

SCANNED 1

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In Re: Standard offer contract )  
for the purchase of firm )  
capacity and energy from a )  
qualifying facility between )  
Panda-Kathleen, L.P. and Florida )  
Power Corporation )

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DOCKET NO. 950110-EI

PROCEEDINGS:

PREHEARING CONFERENCE

BEFORE:

CHAIRMAN SUSAN CLARK

PLACE:

Betty Easley Conference  
Center  
4075 Esplanade Way  
Tallahassee, Florida

TIME:

Commenced at 1:40 p.m.  
Concluded at 2:20 p.m.

DATE:

Monday, February 12, 1996

REPORTED BY:

SARAH B. GILROY, CP, RPR  
Notary Public, State of  
Florida at Large.

BUREAU OF REPORTING

RECEIVED 2-15-96

DOCUMENT NUMBER-DATE

01799 FEB 15 1996

## 1 APPEARANCES:

2 JAMES A. MCGEE, ESQUIRE, Post Office Box 14042, St.  
3 Petersburg, Florida 33733, appearing on behalf of Florida Power  
4 Corporation.

5 DAVID L. ROSS, ESQUIRE; LAWRENCE D. SILVERMAN,  
6 ESQUIRE and LORENCE JON BIELBY, ESQUIRE, Greenberg, Traurig,  
7 Hoffman, Lipoff, Rosen & Quentel, 1221 Brickell Avenue, Miami,  
8 Florida 33131, appearing on behalf of Panda-Kathleen, L.P.

9 MARTHA CARTER BROWN, ESQUIRE, Florida Public  
10 Service Commission, 2540 Shumard Oak Boulevard, Tallahassee,  
11 Florida 32399-0850, appearing on behalf of the Commission  
12 Staff.

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## P R O C E E D I N G S

(The proceedings commenced at 1:40 p.m.)

CHAIRMAN CLARK: Will you please read the notice?

MS. BROWN: By notice issued January 25th, 1996, this time and place was set for a prehearing conference in Docket No. 950110-EI, standard offer contract for the purchase of firm capacity and energy from a qualifying facility between Panda-Kathleen, L.P. and Florida Power Corporation. The purpose of the prehearing conference is to give them the notice.

CHAIRMAN CLARK: Thank you. We will take appearances starting with you, Mr. McGee.

MR. MCGEE: James McGee, Post Office Box 14042, St. Petersburg, 33733, on behalf of Florida Power Corporation.

MR. ROSS: David Ross of Greenberg, Traurig on behalf of Panda Energy -- Panda-Kathleen, L.P.

CHAIRMAN CLARK: Okay.

MR. ROSS: You want all of them?

MR. SILVERMAN: Lawrence Silverman on behalf of Panda-Kathleen, L.P., also with Greenberg, Traurig.

MR. BIELBY: Lorence Bielby, representing Panda-Kathleen, from Greenberg, Traurig's Tallahassee office at 101 East College Avenue, Tallahassee 32301.

MS. BROWN: Martha Carter Brown and Lorna Wagner

1 representing the Florida Public Service Commission  
2 Staff.

3 CHAIRMAN CLARK: I have gone over the prehearing --  
4 the draft prehearing order. I didn't have any questions  
5 about anything. Ms. Brown, you did -- is it necessary  
6 for us to go through the basic positions and each  
7 issue? Do people have any changes that they need to  
8 make on the record?

9 MS. BROWN: I think it would be advisable, Chairman  
10 Clark. We have some discussions about the wording of  
11 the issues.

12 CHAIRMAN CLARK: All right. Let me ask this  
13 question: Are there any changes to the prehearing order  
14 through page four?

15 MS. BROWN: Chairman Clark, I don't think there are  
16 any changes, but this might be a good time to address  
17 the procedure for handling confidential information.

18 CHAIRMAN CLARK: Okay.

19 MS. BROWN: On page two, section two, I've bolded  
20 the sections B1 and 2. It says, the notice shall  
21 include a procedure to assure the confidential nature of  
22 the information is preserved as required by statute.  
23 And I thought perhaps we needed to discuss that a little  
24 bit.

25 I have been given a list, and I am going to be

1 given a list of exhibits that the parties may use in  
2 cross-examination that have been declared confidential  
3 by them under their proprietary agreement that they  
4 entered into partly to deal with the other cases that --  
5 the antitrust case and the other cases that they're  
6 dealing with.

7 They've given -- each party has given this list to  
8 the other party so they can be aware of it and look to  
9 determine what might be confidential and file the  
10 required notices. I have a list of those for you too.

11 And when I get Florida Power Corporation's list I  
12 will give it to your office so we're all aware of what  
13 those might be. There is some testimony that Florida  
14 Power Corporation filed, the rebuttal testimony of  
15 Mr. Morrison, that had a considerable amount of the  
16 testimony redacted pursuant to the proprietary agreement  
17 that Power Corp. had with Panda.

18 Panda has informed me that within the next couple  
19 of days they will be filing their specific request for  
20 confidential treatment and have indicated to me that  
21 they don't think they're going to be asking for a lot of  
22 confidential treatment in the testimony itself. The  
23 exhibits that have been filed may be a somewhat  
24 different story.

