

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Standard offer contract) Docket No. 950110-EI
 for the purchase of firm)
 capacity and energy from a)
 qualifying facility between)
 Panda-Kathleen, L.P. And Florida) Power Corporation)

MORNING SESSION

VOLUME 1

PAGES 1 through 179

PROCEEDINGS:

HEARING

BEFORE:

CHAIRMAN SUSAN F. CLARK
 COMMISSIONER J. TERRY DEASON
 COMMISSIONER JULIA L. JOHNSON
 COMMISSIONER DIANE K. KIESLING
 COMMISSIONER JOE GARCIA

DATE:

Monday, February 19, 1996

TIME:

Commenced at 9:35 a.m.

PLACE:

Betty Easley Conference Center
 Room 148
 4075 Esplanade Way
 Tallahassee, Florida

REPORTED BY:

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PROCEEDINGS

(Hearing reconvened at 9:35 a.m.)

CHAIRMAN CLARK: We're ready to call the hearing to order. Ms. Brown, would you please read the notice?

MS. BROWN: Am I on? By notice issued January 25th, 1996, this time and place was set for a hearing 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 hearing is set out in the notice.

CHAIRMAN CLARK: Thank you. We'll take appearances. Mr. McGee. Is your microphone on?

MR. MCGEE: Excuse me. My name is James McGee, Post Office Box 14042, St. Petersburg 33733, on behalf of Florida Power Corporation. With me is Jeffrey Froeschle of the same address, also on behalf of Florida Power Corporation.

MR. ROSS: Good morning. I'm David Ross of the firm of Greenberg, Traurig, 1221 Brickell Avenue, Miami, Florida on behalf of Panda Energy. And with me is Lawrence Silverman of the same firm and same address, and next to Mr. Silverman is Lo Bielby of the same firm of our Tallahassee office here in Tallahassee.

1 MS. BROWN: Martha Carter Brown and Lorna
2 Wagner representing the Florida Public Service
3 Commission Staff.

4 CHAIRMAN CLARK: Are there any preliminary
5 matters we need to take up?

6 MS. BROWN: Yes, Chairman Clark, there are a
7 couple. Number one, as you remember at the prehearing
8 conference, you granted the parties each five minutes to
9 give an opening statement before testimony. Since the
10 prehearing conference, there have been a couple of
11 objections to testimony filed and a motion for official
12 recognition. I suggest that we can deal with the
13 objections to the testimony at the time the witness is
14 prepared to testify, if you would like.

15 CHAIRMAN CLARK: Okay.

16 MS. BROWN: It might be convenient for the
17 Commission to deal with the request for official
18 recognition now. That was filed by Panda, if Panda
19 would like to introduce that.

20 CHAIRMAN CLARK: Mr. Ross, do you have some
21 documents that you would like us to take official
22 recognition of?

23 MR. ROSS: Yes, we do. I'll have
24 Mr. Silverman handle that.

25 MR. SILVERMAN: Panda has three official

1 orders of the Commission for which it has requested
2 official recognition. Two of those orders relate to
3 petitions by the Auburndale Power Partners. They are
4 set forth in our motion. They are both final orders.
5 The third final order is the order in the Polk Power
6 Partners 1994 decision as set forth and attached in our
7 request for official recognition.

8 In addition, Panda has requested official
9 recognition for the petition in the Polk Power Partners'
10 request for declaratory statement 1992 case on the basis
11 of the order in that case has been put forth as
12 controlling authority by Florida Power, and the facts of
13 that case are not really set forth in the order itself.
14 We have attached a copy of that petition as well, as
15 well as case law cite regarding the ability of a court
16 to take judicial notice, when a movant requests it, as
17 opposed to on its own.

18 CHAIRMAN CLARK: Is there any objection to
19 taking official recognition of the orders -- as I
20 understand it, three orders and the petition in Docket
21 92-0556-EQ?

22 MR. MCGEE: We have no objection.

23 MS. BROWN: No objection.

24 CHAIRMAN CLARK: In that case, we will take
25 official recognition of Order No. PSC-95-1041-AS-EQ

1 issued August 21st, 1995. We will take official
2 recognition of Order No. PSC-94-1306-FOF-EQ dated
3 October 24th, 1994. We will take official recognition
4 of Order No. 94-0197-DS-EQ issued February 16th, 1994.
5 And we will also take official recognition of the
6 petition for declaratory statement filed in Docket
7 92-0556-EQ dated May 28th, 1992, and that docket is
8 entitled Polk Power Partners, for a declaratory
9 statement regarding eligibility for standard offer
10 contracts.

11 MR. MCGEE: Madam Chairman, we have no
12 objection to the petition either, but we would request
13 that if the petition -- if the Commission is going to
14 take official recognition of the petition, that the
15 Staff recommendation also be included to sort of flesh
16 out the docket filing. I think in that declaratory
17 statement proceeding, the file contains little more than
18 the petition, the declaratory -- for the declaratory
19 statement, the Staff recommendation and the order.

20 CHAIRMAN CLARK: Is there any objection to
21 taking official recognition of the Staff
22 recommendation?

23 MR. ROSS: No.

24 MS. BROWN: No objection.

25 CHAIRMAN CLARK: These are official documents

1 that are filed with the Commission, and it is on that
2 basis that official recognition is requested; is that
3 correct?

4 MR. MCGEE: That's correct.

5 CHAIRMAN CLARK: Thank you. Just so the
6 record is clear, we will take official recognition of
7 the Staff recommendation in Docket No. 92-0556-EQ.

8 Mr. McGee, do you happen to know when that
9 recommendation was filed?

10 MR. MCGEE: No, I don't. We are in the
11 process of obtaining a copy of it. We will make copies
12 for the Commission and submit them.

13 CHAIRMAN CLARK: Thank you very much. That
14 will be great.

15 Anything else, Ms. Brown?

16 MS. BROWN: I'm not aware of any other
17 preliminary matters, just the two objections to
18 testimony of Robert Dolan, certain aspects of it, and
19 the testimony of Mr. Morrison, but we can deal with
20 those when the time comes.

21 MR. MCGEE: Madam Chairman, I have one
22 matter. This was an item that was discussed at the
23 prehearing conference. There will be considerable
24 discussion today of a standard offer contract and the
25 reference to a 30-year term. And we indicated at the

1 prehearing conference that we had no objection to the
2 use, at least for convenience, of a 30-year term, but I
3 would like on the record to make the point that the
4 contract started out as a 30-year contract. It was
5 subsequently amended and the in-service date was moved
6 back one and three quarter years. And so the contract,
7 actually, has a term that goes from January 1st, 1997
8 until the end of March, 2025. So the term would be 28
9 years and three months. And rather than belaboring the
10 discussion by continually referencing that, we have no
11 objection to using 30 years as the term of contract, as
12 long as it's understood that Florida Power believes the
13 contract term is actually 28 years and three months.

14 CHAIRMAN CLARK: Thank you, Mr. McGee. I was
15 concerned, Commissioners, that that was a bit confusing
16 because it showed up in one of the positions on the
17 issues, but I did notice as I read the testimony that it
18 was clarified in Mr. Dolan's rebuttal testimony, I
19 believe. So for convenience sake, a 28-year and
20 three-month period was referred to as 30 years.

21 All right, Mr. Ross, what I would like to do,
22 I have just had, as I came in this morning, got copies
23 of your objections to testimony. What I would like to
24 do is go ahead at this point with the five-minute
25 opening statement, starting with Mr. McGee, then with

1 you, Mr. Ross, and we will then collectively swear in
2 the witnesses, and when Mr. Dolan takes the stand, we'll
3 take up objections to his testimony; and Mr. Morrison is
4 the other witness?

5 MS. BROWN: Yes, he's a rebuttal witness,
6 won't come until later.

7 CHAIRMAN CLARK: And we'll take up objections
8 to his testimony at the time he takes the stand.
9 Anything else?

10 Go ahead, Mr. McGee.

11 MR. MCGEE: Thank you, Madam Chairman.
12 Commissioners, you'll hear testimony today from Florida
13 Power and Panda that takes two very different approaches
14 to the issues in this case. And to understand this
15 difference, I think it might be helpful to briefly
16 review how this proceeding has evolved to its point
17 today.

18 This docket, as you may recall, began over a
19 year ago as a declaratory statement proceeding when
20 Florida Power petitioned the Commission for a
21 determination of whether its standard offer rules and
22 Florida Power's standard offer tariff that was approved
23 pursuant to those rules would allow Panda to construct a
24 115-megawatt facility and receive capacity payments for
25 30 years. Panda then filed a request for declaratory

1 statement of its own on the same two issues.

2 Florida Power believed then and Florida Power
3 continues to believe that the two principle issues
4 raised in the declaratory statement request of both
5 Panda and Florida Power can be resolved by a
6 straightforward application of the Commission's standard
7 offer rules. These rules are clear and unencumbered and
8 relatively simple. They provide that the availability
9 of a standard offer contract is limited to, and I quote,
10 "small qualifying facilities less than 75 megawatts."
11 They also provide that the maximum period for the
12 delivery of firm capacity and energy under a standard
13 offer contract is the life of the avoided unit and that
14 Panda contract specifies that the life of the avoided
15 unit is 20 years.

16 These provisions in and of themselves are
17 dispositive of the issues in this case as to whether
18 Panda's revised proposal for a 115-megawatt facility and
19 its claim for 30 years of capacity payments.

20 Then, some five months into the docket, into
21 this proceeding, Panda requested that the docket be
22 converted from an evidentiary -- from a declaratory
23 statement proceeding to an evidentiary proceeding,
24 claiming the existence of material issues of disputed
25 fact.

1 And the Commission granted Panda's request and
2 set this hearing that we're in today so that those
3 disputed issues of material fact could be presented.
4 However, now that we have Panda's prefiled testimony and
5 it's before you this morning, it's clear that while
6 there are disputed factual issues, they are not material
7 to the application of the Commission's rules to the
8 facility size and capacity payment issues in this case.
9 Panda doesn't even contend that they are. In fact, the
10 Panda witnesses on these two issues conspicuously avoid
11 even a reference to the Commission's rules. Instead
12 they attempt to raise a variety of factual issues that
13 really have no bearing on the rules that govern standard
14 offer contracts.

15 The other main issue in this case regarding
16 the extension of contract milestone dates was raised by
17 Panda and it therefore has the burden of demonstrating
18 that it would have met those contract milestone dates,
19 in particular that it would have been able to obtain
20 financing but for Florida Power's initiation of this
21 proceeding. And on that burden they have totally
22 failed. In fact, the Panda witness on this issue
23 doesn't even claim that financing would have been
24 obtained. He simply says that efforts were well
25 underway before Florida Power filed its petition.

1 They've offered no evidence of any kind to show that
2 those efforts had any chance of success. On the other
3 hand, you'll hear the testimony of Mr. Morrison, an
4 expert on QF and independent power financing, that the
5 Panda project was not financially viable.

6 One final point. Panda claims that Florida
7 Power is attempting to, and I'll quote, "Rewrite the
8 Florida Power Panda contract to impose new obligations
9 on Panda."

10 Commissioners, all that Florida Power is
11 attempting to do is to have the Commission's standard
12 offer rules enforced with respect to the standard offer
13 contract.

14 These are the same rules that were in effect
15 when the contract was entered into, same rules that
16 govern the Commission's approval of that standard offer
17 contract and they're the same rules that were
18 incorporated into and made a part of the Panda standard
19 offer contract. In reality, it's Panda who wants to
20 fundamentally alter the deal that was struck when that
21 contract was entered into.

22 At that time Panda represented that its
23 facility would have a maximum net output of 74.9
24 megawatts, which is consistent with the Commission's
25 rule. It now wants to build a facility that's over 50

1 percent larger than the rule permits. Panda accepted a
2 standard offer contract that provided for 20 years of
3 capacity payments, again consistent with the
4 Commission's rule. It now wants to have those capacity
5 payments continue for 30 years. Panda's standard offer
6 contract provided for construction commencement and
7 contract in-service milestone dates that Panda agreed
8 to. It now wants the contract modified to significantly
9 extend those dates.

10 If Florida Power wanted to rewrite the
11 contract, as Panda claims, it would be to remedy the
12 fact that the Panda contract will now cost Florida Power
13 and its ratepayers over double its current avoided
14 cost. So we can't do that. Under PURPA, the Commission
15 isn't allowed to revisit the benefit to the ratepayer of
16 the contract. So we'll have to live with it as
17 approved, and we simply ask that you require Panda to do
18 the same. Thank you.

19 CHAIRMAN CLARK: Mr. Ross.

20 MR. ROSS: I do agree with Mr. McGee that we
21 have a fundamentally different view of the issue before
22 this commission this morning. As Panda sees it, the
23 issue before this commission is that Panda entered into
24 a contract with Florida Power, a contract that has been
25 approved not once, but on two prior occasions by this

1 commission. It was approved as a standard form contract
2 before ever signed by Panda, and then it was approved
3 again by this commission as executed and filled in by
4 Panda after a full hearing when Florida Power came
5 before this commission and asked for permission to
6 accept Panda's contract and reject all other standard
7 offer contracts that were submitted to it in 1991.

8 That standard offer contract, when sent to
9 Panda, had two principal provisions that it allowed
10 Panda to select and fill in blanks as were left by
11 Florida Power. And what happened in this case is that
12 Panda filled those blanks in. Everyone knew what Panda
13 had accepted. Florida Power understood what Panda had
14 proposed, and this commission understood what Panda had
15 proposed when it approved that standard offer contract.

16 The contract said in numerous places, as
17 filled in by Panda, that Panda was to provide 74.9
18 megawatts of committed capacity. And the contract
19 repeatedly speaks in language that says there is a limit
20 on the committed capacity that Panda can provide and
21 receive capacity payments for. And that is 74.9
22 megawatts. There is nowhere in the contract language,
23 in our position, that anyone could fairly read a
24 limitation on the total size of the facility in terms of
25 the maximum theoretical or potential output that the

1 facility could generate under given conditions because,
2 as we all know, every power plant generates different
3 amounts of electricity under different environmental and
4 day-to-day conditions that affect the output of a
5 plant.

6 And so Panda selected as the committed
7 capacity that it would offer when it signed this
8 standard offer contract, 74.9 megawatts, consistent with
9 the limitation in the language of the document itself
10 which said the committed capacity could not exceed 74.9
11 megawatts.

12 That was accepted by Florida Power, and when
13 Florida Power selected Panda as the winning standard
14 offer bid and described this contract to this commission
15 and this commission accepted that contract, it always
16 very clearly referred to it as 74.9 megawatts of
17 committed capacity. The key being, that is the amount
18 of capacity that is there at all times for Florida Power
19 to use and that is the amount of electricity for which
20 my client was to receive capacity payments under this
21 contract.

22 As a matter of engineering design, after this
23 contract was accepted by this commission, it was
24 determined by Panda that in order to meet this
25 requirement of 74.9 megawatts of committed capacity at

1 all times and under all conditions over the life of this
2 contract, it was necessary to use turbines that had the
3 capability of putting out more than 74.9 megawatts of
4 electricity under given conditions.

5 When my client then reviewed the emissions
6 requirements that became more stringent in Florida after
7 this contract was signed, they ultimately determined, as
8 a matter of engineering judgment, that the only
9 facility, the smallest facility that they could build to
10 have both 74.9 megawatts of committed firm capacity
11 always available to Florida Power under any conditions,
12 and meet the pollution control standards that had then
13 been adopted in Florida, the smallest facility they
14 could build was one that used either an ABB 11 turbine
15 or a GE Frame 7 turbine that would be rated at 115
16 megawatts, at what's called ISO conditions. It could
17 put out 115 megawatts, if you will, at perfect, ideal
18 conditions, 59 degrees Fahrenheit, et cetera. It's a
19 standard rating.

20 The other term of this contract that Panda
21 selected, for which there was no limitation placed in
22 the document, was how long of a contract they were
23 offering. Panda filled in, clear as could be, a 30-year
24 term of this contract. And everyone understood that
25 this was a 30-year contract. This commission understood

1 when it approved the contract that it was a 30-year
2 contract. Indeed, the submissions of Florida Power to
3 this commission repeatedly described the Panda contract
4 as a 30-year contract.

5 We were not the only submitter who selected
6 either a 30-year contract or a 74.9 megawatt committed
7 capacity. Indeed, there was a submission of a 74.999
8 megawatt committed capacity, and at least one other
9 standard offer submission at the time was a 30-year
10 contract. So everyone understood that it was a 30-year
11 contract and that's how it was approved. And I do wish
12 to point out, in light of what Mr. McGee said, that we
13 don't agree that there's just a matter of convenience
14 between a 28-year-and-three-month contract and 30. We
15 believe the contract is still 30 years. There was an
16 amendment to the startup dates of this contract, we
17 believe under the language of the contract that extends
18 the ending term of the contract too. Though I will
19 state that no one raised that as an issue in this
20 proceeding up until now, and I don't think it's
21 appropriate for the Commission to resolve that in this
22 particular proceeding. But we refer to it as a 30-year
23 contract because we believe it is still a 30-year
24 contract.

25 What happened thereafter is after the contract

1 was twice approved, we began planning performance, and
2 we believe the evidence will show that in the early
3 years of our performance there was no dispute between
4 Florida Power and Panda, and the Florida Power's
5 representatives indeed agreed with Panda's
6 representatives that everyone understood that there was
7 no problem if we built a facility that could put out
8 more than 74.9 megawatts, that the extra energy would be
9 paid for at as-available energy rates. There would not
10 be a capacity payment for more than 74.9 megawatts and
11 we have never claimed that there should be a capacity
12 payment for more than 74.9 megawatts, but that any
13 energy put out above that should be paid for at
14 as-available rates.

15 And we think the evidence will also show you
16 that in the discussions with Florida Power
17 representatives, Florida Power also agreed that there
18 was no dispute that this was a 30-year contract and that
19 the fact that the schedule that was attached only ran
20 out 20 years was an oversight; it was something that had
21 to be corrected and that it would be corrected with a
22 full 30-year capacity payout schedule, as there had been
23 in an original submission to this commission.

24 It is our position that it was only in late
25 1993 and early 1994 that Florida Power's position

1 radically changed, and that it radically changed because
2 at that time Florida Power reevaluated not only the
3 Panda contract but all of its cogeneration contracts and
4 made a determination that, number one, they no longer
5 needed all the power that they had contracted for in
6 1991, not only with the Panda standard offer contract
7 but the negotiated contracts that it entered into with
8 many cogeneration facilities in '91; and secondly,
9 because they now decided that these contracts were too
10 expensive for them, and that costs had decreased and
11 that they could replace this power more cheaply.

12 But of course, as Mr. McGee said, PURPA does
13 not allow this commission to reevaluate contracts after
14 the fact and to now decide that they are not
15 cost-effective. So it is our position that Florida
16 Power adopted a different approach, and that is to make
17 issues out of everything, including the two issues that
18 we're now here on today. And it was not until that time
19 that they took the position that if we built a facility
20 that put out anything over 74.9 megawatts, that would be
21 a violation of this commission's rules and that it was a
22 violation of this commission's rules to have a 30-year
23 capacity payment contract.

24 The problem with that argument is, and our
25 position is, that it is too late in the game for Florida

1 Power to come before this commission, and now after the
2 Commission approved the contract twice, and after we've
3 been in this contract for four years, to now ask this
4 commission to go back and apply its rules to what
5 they're in essence asking you to do, which is say you
6 never should have approved this contract in the first
7 place.

8 But you did approve the contract, and of
9 course, as this commission knows, it's been our position
10 that indeed this whole proceeding should have been
11 preempted because it is a reevaluation of the contract.
12 But that motion was denied and we are here.

13 It is our position that we are entitled to be
14 put back into the position we were in when Florida Power
15 filed this proceeding, not that we have to prove to you
16 today that we would have been able to get financing.
17 Our evidence shows that our ability to seek financing
18 was stopped because of this petition. All we ask for is
19 the chance to go back to the position we were in and
20 seek our financing to extend the milestone dates to give
21 us the chance to get the financing and build this
22 plant. That is all we ask for from this commission.

23 CHAIRMAN CLARK: Thank you, Mr. Ross. At this
24 time I would like to swear in all the witnesses who will
25 be presenting testimony in this proceeding. And I'll do

1 it all at one time, and if you would all just stand up.
2 Please raise your right hand.

3 (Witnesses collectively sworn.)

4 CHAIRMAN CLARK: Mr. McGee, would you call
5 your first witness?

6 MR. MCGEE: Florida Power would call
7 Mr. Dolan.

8 ROBERT D. DOLAN
9 was called as a witness on behalf of Florida Power
10 Corporation, and having been duly sworn, testified as
11 follows:

12 MR. MCGEE: Mr. Dolan, is the green light on
13 your microphone on?

14 CHAIRMAN CLARK: I think it's that the red
15 light has to be off.

16 MR. MCGEE: Okay.

17 DIRECT EXAMINATION

18 BY MR. MCGEE:

19 Q Mr. Dolan, would you give us your full name
20 and business address for the record, please?

21 A Robert D. Dolan, 6565 38th Avenue North,
22 St. Petersburg, Florida 33710.

23 Q What's your position with Florida Power?

24 A Manager of cogeneration contracts and
25 administration.

1 Q Mr. Dolan, do you have before you a document
2 entitled Direct Testimony of Robert D. Dolan, consisting
3 of 22 pages with 12 marked exhibits attached thereto?

4 A Yes, I do.

5 Q Was that document prepared by you or under
6 your supervision as your direct testimony for this
7 proceeding today?

8 A Yes, it was.

9 Q Do you have any changes or corrections that
10 need to be made?

11 A Yes. On Page 20, Line 9, Panda should be
12 replaced with Florida Power. Where it would read,
13 "This, in essence, would have required Florida Power to
14 make planning decisions a year in advance."

15 Q With that correction, Mr. Dolan, if you were
16 asked the questions contained in your prepared
17 testimony, would your answers be the same today?

18 A Yes, I would.

19 MR. MCGEE: Madam Chairman, we would ask that
20 Mr. Dolan's direct testimony be inserted into the record
21 as though read.

22 CHAIRMAN CLARK: The prefiled direct testimony
23 of Mr. Robert D. Dolan will be inserted into the record
24 as though read.

25 MR. ROSS: Your Honor, this is the witness

1 that we have filed objections to, the direct testimony.

2 CHAIRMAN CLARK: All right, let's go ahead and
3 take up --

4 MR. MCGEE: Could we have the exhibits marked
5 for identification and get that out of the way as well,
6 or would you rather wait?

7 CHAIRMAN CLARK: Let's go ahead and mark the
8 exhibits and then we'll go back to dealing with the
9 objections.

10 MR. MCGEE: He has Exhibits RDD-1 through
11 RDD-12. Is it -- would it be the Commission's
12 preference to mark that as a composite exhibit?

13 CHAIRMAN CLARK: Yes, we'll mark that as a
14 Composite Exhibit 1.

15 (Exhibit No. 1 marked for identification.)

16 CHAIRMAN CLARK: Mr. Ross, you have objected
17 to the prefiled testimony -- some of the prefiled
18 testimony of Mr. Dolan. Let's take up those objections
19 dealing with direct testimony. Was there any -- let me
20 see.

21 MR. ROSS: Yes, there is some rebuttal at the
22 end of the same motion.

23 CHAIRMAN CLARK: All right, the first is on
24 Page 7, Lines 11 through 20, and you object to this on
25 the basis of double hearsay?

1 MR. ROSS: Yes, Commissioner. Essentially,
2 all of our objections are the same. We have set out the
3 particular pages and lines that we object to. We fully
4 understand that the rules of evidence, as they apply in
5 this proceeding, generally does not automatically
6 prohibit hearsay as it would in a court of law.
7 However, as cited in our filed motion, we also believe
8 that the rules of evidence in the Administrative
9 Procedure Act, as applied here, do require that hearsay
10 only be admitted to prove a fact when it is supplemental
11 to or corroborative of some other testimony that is
12 nonhearsay that comes into the record.

