided for within this Order. If any party desires to modify the categories of Qualified Persons set forth above, or the terms and limitations provided for within this Order, that party must first apply to counsel for the party that produced the Confidential Information and, if the parties agree, a written stipulation so modifying those categories of Qualified Persons, or the terms and limitations of this Order, shall be signed by the parties. If the parties are unable to agree, the party

seeking to modify the categories of Qualified Persons or the terms and limitations of this Order may apply to the Court for such modification.

5. All documents produced shall remain the property of the producing party, together with all notes, abstracts, copies or summaries thereof, and shall be returned or destroyed at the conclusion of the latter of this action or the FPSC proceeding.

6. This Order shall not limit the right of the producing party, or any of the parties, to apply for further protective orders or modification or extension of this Order, and shall not restrict the use by any party of its own information.

7. Once the protections pursuant to this Order have attached to a Document, Statement or item of information hereafter communicated, such protection shall not be reduced or waived by further communicating, restating, summarizing, discussing or referring to any such Documents, Statements or Information.

8. Should any Agency, Court, or Person that is not a party to this action or the FPSC proceeding request that any Party or Qualified Person produce or reveal Confidential Information, the Party that produced the Confidential Information shall be provided reasonable notice of the request and an opportunity to interpose an objection. Also, any Party or Person that intends to submit or file Confidential Information with the Florida Public Service Commission in any proceeding before the Commission, including the FPSC proceeding, must first provide the

party that produced the Confidential information reasonable notice of the intent to submit or file Confidential Information with the Commission and identify the Confidential Information so that the party producing the Confidential Information is afforded an adequate opportunity to invoke the procedure of Rule 25-22.006, F.A.C. to protect the Confidential Information from losing its confidentiality and/or becoming a public record.

9. The Court in this action shall retain jurisdiction over the parties for enforcement of the provisions of this Order following final termination of this action.

10. If any Confidential Information is sought or referred to in the course of a deposition, that deposition shall be treated as Confidential Information.

11. In the event any Confidential Information is filed in connection with any motion, hearing or trial, such Confidential Information shall be filed in camera or under seal.**

12. Nothing in this Order shall be construed as a waiver of any privilege that may be applicable to any Document.

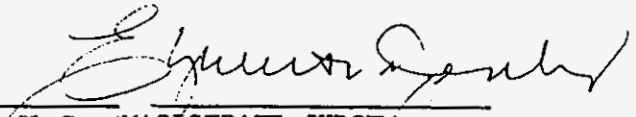
13. This Order shall be binding upon all persons who receive actual notice of its contents and no Person shall make any disclosure of Confidential Information to any Qualified Person, except those persons defined in Section 1.G.(1)-(3) above, without first obtaining a signed statement from each such Qualified Person in the form attached hereto as Exhibit A and

** Nothing in this order shall preclude any party from filing any confidential discovery material with the Clerk of Court or at trial as such restrictions are within the province of the district court and are subject to greater scrutiny. See In re Alexander Grant & Co., 820 F.2d 352, 355 (11th Cir. 987) aff'g 629 F.Supp. 593, 597 (S.D. Fla. 1986).

EAG

providing a copy of such signed statement to counsel for the producing party.

DONE and ORDERED, in Chambers, at Tampa, Florida, this 3rd day of August, 1995.



U.S. MAGISTRATE JUDGE

Copies to:

Thomas T. Steele, Esquire
Ray G. Besing, Esquire
Sylvia H. Walbolt, Esquire
Donald R. Schmidt, Esquire

95 AUG -3 PM 5: 02
U.S. DISTRICT COURT
SOUTH DISTRICT OF FLORIDA
TAMPA, FLORIDA

FILED

EXHIBIT A
Acknowledgement and Agreement to be Bound
By Confidentiality Agreement

I hereby certify my understanding that "Confidential" or "Specially Restricted" information, hereafter collectively referred to as "Confidential Information," is being provided to me pursuant to the terms and restrictions of the Confidentiality Order agreed to by the parties and entered by the Court in Panda-Kathleen, L.P. v. Florida Power Corporation, Case No. 992-CIV-T-24C. I also certify that I have been given a copy of that Confidentiality Order, have read its terms and conditions and agree to be bound by them. I understand that those terms include, but are not limited to, the following:

1. I am prohibited from using the Confidential Information for any purpose not connected to the litigation identified in the Confidentiality Order, including, but not limited to such purposes as responding, or assisting another person or party to respond, to any proposal to buy or sell power or negotiate or administer any fuel agreement;

2. I am prohibited from disclosing the Confidential Information, or their contents, to any person or party, except as provided in the Confidentiality Order;

3. At the conclusion of the litigation, or my involvement in it, I will be required to return such Confidential Information to the person from who I received them, including any notes, memoranda, computer files ("Software"), software documentation and

any other form of information which includes, incorporates, or otherwise discloses the contents of the Confidential Information;

4. I shall continue to be bound by the terms of the Confidentiality Order as a condition to being provided access to the Confidential Documents. Further, by executing this Written Acknowledgement, I hereby consent to the jurisdiction of the above-captioned Court for the special and limited purpose of enforcing the terms and conditions of the Confidentiality Order.

I recognize that all civil remedies for breach of this Written Acknowledgement are specifically reserved by the party producing the Confidential Information and are not waived by this disclosure provided for herein. Further, in the event of the breach of this Written Acknowledgement I recognize that the party producing the Confidential Information may pursue all civil remedies available to it as a third-party beneficiary of this Written Acknowledgement.
Written Acknowledgement.

Dated: _____

Name

Firm

Address

City

State, Zip Code

Telephone Number

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 1995, by _____, who is personally known to me or has produced _____ as identification and who did (did not) take an oath.

My Commission Expires: _____

(Signature)

Name: _____

(Legibly Printed)

(AFFIX OFFICIAL SEAL)

Notary Public,
State of _____

Serial No. (if any): _____