25 It's my understanding that each party -- well I'm

1 not sure how this is going to work. We're still talking  
2 about it. But the parties will provide a limited number  
3 of unredacted versions of the confidential exhibits, and  
4 if there is any testimony, of the testimony as well for  
5 the Commission's benefit at the hearing and for the  
6 parties' and Staff's benefit. And they will be properly  
7 contained in folders and well labeled that they're  
8 confidential.

9 And I think we've agreed that they will be passed  
10 out at the time the exhibits are going to be  
11 cross-examined or -- yeah, that's probably how it would  
12 work -- and then picked up immediately thereafter. And  
13 they will be highlighted with the areas that they're  
14 asking for confidential treatment of.

15 The -- if there is some question about the  
16 confidentiality of the testimony, Florida Power  
17 Corporation -- of Mr. Morrison -- Florida Power  
18 Corporation has indicated to me that they've informed  
19 the witness of this so that he is conscious of what is  
20 confidential and will take care in what he says.

21 Panda will be the ones who are the owners of the  
22 confidential information, and they will be doing the  
23 cross-examination. And they will thus have an awareness  
24 of how they're going to be careful with it.

25 I think until we know exactly what is going to be

1 treated confidential it's a little hard to come up with  
2 a list of things identified as A, B and C. But we're  
3 working on it.

4 CHAIRMAN CLARK: Well let me ask one other thing.  
5 You indicated that this is confidential information that  
6 they've exchanged pursuant to an agreement in their  
7 antitrust case. That doesn't necessarily mean it's  
8 confidential for our purposes.

9 And are both parties aware of the fact that you  
10 have to file a request for confidentiality of that  
11 information?

12 MR. ROSS: Yeah.

13 MS. BROWN: I've tried to beat it into their  
14 heads.

15 MR. MCGEE: We have filed. There is just one  
16 four-line paragraph in one document that Florida Power  
17 has requested confidentiality on.

18 CHAIRMAN CLARK: Okay.

19 MS. BROWN: If anything changes in this regard I  
20 will bring it to your attention as soon as it's brought  
21 to mine.

22 CHAIRMAN CLARK: Okay. Well let me ask this  
23 question of Mr. Ross. When you have identified those  
24 things that you believe are confidential, what is the  
25 procedure you are going to follow in terms of asking for

1 confidential treatment?

2 MR. ROSS: We will file a request just as Florida  
3 Power did. And as we said, we had agreed we would do  
4 that by Wednesday morning at the latest.

5 CHAIRMAN CLARK: That's great. Thank you very  
6 much. I should tell you that it's a member of your law  
7 firm who has sensitized us to the need to be very  
8 careful with confidential information. And if you will  
9 tell Mr. Richard I said hello.

10 MR. ROSS: I will do that.

11 CHAIRMAN CLARK: Let me ask a question with regard  
12 to the rebuttal testimony of Mr. Morrison. Have you  
13 filed that testimony with the redacted information taken  
14 out?

15 MR. MCGEE: We filed late last week an amended  
16 version of his testimony that included all the  
17 exhibits.

18 CHAIRMAN CLARK: Okay.

19 MR. MCGEE: With that amended form we filed it in  
20 two versions, one with the testimony redacted and those  
21 exhibits that had a claim of confidentiality omitted.

22 CHAIRMAN CLARK: Okay.

23 MR. MCGEE: And the public version as well.

24 MS. BROWN: But they have not filed -- have not  
25 been able to file a version of the testimony that only



1 redacts specifically what Panda is asking for  
2 confidential treatment of. And I thought that was what  
3 you were asking.

4 MR. MCGEE: I'm not sure Panda has yet specified --

5 CHAIRMAN CLARK: Let me ask you this. Have you  
6 filed any information that you didn't ask for  
7 confidential treatment of that they may later ask for  
8 confidential treatment of?

9 MR. MCGEE: I don't think so. We were as --

10 CHAIRMAN CLARK: If you have, it's too late.

11 MS. BROWN: I don't think so either.

12 CHAIRMAN CLARK: Here is my concern. The  
13 Commissioners are going to need to read the testimony  
14 before they come to the hearing. And I just want to  
15 make sure that they're aware that Mr. -- that they have  
16 a copy of Mr. Morrison's testimony to the extent it's  
17 not confidential, and they are otherwise notified that  
18 there is a full copy with the unredacted information  
19 available in the clerk's office I would assume, and that  
20 they will get the unredacted version at the hearing. Is  
21 that what you plan to do?

22 MR. MCGEE: As soon as we're advised of the true  
23 extent to which Panda wants to assert a claim of  
24 confidentiality for the testimony itself, we will mark  
25 up a new one and file it as quick as possible, I would

1 think within one day.

2 CHAIRMAN CLARK: I understand that what you've  
3 probably filed takes out more testimony than it needs  
4 to?

5 MR. McGEE: Right.

6 CHAIRMAN CLARK: Okay. Martha, I would like --  
7 Ms. Brown, I would like to ask you to make sure the  
8 Commissioners' aides are aware of the fact that the  
9 confidential testimony will be available in the clerk's  
10 office should they choose to read that before the  
11 hearing. But they will have -- they have the redacted  
12 version.