13 In this particular case, at the various lines
14 and pages that we cite in our memorandum, and if you
15 want me to go through each one specifically, I can, but
16 the objection is the same on each one. We have a
17 situation where Mr. Dolan is testifying about
18 conversations between other representatives of Florida
19 Power and representatives of Panda that he was not
20 present at. And what we don't have anywhere in the
21 record is any testimony from the representatives of
22 Florida Power who were in fact at those meetings. So we
23 have no nonhearsay testimony that we can cross-examine.
24 We have only the double hearsay, if you will, because
25 it's Mr. Dolan's report of the out-of-court statements

1 of someone else from Florida Power. If those witnesses
2 had come forward and given their own testimony about
3 what they said to Panda at that particular place and
4 time, then under the rules I think it would be perfectly
5 proper for Mr. Dolan to add additional testimony to
6 corroborate that or to supplement it. But since there
7 is nothing to supplement or corroborate, we don't
8 believe it is appropriate to have such hearsay testimony
9 come in, because, essentially, we have no opportunity to
10 cross-examine someone else's alleged conversation that
11 Mr. Dolan wasn't present at.

12 CHAIRMAN CLARK: Okay, Mr. McGee.

13 MR. MCGEE: Madam Chairman, the references
14 that Mr. Ross refers to in Mr. Dolan's testimony, and I
15 think there are six of them in his -- six of them in his
16 direct testimony and one in his rebuttal.

17 MS. BROWN: Excuse me, Mr. McGee. Could you
18 speak up just a little bit? Is your mike on?

19 MR. MCGEE: Yes, it is.

20 CHAIRMAN CLARK: You need to speak up,
21 Mr. McGee.

22 MR. MCGEE: All of the information that is
23 referred to by Mr. Ross is information that came to
24 Mr. Dolan in the direct performance of his job and in
25 his capacity as a supervisor of the individuals that are

1 referred to in the several comments. The testimony is
2 also corroborated by, in instances, exhibits that are
3 contained in Mr. Dolan's testimony, deposition exhibits
4 that provide a source for the information, and it would
5 seem to me that it would be appropriate in these
6 instances that if he questions whether the information
7 has an independent source, that he should ask Mr. Dolan
8 about that when he's doing his cross-examination of
9 him. I would like to mention to you that when the
10 Commission has resolved hearsay questions in the past,
11 it's elaborated on the broad scale and the more liberal
12 standard that the Commission uses in these proceedings.
13 The Commission has said that hearsay evidence is allowed
14 in proceedings before this commission provided that it
15 is not relied upon exclusively to support a finding.
16 Well, the issues that are being referred to are
17 contentions regarding the 74.9 megawatt issue and the
18 limitation on the size of the facility, as well as the
19 contract capacity payment duration.

20 You can make findings on those two issues
21 independent of the specific statements that are referred
22 to in their objection to Mr. Dolan's testimony. So I
23 would ask you that you allow this testimony to be put
24 forward by Mr. Dolan because it was obtained by him in
25 the direct performance of his business responsibilities.

1 CHAIRMAN CLARK: Is that an exception to the
2 hearsay rule?

3 MR. MCGEE: Yes, ma'am.

4 CHAIRMAN CLARK: That it is information
5 obtained by him in direct -- in --

6 MR. MCGEE: The business documents exception.

7 CHAIRMAN CLARK: Well, this isn't -- as I
8 understand it, this isn't documents that are being
9 objected to, or exhibits; it's the testimony.

10 MR. MCGEE: Matter of fact, in some instances
11 there are. Let me give you an example. There -- let's
12 see, it would be their third objection. It's on Page 4
13 of their objection, at the top, the testimony that's
14 objected to says, in response to the June proposed
15 modification, David Gammon, Florida Power, faxed to
16 Panda -- faxed another copy of the Polk Power Partner's
17 decision. Well, the copy of that fax that was sent to
18 Panda was produced during the course of discovery. It's
19 a document that exists.

20 CHAIRMAN CLARK: Is it attached to Mr. Dolan's
21 testimony? Is it going to be an exhibit in this
22 proceeding?

23 MR. MCGEE: Polk Power Partners' decision is.
24 The fax cover is not. To me, that was an example of
25 where, if Mr. Ross has a concern about this, he could

1 ask Mr. Dolan if he has a -- an independent basis for
2 making that statement. And Mr. Dolan could respond
3 based on the information that he had.

4 CHAIRMAN CLARK: Well, as I understand it, the
5 objection is that it's hearsay that it was in fact
6 faxed; is that correct?

7 MR. ROSS: And why it was faxed. He's telling
8 us why Mr. Gammon did something. We don't have the
9 testimony of Mr. Gammon. Just so it's clear, I'm not
10 objecting to any of exhibits that are attached to Mr.
11 Dolan's testimony. Those are fine. This particular fax
12 doesn't happen to be an exhibit.

13 MR. MCGEE: The document corroborates and
14 provides an independent source for his information. He
15 does not have to rely on hearsay evidence. He has a
16 hard document.

17 CHAIRMAN CLARK: You're saying the document
18 shows that it was filed in response to the proposed
19 modification and that it was faxed by David Gammon to
20 Panda?

21 MR. MCGEE: The fax itself does not show that
22 it was in response to a proposed modification. It does
23 show that David Gammon faxed that. It shows the time
24 sequence. And in addition, since Mr. Gammon reports
25 directly to Mr. Dolan in the normal course of performing

1 his business, he would have occasion to obtain
2 information, such as the purpose for his -- and to
3 report to Mr. Dolan the purpose of his facts.

4 CHAIRMAN CLARK: And you're saying the fact
5 that it is something he comes -- he learns of in the
6 course of his direct responsibilities is an exception to
7 the hearsay rule?

8 MR. MCGEE: That's our interpretation of it.

9 CHAIRMAN CLARK: Can you tell me what section
10 of the statute I need to look at for that?

11 MR. MCGEE: I don't have that in front of me
12 right now. We received this Friday evening and left for
13 Tallahassee shortly afterwards.

14 CHAIRMAN CLARK: Mr. McGee, do you have any
15 other response to the points of objection to the
16 testimony in the direct of Mr. Dolan?

17 MR. MCGEE: Yes, ma'am. The first item
18 referred to is on Page 2 -- Page 2 of the response, and
19 it refers to the language on Page 7 of Mr. Dolan's
20 testimony, Lines 14 through 20. If that's read in
21 context with the rest of the answer, you can see that
22 that's an introductory statement, and it's followed by
23 the testimony where Mr. Dolan gives an example of the
24 basis for his introductory statement which concerns a
25 meeting that he personally attended.

1 This is a -- an answer that is approximately
2 two pages long, and the paragraph that's identified in
3 the objection is simply an introduction to that. You
4 can see that it's overbroad and treat that all as
5 hearsay because the very first example that he gives in
6 support of that introductory paragraph concerns a
7 meeting where he was present.

8 MR. ROSS: I have no objection to -- I'm
9 sorry.

10 CHAIRMAN CLARK: Just a minute. I'm trying to
11 look at it in context.

12 Go ahead, Mr. Ross.

13 MR. ROSS: I have no objection to the portions
14 of the testimony where Mr. Dolan describes actual
15 meetings that he was at. My problem is this paragraph,
16 for example, he appears to clearly be talking about
17 other Florida Power representatives. If he's not, it
18 shouldn't even be in there. The next paragraph does
19 refer to a meeting on Page 7 that Mr. Dolan was at. I
20 have no objection to that. Mr. Dolan can certainly
21 testify about a meeting that he personally was at.
22 That's not hearsay. I do have objection and there is no
23 exception to the hearsay rule that I know of in this
24 state that would cover evidence that comes to him
25 because somebody works under him. Business records rule

1 only applies to the documents. I'm not objecting to any
2 documents. I think the Item No. 2 on Page 2 is the
3 perfect example of that, where he very directly attempts
4 to describe a conversation between Darol Lindloff of
5 Panda and Allen Honey of Florida Power. He wasn't party
6 to that conversation. There is basis in the hearsay
7 rule for him to describe that conversation, and they've
8 offered no other version of that conversation from
9 Florida Power's perspective.

10 Just so it's clear, also, by the way, that
11 Item No. 4 that we were talking about, the fax, the fax
12 that's described is not an exhibit to Mr. Dolan's
13 testimony. So we don't even have the exhibit itself.

14 CHAIRMAN CLARK: Let me make a ruling on the
15 direct testimony. I think with respect to Page 7, Lines
16 11 and 20, that the information given there is setting
17 the stage for the examples given in the testimony to the
18 extent it is bolstering his understanding and giving
19 examples, and therefore I think it's not hearsay. It
20 may be hearsay with respect to the specific examples,
21 but I don't think the statement itself with respect to
22 his understanding and then followed by specific examples
23 needs to be stricken.

24 It does appear to me that on Page 8, Line 23,
25 through Page 9, Line 3, it does appear to me to be

1 hearsay. And -- but I will allow it in and with the
2 understanding it will be given the weight it deserves,
3 and that it cannot be relied on if there is no
4 corroborating evidence regarding that contact between
5 Mr. Lindloff and Mr. Honey.

6 The same would be true for Page 9, Line 18.
7 With respect to Page 10, Line 8 through 9 does appear to
8 me to be hearsay with respect to whether it was what --
9 that it was faxed and that it was in response to a
10 proposed modification, but I will allow it in, and with
11 the understanding, it seems to me, it cannot be relied
12 on unless it's corroborated.

13 With respect to Page 18, Line 13 through 19,
14 it seems to me, as Mr. Dolan is the individual in charge
15 of cogeneration contracts, he can make this statement
16 that they have not engaged in any conduct that -- with
17 respect to the conduct of the Company, and then Panda
18 can rebut that through their witnesses if they believe
19 they have.

20 With respect to Page 22, Lines 1 through 4, it
21 does appear to me that that is also hearsay. However, I
22 will allow it in, and if it's not otherwise
23 corroborated, it cannot be relied on. And we'll take up
24 the rebuttal testimony at the time we -- Mr. McGee makes
25 a motion to insert into the record.

1 So to be clear on the record, I'm going to
2 allow the testimony, the entire direct testimony to be
3 inserted in the record as though read.

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FLORIDA POWER CORPORATION
DOCKET No. 950110-EI

**DIRECT TESTIMONY OF
ROBERT D. DOLAN**

1 **Q. Please state your name and business address.**

2 A. My name is Robert D. Dolan. My business address is Post Office Box
3 14042, St. Petersburg, Florida 33733.
4

5 **Q. By whom are you employed and in what capacity.**

6 A. I am employed by Florida Power Corporation ("Florida Power" or "the
7 Company") and I am currently the Manager of Cogeneration Contracts and
8 Administration in Florida Power's System Planning Department.
9

10 **Q. Please describe your duties and responsibilities in that position.**

11 A. I have responsibility for implementing Florida Power's cogeneration and
12 small power production ("QF") policies, which include contract negotiation
13 and administration. I have been involved in the Company's QF matters
14 since 1986, except for the period of time between December 1990 and
15 February 1991, when I was working on behalf of another subsidiary of
16 Florida Progress. I have been responsible for the administration of all of
17 Florida Power's QF contracts since June 1991. In addition, I am familiar
18 with the measures taken by the Company to administer or clarify its various
19 QF contracts.

1 **Q. Please describe your educational and business background.**

2 **A.** I have a Bachelor of Science Degree in Electrical Engineering from
3 Christian Brothers University. In 1977, I was employed by Allen & Hoshall
4 Consulting Engineers where I conducted numerous studies for municipal
5 and REA electric utilities.

6
7 In 1980, I was employed by Dashiell. My duties there included turn-key
8 substation and transmission line design and construction for industries,
9 industrial cogenerators and utilities.

10
11 In 1982, I was employed by Turner, Collie & Braden. My duties included
12 high voltage substation design including structures, equipment selection,
13 configuration, relaying and specifications; process and building electrical
14 design; and site design including electrical distribution, medium voltage
15 substations and lighting.

16
17 In 1983, I was employed by Florida Power as an Industrial Services
18 Engineer in the Northern Division located in Monticello. In that capacity,
19 I was responsible for cogeneration and large industrial/commercial
20 customers. My duties included oversight of cogeneration interconnections
21 and participation in the contracting process for various cogeneration
22 projects located in North Florida. In 1986, I assumed the position of Senior
23 Cogeneration Engineer. My responsibilities in that position were to provide
24 project management for QF interconnections. I also performed technical
25 and economic analyses of a wide range of cogeneration projects,

1 negotiated contracts for firm capacity and energy from QFs, and developed
2 the Company's guidelines for Interconnection Standards.

3
4 In February 1990, I was appointed Project Manager, Cogeneration
5 Projects. My responsibilities included continued exploration of
6 cogeneration opportunities for Florida Power Corporation. In June 1991,
7 I was appointed to my current position as Manager, Cogeneration
8 Contracts and Administration.

9
10 **Q. Are you a member of any professional organizations?**

11 **A.** Yes. For the past several years I was a member of the Edison Electric
12 Institute Cogeneration Task Force. In addition, I am a member of the
13 Institute of Electrical and Electronic Engineers and the Association of
14 Energy Engineers.

15
16 **Q. Do you hold any professional certifications or licenses?**

17 **A.** I am a registered Professional Engineer in the State of Florida. I became
18 registered in 1988.

19
20 **Q. What is the purpose of your testimony?**

21 **A.** The purpose of my testimony is to support Florida Power's positions (i) that
22 the recently redesigned 115 MW (or larger) facility proposed by Panda-
23 Kathleen L.P. (Panda) is inconsistent with the provisions of Commission
24 Rule 25-17.0832, F.A.C., and the Company's standard offer contract with
25 Panda, both of which limit the availability of the standard offer to small

1 qualifying facilities less than 75 MW, and (ii) that Commission Rule 25-
2 17.0832, F.A.C., and the Panda standard offer contract limit the duration
3 of capacity payments made under the contract to 20 years, the economic
4 life of the avoided unit. Since Panda, as I understand it, failed to
5 commence construction of its facility prior to January 1, 1996 (which was
6 the extended deadline under the standard offer contract for fulfilling
7 "construction commencement" milestone), I will state Florida Power's
8 position on the effect of that failure.

9
10 **Q. On what do you base the testimony contained herein?**

11 A. My testimony herein is based on my personal knowledge of the facts, my
12 discussions with Florida Power employees who report to me, and on my
13 review of various documents in Florida Power's files (or produced by Panda
14 or others in discovery).

15
16 **THE 75 MW LIMITATION**

17
18 **Q. Please briefly summarize the events leading up to the execution of**
19 **the standard offer contract that is the subject of this proceeding as**
20 **those events relate to the 75 MW limitation issue?**

21 A. On August 29, 1991, the Florida Public Service Commission (the
22 "Commission") approved a form of standard offer contract, incorporated in
23 Florida Power's tariff filed with the Commission, to be used in conjunction
24 with rules adopted by the Commission by qualified cogeneration facilities
25 in selling electrical power to Florida Power. At the same time, the

1 Commission also approved a book life of 20 years for Florida Power's
2 avoided unit and a subscription of 80 MW.

3
4 In late September, 1991, Florida Power conducted an "open season"
5 solicitation for standard offer contracts to fulfill a subscription limit of 80
6 MW of the 1997 combustion turbine. On or about October 4, 1991, Panda
7 and numerous other QFs participated in the "open season" and submitted
8 applications for a standard offer contract to Florida Power.

9
10
11 **Q. Before Florida Power signed the standard offer contract submitted by**
12 **Panda, did Panda say or write anything about the size of the facility**
13 **it proposed to construct?**

14 A. Yes it did. First, on or about October 7, 1991, Panda's general counsel,
15 Edward Gwynn, forwarded to Federal Energy Regulatory Commission
16 ("FERC") an AMENDED AND RESTATED NOTICE OF SELF CERTIFICATION AS A
17 QUALIFYING FACILITY ("Panda's QF Certification") for filing. (Exhibit No. 1
18 (RDD-1)) In Panda's QF Certification, Panda stated as follows:

19 The Facility is a combined cycle cogeneration facility,
20 incorporating three (3) gas fired combustion turbine generators,
21 three (3) waste heat recovery steam generators and one (1)
22 extraction induction steam turbine generator.

23
24 The Facility will have an estimated *net maximum capacity at*
25 *design conditions of 74.9 MW.* (Emphasis added.)

1 Second, in late October or early November, Panda answered a
2 questionnaire that Florida Power had circulated to Panda and all other
3 parties that had submitted standard offer proposals during the "open
4 season." (Exhibit No. L (RDD-2)) The turbines Panda represented it
5 intended to use for its Generator Power Plant were three LM2500 turbines
6 along with a steam turbine that equated to a facility size of approximately
7 75 MW.

8
9 Third, on or about October 29, 1991, Panda described its proposed
10 financing plan for this project to Florida Power as follows:

11 This memorandum describes Panda's proposed plan for financing
12 the development and construction of *the 75 MW gas-fired*
13 *cogeneration facility* near Lakeland, Florida ("Kathleen Project").

14 An excerpt of the letter in which that statement was made is submitted as
15 (Exhibit No. L (RDD-3)) (emphasis supplied).

16
17 Fourth, on November 25, 1991, Panda and Florida Power accepted the
18 Panda Standard Offer Contract (Exhibit No. L (RDD-4)) (the "Panda
19 Contract") pursuant to Rule 25-17.032(3), F.A.C. As I understand it, that
20 rule makes standard offer contracts available to "small qualifying facilities
21 less than 75 megawatts" Consistent with this provision, the Panda
22 Contract states in its title that it is from a "Qualifying Facility *Less Than 75*
23 *MW*" (Emphasis added). Specifically, the Panda Contract is titled
24 STANDARD OFFER CONTRACT FOR THE PURCHASE OF FIRM CAPACITY AND ENERGY
25 FROM A QUALIFYING FACILITY LESS THAN 75 MW OR A SOLID WASTE FACILITY.

1 **Q. What size facility did Florida Power understand Panda intended to**
2 **build?**

3 A. In accepting the standard offer from Panda, Florida Power understood that
4 the size of the facility Panda was proposing to build would be a facility of
5 approximately 75 MW. The Commission approved the Panda standard
6 offer proposal with its Order Granting Petition for Authority for Florida
7 Power Corporation to Refuse all Standard Offer Contracts Except that
8 Submitted by Panda Kathleen, L.P. in Docket 911142-EQ dated October
9 22, 1992. (Exhibit No. 1 (RDD-5))

10
11 **Q. Please briefly describe the essence of the communications between**
12 **Panda and Florida Power on the subject of Panda's facility size**
13 **between when the Panda Contract was signed in 1991 and mid-1994.**

14 A. From the time the contract was signed in late 1991 and approved by the
15 Commission in early 1992 through mid-1994, it is my understanding that
16 Panda consistently represented that it intended to construct a facility with
17 a net capacity of 74.9 MW. The only variance from that 74.9 MW size that
18 were discussed between Florida Power and Panda representatives was the
19 possibility that their would occasionally be infrequent times when the output
20 would be slightly above 74.9 MW for short periods of time.

21
22 For example, the first time I recall variances in the intended output of
23 Panda's facility being discussed was in a meeting with Don Kinney and Joe
24 Brinson (of Panda) on or about April 15, 1992 that I attended. At that time,
25 we were discussing the electrical interface between Panda and Florida

1 Power. In that context, they assured Florida Power that the facility output
2 would be 74.9 MW with the potential for transient conditions as high as 78
3 MW to 80 MW. An increase of 3 MW to 5 MW lasting only a short time
4 does not require redundant circuit design to assure system reliability. At
5 no time during this meeting did Panda representatives suggest that the
6 facility size would ever even approach 115 MW.

7
8 On or about May 1, 1992, I attended another meeting with a Panda
9 representative, Joe Brinson, who asked me if Panda could build a facility
10 greater than 75 MW. I told him at the time that I believed such a facility
11 would not be entitled to use the standard offer contract, or words to that
12 effect. I also told him, however, that the *Polk Power Partners* case that
13 was then pending before the Commission probably would better answer his
14 question, or words to that effect.

15
16 In July 1992, it appears from a document that Panda produced in
17 discovery, that Panda read about the *Polk Power Partners* decision of the
18 Commission in a publication known as the SOUTHEAST POWER REPORT. That
19 publication reported that "the PSC determined that *75 MW is the limit for*
20 *a project's total size* under Florida Administrative Code Rule 25-
21 17.0832(3)(a)." (Exhibit No. 1 (RDD-6) emphasis added.)

22
23 Panda's Darol Lindloff contacted Florida Power's Allen Honey in September
24 or October 1992 and again mentioned the possibility that Panda might
25 construct a facility greater than the 74.9 MW permitted under the terms of

1 the contract -- specifically, that it might, during irregular short periods,
2 produce as much as 80 MW. Panda did not inform Florida Power at this
3 time that it was contemplating a facility as large as 115 MW.

4
5 On or about November 12, 1992, Allen Honey faxed to Panda a full copy
6 of the Commission's *Polk Power Partners* decision to Panda. (Exhibit No.
7 1 (RDD-7)). After Mr. Honey faxed Panda a copy of the *Polk Power*
8 *Partners* decision, I am not aware that facility size was ever again
9 mentioned between Florida Power and Panda until June, 1994.

10
11 **Q. Please briefly describe the events that prompted Florida Power, in**
12 **early 1995, to believe an actual controversy had developed between**
13 **Panda and Florida Power regarding the size of Panda's facility that**
14 **needed to be resolved by the Commission through this proceeding.**

15
16 **A.** In June 1994, Florida Power learned that Panda had in fact abandoned its
17 plan to build a 75 MW and now intended to build a 115 MW (or larger)
18 facility. At a meeting in late June, 1994, Panda's representative informed
19 Florida Power's representatives for the first time that it was now planning
20 to construct a facility with a net capacity of 115 MW. Florida Power's
21 representative responded at the time by advising Panda that Florida Power
22 did not consider a facility of this size to be consistent with the standard
23 offer contract's 75 MW limitation adopted and approved under the
24 Commission's rules, and by urging Panda, if it intended to pursue the

1 enlarged facility, to obtain a ruling from the Commission regarding the
2 continued availability of the standard offer contract.

3
4 Panda did not seek a ruling from the Commission. Instead, Panda tried
5 several different times in June and July to get Florida Power to agree to
6 modify the Panda Contract to allow the larger facility. (Exhibits No. 1
7 (RDD-8) and (RDD-9). Florida Power responded to each of these
8 proposals. In response to the June proposed modification, David Gammon
9 of Florida Power faxed to Panda another copy of the *Polk Power Partners*
10 decision. In response to the July proposed modification, on August 3,
11 1994, Mr. Gammon wrote Panda and made it very clear that Florida Power
12 disagreed with the "interpretation" that Panda was trying to place on the
13 Panda Contract so that it could build a facility with an output as high as
14 115 MW. (Exhibit No. 1 (RDD-10)) Specifically, Mr. Gammon states
15 that:

16 [A]s you know, we are not in agreement with [Panda's] position
17 [that it may construct a 115 MW facility consistent with the
18 Standard Offer contract]. In fact, the Standard Offer Contract
19 specifically states that it is for the purchase of capacity and
20 energy by Florida Power "from a Qualifying Facility less than 75
21 MW."

