

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)

EVENING SESSION

VOLUME 3

PAGES 378 through 562

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:

LISA GIROD JONES, RPR, RMR

W. Paul Rayborn
and Associates

P.O. BOX 10195

TALLAHASSEE, FLORIDA 32302-2195

(904) 224-7642

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1 APPEARANCES:

2 JAMES A. MCGEE, Attorney at Law, and JEFFERY
3 A. FROESCHLE, Attorney at Law, Florida Power
4 Corporation, Post Office Box 14042, St. Petersburg,
5 Florida 33733-4042; appearing on behalf of Florida Power
6 Corporation.

7 DAVID L. ROSS, Attorney at Law, LAWRENCE D.
8 SILVERMAN, Attorney at Law, and LORENE JON BIELBY,
9 Attorney at Law, Greenberg, Traurig, Hoffman, Lipoff,
10 Rosen & Quentel, P.A., 1221 Brickell Avenue, Miami,
11 Florida 33131; appearing on behalf of Panda-Kathleen,
12 L.P.

13 MARTHA CARTER BROWN, Staff Counsel, and LORNA
14 WAGNER, Staff Counsel, Florida Public Service
15 Commission, 2540 Shumard Oaks Boulevard, Tallahassee,
16 Florida 32399-0850; appearing on behalf of the
17 Commission Staff.
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1 PROCEEDINGS

2 (Transcript continued in sequence from
3 Volume 2.)

4 CHAIRMAN CLARK: We'll reconvene the hearing.
5 Mr. Lindloff?

6 DAROL LINDLOFF

7 was called as a witness on behalf of Panda-Kathleen,
8 L.P., and having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. ROSS:

11 Q Mr. Lindloff, would you state your name and
12 your work address for the record please?

13 A Yes. My name is Darol Lindloff. I work at
14 Panda Energy International, Incorporated, located at
15 4100 Spring Valley Road, Dallas, Texas 75244.

16 Q Do you have before you a document which is a
17 copy of the prefiled direct testimony that you have
18 given in this case?

19 A Yes, I do.

20 Q Do you have any additions or corrections that
21 you wish to make at this time to that testimony?

22 A No, I do not.

23 Q And is that testimony true and accurate?

24 A Yes, sir, it is.

25 Q And if you were asked the same questions

1 today, would you give the same answers on the record?

2 A Yes, sir, I would.

3 MR. ROSS: I would move that the testimony of
4 Darol Lindloff be entered into the record as though
5 read.

6 CHAIRMAN CLARK: The prefiled direct testimony
7 of Mr. Darol Lindloff will be inserted in the record as
8 though read.

9 BY MR. ROSS:

10 Q Mr. Lindloff, do you have attached to your
11 prefiled testimony certain exhibits?

12 A Yes, sir, I do.

13 Q Those are designated, are they not, as DL-1
14 through DL-4?

15 A Yes, sir, that is correct.

16 Q And those are the exhibits that are referred
17 to in your direct testimony?

18 A Yes.

19 Q I would move Exhibits DL-1 through DL-4 into
20 evidence as Composite Exhibit 30.

21 CHAIRMAN CLARK: Mr. Ross, they'll be
22 identified as Composite Exhibit 30.

23 (Exhibit No. 30 marked for identification.)

24

25

1 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
2 TESTIMONY OF DAROL LINDLOFF
3 ON BEHALF OF PANDA-KATHLEEN, L.P.
4 DOCKET NO. 950110-EI
5

6 Q. Please state your name, profession, and business
7 address.

8 A. My name is Darol Lindloff. I am Vice President of
9 Panda Energy International, Inc. Panda Energy
10 International, Inc., is engaged in the development and
11 operation of cogeneration facilities. Panda-Kathleen,
12 L.P. is engaged in the development of a qualified
13 cogeneration facility in Lakeland, Florida pursuant to
14 a contract between Panda-Kathleen, L.P. and Florida
15 Power Corporation. My business address is 4100 Spring
16 Valley, Dallas, Texas 75244.

17
18 Q. State briefly your educational and professional
19 background.

20
21 A. I earned a B.S. in organic chemistry from Southwestern
22 University in 1960. From 1970 to 1977 I was an
23 applications engineer and sales manager for the

1 industrial gases division of Airco, Inc. From 1977 to
2 1983, I was a southwestern regional manager for the
3 sale of systems and equipment at two different air
4 pollution control firms. In 1984 and 1985, I developed
5 cogeneration projects for Central & Southwestern
6 Corporation's diversification subsidiary, C & SW Energy
7 of Dallas, Texas. I developed cogeneration projects
8 for Hawker Siddeley Power Engineering of Texas during
9 1986 and 1987. I arrived at Panda in 1989.

10

11 Q. On whose behalf are you appearing in this proceeding?

12

13 A. I am appearing on behalf of Panda-Kathleen, L.P.

14

15 Q. Please describe your duties with Panda Energy
16 Corporation.

17

18 A. I am involved with all aspects of project development,
19 including proposals, conceptual design, and technical
20 backup efforts.

21

22 Q. When was your first contact with FPC on behalf of
23 Panda?

1

2

A. In late 1990 and 1991, I was involved in negotiations with FPC to contract for a 150MW cogeneration plant to be located in Lakeland, Florida. Through those negotiations, I became acquainted with John Seelke, Robert Dolan and Alan Honey of FPC. Ultimately, in March 1991, FPC decided not to accept Panda's proposal because they required a different structuring of payment terms than our proposal had provided.

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Q. Did Panda ever enter into a contract with FPC?

14

15

A. Yes. In September of 1991, Panda received notification that the PSC had approved a standard offer contract form for the sale of committed capacity to FPC. Panda completed the form, and sent it back to FPC. A copy of the completed standard offer contract is attached as Exhibit "A".

16

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Q. What terms did Panda fill in on the standard offer contract?

23

1

2

A. The standard offer contract allows the cogenerator to chose a length of the contract of not less than ten years, and allows the cogenerator to chose a committed capacity to be provided to FPC. Panda chose a thirty year term and a committed capacity of 74.9 MW.

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Q. When Panda executed the standard offer contract, did Panda think that the contract required Panda to build a plant with a total generating capacity in excess of 74.9 MW?

9

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13

A. Yes. We thought that the contract would allow Panda to utilize any plant design which was sufficient to meet Panda's 74.9 MW committed capacity obligation to FPC. Panda knew that in order to meet the 74.9 MW committed capacity obligation, it would need to build a plant that would be able to produce an average output substantially larger than 74.9 MW.

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1 Q. Why would Panda need to build a plant with the ability
2 to produce an average output substantially larger than
3 74.9 MW ?

4
5 A. The output of a power plant at any given time is
6 dependant on conditions such as humidity, ambient
7 temperatures, power line loss, and degradation of
8 output due to necessary maintenance. Since the average
9 weather conditions in Florida involve massive amounts
10 of high temperatures and humidity, you need a larger
11 facility to meet a specific output requirement. In the
12 case of the Lakeland facility, you would need a
13 substantial amount of additional design capacity to be
14 sure that a 74.9 MW minimum committed capacity is met
15 during all conditions.

16
17 Q. Did FPC know that climate conditions would affect plant
18 output?

19
20 A. Yes. In fact, FPC had asked Panda to provide output
21 figures for the proposed plant under a range of ambient
22 temperatures, including 110 degrees fahrenheit. At

1 that temperature, the drop off in generating efficiency
2 would be considerable.

3

4 Q. When designing the plant, did Panda limit its analysis
5 to a single plant design or capacity?

6

7 A. No. We considered many different brands of equipment
8 in several different configurations to meet the 74.9 MW
9 committed capacity. Initially we considered using a
10 combination of smaller turbines to met the committed
11 capacity. However, the applicable environmental
12 regulations changed shortly before we had to commit to
13 our equipment selection, and that change required us to
14 go to larger turbines with better demonstrated
15 environmental capability.

16

17 Q. How did the environmental regulations change?

18

19 A. The amount of permissible "nox" emissions for plants
20 such as Panda-Kathleen was decreased from 25 parts per
21 million to 15 parts per million.