13 MS. BROWN: I will let them know.

14 CHAIRMAN CLARK: Okay. All right. Anything else  
15 on that?

16 MS. BROWN: I think that's all we had up through  
17 page four to the order of witnesses

18 CHAIRMAN CLARK: All right. Is there any problem  
19 with the order of witnesses?

20 MS. BROWN: Staff has no problem with the order.

21 CHAIRMAN CLARK: Mr. Ross?

22 MR. ROSS: No.

23 MR. McGEE: No.

24 CHAIRMAN CLARK: How about the basic positions? I  
25 would assume those were supplied by both the parties,

1 and they have been accurately reproduced?

2 MR. MCGEE: Yes, ma'am.

3 MR. ROSS: Yes.

4 CHAIRMAN CLARK: Okay. Issue number one.

5 MS. BROWN: Chairman Clark, if I might interrupt  
6 for a minute, Staff's basic position lays out the fact  
7 that the positions that we've taken on a couple of these  
8 issues are preliminary in nature. And I just wanted to  
9 emphasize that with the parties.

10 We have -- the Staff has taken some positions, but  
11 we will wait for the evidence to take a final position.

12 CHAIRMAN CLARK: Mr. Ross, let me give you some  
13 background on that. The reason the Staff does that is  
14 sort of to give parties an idea of their preliminary  
15 thinking.

16 We have switched back and forth between doing no  
17 position and waiting for all the evidence to come in,  
18 and then stating a position. The parties in the past  
19 have indicated they found it helpful to at least know  
20 what Staff's preliminary thinking is so that if there  
21 are some aspects of the issue that the other parties  
22 have not raised but are on the Staff's mind, the parties  
23 are aware of it and can address those issues in the  
24 hearing.

25 I can assure you though that Staff has been known

1 to change their mind on these things, depending what the  
2 evidence produces. And I think some parties believe it  
3 indicates a predisposition.

4 It's not. I think the Staff maintains an open mind  
5 on these things. And I just -- I know you haven't  
6 practiced before us, and I wanted to give you that  
7 information.

8 MR. ROSS: Thank you.

9 CHAIRMAN CLARK: Is there anything -- any problems  
10 with issue number one?

11 MR. MCGEE: Not Florida Power.

12 MR. ROSS: We had discussed some changes. But I  
13 think in light of our conversations this morning, we're  
14 prepared to accept that as it is rather than get into a  
15 debate about it.

16 MS. BROWN: Staff has no problems with issue one.

17 CHAIRMAN CLARK: Issue number two?

18 MS. BROWN: Staff has no problems with issue number  
19 two.

20 MR. ROSS: Same here.

21 MR. MCGEE: Same here.

22 CHAIRMAN CLARK: Okay. Issue number three?

23 MS. BROWN: No problems with issue three.

24 MR. ROSS: No problem.

25 CHAIRMAN CLARK: Let me ask a question. On Florida

1 Power Corporation's position, is the number in there  
2 correct, 28 years and three months?

3 MR. MCGEE: That's what Mr. Dolan and I were just  
4 discussing. The -- I don't want to be picky about it.  
5 For convenience it's often been referred to as a dispute  
6 between 20 years and 30 years.

7 At least our position is that if you actually  
8 calculate the term, even under Panda's view, it would be  
9 28 years and three months.

10 We have no objection to it being referred to as a  
11 30-year term, as long as that qualification is  
12 understood.

13 CHAIRMAN CLARK: All right. That was just a new  
14 number that I didn't understand. I don't know. I think  
15 it may be confusing to the other Commissioners. It may  
16 be better to, on page -- well it's in issue two, maybe  
17 to footnote it somehow that, to say that -- is the term  
18 of the standard offer contract is actually 28?

19 MR. ROSS: Well it was 30 years as it was signed.  
20 The parties agreed to push back the dates. And I  
21 learned at a deposition that we apparently have a  
22 dispute, although I don't think -- it's not -- it's not  
23 an issue in this proceeding. It was never raised as an  
24 issue in this proceeding.

25 Our position would be that when the front end of

1 the contract was pushed back, the back end of the  
2 contract was pushed back the same amount of time. But I  
3 don't think that is a dispute that is raised in this  
4 proceeding, and is not for any decision to be had here.  
5 So by our view it's still 30 years.

6 CHAIRMAN CLARK: Okay. In one sense it says, the  
7 term of the standard offer contract, and it says it's 30  
8 years. And you go over here and it says, the full term  
9 of the standard offer contract, and it says 28 years and  
10 three months. Which one -- should it just be 30 years,  
11 and then you can footnote it the first time you mention  
12 it, and say in actuality it's really 28?

13 MR. McGEE: I don't have any real problem with it.  
14 The expiration date is the end of March 2025. That --  
15 we could --

16 CHAIRMAN CLARK: You mean that's peculiar to this  
17 contract?

18 MR. McGEE: Well I don't know if it's peculiar to  
19 that contract. I think at least most at Florida Power  
20 specified a particular date. At the time it was first  
21 signed, as Mr. Ross says, it was a 30-year term. It was  
22 exactly 30.