22
23 **Q. Did Panda respond to Mr. Gammon's August 3, 1994 letter?**

1 A. Yes. By a letter dated August 10, 1994, Panda informed me that it
2 intended to "discuss equipment configuration with the . . . Commission . .
3 . to determine whether or not FPSC approval is required." (Exhibit No. 1
4 (RDD-11)) On September 8, 1994, I responded to that letter by again
5 expressing Florida Power's "concerns about the configuration's ability to
6 comply with the 75 MW limitations imposed on standard offer contracts .
7 . . ." I also stated I was pleased to see that Panda intended to consult the
8 Commission and that Florida Power would again address the facility size
9 issue after learning what action the Commission took on the subject.
10 (Exhibit No. 1 (RDD-12))
11

12 **Q. Did Panda seek a Commission ruling on this point?**

13 A. No, to the contrary in late December 1994 or early January 1995, I learned
14 that the only communication that Panda had had or intended to have with
15 the Commission on this subject was to discuss the matter on an informal
16 basis with one of the Commission's staff members. In early January, 1995,
17 I received from Panda a copy of a letter that had been written to Panda's
18 lawyer back in August, 1994, by Joseph Jenkins, a staff member employed
19 by the Commission. I had not received a copy of that letter at the time it
20 was written. Upon receipt, it finally became apparent to Florida Power that
21 Panda did not intend to seek any formal Commission ruling on this subject
22 and that Panda intended to construct a facility that was substantially larger
23 than that permitted under the Panda Contract anyway. Thus, Florida
24 Power recognized the existence of a controversy that needed to be

1 resolved, and filed its petition to obtain a definitive and binding ruling from
2 the Commission itself on this issue.

3
4 **Q. Why does Florida Power believe that the standard offer contract is no
5 longer available to Panda if it builds a 115 MW facility?**

6 A. The redesigned facility Panda now proposes to build is substantially larger
7 than the "less than 75 MW" limitation imposed on facilities eligible standard
8 offer contracts. The redesigned facility apparently will produce on a
9 consistent basis net electrical output of 115 MW or more. This is not an
10 issue of transient and small variances. Florida Power understands
11 Commission Rule 25-17.0832, F.A.C., to limit the availability of standard
12 offer contracts to facilities with a capacity of less than 75 MW. Subsection
13 (3)(a) of the rule requires that "each public utility shall submit for
14 Commission approval a tariff or tariffs and a standard offer contract or
15 contracts for the purchase of firm capacity and energy from small qualifying
16 facilities less than 75 megawatts" Likewise, subsection (3)(c) of the
17 rule provides: "In lieu of a separately negotiated contract, a qualifying
18 facility under 75 megawatts . . . may accept any utility's standard offer
19 contract." Since Panda's proposed facility is substantially larger than 75
20 MW, it is my understanding from these rules that Panda's facility would not
21 comply with the standard offer contract, and hence the standard offer
22 contract cannot be used by Panda to sell the facility's capacity and energy
23 to Florida Power.

1 Q. What does Florida Power understand the relationship to be between
2 the "committed capacity" phrase used in the Panda Contract and the
3 facility size limitation of "less than 75 MW" used in Rule 25-
4 17.0832(3)(a) and (c)?

5 A. Florida Power has understood since prior to when the Panda Contract was
6 signed that the rule limits the size of the facility to one having a net
7 generating capacity of less than 75 MW, because the language of the Rule
8 says as much, and because the purpose of the rule is to place small
9 facilities on a relatively even playing field from a bargaining position
10 standpoint with utilities. The term "Committed Capacity" is defined in the
11 Panda Contract as follows:

12 the KW capacity, as defined in Article VI [sic - VII] hereof, which
13 the QF has agreed to make available on a firm basis at the Point
14 of Delivery.

15 As I read the rule, it contemplates that a QF developer desiring to avail
16 itself of a utility's standard offer first is supposed to design a facility that
17 satisfies the 75 MW facility size limitation. The QF then is supposed to use
18 that facility size to derive the committed capacity.

19
20 Panda, on the other hand, started with the premise that the rule limitation
21 somehow sanctioned a committed capacity of 74.9 MW and that, since it
22 is contractually bound to deliver that capacity, it is now justified in enlarging
23 a facility to substantial more than 75 MW -- in this case 40 MW more. The
24 flaw in Panda's approach is that the standard offer *rule says nothing about*

1 *the size of a contract's committed capacity*; it simply limits the *size of the*
2 *facility* to less than 75 MW.

3
4 The Commission's decision in *Polk Power Partners* confirmed Florida
5 Power's understanding in this regard when the Commission stated:

6 If "committed" capacity, rather than total net generating
7 capacity were the measure by which to calculate the 75 MW
8 cap, QF's of any size could participate in standard offer
9 contracts, contrary to the clear intent of the rules to preserve
10 such participation to small QF's.

11 * * *

12 Accordingly, we decline Polk's Petition to issue the
13 statement requested. We state instead that the 75 MW cap
14 referenced in Rule 25-17.0832(3)(a) refers to the total net
15 generating capacity of the QF.

16 Order No. PSC-92-0683-DS-EQ, issued July 21, 1992 in Docket No.
17 920556-EQ. (Exhibit No. + (RDD-7)) As noted above, Florida Power,
18 on at least two occasions, one in late 1992 and again in early July 1994,
19 provided Panda with a copy of this decision.

20
21 In short, the Commission ruled that the language of the 75 MW limitation
22 means what it says; the standard offer is available only to facilities less
23 than 75 MW. Since the facility Panda now proposes to build is
24 substantially greater than 75 MW, Florida Power believes it follows that a

1 standard offer contract is not available for the sale of such a facility's
2 capacity and energy.

3
4 **Q. What would have happened if Panda had proposed a 115 MW facility**
5 **when its original proposal was submitted to Florida Power in 1991?**

6 A. Florida Power would have rejected that proposal. A 115 MW facility would
7 not have qualified for the standard offer under the rule. Instead, one or
8 more of the other proposals, all of which were for facilities less than 75
9 MW, would have been selected. Panda should not be rewarded by a
10 different result simply because the disclosure of its ultimate intentions was
11 delayed until after the selection process had been completed.

12
13 **Q. How will Florida Power be affected if the Panda standard offer**
14 **contract were to be served by a 115 MW facility?**

15 A. Under those circumstances, Florida Power could be forced to purchase all
16 of the output of the facility above 74.9 MW as as-available energy. Florida
17 Power does not believe Panda's proposed unilateral increase in production
18 represented by the 115 MW facility that Panda proposes to build is not
19 matched by a corresponding increase in demand by the public for
20 electricity. The need to accommodate this additional generation would
21 alter the dispatch of the existing Florida Power system and, in some cases,
22 would result in the need to incur the costs of additional shutdowns and
23 startups of the Company's generating units, particularly during periods
24 approaching minimum load conditions.

1 For example, if Florida Power had been forced, over the past year, to
2 receive the additional 40 MW of as-available energy Panda now wants to
3 be able to produce with its 115 MW facility, Florida Power's oil-fired units -
4 - the Anclote and Bartow plants -- would have incurred between 10 and 20
5 additional shutdowns/startups at a cost of \$8,000 to \$16,000 each. Stated
6 another way, this factor alone would have cost Florida Power and its
7 ratepayers an additional \$80,000 to \$320,000 just for the last year, had
8 Panda been on line at the beginning of 1995.

9
10 **LIMITATION ON THE DURATION OF CAPACITY PAYMENTS**

11
12 **Q. Please summarize Florida Power's position concerning the dispute**
13 **between Panda and Florida Power regarding the duration of capacity**
14 **payments under the standard offer contract.**

15 A. Florida Power contends that Commission Rule 25-17.0832(3)(e)(6), in
16 conjunction with Schedule 2 to Appendix C of the Panda standard offer
17 contract, dictates the period of time during which firm capacity and energy
18 can be delivered under the contract. The rule specifies both the minimum
19 and the maximum time periods for delivery of firm capacity and energy.
20 After establishing that the minimum period for such delivery shall be 10
21 years, the rule goes on to state:

22 At a maximum, firm capacity and energy shall be delivered for a
23 period of time equal to the anticipated plant life of the avoided
24 unit, commencing with the anticipated in-service date of the
25 avoided unit. (emphasis added).

1 In Docket No. 910004-EU, the Commission approved as the plant life for
2 Florida Power's avoided unit a period of 20 years. Consistent with that
3 approval, Schedule 2 of Appendix C to the Panda standard offer contract
4 expressly provides that the economic plant life of the avoided unit is 20
5 years. In addition, the schedule of capacity payments contained in
6 Schedule 3 of Appendix C to the contract is defined only through 2016, a
7 20-year period; there is no agreement as to the price to be paid for
8 capacity that applies after the twentieth year. Therefore, Florida Power
9 contends that under Rule 25-17.0832(3)(e)(6) and under the standard offer
10 contract entered into pursuant thereto, the maximum period of time for the
11 delivery of firm capacity and energy under the Panda standard offer
12 contract is 20 years and the payments to be made are those set forth in
13 Schedule 2 and 3 of Appendix C.

14
15 On the other hand, Panda apparently contends that it is entitled to capacity
16 payments through "March, 2025," because (i) it filled that date in a blank
17 for the contract's expiration date in the standard offer contract form, and (ii)
18 because it alleges Florida Power agreed to do so after entering into the
19 Panda Contract. Thus, in effect, Panda contends that those events
20 somehow supersede the rule. On that basis, Panda takes the position that
21 Florida Power is obligated to make capacity payments in some amount
22 unspecified in the standard offer contract for a period in excess of 8 years
23 after the year 2016.

1 **Q. What is Florida Power's position regarding Panda's assertion that the**
2 **actions of the parties to the standard offer contract have modified the**
3 **period for capacity and energy payments beyond the period specified**
4 **by Commission rule?**

5 A. Florida Power contends that Rule 25-17.082(3)(e)6 controls the duration of
6 capacity payments under a standard offer contract, and the parties to such
7 a contract have no authority to alter those restrictions. Thus, the
8 assertions of Panda in this regard, even if they were true, are simply not
9 germane to the issue. Florida Power would not have the authority to
10 modify this provision without a rule change and a ruling from the
11 Commission.

12
13 Moreover, Florida Power has not engaged in any conduct subsequent to
14 acceptance of the standard offer proposal submitted by Panda that has
15 modified or even been intended to modify the contract on this issue.
16 Indeed, several times between 1991 and now, Panda has suggested
17 various proposed contract modifications on this subject, and Florida Power
18 has never accepted any one of them, much less sought permission from
19 the Commission to accept any one of Panda's proposals.

20
21 **Q. What would be the effect if Panda were to receive capacity payments**
22 **for more than the Commission approved 20-year plant life of Florida**
23 **Power's avoided unit?**

24 A. If Panda were to receive capacity payments for 28 years 3 months instead
25 of the 20 year plant life approved by the Commission, Florida Power and

1 its ratepayers would be forced to pay substantially more than the cost of
2 the avoided unit that is the subject of the Panda Contract. This would be
3 contrary to the avoided cost pricing principles of PURPA. This excessive
4 payment was not known by Florida Power until after the contract was
5 signed and Panda sought to obtain a modification that would specify
6 additional capacity payments. Not only would this be a detriment to Florida
7 Power, but it also would result in an unwarranted windfall to Panda.
8 Consistent with the concept of avoided cost pricing, it is my understanding
9 that Rule 25-17.0832(3)(e)6 sets a maximum time period for delivery of firm
10 capacity and energy equal to the life of the avoided unit because the
11 capacity payments are based on the revenue requirements of the avoided
12 unit. Obviously, the revenue requirements of a unit with a 20-year life end
13 after 20 years. Revenue requirements calculations include the depreciation
14 of the capital, taxes, and fixed O&M expenses, as well as profits.
15 Depreciation, of course, is a function of the length of the economic life,
16 making the revenue requirements dependent on the specific avoided unit's
17 plant life. Value of deferral is calculated to defer the net present value of
18 the revenue requirements each year up to the end of the life of the avoided
19 unit.

20
21 Had Florida Power invested in a plant with a life of 28 years 3 months,
22 instead of 20 years, the depreciation of the plant over a 28-year period
23 would result in substantially lower annual payments than depreciating a 20-
24 year plant over 20 years (because the incremental increased cost of
25 building a 28 year plant as opposed to a 20 year plant is not substantial).

1 Panda, however, does not want a 28-year value of deferral payments for
2 a 28-year plant. Rather, it wants the equivalent of the value of deferral
3 payments for a first avoided unit with a 20 year plant life (which would be
4 completely depreciated after the 20 years), followed by 8 years 3 months
5 of deferral payments for what would have amounted to a second avoided
6 unit (with exactly the same characteristics of the first) even though such a
7 second unit was not the subject of this contract. Panda, in short, wants
8 capacity payments not provided by its standard offer contract and Rule 25-
9 17.0832(3)(e)6. This in essence would have required ^{Florida Power} ~~Panda~~ to make
10 planning decisions years in advance of when that planning process and
11 decision otherwise would have been made. To illustrate the significance
12 of this, Florida Power has experienced over the last four years substantial
13 decreases in the cost of combustion turbines and increases in efficiency
14 that would have rendered that type of extraordinarily premature planning
15 obsolete before its time. Panda's attempt to receive such a windfall, at the
16 expense of Florida Power and its ratepayers, should be rejected by this
17 Commission.

18 19 EXTENSION OF CONTRACT MILESTONE DATES

20
21 **Q. What is Florida Power's position regarding the effect of Panda's**
22 **failure to commence construction by the January 1, 1996 extended**
23 **construction commencement milestone deadline?**

1 A. The Panda Contract plainly provides that:

2 15.1 PRE-OPERATIONAL EVENTS OF DEFAULT

3 Any one or more of the following events occurring before the
4 Contract In-Service Date for any reason, *except events caused by the*
5 *Company*, shall constitute a Pre-Operational Event of Default and
6 shall give the Company the right, without limitation, to exercise the
7 remedies specified under section 15.2 hereof:

8 * * * *

9 15.1.4 The Construction Commencement Date has not occurred
10 on or before the date specified in Article IV hereof, as extended
11 only pursuant to said Article IV.

12 * * * *

13 15.1.6 The Facility fails to achieve Commercial In-Service Status
14 on or before the Contract In-Service Date.

15 Florida Power has not caused any event that has prevented Panda from
16 meeting the contract milestones represented by the Construction
17 Commencement Date and the Contract In-Service Date.

18
19 Panda's failure to meet the Construction Commencement Date milestone
20 is a product of Panda's actions, not Florida Power's actions. Panda's
21 desire to modify the Panda Contract so that it can construct a larger facility
22 than is permitted under the Panda Contract and its failure to take action
23 early enough to have the issues raised by that desire resolved, appear to
24 be the reason for the delay. Panda has done virtually nothing on a timely
25 basis to obtain a certain resolution of the dispute on this point. To the

1 contrary, even though Panda, as I understand it, was aware of the
2 Commission's *Polk Power Partners* decision as early as 1992 and had
3 received advice from its in-house general counsel at the time that it could
4 not construct a facility that was materially larger than 75 MW, and even
5 though Florida Power told Panda when it first raised this issue in 1994, that
6 it would have to get a commission ruling, Panda did not affirmatively bring
7 the issue before the commission until March 14, 1995, when it filed its
8 MOTION FOR DECLARATORY STATEMENT AND OTHER RELIEF as a "counter-petition"
9 in this proceeding.

10
11 Then, rather than seek a prompt and expeditious ruling on the competing
12 petitions for declaratory statement, I understand that Panda asked for this
13 evidentiary hearing (delaying a definitive ruling by the Commission for a
14 substantial period). Adding to this delay, since August, 1995, as I
15 understand it, Panda has filed every motion conceivable to try to delay
16 even further, rather than obtain a definitive, binding ruling on the issues.

17
18 Since Panda has now failed to begin construction of a less than 75 MW
19 facility prior to the Construction Commencement Date, through no fault of
20 Florida Power, Florida Power is of the view that Panda is in default and is
21 not entitled to a modification of the Panda Contract to eliminate that default
22 through an extension of the contract milestone dates.

23
24 **Q. Does this conclude your testimony?**

25 **A. Yes.**

1 CHAIRMAN CLARK: Now let's -- as I understand
2 it, we had all agreed that we would do the rebuttal at
3 the same time?

4 MR. MCGEE: No, ma'am.

5 CHAIRMAN CLARK: No, we did not? Okay.

6 MR. MCGEE: I think we agreed to separate it.

7 CHAIRMAN CLARK: That was something that was
8 to be worked out after the prehearing, right?

9 MS. BROWN: Yes, and it was never really
10 worked out, I don't think. And so I think we are left
11 with keeping direct first and --

12 CHAIRMAN CLARK: I think that's fine, because
13 it's only Mr. Dolan that has, or is it Mr. Killian --

14 MR. ROSS: We have two that have brief
15 additional rebuttal.

16 CHAIRMAN CLARK: And we will take them in the
17 order shown in the prehearing order and we will not take
18 up rebuttal at the same time as direct for each of those
19 witnesses.

20 BY MR. MCGEE:

21 Q Mr. Dolan, would you give us a summary of your
22 testimony, please?

23 A Yes, I would. My direct testimony primarily
24 covers three areas: The size of the facility permitted
25 under this commission's rules, the duration of capacity

1 payments, and the contract milestone dates for the
2 construction commencement date and the in-service date
3 of the facility.

4 The Commission's rules seem so straightforward
5 that no elaborate interpretation seems necessary. Let
6 me take a few seconds to quote the relevant parts of
7 these rules. Regarding size, Rule 25-17.0832(3)(c), "In
8 lieu of a separately negotiated contract, QF under 75
9 megawatts or a solid waste facility may accept any
10 utility standard offer. QFs which are 75 megawatts or
11 greater may negotiate contracts."

12 An excerpt from Commission Rule
13 25-17.0832(3)(a), it uses the term, "from a small QF
14 less than 75 megawatts or a solid waste."

15 The Polk Power Partners' decision, which is
16 not a rule, but a previous ruling from the Commission,
17 in Order No. PSC 92-0683-DS-EQ in Docket 920556-EQ
18 issued 7-21-92, "If committed capacity, rather than
19 total net generating capacity, were the measure by which
20 to calculate the 75 megawatt cap, QFs of any size could
21 participate in standard offer contracts, contrary to the
22 clear intent of the rules to preserve such participation
23 for small QFs."

24 Panda intends to build a facility that
25 delivers 150 -- 115 megawatts day in and day out. This

1 is clear to Florida Power since we purchase capacity
2 from an almost identical facility as Panda proposes,
3 Orlando CoGen Limited.

4 Regarding term, the Commission rule on that
5 states, 25-17.0832(3)(e)(6), "Capacity payments, at a
6 maximum, shall be equal to the anticipated plant life of
7 the avoided unit, or as Florida Power references in our
8 contract, the economic life."

9 Panda would like to see the capacity payments
10 extended beyond the life of the avoided unit to the
11 detriment of FPC's ratepayers and this could be
12 approximately a net present value of 11.6 million.

13 Under milestones, it's in my testimony that
14 Panda had serious concerns very early in the development
15 process whether they could construct a facility larger
16 than 75 megawatts, and to extend their milestones, when
17 they could have resolved these issues in a timely manner
18 before this commission, seems contrary to common sense
19 and would reward their irresponsible behavior. That's
20 all of my summary.

21 MR. MCGEE: Tender Mr. Dolan for
22 cross-examination.

23 CHAIRMAN CLARK: Thank you. Mr. Ross.

24 MR. ROSS: Your Honor, I have to state an
25 objection to that summary. He made several factual

1 statements that are nowhere in his direct testimony.
2 And therefore he has just attempted to supplement his
3 direct testimony by his summary, which I understand to
4 be a violation of the rules of this.

5 CHAIRMAN CLARK: It is. Would you be more
6 specific as to what you object to?

7 MR. ROSS: Yes. He specifically just tried to
8 summarize the facts regarding the Orlando cogeneration
9 facility. He's made the statement that our plant, as we
10 propose it, would always put out 115 megawatts because
11 it's similar to the Orlando CoGen plant. Aside from the
12 fact that we believe that to be factually false, that is
13 nowhere in his testimony, and obviously we've had no
14 opportunity to even address that up until now, because
15 it was not in his testimony.

16 I also understood him to say that there was a
17 net present value of some \$11.6 million in cost to
18 Florida Power increased by virtue of our facility. I
19 think that's what he said. I was a little unsure what
20 he was saying because, again, that is nowhere in his
21 direct testimony, and I'm not even quite clear what he's
22 referring to.

23 CHAIRMAN CLARK: As I understand your
24 objection, you would move to strike the references to
25 the -- as an example, the Orlando CoGen facility which

1 produces, according to his statement just now, 115
2 megawatts, and the notion that the net present value of
3 the additional contract term is \$11 million.

4 Mr. McGee, will you respond to that, please?

5 MR. MCGEE: I think Mr. Ross is correct that
6 the Orlando CoGen facility is not referred to in his
7 direct testimony. It is referred to in terms of the
8 similarity between that facility and the one that's
9 proposed by Panda in his rebuttal testimony.

10 CHAIRMAN CLARK: Does it specifically say
11 Orlando CoGen?

12 MR. MCGEE: There's a sentence that says, "In
13 fact, these two facilities, Polk Power Partners,
14 (Mulberry) and Orlando CoGen," and there's a
15 parenthetical phrase which says, "which both utilize
16 equipment nearly identical to Panda's proposed
17 configuration."

18 CHAIRMAN CLARK: What about the net present
19 value?

20 MR. MCGEE: I don't believe that is in his
21 direct testimony.

22 CHAIRMAN CLARK: I'm going to go ahead and
23 strike both those statements. And it seems to me that
24 when he summarizes his rebuttal it can be done in that
25 context.

1 Go ahead, Mr. Ross.

2 CROSS-EXAMINATION

3 BY MR. ROSS:

4 Q Mr. Dolan, excuse me, let me begin by
5 discussing some of the other contracts that Florida
6 Power has similar in nature to ours. As I understand
7 it, in 1991, Florida Power made standard offer contracts
8 available for up to 80 megawatts of committed capacity;
9 is that correct?

10 A What time frame did you say?

11 Q In 1991.

12 CHAIRMAN CLARK: Mr. Dolan, bring the
13 microphone down a little bit. Thank you.

14 WITNESS DOLAN: They could be up to 80
15 megawatts for a solid waste facility.

16 BY MR. ROSS:

17 Q Maybe you misunderstood my question. The
18 total megawatt capacity available for standard offer
19 contracts in 1991 was 80 megawatts; isn't that correct?

20 A We set aside in 1991, at the APH, 80 megawatts
21 of a 150-megawatt unit, for standard offer.

22 Q And of that 80 megawatts, 74.9 megawatts of
23 that total capacity was subscribed for by the Panda
24 contract, correct?

25 A That's correct.

1 Q The remaining 5.1 megawatts set aside for
2 standard offers in 1991 was ultimately subscribed for by
3 U.S. Agricultural, correct?

4 A That's correct.

5 Q And so they have entered into a standard offer
6 contract with Florida Power for a committed capacity of
7 5.1 megawatts, correct?

8 A That's correct.

9 Q But the actual size of the facility that U.S.
10 Agriculture built to serve that contract puts out around
11 32 megawatts, correct?

12 A That's not correct. They did not build a
13 facility to serve that contract.

14 Q I'm sorry, they already had a facility?

15 A They had a facility that was built in the
16 early eighties that has a generating capacity of
17 approximately 32 megawatts.

18 Q And that's the --

19 A And of that --

20 CHAIRMAN CLARK: Just a minute. Mr. Ross, let
21 him finish his answer.

22 WITNESS DOLAN: And of that, they consume on
23 site, running their phosphate plant, between 22 and 27
24 megawatts.

25 BY MR. ROSS:

1 Q So they use 22 to 27 megawatts. I believe you
2 said at your deposition 20 to 25 megawatts. That's
3 about right, correct?