22

1 Q. How did that environmental regulatory change affect
2 Panda's choice of equipment?

3
4 A. That regulatory change made it very difficult to
5 utilize small turbines in the project, since those
6 turbines were based on aircraft engines. Aircraft-
7 derivative machinery at that time burned fuel at a
8 fairly high temperature, and the combustion chambers
9 and burner configurations were not yet adapted to
10 reduce nox emissions. Accordingly, it creates a
11 proportionately larger amount of nox emissions. Due to
12 the regulatory change, Panda chose to use an industrial
13 frame engine, with a burner design and a combustion
14 stage which was proven and guaranteed to meet the lower
15 nox standards.

16

17

18 Q. Did Panda submit a proposed plant design to FPC while
19 FPC was considering which standard offer contract to
20 accept?

21

22 A. Yes. Soon after Panda submitted its executed standard
23 offer contract, Panda tentatively proposed utilizing

1 three GE LM-2500 units, which would have produced about
2 90 MW at ISO conditions.

3

4 Q. Why did Panda decide not to use that configuration for
5 the project?

6

7 A. After we reviewed and considered the existing and
8 revised environmental regulations, we determined that
9 the three GE LM-2500 units would not meet those
10 regulations.

11

12 Q. Would it be technically feasible to build a plant with
13 a total capacity of 75 MW or less that could meet
14 Panda's 74.9 MW committed capacity obligations to FPC?

15

16 A. No.

17 Q. Why was it necessary for Panda to design a plant which
18 resulted in a capacity greater than 74.9 MW?

19

20 A. Panda chose and permitted a configuration utilizing an
21 ABB-11N turbine or the GE Frame 7, because this was the
22 minimum plant size which could meet Panda's 74.9 MW
23 minimum committed capacity obligation under the site

1 conditions, operational condition, and the applicable
2 environmental regulations.

3 Q. Did Panda ever discuss the design capacity of the
4 proposed plant with FPC?

5

6 A. Yes. Other Panda employees had discussed this issue
7 with FPC employees in the early months of 1992, and I
8 had a phone conversation with Alan Honey at FPC
9 concerning the size of the plant on September 29, 1992.

10

11 Q. What did Alan Honey tell you in that conversation?

12

13 A. He told me that he knew that no configuration of
14 equipment would put out exactly 74.9 MW under all
15 circumstances. He said that, during on peak periods,
16 FPC would in all likelihood want and need all energy
17 that the Panda plant would produce in excess of 74.9 MW
18 Committed Capacity, as long as the amount was within
19 reason. He said that FPC would find a 95 to 100 MW
20 plant reasonable, and said that FPC would prefer a
21 plant using two GE LM-6000 machines in combined cycle.

22

- 1 Q. Did Mr. Honey ask you to go to the PSC regarding the
2 size of Panda's plant?
3
- 4 A. No.
5
- 6 Q. Do you recognize this memo, dated October 8, 1992
7 [Exhibit "A"]?
8
- 9 A. Yes. It is memo from me to Brian Dietz, containing a
10 summary of my conversation with Alan Honey on September
11 29, 1992.
12
- 13 Q. Why did you write this memo to Brian Dietz?
14
- 15 A. Brian had the responsibility for the technical
16 specifications for the plant, and he had questions
17 regarding how much capacity and output was acceptable.
18
- 19 Q. Did you ever have any further discussions with PSC on
20 the size of Panda's facility?
21
- 22 A. No. However, on January 6 of 1995, I, along with
23 Gerald Pargac of Panda, met with Alan Honey and Pete

1 O'Neil of FPC on other matters. At that meeting, I
2 presented them with a copy of a letter from the PSC
3 staff stating that Panda's designed capacity was
4 acceptable to the PSC staff. A copy of that letter is
5 attached as Exhibit "B". Alan Honey reviewed that
6 letter at the meeting, and gave no indication that the
7 plant size would be a problem. Minutes of a Panda
8 meeting in which I summarized these discussions with
9 FPC are attached as Exhibit "C".

10

11 Q. Did you ever have any discussions with FPC about the
12 length of the Panda/FPC contract?

13

14 A. Yes. On January 9, 1992, I attended a meeting with
15 several of FPC's employees. At that meeting, Alan
16 Honey indicated to the Panda representatives, including
17 myself, that something could be done about the fact
18 that the attached contract rate schedule only had
19 twenty years worth of payments listed. He stated that
20 either (1) the payments for the last ten years of the
21 contract could be computed using a 5.1% escalation
22 factor, (2) the payments could be computed using the
23 formula contained in the PSC regulations, or (3) a

1 different avoided unit could be considered. He stated
2 that the best way to deal with the problem seemed to be
3 using the 5.1% escalation rate, but whatever solution,
4 he as spokesman left me with the strong impression that
5 something would be done.

6 Q. Does this conclude your testimony?

7

8 A. Yes.

1 BY MR. ROSS:

2 Q Mr. Lindloff, would you give us a summary of
3 your testimony, please?

4 A My prefiled direct testimony is based on my
5 involvement in relationships with Florida Power Corp.
6 during Panda's unsuccessful bid for a negotiated
7 contract in late 1990, and again in the submittal of our
8 response to this standard offer contract in the fall of
9 1991.

10 My testimony describes Panda's execution of
11 the standard offer contract by filling in the committed
12 capacity of 74.9 megawatts, and the contract term is 30
13 years.

14 The project was based on a qualifying facility
15 to be located near Lakeland, Florida. The original
16 configuration was contemplated to be that of using two
17 Gen -- excuse me, three General Electric LM 2500
18 aero-derivative engines in combined cycle, which made --
19 or under ISO conditions, made approximately 90 megawatts
20 in order to fulfill the 74.9 megawatts worth of
21 committed capacity.

22 As has already been testified to, later in
23 1992 the environmental regulations caused Panda to look
24 at other equipment configurations, namely that of the
25 frame -- industrial frame machines, because they had

1 been able to demonstrate better compliance with lower
2 NOX level requirements which were being required by the
3 Florida EPA at that time.

4 In January of 1992 I attended a meeting at FPC
5 which was intended to be a kickoff meeting with regard
6 to the understanding of the standard offer contract. At
7 that meeting the sale of energy that would be produced
8 from the plant in excess of the 74.9 megawatts worth of
9 committed capacity was discussed. It was told to us at
10 that time that Florida Power Corp. would accept and pay
11 for the additional energy above the 74.9 megawatts.

12 We also discussed the discrepancy in the
13 contract between the 30 years which Panda had filled in
14 and the 20-year payment schedule, which was attached to
15 the back of the contract. Several methods of
16 compensating Panda for the capacity during years 20 to
17 30 were discussed, and in fact it was told to us that
18 one of the best ways possibly would be to carry on out
19 the escalation at the 5.1 percent installation per
20 year.

21 After that meeting, the responsibility for the
22 project was turned over to other people in our company,
23 other than myself, and my involvement with the project
24 has decreased substantially and I was moved -- I moved
25 on to other development opportunities in areas for the

1 company.

2 However, in the fall of 1992 I was asked by
3 some of the people that were working on the design and
4 sizing of the plant if I would contact Florida Power
5 Corp. one more time and to get their opinions and their
6 attitude on the sizing of the plant. I did so by
7 calling Florida Power Corp. and discussed this with
8 Mr. Allen Honey. He told me in this phone conversation
9 that he knew and they knew that no combustion turbine
10 combined cycle power plant would make exactly 74.9
11 megawatts all the time and that in order to meet that
12 capacity, it had to be oversized to some extent. He
13 also indicated that in times of extreme peak
14 requirements on the part of Florida Power Corp., that
15 they would need and want all the energy that this plant
16 would put out, as long as it was kept in a reasonable
17 amount, and the reasonable amount he gave was somewhere
18 between 90 and 100 megawatts.

19 When asked, he said that their preference
20 would be that we use two LM 6000 machines, which in
21 combined cycle make approximately 104 megawatts since
22 this was a configuration that they had -- they were
23 building at other locations. This concludes the summary
24 of my prefilled testimony.

25 CHAIRMAN CLARK: Thank you. Mr. McGee?

1 Mr. Froeschle?

2 CROSS-EXAMINATION

3 BY MR. FROESCHLE:

4 Q Mr. Lindloff, I believe you've testified your
5 college degree is in organic chemistry; is that correct?

6 A Yes, sir, that's correct.

7 Q Do you have a degree in engineering?

8 A No, sir, I do not.

9 Q You testified that you have been involved in
10 the development of cogeneration projects. Has your
11 involvement included any design of facilities?