23 The in-service date and the construction  
24 commencement date were specifically modified and shifted  
25 to a later time. And there was nothing that has changed

1 the specified termination date. So that's the basis for  
2 our calculation.

3 CHAIRMAN CLARK: Let me ask you this. Under the  
4 rule the standard offer contract term is 30 years; is  
5 that right?

6 MS. BROWN: No. Chairman Clark, I'm --

7 MR. MCGEE: The rule specifies a ten-year minimum.  
8 It says that the maximum -- well for capacity payments,  
9 if that's the scope of our discussion. It says the  
10 maximum term for capacity payments is the life of the  
11 avoided unit.

12 CHAIRMAN CLARK: Okay.

13 MR. ROSS: The term in the contract as originally  
14 signed, leaving aside the little issue about whether the  
15 back end was pushed back. But as originally signed the  
16 contract was clearly 30 years.

17 The termination date was, I think it's March 2025,  
18 and I think it was signed 30 years before that, from  
19 whatever the starting date was. That's where the 30  
20 years comes from.

21 That's actually, if you go back to issue number  
22 two, the difference between what Mr. McGee said about  
23 the rule and what the contract says is one of the issues  
24 in this proceeding, as to whether it is -- again,  
25 leaving aside this year and a half issue -- whether it

1 was 20 year -- just talking about it as signed --  
2 whether it was 20 years or 30 years.

3 CHAIRMAN CLARK: I think I understand. Let me ask  
4 Mr. McGee something. The 28 years and three months is  
5 from today I assume?

6 MR. MCGEE: No. The contract in-service date  
7 provides for January 1st, 1997. And if you go through  
8 March -- through the end of March of 2025, that's 28  
9 years and three months.

10 CHAIRMAN CLARK: Okay.

11 MS. BROWN: Chairman Clark, I think this little  
12 issue that is not -- as Mr. Ross says has not been  
13 identified as an issue in the case may well have some  
14 impact on issue -- I think it's issue five, which is the  
15 issue asking the Commission to determine if it should  
16 extend the milestone dates.

17 And then issue six is sort of a calculation issue  
18 of how the capacity and energy payments would be  
19 determined. It seems to me that this question of  
20 exactly how long the term of the contract is might make  
21 a difference in the Commission's determination of that.

22 So if there would be a way to footnote it in a  
23 position to explain the distinction between the 30-year  
24 term and the 28.3 months (sic), I think you're right.  
25 It might be more helpful to the Commission.



1           CHAIRMAN CLARK: Let me ask a question. With  
2 respect to number -- issue number three, if you could  
3 take out that parentheses and not harm the issue at  
4 all.

5           MS. BROWN: You mean in Power Corp.'s position?

6           CHAIRMAN CLARK: Yes.

7           MS. BROWN: Well that's their position, not the  
8 issues. So I guess they would have to decide if they  
9 agreed with you on that.

10          MR. MCGEE: Commissioner, were you referring to  
11 issue two or three? Both of them specify 30 years.

12          CHAIRMAN CLARK: No, one says 30, and one says 28  
13 and three months. And that confused me. I'm just  
14 trying to eliminate the confusion.

15          MR. MCGEE: I see. When we had suggested our issue  
16 in our prehearing statement we had removed the 30 years  
17 and said something to the effect of, I believe the full  
18 term of the contract, so as not to have to deal with  
19 that.

20          CHAIRMAN CLARK: All right. Let me clarify  
21 something with Staff. The standard offer contract  
22 requires -- doesn't give a -- it gives ten-year  
23 increments?

24          MS. BROWN: No. It -- the term of the contract  
25 demonstrates that it's going to end -- and correct me if

1 I'm wrong -- going to end in March of 2025.

2 CHAIRMAN CLARK: You're talking about their  
3 standard offer that they signed. I'm talking about  
4 under the rules. What do the rules say?

5 MS. BROWN: The rules say that a standard offer  
6 contract term may -- term for firm capacity payments can  
7 be no less than ten years and no more than the life of  
8 the avoided unit. The life of the avoided unit  
9 identified in this standard offer contract is the  
10 20-year life.

11 But the term of the contract that Panda filled in,  
12 they filled in for -- to last until March of 2025. And  
13 they asked for an extension of their milestone dates  
14 that Florida Power Corporation agreed with, or -- I  
15 don't remember exactly.

16 But that moved it back a year and however many  
17 months. But I guess they never agreed on extending the  
18 ending date of the term. And that's where we're running  
19 into problems.

20 When the contract was signed and the term was  
21 filled out, it was filled out for 30 years. And when  
22 the contract was brought to the Commission for approval  
23 twice, it was identified in that proceeding that it was  
24 a 30-year -- a contract for a 30-year term. So that's  
25 what we've been operating under.

1           Now Florida Power Corporation is clarifying that in  
2 their mind they think it's 28 years and three months. I  
3 hear Panda saying they haven't resolved that issue, and  
4 it hasn't really been identified as a particular issue  
5 here.

6           And I suppose that would mean they deal with it  
7 later, which is fine with us, except that I want to make  
8 sure that it doesn't -- that it doesn't arise as a  
9 conflict in the hearing if we have to address it when we  
10 try to resolve some of these other time issues.

