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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

TESTIMONY OF RALPH KILLIAN

ON BEHALF OF PANDA-KATHLEEN, L.P.

DOCKET NO. 950110-EI

DOCUMENT NUMBER-DATE

00202 JAN-58

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ON BEHALF OF PANDA-KATHLEEN, L.P.

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I. INTRODUCTION AND QUALIFICATION

Q. Please state your name, profession, and business address.

A. My name is Ralph Killian. I am the Senior Vice President of Panda Energy International, Inc. Panda Energy International, Inc. is engaged in the development and operation of cogeneration facilities. Panda-Kathleen, L.P. ("Panda") is engaged in the development of a qualified cogeneration facility in Lakeland, Florida pursuant to a contract between Panda and Florida Power Corporation ("Florida Power"). My business address is 4100 Spring Valley, Dallas, Texas 75244.

Q. State briefly your educational and professional background.

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A. I earned a B.S. degree in chemical engineering from the University of Florida in 1969. From 1969 to 1988, I held various engineering staff and management positions at AMOCO Production Company. From 1988 to 1989, I was Senior Vice president of Texas Eastern Gas Pipeline Company, where I was responsible for all marketing, supply and transportation for the Texas Eastern interstate natural gas pipeline serving the northeast United States.

Q. On whose behalf are you appearing in this proceeding?

A. I am appearing on behalf of Panda-Kathleen, L.P.

Q. Please describe your duties with Panda Energy International, Inc.

A. I am the Senior Vice President of Panda Energy International, Inc.. I am responsible for business development, sales, project development, fuel

1 procurement and management, and certain other
2 functions. I had, and continue to have, overall
3 responsibility for the Panda-Kathleen, L.P. project,
4 among other matters. I have been with Panda Energy
5 International, Inc. and its predecessor, Panda Energy
6 Corporation, since 1989.

7
8 Q. Have you ever testified before the Florida Public
9 Service Commission?

10
11 A. No, I have not.

1 II. PURPOSE OF TESTIMONY

2 Q. What is the purpose of your testimony?

3

4 A. The purpose of my testimony is to state the facts
5 underlying Panda's contract with Florida Power
6 Corporation, obligating Panda to furnish wholesale
7 electric power for 30 years at a net 74.9 MW or greater
8 of capacity, under all operating conditions, and
9 obligating Florida Power to purchase that power at
10 rates as calculable in the contract. My testimony will
11 also state the facts of Panda's discussions with
12 Florida Power Corporation from 1991-1995 relating to
13 these contractual issues.

14

15 Q. Are you sponsoring an exhibit in this case?

16

17 A. Yes. It consists of seventeen documents.

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19 Document No. 1 is a Standard Offer Contract
20 Questionnaire Panda received from Florida Power in
21 September 1991.

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Document No. 2 is Panda's response to that questionnaire, which it delivered to Florida Power in October 1991.

Document No. 3 is Florida Power's "Evaluation Of Standard Offer Proposals," dated November 1991.

Document No. 4 is a Florida Power document entitled "Negotiated Contract For The Purchase Of Firm Capacity And Energy From A Qualifying Facility," which was provided to Panda in February 1991.

Document No. 5

Document No. 6 is Panda's Quarterly Progress Report to Florida Power, dated June 20, 1994.

Document No. 7 is a June 23, 1994 letter from Ted Hollon to David Gammon.

1 Document No. 8 is a July 27, 1994 letter from Ted
2 Hollon to David Gammon.

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4 Document No. 9 is an August 3, 1994 letter from David
5 Gammon to Ted Hollon.

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7 Document No. 10 is an August 8, 1994 letter from Ralph
8 T. Killian to David Gammon.

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10 Document No. 11 is an August 10, 1994 letter from Kyle
11 Woodruff to Robert D. Dolan.

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13 Document No. 12 is an August 23, 1994 letter from
14 Barrett G. Johnson to Joseph D. Jenkins of the Florida
15 Public Service Commission.