12 A No, sir.

13 Q On Page 6 of your testimony now, the copy that
14 I have does not have page numbers on it. So maybe what
15 I should do now, just so that -- if no one else's copy
16 has those, I would like to just give them some numbers
17 to work from. The very first page, that has on the
18 front of it, before the Florida Public Service
19 Commission, Testimony of Darol Lindloff, I would number
20 that number 1 and go sequentially from there.

21 CHAIRMAN CLARK: Mine has page numbers.
22 They're upside down, I'll admit that, but they're
23 there.

24 MR. FROESCHLE: Would those be the fax -- what
25 appear to be fax numbers?

1 CHAIRMAN CLARK: I guess it is.

2 MR. FROESCHLE: And I believe my numbers do
3 correspond to those fax numbers.

4 MR. ROSS: Are you counting the cover sheet as
5 Page 1?

6 MR. FROESCHLE: I was counting -- let me show
7 it. I was counting this page as Page 1.

8 CHAIRMAN CLARK: All right, then we're all
9 right. The first question is on faxed Page 2.

10 COMMISSIONER GARCIA: Where are you guys?

11 CHAIRMAN CLARK: He's just concerned that
12 there are no numbers at the bottom of the pages, but
13 there is what appears to be a fax number, and I think we
14 can use those if we indicate the first page is the title
15 page and then the second page is where the questions
16 actually start. And that is labeled as Page 2.

17 BY MR. FROESCHLE:

18 Q Now, based on those numbers for the pages, I
19 would refer you to Page 6 of your testimony. And
20 there's a question there. Do you have that before you?

21 A Yes, I do.

22 Q There's a question there that says: "Why
23 would Panda need to build a plant with the ability to
24 produce an average output substantially larger than 74.9
25 megawatts?" Do you see that?

1 A Yes, sir.

2 Q And you state an answer, which I will not take
3 the time of the Commission up to repeat, but my question
4 for you is in making that answer that you have presented
5 there in Lines 5 to 15, did you conduct an analysis of
6 how much greater the facility would have to be to supply
7 the necessary capacity?

8 A No, sir, I did not.

9 Q Did you conduct any analysis whatsoever to
10 determine whether or not it would have to be any larger
11 at all?

12 A No, sir, I did not.

13 Q Could you tell us where you received that
14 information?

15 A The information that's listed in my answer
16 here is my experience level with the combustion turbine
17 equipment, the specification sheets that are put out by
18 the vendors, of what they will make under various
19 temperature and humidity conditions, and drawing the
20 conclusions that under extremely hot conditions, looking
21 at certain curves, the machines will have to be sized
22 larger in order to meet the required capacity that
23 you're trying to make at that given condition.

24 Q On what expertise do you base that answer that
25 you've just given?

1 A Personal knowledge.

2 Q I believe that Mr. Dietz earlier testified
3 that you were the person who selected the committed
4 capacity for the facility in the Amended and Restated
5 Notice of Self-certification which was filed in 1991; is
6 that correct?

7 A No, sir, that's not correct.

8 Q So Mr. Dietz's testimony was incorrect on that
9 point?

10 A Yes, sir, that's correct.

11 Q Can you tell us who did select that number?

12 MR. ROSS: Let me just object for the record,
13 I don't believe that's what Mr. Dietz said either. I
14 think Mr. Dietz only said you can ask Mr. Lindloff.

15 CHAIRMAN CLARK: The record will reflect what
16 it says, and you can answer, Mr. Lindloff, as to what
17 you understood, where the information came for the
18 applications to FERC.

19 WITNESS LINDLOFF: My answer is that I did not
20 select the number that went into that document.

21 BY MR. FROESCHLE:

22 Q Were you in the hearing room when Mr. Dietz
23 was testifying?

24 A Yes, sir, I was.

25 Q Did you hear him state that you were the

1 person who had selected that number?

2 A No, sir, I did not.

3 Q You did not. Okay, well, thank you. At
4 anytime did you conduct an analysis of that facility
5 configuration of -- in 1991 that would -- excuse me, let
6 me withdraw that question. I was getting lost.

7 Let me move on. Are you a turbine expert?

8 A No, sir, I am not.

9 Q Have you previously participated in the
10 selection of a turbine for a power plant?

11 A On a conceptual basis I have made
12 recommendations that these are the ones that should be
13 considered, but no, I have not actually selected the
14 turbine.

15 Q Were you the person who selected the turbines
16 for the Panda-Kathleen project in 1991?

17 A Would you clarify what you mean by selected?

18 Q I believe on the amended and restated notice
19 of self-certification, which has been introduced as an
20 exhibit previously, that there was a size of 74.9
21 megawatts of capacity, and I believe it was the
22 testimony of -- previously in this proceeding, that you
23 had selected turbines that were the basis of that 74.9
24 megawatts of capacity. Would you agree with that
25 statement?

1 A No, sir, I would not.

2 Q Would you disagree that you selected the
3 turbines?

4 A At that point in time, the turbines had not
5 even really been selected.

6 Q If I might have a moment, Madam Chairman.

7 (Pause)

8 Would you be able to select the proper turbine
9 for a facility?

10 CHAIRMAN CLARK: Mr. Froeschle, I feel like
11 we're covering the same ground. You had previously
12 asked him about that and I thought he said, on a
13 conceptual basis, yes, but he would not be the one to
14 finally select it. I may be wrong, but --

15 MR. FROESCHLE: What I would like to do then
16 is cite Mr. Lindloff to his testimony, Page 7, Lines 7
17 to 11.

18 BY MR. FROESCHLE:

19 Q And there you state that in designing the
20 plant, "We considered many different brands of equipment
21 and several different configurations to meet the 74.9
22 megawatt committed capacity." Is that a correct
23 statement?

24 A Yes, sir, that's correct.

25 Q Were you a person who considered those brands

1 of equipment in different configurations?

2 A Yes.

3 Q Who else assisted you in that?

4 A Had conversations with outside engineering
5 firms as to what the capabilities of the equipment,
6 combined with waste heat recovery generators and steam
7 turbine cycles, might give us in the way of output at
8 various temperatures and conditions. And using that
9 information, we were considering combinations of
10 aero-derivative engines to finally settle on to build
11 the plant, any one of which would probably have been
12 able to meet the 74.9 megawatts.

13 Q Now with respect to that aircraft derivative
14 machinery, you testify on Page 8 that aircraft-
15 derivative machinery at that time burned fuel at a
16 fairly high temperature, and you go on to discuss that.
17 Do you consider yourself an expert in aircraft-
18 derivative machinery?

19 A No, sir, I do not.

20 Q Do you consider yourself an expert in
21 environmental technology?

22 A No, sir.

23 Q Or in environmental regulations?

24 A No, sir.

25 Q On what do you base those statements in your

1 testimony?

2 A Fifteen to 20 years worth of experience in
3 this business working with the conceptual designs and
4 the applications that have to be considered in putting
5 together a project, and by "putting together a project"
6 I mean considering all the things that go into deciding
7 how one goes together.

8 Q On Page 9 of your testimony, at Line 17, you
9 are asked the question: "Why was it necessary for Panda
10 to design a plant which resulted in a capacity greater
11 than 74.9 megawatts?" Is that correct?

12 A Yes.

13 Q First, in entering into the standard offer
14 contract, isn't it true that Panda first chose the
15 amount of committed capacity it would provide to Florida
16 Power?

17 A Yes, sir, that's correct.

18 Q And isn't it true that after Panda decided
19 what amount of capacity it would supply, then it
20 determined what size facility it would build?

21 A Yes, sir, that is correct.

22 Q In other words, Panda didn't start with the
23 limitation that the facility could not be greater than
24 75 megawatts; is that correct?

25 A That's correct.

1 Q Are you familiar with the title of the
2 standard offer contract?

3 A No, sir, I could not recite it.

4 Q Do you have that contract before you in your
5 prefiled testimony?

6 A Yes, I do.

7 Q Could you read the title for us?

8 A "Standard offer contract for the purchase of
9 firm capacity and energy from a qualifying facility less
10 than 75 megawatts or a solid waste facility."