4 A Yes.

5 Q And in fact Florida Power buys all of the
6 excess energy of that facility that is produced and that
7 is not used in their own phosphate facility, correct?

8 A That's correct.

9 Q And in fact, even though the committed
10 capacity under the standard offer of that contract is
11 5.1 megawatts, Florida Power is buying 5 to 10 megawatts
12 of electricity from U.S. Agriculture Plant, on the
13 average, correct?

14 A That's correct. U.S. Ag probably would have
15 signed the contract for 10 megawatts if there would have
16 been 10 megawatts of capacity available under the
17 standard offer.

18 Q So they're getting -- their standard offer
19 contract that they signed, the U.S. Agriculture, is
20 identical to the Panda standard offer contract, correct?

21 A Almost identical.

22 Q Except for the term and the committed
23 capacity, the things that you fill in. Otherwise it's
24 the same standard offer contract form, correct?

25 A That's correct.

1 Q So they -- just so we're clear, they have a
2 5.1 megawatt committed capacity, but you purchase every
3 month, on the average, 5 to 10 megawatts from them,
4 correct?

5 A On -- typically, they make each hour between 5
6 and 10 megawatts. It varies. Sometimes they don't sell
7 us any capacity.

8 Q Mr. Dolan, I want to show you a document that
9 I marked at your deposition as Deposition Exhibit 108.
10 You're familiar with that document; are you not?

11 A Yes.

12 MR. ROSS: Commissioner, I just would like to
13 ask what is your convention as far as identifying
14 cross-examination exhibits?

15 CHAIRMAN CLARK: We will identify it as
16 Exhibit 2. If you will give a copy to the court
17 reporter and each of the commissioners and the parties,
18 then we'll proceed.

19 Exhibit 2 is a Deposition Exhibit 108 from
20 Mr. Dolan's deposition. Do you have a date that
21 deposition was taken?

22 MR. ROSS: Yes, I do. That deposition was
23 taken on -- well, the first part of it was taken on
24 January the 19th, 1996.

25 (Exhibit No. 2 marked for identification.)

1 MR. ROSS: So this will be identified as
2 Exhibit 2?

3 CHAIRMAN CLARK: In this proceeding, yes, it
4 will. Let me ask a question. Is there -- this is not a
5 confidential exhibit?

6 MR. ROSS: My understanding of -- although
7 lots of things were marked as confidential when
8 originally produced, my understanding was Florida Power
9 was going to let us know today if there was any of these
10 that they actually wanted to identify as confidential.

11 CHAIRMAN CLARK: It's not on the list,
12 Mr. McGee?

13 MR. MCGEE: We have no claim for
14 confidentiality on this.

15 CHAIRMAN CLARK: Okay, thank you.

16 BY MR. ROSS:

17 Q Do you recognize that document, Mr. Dolan?

18 A Yes.

19 Q To the best of your knowledge, this document
20 is a list of the existing QF contracts that Florida
21 Power had at the time that it was created, which was in
22 September of 1993?

23 A Yes.

24 Q Addressing your attention to -- let's identify
25 it as Page 3 of 4 in this document, the second one on

1 the list referred to is Ark Energy. You see that?

2 A Yes.

3 Q It's correct, is it not, that that Ark Energy
4 facility described there is the same facility that was
5 the subject of the Polk Power Partners' decision that's
6 been talked about in this proceeding? That's correct
7 isn't it?

8 A Yes.

9 Q Now at the present time, that facility
10 actually serves two different contracts; is that
11 correct?

12 A That's correct. And in the Polk Power
13 Partners' case they were going to serve two different
14 contracts. They just presently serve two negotiated
15 contracts both selling to Florida Power.

16 Q And the two contracts that that facility
17 serves are the one known as Mulberry, which is the
18 second one in the list, and the one known as Royster
19 Phosphates, the third one on the list; is that correct?

20 A That's correct. There has been a change in
21 this, that they increased the committed capacity of the
22 Mulberry contract to 79.2 and the Royster to 30.8, for a
23 total committed capacity of 110 megawatts.

24 Q At the time that this document was created,
25 the total megawatt capacity to be served from that

1 facility was 100 manage megawatts, correct?

2 A I believe they had told us they were going to
3 increase to 110. They just weren't required by the
4 contract.

5 CHAIRMAN CLARK: Mr. Dolan, you need to not
6 trail off when you give your answers, because I don't
7 always hear what you're saying.

8 And along those lines, did you indicate that
9 both those contracts on Page 3 were negotiated
10 contracts?

11 WITNESS DOLAN: Yes, ma'am, they were both in
12 the Florida Power bid in March of '91.

13 CHAIRMAN CLARK: Go ahead, Mr. Ross.

14 BY MR. ROSS:

15 Q At one time the facility served a standard
16 offer contract, did it not, the TECO standard offer
17 contract?

18 A Yes. Prior to the Orange facility coming on
19 line they served the -- for like six months, the 23
20 megawatt TECO contract.

21 Q And at that time it was serving both the TECO
22 standard offer contract and a negotiated contract from
23 that same facility, correct?

24 A No, it was serving all three.

25 Q All three contracts, a standard offer contract

1 and two negotiated contracts from that facility?

2 A It was serving these two negotiated
3 contracts. They had not increased it to 110 yet because
4 they were waiting to transfer the contracts, and the old
5 TECO standard offer contract of 23 megawatts.

6 Q Thereafter the TECO standard offer contract
7 was moved to the Orange facility, correct?

8 A That's correct.

9 Q That's the last facility shown on Page 4 of
10 this document, correct?

11 A That's correct.

12 Q And that's a facility that shows on your list
13 106 megawatts; that's correct?

14 A That's correct.

15 Q And that is -- would you refer to that as the
16 nominal megawatt rating of that facility?

17 A It's the output that it typically makes. It
18 isn't quite 106 anymore. It's about 104. It never
19 quite got to 106.

20 Q Do you know if any of the ratings of
21 facilities that are contained in this document are
22 ratings that are shown at ISO conditions?

23 A The ratings appear to be more just typical
24 ratings.

25 Q To the best of your knowledge, these are not

1 ISO ratings?

2 A No, they're -- ISO probably are slightly
3 higher than these.

4 CHAIRMAN CLARK: Mr. Dolan, what is ISO
5 again?

6 MR. ROSS: ISO it's all caps, I-S-O. It
7 stands for international standards organization. I
8 think that's what it stands for. My witness will
9 correct me if I'm wrong.

10 WITNESS DOLAN: But an ISO rating isn't
11 necessarily a rating you would use on a cogen facility.
12 It's a rating that the turbine manufacturers discuss if
13 all steam is going to electrical production. And these
14 ratings are more taking into account the facilities that
15 were built, including the steam host.

16 BY MR. ROSS:

17 Q The Orange facility is currently serving two
18 separate contracts, correct?

19 A That's correct.

20 Q One of them is the 23 megawatt committed
21 capacity TECO standard offer contract that was moved to
22 that facility?

23 A That's correct.

24 Q And the other is a 74 megawatt negotiated
25 contract with Florida Power, correct?

1 A That's correct. But now, that's almost
2 misleading. The negotiated contract with us is the old
3 CFR contract, and it did not allow the contract's
4 committed capacity to be increased. It was capped at
5 74, or they probably would have increased that and would
6 be selling us 104 minus 23, which would be 81
7 megawatts.

8 Q You're also familiar with the Tiger Bay
9 facility, correct?

10 A That's correct.

11 Q I believe the Tiger Bay facility is presently
12 serving five contracts; is that right?

13 A That's correct.

14 Q One of those is a six megawatt standard offer
15 contract?

16 A One of them is an old six megawatt standard
17 offer contract from the 1988 time frame.

18 Q The -- go back to Page 3 of 4 on this list of
19 your projects. The next one after Ark Energy is
20 El Dorado Energy; you see that?

21 A That's correct.

22 Q Is that the same project that we -- is
23 frequently referred to as the Auburndale project?

24 A It originally was called El Dorado, and the
25 name was changed somewhere through time to Auburndale.

1 Q So that is what we refer to today as the
2 Auburndale project?

3 A That's correct.

4 Q And the total committed capacity under all
5 contracts that the Auburndale facility is presently
6 serving is 131 megawatts; isn't that correct?

7 A I think it's 131.18 megawatts.

8 Q And on your list you show that the output, the
9 nominal output, I think is what you called it before, of
10 that facility is 150 megawatts, correct?

11 A That's correct, but Auburndale would love to
12 sell that additional 18 or 19 megawatts to someone and
13 has approached Florida Power numerous times about if we
14 would be interested in purchasing.

15 Q I'm sure they would. There are two standard
16 offer contracts being served out of the Auburndale
17 facility among those five; is that correct?

18 A That's correct. There are two of the older
19 standard offer contracts from '88, '89 time frame and
20 those would be served out of the Biomass facilities in
21 Monticello and Madison.

22 Q Both of those standard offer contracts are for
23 about seven and a half megawatts of committed capacity,
24 correct?

25 A I think they're eight and a half megawatts

1 each.

2 Q Let's turn, if we could, to the process that
3 led us to the standard offer contract in this case. In
4 1991 Florida Power put out a -- I guess an RFP for
5 negotiated contracts, correct?

6 A In January of '91, yes.

7 Q And you were directly involved in that
8 process, negotiating those contracts for Florida Power?

9 A I didn't hear your question.

10 Q You were directly involved yourself in that
11 process, for the negotiated contracts for Florida Power?

12 A Well, I was involved early on in that process
13 and then when the actual bid took place, I was working
14 on the bid that was being submitted by Pasco Cogen and
15 Lake Cogen, because I was working for a cogen
16 development subsidiary, Florida Progress, at that time.

17 Q But you were directly involved in developing
18 the negotiated contracts in the bid process, correct?

19 A I was involved prior to December of 1990 in
20 helping to develop the contract that eventually was used
21 in that bid process.

22 Q In fact, when Florida Power was negotiating
23 contracts with prospective cogenerators in 1991, Florida
24 Power wanted to use a standard form contract for the
25 negotiated contract; did it not?

1 A Yeah, we had talked about using the standard
2 form for ease of administration.

3 Q There were a total of eight negotiated
4 contracts signed in that bid process in 1991?

5 A That's correct.

6 Q And Florida Power, in fact, used essentially
7 the same form contract for each one of those negotiated
8 contracts, correct?

9 A That's correct.

10 Q As a matter of fact, isn't it true that
11 Florida Power required all of the winning bidders to
12 execute virtually identical contracts?

13 A I don't believe you can require anybody to do
14 anything. I think the word that was used was
15 encouraged.

16 Q Mr. Dolan, let me show you an exhibit that I
17 marked as Exhibit 102 at your deposition and ask that
18 that be identified as Exhibit 3.

19 CHAIRMAN CLARK: Deposition Exhibit 102 from
20 Mr. Dolan's January 19th, 1996 deposition will be marked
21 as Exhibit 3.

22 (Exhibit No. 3 marked for identification.)

23 MR. ROSS: By the way, Commissioner, I am done
24 with that last exhibit. Let me just formally move that
25 last exhibit, or do you want me to do them all at the

1 end?

2 CHAIRMAN CLARK: We do it at the end.

3 MR. ROSS: That's fine.

4 BY MR. ROSS:

5 Q Mr. Dolan, this is in fact -- Exhibit 3 is in
6 fact an affidavit that you filed in the federal district
7 court for the Middle District of Florida in the case of
8 Orlando CoGen, et al., vs. Florida Power Corporation,
9 correct?

10 A Yes, that's what it appears to be.

11 Q And you signed this affidavit under oath on
12 March the 24th, 1994; isn't that correct, sir?

13 A That's correct.

14 Q If you'll turn to Page 9, paragraph 18 of your
15 affidavit that you filed with the federal court, would
16 you please just read the first sentence of your
17 affidavit?

18 A Which paragraph?

19 Q Page 18 on -- excuse me, paragraph 18 on Page
20 9, would you just please read for me the first sentence
21 of that paragraph?

22 A "FPC required all the winning bidders to
23 execute virtually identical contracts for two reasons."

24 Q Okay.

25 A It goes on further to say that certain changes

1 in the contracts were offered to FPC and modified.

2 Q Okay. Let me next show you Exhibit 135 from
3 your deposition, which I'll ask be identified as Exhibit
4 4.

5 CHAIRMAN CLARK: Deposition Exhibit 135 from
6 Mr. Dolan's January 19th, 1996 deposition will be marked
7 as Exhibit 4.

8 (Exhibit No. 4 marked for identification.)

9 BY MR. ROSS:

10 Q Mr. Dolan, Exhibit 4 is in fact one of the
11 eight negotiated contracts that were entered into in
12 1991 by Florida Power?

13 A Yes.

14 Q This happens to be the one with Orlando CoGen?

15 A Yes.

16 Q All of the negotiated contracts that you
17 entered into in 1991 were submitted to this commission
18 for approval before they were signed by Florida and the
19 cogen, correct?

20 A No.

21 Q That is not correct?

22 A (Indicates negatively). The contracts were
23 executed by both parties and then submitted to the
24 Commission for approval.

25 Q Okay. I stand corrected. They were signed by

1 the parties and then submitted for approval, the
2 negotiated contracts?

3 A Yes. You stated it the other, that we had
4 them approved and then signed them.

5 Q All right. In fact, all contracts that you
6 entered into, whether they be negotiated contracts or
7 standard offer contracts, are submitted to this
8 commission for approval, correct?

9 A All contracts that we've signed have been
10 submitted to the Commission. How did you phrase the
11 question?

12 Q That's what I said. They were all submitted
13 to the Commission for approval. The standard offer
14 contracts, such as the one signed by Panda are actually
15 submitted for approval to the Commission twice; isn't
16 that correct?

17 A Yes, the form of the contract is approved by
18 the Commission prior to execution, since it's a tariff,
19 and then Florida Power has submitted them again to the
20 Commission for approval.

21 Q When this commission approves a negotiating --
22 a negotiated contract, it's approving, among other
23 things, the avoided cost rates in that contract,
24 correct?

25 A It's approving the things that are stated in

1 the Commission rules on negotiated contracts.

2 Q One of those is the avoided cost rate; isn't
3 that correct?

4 A Which includes avoided cost.

5 Q The Commission is also approving the right of
6 Florida Power to pass on those costs to its ratepayers,
7 correct?

8 A That's correct.

9 Q And it's approving the fact that the contract
10 is in fact deferring capacity that would otherwise be
11 needed, correct?

12 A That's correct.

13 Q Now, when the standard offer contracts are
14 submitted to this commission for approval, the
15 Commission is approving those contracts for the very
16 same purposes, correct?

17 A When the Commission approves a standard offer
18 contract, it's also approving the form of the contract.

19 Q That's in addition to the three purposes I
20 just listed, correct?

21 A I'm not sure the negotiated contracts -- it's
22 not just those three purposes that they're approving
23 them for.

24 Q Among other things?

25 A That's correct.

1 Q But the same purposes are approved by this
2 commission when it approves a standard offer contract,
3 in addition to approving the form of the contract?

4 A That's correct.

5 Q As a matter of fact, unlike the situation with
6 the negotiated contract, when this commission approves a
7 standard offer contract, it actually does a
8 section-by-section analysis of that standard offer
9 contract; isn't that correct?

10 A That's correct.

11 Q The negotiated contracts that you entered into
12 in 1991 all have a regulatory out clause, correct?

13 A That's correct. I'm not sure if everybody
14 understands what a reg out clause is.

15 Q I'm sure if there's somebody has a question
16 about that they'll ask. When Florida Power proposed the
17 standard offer contract that ultimately became the Panda
18 standard offer contract, you originally proposed having
19 a regulatory out clause in that contract as well, didn't
20 you?

21 A That's correct.

22 Q But when this commission approved the Panda
23 standard offer contract, both when it approved it as a
24 form, it required Florida Power to take out the
25 regulatory out clause, correct?

1 A Not when it approved the Panda contract.

2 Q I said when it approved it as a form.

3 A When it approved it as a form, and you had
4 both those in your question.

5 Q That's right. I'm sorry. I stand corrected.
6 But this commission -- just so the record is clear, this
7 commission required Florida Power to take the regulatory
8 out clause out of the proposed standard offer contract,
9 correct?

10 A That's correct.

11 Q The negotiated contracts, the example of which
12 we've marked as Exhibit 4 and the standard offer
13 contract which became the Panda contract were both
14 developed at the about the same time in 1991, correct?

15 A That's correct.

16 Q And since they were going to be submitted
17 about the same time, it's also correct that a lot of the
18 very same language was used in both contracts, correct?

19 A Well, I mean the standard offer contract, the
20 original form was submitted to the Commission in the
21 middle of November, 1990, so the contract that was
22 ultimately signed in March of '91 with the eight
23 negotiated contracts was different than the November
24 contract submittal, and then we revised, if I remember
25 right, the standard offer contract prior to the APH,

1 probably would have filed it in April, a different form
2 than the one that was filed in November, which made it
3 different than the one that was filed, or signed, in
4 March. I mean, there were some -- there is a time line
5 of different contract with different language in them.
6 A lot of that language was similar, but there was some
7 big distinctions between the too.

8 Q I understand. But nevertheless, a lot of the
9 language between the standard offer contract and the
10 negotiated contract are very similar; are they not?

11 A That's correct.

12 Q The reason that Florida Power was using a
13 standard offer contract in 1991, in addition to all of
14 the negotiated contracts that it put out for bid, was
15 because this commission wanted some standard offer
16 capacity available for small developers with good
17 projects that didn't necessarily have big legal
18 departments to get involved in negotiating a contract;
19 isn't that correct?

20 A I think maybe small developers wasn't the
21 term, but for small projects.

22 Q Right.

23 A That's correct.

24 Q So you agree with my statement?

25 A No, I don't. You said small developers.

1 Q Okay, other than that you agree with what I
2 said?

3 A That's a pretty big distinction.

4 Q For small projects.

5 A Small projects. A small developer could have
6 had a 10,000 megawatt project.

7 COMMISSIONER JOHNSON: Could you repeat
8 whatever the statement is that you agree with?

9 WITNESS DOLAN: I don't agree with his
10 statement. He quoted the Commission as saying it was
11 reserved it for small developers, and I think it was
12 reserved for small facilities.

13 BY MR. ROSS:

14 Q Mr. Dolan, do you remember giving your
15 deposition in this case on January 19th, 1996? Correct?

16 A I don't remember the date.

17 Q You remember I took your deposition just a few
18 weeks ago?

19 A A couple of days worth.

20 Q And you recall on Page 52 of Volume 1 of your
21 deposition, I asked you the question, "So your
22 understanding was that the Commission" -- well, back
23 up. I asked you the first question, "Why did Florida
24 Power decide to use the standard offer contract
25 methodology for a certain percentage of its needs back

1 in 1991?" That's on Page 51, Line 22.

2 We jump over to the next page: "Question: So
3 your understanding was that the Commission wanted you to
4 use a standard offer contract --" and then you
5 interrupted me and you answered. And your answer you
6 gave was, "To carve out some capacity for small
7 developers with good projects, to be able to -- that
8 didn't have a big legal department, that could just sign
9 a standard form." Do you remember giving that answer at
10 the time?

11 A Yes.

12 Q There was more than one draft --

13 COMMISSIONER JOHNSON: Well, are you saying
14 something -- I would like to understand what you're
15 saying now, or what you're trying to clarify.

16 WITNESS DOLAN: I think it -- the only thing
17 I'm trying to clarify is that it's small developers with
18 good projects that are a small size.

19 COMMISSIONER JOHNSON: You said good projects
20 that were -- what you meant by small developers was --

21 WITNESS DOLAN: With good projects. In that
22 deposition I just think I need to add in the language,
23 with projects -- good projects that are of a small
24 size.

25 COMMISSIONER JOHNSON: Okay.

1 BY MR. ROSS:

2 Q Mr. Dolan, more than one draft of a standard
3 offer contract was submitted to this commission before
4 it was ultimately approved, correct?

5 A I think I already said that.

6 Q Okay. Let me show you the next exhibit, which
7 we'll have marked -- identified as Exhibit 5, which was
8 Exhibit 103 your deposition.

9 (Exhibit No. 5 marked for identification.)

10 COMMISSIONER GARCIA: Mr. Dolan, while they're
11 doing that, can I ask you a question? Isn't part of the
12 philosophy behind the standard offer contract smaller
13 generating facilities based on the fact that the smaller
14 groups don't have the same power to negotiate that the
15 larger producers do?

16 WITNESS DOLAN: That's my understanding of
17 when the rule was changed back in the '89 to '90 time
18 frame, was that people with smaller projects, which
19 typically were the smaller developers, couldn't compete
20 with, say, the Destecs or the Enrons of the world, with
21 their huge legal budgets and developers --

22 MR. GARCIA: As well as competing with you to
23 some degree. In other words, their ability to negotiate
24 with you was limited precisely by their size. So you
25 offered just a blanket for everyone who was of that

1 small size, correct?

2 WITNESS DOLAN: Right, that's correct.

3 COMMISSIONER GARCIA: But it was based
4 specifically on smaller units?

5 WITNESS DOLAN: Yes.

6 COMMISSIONER GARCIA: Because the larger ones
7 do have -- whether it be the legal team, or whatever the
8 resources, to be able to sit as equals across the table
9 from you or any other buyer of power?

10 WITNESS DOLAN: That's correct. And spend the
11 \$500 million dollars that it may require to negotiate a
12 contract.

13 CHAIRMAN CLARK: Mr. Ross, let me ask you a
14 question. Is this a convenient breaking point, or do
15 you need to finish this?

16 MR. ROSS: Anytime is convenient.

17 CHAIRMAN CLARK: We'll take a break and we'll
18 come back at ten minutes after 11.

19 (Recess from 10:55 a.m. until 11:20 a.m.)

20 CHAIRMAN CLARK: We'll reconvene the hearing.
21 Go ahead, Mr. Ross.

22 BY MR. ROSS:

23 Q Mr. Dolan, when we broke we were putting
24 before you deposition Exhibit 103 which has been
25 identified as Exhibit No. 5. Do you have that?

1 A Yes, I do.

2 Q Can you identify that as a previous version of
3 the standard offer contract which was submitted to the
4 Commission, along with a cover letter sending a copy of
5 that to Panda Energy Corp.?

6 A This appears to be the initial standard offer
7 submittal that I mentioned that was submitted to the
8 Commission in November of 1990.

9 Q Let me next show you a document that I would
10 like to have marked as Exhibit 6 in this proceeding,
11 which was deposition Exhibit 104, for you.

12 CHAIRMAN CLARK: The deposition Exhibit 104
13 from Mr. Dolan's January 19, 1996 deposition will be
14 marked as Exhibit 6.

15 (Exhibit No. 6 marked for identification.)

16 BY MR. ROSS:

17 Q Mr. Dolan, can you verify for me, please, that
18 Exhibit 6 is a copy of the brief of Florida Power
19 Corporation filed with this commission in June of 1991
20 in support of the approval of the standard offer
21 contract form?

22 A It's in support of the planning hearing, which
23 included the standard offer contract. It just wasn't a
24 standard offer.

25 Q That's fine. It deals with other things, but

1 among other things it deals with the standard offer
2 contract form that we're here on today, correct?

3 A That's correct.

4 Q Would you just turn to Page 45? I believe
5 that's the last page. And if you will look at Issue
6 186, which reads, "Does Commission approval of the terms
7 and conditions of each of the utility's standard offer
8 contract and tariff and the firm capacity and energy
9 prices stated therein constitute a determination by the
10 Commission that any payments made to a QF under the
11 standard offer constitute a reasonable and prudent
12 expenditure by the utility under Section 366.06, Florida
13 Statutes, based on the information reasonably available
14 to the utility and the Commission at this time?"

15 Would you just read for the Commission,
16 please, the first sentence of Florida Power's summary of
17 argument and answer to that issue?