16
17 Document No. 13 is an August 24, 1994 letter from
18 Joseph Jenkins of the Florida Public Service Commission
19 to Barrett Johnson.
20

1 Document No. 14 is Robert D. Dolan, "Financial
2 Incentives For Power Purchases: A Utility's View,"
3 presented at the Gulf Coast Cogeneration Association,
4 1992 Spring Meeting, held April 21, 1992.

5
6 Document No. 15 is an April 29, 1993 letter from Robert
7 Dolan to Mark Bentley, extending the milestone dates
8 under the contract.
9

10 **III. THE CONTRACT BETWEEN PANDA AND FLORIDA POWER CORPORATION**

11 Q. Please describe the process by which Panda responded to
12 Florida Power Corporation's Standard Offer Contract
13 Questionnaire in October 1991.

14
15 A. In September 1991, Panda received a Standard Offer
16 Contract Questionnaire from Florida Power (attached
17 hereto as "Exhibit 1"). Among the questions posed in
18 that questionnaire was the committed capacity of a
19 Panda facility. When Panda responded to that
20 questionnaire in October 1991 (attached hereto as

1 "Exhibit 2"), it offered to provide Florida Power with
2 74.9 MW of committed capacity for a thirty-year term.

3
4 Q. Was Panda successful in its bid for the Florida Power
5 Contract?

6
7 A. Yes. After reviewing Panda's response and the
8 responses of six other bidders, Florida Power chose to
9 contract with Panda. On November 19, 1991 and on
10 November 26, 1991, Florida Power petitioned the Public
11 Service Commission for authority to refuse standard
12 offer contracts from cogenerators other than Panda.

13
14 On October 22, 1992, the Commission granted the
15 petition, finding that "Florida Power Corporation acted
16 in the best interests of the ratepayers to select the
17 contract which after a comparative evaluation was
18 deemed by FPC to be the best available. We find that
19 this action is consistent with the language of Rule 25-
20 17.0832(3)(d), F.A.C." Order Granting Petition For
21 Authority For Florida Power Corporation To Refuse All

1 Standard Offer Contracts Except That Submitted By Panda
2 Kathleen, L.P. ("Order") at 3.

3
4 Q. What obligations did the Panda-Florida Power contract
5 impose on the parties with respect to the capacity of a
6 facility?

7
8 A. The contract discussed capacity in several paragraphs.
9 Among these references were the following:

10
11 (a) Paragraph 1.9 defined committed capacity as
12 the "KW capacity, as defined in Article VI hereof,
13 which the QF has agreed to make available on a firm
14 basis at the Point of Delivery.

15
16 (b) Paragraph 2.1 limited the availability of the
17 Agreement to the available capacity limitations
18 described in Schedule 1 of Appendix C and being either
19 a solid waste facility or a facility having a Committed
20 Capacity of less than 75,000 KW.

1 (c) In Paragraph 6.1, Panda committed to sell and
2 arrange for the delivery of the Committed Capacity to
3 Florida Power Corporation. Further in that Article,
4 Florida Power contracted to purchase the Committed
5 Capacity made available to it at the Point of Delivery.

6 In addition, in the last sentence of that Article,
7 Panda agreed to sell and deliver or arrange for
8 delivery of the electric energy to the company and
9 Florida Power Corporation agreed to purchase such
10 electric energy as is made available for sale and
11 received by it at the Point of Delivery.

12
13 (d) Paragraph 6.2 states that the Committed
14 Capacity and electrical energy made available to
15 Florida Power shall be net of any electrical energy on
16 Panda's side of the Point of Ownership.

