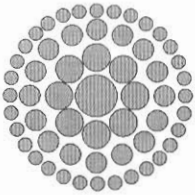


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**Florida
Power**
CORPORATION

JAMES A. MCGEE
SENIOR COUNSEL

July 11, 1997

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

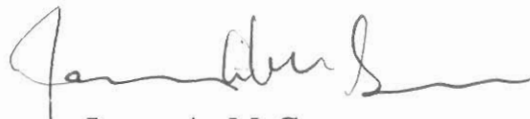
Re: Docket No. 950110-EI

Dear Ms. Bayó:

Enclosed for filing in the subject docket are an original and fifteen copies of Response of Florida Power Corporation to Panda's Emergency Motion for Stay of Extended Contract Performance Dates and Collection Under Irrevocable Letter of Credit Pending Determination of the Appeal from Final Order by the Supreme Court of Florida.

Please acknowledge your receipt of the above filing on the enclosed copy of this letter and return to the undersigned. Also enclosed is a 3.5 inch diskette containing the above-referenced document in WordPerfect format. Thank you for your assistance in this matter.

Very truly yours,


James A. McGee

JAM/kp
Enclosures
cc: Parties of Record

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DOCUMENT NUMBER-DATE
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FPSC-RECORDS/REPORTING

GENERAL OFFICE

3201 Thirty-fourth Street South • Post Office Box 14042 • St. Petersburg, Florida 33733-4042 • (813) 866-5184 • Fax: (813) 866-4931

A Florida Progress Company

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Standard Offer Contract for
the purchase of firm capacity and
energy from a qualifying facility
between Panda-Kathleen, L.P. and
Florida Power Corporation.

Docket No. 950110-EI

Submitted for filing:
July 14, 1997

**RESPONSE OF FLORIDA POWER CORPORATION TO PANDA'S
EMERGENCY MOTION FOR STAY OF EXTENDED CONTRACT
PERFORMANCE DATES AND COLLECTION UNDER IRREVOCABLE
LETTER OF CREDIT PENDING DETERMINATION OF THE APPEAL
FROM FINAL ORDER BY THE SUPREME COURT OF FLORIDA**

Although styled a motion for "stay," Panda-Kathleen, L.P. (Panda) seeks affirmative substantive relief from the Commission by its motion. Panda wants an additional 18-month extension of its standard offer contract milestone dates, with the extension to run from the date of the Supreme Court's decision on Panda's appeal of the Commission's order in this case. The milestones are the dates by which Panda must begin construction and ultimately place in service its co-generation facility.

While Florida Power does not oppose a stay of the existing milestone dates between June 27, 1997 (the date Panda first moved the Court for a stay) and the date the Court renders its decision, Florida Power does oppose an additional 18-month extension on top of that. Panda should be required to justify its request for such a lengthy extension with evidence that this is warranted. Florida Power requests that, once the Court disposes of the appeal, an evidentiary hearing be held to that end. At that hearing, the Commission can then determine whether an additional extension should be granted and, if so, upon what conditions.

DOCUMENT NUMBER-DATE
07005 JUL 14 97

The following chronology of milestone dates and extensions sets the context of Panda's request:

4/94 & 4/95	Original construction commencement and in-service milestone dates in contract
1/1/96 & 1/1/97	1st extended contract milestone dates (to which parties stipulated in 1993 and which the Commission previously approved)
7/1/97 & 7/1/98	2nd extended contract milestone dates per 5/20/96 Commission order

Notably, in its May 20, 1996 final order in this proceeding, the Commission did *not* start the 18-month extension period running from the date of its order. Rather, the Commission added 18 months to the existing deadlines, one of which -- the January 1, 1996 construction commencement milestone -- had already passed. Panda's motion for stay effectively asks the Commission to *amend that original order* so that the 18-month period is deemed to have begun running on May 20, 1996 (the date of the Commission's final order), and then Panda also seeks a stay of the start of the extension period, *nunc pro tunc*, so that the 18 months does not even start running until the Court rules on the appeal.¹

Panda waited until the last day of the second extended contract milestone date (7/1/97) to seek such relief from the Commission. Then, Panda moved the

¹ Panda seems to have lost sight of the purpose behind the standard offer contract. A standard offer contract is designed to replace an "avoided unit." This particular "avoided unit" was supposed to go on line January 1, 1997. That date was delayed once by the May 20, 1996 PSC final order. Panda's latest request would mean construction did not even have to start until January 1, 1999 and that the avoided unit would not actually have to be on line (assuming Panda started construction) until January 1, 2000. Such delays undermine the foundation of this standard offer contract, and certainly should not be granted without careful consideration by the Commission of all its ramifications and its impact upon Florida Power and its customers.

Commission for that relief without even offering to show why it needs so much more time. Panda also does not offer any protection to Florida Power and its ratepayers against the consequences and prejudice they will suffer by such an extension. Nevertheless, Florida Power would not object to a status quo stay by which the Commission stayed Florida Power's right to terminate the contract and collect on Panda's security guaranty pending the outcome of the appeal, if:

- (1) the Commission holds in abeyance until the appeal is resolved Panda's request to extend the existing milestones until dates 18 months beyond when the appeal is resolved,
- (2) the Commission will, upon conclusion of Panda's appeal, schedule an evidentiary hearing to then evaluate (i) the extent to which the Commission has jurisdiction to modify the contract milestone dates, (ii) whether Panda needs or is entitled to the requested extension, in whole or in part, and (iii) the safeguards necessary to protect Florida Power and its ratepayers from harm as a result of a milestone extension.
- (3) the Commission orders Panda to promptly post a supersedeas bond to protect Florida Power and its ratepayers against the lost use of the \$749,900 security guaranty that it would have been able to collect on July 1, 1997, but for the requested stay of the extended milestone, if Florida Power prevails on appeal and then Panda does not construct the project.

Florida Power believes a supersedeas bond in the amount of \$59,992 would be reasonable.²

WHEREFORE, Florida Power respectfully requests that the Commission enter an order:

A. Granting Panda's motion for stay only in part to stay Florida Power's right to terminate the contract and to draw down on the letter of credit,

² That number represents 12 months interest at the 8% Florida statutory rate on the \$749,900 security guaranty posted by Panda that would have belonged to Florida Power but for its request to extend the milestones again, pending this appeal.

pending the outcome of the appeal, on the conditions that (1) Panda promptly post a supersedeas bond in the amount of \$59,992, and (2) the Commission schedule an evidentiary hearing on whether and to what extent, if any, Panda's request for a further extension of milestone dates should be granted once the appeal has been concluded; and

B. Granting such further relief as the Commission deems just and equitable under the circumstances.

Respectfully submitted,

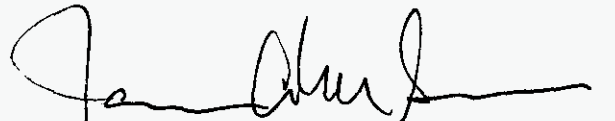
OFFICE OF THE GENERAL COUNSEL
FLORIDA POWER CORPORATION

By 

Jeffery A. Froeschle
James A. McGee
Post Office Box 14042
St. Petersburg, FL 33733-4042
Telephone: (813) 866-5184
Facsimile: (813) 866-4931

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Florida Power Corporation's Response to Panda's Emergency Motion for Stay, etc., has been furnished to David L. Ross, Esq., Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A., 1221 Brickell Avenue, Miami, Florida 33131 and Martha Carter Brown, Division of Legal Services, Florida Public Service Commission, 2450 Shumard Oak Blvd., Tallahassee, FL 32399-0892, by express delivery this 11th day of July, 1997.



Attorney