18 A Well, "Commission approval of the standard
19 offer should have the same legal effect as Commission
20 approval of a negotiated contract," and then it goes on
21 further.

22 Q Sure. I understand. And you concur with that
23 statement that you just read in that brief, don't you,
24 sir?

25 A I don't know that I do. I didn't -- this

1 isn't my work.

2 Q You've seen it before, haven't you?

3 A I'm not sure I really studied it. I think
4 you -- at least I would have to go on to say that you
5 would need that second sentence to clarify what the
6 first sentence means.

7 Q Well, you were asked about this very document
8 at your deposition, were you not, Mr. Dolan?

9 A I don't recall.

10 Q Well, at the deposition -- do you recall
11 Volume 1 of your deposition at Page 63, beginning at
12 Line 4, where I read to you the very same sentence that
13 you just read to us, "Commission approval of the
14 standard offer should have the same legal effect as
15 Commission approval of a negotiated contract."

16 I then said, "Do you agree with that
17 statement?"

18 We then had some back and forth about whether
19 we were asking for your opinion. And you finally gave
20 me the answer on Page 64, where I said, "Yes, do you
21 agree with that statement? That's all I'm asking. If
22 you don't have an opinion, I'm happy."

23 And you said, Answer: "I think I concur with
24 that." Do you recall that's how you answered the
25 question in your deposition?

1 A Yeah, but I mean, I think, looking at this,
2 again today, that you need the second sentence to go
3 along with what it's talking about in the first
4 sentence. I mean it goes on and says, "That is, as
5 provided in Section 25-17.0808(b), firm energy and
6 capacity payments made to the QF pursuant to the
7 standard offer contract shall be recoverable by a
8 utility through the Commission's periodic view of fuel
9 and purchased power costs."

10 Q Let me next show you deposition Exhibit 105
11 which will be asked to be identified as Exhibit 7 in
12 this proceeding.

13 CHAIRMAN CLARK: Deposition Exhibit 105 will
14 be marked as Exhibit 7.

15 (Exhibit No. 7 marked for identification.)

16 BY MR. ROSS:

17 Q Mr. Dolan, you recognize this Exhibit 7 as in
18 fact a copy of this commission's final order that
19 approved Florida Power's standard offer contract,
20 correct?

21 A Yes.

22 Q If you'll turn to Page 17 of the Commission's
23 order in this exhibit. Do you see a description of the
24 avoided unit parameters for your 1997 combustion turbine
25 unit? Correct?

1 A That's correct.

2 Q And you see under little sub (i) a reference
3 to the words, quote, "book life." See that?

4 A Yes.

5 Q Mr. Dolan, you understand that the term "book
6 life" means the economic life of how a unit is
7 depreciated and paid off; isn't that correct?

8 A That's correct.

9 Q The actual operating life of a plant, such as
10 the 1997 combustion turbine unit, could in fact be more
11 than 20 years though, couldn't it, sir?

12 A Yes, it could, but the ratepayer would no
13 longer be making payments on that unit for the -- since
14 it would be a fully depreciated asset. So the capacity
15 would be free.

16 Q Yes, sir, that's right. The capacity would be
17 free. Thank you, sir.

18 Now, after the standard offer was approved,
19 you had a -- what you called an open season for
20 cogeneration developers to accept the standard offer
21 contract, correct?

22 A That's correct.

23 Q And so anybody out there who was interested,
24 and who either had a cogeneration facility or was
25 interested in building a cogeneration facility could

1 submit a signed standard offer contract to Florida
2 Power?

3 A That's correct, during that period, and they
4 would all be treated as if they were delivered on the
5 same date.

6 Q And the standard offer contract, as it went
7 out to the developers, had a blank for committed
8 capacity that had to be filled in by each developer,
9 correct?

10 A That's correct.

11 Q And it also had a blank for term of the
12 contract that had to be filled in by each developer?

13 A That's correct.

14 Q Now, in fact, Florida Power received signed
15 standard offer contracts that would have totalled a lot
16 more than 80 megawatts of committed capacity in 1992,
17 correct?

18 A That's correct.

19 Q And so Florida Power decided to do an
20 evaluation process of the various standard offers that
21 were submitted in order to decide which was the best
22 proposal to accept, correct?

23 A That's correct.

24 Q And Florida Power actually wrote up a detailed
25 evaluation of the contracts and the proposals and

1 submitted that evaluation to the Commission as part of
2 its petition to reject all standard offer contracts
3 other than the ones submitted by Panda, correct?

4 A That's correct.

5 Q Let me then show you exhibit -- Deposition
6 Exhibit 106, which we'll ask be identified in this
7 proceeding as Exhibit 8.

8 CHAIRMAN CLARK: Deposition Exhibit 106 will
9 be marked as Exhibit 8.

10 (Exhibit No. 8 marked for identification.)

11 BY MR. ROSS:

12 Q Mr. Dolan, can you verify for us, please, that
13 Exhibit 8 is in fact a copy of the evaluation of
14 standard offer proposals that was done by Florida Power
15 in November, 1991 and submitted to this commission?

16 A That's correct.

17 Q Now, if you will turn to the very first page
18 of the document, Page No. 1, entitled Executive
19 Summary. And on that page Florida Power listed all of
20 the proposed projects for which it had received standard
21 offer contracts, correct?

22 A That's correct.

23 Q And for each one of those facilities there is
24 listed a size next to the facility, correct?

25 A That's correct.

1 Q And the size referred to in that evaluation
2 there is in fact the committed capacity of the project,
3 correct?

4 A I think it also was the -- in the form listed
5 as the facility size and the committed capacity.

6 Q Mr. Dolan, on Page 11 of this document, isn't
7 it correct that in fact size is defined as the committed
8 capacity of the project?

9 A That's correct.

10 Q So it is correct, is it not, that the facility
11 sizes listed on the front page are the committed
12 capacities of the project, correct?

13 A Yes, but I also think it was in the sheets
14 that were requested to be filled out that it was used as
15 facility size.

16 Q All right, we'll get to that. On Page 2 of
17 this evaluation, you describe the highlights of the
18 Panda project, and there you describe the Panda project
19 as having a committed capacity of 74.9 megawatts,
20 correct?

21 A This document describes that.

22 Q Now, on Page 1, there was another proposal
23 submitted at the same time by the Charon Corporation for
24 a project that they called Sparrow, correct?

25 A That's correct.

1 Q You see that on Page 1? And the committed
2 capacity that Sparrow was proposing was actually 74.999
3 megawatts, correct?

4 A That's correct.

5 Q Mr. Dolan, do you recall that Sparrow
6 originally submitted a proposal for more than 75
7 megawatts of committed capacity and when told that more
8 than 75 megawatts of committed capacity was too large,
9 they were allowed to amend their submission down to the
10 74.999 megawatts?

11 A I'm not sure. I think that happened.

12 Q You think that happened.

13 A If it was done, it was done prior to the end
14 of the two-week open season.

15 COMMISSIONER KIESLING: I'm sorry, I'm having
16 trouble hearing you.

17 WITNESS DOLAN: If it was done, it was done
18 prior to the end of the two-week open season.

19 BY MR. ROSS:

20 Q Now you made reference a moment ago to the
21 fact that at the time the standard offers were submitted
22 by the various proposers, including Panda, you also
23 asked each QF, or proposed QF, to submit and fill out a
24 questionnaire with certain information about their
25 proposed project, correct?

1 A That's correct.

2 Q Let me show you, as the next document,
3 Deposition Exhibit 107, which I will ask be identified
4 as Exhibit 9.

5 CHAIRMAN CLARK: Deposition Exhibit 107 will
6 be marked as Exhibit 9.

7 (Exhibit No. 9 marked for identification.)

8 BY MR. ROSS:

9 Q Mr. Dolan, you recognize do you not, that
10 Exhibit 9 is the -- both the cover letter and the
11 questionnaire submitted on behalf of the Charon
12 Corporation for their Sparrow project which they
13 submitted as a proposed standard offer contract at the
14 same time that Panda's was signed?

15 A Yes.

16 Q All right. Now, if you'll turn to the page
17 that has bate stamp no. 141201, which I know you've seen
18 before. It's the diagram of their proposed facility.
19 It says Stewart and Stevenson at the top of the page, if
20 you can turn to that for me. Are you with me?

21 A Yes.

22 Q All right, and that diagram, which was
23 submitted by Charon for their Sparrow contract, showed
24 that they intended to use two LM 6000 gas turbines for
25 their facility, correct?

1 A That's correct.

2 Q And down at the bottom of the page they show
3 that they expected the net plant output of their Sparrow
4 project to be 85,442 kilowatts or 85.442 megawatts,
5 correct?

6 A Yes. Under these very specific conditions
7 that are illustrated on this diagram.

8 Q Now the fact of the matter is, Mr. Dolan, that
9 none of the people who submitted standard offer
10 contracts in 1991 were rejected in the evaluation
11 process because the maximum capacity output or the
12 expected output of the turbines being proposed exceeded
13 75 megawatts; isn't that correct?

14 A That's correct. I'm not sure that we knew
15 whether they would, under conditions required by the
16 contract.

17 Q Well, you are familiar with the fact, are you
18 not, that the nominal rating of an LM 6000 turbine at
19 ISO conditions would be about 42 megawatts?

20 A At 59 degrees would be about 42 megawatts.

21 Q Okay. So --

22 A That's correct.

23 CHAIRMAN CLARK: Mr. Dolan, you have to give
24 an audible answer.

25 WITNESS DOLAN: I'm sorry. That's correct.

1 An ISO under no steam sales and all would be 42
2 megawatts.

3 BY MR. ROSS:

4 Q So obviously two LM 6000s at ISO conditions
5 would have been about 84 megawatts, correct?

6 A That's correct, at those conditions.

7 Q And by the way, the Sparrow facility that's
8 proposed in this design does propose a chiller on the
9 inlet side of the facility, correct?

10 A That's correct.

11 Q You're not aware of anyone at Florida Power
12 who attempted to disqualify Sparrow from the evaluation
13 process standard offers because they proposed to use
14 these two LM 6000s; are you, sir?

15 A I'm not even sure we studied this diagram.

16 Q Fact of the matter is, you're not aware of
17 anyone at Florida Power who proposed to disqualify any
18 of the standard offer submissions because the rated
19 output capacity of their plants at ISO conditions
20 exceeded 75 megawatts; are you, sir?

21 A I'm not sure that we were aware of that, that
22 they did exceed 75.

23 Q My question to you, sir, is you're not aware
24 of anyone who attempted to disqualify any of these
25 facilities because their plant designs exceeded 75

1 megawatts at ISO conditions, correct?

2 A Yes, but I'm not sure that's the -- I'm not
3 sure we interpreted the rule to mean that 75 megawatts
4 was required at ISO conditions.

5 Q It's also correct, Mr. Dolan, isn't it, that
6 in fact in the exhibit, which was Deposition Exhibit
7 106, Exhibit 8, the evaluation of the standard offer
8 proposals, there's nothing in that exhibit that even
9 discusses the maximum generation capacity of any of
10 these facilities at ISO conditions, or at any
11 conditions; is there?

12 A No, there is not.

13 Q We've talked a number of times about the ISO
14 conditions. You, in fact, recognize that rating
15 turbines for their output at ISO conditions is a
16 standard recognized rating technique in the industry;
17 don't you?

18 A That's correct, but I'm not sure that that's
19 the interpretation of the standard offer contract or
20 other contracts.

21 Q I didn't ask you if that was the
22 interpretation of the standard offer contract.

23 Now, also referring back to the Exhibit 8, the
24 evaluation, also note in your highlight. It's on Page 2
25 of the Panda project, you state right there in your

1 submission to this commission that the Panda project is
2 a, quote, "30-year contract term," don't you, sir?

3 A That's correct, sir.

4 Q And the fact that Panda submitted a contract
5 that was to run through the Year 2025, that was not
6 something that was an oversight on Florida Power's part;
7 you saw it at the time, that it was a 30-year contract,
8 correct?

9 A That's correct.

10 Q In fact, all throughout the submission and
11 petition to this commission to reject all but the Panda
12 project, the Panda project was always referred to as a
13 30-year contract?

14 A That's correct.

15 Q Now, as I understand your position today on
16 this 30-year contract issue, what you thought this meant
17 was that Panda was going to get capacity payments for
18 only 22 or 23 years, and then for the balance -- and I'm
19 talking now when they had the early payment option --
20 for the balance they were only going to get as-available
21 energy payments, correct?

22 A They would get 20 years of normal payments and
23 one year and nine months of early payments, and the
24 remainder of the 30-year term they would get as-
25 available payments and Florida Power would be required

1 to purchase as-available energy.

2 Q So, in fact, your position is that Panda was
3 proposing to give Florida Power anywhere from seven to
4 ten years, depending on which payment option you ended
5 up with, of free capacity, correct?

6 A Of capacity that they were obligating us to
7 pay them as available rates that may not be required in
8 the future.

9 Q Capacity for which you thought they weren't
10 going to get any capacity payment; isn't that correct,
11 Mr. Dolan?

12 A That's correct, but we would be obligated to
13 buy as-available. Their facility probably would have
14 been paid off at that point, so they may have wanted
15 that option.

16 Q But even though that's what you thought -- and
17 if I understand your testimony, you thought that at the
18 time back in 1992; is that your testimony?

19 A I thought that early on.

20 Q Early on. Fact of the matter is, you never in
21 1992, before entering into the standard offer contract
22 or submitting Panda's standard offer contract for
23 permission -- for approval by this commission, you
24 never, ever confirmed with Panda your view that Panda
25 was going to be providing seven to ten years of free

1 capacity at the end of this contract, did you, sir?

2 A I think the contract speaks for itself.

3 Q The fact is you never -- answer my question,
4 please. You never confirmed your view that what you now
5 say this contract meant with anyone from Panda; isn't
6 that correct, sir?

7 A Somewhere later down the road we did.

8 Q At the time you entered into the contract and
9 submitted it for approval and this commission approved
10 it, you never confirmed it with Panda; did you, sir?

11 A No, but conversely, Panda never confirmed with
12 us what they expected for those years, whether it was
13 something other than as-available payments.

14 Q As a matter of fact you never, in any document
15 submitted to this commission at the time you sought
16 approval of the Panda contract, ever discussed for this
17 commission the fact that you believed there was seven to
18 ten years of free capacity in this contract; did you,
19 sir?

20 A I'm not sure that discussion would have ever
21 taken place since I didn't know there was a dispute on
22 the issue.

23 Q Could I just have an answer to my question,
24 Mr. Dolan? The fact is, you never brought to this
25 commission's attention the fact that you felt this was a

1 contract that had seven to ten years of free capacity,
2 correct?

3 COMMISSIONER GARCIA: Mr. Dolan, speak into
4 the mike. You may not be committed to the answer, but
5 speak into it so I can --

6 CHAIRMAN CLARK: Mr. Dolan, you can answer yes
7 or no and then explain it.

8 WITNESS DOLAN: No, I never, as far as I
9 recall, had submitted anything to the Commission, but
10 I'm not sure it was required. And to do the converse,
11 is Panda never did the same thing saying that they were
12 entitled to capacity payments escalating at 5.1 percent
13 for those eight years and three months.

14 BY MR. ROSS:

15 Q Now, Mr. Dolan, the Commission ultimately
16 approved your petition to reject all the standard offer
17 contracts other than Panda's, correct?

18 A They ultimately approved Florida Power's
19 petition.

20 Q And let me show you a document that we'll ask
21 be marked as Exhibit 10 in this proceeding. Did not
22 have a deposition exhibit number.

23 CHAIRMAN CLARK: I'm sorry, this is something
24 we took official notice of?

25 MR. ROSS: I don't think this was included.

1 Certainly something you can take initial notice of.

2 CHAIRMAN CLARK: We're not going to mark it as
3 an exhibit, but we'll take official notice of Order No.
4 PSC 92-1202-FOF-EQ.

5 MS. BROWN: Chairman Clark, just for your
6 information, I think this has been submitted as an
7 exhibit in the direct testimony of one of Panda's
8 witnesses.

9 CHAIRMAN CLARK: At any rate, we will take
10 official recognition of it.

11 MR. ROSS: Just identify for the record that
12 that is the order approving the rejection of all the
13 contracts other than Panda's.

14 BY MR. ROSS:

15 Q Mr. Dolan, after the Commission approved the
16 Panda contract, Florida Power went ahead and signed the
17 standard offer and entered into the contract with Panda,
18 correct?

19 A What was -- I'm not sure that was clear.

20 Q After the Commission approved your petition to
21 reject all the standard offers other than Panda's, then
22 Florida Power went ahead and signed the contract and
23 entered into the contract with Panda?

24 A I thought we signed the contract and then
25 submitted it to the Commission and --

1 Q It was not a trick question. You think you
2 signed it beforehand?

3 A Yes, we signed it beforehand.

4 Q That's fine.

5 A I don't know if it's a trick question, but I
6 would like the questions to be correct.

7 Q Now, thereafter, after the contract was
8 entered into, a series of conversations took place
9 between representatives of Panda and representatives of
10 Florida Power about each party's respective performance
11 under the contract, correct?

12 A That's correct.

13 Q In fact you've, in your direct testimony, as
14 we've already discussed this morning, you've made some
15 comments about those in your direct testimony, correct?

16 A That's correct.

17 Q The fact of the matter is, Mr. Dolan, isn't it
18 true that you understood from conversations that took
19 place before the middle of 1984, that Panda was
20 considering installing a turbine --

21 CHAIRMAN CLARK: Mr. Ross, you said 1984?

22 MR. ROSS: I'm sorry. If I did, I didn't mean
23 to. Let me rephrase that.

24 BY MR. ROSS:

25 Q You in fact understood from conversations that

1 took place prior to the middle of 1994 that Panda was
2 considering installing turbines that would have given
3 this facility a rated capacity of 115 megawatts at ISO
4 conditions, correct?

5 A I'm not sure that's correct. We -- they at
6 first talked about the three LM 2500s that would have
7 occasionally produced over 75. And then somewhere in
8 the middle of '94, they officially informed us that they
9 had selected the 115 megawatt size.

10 Q My question was, you understood that even
11 prior to the middle of 1994, you knew that Panda was
12 considering turbines that had a rated capacity of 115
13 megawatts at ISO conditions; didn't you, sir?

14 A We may have understood they were looking at
15 other turbine configurations.

16 Q As a matter of fact, somewhere in the time
17 frame of 1993, or up to the mid 1994, you learned that
18 Panda was looking at the GE Frame 70 EA's, correct?

19 A I'm not sure we had a lot of discussions with
20 them in the '93 time frame. I know in '94 they wrote us
21 a letter saying they had selected the -- they had
22 selected a configuration based on 115 megawatts.

23 Q Do you think maybe you knew it in 1993?

24 A That they had officially selected --

25 Q No, that they were looking at it.

1 A We may have known or may have thought they
2 were looking at it. I'm not sure.

3 Q As a matter of fact, Mr. Dolan, you do
4 remember being at a meeting with Panda representatives,
5 yourself, in either 1992 or 1993 in which you discussed
6 with representatives of Panda the subject of what
7 transmission lines would be necessary from this facility
8 if the output of the facility exceeded 75 megawatts;
9 isn't that correct?

10 A Yes. I think you're at -- typically when we
11 were thinking of that we were talking about 75 MVA,
12 rather than megawatts.

13 CHAIRMAN CLARK: 75 what?

14 WITNESS DOLAN: Megavolt amps, which includes
15 the reactive power, which can be -- which can
16 significantly increase a facility's amperage on the
17 transmission lines over just the kW's.

18 BY MR. ROSS:

19 Q Okay, well you remember giving your deposition
20 in this case on January 19th, and at Page 159 you were
21 asked the question, beginning at Line 5: "Were you at a
22 meeting yourself with representatives of Panda in which
23 the subject of transmission lines, if the output of the
24 facility exceeded 75 megawatts, was discussed?"

25 You answered, "I believe so."

1 Two lines below that I asked you, "Can you
2 give me a ball park as to when that meeting was?"

3 And your answer was: "'92, '93, probably."
4 You recall that question and answer, correct?

5 A Yes, and we were thinking more of the smaller
6 amount of megawatts at that time.

7 Q Well, the record reflects what the question
8 was to you at your deposition, Mr. Dolan.

9 Now, the fact of the matter is you then
10 remembered at your deposition -- and the meeting we're
11 talking about is actually the meeting that took place on
12 April the 15th, 1992; isn't that correct?

13 A That's correct.

14 Q And that was the meeting that you discuss in
15 your direct testimony?

16 A That's correct.

17 Q Okay. And in fact, what you recall now
18 happening at that meeting on April 15th, 1992 was the
19 fact that there was a discussion about whether the
20 electrical interface with the Panda facility could
21 handle a facility as big as 115 megawatts, don't you,
22 sir?

23 A I'm not sure. When I gave this answer at that
24 deposition, I think I misspoke with that answer and got
25 dates confused because there's nothing in anything that

1 I can find where that was discussed.

2 Q Well, what is it that you have that you can
3 find? You don't have notes of this meeting, do you,
4 sir?

5 A No, we have Brinson and Kinney's notes of the
6 meeting.

7 Q Fine. Florida Power doesn't have any notes of
8 this meeting, does it, sir?

9 A I don't have any.

10 Q You do recall that at your deposition you were
11 asked the following question, at Page 160, Line 13:
12 "What do you recall taking place at the meeting?"

13 And your answer was, beginning at Line 15,
14 "Just the discussion coming up about whether the
15 electrical interface could handle a facility bigger than
16 75 and as much as 115 or so."

17 A Yeah, I think I misspoke at my deposition. We
18 were talking about meeting dates going from what
19 happened on this Thursday and what happened on last
20 Friday and what happened a month later, and I think I
21 misspoke for this deposition.

22 Q So is it now your testimony that the meeting
23 that you describe in your direct testimony, you don't
24 really recall what happened because you've got your
25 dates mixed up?

1 A No, I recall that from looking over their
2 notes and talking with our people that were at the
3 meeting, that the discussion was about slight increases
4 over the 75, plus the interconnection focus is also on
5 MVA, which the MVA on an 80, 75 megawatt facility, could
6 be as high as 110, 115 MVA.

7 Q Mr. Dolan, there were many meetings between
8 representatives of Panda and representatives of Florida
9 Power back in '92 and '93 that you were not at; isn't
10 that correct?

11 A There were meetings I wasn't at.

12 Q For example, you don't recall being in a
13 meeting on January 9th, 1992 with representatives of
14 Panda, do you?

15 A No.

16 Q So you don't have any way of telling us as you
17 sit here today what happened at that meeting, correct?

18 A Other than reading people's notes from the --
19 and people's depositions.

20 Q But you don't recall whether Mr. Honey or
21 Mr. Gammon from Florida Power, who were at that meeting,
22 ever told you that they had discussed with Panda at that
23 meeting what the payment for energy over 75 -- over 74.9
24 megawatts would be, do you, sir?

25 A At which meeting?

1 Q At the meeting on January the 9th, 1992.

2 A No. Other than reading people's notes.

3 Q And I take it then that you can't recall in --
4 whether in making the statements that you made in your
5 direct testimony, you weren't relying on anything that
6 Mr. Honey or Mr. Gammon told you about the subject of
7 what they discussed that day in preparing your
8 testimony, correct?

9 A I discussed it with both those gentlemen and
10 our attorneys and reading all the items that are
11 available to -- during the course of this litigation.

12 Q Well, is your testimony now that you did
13 discuss with Mr. Honey and Mr. Gammon what they
14 discussed with Panda at that meeting?

15 A Where are you referencing my testimony?

16 Q I'm just asking you a question, Mr. Dolan. I
17 know that you think I'm about to take out your
18 deposition, and I will if you don't give me the same
19 answer, but I'm just asking you a question.