11 Q What do the terms "qualifying facility less
12 than 75 megawatts" mean to you?

13 A It defines the nature of the plant.

14 Q By nature, what do you mean?

15 A It's a qualifying facility and has a committed
16 capacity of less than 75 megawatts.

17 Q Where do you see "committed capacity" in that
18 title?

19 A To me, this is an advertisement on the part of
20 Florida Power Corp. for firm capacity and energy of less
21 than 75 megawatts.

22 Q Do you believe that the terms "qualifying
23 facility less than 75 megawatts" are also synonymous
24 with the term "committed capacity"?

25 A In this case, I do, sir.

1 Q Have you read the Commission's rules?

2 A Not all of them, no.

3 Q Have you read Rule 25-17.0832?

4 A Yes, sir, I have.

5 Q I would like to refer you to the back of your
6 prefiled testimony, to that rule, 17.0832.

7 A 25-17.082; is that correct?

8 Q 832.

9 A 832?

10 Q 0832.

11 A Okay.

12 Q And I would like to refer you to paragraph
13 (1)(b)(2). Were you in the room earlier when that was
14 read into the record?

15 A Yes, I was.

16 Q And I believe that that states that for this
17 summary, "shall report the amount of committed capacity
18 specified in the contract, the size of the facility,"
19 et cetera. If the terms "committed capacity" and
20 "qualifying facility less than 75 megawatts" are
21 synonymous, why do you believe this rule includes
22 separate provisions for committed capacity, the amount
23 of that, and the size of the facility?

24 A Could you repeat the question, please?

25 Q If the term -- if the size of the facility and

1 the committed capacity are synonymous -- would you agree
2 that that is your understanding of the terms as used in
3 the contract and in the rule?

4 A Yes, sir, I do.

5 Q If that is true, why, in Rule 25-17.0832,
6 subparagraph (1)(b)(2), in a report to the Commission
7 concerning standard offer contracts, why do you believe
8 that the Commission would require that the purchasing
9 utility report as separate items the amount of committed
10 capacity specified in the contract and the size of the
11 facility?

12 A I honestly don't know why.

13 MR. FROESCHLE: Thank you. I have no further
14 questions of this witness.

15 CHAIRMAN CLARK: Staff?

16 MS. BROWN: Staff just has one question.

17 CROSS-EXAMINATION

18 BY MS. BROWN:

19 Q Actually, I just was curious, Mr. Lindloff.
20 On Page 4 of your testimony, you were talking about your
21 involvement in negotiating a contract with Florida Power
22 Corporation before you signed the standard offer.

23 A Yes, uh-huh.

24 Q Well, the last sentence in that first
25 paragraph of your answer starting on Line 6, you say,

1 "Ultimately, in March 1991 FPC decided not to accept
2 Panda's proposal." I assume that was for the negotiated
3 contract?

4 A Yes, that's correct.

5 Q "Because they required a different structuring
6 of payment terms than our proposal had provided." Can
7 you explain that to me, what different structuring?

8 A Yes, the avoided unit for this particular
9 proposal was a Crystal River coal unit.

10 Q For your proposal?

11 A Yes, for our proposal. We were proposing a
12 gas-fired combustion turbine, and they were requiring
13 that the payment stream for this energy track the
14 escalation of the Crystal River coal. We took a little
15 bit different tack on that and actually quoted, in our
16 proposal, a flat rate for energy over the life of the
17 contract.

18 Q Okay. Thank you, that's all I have.

19 CHAIRMAN CLARK: Questions, Commissioners?

20 COMMISSIONER DEASON: No, I just want to make
21 an observation. We're not off to a very good start.
22 Mr. Froeschle indicated five minutes. He took 16 and a
23 half, and Staff said no questions and they had several.
24 So we're going to be here for a long time, folks.

25 CHAIRMAN CLARK: Mr. Ross?

1 MR. ROSS: I think just two questions on
2 redirect.

3 REDIRECT EXAMINATION

4 BY MR. ROSS:

5 Q Mr. Lindloff, you and other witnesses have
6 been asked to read a lot of portions of the rules and
7 the contract to the Commission. I wonder if you would
8 just do me a favor. Would you look at paragraph 1.8 of
9 the contract. Everybody has focused our attention on
10 this before. That is a definition of the commercial
11 in-service status of the proposal?

12 A Yes, sir, it's in the definition section of
13 the proposal.

14 Q And you're familiar that this contract, as has
15 been testified to earlier today, requires us to
16 demonstrate each year of the commercial in-service
17 status of the facility?

18 A That is correct.

19 Q Would you read for the Commission the
20 definition of commercial in-service status through
21 little subpoint 2?

22 A "Commercial in-service status means: Sub 1,
23 that the facility is in compliance with all applicable
24 facility permits; sub 2, that the facility has
25 maintained an hourly kW output as metered at the point

1 of delivery, equal to or greater than the committed
2 capacity for a consecutive 24-hour period, or during the
3 on-peak hours specified in Appendix C of the two
4 consecutive days."

5 Q So the contract specifically states a
6 definition of in-service status equal to or greater than
7 the committed capacity has to be demonstrated, correct?

8 A That's correct. That's what it says.

9 MR. ROSS: Thank you. I have no other
10 questions.

11 CHAIRMAN CLARK: Thank you, Mr. Ross.
12 Exhibits?

13 MR. ROSS: Yes, I move into evidence Composite
14 Exhibit 30.

15 CHAIRMAN CLARK: Exhibit 30 will be entered in
16 the record without objection.

17 (Exhibit No. 30 received into evidence.)

18 CHAIRMAN CLARK: Thank you, Mr. Lindloff.
19 Mr. Dolan.

20 (Witness Lindloff excused.)

21 * * *

22 ROBERT D. DOLAN

23 was called as a witness on behalf of Florida Power
24 Corporation, and having been duly sworn, testified as
25 follows:

1 CHAIRMAN CLARK: Mr. McGee?

2 DIRECT EXAMINATION

3 BY MR. MCGEE:

4 Q Mr. Dolan, do you have before you a document
5 entitled Rebuttal Testimony of Robert D. Dolan?

6 A Yes, I do.

7 Q Was that prepared by you?

8 A Yes.

9 Q As your rebuttal testimony for this proceeding
10 today?

11 A Yes, it was.

12 Q If you were asked the questions contained in
13 that rebuttal testimony, would your answers be the same
14 as reflected therein?

15 A Yes, they would.

16 MR. MCGEE: Madam Chairman, we would ask his
17 rebuttal testimony be inserted into the record as though
18 read.

19 CHAIRMAN CLARK: The rebuttal testimony of
20 Mr. Robert D. Dolan will be inserted into the record as
21 though read.

22 MR. MCGEE: And he has one exhibit, RDD-13,
23 that's attached to the back of that testimony, if we
24 could have that marked.

25 CHAIRMAN CLARK: RDD-13 will be marked as

1 Exhibit 31.

2 (Exhibit No. 31 marked for identification.)

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**FLORIDA POWER CORPORATION
DOCKET No. 950110-EI**

**REBUTTAL 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. Have you previously filed testimony in this proceeding?**

6 **A. Yes. My prepared direct testimony was filed on January 5, 1996.**

7

8 **Q. What is the purpose of your rebuttal testimony?**

9 **A. The purpose of my testimony is to rebut the testimony of Panda**
10 **witnesses Dietz, Killian and Lindloff with respect to their contention (i)**
11 **that the delivery of capacity and energy from Panda's redesigned and**
12 **enlarged 115 MW facility is permissible under the standard offer**
13 **contract, (ii) that capacity payments under the standard offer contract**
14 **must continue for 10 years beyond the life of the unit to be avoided by**
15 **the contract, and (iii) that the Commission should grant Panda's request**
16 **to unilaterally modify the standard offer contract by extending the**
17 **construction commencement and in-service milestone dates for an**
18 **unspecified period.**

THE SIZE OF PANDA'S FACILITY

1
2
3 **Q. Would you please summarize your response to Panda's contention that**
4 **the delivery of capacity and energy from its redesigned and enlarged**
5 **115 MW facility is permissible under the standard offer contract?**

6 **A. Yes. The argument of Panda's witnesses completely misses the point.**
7 **They fail to even mention, much less address, the central issue**
8 **concerning the permissible size of its facility; the fact that the**
9 **Commission's rules expressly limit standard offer contracts to "small**
10 **cogeneration facilities less than 75 MW." In speaking only of Panda's**
11 **obligations under the contract rather than limitations under the rules,**
12 **they also fail to recognize that these rules are expressly made a part of**
13 **the contract and are attached as an appendix. Panda cannot avoid the**
14 **need to comply with the 75 MW limitation contained in the**
15 **Commission's rules and the contract by simply ignoring it.**

16
17 **Q. Panda claims that to satisfy the requirements of the standard offer**
18 **contract it had to design a facility substantially larger than 74.9 MW.**
19 **Do you agree?**

20 **A. No. In the first place, whether or not Panda *needs* to build a facility**
21 **larger than 75 MW is irrelevant to the question of whether the**
22 **Commission's rule limits standard offer contracts to facilities less than**
23 **75 MW. If Panda believes it needs to build a facility larger than 75 MW,**
24 **the Commission's rules provide for negotiated contracts to**
25 **accommodate such facilities. Conversely, if Panda wants to utilize a**

1 standard offer contract and believes that it cannot deliver a committed
2 capacity of 74.9 MW from a facility that satisfies the rule's size
3 limitation, Panda should have selected a lower committed capacity. In
4 either event, the choice was Panda's and it should not now be allowed
5 to have it both ways.

