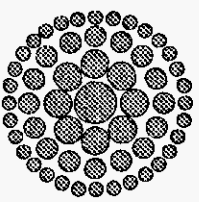


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**Florida  
Power**  
CORPORATION

**JAMES P. FAMA**  
ASSISTANT GENERAL COUNSEL

March 23, 1995

Ms. Blanca S. Bayó, Director  
Division of Records and Reporting  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, Florida 32399-0870

MAR 24 7 45 AM '95  
RECEIVED  
MAIL ROOM

Re: Docket No. **950110-EI**

Dear Ms. Bayó:

Enclosed for filing in the subject docket are fifteen copies of Florida Power Corporation's Motion to Strike Panda-Kathleen L.P.'s Motion for Declaratory Statement.

- ACK
- AFA \_\_\_\_\_
- APP Nelton
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
- EAC Ballinger
- LEB \_\_\_\_\_
- LIN 6
- CPC \_\_\_\_\_
- ROB \_\_\_\_\_
- SEC 1
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

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 P. Fama*  
James P. Fama

RECEIVED & FILED

*J.P.*  
FPSC BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

03191 MAR 24 1995

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL  
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In re: Petition for declaratory statement regarding eligibility for Standard Offer contract and payment thereunder by Florida Power Corporation.

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Docket No. 950110-EI

Submitted for filing:  
March 24, 1995

**FLORIDA POWER CORPORATION'S MOTION TO  
STRIKE PANDA-KATHLEEN L.P.'s MOTION  
FOR DECLARATORY STATEMENT**

Pursuant to Commission Rule 25-22.037(2), Florida Power Corporation ("FPC") hereby submits this Motion To Strike Panda-Kathleen L.P.'s March 14, 1995 Motion For Declaratory Statement And Other Relief. In support of this motion, FPC submits the following:

1. On January 25, 1995 Florida Power Corporation filed its Petition for Declaratory Statement seeking a declaration that the Standard Offer Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility Less than 75 MW or a Solid Waste Facility between Panda-Kathleen L.P. and Florida Power Corporation, dated November 25, 1991, was not available to Panda-Kathleen L.P. ("Panda") if it constructs a facility configuration with the capacity to produce 115 megawatts ("MW"). Further, if the Commission determines that the Standard Offer Contract is available to Panda, Florida Power is seeking a declaration that FPC has no obligation to make capacity or energy payments under the Standard Offer Contract beyond a 20-year term ending December, 2016.

DOCUMENT NUMBER-DATE

03191 MAR 24 1995

2. On March 14, 1995 Panda filed a Motion For Declaratory Statement And Other Relief. This eclectic, 31-page motion, including seven exhibits totalling 102 pages, makes various requests of the Commission, including the following:

- (a) a determination that the facility Panda has designed is consistent with the Standard Offer Contract;
- (b) a determination that the Standard Offer Contract has a 30-year term;
- (c) a determination that the Standard Offer Contract provides for escalating capacity payments over the last ten years of its alleged 30-year term;
- (d) an amendment of the Standard Offer Contract to change key provisions such as the "Construction Commence Date," the "Contract In-Service Date" and the "Term;" and
- (e) the issuance of a show-cause order that FPC be required to show cause why it should not be required expeditiously to provide Panda with 32 contract "clarifications."

3. The scope of the Commission's rule governing declaratory statements is narrow, and provides in pertinent part that "a declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of any statutory provision, rule or order as it does, or may, apply to petitioner in his or her particular circumstances only." Rule 25-22.021 [emphasis added]. Panda's motion raises many issues, such as the project financing clarifications Panda seeks, which are well beyond the particular circumstances surrounding the application of the Commission's rules to the Standard Offer Contract. Panda's claims might be appropriate in a Complaint proceeding under

Commission Rule 25-22.036(5) ("when a person complains of an act or omission by a person subject to Commission jurisdiction which affects the complainants substantial interest and which is a violation of . . . any Commission rule or order), but such claims are wholly inappropriate in a declaratory statement proceeding.

4. Panda's motion further seeks a show cause order, a procedure which has no place under the Commission's declaratory statement rules.

5. Lastly, Panda's motion raises various issues of material fact, both in the body of its pleading and in its affidavits, which are beyond the scope of a declaratory statement proceeding.

6 In the alternative, if FPC's motion to strike Panda's pleading is denied, FPC requests that it be granted an additional seven-days to answer Panda's extensive pleading. FPC's answer currently is due on Monday, March 27, 1995. A seven-day extension would make FPC's answer due on Monday, April 3, 1995. This brief extension of time is warranted in light of FPC's need to answer the many factual and legal issues Panda is raising and attempting to inject into this proceeding. If FPC's motion for a seven-day extension is granted, FPC has no objection to a change in the April 6, 1995 Staff recommendation date, or any other date currently set forth in the Case Assignment and Scheduling Record in this docket.