17
18 (e) Schedule 4 of Appendix C refers to a
19 multiplier for the On-Peak Capacity Factor ("OPCF")
20 which must be greater than or equal to the Committed

1 OPCF, clearly recognizing that on-peak capacity would
2 be greater than the Committed Capacity.

3
4 (f) Energy sales in excess of the committed
5 capacity as referred to in Paragraphs 6.1, 6.2 and 6.3
6 are clearly contemplated by Schedule 5 of Appendix C,
7 which describes an optional payment plan for such
8 excess energy sales. Appendix C encouraged Panda to
9 participate in this payment plan by providing such
10 excess energy for sale to Florida Power. While Panda
11 did not elect this payment program, the fact remains
12 that the availability of such a program would serve no
13 purpose absent the availability of energy production in
14 excess of the committed capacity, and Florida Power's
15 obligation to purchase that excess energy.

16
17 Q. How did the Panda-Florida Power contract bind the
18 parties to an express contract length?

19
20 A. Article 4.1 shows the term of the Agreement beginning
21 on the execution date (November 25, 1991) and

1 terminating on the last day of March 2025. Florida
2 Power acknowledged this in its November 1991
3 "Evaluation Of Standard Offer Proposals," (attached
4 hereto as "Exhibit 3"), repeatedly describing the
5 contract term as 30 years. This document was submitted
6 to the Commission by Florida Power in its petition for
7 authority to refuse standard offer contracts from
8 cogenerators other than Panda, and was admitted as
9 Exhibit 1 in that proceeding.

10
11 Q. Did Panda understand the term "committed capacity" to
12 be synonymous with the net size of the plant?

13
14 A. At no time did Panda ever understand committed capacity
15 to be synonymous with net size. The contract does not
16 state a net size limitation, and moreover, Florida
17 Power never indicated to Panda that it understood that
18 the term "committed capacity" represented a 74.9 MW
19 absolute size limitation. At all times, as described
20 below, Florida Power Corporation's representatives were
21 in accord with the irrefutable engineering realities

1 that to produce 74.9 MW of committed capacity, under
2 all conditions, a facility must have a net capacity
3 greater than 74.9 MW. From the very beginning of the
4 contracting process, in responding to a questionnaire
5 that Florida Power sent to Panda inviting submission of
6 a contract proposal, Panda indicated that its equipment
7 choice at that time was three Stewart & Stevenson/GE LM
8 2500 turbine generator sets. Such equipment, with a
9 heat generator and steam turbine-generator would be
10 capable of producing at least 87-95 MW at 59° F.

1 Q. You referred to irrefutable engineering realities
2 relevant to the capacity of a generator. What do you
3 mean by that?

4
5 A. There are a variety of factors that affect the actual
6 output of a generator. A generator's actual output
7 varies, depending on (a) the frame size, (b) age, (c)
8 maintenance, (d) ambient air temperature, (e) humidity,
9 (f) elevation above sea level, (g) BTU rating of the
10 fuel from time to time, (h) condenser cooling water
11 temperature, and many other factors. It ignores these
12 realities to speak of a generating unit as having a
13 specific capacity without defining all the variable
14 conditions. It also follows that the capacity of a
15 generating unit will vary with changes in these
16 variables. As a practical matter, to comply with its
17 contractual commitment to produce the committed
18 capacity for thirty years during summer conditions or
19 other challenging environmental conditions while
20 complying with Florida's strict emissions regulations,
21 Panda had to be acutely sensitive to each of these

1 variables during the process of selecting an
2 appropriate equipment configuration.

1 IV. "STANDARD OFFER" CONTRACTS AND "NEGOTIATED" CONTRACTS

2 Q. What experience did Panda have with the contractual
3 provisions in Florida Power's "negotiated" contracts?
4

5 A. In January and February 1991, Panda participated in the
6 process by which Florida Power selected a "negotiated
7 contract" for the purchase of firm capacity and energy
8 from a qualifying facility. See "Negotiated Contract
9 For The Purchase Of Firm Capacity And Energy From A
10 Qualifying Facility (attached hereto as "Exhibit 4").
11 This process contained no true negotiation, rather
12 consisting of Florida Power providing qualifying
13 facilities ("QF") with proposed contracts and then
14 soliciting suggestions from those QF's. Florida Power
15 then reviewed the suggestions and decided which
16 suggestions it would accept. Those accepted
17 suggestions, and any other new provisions that Florida
18 Power decided to incorporate, were incorporated into
19 all contracts, standardizing the "negotiated contract."
20

1 In those discussions, Panda was told by Florida Power
2 that there would be no negotiation of contract terms,
3 and "negotiated contracts" containing changes when
4 returned by QF's to Florida Power would be disfavored.