6
7 Moreover, it is apparent that Panda itself believed it could build a facility
8 that would satisfy both its contractual capacity commitment and the
9 rule's size limitation. In its Notice of Self-Certification filed with the
10 Federal Energy Regulatory Commission on October 7, 1991 (Exhibit
11 RDD-1 to my direct testimony), Panda stated that "The Facility will have
12 an estimated net maximum capacity at design conditions of 74.9 MW."
13 Then, in April 1994, after Panda had enlarged its facility by 40 MW
14 supposedly because the additional capacity was needed to satisfy its
15 commitment to Florida Power, Panda submitted a proposal to the City
16 of Lakeland offering to sell 35 MW of capacity and energy from the
17 Kathleen facility for a period of 30 years. A copy of Panda's proposal
18 is attached as Exhibit No. 31 (RDD-13). It is readily apparent that
19 Panda enlarged its facility to enhance the economics of the project
20 rather than to meet its capacity commitment to Florida Power.

21
22 In addition, the standard offer contract provides several features that
23 enable a QF to satisfy its capacity commitment without the need to
24 substantially oversize the facility, contrary to Panda's contention that

1 the facility must be sized to deliver the committed capacity under the
2 worst conditions.

3
4 **Q. What are the contractual provisions that would enable Panda to satisfy**
5 **its committed capacity without the need to substantially oversize its**
6 **facility?**

7 **A. Article VII of the standard offer contract contains three provisions that**
8 **would allow Panda to mitigate any difficulties it might experience in**
9 **meeting its committed capacity. The first is Section 7.2, which allows**
10 **Panda to decrease its committed capacity by 10%, or down to**
11 **approximately 67.4 MW, within the first year after the facility's in-**
12 **service date. In fact, if Panda had originally selected a committed**
13 **capacity of about 68.1 MW, it would have had the flexibility to adjust**
14 **its committed capacity anywhere from 74.9 MW to 61.3 MW.**

15
16 Section 7.4 provides a significant measure of flexibility to Panda in
17 satisfying its committed capacity obligations, thus obviating the need to
18 oversize a facility in the manner proposed by Panda. This section allows
19 Panda a full 60 days to demonstrate the ability to meet its committed
20 capacity after notification by Florida Power. This gives Panda the
21 opportunity to perform maintenance needed to restore or enhance the
22 unit's efficiency and to avoid extreme weather conditions. For example,
23 Mr. Dietz claims the facility's size needs to be increased by 15% to
24 19% to allow for the possibility that Panda will have demonstrate its
25 committed capacity at a time when the temperature is 102° F, which

1 he says is the hottest day ever recorded in Lakeland. Since Section 7.4
2 gives Panda 60 days demonstrate its committed capacity, it seems
3 unlikely that a temperature of 102° will be sustained for two months.
4

5 Section 7.5 allows Panda to reduce its committed capacity during a
6 force majeure event for up to 24 months and to permanently reduce its
7 committed capacity within three months after a force majeure event.
8 The flexibility provided by this section, in combination with that
9 provided by Sections 7.2 and 7.4, eliminates the need for the kind of
10 ultra-conservative design assumptions used by Panda in attempting to
11 justify its oversized facility.
12

13 **Q. Are there other examples of unnecessary or overly conservative design**
14 **assumptions used by Panda to justify the size of its facility?**

15 **A. Yes. Except for a potential unrecoverable performance degradation of**
16 **about 2% or 3% over the life of the facility, all of the factors identified**
17 **by Mr. Dietz in calculating his overall degradation of 27% to 31% are**
18 **unnecessary. The installation of inlet air cooling equipment would**
19 **enable Panda's facility to operate at design ambient conditions during**
20 **extreme temperatures, thus eliminating entirely the need for Mr. Dietz's**
21 **15% to 19% ambient temperature adjustment. All but one of Florida**
22 **Power's other combined cycle QFs utilize this performance enhancing**
23 **equipment. The flexibility provided by the 60-day notice period in**
24 **Section 7.4 of the contract effectively eliminates the need for Mr.**
25 **Dietz's "maintenance-recoverable" and "operationally-recoverable"**

1 degradation adjustments. His adjustment for parasitic load (*i.e.*, the
2 load required to operate the plant's auxiliary equipment) is unnecessary
3 because this load is already subtracted in determining the facility's *net*
4 generating capacity. Likewise, Mr. Dietz's adjustment for transmission
5 losses can be eliminated by purchasing these losses from the wheeling
6 utility, the City of Lakeland or interconnecting directly with Florida
7 Power.

8
9 **Q. Have Florida Power's other combined cycle QFs found it necessary to**
10 **similarly oversize their facilities in order to satisfy their committed**
11 **capacity obligations?**

12 **A. No. None of our other similarly situated QFs (combined cycle facilities**
13 **with comparable committed capacity obligations) have designed their**
14 **facilities with a "margin of error" even close to 53% level used by**
15 **Panda. In fact, two of these facilities, Polk Power Partners (Mulberry)**
16 **and Orlando Cogen (which both utilize equipment nearly identical to**
17 **Panda's proposed configuration), each have a capacity commitment that**
18 **is almost the same as the facility's net generating capacity.**

19
20 **Q. Mr. Killian claims Florida Power knew from the beginning that Panda**
21 **would need to build a facility with a net capacity greater than 74.9 MW**
22 **because Panda initially informed Florida Power it would utilize three GE**
23 **LM 2500 turbine generator sets, which he says would be capable of**
24 **producing 87 MW to 95 MW. Do you agree?**

1 A. No. Although we estimated that the equipment originally proposed by
2 Panda would have a *gross* capacity of about 85 and 90 MW, the *net*
3 generating capacity that the facility would actually have been capable
4 of delivering to Florida Power would have been dependant on such
5 additional factors as the amount of facility's parasitic load and especially
6 the energy required by the facility's steam host. Because of this, we
7 did not know the precise net generating capacity that would be available
8 to Florida Power, but given the representations by Panda described on
9 pages 5 and 6 of my direct testimony that it was proposing a 75 MW
10 facility, we had no reason to believe it would have exceeded 75 MW to
11 any significant degree. As I described above, several of Florida Power's
12 other QFs have contractually committed to a capacity that is nearly
13 identical to their facility's net generating capacity.

14
15 **Q. Mr. Killian also claims that Panda discussed Florida Power's concerns**
16 **about Panda's proposed "equipment configuration" with members of the**
17 **Commission Staff and that "based upon express assurances" in a letter**
18 **from Staff, with which you were said to concur, Panda "felt it had**
19 **satisfied the issue of facility size." Do you, in fact, agree that the**
20 **Florida Power's concern about the size of Panda's proposed 115 MW**
21 **facility was satisfied?**

22 A. No, I did not. To begin with, let me say that neither I nor anyone else
23 at Florida Power were invited to, or had any knowledge of, Panda's
24 meeting with Staff, nor were we copied with any of the correspondence
25 between Panda and Staff regarding the meeting, nor was this kind of

1 informal communication what Florida Power had in mind when it urged
2 Panda to seek a ruling from the Commission. Moreover, rather than
3 discussing *Florida Power's* concerns with Staff, as Mr. Killian contends,
4 it appears Panda presented the size issue in terms of whether it
5 constituted a contract modification requiring Commission approval.
6 Florida Power has never contended that a change in the size of a
7 facility, in and of itself, requires Commission approval, only that the size
8 cannot exceed the 75 MW limitation in the Commission's rules. The
9 correspondence between Panda and Staff contains no mention of Florida
10 Power's true concern, *i.e.*, the compatibility of Panda's proposed
11 capacity enlargement with the 75 MW limitation in the Commission's
12 rules.