11           MR. ROSS: And I don't think that it would  
12 actually, the two things that you've identified. The  
13 milestone dates obviously that we're talking about are  
14 the start-up, in-service dates. And that wouldn't be  
15 affected by that at all.

16           MS. BROWN: Right.

17           MR. ROSS: And the calculation, if you came up with  
18 a calculation, the methodology would be the same. The  
19 only question that we would have to work out somewhere  
20 down the road is whether that calculation applies for  
21 the last year and nine months or it doesn't, or there is  
22 no last year and nine months.

23           MS. BROWN: Well then is there a way to modify your  
24 position language, Mr. McGee, to address that, so that I  
25 think Chairman Clark's concerns are that that might be

1 misleading to the Commissioners when they're trying to  
2 figure out just what the time is and what matters.

3 MR. MCGEE: As I mentioned before, it is more  
4 convenient to refer to these -- the dispute as 20 versus  
5 30 years. And I have no problem with that.

6 I'm concerned though that to the extent there is an  
7 issue later on in this forum or some other forum, that  
8 the constant use of 30 years may be prejudicial to our  
9 position. If we can have it sufficiently clarified that  
10 that isn't any determination by the Commission on that  
11 issue, then I have no problem using 30 years, or to the  
12 extent possible, the full term of the contract.

13 CHAIRMAN CLARK: I guess my confusion arose because  
14 in one -- in one breath it's described as a 30-year  
15 contract, and then you describe it as a 28-year and  
16 three months.

17 You're correct. If you look at issue three it  
18 says, required to make firm capacity payments to Panda  
19 Energy for 30 years. And then -- then your answer  
20 implies that the full term is something different than  
21 30 years, without ever hitting it head-on, that it is in  
22 fact different. And it raises the question of whether  
23 it was 30 years to begin with or not.

24 What I would suggest you do is maybe just answer it  
25 for the full term of the standard offer contract and put

1 30 years, and then somehow put an asterisk and say, it's  
2 been referred to as a 30-year contract when actually it  
3 was signed, the in-service date was January 1, 1997?

4 MR. MCGEE: That's correct.

5 CHAIRMAN CLARK: With capacity payments being made  
6 through March 20th -- March 2025?

7 MR. MCGEE: No. That goes kind of to the issue --  
8 Panda contends that capacity payments are due for the  
9 full period, through 2025. Florida Power says that the  
10 capacity payments are limited by the Commission's rule  
11 to a 20-year period from whenever they began.

12 CHAIRMAN CLARK: I guess what I'm trying to say to  
13 you is that I understand your dispute to be between 20  
14 and 30 and not between 28 and three months and 30?

15 MR. MCGEE: Yes. But to the extent -- there have  
16 been several instances where Panda has indicated they  
17 should receive capacity payments for an additional ten  
18 years. And if we're being accurate about it, Florida  
19 Power's position is that the period in controversy is  
20 eight years and three months, the difference between 20  
21 years and a 28 and three-month period.

22 I would think that it might be easier, at least in  
23 terms of this issue number three, if the issue might be  
24 reworded to just take out the term.

25 MS. BROWN: Well, Chairman Clark, Mr. Haff has

1 suggested that in issue two we take out the parentheses  
2 that identify the year period in that one. So issue two  
3 would read, the standard offer contract would require  
4 Florida Power Corporation to make firm capacity payments  
5 for the life of the avoided unit or the term of the  
6 standard offer contract. That gets the 30-year period  
7 out of it, at least there.

8 CHAIRMAN CLARK: Okay.

9 MR. MCGEE: And for issue number three --

10 MS. BROWN: But it also doesn't preclude Panda from  
11 arguing that the term is 30 years when the time comes.

12 MR. ROSS: Yeah. I just wonder if that might not  
13 confuse everybody more, because in everything that's  
14 come before in this case until just now it's always been  
15 referred to as a 30-year contract. And it's always been  
16 clear that the dispute was the 20 versus 30. And  
17 that might--

18 CHAIRMAN CLARK: That's what I understand the  
19 dispute to be. And it's -- I understand from you,  
20 Mr. McGee, that really the 30-year is really 28 years  
21 and three months. Do you disagree with that, Mr. Ross?

22 MR. ROSS: Yes. But I have no problem stipulating  
23 in some way that calling it a 30-year contract here is  
24 without prejudice to their right at some other time if  
25 necessary to say it's really not 30, it's 28 three,

1 because I don't think anyone has ever brought that forth  
2 as an issue in this proceeding.

3 MR. MCGEE: Madam Chairman, no one has ever  
4 contended before that the duration of the contract  
5 extended beyond March 2025. Coming up with 18 years  
6 three months is simply just doing the math.

7 CHAIRMAN CLARK: But, Mr. McGee, all I'm saying,  
8 it's not clear to me then if you are -- what are you  
9 disputing, if you're disputing the 30 years or the 20  
10 years. I mean --

11 MR. MCGEE: We are disputing --

12 CHAIRMAN CLARK: I understand that. But the way  
13 it's in the prehearing order, it's confusing.

14 MR. MCGEE: Okay. And --

15 CHAIRMAN CLARK: I think the suggestion made by  
16 Staff, at least with respect to issue two, is probably  
17 correct, because then FPC's position -- it says, which  
18 in the case of Panda's standard offer contract is  
19 specified as 20 years. So you specify your position  
20 there.