5
6 I have since learned that the "negotiated contract" and
7 the standard offer contract were developed by Florida
8 Power from a "model contract." Hence, it is
9 unsurprising that there are so many striking
10 similarities in the provisions of those contracts,
11 especially those provisions relevant to this dispute.

12
13
14 V. PANDA'S DILIGENT ATTEMPTS TO MEET THE IN-SERVICE DATE

15 Q. What did Panda personnel do to meet the in-service date
16 set forth in the contract?

17
18 A. After the execution of the contract, Panda personnel
19 began to solicit bids to construct the facility.
20 Initially, we had planned to construct a plant using a
21 gas turbine with an average output of between 75 and 95

1 MW. However, after examining the available turbines
2 and analyzing projected Panda Kathleen operations with
3 respect to the temperatures, humidity and elevation
4 common to Polk County and considering typical equipment
5 degradation patterns and state environmental mandates,
6 and the other factors discussed above on pages 10 and
7 11, it became clear that it would be impossible for
8 Panda to ensure that it could produce the committed
9 capacity of 74.9 MW for each day of the thirty year
10 contractual term without a net generating capacity of
11 at least 100 MW. Therefore, we decided to consider a
12 turbine with power output of 100 MW to ensure that we
13 could always meet the contractually agreed committed
14 capacity and avoid defaulting on our contractual
15 obligations to Florida Power.

16
17 In this process, a change in the environmental
18 regulations promulgated by the Florida Department of
19 Environmental Protection ("FDEP") played a critical
20 role. In 1992, by the time that this Commission had
21 granted Florida Power's petition to refuse all standard

1 offer contracts other than Panda's, the FDEP had
2 lowered its acceptable limit on a gas combustion
3 turbine's nitrogen oxide emissions from 25 parts per
4 million ("PPM") to 15 PPM. As a result, certain
5 configurations Panda had previously considered would no
6 longer meet the standards set by the FDEP's
7 regulations.

8
9 Q. What discussions did Panda have with Florida Power
10 after Florida Power and Panda executed their contract,
11 to ensure that Panda would meet the contractual
12 milestones?

13
14 A. Beginning in January 1992, Panda representatives and
15 Florida Power representatives had numerous face-to-face
16 discussions and telephone conferences to implement the
17 contract and prepare for the in-service date.

18
19 On January 9, 1992, I attended a meeting with Florida
20 Power to discuss our agreement and several areas that
21 needed clarification. Allen Honey, whom I believe was

1 Florida Power Corporation's Senior Cogeneration
2 Engineer at that time, led the Florida Power team in
3 attendance. At that meeting, Florida Power told us
4 that while it would pay Panda for our energy output in
5 excess of 74.9 MW, the contract limited their
6 obligation to pay for capacity in excess of 74.9 MW.
7 This comported with our understanding of our agreement
8 as well as with the engineering reality discussed
9 above, namely that a facility capable of producing 74.9
10 MW of output at all times during a thirty year contract
11 will, much of the time, be capable of generating more
12 than 74.9 MW.

13
14 In addition, at that January meeting, we discussed the
15 fact that while the parties had agreed to a 30 year
16 contract term and the contractual terms themselves
17 reflected this, Schedule 3 to Appendix C to the
18 contract only showed 20 years of payments. Florida
19 Power acknowledged that this was an inadvertent error
20 that needed to be corrected. Florida Power agreed that
21 (1) Panda would receive capacity payments for the

1 entire 30-year term of the contract, and (2) Florida
2 Power's payments would escalate over the contract term
3 not shown in the tables in Schedule 3 to Appendix C at
4 a rate of 5.1% per year.