13
14 With respect to my discussion with Mr. Jenkins referenced in his letter
15 to Panda, the conversation lasted only a few minutes as I was preparing
16 to testify before the Commission. The brief discussion took place in the
17 hearing room. Mr. Jenkins asked me whether I objected to his writing
18 a letter regarding whether Panda's proposal was a contract change that
19 would require Commission approval. I told him I had no objection to
20 writing such a letter. However, I believed a formal Commission ruling
21 was required for the facility size Panda was proposing. Time did not
22 permit us to discuss the substance of his proposed letter and I never
23 received a draft copy from him. Because I never received a copy of a
24 letter, I assumed that no letter was ever written and thus did not pursue
25 the matter further. At no time did I tell Mr. Jenkins that I believed

1 Panda could construct a facility with a net output of 115 MW and
2 qualify for the use of a standard offer contract under the Commission's
3 rules.

4 5 THE DURATION OF CAPACITY PAYMENTS

6
7 **Q. Would you please summarize your response to Panda's contention that**
8 **capacity payments under the standard offer contract must continue for**
9 **10 years beyond the life of the unit to be avoided by the contract?**

10 **A. As with the issue of facility size, Panda's position on the duration of**
11 **capacity payments under the standard offer contract is fundamentally**
12 **flawed because it fails to take into account the Commission's rules on**
13 **this point. Specifically, none of the Panda witnesses even mention,**
14 **much less attempt to reconcile their position with, the restriction in Rule**
15 **25-17.0832(3)(e)(6) that limits the maximum period for the delivery of**
16 **firm capacity and energy to the life of the avoided unit, which in the**
17 **case of the Panda standard offer contract is 20 years.**

18
19 **Instead, witnesses Killian and Lindloff refer to various meetings, memos**
20 **and letters in which Florida Power representatives supposedly agreed to**
21 **or acknowledged that capacity payments were to be made for 30 years.**
22 **Because it is irrelevant to the issue before the Commission, I do not**
23 **intend to engage in a "we said, they said" type of argument with Panda**
24 **on this matter. Suffice it say that Florida Power has never agreed to**
25 **make capacity payments to Panda beyond 20 years, nor could it have.**

1 In the first place, Section 27.4 of the contract expressly provides that:

2 The Parties' representatives designated above shall have full
3 authority to act for their respective principals in all technical
4 matters relating to the performance of this Agreement. However,
5 they shall not have the authority to amend, modify, or waive any
6 provision of this Agreement. (Emphasis added.)

7 More importantly, representatives of Panda and Florida Power certainly
8 had no authority to modify or waive the application of the Commission's
9 rules regarding maximum period for capacity payments, or the limitation
10 on the size of a facility.

11
12 **Q. The Panda witnesses refer to the term of the standard offer contract**
13 **with Florida Power as 30 years. Are they correct?**

14 **A. No.** The contract term is not expressed as a number of years, but
15 rather in terms of a commencement date and an expiration date. The
16 contract originally provided for a Contract In-Service Date of April 1,
17 1995 and an expiration date of March 31, 2025, which amounted to a
18 term of 30 years. Thereafter, in May 1993, the Contract In-Service
19 Date was amended to January 1, 1997, with no change in the
20 expiration date. Although the contract term is sometimes referred to as
21 30 years for convenience, it should be understood that the term is
22 actually 28 years, three months. Likewise, when the dispute between
23 Florida Power and Panda over the duration of capacity payments is
24 referred to in terms of 20 years versus 30 years, it is actually 20 years
25 versus 28 years, three months.

1 **Q. If the Commission were to determine that Florida Power is required to**
2 **make firm capacity for the full term of the contract, how should the**
3 **pricing terms for that capacity be determined?**

4 **A. If Florida Power were required to make capacity for 28 years, three**
5 **month, the value of deferral calculation should be redone, in accordance**
6 **with the Commission's rules, using an economic life equal to the term**
7 **of the capacity payments.**

8
9 **EXTENSION OF CONTRACT MILESTONE DATES**

10
11 **Q. Would you please summarize your response to Panda's request that the**
12 **Commission unilaterally modify the standard offer contract by extending**
13 **the construction commencement and in-service milestone dates for an**
14 **unspecified period?**

15 **A. Yes. Mr. Killian, the only witness who addresses Panda's request,**
16 **attempts to place the blame for its milestone predicament on Florida**
17 **Power. He ignores the fact that it was Panda's decision to enlarge the**
18 **size of its facility by over 50% that brought into question Panda's**
19 **compliance with the Commission's 75 MW limitation, and that it was**
20 **Panda's failure to bring this question to the Commission for resolution**
21 **that forced Florida Power to take the action that Panda now complains**
22 **of. Panda's predicament is of its own making. Panda should not be**
23 **allowed to shift the responsibility for its actions and inactions to Florida**
24 **Power.**

1 Mr. Killian claims that the filing of Florida Power's declaratory statement
2 petition resulted in "bringing Panda's financing of the Panda Kathleen
3 facility to a halt." However, he offers nothing to show that Panda could
4 have secured financing even if Florida Power had not filed its petition.
5 He simply says that "efforts were well under way to obtain financing
6 and an equity partner for the project" before the petition was filed, but
7 provides no documentation or other evidence to suggest, much less
8 demonstrate, that those "efforts" had any chance of success.

9
10 It is my understanding that a party who requests affirmative relief from
11 the Commission has the burden of demonstrating that they are entitled
12 to that relief. Given Panda's failure to demonstrate the viability of
13 project before Florida Power initiated this proceeding, and particularly in
14 light of the evidence to the contrary in Mr. Morrison's testimony, I urge
15 the Commission to reject Panda's request to extend the contract
16 milestone dates. To do otherwise would reward Panda's dilatory
17 conduct before and during this proceeding and would very likely place
18 Panda in a better position than before it began.

19
20 **Q. Does this conclude your rebuttal testimony?**

21 **A. Yes.**

h:\jam\950110\dolan.reb

1 BY MR. MCGEE:

2 Q Would you summarize your testimony, please?

3 A Yes. I would like to take a few moments, and
4 I'll be very brief. We heard a lot about turbine
5 degradation from Mr. Dietz, and almost all of the
6 turbine degradation can be overcome by inlet air
7 chilling, or cooling of the air to almost ambient
8 temperatures as required by the turbine. This is
9 demonstrated -- since Panda intends to build a facility
10 that is almost identical to two facilities on Florida
11 Power's system, Orlando CoGen and Polk Power Partners,
12 which both have inlet air chilling and almost produce
13 the -- on a day-in and day-out basis -- the same output
14 as their committed capacity, which is, respectively, for
15 those two facilities, 115 and 110 megawatts.

16 Also in Mr. Dietz's testimony, he used the
17 almost record high for the City of Lakeland to calculate
18 his degradation, and of course he used evaporative
19 cooling, which is not inlet air chilling, and you do not
20 get near the reduction, and it's highly unlikely that a
21 record high or one degree off the record high in
22 Lakeland would last for a 60-day period, as would be
23 required to redemonstrate his capacity, committed
24 capacity.

25 And Florida Power has -- finally, Florida

1 Power has never agreed to make capacity payments to
2 Panda beyond the 20 years. If FPC were required to make
3 capacity payments beyond the 20 years, then the value of
4 deferral calculations ought to be redone using an
5 economic life equal to the duration of the capacity
6 payments.

7 CHAIRMAN CLARK: Thank you.

8 MR. MCGEE: We tender Mr. Dolan.

9 CHAIRMAN CLARK: Mr. Ross?

10 CROSS-EXAMINATION

11 BY MR. ROSS:

12 Q Excuse me. I was just, once again, having to
13 go through this testimony because I don't believe most
14 of what he just said -- let's see if he even -- okay,
15 I'll go on.

