

GREENBERG
ATTORNEYS AT LAW
TRAURIG

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LORENCE JON BIELBY

TALLAHASSEE

January 24, 1996

Blanca Bayo, Director
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32301

BY HAND DELIVERY

Re: IN RE: Petition for Declaratory Statement Regarding
Eligibility For Standard Offer Contract And Payment
Thereunder By Florida Power Corporation;
DOCKET NO. 950110-EI

Dear Ms. Bayo:

Attached please find the following documents, all of which are
to be filed in the above-referenced matter:

- 00867-96 1. One (1) original plus fifteen copies of the rebuttal
testimony of Ralph Killian, along with Exhibits RK-1 and
RK-2;
- 00868-96 2. One (1) original plus fifteen copies of the rebuttal
testimony of Brian Dietz;
- 00869-96 3. One (1) original plus fifteen copies of the rebuttal
testimony of Roy J. Schanker; and
- *00870-96 4. One (1) original plus fifteen copies of the Notice of
Intent to Request Confidential Classification regarding
the rebuttal testimony of Brian A. Morrison, filed herein
by Florida Power Corporation.

ACK _____

AFA _____

APP _____

CAF of any assistance, please contact me or Michelle Beal at (904) 222-
6891.

CMU _____

CTR _____

EAG 1

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LIN orig test & 5

OP Enclosures

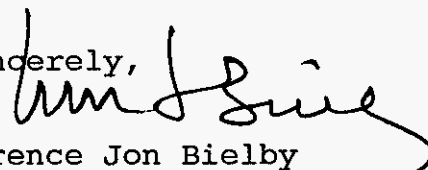
RCH _____

SEC 1

WAS _____

*JTH 1

Sincerely,


Lorence Jon Bielby
For the Firm

GREENBERG TRAURIG HOFFMAN LIPOFF ROSEN & QUENTEL, P.A.
101 EAST COLLEGE AVENUE POST OFFICE DRAWER 1838 TALLAHASSEE, FLORIDA 32302
904-222-6891 FAX 904-681-0207
MIAMI FORT LAUDERDALE WEST PALM BEACH TALLAHASSEE
NEW YORK WASHINGTON, D.C.

Blanca Bayo, Director
January 24, 1996
Page 2

cc:

Donald R. Schmidt, Esquire
and Steven Dupre, Esquire
Post Office Box 2861
Saint Petersburg, Florida 33731

Robert Vandiver, Esquire
and Martha Carter-Brown, Esquire
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0892

James A. McGee, Esquire
and Jeffery A. Froeschloe, Esquire
Post Office Box 14042
St. Petersburg, Florida 33733-4042

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BEFORE THE PUBLIC SERVICE COMMISSION

PREFILED REBUTTAL TESTIMONY OF

RALPH KILLIAN

ON BEHALF OF PANDA-KATHLEEN, L.P.

DOCKET NO. 950110-EI

DOCUMENT NUMBER-DATE

00867 JAN 24 8

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

REBUTTAL TESTIMONY OF RALPH KILLIAN

ON BEHALF OF PANDA-KATHLEEN, L.P.

DOCKET NO. 950110-EI

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Q. Have you reviewed the prefiled testimony of Robert Dolan in this case?

A. Yes.

Q. On pages 9 through 11 of Mr. Dolan's testimony, Mr. Dolan describes a series of communications between FPC and Panda in 1994 concerning the size of Panda's plant. Is Mr. Dolan's testimony accurate?

A. No. Mr. Dolan's testimony in that regard is inaccurate in several significant respects.

Q. Did you have any discussions with FPC employees in 1994 regarding the size of the Panda-Kathleen Plant?

A. Yes. On June 22, 1994, I attended a meeting with Pete O'Neil and David Gammon of FPC. At that meeting, we discussed that Panda would be seeking to permit a plant configuration using either a GE Frame7 or an ABB11N1, either of which would result in a plant with a net generating capacity of approximately 115MW.

1 Q. At that meeting, did you discuss whether FPC would
2 purchase power from Panda in excess of the 74.9 MW
3 Committed Capacity?
4 A. Yes. I recall that we discussed the fact that Panda
5 may have energy available in excess of 74.9 MW, and we
6 discussed the time periods when such additional energy
7 would be made available to FPC.
8
9 Q. Did you discuss whether Panda would confirm the
10 discussions of that meeting with FPC in writing?
11 A. Yes. Panda was to write a letter to FPC on the issues
12 discussed in the meeting, and FPC would respond.
13
14 Q. Did Panda write and send such a letter?
15 A. Yes. Panda sent a letter confirming our understanding
16 of the meeting. A copy of that letter, dated June 23,
17 1994, is attached as Exhibit "A".
18
19 Q. Did FPC agree to the terms contained in that letter?
20 A. No.
21
22 Q. Did you have any further conversations with FPC
23 pertaining to the size of the plant?
24 A. Yes. After Panda sent the June 23, 1994 letter, I had
25 a conversation with David Gammon and one of FPC's

