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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

REQUEST FOR CONFIDENTIAL CLASSIFICATION

PANDA-KATHLEEN L.P. ("Panda"), pursuant to §366.093, Florida Statutes and F.A.C. Rule 25-22.006, and, further pursuant to the August 3, 1995 Agreed Order for the Handling of Confidential Information in Panda-Kathleen L.P. v. Florida Power Corporation, United States District Court (Middle District of Florida), case No. 95-992-CIV-T-24C<sup>1</sup>, hereby requests confidential classification for certain documents attached as exhibits to the Amended prefiled rebuttal testimony of Brian A. Morrison, filed on behalf of Florida Power Corporation ("FPC"), and states:

1. On February 8, 1996, Florida Power Corporation filed herein the Amended Pre-filed rebuttal testimony of Brian A. Morrison. Morrison's testimony contains information derived from documents which Panda contends and asserts are confidential. Attached to that testimony were a number of exhibits, each of which are Panda documents which had been provided to FPC by Panda pursuant to a confidentiality agreement.

<sup>1</sup>On December 29, 1995, Florida Power Corporation filed herein a Motion Requesting Approval of Stipulation Confirming Agreement Regarding Discovery, wherein Florida Power requested for the Commission to grant approval of Florida Power and Panda's Stipulation Confirming Agreement Regarding Discovery and the August 3, 1995 Agreed Order for the Handling of Confidential Information.

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2. FPC previously filed the rebuttal testimony of Brian A. Morrison on or about January 23, 1996, and on January 24, 1996, Panda filed its notice of Intent to Request Confidential Classification of Mr. Morrison's testimony. Panda, therefore, at this time files its request for confidential classification as to certain select exhibits appended to the Amended Pre-filed Rebuttal Testimony of Brian A. Morrison, which contain confidential information regarding the financial models and financial terms upon which Panda will seek to finance and operate the Panda-Kathleen project.

3. The public dissemination of such information (which has been and is kept confidential by Panda) would severely prejudice Panda, in that it would injure Panda's ability to negotiate with lenders and other financiers. The specific requests for confidential classification are as follows:

<u>Exhibit Number</u>	<u>Line Numbers</u>	<u>Description</u>
BAM - 3	Sheet 2 of 2, Line 25	This line discloses the projected price paid by Panda for fuel. The public dissemination of this information would prejudice Panda in its ability to negotiate for future fuel purchases.
BAM - 4	Sheet 1 of 3 Lines 6, 7	This line discloses the bid price received by Panda for the construction of the Panda-Kathleen facility. The public dissemination of this information would prejudice Panda in its ability to negotiate for better prices.
BAM - 19	All (5 pages) except for two portions of sheet 2 of 5	This document is a proforma analysis of the economic performance of the project and Panda's projections regarding the pricing of the project inputs. Dissemination of these projections would injure Panda in its dealings with its vendors and lenders. <b>On sheet 2 of 5 , two portions of the page are not confidential: <u>Disbursement Assumptions: Plant Capacity (kw) 112,100; Notes to Assumptions: Equipment description: one abm 11M, Steam Turbine HRSG</u></b>
BAM - 23	Sheets 7-9 of 11	This document is a draft agreement between Panda and its lenders regarding the terms of the financing to be provided to Panda. Page 7 describes the terms of the lending agreement (including the arrangement fee), Page 8 describes the interest rates and fees to be

charged to Panda, and page 9 describes the additional restrictions to be placed on Panda. Dissemination of pages 7 through 9 would prejudice the ability of Panda to obtain other financing and interfere with Panda's ability to obtain better terms.

BAM - 24

Sheets 7-9 of 12,  
and Sheet 11  
of 12

This document is a draft agreement between Panda and its lenders regarding the terms of the financing to be provided to Panda. Page 7 describes the terms of the lending agreement (including the fees), Page 8 describes the interest rates to be charged to Panda, and Page 9 describes the additional restrictions to be placed on Panda. Dissemination of pages 7 through 9 would prejudice the ability of Panda to obtain other financing and interfere with Panda's ability to obtain better terms. The last paragraph of Page 11 describes the development fee terms that would be payable to Panda in the project. Dissemination of this information would injure Panda's ability to obtain better terms from another financier.

BAM - 25

Sheets 6-9 of 12,  
and Sheet 11  
of 12

This document is a draft agreement between Panda and its lenders regarding the terms of the financing to be provided to Panda. Page 6 describes the terms of the lending agreement (including the fees), Page 7 describes the interest rates to be charged to Panda, and Page 8 describes the additional restrictions to be placed on Panda. Dissemination of pages

7 through 9 would prejudice the ability of Panda to obtain other financing and interfere with Panda's ability to obtain better terms. The last paragraph of page 11 describes the development fee terms that would be payable to Panda in the project. Dissemination of this information would injure Panda's ability to obtain better terms from another financier.

BAM - 26 Sheet 1 of 1, Lines  
11-15

This document is an internal Panda e-mail describing the "dropout" of an investor from Panda's project. Lines 11 through 15 describe Panda's analysis of the tax effects of the projects on certain investors. The disclosure of Panda's internal analysis could affect the ability of Panda to obtain other equity financing.

BAM - 27 Sheet 6 of 42, line 31

Exhibit 27 is a confidential analysis of the Panda project performed by Brown & Root, an independent consultant hired by Panda's lenders. Page 1, line 31 discusses the bids obtained by Panda to construct the plant. Dissemination of this information could prejudice Panda's ability to obtain better terms.