5
6 Florida Power stated that Schedule 3 was an
7 illustrative table only and not a modification of the
8 30 year term. They explained that contract payments
9 for years 21-30 of the contract had been omitted from
10 Schedule 3 simply because the applicable regulations
11 required illustration of only ten years or more
12 of payments.

13
14
15 Q. Was this consistent with Florida Power's previous
16 evaluation of the value of Panda's proposal to the
17 ratepayers and to Florida Power?

18
19 A. Yes. When it had decided to contract with Panda in
20 October 1991, Florida Power had used a calculus of
21 factors to rate the proposals. In the evaluation

1 containing that calculus, which it submitted to this
2 Commission in November 1991, Florida Power had rated
3 Panda's proposal as clearly the best offer for the
4 rate-payers and for avoiding expensive replacement
5 power. In its calculus, size, which Florida Power
6 defined as "the committed capacity," was weighted as
7 comprising 10% of the ranking. On the other hand,
8 feasibility was weighted at 40% and reliability at 30%.
9 Location and developer qualifications were weighted
10 equally with size. In its October 22, 1992 Order
11 granting Florida Power's petition for authority to
12 refuse all standard offer contracts except that
13 submitted by Panda, this Commission held that "the
14 criteria used to evaluate the various proposals were
15 valid, reasonable and fairly applied." Order at 5.

16
17 Q. Did Florida Power's behavior remain consistent with its
18 November 1991 evaluation of Panda's proposal?

19
20 A. No. In the later half of 1994, Florida Power rather
21 suddenly began taking the approach that it was

1 unwilling to state in writing that Panda's equipment
2 configuration was permissible under our contract. Up
3 until the middle of 1994, Florida Power had
4 consistently agreed with Panda representatives that a
5 plant with a net generating capacity under certain
6 conditions in excess of 74.9 MW was a technical
7 necessity, and had suggested not raising the issue with
8 the Florida Public Service Commission so as to not
9 interrupt the challenge by ARK Energy to Florida
10 Power's having chosen our contract. However, in the
11 second half of 1994, Florida Power abruptly refused to
12 sign any documents or clarification letters for lenders
13 confirming our equipment choice.

14
15 Until this time, Florida Power had treated Panda as
16 offering the most feasible and reliable option for its
17 customers and shareholders. After its sudden change,
18 whereas facility size was previously not an issue, it
19 suddenly emerged as the 100% criterion. In revising
20 its evaluation process, Florida Power acted in a manner

1 inconsistent with its previous representations and its
2 November 1991 ranking process.

3
4 Q. Do you know of any reason for this remarkable change in
5 attitude by Florida Power?
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Q. What did Panda do to try to resolve this dispute?

A. Florida Power demonstrated its revised attitude following Panda's June 3, 1994 application to the Florida Department of Environmental Protection ("FDEP") for an Air Permit for Construction of the facility with a nominal output of 115 MW. In that application, Panda had submitted two configurations: one based on the General Electric ("GE") 7EA Combustion turbine and the other based on the ABB Power Generation ABB 11N1.

Representatives of Panda and Florida Power met on June 22, 1994 to discuss the excess energy which could be produced by either of those configurations. At that

1 meeting, Panda informed Florida Power of this submittal
2 and equipment configurations in Panda's Quarterly
3 Progress Report dated June 20, 1994. See Panda's
4 Quarterly Progress Report to Florida Power, dated June
5 20, 1994. (attached hereto as "Exhibit 6").
6
7

8 Following discussions, the parties agreed that Panda
9 would compose a clarification letter for both parties'
10 signatures confirming the equipment configuration and
11 the sale of excess energy produced by the facility to
12 Florida Power.
13

14 On June 23, 1994, Panda sent a clarification letter to
15 Florida Power for its signature memorializing the
16 parties' June 22, 1994 discussions. See June 23, 1994
17 letter from Ted Hollon to David Gammon (attached hereto
18 as "Exhibit 7"). Yet, Florida Power refused to sign
19 this letter. On July 27, 1994, Panda sent a revised
20 clarification letter to Florida Power for its signature
21 stating, among other things, that the two