20 CHAIRMAN CLARK: Mr. Ross, would you please
21 repeat your question?

22 MR. ROSS: Yes.

23 BY MR. ROSS:

24 Q Is it your testimony today, yes or no, that
25 you recall what Mr. Honey or Mr. Gammon from Florida

1 Power told you they had discussed with Panda at the
2 meeting in January of 1992 on the subject of payment for
3 energy over 74.9 megawatts?

4 A I don't recall that meeting. I don't know
5 where in my testimony that meeting is referenced.

6 Q I'm just asking a question, Mr. Dolan. I'm
7 not asking you to look at your testimony. The answer is
8 you don't recall; is that correct?

9 A I could research it and --

10 Q No, I'm not asking you to research it,
11 Mr. Dolan. I'm asking you if you have any recollection
12 of Mr. Honey and Mr. Gammon telling you what they
13 discussed at that meeting with Panda, either today or at
14 the time a few weeks ago that you filed your prefiled
15 testimony .

16 A I don't recall.

17 Q Okay. So I take it, then, that you weren't
18 relying on anything that Mr. Honey or Mr. Gammon may
19 have told you about that meeting when you filed your
20 prefiled testimony, correct?

21 A I believe that's correct.

22 Q And you don't know, then, whether or not on
23 January 9th, 1992, representatives of Panda and Florida
24 Power may have, in fact, discussed capacity payments for
25 the last eight to ten years of the Panda contract, do

1 you?

2 A I don't know.

3 Q Now on Page 8 of your prefiled -- wait a
4 minute. Is this the one that was stricken? No.

5 On Page 8 of your prefiled testimony, you do
6 make some comments about what took place at a meeting on
7 May 1st, 1992 that you said you did attend with
8 Mr. Brinson, correct?

9 A Yes.

10 Q But you don't have any notes of that meeting,
11 do you, sir?

12 A No, but I've read his notes.

13 Q Okay. Fine. Do you recall whether or not you
14 based your testimony in this case on Mr. Brinson's
15 notes?

16 A Both on Mr. Brinson's, my understanding what
17 took place in the meeting and discussions with the
18 people that work for me.

19 Q The fact of the matter is, Mr. Dolan, when I
20 took your deposition just a few weeks ago in this case
21 and asked you what you were basing your recollection of
22 what took place at that meeting on, you couldn't
23 remember, could you, sir?

24 A That's correct, but I -- you know, when I
25 prepared this testimony, I researched the information

1 and also researched it before today.

2 Q And other than Mr. Brinson's notes, what did
3 you research?

4 A From reading over Mr. Brinson's notes and
5 discussing it with Dave Gammon.

6 CHAIRMAN CLARK: Discussing it with whom?

7 WITNESS DOLAN: Dave Gammon.

8 CHAIRMAN CLARK: Thank you.

9 BY MR. ROSS:

10 Q One thing that you do recall at that meeting
11 in May of 1992 is that you told Mr. Brinson that Panda
12 ought not seek any determination from this commission at
13 that time of Panda's ability to build a facility that
14 would put out more than 75 megawatts because of the
15 pendency of the Ark Energy challenge to the standard
16 offer contract; didn't you, sir?

17 A That isn't why -- that isn't a complete
18 answer. The --

19 Q Please answer the question first, and then if
20 you need to explain it, explain it. But the fact is,
21 you told that to Mr. Brinson at the meeting; didn't
22 you?

23 A I told Mr. Brinson there was no need to raise
24 this issue before the Commission because the Polk Power
25 Partners' case was pending and a vote on it was going to

1 take place in a few weeks over the interpretation of the
2 language in the standard offer rules.

3 Q You also told him that there was no need to
4 raise that issue with this commission because you didn't
5 want to muddy the water with the Ark proceeding pending;
6 isn't that correct, sir?

7 A That's correct.

8 Q And you also recall at that meeting in May of
9 1992 Mr. Brinson telling you -- we're now in May of
10 1992 -- that Panda was considering building a facility
11 that would put out as much as 110 megawatts of energy
12 under certain conditions; don't you?

13 A I don't recall. I don't recall.

14 Q Well, you recall he told you about it either
15 at that meeting or some time in the summer of 1992;
16 don't you, Mr. Dolan?

17 A That they were building a facility that could
18 be greater than 75?

19 Q That they were considering building a facility
20 that would put out as much as 110 megawatts.

21 A I don't recall.

22 Q Well, at your deposition when you were asked
23 this question on Page 183, Line 16, question: "Do you
24 recall Mr. Brinson telling you at that meeting that
25 Panda was considering a facility that would put out as

1 much as 110 megawatts?"

2 You answered, "That may have been one."

3 And I said, "That may have? You recall he may
4 have told you that at the time?"

5 And you answered, "Sometime in the summer."

6 Question: "Sometime in the summer of 1992?"

7 Answer: "That they were looking at different
8 facility sizes."

9 Question: "And that one of them was as high
10 as a max output of 110 megawatts."

11 You remember that?

12 A Yes, but I'm not sure any of those statements
13 are very definitive. It could have been sometime. The
14 meeting notes don't reflect that.

15 CHAIRMAN CLARK: Mr. Ross, let me be clear.
16 Are you asking the witness if he made the statement in
17 his deposition that he actually said it was at that
18 meeting?

19 MR. ROSS: Yes, that's all I asked him.

20 CHAIRMAN CLARK: All right, Mr. Dolan, will
21 you answer that?

22 WITNESS DOLAN: No, because it doesn't say
23 that in the deposition.

24 MR. ROSS: At the meeting or in the summer of
25 1992.

1 CHAIRMAN CLARK: Well, you need to be clear,
2 because I'm having a little difficulty understanding how
3 what you're saying the deposition says backs up your
4 position.

5 MR. ROSS: I'm just reading from the
6 deposition.

7 CHAIRMAN CLARK: Well, you didn't add to it
8 "or sometime." You had pinpointed the meeting, and I
9 think he was responding that he couldn't say for sure it
10 was the meeting.

11 MR. ROSS: I'm sorry. And I'll make the
12 record clear. I believe the record will show that I
13 asked him was it at that meeting, or -- I said, "You
14 remember it took place either in that meeting or
15 sometime in the summer of 1992," which was exactly what
16 his answer was.

17 CHAIRMAN CLARK: That there were discussions
18 that Panda was planning 115 megawatts.

19 MR. ROSS: 110, but that's correct.

20 CHAIRMAN CLARK: Mr. Dolan, will you answer
21 that question?

22 WITNESS DOLAN: I'm not sure this deposition
23 reflects what he just said.

24 CHAIRMAN CLARK: I don't care about the
25 deposition. I want to know your recollection now.

1 WITNESS DOLAN: No.

2 CHAIRMAN CLARK: Okay.

3 BY MR. ROSS:

4 Q You're also aware of the fact, are you not,
5 Mr. Dolan, that in the summer of 1992 Florida Power
6 asked Panda to provide to Florida Power the maximum
7 output of its proposed facility at temperatures ranging
8 from 40 degrees Fahrenheit to a high of 110 degrees
9 Fahrenheit?

10 A I think we asked for the maximum output in
11 MVA, if you read the letter, which is not megawatts.

12 Q Let me have --

13 CHAIRMAN CLARK: Mr. Dolan, are you saying
14 M-B, as in boy.

15 WITNESS DOLAN: Megavolt amps, which is --

16 CHAIRMAN CLARK: No, you're saying V, as in
17 Victor?

18 WITNESS DOLAN: Yes.

19 CHAIRMAN CLARK: I'm having trouble
20 understanding that.

21 WITNESS DOLAN: The rating for the conductors
22 is based on a megavolt rating, which includes the
23 reactive power required to like start your air
24 conditioning motor, which has nothing to do exactly with
25 the kW requirement. It's a higher amount.

1 BY MR. ROSS:

2 Q Just so we're clear, though, MVA is a
3 different way of measuring electrical output of the
4 facility, correct?

5 A It's a way of measuring the voltage in the
6 current.

7 Q Okay. So we're still talking about electrical
8 output. That's all I want to be clear.

9 A Typically electrical output is referred to as
10 in kWh or megawatts.

11 Q But this is another way of referring to it for
12 other purposes, correct?

13 A Yeah, but they're totally different. One of
14 them includes the cosign of the angle between the
15 current and the voltage.

16 CHAIRMAN CLARK: Let me see if I understand.
17 You're indicating that what you might have to put up in
18 terms of transmission line to serve this facility may be
19 different because of reactive power?

20 WITNESS DOLAN: That's correct.

21 CHAIRMAN CLARK: Okay.

22 WITNESS DOLAN: Typically, generators have a
23 reactive capability of 80 to 90 percent. And you go
24 through the kW times the cosign of the angle to get the
25 kVA output, the old trigometric chart.

1 CHAIRMAN CLARK: You're way over my head. All
2 I want to know is, is that it seems to me, if I've
3 understood the exchange, that what you might have to put
4 up in terms of transmission to a facility that, say,
5 puts out 110 may be more because of reactive power?

6 WITNESS DOLAN: Yeah, make it easier, say a
7 100 megawatt facility, you may have to build an
8 interconnection that's 120 MVA.

9 CHAIRMAN CLARK: Okay. Go ahead, Mr. Ross.

10 WITNESS DOLAN: Just so I could do the math in
11 my head real quick.

12 MR. ROSS: That's about as far as I can
13 understand it too. Let me just have marked what was
14 Deposition Exhibit No. 112, which will be Exhibit 11 in
15 this proceeding. I think it's the letter that you
16 just --

17 CHAIRMAN CLARK: No, Mr. Ross, it will be
18 Exhibit 10. The other we took official recognition of.

19 MR. ROSS: I'm sorry, we didn't mark that as
20 an exhibit. I stand corrected.

21 CHAIRMAN CLARK: That's Deposition Exhibit 112
22 and that is still to the deposition taken on January
23 19th?

24 MR. ROSS: Yes.

25 (Exhibit No. 10 marked for identification.)

1 BY MR. ROSS:

2 Q Let me ask you, Mr. Dolan, you can identify
3 this as a letter sent by Mr. Honey at Florida Power with
4 a carbon copy to you, and it was sent by Mr. Brinson at
5 Panda, correct?

6 A That's correct.

7 Q On or about July 24th, 1992. Just so the
8 record is clear, in your prefiled testimony on Page 8,
9 you made reference to a conversation that took place
10 between Allen Honey of Florida Power and Darol Lindloff,
11 the subject of our motion this morning. You were not
12 party to that conversation, were you, Mr. Dolan?

13 A I wasn't a direct party to that conversation,
14 but after that took place, I gave Allen a copy of the
15 Polk Power Partners' decision to be able to fax to
16 Panda.

17 Q On May -- in May of 1993, the standard offer
18 contract between Panda and Florida Power was amended to
19 delay the in-service date and the construction
20 commencement date, correct?

21 A That's correct.

22 Q Okay, and let me just enter into the record as
23 Exhibit 11 -- 12, Exhibit 12 -- no, now we're on 11.

24 CHAIRMAN CLARK: It is Exhibit 11.

25 MR. ROSS: -- what was Deposition Exhibit 113.

1 (Exhibit No. 11 marked for identification.)

2 BY MR. ROSS:

3 Q And you can identify that as the letter
4 agreement amending the contract, as we just described?

5 A That's correct.

6 Q All right. Now, at about the same time, in
7 mid 1993, something called the nonutility generator
8 buyout committee was formed at Florida Power; isn't that
9 correct?

10 A That's correct.

11 Q And this committee within Florida Power
12 thought about and looked at the possibility of buying
13 out some of the cogeneration contracts that Florida
14 Power had entered into up until that point?

15 A That's correct, but I'm not sure, it was
16 formed because we had two very specific opportunities.
17 We were approached by Auburndale about owning part of
18 their facility, and then shortly thereafter, the Lake
19 Cogen facility was up for sale by Merrill -- being sold
20 through Merrill Lynch, and half of the Pasco Cogen
21 facility.

22 Q But, in fact, after the committee was formed
23 it didn't limit itself to those two projects; it looked
24 at the possibility of buying out a variety of cogen
25 projects, correct?

1 A I'm not sure we went into details of every
2 project. We generally talked about buying out other
3 projects.

4 Q We'll look at some documents in a minute. Let
5 me go back for a moment, though, in discussing this
6 buyout committee. You identified earlier that in 1991
7 you had entered into eight negotiated contracts,
8 correct, with cogenerators?

9 A I identified that we did a bid that resulted
10 in eight negotiated contracts. We signed ten negotiated
11 contracts in 1994.

12 Q Eight in the bidding process?

13 A That's correct.

14 Q Florida Power had, in fact, deliberately
15 overbooked the committed capacity that it projected
16 needing back in 1991 because of an expectation that some
17 of those cogen projects would fail and never come on
18 line, correct?

19 A That's correct.

20 Q In point of fact, however, that didn't
21 actually happen, and Florida Power actually ended up
22 getting even more committed capacity than was booked
23 for, correct?

24 A Than we had anticipated, that's correct.

25 Q And that was because all of the projects did

1 in fact come to fruition?

2 A All of the contracts came to fruition. All
3 the projects did not. Some of the contractors sold to
4 other projects.

5 Q And also, under those negotiated contracts, I
6 believe, all of the cogenerators exercised their option
7 of increasing their committed capacity by ten percent,
8 right?

9 A That's not correct.

10 Q Didn't a lot of them, most of them?

11 A Not all of them increased it by ten percent.

12 Q Most of them did?

13 A Some of them did by six percent, seven
14 percent.

15 Q Now, in mid '93, this nonutility generation
16 buyout committee evaluated the possibility of buying out
17 certain contracts because it was clear to Florida Power
18 that the costs of these cogeneration contracts that had
19 been entered into in 1991 and '92 were above the market;
20 isn't that correct?

21 A I'm not sure the buyout committee -- I
22 remembered it more we were looking at Auburndale and
23 Lake. I remember most of our details were creating
24 Auburndale pro formas, and Lake and Pasco Cogen
25 pro formas, and we talked about doing it, but never did,

1 create pro formas for the other projects to evaluate
2 buydowns.

3 Q Isn't it correct that Florida Power had an
4 interest in buying out cogenerators' contracts in 1993
5 because it was apparent to Florida Power that they were
6 above the market?

7 A I think we were looking at the potential for
8 buying them out. We never proposed a buyout of any in
9 that time frame. And in fact we chose not to be a
10 partner with Auburndale or to bid on the Lake and Pasco
11 Cogen projects.

12 Q The buyout committee was looking at this
13 possibility in order to improve the ability of Florida
14 Power to make a profit, correct?

15 A To do what?

16 Q Make a profit?

17 A It was looking at it from both the ability to
18 make an investment, make a return, and improve the
19 operation of the facilities on our system.

20 Q Let me show you what was marked at your
21 deposition as Exhibit 114, which would be Exhibit 12 in
22 this proceeding.

23 (Exhibit No. 12 marked for identification.)

24 CHAIRMAN CLARK: Mr. Ross, how much more do
25 you have for this witness?

1 MR. ROSS: I would say approximately 25, 30
2 minutes.

3 CHAIRMAN CLARK: All right, we'll continue on
4 and then we'll take a lunch break when you're done. And
5 we will take no more than a half an hour.

6 COMMISSIONER DEASON: Is that a half hour for
7 lunch or a half hour to finish the cross-examination?

8 CHAIRMAN CLARK: Half an hour for lunch. I'm
9 hoping we will get this done before half an hour.

10 BY MR. ROSS:

11 Q Mr. Dolan, you are, in fact, the person who
12 prepared this document which I have put before you,
13 correct?

14 A That's correct. It was prepared to hand out
15 to the people in the meeting to ground them on some of
16 the projects.

17 Q And this was handed out to a meeting of this
18 nonutility generation buyout committee; is that correct?

19 A I believe so.

20 Q And it's correct, is it not, that this
21 document identifies as potential buyout candidates all
22 of the cogeneration facilities where construction had
23 not yet begun, correct?

24 A That's correct.

25 Q And that would have included at that time the

1 Panda contract?

2 A That's correct.

3 Q And one of the reasons, in addition to the
4 cost that we talked about before, that you were
5 identifying these potential buyout candidates in 1993,
6 was because your load forecast had also declined by that
7 point and you really had too much capacity from
8 cogeneration contracts, correct?

9 A I think we were seeing that -- I don't know
10 about the timing of the capacity may have been high, but
11 the cost -- it was already becoming apparent that the
12 cost and the operation of the contracts wasn't working.
13 Plus, several of these contracts were -- of these listed
14 were on the market where people were either selling
15 parts of the project out or selling the facilities.

16 CHAIRMAN CLARK: Mr. Dolan, I don't think that
17 what you just said was responsive to what he asked. And
18 it may just be how I understood what he asked. Would
19 you ask your question again, Mr. Ross?

20 MR. ROSS: Could you just read it back for
21 me? I didn't have it in my mind.

22 (Record read.)

23 WITNESS DOLAN: I'm not sure that's a correct
24 answer. That could have been part of it, but I can look
25 at seven of the eight projects on this list, and they

1 were in the secondary market, either for the whole
2 project or for pieces of the projects. So that's why we
3 were looking at it.

4 CHAIRMAN CLARK: And not because your load
5 forecast had indicated a decline in load?

6 WITNESS DOLAN: Well, when we were looking at
7 these, we were going to operate these projects, not --
8 except for maybe Panda. We were looking at it for
9 ownership. I'm just --

10 CHAIRMAN CLARK: So it had nothing to do with
11 a drop in the load forecast, if there, in fact, was
12 one?

13 WITNESS DOLAN: It was partly due to that,
14 that maybe the Panda and Pinellas County you might have
15 just bought it out and not built the project, but it
16 wasn't entirely due to that, as he was phrasing his --

17 CHAIRMAN CLARK: All right, that's fine.

18 BY MR. ROSS:

19 Q The fact of the matter is, Mr. Dolan, that as
20 of the date that you wrote this document, you would have
21 preferred that the Panda project not be built, correct?

22 A I'm not sure I had made that conclusion. I
23 didn't think the Panda project would be built.

24 Q Well Mr. Dolan, do you remember when I asked
25 you the same question at your deposition, Page 213, Line

1 13, I said, "Okay, so the fact is Florida Power would
2 have preferred at the time that you wrote this" -- and
3 the court reporter wrote "contract," but the word was
4 "document" -- "that the Panda project not be built,
5 isn't that correct?"

6 And your answer at your deposition just a few
7 weeks ago was, "Yes"?

8 A That's probably correct. But I wasn't even
9 considering Panda in that time frame as a viable
10 project.

11 Q Do you also recall that somewhere in the 1993
12 time frame, Panda made a request of Florida Power for
13 permission to move the site of their project to the
14 Cargill Frostproof site?

15 A They requested to move to Cargill. I think it
16 was Frostproof.

17 Q And you also recall that Florida Power refused
18 to give Panda permission to move the site of their
19 facility?

20 A That's correct.

21 Q Let me show you the next exhibit which was
22 Exhibit 116 at your deposition, and it should be, I
23 believe I'd request, marked as Exhibit 13.

24 CHAIRMAN CLARK: That's correct.

25 (Exhibit No. 13 marked for identification.)

1 BY MR. ROSS:

2 Q You recall seeing this document before, don't
3 you, Mr. Dolan?

4 A I believe so.

5 Q This was a document from the files of Florida
6 Power that was actually prepared at an attorney's
7 request, wasn't it, sir?

8 A I don't remember.

9 Q But you do recall that it was prepared in the
10 1993 or '94 time frame, correct?

11 A Yes, probably late '93.

12 Q And would you just read for us, please, the
13 last two paragraphs of the top half of this document
14 starting with the fifth paragraph down, those two
15 sentences, the fifth paragraph and the sixth paragraph?

16 A "Panda requested to move to Frostproof,
17 Cargill. Citro America would be the host. FPC declined
18 the move."

19 Q And the next paragraph?

20 A "Cargill then solicited FPC for the move. FPC
21 still refused the move. FPC did not want to throw Panda
22 a life line."

23 Q Mr. Dolan, you were also part of the team that
24 prepared something called a Cogeneration and Purchase
25 Power Strategic Proposal?

1 A That's correct.

2 Q Let me just show you what was Deposition
3 Exhibit No. 117, which would be Exhibit 14 in this
4 proceeding.

5 CHAIRMAN CLARK: Exhibit 14 is deposition
6 Exhibit 117.

7 MR. ROSS: Yes.

8 CHAIRMAN CLARK: Thank you.

9 (Exhibit No. 14 marked for identification.)

10 MR. MCGEE: Might I inquire -- that is a
11 document which Florida Power has claimed confidentiality
12 for in one small respect. I just wanted to verify that
13 that has been redacted out of this.

14 MR. ROSS: I don't think this is the one, but
15 if you want to claim it.

16 CHAIRMAN CLARK: We'll just take a minute,
17 Mr. McGee. Look at the document and see if this is the
18 one you requested confidential treatment for part of
19 it.

20 MR. MCGEE: No, this is not the document.

21 CHAIRMAN CLARK: Okay. Go ahead, Mr. Ross.

22 BY MR. ROSS:

23 Q This was a document that was -- you recognize
24 this document, correct?

25 A Yes.

1 Q This was a document that was prepared by a
2 team that you were a part of in March of 1994?

3 A Yes.

4 Q And this was a document that proposed to the
5 senior management and strategic planning team at Florida
6 Power various strategies, what to do about cogeneration
7 or other purchase power facilities?

8 A It was a proposal, that's correct.

9 Q And you're the person, actually, who presented
10 this proposal to the senior management, correct?

11 A I think I made all the preparations --

12 COMMISSIONER KIESLING: Would you get close to
13 your mike? I can't hear you at all.

14 WITNESS DOLAN: Because I'm hungry, starting
15 to lose energy. I think I made all the presentations to
16 senior management, but I'm not exactly sure that I -- of
17 all the presentations that could have been made.

18 BY MR. ROSS:

19 Q And this document identifies within it various
20 objectives that underlie the proposed strategies,
21 correct?

22 A That's correct.

23 Q And the objectives that are identified in
24 there accurately reflect what the objectives were of
25 Florida Power at the time, correct?

1 A Well, I think this was a proposal.

2 Q Right. The strategies were the proposal, but
3 the objective -- the strategies were to get to the
4 objectives and the objectives were accurate, correct?

5 A I think when we presented this whole document
6 as one --

7 CHAIRMAN CLARK: I'm not clear what you're
8 asking, Mr. Ross. Are you saying that Florida Power
9 Corporation had already adopted objectives and this was
10 a proposal to meet already adopted objectives?

11 MR. ROSS: Yes, this was a proposal of various
12 strategies to meet those objectives, yes.

13 CHAIRMAN CLARK: What objectives?

14 MR. ROSS: The ones that are stated in the
15 document.

16 WITNESS DOLAN: I think the whole document was
17 a -- the objectives were proposed and the strategies to
18 implement the objectives were proposed.

19 BY MR. ROSS:

20 Q This document that we just talked about arose
21 out of another document that was prepared under your
22 supervision called the Cogeneration Review, correct?

23 A That's correct.

24 MR. ROSS: And let me have that marked. Go
25 ahead. This is the one.

1 MR. SILVERMAN: This is the document for which
2 Florida Power had requested and received confidential
3 treatment as to one redacted portion. What we have
4 facilitated for the purposes of cross-exam is we have
5 attached the document which -- the document in full is
6 about 100 pages long. The document, as it was attached
7 to someone's testimony, was only 20 pages long. So what
8 we have done is attached the unredacted portion in the
9 red covers, which will be retrieved after the
10 cross-examination is complete, and the rest of the
11 document they didn't seek confidentiality for.