Sheet 35 of 42, lines  
3-7

Page 30, lines 3-7 discuss the bids obtained by Panda to construct the plant. Dissemination of this information could prejudice Panda's ability to obtain better terms.

Sheet 36 of 42, lines

Page 31, lines 26-28 discuss

26-28	the bids obtained by Panda to operate and maintain the plant. Dissemination of this information could prejudice Panda's ability to obtain better terms.
Sheet 39 of 42, lines 7-10	Page 34, lines 7-10 discuss the bids obtained by Panda to construct the plant. Dissemination of this information could prejudice Panda's ability to obtain better terms.
Sheet 41 of 42 (all)	Page 36 describes the liquidated damages terms of Panda's contract to construct the plant. Dissemination of these terms would prejudice Panda's ability to obtain more favorable terms from another vendor.
BAM - 28 Sheet 1 of 31, entire page	Exhibit 28 contains Panda's financial projections for the operation of the plant. These projections including the pricing for the project's inputs, and Panda's projections as to future pricing and economic conditions. Dissemination of these projections would injure Panda in its dealings with its vendors and lenders.
BAM - 29 Sheets 1 and 2 of 2	Exhibit 29 contains Panda's projections and assumptions regarding its investment ranking and grading. The dissemination of this information would injure Panda's ability to obtain a favorable investment grade, and would increase the cost of borrowing to Panda.

BAM - 30 Sheet 4 of 4

Exhibit 30, page 4 contains Smith Barney's projections and assumptions regarding Panda's investment ranking and grading. The dissemination of this information would injure Panda's ability to obtain a favorable investment grade, and would increase the cost of borrowing to Panda.

BAM - 32 Sheets 3, 4 and 5 of 5

Exhibit 31 is a letter agreement regarding the investment by Calpine in the Panda project. Pages 3, 4 and 5 of that Exhibit contain the terms upon which Calpine and Panda agreed for the equity financing of the Kathleen project. Dissemination of this information would injure Panda's ability to obtain favorable financing terms from other potential investors.

BAM - 33 Sheet 6 of 23, lines 10-17

Exhibit 33 is a confidential investment memorandum for potential equity investors in the Kathleen project. Lines 10 through 17 describe the terms of financing for the project. Dissemination of these terms would prejudice Panda's ability to obtain better terms from other lenders.

Sheet 14 of 23, lines 5-6

Page 14, lines 5 and 6 describe Panda's projections for the cost of fuel for the facility. Dissemination of these projections would prejudice Panda's ability to obtain favorable pricing from fuel sellers.

Sheet 14 of 23, lines 26-29

Page 14, lines 26 through 29 describe the projected cost of building the Panda plant.

Dissemination of these projections would prejudice Panda's ability to obtain favorable pricing from construction contractors.

4. A copy of the non-redacted exhibits listed above, with the confidential information indicated by highlighting, is submitted herewith in a separated, sealed envelope. Also separately submitted are fifteen copies of the exhibits with the confidential information redacted.

5. The highlighted portions of the exhibits are proprietary and confidential to Panda. The highlighted portions satisfy the general requirements of the definition of proprietary and confidential business information in Sections 366.093(3), and 366.093(3)(e), Florida Statutes. That statute provides, in relevant part, that proprietary confidential business information is:

Information, regardless of form or characteristic, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public. Proprietary confidential business information includes but is not limited to:

...



(d) information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms.

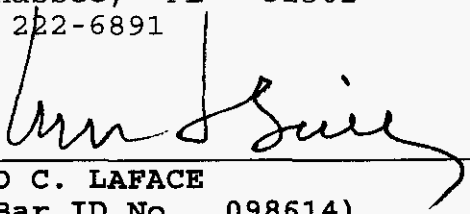
(e) information relating to competitive interest, disclosure of which would impair the competitive business of the provider of the information.

§366.093(3)(d), (e), Fla. Stat. (1993).

6. As a matter of corporate policy, Panda treats this type of financial and strategic planning information as confidential and proprietary and has not publicly disclosed it. As such, the information constitutes proprietary confidential business information entitled to protection from disclosure pursuant to Section 366.093, Florida Statutes. Panda, then, requests that the highlighted information identified above as confidential, and highlighted in the enclosed envelope, be designated confidential for the reasons set forth herein.

Respectfully submitted,

**GREENBERG, TRURIG, HOFFMAN,  
LIPOFROSEN & QUENTEL, P.A.**  
101 East College Avenue  
Post Office Drawer 1838  
Tallahassee, FL 32302  
(904) 222-6891

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail/~~Hand Delivery~~<sup>AND</sup>/Telecopy to Donald R. Schmidt, Esquire, and Steven Dupre, Esquire, Post Office Box 2861, Saint Petersburg, Florida 33731, by U.S. Mail/~~Hand Delivery~~<sup>AND</sup>/Telecopy to Robert Vandiver, Esquire, and <sup>HAND DELIVERY TO</sup> Martha Carter-Brown, Esquire, Florida Public Service Commission, 2450, Shumard Oak Boulevard, Tallahassee, Florida 32399-0892, by U.S. Mail/~~Hand Delivery~~<sup>AND</sup>/Telecopy to James A. McGee, Esquire, and Jeffery A. Froeschloe, Esquire, Post Office Box 14042, St. Petersburg, Florida 33733-4042, this 15<sup>TH</sup> day of FEBRUARY, 1996.

  
RONALD C. LAFACE