21 And then you say that Panda -- referring to Panda,  
22 they simply claim that Florida Power representatives  
23 acknowledge that capacity payments were to be made for  
24 30 years. And I assume it's that 30 years you're  
25 talking about is really 28 point -- 28 years and three

1 months.

2 MR. McGEE: That's correct.

3 CHAIRMAN CLARK: What's confusing is, in one sense  
4 you use the term 30 years, even though you don't agree  
5 with it in your position, and then you use 28.3  
6 months -- I mean 28 years and three months elsewhere.  
7 So it confuses what your position is.

8 MR. McGEE: The reference you make in the position  
9 concerns just some allegations of conversations between  
10 Florida Power representatives and Panda in the past.  
11 And at that time these subtleties, these distinctions  
12 apparently weren't being made. I was just referring to  
13 the allegations that have been made.

14 CHAIRMAN CLARK: All I'm saying, by introducing  
15 those subtleties and distinctions, it made it confusing  
16 to me.

17 MR. ROSS: If I may make the suggestion, if Florida  
18 Power takes out the parentheses, which is where we  
19 started from in issue three, which is the only place in  
20 the statement where it comes up and therefore it gets  
21 confusing, and to pick up on the suggestion, either  
22 wants to put in a footnote, or if you want to just have  
23 a stipulation on the record, which I'm willing to do,  
24 that nothing in here in any way prejudices their  
25 position in some other proceeding, if necessary, that



1 it's really only 28 years three months rather than 30.

2 If we do anything else I'm afraid we're going to  
3 have to go back and change a lot of things, because it's  
4 referred to as 30 years everywhere else, other than  
5 right there on page ten, which is where it came up.

6 MR. McGEE: I would be glad to take out the  
7 parenthetical insertion, if we can do the same thing to  
8 the issue that we did on number two, where it refers to  
9 the standard offer contract for 30 years, if we could  
10 say for the full term.

11 MS. BROWN: I was going to suggest that for the  
12 wording of issue three, if it is determined that Florida  
13 Power Corporation is required to make firm capacity  
14 payments to Panda Energy pursuant to the standard offer  
15 contract for the term of the contract, what are the  
16 price terms for that capacity.

17 Either that, or the suggestion has been made to me  
18 also that Florida Power Corporation could identify in  
19 its basic position that it's their position that the  
20 actual term of the contract is 28 years and three  
21 months.

22 MR. McGEE: We can do that.

23 CHAIRMAN CLARK: Although for convenience sake it  
24 has been referred to as a 30-year term.

25 MR. McGEE: That has been stated in our testimony

1 in --

2 CHAIRMAN CLARK: Why don't you put it in your basic  
3 position, where it first comes up.

4 MR. McGEE: Sure.

5 MS. BROWN: Again, I don't think it would be  
6 necessary to change the wording --

7 CHAIRMAN CLARK: I don't either.

8 MS. BROWN: -- on issue two or three.

9 CHAIRMAN CLARK: But I do think it would be a good  
10 idea to take that parenthetical out of FPC's position  
11 and issue three. And that way you preserve your view  
12 that, even though it's referred to as a 30-year  
13 contract, in reality it was only for 28 years and three  
14 months.

15 MR. McGEE: Yes.

16 CHAIRMAN CLARK: Okay. Let's do that. So that  
17 requires an addition to the basic position and deletion  
18 in issue three in Florida Power Corporation's position.  
19 Anything -- any other changes to issue four?

20 MS. BROWN: Staff has no changes to issue four.

21 MR. ROSS: We have no changes.

22 CHAIRMAN CLARK: Mr. McGee, anything on issue  
23 four?

24 MR. McGEE: No. Issue four is fine. The next to  
25 the last -- excuse me. The next to the last line ends

1 with the word "offer," and I think it should be  
2 "offers."

3 MS. BROWN: I'm sorry. Where are we?

4 CHAIRMAN CLARK: On page 11, the next to the last  
5 line in Power Corp.'s position, there should be an S on  
6 offer.

7 MS. BROWN: Got it.

8 CHAIRMAN CLARK: Issue five, any changes to issue  
9 five?

10 MS. BROWN: None for Staff.

11 MR. ROSS: None for us.

12 MR. McGEE: None for Florida Power.

13 CHAIRMAN CLARK: Issue six.

14 MS. BROWN: None for Staff.

15 MR. ROSS: None for Panda.

16 MR. McGEE: None for Florida Power.

17 CHAIRMAN CLARK: Any changes to the exhibit list?

18 MS. BROWN: Chairman Clark, I've received a list of  
19 exhibits that Panda has given me, and I will incorporate  
20 that exhibit list into the prehearing order before I  
21 give it to you.