1 configurations submitted to the FDEP were being
2 permitted in order to meet the committed capacity
3 requirements of the contract as well as the current
4 environmental requirements in the State of Florida.
5 See July 27, 1994 letter from Ted Hollon to David
6 Gammon (attached hereto as "Exhibit 8"). The revised
7 letter further stated that although under certain site
8 operating conditions the facility's output would be 115
9 MW, Florida Power would not be obligated to make any
10 capacity payments above the 74.9 MW of committed
11 capacity. Finally, the letter stated that Panda had no
12 objection to Florida Power submitting this letter to
13 this Commission if Florida Power deemed it necessary.

14
15
16 On August 3, 1994, Panda received a reply from Florida
17 Power refusing to sign the revised letter. See August
18 3, 1994 letter from David Gammon to Ted Hollon
19 (attached hereto as "Exhibit 9"). In its reply,
20 Florida Power stated that it did not agree that the
21 construction of a 115 MW facility was consistent with

1 the contract. However, Florida Power ignored the issue
2 of presenting any dispute to this Commission.

3
4 In response, Panda initiated telephone conversations
5 with Florida Power to resolve these new differences.

6 These conversations seemed to have proved successful.

7 As a result, on August 8, 1994, Panda submitted a third
8 letter to Florida Power for its signature under the
9 impression that this second revised clarification
10 letter would be acceptable to Florida Power. See

11 August 8, 1994 letter from Ralph T. Killian to Robert
12 Dolan (attached hereto as "Exhibit 10"). This letter

13 reiterated that the facility size was 115 MW and added

14 that Panda would submit the executed letter to the

15 Commission to determine if Commission approval is

16 required. Nothing in that letter prevented Florida

17 Power from intervening or from taking any position in

18 any such action at the Commission. Florida Power

19 refused to sign this clarification letter as well. In

20 a subsequent telephone conversation, Florida Power

1 simply told Panda that it saw no advantage in Florida
2 Power signing the letter.

3
4 On August 10, 1994, Panda sent a letter to Mr. Dolan
5 re-emphasizing Panda's understanding that the equipment
6 it had selected was appropriate under the Contract.

7 See August 10, 1994 letter from Kyle Woodruff to
8 Robert. D. Dolan (attached hereto as "Exhibit 11").

9 Panda also informed Mr. Dolan that it intended to
10 consult with the Commission to determine if this issue
11 required Commission approval.

1 Q. Did Panda discuss Florida Power's apparent concerns
2 about the equipment configuration with any
3 representative of the Florida Public Service
4 Commission?

5
6 A. Yes. On August 15, 1994, Panda representatives met
7 with Joseph Jenkins, Director of the FPSC's Division of
8 Electric and Gas, as well as Robert Trapp and Thomas
9 Ballenger of the FPSC. In that meeting, Panda's
10 representatives set forth the two specific equipment
11 configurations it was considering, and the fact that,
12 "under optimal conditions these units can produce in
13 the 115 MW range." In response, Mr. Jenkins and his
14 colleagues agreed with Panda that Panda's generation of
15 net generating capacity of 115 MW was "consistent with
16 Panda's standard offer contract and is not a contract
17 change that would require Florida Public Service
18 Commission approval." See August 24, 1994 letter from
19 Barrett Johnson to Joseph Jenkins of the Florida Public
20 Service Commission (attached hereto as "Exhibit 12").
21

1 Moreover, Mr. Jenkins stated that he had discussed
2 this issue with Bob Dolan of Florida Power Corporation
3 and Mr. Dolan concurred with Mr. Jenkins that this was
4 a contractual matter between Panda and Florida Power
5 that did not require PSC adjudication. See August 23,
6 1994 letter from Joseph Jenkins of the Florida Public
7 Service Commission to Barrett Johnson (attached hereto
8 as "Exhibit 13"). Based upon the express assurances of
9 Mr. Jenkins, Panda moved forward with performing under
10 the contract, continued with permitting the above
11 equipment configurations, and felt it had satisfied the
12 issue of facility size, despite Florida Power's lack of
13 cooperation or initiative.