1 outside lawyers. During that conversation, we agreed
2 to jointly prepare a letter confirming the parties'
3 understanding as to Panda's right to build a plant
4 with a net generating capacity of 115 MW, and the
5 payments by FPC to Panda for power provided to FPC in
6 excess of the 74.9 MW Committed Capacity. Panda's
7 representatives then proceeded to enter into telephone
8 negotiations with FPC's representatives over the terms
9 of such a letter. During those negotiations, Panda's
10 representatives went through the proposed letter word
11 by word with FPC's representatives, in order to come
12 up with a letter that reflected the views of both
13 Panda and FPC. My August 8, 1994 letter to FPC
14 reflects the language that FPC's representatives
15 requested for inclusion in the letter. A copy of my
16 August 8, 1994 letter is attached as Exhibit "B".

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Q. Did FPC agree to sign the August 8, 1994 letter?

A. No.

Q. Did FPC tell you why they did not agree to sign the letter?

A. Yes. David Gammon told me that he brought the letter to Robert Dolan for approval, and that Mr. Dolan refused to allow FPC to sign the letter because it was

1 not to FPC's advantage to sign the letter.

2

3 Q. Have FPC's actions prevented Panda from meeting the
4 milestone dates contained in the standard offer
5 contract?

6 A. Yes. By virtue of FPC's actions, including but not
7 limited to its filing of the petition in this case,
8 its refusal to sign a clarification letter for Panda's
9 financiers, and its disruption of Panda's
10 relationships with its vendors, Panda has been unable
11 to commence construction of the project.

12

13 Q. How long would it take for Panda to be able to
14 commence construction of Panda-Kathleen facility?

15 A. Due to the disruptions from FPC that I just described,
16 Panda has "lost its place in line" for the confirmed
17 delivery of the equipment it needs to build the Panda-
18 Kathleen plant. Even though FPC's actions have
19 already disrupted the commencement of construction of
20 the Panda-Kathleen plant for over 12 months (and
21 counting), it will now take Panda at least 18 months
22 to be able to commence construction, due to the loss
23 of confirmed delivery dates for equipment.

24 Q. Does this conclude your testimony?

25 A. Yes, it does.

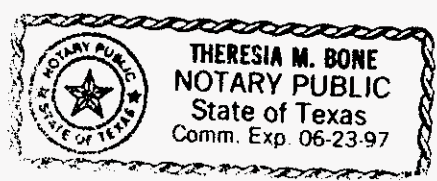
Ralph T. Killian

STATE OF TEXAS)
) SS: 467-54-5763
COUNTY OF Dallas)

The foregoing instrument was acknowledged before me this 14th day of January, 1996 by Ralph Killian. He is personally known me, and did take an oath.

[NOTARIAL SEAL]

Notary: Theresia M. Bone / Theresia M. Bone
Print Name: Theresia M. Bone
Notary Public, State of Texas
My commission expires: 6-23-97



FPSC DOCKET NO. 950010-EI
EXHIBIT NO. _____ RK-1

PANDA-KATHLEEN L.P.

A Panda Company



June 23, 1994

Mr. David Gammon, P.E.
Senior Cogeneration Engineer
Florida Power Corporation
3201 34th Street South
St. Petersburg, FL 33711

Dear David:

As we discussed in our meeting on June 22, 1994, Panda-Kathleen, L.P. is permitting two equipment configurations- a GE 7EA and an ABB11N for its Lakeland project. These machines are the most economical units that allow Panda-Kathleen, L.P. to supply the committed capacity of 74.9 MW at all times. The net output of the selected turbine will be 100-115 MW under certain conditions.

A prospective lender has raised the question as to the price that Panda-Kathleen, L.P. would be paid for power in excess of 74.9 MW. The contract provides for payment of the as-available energy prices at times when the avoided unit would not have otherwise run. When the avoided unit would have run, two options exist: FPC would pay either (1) the as-available energy rate or (2) the avoided unit rate. FPC agrees that Panda-Kathleen L.P. shall be paid the "avoided unit rate" under the contract for all energy above 74.9MW during times when the "avoided unit" would have been dispatched, since Panda-Kathleen, L.P. did not elect the "Performance Adjustment" specified in Section 9.1.3 of the contract.

In order to clarify this question and maintain our development schedule, please signify your concurrence on this interpretation in the space provided below on or before July 8, 1994.