22 CHAIRMAN CLARK: And they've also given Mr. McGee  
23 that list?

24 MR. McGEE: I haven't seen it, but --

25 MS. BROWN: I don't know whether they have or not.

1 Do you have an extra copy?

2 MR. SILVERMAN: I don't think we do.

3 MR. ROSS: It's the exhibits attached to the  
4 prefiled.

5 CHAIRMAN CLARK: I'm just interested in Mr. McGee  
6 having a list of those exhibits as soon as possible.

7 MS. BROWN: You want to look over it now?

8 MR. MCGEE: This is the one that is just a list of  
9 the exhibits to the prefiled testimony? Okay. That's  
10 fine.

11 CHAIRMAN CLARK: Okay. What about -- Panda has  
12 rebuttal? I assume that the list also includes the  
13 exhibits attached to the rebuttal testimony?

14 MR. ROSS: Yes.

15 CHAIRMAN CLARK: Okay. While we're on the exhibit  
16 list I forgot to ask, what is the parties' inclination  
17 with respect to direct testimony and rebuttal  
18 testimony? We have one day for the hearing?

19 MS. BROWN: We do, Chairman Clark, and I'm glad you  
20 brought that up, because as we get closer to the hearing  
21 we're beginning to get more nervous about how long it's  
22 going to take. We have several witnesses. In fact I  
23 briefly talked to the parties about starting a little  
24 bit earlier.

25 CHAIRMAN CLARK: Well I believe the notice has

1 already gone out, and I don't know that we can start any  
2 earlier. Is it 9:30?

3 MS. BROWN: We can't issue another notice before  
4 the time. Well I just wanted you to be aware that it  
5 might be a long day.

6 CHAIRMAN CLARK: I ask you to do this. Make sure  
7 that the other Commissioners are aware of the fact that  
8 it may take us a while to get through the hearing, and  
9 they need to be prepared for that.

10 MS. BROWN: All right.

11 CHAIRMAN CLARK: I suppose -- I don't know  
12 anything -- the only other thing we might do is  
13 reconvene it after agenda. But I don't -- agenda is  
14 going to be -- it could take all day. I mean it's not a  
15 long agenda, but there are some difficult cases on  
16 there.

17 MS. BROWN: Well I've been doing these long enough  
18 to know that if we gave the parties three days, it would  
19 take them three days. If you give them one day, it will  
20 take one day. But that would be somewhat of a long  
21 day.

22 CHAIRMAN CLARK: Mr. McGee knows this, but Mr. Ross  
23 may not know. We will go as late into the evening as we  
24 have to to get these things done. So you can schedule  
25 your flights accordingly.

1 I don't think there is anything that leaves that  
2 late from Tallahassee.

3 MR. ROSS: No, not after 5:55 I think is the last  
4 one.

5 CHAIRMAN CLARK: Well one of the things that we  
6 have done to speed things up is to take direct and  
7 rebuttal at the same time. And it may be that this is a  
8 case that would benefit from that practice.

9 MS. BROWN: Except that I just told the parties  
10 about two hours ago that the Commission really didn't  
11 like to do it that way.

12 CHAIRMAN CLARK: That's true. I think the flow of  
13 the evidence is better that way. But let me ask you  
14 this: I have not looked at the testimony. Is the  
15 rebuttal lengthy?

16 MR. MCGEE: The rebuttal on Florida Power's part is  
17 not lengthy. Mr. Dolan has direct and rebuttal. The  
18 two other Florida Power witnesses --

19 CHAIRMAN CLARK: Are just rebuttal anyway. Only  
20 Mr. Dolan with direct and rebuttal. How about --

21 MR. ROSS: Our rebuttal is very brief. And it's  
22 from the same witnesses who do direct except one. We  
23 have one additional rebuttal witness. And his is -- his  
24 is the lengthiest of our rebuttal testimony.

25 CHAIRMAN CLARK: Well do the parties have any

1 objection in doing direct and rebuttal at the same  
2 time?

3 MR. ROSS: Is that -- would that be only for the  
4 witnesses who have both?

5 CHAIRMAN CLARK: Yes. It would only be for the  
6 witnesses that have both. We don't need to decide it  
7 today. But you can -- why don't you give it some  
8 thought. Mr. McGee, do you have any objection to doing  
9 it that way?

10 MR. MCGEE: I guess my preference would be to do it  
11 the way we had talked about earlier. If it causes a  
12 real problem in the conduct of the hearing, we will try  
13 to accommodate --

14 CHAIRMAN CLARK: Logically it should go direct and  
15 then rebuttal and not -- because frequently what happens  
16 is, for instance, Mr. Dolan may be rebutting  
17 Mr. Killian, and we haven't even heard from Mr. Killian  
18 yet technically, although we've read the prefiled  
19 testimony.

20 Why don't we just leave that pending. If Staff  
21 would give that more thought in terms of how long you  
22 think the hearing may go and if we would benefit in any  
23 way, and let me know tomorrow.

24 And you can talk with the parties about how they  
25 would prefer to conduct the hearing in terms of direct

1 and rebuttal and also the impact it might have on how  
2 quickly we can get through the case. That would be  
3 helpful.

4 MS. BROWN: All right.

5 CHAIRMAN CLARK: Okay. There are no proposed  
6 stipulations. And the only pending motion is --

7 MS. BROWN: Chairman Clark, there are I think two  
8 pending motions from Panda. One is a motion to withdraw  
9 clarification letter. But Panda has indicated to me  
10 that they think in a very early order in this case that  
11 may have been taken care of.