16 CHAIRMAN CLARK: Mr. Ross, let me --

17 MR. ROSS: I'm sorry, I won't object.

18 CHAIRMAN CLARK: But you have filed an
19 objection, a written objection to part of the rebuttal
20 testimony, which I don't believe I've ruled on.

21 MR. ROSS: No, that's true. Your Honor, I've
22 decided I'll withdraw that objection.

23 CHAIRMAN CLARK: Okay, thank you.

24 BY MR. ROSS:

25 Q Mr. Dolan, it's a fact, is it not, that

1 Florida Power has quite a number of combustion turbine
2 facilities of its own that are presently on line?

3 A That's correct.

4 Q And it's correct that Florida Power does not
5 have any chillers or heaters on the inlet side of any of
6 their combustion turbine facilities?

7 A Florida Power does not have any -- we have
8 inlet air cooling on our University of Florida that is
9 similar to a combined cycle. We do not have any
10 combined cycles on our system.

11 Q But you have combustion turbines?

12 A We have combustion turbines.

13 Q And you don't have any heaters or chillers on
14 those?

15 A We have a cooler on the University of Florida
16 property.

17 Q Other than that one you don't have any,
18 correct?

19 A That's correct.

20 Q In your direct testimony, you make some
21 statements about the size, et cetera. I'm not going to
22 go over all of those. I just want to know, isn't it
23 correct that Florida Power has never actually operated a
24 facility using LM 2500s?

25 A That's correct.

1 Q Also, in your rebuttal testimony that you've
2 prefiled, you describe your conversation with
3 Mr. Jenkins in 1994, on Page 17 -- excuse me on Page 8,
4 beginning at Line 17, and you said there, "Mr. Jenkins
5 asked me whether I objected to his writing a letter
6 regarding whether Panda's proposal was a contract change
7 that would require Commission approval." It's correct,
8 is it not, Mr. Dolan, that what Mr. Jenkins told you was
9 Panda's proposal was a proposal to build a facility that
10 would in fact have an output larger than 75 megawatts?

11 A That's my understanding.

12 Q Not your understanding; that's what he told
13 you, isn't it?

14 A That's what I remember.

15 MR. ROSS: I have no further questions on his
16 rebuttal testimony.

17 CHAIRMAN CLARK: Thank you, Mr. Ross. Staff?

18 CROSS-EXAMINATION

19 BY MS. BROWN:

20 Q Mr. Dolan, I just have one question for you.
21 If the Commission determines that Florida Power
22 Corporation should purchase energy above 74.9 megawatts
23 from the Panda project as -- at as-available rates for
24 energy, would the ratepayers be harmed in any way by that?

25 A Well, only if due to the higher output it

1 caused us to cycle the Anclotes and Bartows that I
2 mentioned in our -- I believe in my direct testimony,
3 because we cycle those plants prior to reducing the NUGs
4 output per our curtailment plan. So the cycling costs,
5 which include start-up shutdown fuel, those units have a
6 minimum capacity state of 20 -- if I remember right from
7 the curtailment hearing -- 20 megawatts for Bartow 1, 20
8 for Bartow 2, and 30 for Bartow 3. So you can see 40
9 megawatts additional capacity could cause additional
10 cycling of those units. So that would be the only
11 ratepayer harm.

12 Q That would be the only ratepayer harm is that?

13 A (Nods affirmatively.)

14 Q Because they would be purchasing that power at
15 the rates that you would be paying anyway?

16 A Right, except that we're not, in our as-
17 available calculations, as far as I know, charging the
18 shutdown costs, including the stress that we heard many
19 hours of testimony, fatigue and inner fatigue.

20 CHAIRMAN CLARK: Well, Mr. Dolan, I'm not
21 clear. Is there harm to the ratepayers then? Are you
22 indicating that the costs -- they'll incur higher costs
23 by paying for avoided energy to this Panda project than
24 if they didn't.

25 WITNESS DOLAN: They'll pay a higher cost only

1 if that we don't recover all the cycling costs in our
2 as-available rates.

3 CHAIRMAN CLARK: So you will recover the
4 cycling costs from the ratepayers?

5 WITNESS DOLAN: No, no, we wouldn't. I mean,
6 I guess eventually if we had a rate case we would, but
7 it could cause an increase in maintenance on our
8 equipment, it could cause an increase in fuel costs due
9 to starting and stopping the units.

10 CHAIRMAN CLARK: So to the extent those
11 happen, the ratepayers will pay more?

12 WITNESS DOLAN: Yes.

13 CHAIRMAN CLARK: Okay.

14 MS. BROWN: We have no further questions.

15 CHAIRMAN CLARK: Any other questions from the
16 Commissioners? Redirect?

17 MR. MCGEE: None.

18 CHAIRMAN CLARK: Mr. Morrison?

19 (Pause)

20 CHAIRMAN CLARK: Exhibit 31 is moved into the
21 record without objection.

22 (Exhibit No. 31 marked for identification.)

23 (Witness Dolan excused.)

24 * * *

25 CHAIRMAN CLARK: Mr. Froeschle?

1 BRIAN A. MORRISON
2 was called as a witness on behalf of Florida Power
3 Corporation, and having been duly sworn, testified as
4 follows:

5 DIRECT EXAMINATION

6 BY MR. FROESCHLE:

7 Q Mr. Morrison, would you please state your name
8 and business address?

9 A Brian A. Morrison. Business address is 800
10 Third Avenue, New York, New York 10022.

11 Q Do you have before you what is entitled
12 Amended Rebuttal Testimony of Brian A. Morrison?

13 A I do.

14 Q Was this testimony prepared by you or under
15 your direct supervision as your rebuttal testimony in
16 this proceeding?

17 A It was.

18 Q Do you have any additions or corrections you
19 need to make to your testimony?

20 A I do not.

21 Q If you were asked the same questions today
22 that you were asked in this testimony, would you answer
23 the questions in the same way?

24 A I would.

25 MR. FROESCHLE: Madam Chairman, I would ask

1 that Mr. Morrison's testimony be inserted into the
2 record as though read.

3 MR. ROSS: Madam Chairman, this is the witness
4 whose testimony we filed the objection to.

5 CHAIRMAN CLARK: Yes, I know that. Let me be
6 clear. I have an Amended Rebuttal Testimony and it says
7 unredacted version, contains confidential information.
8 Is that still the case that there is confidential
9 information in his testimony?

10 MR. SILVERMAN: That's correct.

11 MS. BROWN: No. It --

12 MR. SILVERMAN: In the exhibits. There's no
13 confidential information in the testimony itself. Just
14 in the exhibits that are attached.

15 MS. BROWN: Chairman, would you like me to
16 clarify that?

17 CHAIRMAN CLARK: Go ahead, Ms. Brown.

18 MS. BROWN: When Florida Power Corporation
19 first filed this testimony, operating under their
20 proprietary agreement with Panda, they redacted a good
21 portion of the testimony when Panda -- in anticipation
22 that Panda would request confidential treatment for some
23 of it. Panda then filed their request for
24 confidentiality with us and did not ask for confidential
25 treatment of anything in the testimony.

1 CHAIRMAN CLARK: Okay.

2 MS. BROWN: There are some confidential
3 sections of the documents.

4 CHAIRMAN CLARK: Of an exhibit?

5 MS. BROWN: Yes, of the exhibit.

6 CHAIRMAN CLARK: Let's just deal with the
7 testimony. I have in my hand a copy of the Amended
8 Rebuttal Testimony of Brian A. Morrison and it says,
9 unredacted version, contains confidential information,
10 but it's this that we should insert in the record?
11 Because the other copies of the testimony I have things
12 blacked out.

13 MR. SILVERMAN: Chairman, I believe that
14 Florida Power had filed that sheet as part of a cover
15 sheet of the whole testimony with exhibits. The
16 testimony itself we're not seeking any confidentiality
17 protection for. It's just the exhibit. So when it says
18 "contains confidential information" --

19 CHAIRMAN CLARK: That's no longer true,
20 right?

21 MR. SILVERMAN: That's no longer true; it's
22 the --

23 CHAIRMAN CLARK: All I want to know, is that
24 the testimony we're supposed to be inserting?

25 MR. FROESCHLE: Madam Chairman, we have copies

1 here of the testimony that have been highlighted, the
2 exhibits have been highlighted, showing the portions
3 that have been claimed to be confidential by Panda, and
4 then we have another set that show those exhibits as
5 having -- those confidential elements being redacted.