14
15 At no time during this process or at any other time
16 prior to filing the instant action did Florida Power
17 give any indication that it intended to reintroduce
18 this matter before the Commission. Panda only received
19 notice of Florida Power's true intent after Florida
20 Power had filed its Petition for Declaratory Statement
21 with this Commission on January 25, 1995.

1

2 VI. CALCULATION OF PAYMENTS FOR YEARS 21 THROUGH 30 OF THE
3 CONTRACT

4 Q. How are capacity payments to be made to Panda for years
5 21 through 30 of the contract?

6
7 A. Payments for years 21 through 30 are to be made by
8 applying the value deferral method. Payment through
9 that method is consistent with the FPSC's regulations.

1 VII. BENEFIT OF THE CONTRACT TO FLORIDA CITIZENS
2

3 Q. How would Florida Power's rate payers benefit from a
4 Panda facility that provided energy in excess of the
5 committed capacity?
6

7 A. For the energy that Panda produces in excess of the
8 committed capacity, Florida Power would be able to
9 purchase that energy from Panda at a low rate. Under
10 the contract, Florida Power is entitled to do so as it
11 would pay Panda solely for the energy cost, without any
12 obligation to pay for the capacity based on the per-KW
13 cost of Florida Power's avoided simple-cycle combustion
14 turbine for 74.9 MW of capacity. As contemplated by
15 the contract, this would provide Florida Power with
16 free capacity. With the production of 115 MW of
17 energy, Florida Power would receive 40.1 MW of free
18 capacity. This would enhance the reliability and
19 profitability of Florida Power's service.
20

21 Moreover, as Robert Dolan, Florida Power's Manager of
22 Cogeneration Contracts and Administration, told the

1 members of a cogeneration association six months after
2 Florida Power executed its contract with Panda and six
3 months before this Commission approved the contract,
4 "The expected future need for capacity is great,
5 therefore it is virtually certain that this
6 [contracted] capacity will be needed. Florida's
7 population keeps expanding even during recessionary
8 periods, planned reserve margins are low, and there is
9 significant reliance on demand-side management. These
10 factors assure that there will be a market for this
11 capacity FPC has under contract." See Robert D. Dolan,
12 "Financial Incentives For Power Purchases: A Utility's
13 View," presented at the Gulf Coast Cogeneration
14 Association, 1992 Spring Meeting Held April 21, 1992
15 (attached hereto as "Exhibit 14").
16
17

18 VIII. WHAT IMPACT DID FLORIDA POWER'S ACTIONS HAVE ON PANDA

19 Q. What effect has Florida Power's refusal to honor its
20 contract had on Panda?
21

1 A. Florida Power's actions in attempting to dishonor its
2 contractual obligation and seeking to rewrite the
3 Panda-Florida Power contract to impose new obligations
4 on Panda have had the absolutely predictable result of
5 bringing Panda's financing of the Panda Kathleen
6 facility to a halt. As no lender will offer financing
7 to a party for a project of this magnitude when the
8 other party is doing everything in its power to avoid
9 its contractual obligations, Panda's commitment has
10 been placed on hold pending resolution of these
11 disputed issues.

12
13 By December 16, 1994, ABB Power Generation ("ABB") had
14 begun engineering and material procurement to meet the
15 required delivery dates. By January 11, 1995, Panda
16 had obtained all construction permits and efforts were
17 well under way to obtain financing and an equity
18 partner for the project. Panda updated Florida Power
19 on or about January 1, 1995, about this significant
20 progress as required by the Contract.

1
2 Today, as there is no immediate financing available,
3 Florida Power's actions have forced Panda to cancel its
4 order for combustion and steam turbine generators with
5 its supplier ABB and Panda has lost its place in the
6 ABB production schedule. In addition, Panda has been
7 forced out of the queue for the manufacture of other
8 major components of its facility.