12 CHAIRMAN CLARK: Well, we're going to mark as
13 Exhibit 15 the total document, which is -- was a
14 deposition exhibit document?

15 MR. ROSS: Yes, it was Deposition Exhibit 118.

16 CHAIRMAN CLARK: What's its title again?

17 MR. ROSS: Titled Cogeneration Review.

18 CHAIRMAN CLARK: That will be marked as the
19 exhibit.

20 (Exhibit No. 15 marked for identification.)

21 CHAIRMAN CLARK: The court reporter retains
22 the confidential exhibit, as I recall, and then all
23 these copies are picked up by you, Mr. Ross, and remain
24 confidential.

25 MR. ROSS: That's fine. It won't be a

1 problem. I'm really just going to ask him to identify
2 the document so that the portion of it can go in the
3 record.

4 MR. MCGEE: Madam Chairman, there is a concern
5 here, though. We had reviewed the document attached as
6 an exhibit to Mr. Killian's testimony. And as
7 Mr. Silverman said, that was 20 pages, and we only found
8 one small portion we can claim confidentiality for. We
9 have not reviewed the remainder of this full document.
10 And I simply can't say whether or not at this time that
11 we have --

12 COMMISSIONER KIESLING: I'm sorry, Mr. McGee,
13 I can't hear you at all.

14 CHAIRMAN CLARK: Mr. McGee, you do need to get
15 close to the microphone, and speak loudly.

16 MR. MCGEE: I will do better. We had reviewed
17 the 21-page document that was attached to Mr. Killian's
18 testimony that was from this report and found only a
19 small portion to raise the confidentiality concern. We
20 have not reviewed -- now, the full document, we weren't
21 aware that that was going to be used.

22 CHAIRMAN CLARK: Mr. Ross, do you need the
23 full document?

24 MR. ROSS: Yes. We would like the full
25 document into evidence. We're happy to accommodate

1 whatever part of it they want to make confidential.

2 CHAIRMAN CLARK: We will mark -- this will be
3 marked as Exhibit 15. It will be marked as a
4 confidential exhibit. And Mr. McGee, you will have the
5 opportunity to look at it and further designate and
6 request confidential treatment of the matters in the
7 other portions of the document you believe require
8 confidential treatment.

9 MS. BROWN: Chairman Clark, if I just may
10 clarify, we will have to have a formal request for
11 confidential treatment filed at a later date.

12 CHAIRMAN CLARK: Yes, that's my understanding.

13 MR. MCGEE: Or a notice of intent to seek
14 confidential treatment.

15 CHAIRMAN CLARK: You will have to file the
16 normal procedures in getting it identified as
17 confidential.

18 MR. SILVERMAN: Chairman Clark, we would just
19 like to note for the record that none of the testimony
20 that's expected to be used in this proceeding involves
21 the confidential portions of these documents. So that
22 there is no risk that someone --

23 CHAIRMAN CLARK: I would hope not. Go ahead.

24 MR. ROSS: I'm not sure --

25 CHAIRMAN CLARK: You're only identifying the

1 exhibit.

2 MR. ROSS: Just identifying it and putting it
3 into the record, and I don't think we've actually done
4 that.

5 BY MR. ROSS:

6 Q Can you identify for us, Mr. Dolan, that
7 Exhibit 15 is in fact a copy of the Cogeneration Review
8 that was developed under your supervision at Florida
9 Power?

10 A I think these are mismatched sets. Oh, this
11 is the same one. Got the wrong cover page on the
12 February 1st document.

13 CHAIRMAN CLARK: Mr. Ross --

14 WITNESS DOLAN: There were two of these
15 documents produced. One had like a December 1st date
16 and one had a February 1st date, and he has the cover
17 page of the December document attached to the February
18 document.

19 MR. ROSS: That's the part we were trying to
20 redact out.

21 CHAIRMAN CLARK: Mr. Ross, are you going to
22 ask him questions about this?

23 MR. ROSS: No, no.

24 CHAIRMAN CLARK: Let's move on and then you
25 can sort out the exhibit before we move it into the

1 record. All right.

2 BY MR. ROSS:

3 Q In 1994, Mr. Dolan, isn't it correct that you
4 considered QFs to be competitors to Florida Power in the
5 wholesale market?

6 A I mean, they are -- I'm not sure we considered
7 them to be our big competitors in the market, but we had
8 lost somewhere in '92 some business to QFs.

9 CHAIRMAN CLARK: So the answer is yes?

10 WITNESS DOLAN: Yes, but not a big
11 competitor.

12 CHAIRMAN CLARK: Okay.

13 BY MR. ROSS:

14 Q Now, also in 1993 you had begun voluntary
15 curtailment negotiations with the QFs that you had
16 contracted with, correct?

17 A That's correct.

18 Q And curtailment, of course, means in order to
19 reduce the amount of electric output of the QFs to
20 Florida Power, correct?

21 A That's correct. We had begun voluntary
22 negotiations to try to mitigate the minimum load
23 problem.

24 Q Actually, I stand corrected, I do have some
25 questions to ask about one page of this document, but

1 I'm certain it's not within the confidential portion of
2 the document.

3 CHAIRMAN CLARK: Mr. Ross, why don't you just
4 get up and check it with Mr. McGee before you ask that
5 question?

6 MR. ROSS: I will do that.

7 MR. MCGEE: The two pages I have reviewed
8 contain no confidential information.

9 CHAIRMAN CLARK: All right, go ahead,
10 Mr. Ross.

11 BY MR. ROSS:

12 Q Mr. Dolan, if you'll refer to the page, it's
13 very near the back of Exhibit 15, that has bate stamp
14 no. 400364. Are you with me?

15 A Yes.

16 Q Entitled Panda-Kathleen Operational Review?

17 A Yes.

18 Q And that page and the immediately following
19 page were a -- kind of a status report on the Panda
20 project as of the time this document was written,
21 correct?

22 A Right.

23 Q All right. And you point out in that document
24 that you had not begun any negotiations with Panda
25 because, quote, "FPC doubts the viability of the

1 project."

2 A That's correct.

3 Q And as I understand it, what you meant was
4 that at that time Florida Power didn't believe that
5 anybody would ever be able to get financing for a
6 project that was based on combustion turbine capacity
7 payments; is that correct?

8 A Or it may be impossible, I think is the words
9 we had in the next page.

10 Q And your comments there were not specific to
11 Panda, they were actually generic comments. You didn't
12 think anybody would ever be able to finance a CT-based
13 plant, correct?

14 A Right, with a contract similar to Florida
15 Power's.

16 Q And, in fact, I believe you have told us that
17 you had come to the view, even back in 1991 when you
18 were still doing the bid for negotiated contracts, that
19 no cogenerator would ever be able to finance a contract
20 based upon combustion turbine unit capacity payments,
21 correct?

22 A Using nonrecourse, high leverage financing,
23 that it may be very, very difficult, if not impossible.
24 And we kind of came to that information when -- we did
25 the bid where we offered CTs and coal, and every bid

1 that was submitted in that January time frame was based
2 on the coal capacity payment.

3 CHAIRMAN CLARK: Mr. Dolan, so I'm clear, the
4 answer to his question is yes, you did not think anyone
5 could finance a project based on a combustion turbine
6 under the -- your avoided unit?

7 WITNESS DOLAN: Yes, using nonrecourse, highly
8 leveraged --

9 CHAIRMAN CLARK: All right. I think what's
10 happening is you tend to finish off his question with
11 some qualifications without agreeing with his premise
12 and then giving the qualifications.

13 WITNESS DOLAN: Sorry. It's hard after ten
14 hours of depositions with him.

15 BY MR. ROSS:

16 Q All right, let's refer back to your prefiled
17 testimony again. In your prefiled testimony, again just
18 so we're clear, you describe a meeting that took place
19 in late June of 1994 between Panda representatives and
20 Florida Power representatives, on Page 9. Just so the
21 record is clear, you were not at that meeting, were you,
22 sir?

23 A I don't believe so.

24 Q And you don't recall whether you've had any
25 discussions with anybody about what took place at that

1 meeting; isn't that correct?

2 A Yeah, I had discussions with Dave.

3 CHAIRMAN CLARK: With who?

4 WITNESS DOLAN: With Dave Gammon, plus they
5 had sent us a letter, either shortly -- I think right
6 before that meeting or right after.

7 BY MR. ROSS:

8 Q You recall those today, but you didn't recall
9 those at your deposition a few weeks ago?

10 A Correct.

11 Q That's correct, isn't it, Mr. Dolan?

12 A Yes, sir.

13 Q When you gave your deposition a few weeks ago
14 you couldn't recall if you had had any discussions with
15 anybody about that meeting, correct?

16 A That's correct, but I've researched meeting
17 notes about that meeting.

18 Q Are there Florida Power meeting notes of that
19 meeting, Mr. Dolan?

20 A I don't believe so.

21 Q So whose meeting notes of that meeting did you
22 research?

23 A Panda's.

24 Q Anybody other than Panda's notes?

25 A No. And other than I remembered that I asked

1 Dave to fax that Polk Power Partners' decision to him
2 again, which a copy of that fax sheet is in the
3 deposition exhibits.

4 Q At your deposition, isn't it correct,
5 Mr. Dolan, that you didn't remember at all whether there
6 was any response to the letter that's attached to your
7 prefiled testimony as RDD-8?

8 A I don't know where in the depo it is.

9 Q Well, do you now recall that there was a
10 response to Mr. Holland's letter of June 23rd, 1994,
11 which is attached to your direct testimony?

12 A We faxed the Polk Power Partners' decision to
13 them.

14 CHAIRMAN CLARK: Mr. Ross, what exhibit did
15 you reference to Mr. Dolan's direct testimony?

16 MR. ROSS: It's attached to his prefiled
17 testimony. It's called their RDD-8. It would now be
18 part of Composite Exhibit 1.

19 CHAIRMAN CLARK: What was your question
20 again?

21 MR. ROSS: Did he recall whether or not there
22 was a response to that letter?

23 CHAIRMAN CLARK: And your answer?

24 WITNESS DOLAN: Other than we faxed the Polk
25 Power Partners' decision to them.

1 CHAIRMAN CLARK: That's the only response you
2 made to that, that you recall?

3 WITNESS DOLAN: Yeah, and obviously we weren't
4 going to sign the letter, which we didn't.

5 CHAIRMAN CLARK: Okay.

6 BY MR. ROSS:

7 Q Now at your deposition, at Page 54, this is of
8 Volume 3 -- and actually Volume 3 took place on January
9 the 30th, 1996, that was the second day of your
10 deposition, beginning at Line 24 where we were
11 discussing this same June 23rd letter, I asked you
12 beginning on 25, "That's why I'm asking you if you
13 recall if there was a response to the June 23rd letter."

14 And your answer at that time was, "I don't --
15 I don't know for sure, but I think there wasn't a formal
16 response."

17 A There wasn't a formal response then to the
18 letter addressing that exact letter.

19 CHAIRMAN CLARK: There was not a formal
20 response? You agree with what you said at your
21 deposition?

22 WITNESS DOLAN: Yes, we faxed something more
23 informal and we wouldn't sign the document, but we
24 didn't write a letter saying we will not sign document.

25 BY MR. ROSS:

1 Q You recall that in the spring of 1994, there
2 had been discussions with Panda about building direct
3 interconnection facilities to the Florida Power system
4 from their project, but that those discussions were
5 dropped as a result of certain threats made by the City
6 of Lakeland?

7 A I'm not sure about the time frame.

8 Q But you remember the event occurring?

9 A Yes. Lakeland threatened that they would take
10 us to the Commission on duplication of services, the
11 City of Lakeland.

12 Q And that's because they had transmission
13 facilities that they thought could be used by Panda to
14 connect to your system that would be duplicated,
15 correct?

16 A That's correct. They had 69 kV facilities,
17 probably closer to the Panda proposed location than we
18 had our higher voltage facilities.

19 Q And so as a result of those discussions being
20 dropped, Panda had to negotiate a wheeling agreement
21 with the City of Lakeland, correct?

22 A They may have already been negotiating one. I
23 think they were.

24 Q But they went ahead and then --

25 A Finalized it.

1 Q Mr. Dolan, in your prefiled testimony, as part
2 of what's now Composite Exhibit 1, you submitted a
3 series of letters from -- between Florida Power and
4 Panda in the June-August 1994 time period. But there's
5 one that you didn't submit, and let me see if you recall
6 this one. Let me show you what was Deposition Exhibit
7 125. All of our multiple copies of this one seem to
8 have disappeared. Well, let's press on. We'll get the
9 copies made. For some reason all of our copies seem to
10 be misplaced.

11 Do you have any copy of it? Well, let me show
12 the witness my copy just for the purpose of identifying
13 it.

14 Let me show you what was Deposition Exhibit
15 125 at your deposition, which I will ask be identified
16 as Exhibit 16, consists of a cover sheet, fax cover
17 sheet, and two letters, one addressed to Mr. Gammon and
18 one addressed to you, both dated August 8th, 1994.

19 Do you recall having seen those letters and
20 having received those letters?

21 A Yes.

22 Q Okay. And you will notice that the letter to
23 Mr. Gammon refers to changes being made to the attached
24 letter of clarification per our, quote, "recent
25 discussions." You see that reference?

1 A Per our recent discussion, singular, yes.

2 Q You see that reference?

3 A Yes.

4 Q The fact is, Mr. Dolan, you don't know whether
5 or not conversations took place between Mr. Gammon and
6 Mr. Killian as Mr. Killian reflects in this letter; do
7 you, sir?

8 A I would think they did.

9 Q Okay. But you don't know what Mr. Gammon and
10 Mr. Killian discussed; is that correct?

11 A I would assume it's about this letter that's
12 addressed to me that came attached to it.

13 Q You don't have any specific recollections of
14 discussions within Florida Power about whether anyone
15 should sign the letter that's addressed to you dated
16 August 8th, 1994; do you, sir?

17 A I'm sure we had discussions and we would not
18 sign. I don't recall the specific discussions.

19 Q Now, in your --

20 COMMISSIONER GARCIA: Mr. Dolan, could you
21 please speak up? I beg of you.

22 WITNESS DOLAN: I don't remember the specific
23 discussions, but I'm sure we had discussions; when
24 somebody sends a letter for you to sign, that you would
25 discuss it and decide whether you were going to sign the

1 document or not, which we did not sign this document.

2 MR. ROSS: Just for the record, I will be
3 submitting this one into evidence at the lunch break, or
4 some time this afternoon we'll try to get the copies
5 made. I don't know where our copies went.

6 If anybody on the Commission would like to
7 review this right now, I have one copy of it right
8 here.

9 CHAIRMAN CLARK: We'll look at it when you get
10 the copies.

11 BY MR. ROSS:

12 Q In your direct testimony, in the exhibits that
13 have been admitted as Composite Exhibit 1, there is a
14 letter dated September the 8th, 1994 referenced in your
15 direct as RDD-12. If you could turn to that for a
16 moment. That is a letter dated September the 8th, 1994
17 that you wrote to Mr. Woodruff at Panda, correct?

18 A That's correct.

19 Q In your letter you say, at the end of the
20 first paragraph, you are pleased to see that Panda
21 intends to consult with the Florida Public Service
22 Commission, and you're referring to the 75 megawatt
23 issue, correct?

24 A That's correct.

25 Q And the fact is, at the time you wrote this

1 letter, you didn't have in your mind any specific method
2 of consulting with the Florida Public Service Commission
3 that you were referring to, correct?

4 A No, other than the letter goes on to discuss
5 FPSC actions.

6 Q Right. Fine. The letter goes on to discuss
7 what your position might be after the FPSC actions,
8 correct?

9 A That's correct.

10 Q You don't recall being in a meeting that took
11 place on January the 6th, 1995 between Panda
12 representatives and Florida Power representatives,
13 correct?

14 A No.

15 CHAIRMAN CLARK: January 6th?

16 MR. ROSS: January 6th, 1995.

17 WITNESS DOLAN: I don't believe I was there.

18 BY MR. ROSS:

19 Q And I take it then that in making the comments
20 you've made in your prefiled testimony, you weren't
21 relying on anything that may have occurred at such a
22 meeting? Is that correct?

23 A Probably correct.

24 CHAIRMAN CLARK: I'm sorry. What was your
25 answer?

1 WITNESS DOLAN: That's probably correct.

2 CHAIRMAN CLARK: Okay.

3 MR. ROSS: Let me next show you Exhibit 130,
4 Deposition Exhibit 130, which we will mark as --

5 CHAIRMAN CLARK: Mr. Ross, I think it's -- we
6 didn't get Exhibit 16 yet.

7 MR. ROSS: So this would be 17.

8 CHAIRMAN CLARK: Exhibit 17 is Deposition
9 Exhibit 130?

10 MR. ROSS: 130, correct.

11 (Exhibit No. 17 marked for identification.)

12 BY MR. ROSS:

13 Q And can you just identify for the record that
14 you in fact wrote this letter to Mr. Woodruff at Panda
15 on September 19th, 1994?

16 A That's correct.

17 Q And in this letter you were asking Panda to
18 describe for you what their standby fuel capabilities
19 were at the project, correct?

20 A That's correct.

21 Q And you knew that Panda was using No. 2 fuel
22 oil as its standby fuel, correct?

23 A I think we knew that their QF application with
24 FERC used No. 2 oil, and in their previous responses to
25 Florida Power in '91 were using No. 2 oil. I'm not sure

1 exactly what we knew they were planning on doing now,
2 and this is what the letter was about, verifying what
3 their intentions were today.

4 Q Mr. Dolan, let me next show you deposition
5 Exhibit 134, which would be Exhibit 18.

6 CHAIRMAN CLARK: Deposition Exhibit 134 will
7 be identified as Exhibit 18.

8 (Exhibit No. 18 marked for identification.)

9 BY MR. ROSS:

10 Q Mr. Woodruff, you in fact wrote that letter to
11 Mr. Woodruff at Panda and sent it to Panda on January
12 25th, 1995?

13 A That's correct.

14 Q January 25th, 1995 is in fact the same day
15 that you filed this proceeding in the Public Service
16 Commission that we're here on today; is that correct?

17 A I believe that date is correct.

18 Q And in that letter you were letting
19 Mr. Woodruff know that you were filing that petition
20 that day, correct?

21 A Yes.

22 Q And isn't it also correct that you had not
23 given anyone at Panda any advance notice prior to that
24 day of the fact that you intended to file this
25 proceeding in the Florida Public Service Commission?

1 A That's correct.

2 Q In the last paragraph of your letter you refer
3 to the issue of the 20- versus 30-year capacity payment
4 in this proceeding, correct?

5 A That's correct.

6 Q Isn't it correct, sir, that you personally
7 don't recall ever having discussed the issue of capacity
8 payments after the expiration of 20 years with anyone at
9 Panda prior to writing your letter?

10 A I think I had told some people at Panda that
11 it was our understanding that capacity payments were
12 only for 20 years.

13 Q Your testimony today is that you did have a
14 discussion personally?

15 A I think that discussion was had. I don't
16 recall exactly who with or when it took place.

17 Q Do you recall in your deposition on Page 106
18 at Line 11 being asked: "Have you discussed this issue
19 of capacity payments after the expiration of 20 years
20 with anyone at Panda prior to your letter?"

21 You said, "I think we had."

22 And I said, "No, I mean you personally," at
23 Line 16, "is what I'm asking."

24 And your answer was, "I don't recall."

25 A Yes. The more I've thought about that, I do

1 think I recall that conversation taking place.

2 Q Prior to January 25th, you had become aware,
3 had you not, of a letter dated August 24th, 1994 from
4 Joe Jenkins, the Director of the Division of Electric
5 and Gas of this Public Service Commission to Barrett
6 Johnson?

7 A Prior to when?

8 Q Prior to your writing your letter of January
9 25th.

10 A Yes. I think we found out about it in January
11 of that year.

12 Q And let me have that letter, which was
13 Deposition Exhibit No. 127 marked as Exhibit 18.

14 CHAIRMAN CLARK: Deposition Exhibit 127 will
15 be marked as Exhibit 19.

16 (Exhibit No. 19 marked for identification.)

17 BY MR. ROSS:

18 Q In fact, you had received a copy of --

19 CHAIRMAN CLARK: Isn't this already an exhibit
20 to somebody's testimony?

21 MR. ROSS: Yes, I think it is an exhibit to
22 Mr. Killian's testimony. Of course we haven't -- which
23 we'll get to.

24 CHAIRMAN CLARK: Okay.

25 BY MR. ROSS:

1 Q You in fact had received a copy of that letter
2 from Panda in early January attached to a letter from
3 Panda, hadn't you?

4 A That's correct.

5 Q Let me just ask you to identify that one for
6 the record, which would be Deposition Exhibit 132, which
7 will be Exhibit 19 in this proceeding.

8 CHAIRMAN CLARK: Mr. Ross, the last exhibit
9 was 19. This one is 20.

10 MR. ROSS: Good thing they don't allow me to
11 mark documents. I'm sorry.

12 CHAIRMAN CLARK: Deposition 132 will be marked
13 as Exhibit 20.

14 (Exhibit No. 20 marked for identification.)

15 BY MR. ROSS:

16 Q Can you identify that document as the letter
17 that transmitted to you a copy of Mr. Jenkins' letter?

18 A Yeah, other than it doesn't enclose Barrett
19 Johnson's letter. It's referenced on this letter that
20 both are enclosed.

21 Q And when you got the letter, Barrett Johnson's
22 letter was attached also, correct?

23 A That's correct.

24 Q Mr. Dolan, in your direct testimony you make
25 some statements about the effect on Florida Power if, as

1 you say, Panda is permitted to build a facility that
2 could turn out under some conditions as much as 115
3 megawatts. Isn't it correct that under the curtailment
4 plan that has been adopted by this commission, in low
5 load periods you would be able to curtail Panda's entire
6 output down to the 74.9 megawatt level?

7 A No. I think in my testimony I relate to
8 cycling off of the Anclotes and Bartow, the oil-fired
9 plants. And under our plan we cycled them off before we
10 turned the NUGs down to their committed capacity. And
11 the savings would not be attributable in our curtailment
12 plan. The savings that are talked about in this
13 document are the cycling costs of our oil-fired plants,
14 which are cycled off prior to turning the NUGs down to
15 their committed capacity?

16 Q Mr. Dolan, let me see if I can ask my question
17 again. It's correct, is it not, under your curtailment
18 plan, that in low load periods you could curtail Panda's
19 capacity, all of its capacity above 74.9 megawatts. You
20 could curtail them down to the 74.9, correct?

21 A Yes, but I think you started talking about in
22 my testimony, and that question really doesn't relate
23 directly to the testimony I put in here. We can curtail
24 Panda prior to cycling off our coal plants.

25 Q You can curtail everything down to the 74.9,

1 correct?

2 A Prior to turning off our coal plants.

3 CHAIRMAN CLARK: Your what plants?

4 WITNESS DOLAN: Our coal plants, C-O-A-L.

5 BY MR. ROSS:

6 Q This curtailment plan is a result of what you
7 perceived to be minimum low load problems, correct?

8 A Yes.

9 Q Isn't it also correct that you don't expect
10 your low load problems to last more than about seven
11 years?

12 A I think the severe low load problems we stated
13 at the Commission would be five to seven years, but we
14 may be cycling off oil plants for -- as we have been
15 before we had low load problems, that we were cycling
16 off the Anclotes and Bartows.

17 Q In fact, you expect your minimum load problem
18 to get less and less until it ultimately becomes a
19 nonproblem, correct?

20 A It should become significant as far as the
21 impact on our coal plants.

22 Q Isn't it correct that you had discussions with
23 representatives of Panda about this curtailment question
24 where Panda advised you that the way they intended to
25 operate the plant was that it would not be in their

1 interest to operate the plant when you were at minimum
2 load conditions?