12 MR. ROSS: That's our understanding. It was before  
13 we were in the case, but I think that was disposed of.

14 MS. BROWN: And they were going to let me know  
15 that --

16 CHAIRMAN CLARK: Let me ask a question: Do you  
17 need to go back -- if it's not granted, it's granted.

18 MR. ROSS: It was not something that we were  
19 pursuing anyway. So it doesn't matter to us. If you  
20 want to dispose of it again that's fine.

21 CHAIRMAN CLARK: If it was previously granted,  
22 great. If it wasn't, it's now granted. That will save  
23 you having to go back and research that. The motion for  
24 protective order, I understand we should deny that now  
25 as moot?



1 MS. BROWN: Yes, that's correct.

2 CHAIRMAN CLARK: And the motion for stay of  
3 proceedings pending appellate review, and I believe that  
4 was -- where was that? That was the appeal to the first  
5 DCA?

6 MS. BROWN: This is the petition for writ of  
7 certiorari.

8 CHAIRMAN CLARK: And you petitioned us first for  
9 the motion for stay, which was denied. And you indicate  
10 you have a motion pending in the Supreme Court to stay  
11 the proceedings?

12 MR. ROSS: Yes, we do.

13 CHAIRMAN CLARK: That's out of our hands; correct?

14 MR. ROSS: Correct.

15 CHAIRMAN CLARK: Great. All right. Then there is  
16 no other pending motions before us?

17 MS. BROWN: Not that I'm aware of.

18 CHAIRMAN CLARK: Mr. McGee?

19 MR. MCGEE: None that I'm aware of.

20 MS. BROWN: There is of course the request for  
21 confidentiality that we're going to resolve.

22 CHAIRMAN CLARK: Mr. Ross, no pending motions?

23 MR. ROSS: No pending motions I'm aware of.

24 CHAIRMAN CLARK: Anything else we need to resolve?

25 MS. BROWN: Not that I know of.

1 MR. ROSS: I was going to ask -- we asked in our  
2 meeting this morning, and I was told I should ask you.  
3 What is the Commission's procedure or policy with  
4 respect to opening and closing? Do you have such  
5 things? Do you want them or not want them?

6 CHAIRMAN CLARK: We do allow them. And my advice  
7 is that -- let me ask it this way. Do you think,  
8 Mr. McGee and Mr. Ross, that it would be beneficial to  
9 set the stage for the testimony of the witnesses?

10 If you do, I can tell you that it's -- the  
11 Commissioners have, in all likelihood, read the  
12 prehearing order and have read the testimony. Do either  
13 one of you desire to give an opening statement?

14 MR. MCGEE: I believe that an opening statement, at  
15 least a brief one, might be helpful. I think in the  
16 interest of time and the consideration we were just  
17 talking about, that we probably shouldn't spend too much  
18 time on it.

19 CHAIRMAN CLARK: Okay. How about this, a  
20 five-minute opening statement; will that be enough?

21 MR. ROSS: I will do whatever is your pleasure.

22 CHAIRMAN CLARK: Okay. I personally have found  
23 them helpful, provided they are short. And they  
24 highlight what you think are the salient points to your  
25 position.

1 Ms. Brown, if you would remind me that we have  
2 indicated that there will be brief opening statements of  
3 five minutes at the beginning of the hearing, that would  
4 be helpful to me.

5 MS. BROWN: I can put it in the prehearing order  
6 also if you would like.

7 CHAIRMAN CLARK: All right. But I want you to tell  
8 me too. Anything else?

9 MR. ROSS: What about closing? Is there --

10 CHAIRMAN CLARK: No.

11 MR. ROSS: There are no closing statements?

12 CHAIRMAN CLARK: That's what your brief is.

13 MR. ROSS: That's all I was asking. I don't want  
14 to prepare something that's unnecessary.

15 CHAIRMAN CLARK: No. We do it by briefs, because I  
16 can count on my one hand how many times we've made a  
17 bench decision. And what happens is, the Staff will  
18 read the briefs in preparing their recommendations.  
19 Anything else?

20 MS. BROWN: No. Nothing else.

21 CHAIRMAN CLARK: Okay. Great. See you in a week.  
22 This prehearing is adjourned.

23 (The proceedings were adjourned at 2:20 p.m.)  
24  
25

1 STATE OF FLORIDA)

2 CERTIFICATE OF REPORTER

3 COUNTY OF LEON )

4  
5 I, SARAH B. GILROY, CP, RPR

6  
7 DO HEREBY CERTIFY that the Prehearing Conference on  
8 Docket No. 950110-EI was heard by the Florida Public Service  
9 Commission at the time and place herein stated; it is further

10  
11 CERTIFIED that I stenographically reported the said  
12 proceedings; that the same has been transcribed under my direct  
13 supervision; and that this transcript, consisting of 35 pages,  
14 constitutes a true transcription of my notes of said  
15 proceedings.

16  
17 DATED this 15th day of February, 1996.

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21 \_\_\_\_\_  
22 SARAH B. GILROY  
23 Registered Professional Reporter  
24  
25