9
10 The forced delay in Panda's development of the project
11 will be greater than the elapsed time lost from Florida
12 Power's attempts to disown its contract. In other
13 words, a day-for-day extension will not restore Panda
14 to the position it occupied on the day prior to Florida
15 Power's petition. Major pieces of generating equipment
16 with long lead times are built by their manufacturer
17 only when there is a firm equipment order in place and,
18 if there is not a timely notice to proceed to the
19 manufacturer, it normally means lengthy delays because
20 the offering company will have to "go back to the end
21 of the line" and the lead time varies greatly depending

1 upon the volume of orders received by the manufacturer
2 at any given time.

3
4 Each of these activities is part of a critical time
5 path to commercial operation and to meeting the
6 milestones set forth in the Panda-Florida Power
7 contract, as amended by the April 29, 1993 letter from
8 Robert Dolan to Mark Bentley (attached hereto as
9 "Exhibit 15"). Panda's ability to meet the
10 construction start date of January 1, 1996 and the in-
11 service date of January 1, 1997 has been jeopardized
12 solely as a result of Florida Power's actions in
13 attempting to disown the contract.

14
15 Further, any delay beyond the expected date for
16 commercial operations costs Panda money in real terms
17 even if the milestone dates are extended, because Panda
18 will not receive capacity payments or revenues from the
19 sale of energy when they were expected pursuant to the
20 Contract.

21

1 Moreover, Panda has already spent substantial sums to
2 perform under the contract, including, but not limited
3 to: purchasing land for the project site; contracting
4 for environmental studies and permitting on the project
5 site; surveying of the project site; paying Florida
6 Power the \$750,000 security deposit, and paying fees to
7 contractors, consultants, lenders, and attorneys. From
8 1991 to 1995, Panda expended these funds to ensure that
9 it would meet a supplier's production schedule, comply
10 with all Florida permitting requirements and meet the
11 commercial in-service date.

12
13 In sum, Panda will be unable to discover the ultimate
14 effect of Florida Power's actions at least until a
15 final adjudication of this contractual dispute has been
16 obtained.

1 Q. Does Panda remain ready, willing and able to build this
2 facility and commit 74.9 MW of capacity for 30 years as
3 called for in the contract?

4
5 A. Yes.

6
7 Q. What is it you want this commission to do?

8
9 A. Deny Florida Power's petition. Panda has asked this
10 Commission to rule that it does not have jurisdiction
11 to now go back and reinterpret a contract that it has
12 approved on two separate occasions or, alternatively,
13 to now rule that the Panda-Florida Power contract is
14 void. Panda believes that issues of interpretation of
15 this contract should be resolved by the courts. Of
16 course, so long as this commission believes it has
17 jurisdiction, Panda asks for a ruling denying Florida
18 Power's petition and holding that (1) the equipment
19 configuration Panda has chosen does not violate the
20 contract, (2) Florida Power is obligated to pay for the
21 committed capacity at the rate set forth in Appendix C

1 as escalated at the same rate for the final 10 years,
2 and (3) extending the contractual milestone schedule to
3 provide Panda with sufficient time to meet a revised
4 construction start date and a revised in-service date.

5 Anything less will destroy this cogeneration project
6 in violation of the principles of PURPA, to the
7 detriment of Florida's citizens.

8
9 Q. Does this conclude your testimony?

10
11 A. Yes, it does.

12
13 Ralph Kill
14

15
16 STATE OF TEXAS)

17) SS: 467-54-5763
18 COUNTY OF Dallas)

19
20 The foregoing instrument was acknowledged before me this 4th
21 day of January, 1995 by Ralph Killian. He is personally known me,
22 and did take an oath.

23
24
25 [NOTARIAL SEAL]

26 Notary: Theresia M. Bone
27 Print Name: THESSIA M. BONE
28 Notary Public, State of Texas
29 My commission expires: 6-23-97