3 A We had some very preliminary talks with them
4 about low load operation.

5 COMMISSIONER KIESLING: Would you speak up?
6 And Mr. Ross, you're going to get it now. You trailed
7 off at the end the question, so I don't even know what
8 the question is.

9 MR. ROSS: You're right, I wasn't thinking,
10 and I backed away from the microphone. Let me just ask
11 the question again. We're just about finished here.

12 BY MR. ROSS:

13 Q Isn't it a fact that you had discussions with
14 Panda about your curtailment question where Panda
15 representatives advised you that the way Panda intended
16 to operate their plant, it would have not been in their
17 interest to operate the plant when you were at minimum
18 load conditions?

19 A That's correct, but the minimum load
20 conditions as related to the cycling off the NUGs and
21 the coal plants, or cycling them down.

22 Q In fact, they told you they intended to shut
23 off their plant at minimum loads conditions; didn't
24 they?

25 A That's what I recall.

1 MR. ROSS: I have no further questions of
2 Mr. Dolan as to his direct testimony.

3 CHAIRMAN CLARK: Okay. We're going to take a
4 break until 1:30. At that time Staff can begin their
5 cross-examination, and Mr. Ross, I would hope you would
6 have copies of Exhibit 16 and we can clarify that. I
7 would remind you that we're on the first witness. We
8 have one day for this hearing. We need to speed things
9 up.

10 Would you also pick up these confidential
11 exhibits? Thank you. We will adjourn until 1:30.

12 (Recess from 12:55 a.m. until 1:37 p.m.)

13 CHAIRMAN CLARK: Going to reconvene the
14 hearing. Mr. Ross.

15 MR. ROSS: Shall I formally move those
16 exhibits in now or --

17 CHAIRMAN CLARK: No, at the end of the
18 redirect. But I have a document, it's Deposition
19 Exhibit 125, and we will mark that as Exhibit 16.

20 (Exhibit No. 16 marked for identification.)

21 CHAIRMAN CLARK: Ms. Brown.

22 MS. BROWN: Chairman Clark, Florida Power
23 Corporation has asked if its witness, rebuttal witness,
24 Mr. Gwynn, could be taken out of order in order that he
25 can catch his plane this evening. His plane leaves at

1 6:00. The -- as I understand it, Panda has no objection
2 to that. We have no objection to that. FPC has
3 suggested that we take him right after Mr. Dolan.

4 CHAIRMAN CLARK: All right, that's what we'll
5 do.

6 Go ahead, Ms. Brown, you're doing
7 cross-examination of Mr. Dolan.

8 CROSS-EXAMINATION

9 BY MS. BROWN:

10 Q Good afternoon. Let me put on my glasses.

11 Mr. Dolan, do I understand your testimony in
12 this proceeding to propose that the Commission's
13 standard offer rules limit a qualifying facility's size
14 to 75 megawatts of net capacity?

15 A Yes, under normal conditions.

16 Q Can you define what you mean by that?

17 A Typical output.

18 Q And what is typical output?

19 A Under normal Florida conditions, considering
20 their steam host requirements.

21 Q It's not the same in your mind as the term
22 gross output, is it?

23 A No.

24 Q Well, can you explain the difference?

25 A Gross output is before generation auxiliaries,

1 which those auxiliaries are needed to make the power.

2 Q Okay, can you restate your answer to that
3 question in some walking-around language?

4 A Well, typically at Florida Power we talk about
5 the gross output of like a Crystal River unit that might
6 be 740 megawatts. But to create the 740 megawatts, it
7 takes 30 megawatts of pumps and fans and that type of
8 equipment. So the net output is 710.

9 Q All right, so with respect to Panda's proposed
10 facility, you say they can -- are you saying that they
11 can construct a facility that has a gross output that is
12 larger in order that their net capacity, after all of
13 their internal uses of electricity have been taken care
14 of, will not exceed 75 megawatts?

15 A Yes. And a facility like that may have four
16 or five megawatts of auxiliaries.

17 CHAIRMAN CLARK: Mr. Dolan, I want to be clear
18 on that point too. Under -- is it your interpretation
19 under the rule that the capacity, the limitation of 75,
20 is net capacity and not gross?

21 WITNESS DOLAN: Yes, net of generation
22 auxiliaries.

23 CHAIRMAN CLARK: Okay.

24 BY MS. BROWN:

25 Q At the time that Panda's standard offer

1 contract was chosen by Florida Power Corporation, did
2 Florida Power Corporation expect Panda to supply 74.9
3 megawatts of firm capacity from a unit whose size was
4 smaller than 75 megawatts, net capacity?

5 A We thought they could size -- or I did, that
6 they could size the facility, and typically make 74.9
7 megawatts.

8 Q And what size, in your mind, would they have
9 to make that facility to do that?

10 A Well, depending on their steam host, I mean
11 it's all -- a lot of it depends on that. But you
12 probably could make a facility that almost always, under
13 normal conditions, makes 75 megawatts.

14 Q How big would the gross output of that
15 facility have to be in order to do that?

16 A Well, again, it may be 80.

17 Q It may be 80?

18 A Yeah, but I mean the pumps and fans associated
19 with the generation really has to be taken into
20 account. That's load the generation has to serve. And
21 that's load that wouldn't be there if the generation
22 wasn't there.

23 Q So if they built a facility that was 80
24 megawatts, in your mind that wouldn't violate the
25 Commission rules, or would it?

1 A No. I think the rule says net capacity, and
2 under that example it would have a net capacity of 74.9,
3 74 megawatts. I mean, also the contract had the ability
4 to lower the committed capacity by ten percent so that
5 they wouldn't have had to come in at exactly 74.9; they
6 could have come in somewhere between -- if I do the math
7 right -- at 68.1 to 74.9.

8 Q You mean in terms of the standard offer that
9 they signed with you?

10 A Yes.

11 Q So if I follow your logic, because of the way
12 the rule is written, a cogenerator could never sign a
13 contract for committed capacity, a standard offer
14 contract for committed capacity of 74.9 megawatts and
15 satisfy the terms of the rule?

16 A They might be able to do that. I mean, you
17 know --

18 Q How likely is it that they would be able to do
19 that?

20 A Actually, Stewart & Stevenson created a design
21 just to comply with -- I think it was a New York law and
22 a California law that didn't allow as -- or relieved
23 some of the permitting restrictions if the facilities
24 were 75 megawatts or less, and actually combined an
25 LM 2500 and an LM 5000 to two of their turbines and

1 created an LM 7500 -- they called it that -- that
2 complied with the California and New York laws and
3 created 75 megawatts.

4 Q They specifically specially had to do this in
5 order to comply?

6 A (Nods affirmatively.)

7 Q So am I to understand from your answer that
8 you're saying it would, under special circumstances, be
9 possible to satisfy a 74.9 committed capacity contract
10 with the 74.9 facilities, net capacity facility size?

11 A Yes, under normal conditions. I mean, true,
12 it could have some fluctuations where it may, under
13 certain conditions, could make more power, but they have
14 control of that by how much fuel they put in. Tiger
15 Bay, just to give you an example, has a steam turbine
16 rated at 74.9 megawatts, and that's all it can make.
17 And the reason they did that was they limited the size
18 of the steam turbines so they wouldn't have to go under
19 the site act. So if you go look at the name plate, it
20 says 74.9, and they designed -- it's right there on the
21 name plate of the GE machine -- and they designed it,
22 GE, to peak out at 74.9.

23 Q In your testimony you make several points
24 regarding the idea that the cogenerator could lower the
25 size of the contract that they -- standard offer that

1 they signed in order to meet the 75 megawatt facility
2 limit that you think is there. So while it might be
3 possible to meet a standard offer contract of 74.9
4 megawatts with the 74.9 facility, don't you agree that
5 you emphasize the choice that the cogenerator has in
6 your testimony to build a smaller -- or to -- not to
7 build a smaller, but to sign up for a standard offer of
8 smaller size? And that is the suggestion that you make
9 most often in your testimony about how to accommodate
10 the 75 megawatt limit.

11 A Yeah. You know, they could have -- a
12 developer could have picked, under this contract, 68
13 point -- I think it's 3 megawatts, and got to the plus
14 or minus ten percent, which would have got them to the
15 74.9 or whatever the other number is, going backwards,
16 which would have given them more flexibility in the
17 design.

18 Q Well, I don't want to belabor this, but let me
19 just say it one other way. So although the cogenerator
20 cannot build a facility larger, in your mind, than 75
21 megawatts to serve an almost 75 megawatt standard offer,
22 your suggestion, then, is that they build a 75 megawatt
23 facility but only sign up for a standard offer that's
24 less than that?

25 A Or they could -- yes, or they could try to

1 design a facility to exactly hit that point.

2 Q And in the process, of course, of signing up
3 for a standard offer contract that's less than the 75
4 megawatt limit, they receive less capacity payments;
5 they don't make as much money?

6 A If their committed capacity is less, yes.

7 COMMISSIONER GARCIA: How often does that
8 happen, in your contracts? Give me a ball park, where
9 the facility is designed specifically for the size, or
10 that the facility is not capable of producing much
11 more. Does that happen all the time or -- you just
12 mentioned one plant and you talked about a little plaque
13 on the door, but as a general rule, is that how it
14 occurs?

15 WITNESS DOLAN: The plant is pretty well --
16 our cogeneration facilities, when they design like OCL
17 for 115, it makes between -- and you can pull the meter
18 readings between 114 and 116. The Lake and Pasco were
19 designed -- they thought they would make 109 or 110,
20 according to which facility, and they just, like
21 clockwork, make 109 and 110 respectively. Mission
22 Energy thought their unit would be 150, and when you
23 pull the meter readings, it's almost always at 150.

24 BY MS. BROWN:

25 Q Mr. Dolan, in Mr. Dietz's testimony, he

1 proposes that the 115 megawatt unit is needed to ensure
2 Panda's ability to supply the 74.9 megawatts of firm
3 capacity under all conditions and at all times.

4 That's -- if you want to look at his testimony, it's
5 Page 5, Line 2.

6 A Yeah, I remember.

7 Q In your opinion, does Florida Power
8 Corporation's standard offer contract require Panda to
9 supply 74.9 megawatts at all times?

10 A It requires it to supply 74.9 megawatts
11 within -- on a 24-hour basis within 60 days. In other
12 words, we can put them on notice and tell them we want
13 to conduct a -- I forget the definition, a test of their
14 committed capacity. And they have 60 days to comply
15 with that test, to pass it, and it's 24 straight hours,
16 and maybe in this contract, two 11-hour periods,
17 consecutively.

18 Q That's all in their contract?

19 A Yes.

20 Q I'm just curious. This may not really be
21 horribly relevant, but in your other cogeneration
22 contracts, do you have a similar provision, 60-day
23 provision?

24 A Yes.

25 Q How often do you exercise that?

1 A We have not done it very often yet because
2 we're getting their meter readings, and the people are
3 consistently making their committed capacity.

4 And this includes the two machines that they
5 talked about, that the Pulp Power Partners has a
6 committed capacity of 110. You can pull the readings.
7 We're not seeing these degradations. The OCL has 115
8 megawatts of committed capacity, 79.2 to us and 35 to
9 Reedy Creek, and they are just day in and day out, since
10 September, summer of '93, making 115 megawatts. So they
11 design their facility taking these things into
12 consideration.

13 Q And the Polk unit is -- the Polk Power
14 Partners' unit is which one?

15 A GE Frame 70A.

16 Q No, I mean, what's the name of the facility?

17 A It's Polk Power Partners. The two contracts
18 are Mulberry and Royster.

19 Q Right. And they're in Polk County?

20 A Yes.

21 Q Where Lakeland is located?

22 A Yeah. They're maybe ten miles away from
23 Lakeland.

24 Q So the temperatures are similar, weather
25 conditions are similar?

1 A Yes.

2 Q So I think I understand you to be saying that
3 the type of facilities that the cogenerators are
4 building are extremely reliable; is that correct?

5 A Yes. And they're also designing them to take
6 into account changes in ambient temperature.

7 Q I want to ask you just a few questions about
8 the 20 or 30-year issue that's in this case. I think I
9 understood your responses to Mr. Ross's
10 cross-examination earlier, and it was also my
11 understanding that you gave that opinion in your
12 deposition, that you were aware from the very beginning
13 that Panda filled in the March 2025 date in its standard
14 offer contract, which at that time amounted to a 30-year
15 term; is that correct?

16 A Yes.

17 Q And I think -- I'm not sure, but I think
18 Mr. Ross asked you if you had communicated to Panda
19 about the difference between the 20-year capacity
20 payment stream and the 30-year term. Had you?

21 A I'm pretty sure somewhere during the course
22 of -- not in the '91 time frame, but later on, that
23 that was communicated to them by me.

24 Q But not in the '91 time frame when the
25 contract was signed?

1 A No.

2 Q You also indicated earlier that you
3 interpreted, or assumed I guess is really a better way
4 to say it, that after the 20-year period for firm
5 capacity payments had expired, Florida Power Corporation
6 would be obligated only to pay as-available energy to
7 Panda for the remaining years of the term?

8 A Yes, but also that we would be obligated to
9 purchase as-available, which may not be the case
10 according to the changes in law in 2017.

11 Q True. I understand. Panda would not be
12 obligated to sell you that as-available energy, though,
13 would it?

14 A Probably not, since they're -- as far as I
15 know, the contract did not have the operational security
16 guarantees. So they could default on the contract and
17 walk away with no damages.

18 Q Well what would be a situation where they
19 wouldn't have to sell you energy under that contract
20 after the capacity terms had expired? Where they didn't
21 have the energy available, they wouldn't have to sell it
22 to you; that's correct?

23 A Yes.

24 Q And if they had negotiated another agreement
25 with another entity for the remaining years, they

1 wouldn't have it available and they wouldn't have to
2 sell it to you?

3 A That's most likely the case.

4 Q Does your standard offer contract -- I think
5 you have it. It's in your exhibits. Does it spell out
6 anywhere in specific language that after the 20-year
7 capacity payment term expires, you will be responsible
8 only to pay as-available energy prices to Panda? We
9 talked about this at your deposition.

10 (Pause)

11 A I'm not sure it's clear on that, in the
12 contract, on what would happen.

13 Q All right. So I understand that answer to
14 mean that it does not spell it out anywhere specifically
15 that that would happen?

16 A Well, I don't recall anything in it. I mean,
17 we haven't researched the contract to make that
18 determination.

19 Q Can you turn to that contract in your
20 exhibit? I'm not exactly sure where it is. It's the
21 date stamp 101332 attached to your direct testimony.

22 A What number?

23 Q 101332.

24 A What does the document look like?

25 Q It's the contract, the standard offer

1 contract.

2 MR. SILVERMAN: That should be 382.

3 MR. MCGEE: At the top it's designated sheet
4 16 of 66.

5 MS. BROWN: Yes. Original Reissue Sheet No.
6 9.516. Do you see that, Mr. Dolan?

7 WITNESS DOLAN: Yes.

8 BY MS. BROWN:

9 Q Do you see the second sentence under Article 7
10 in 7.1 that says, "The committed capacity shall be made
11 available at the point of delivery from the contract
12 in-service date through the remaining term of this
13 agreement"?

14 A Yes.

15 Q How do you reconcile that specific language in
16 the contract with your position that the firm capacity
17 and energy payments to Panda only last for 20 years?

18 A Well, they would no longer have any firm
19 capacity requirements. They would no longer have to
20 meet the 90 percent capacity factor obligation after the
21 end of the capacity payments.

22 Q But none of that is specifically laid out in
23 the contract in express language, is it?

24 A Yeah, other than it talks about you have to
25 meet these certain requirements to receive your capacity

1 payment.

2 Q Well, maybe I can cut through some of this and
3 just ask you this. Would you agree with me that there
4 is an internal inconsistency in this standard offer
5 contract between the term for committed capacity
6 payments and the 30-year length of the contract term?

7 A I don't know.

8 Q What does the Commission's rule say on this
9 matter with respect to the amount of time that a utility
10 is required to pay firm capacity payments to a QF?

11 A The Commission rule says that for the life of
12 the unit -- capacity payments at a maximum would be for
13 the life of the unit.

14 Q Now, I think you said earlier that if the
15 capacity payments to Panda stop after 20 years, Panda
16 would no longer be obligated to provide capacity to
17 Florida Power Corporation under the standard offer
18 contract?

19 A That's correct. Right.

20 Q So you would be -- Florida Power Corporation
21 would relieve Panda of its performance requirements
22 under the contract after 20 years?

23 A Yeah, there is no penalties under the contract
24 to really relieve them because they're not getting the
25 capacity payment. There's no security deposit.

1 Q Okay. Now, if the Commission determines that
2 capacity payments should be paid to Panda for the term
3 of the contract, that is for 30 years or 28 years and
4 three months, as opposed to 20 years, how do you believe
5 those capacity payments should be calculated?

6 A I guess you could do it two ways. One is you
7 could just put into the formula the term of the capacity
8 payments, whether it be 28.25 years or 30.

9 Q When you say "the formula," you mean the
10 formula that's in our rule?

11 A Yeah, the formula -- let me find the rule.

12 Q 25-17.0832 sub (5)(a)?

13 A Yeah, the formula that's on 1748, which is 4,
14 subsection 4 -- no, (5)(a). You would just replace --
15 the L number in there would be the new -- the new term
16 of the capacity payments, whether it be 28.25 or 30, and
17 then you could recalculate the capacity payments based
18 on that and it lowers the payment about a dollar per kW
19 month.

20 Q And that payment then lasts for 30 years?

21 A Whatever the L is, whether it be 28.25. The
22 second way it readily comes to mind is you could look at
23 our current avoided cost for the remaining eight and a
24 quarter years or ten years, and calculate it based on
25 current avoided costs, which is what I said in -- some

1 in my testimony, where by requiring it up front, where
2 you wouldn't get the benefits that we've seen of cost
3 going down, or being able to make your planning
4 decisions in a timely manner as close to when you would
5 put that capacity in service.

6 Q How would the value of deferral be calculated
7 for the first year of payment to Panda if FPC has to pay
8 30 years of capacity payments?

9 A The first -- under the first scenario I
10 described?

11 Q Yes.

12 A You would just recalculate the first year
13 based on that formula that's 5-A.

14 Q With the 30-year life?

15 A Whatever the life that came out, whether it's
16 28 and a quarter or 30. And then once you calculate the
17 first value, just escalate the remainder at 5.1 percent.

18 Q Mr. Dolan, we asked you to make a similar
19 calculation and provide it to us at the hearing. I want
20 to pass that out now. It's entitled, Capacity Payments
21 For Term of FPC/Panda Standard Offer Contract.

22 CHAIRMAN CLARK: Ms. Brown, we'll mark that as
23 Exhibit 21.

24 MS. BROWN: All right.

25 (Exhibit No. 21 marked for identification.)

1 BY MS. BROWN:

2 Q Is that the -- is this the document that you
3 prepared for us?

4 A Yes.

5 Q Can you describe it for the Commission, what
6 it does?

7 A All we did in the first column is take the 20
8 years of capacity payments out of the contract, actually
9 type them in, and then multiplied that to get an annual
10 capacity payment of 70 -- multiplied it times 74,900 kW
11 and then 12 months.

12 The fourth column, we actually went into this
13 formula that's in your rule and substituted 28.25 for L,
14 which is expected life of the avoided unit, recalculated
15 the first year and then escalated at the contract
16 escalation rate each year thereafter of 5.1 percent, and
17 then also did the total annual payment. The annual
18 payment there is more for just information purposes.

19 Q Okay.

20 A As you can see, it changes the first year by
21 what, 79 cents -- no, 89 cents. It lowers the capacity
22 payment by 89 cents a kW month, which is about \$800,000
23 a year in the first year.

24 The second page, really, was an example of --
25 I think it's Panda's position -- better for Panda to say

1 it -- where we just took the last year in the
2 contract -- in the first column there we took the 2016
3 value out of the contract and just kept escalating at
4 5.1 percent through March of 2025 and then recalc using
5 our current avoided cost information, and that's the
6 fifth column. That's our avoided cost information
7 sitting here in January, February of this year, and then
8 did a comparison of current avoided cost to the -- what
9 I think is the Panda position on how to get those
10 remaining years of the contract, and did a comparison to
11 try to show the negative effect to the ratepayer of that
12 -- of extending that contract using that old avoided
13 cost information compared to new avoided cost
14 information.

15 Q So I think it's -- what you're saying is that
16 replacing -- that the capacity after the 20 years, in
17 kind, as Panda is arguing, at the end of the economic
18 life of this avoided unit that's in the standard
19 contract, would not be in the best interest of your
20 ratepayers?

21 A "In kind" meaning continuing that contract and
22 escalating at 5.1 percent?

23 Q Yes.

24 A Yes. It shows a detriment to the ratepayers
25 of a negative 11.6 million at the current cost of

1 capital.

2 MS. BROWN: We have no further questions.

3 Thank you.

4 CHAIRMAN CLARK: Commissioners, do you have
5 any questions?

6 (No response.)

7 CHAIRMAN CLARK: Redirect?

8 REDIRECT EXAMINATION

9 BY MR. MCGEE:

10 Q Mr. Dolan, do you recall earlier when you were
11 asked some questions by Mr. Ross regarding what was
12 marked as Exhibit 2, a list of all of the contracts that
13 Florida Power has with qualifying facilities, at least a
14 list that was current in September of 1993?

15 A Yes.

16 Q You were asked several questions about
17 standard offer contracts that were being served from
18 facilities larger than 75 megawatts. And I would like
19 to ask you -- and actually, I think you referred to
20 those, at the time that you were responding to the
21 question, as older standard offer contracts. Would you
22 explain to the Commission what the significance of those
23 being older contracts are?

24 A Yes, those -- the contracts that are served by
25 the larger facilities are contracts that were signed

1 prior to the Commission rules limiting the size of
2 standard offers to 75 megawatts, which occurred in the
3 1990 time frame. Those contracts were signed somewhere
4 in the '86 to '88 time frame, where there was no size
5 limitation on standard offer contracts. And that's why
6 I referred to them as old contracts. Typically we --
7 somehow started to refer to the ones after these rules
8 as new contracts and the other ones as old.

9 Q Ms. Brown asked you some questions about the
10 distinction between gross output and net output of a
11 facility as it relates to the 75 megawatt limit in the
12 Commission's rule. When you speak of net output, you
13 indicated that you would reduce from the facility's
14 gross capacity its -- I think you referred to it as
15 parasitic load, or the power required to operate the
16 station auxiliaries, pumps and other equipment. In
17 speaking of the unit's net electrical output, would you
18 also take out the thermal requirements that are
19 necessary to serve the steam host?

20 A Yes.

21 MR. MCGEE: That's all I have.

22 CHAIRMAN CLARK: Thank you. Exhibits?

23 MR. ROSS: Yes, I tender in each of the
24 exhibits that we used on cross-examination.

25 CHAIRMAN CLARK: Mr. McGee, do you move

1 Exhibit 1?

2 MR. MCGEE: Yes, ma'am.

3 CHAIRMAN CLARK: Exhibit 1 will be admitted in
4 the record without objection.

5 Mr. Ross moves Exhibits 2 through 20.

6 MS. BROWN: Staff moves Exhibit 21.

7 CHAIRMAN CLARK: Without objection, Exhibits 2
8 through 20 are admitted in the record, and without
9 objection, Exhibit 21 is admitted in the record.

10 Thank you, Mr. Dolan.

11 (Witness Dolan excused.)

12 * * *

13 MR. MCGEE: Madam Chairman, could I ask, was
14 Exhibit 16 passed out?

15 CHAIRMAN CLARK: Yes, it was.

16 (Exhibit Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10,
17 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 received
18 into evidence.)

19 (Transcript continues in sequence in
20 Volume 2.)

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