Yours truly,

Ted Hollon
Vice President
Project Management and Construction

Accepted and Agreed to as of _____, 1994

FLORIDA POWER CORPORATION

By: _____

Title: _____

Docket 95-0110-EI

RALPH KILLIAN

Exhibit No. RK-1

Sheet 1 of 1

FPSC DOCKET NO. 950010-EI
EXHIBIT NO. _____ RK-2

PANDA ENERGY CORPORATION
The Independent Power Company

PANDA'S FAX: (214) 980-6815

DATE: 8-8-94

NUMBER OF PAGES (INCLUDING COVER): _____

TO: David Gammon

COMPANY: Florida Power Corporation

FAX NUMBER: (813) 866-4994

FROM: Ralph Killian

SUBJECT: _____

Docket 95-0110-EI

RALPH KILLIAN

Exhibit No. RK-2

Sheet 1 of 5

4100 Spring Valley, Suite 1001 Dallas, Texas 75244
214/980-7159 FAX 214/980-6815

P-K001366



August 8, 1994

Mr. David Gammon, P. E.
Senior Cogeneration Engineer
Florida Power Corporation
3201 34th Street South
St. Petersburg, Florida 33711

RE: Standard Offer Contract For the Purchase Of Firm Capacity and Energy
From A Qualifying Facility Less Than 75 MW Or A Solid Waste Facility
Between Panda-Kathleen L.P. and Florida Power Corporation (the "Agreement").

Dear David:

Please find attached a letter of clarification reflecting the changes per our recent discussion.
Panda has signed the letter. Please fax a copy of the letter to us upon FPC's execution thereof.

Thank you for your cooperation.

Sincerely,

Ralph T. Killian
Senior Vice President

RTK/lc

enclosure

Docket 95-0110-EI

RALPH KILLIAN

Exhibit No. RK-2

Sheet 2 of 5

4100 Spring Valley, Suite 1001 Dallas, Texas 75244
214/980-7159 FAX 214/980-6815

P-K001367



August 8, 1994

Mr. Robert D. Dolan, P. E.
Manager, Cogeneration Contracts
Florida Power Corporation
3201 34th Street South
St. Petersburg, FL 33711

**RE: Standard Offer Contract For The Purchase Of Firm Capacity And Energy
From A Qualifying Facility Less Than 75 MW Or A Solid Waste Facility
Between Panda-Kathleen L. P. and Florida Power Corporation (the "Agreement")**

Dear Mr. Dolan:

The purpose of this letter is to clarify issues relating to the Agreement. Panda is installing either a GE Frame 7EA or an ABB 11 N for the Lakeland cogeneration facility since they are the only gas turbines commercially available which can produce at least 74.9 MW each day over the life of the 30 year contract term, taking into account degradation and site weather conditions. The cogeneration facility may produce more than 74.9 MW of energy from time to time depending on the degree of site weather conditions and the effects of performance degradation.

Panda will submit this letter to the Florida Public Service Commission (FPSC) to determine whether or not FPSC approval is required with respect to Panda's intention to install such equipment.

Florida Power Corporation (FPC) and Panda-Kathleen L.P. (Panda) agree as follows

1. Nothing in this letter shall prevent or preclude FPC from taking any position in or intervening in any such proceeding before the FPSC.

Assuming that the FPSC determines that its approval is not required, then the terms of the Agreement shall apply to such Facility including but not limited to 2, 3, and 4 below.

2. Under no circumstances is FPC required to pay for more than 74.9 MW of capacity.
3. FPC will purchase the energy produced above 74.9 MW, if any, at all times when available except when system operating conditions will not permit such, i.e. at minimum load conditions as reasonably defined by FPC.

Docket 95-0110-EI
RALPH KILLIAN
Exhibit No. RK-2
Sheet 3 of 5

P-K001368

4. FPC will pay Panda for energy produced above 74.9 MW at FPC's as-available energy price.

Subject to any determination of the FPSC, this letter does not in any way modify, amend or otherwise change the Agreement. In the event of any conflict between the Agreement and this letter, the Agreement shall prevail.

The parties acknowledge this clarification by signature below.

PANDA-KATHLEEN L. P.

By: Panda-Kathleen Corporation

By: Ralph T. Killian

Title: Senior Vice President

Date: August 8, 1994

Accepted and Agreed to as of August _____, 1994

FLORIDA POWER CORPORATION

By: _____

Title: _____

Docket 95-0110-EI

RALPH KILLIAN

Exhibit No. RK-2

Sheet 4 of 5

P-K001369

P-K001365

EPL-1158

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RALPH KILLIAN
Exhibit No. RK-2
Sheet 5 of 5