6 And --

7 MS. BROWN: But the testimony can be inserted
8 into the record without redaction.

9 CHAIRMAN CLARK: My only purpose in pursuing
10 this is to make sure the court reporter has the right
11 testimony to insert in the record, and as I understand
12 what you're saying, Mr. Froeschle, is this testimony
13 that you're now passing out we can give to the court
14 reporter and that can now be inserted into the record?

15 MR. FROESCHLE: Yes.

16 (Pause)

17 COMMISSIONER KIESLING: I'm sorry. I'm still
18 confused. Is what I have here the same as what was just
19 handed out except that the unredacted amended testimony
20 is included in the testimony section?

21 MR. FROESCHLE: I'm sorry, I --

22 CHAIRMAN CLARK: Yes. The answer should be
23 yes.

24 MR. FROESCHLE: I believe that's true.

25 COMMISSIONER KIESLING: Then why do I need

1 another one? I just want to know which one to look at.

2 MR. FROESCHLE: For purposes at this time, the
3 version that you were just given will include the
4 exhibits. So far as the material, it won't change what
5 was filed previously.

6 CHAIRMAN CLARK: As I understand it, the
7 testimony is not different.

8 COMMISSIONER KIESLING: Right.

9 MR. FROESCHLE: If I can try to clarify. At
10 the time that we had filed his amended testimony, Panda
11 was still claiming confidentiality to elements of the
12 testimony itself. And that had not been resolved.
13 Since that time they've withdrawn that objection to the
14 testimony on those parts. So the testimony is no
15 longer -- there's no claim of confidentiality regarding
16 that.

17 COMMISSIONER KIESLING: I understand that.
18 But I have this whole separate exhibit with 13 exhibits
19 in it. Are they the same as what you just handed out?
20 That's all I want to know.

21 MR. MCGEE: I think what's happened is you
22 have a set of exhibits from Panda and you also have a
23 set from Florida Power, which includes the testimony as
24 well.

25 CHAIRMAN CLARK: Commissioner Kiesling, why

1 don't you take a minute to look at it and see if there's
2 any difference.

3 In the meantime, we will be inserting in the
4 record the testimony entitled Amended Rebuttal Testimony
5 of Brian Morrison which has no redacted parts of the
6 testimony. Okay.

7 Now, Mr. Ross, you have objected to the
8 testimony of Mr. Morrison.

9 MR. ROSS: And our objection to the testimony
10 comes out of what is the -- sort of the unique
11 situation, I think, in this case, that we filed direct
12 on the same day and we each filed rebuttal on the same
13 day. It is our position that Mr. Morrison's testimony
14 is not appropriate rebuttal, that it doesn't rebut any
15 testimony that we gave, and as a result it has given us
16 no opportunity to respond to Mr. Morrison's testimony.

17 Mr. Morrison's testimony essentially responds
18 to -- attempts to respond to Mr. Killian who said that
19 the pendency of this proceeding interfered with our
20 ability to get financing. I don't think Mr. Morrison
21 even disagrees with that. As a matter of fact, I think
22 his testimony agrees that this dispute interferes only
23 with our ability to get financing. But then he launches
24 into a lengthy opinion that, in his opinion, based on
25 his review of documents, we never would have gotten

1 financing for this facility.

2 Number one, I don't think that's an issue in
3 this proceeding. We're only asking to be put back to
4 the position we were before the proceeding started,
5 which is, namely, give us an opportunity to complete
6 financing. We understand if we don't get financing, we
7 don't get financing, and that's our problem. But
8 secondly, we put in no testimony about our ability to
9 get financing separate and apart from the impact of this
10 proceeding because we didn't see it as an issue in the
11 case. And therefore it's not in rebuttal to any of our
12 testimony.

13 We've suggested two ways to handle it, and I'm
14 perfectly happy with either one. One is to not permit
15 this testimony. If the Commission prefers to allow this
16 testimony, we would ask the right, when Mr. Killian is
17 doing his rebuttal testimony, to briefly respond to this
18 testimony because we've never had an opportunity to
19 respond to this argument that, well, for reasons wholly
20 separate and apart from this proceeding, his opinion is
21 we never could have gotten financing.

22 CHAIRMAN CLARK: Mr. Froeschle?

23 MR. FROESCHLE: Yes, Madam Chairman. If I may
24 respond. Mr. Morrison has specifically cited at Page 37
25 of Mr. Killian's testimony where Mr. Killian states

1 that, "Panda's ability to meet the construction start
2 date and the in-service date have been jeopardized
3 solely as a result of Florida Power's actions." He was
4 clearly responding, at least, to that statement. And I
5 do not know of any requirement anywhere that the
6 response to a statement be limited to a certain number
7 of pages, whether -- one of their statements is that
8 he's responding only to a single statement. I do not
9 see the validity of that argument.

10 However, furthermore, on Page 35 of
11 Mr. Killian's testimony, he makes the statement
12 regarding "the absolutely predictable result of bringing
13 Panda's financing of the Panda-Kathleen facility to a
14 halt."

15 Furthermore, down the page, on that same page,
16 Page 35, Line 15 through 18, Mr. Killian testifies that
17 "Panda had obtained all construction permits, and
18 efforts were well underway to obtain financing and an
19 equity partner for the project." Mr. Morrison's
20 testimony is directly on this point.

21 Now the fact that it was not specifically
22 cited as part of what he was rebutting, I do not believe
23 changes the fact that he is effectively -- or attempting
24 to rebut those statements made by Mr. Killian.

25 Panda has further argued that Mr. Morrison's

1 testimony is a patent violation of the Commission's
2 order establishing procedure. However, they do not cite
3 anywhere in that order wherein the order has been
4 violated. And Florida Power is not aware of any
5 specific clause to which it's in violation of, and it
6 would maintain it has not violated that order.

7 We believe that Mr. Morrison has properly
8 responded to Panda's essentially unsupported
9 allegations. Contrary to the statements of Mr. Ross
10 right now that there was nothing here that he was
11 responding to, and that his going off on a discussion of
12 financing was not related to the direct testimony and
13 that they had not attempted to place testimony in the
14 record, the facts show here that they did state that
15 efforts were well underway and that they were talking
16 about financing and the equity partner. Therefore, we
17 believe that the statements of Mr. Morrison do respond
18 to those.

19 Finally, Panda requests that if the testimony
20 is allowed into the record, that they be allowed to
21 orally respond to Mr. Morrison's testimony at this time
22 because they've been prejudiced. We would object
23 strenuously to that for the following grounds: First,
24 Panda has had three weeks to file an objection or to
25 request permission to file some form of surrebuttal

1 testimony in this proceeding. They could have requested
2 weeks ago that right and that could have been dealt with
3 either at the prehearing or -- and in some way before
4 this time. It was Panda that did not support their
5 allegations as to whether or not they had financing or
6 whether or not Florida Power was the sole cause of their
7 failure to meet the milestones. Now when those
8 unsupported allegations have been challenged by
9 Mr. Morrison, they claim that they have lost some kind
10 of -- they've been prejudiced in some way. We believe
11 that if they were permitted at this time to present oral
12 testimony that we have not had a chance to review for
13 three weeks like they have, that we, Florida Power, will
14 be severely prejudiced in this matter. And it would
15 give Panda an unfair advantage. Thank you.

16 CHAIRMAN CLARK: Thank you. Would you like to
17 respond, Mr. Ross?

18 MR. ROSS: Yes. His testimony is not in
19 rebuttal to a testimony that efforts were underway to
20 obtain financing. He doesn't rebut the fact that
21 efforts were underway. We never put forth any testimony
22 that said we had financing or that financing was
23 guaranteed. We've said our efforts were stopped. He
24 actually agrees with that. But then he goes on to offer
25 an opinion, an expert opinion, that in his expert

1 opinion we never would have been able to get financing.
2 And that's not in -- we've never offered an opinion that
3 we would have gotten our financing. All we've said is
4 we were trying to get our financing and we had to stop
5 because of this proceeding. No one is going to lend you
6 money when you're in this proceeding, a fact with which
7 this witness agrees, I might add.

8 With respect to the procedure, with all due
9 respect, we simply inquired how we should go about doing
10 this, and Staff suggested to us the way to do it was to
11 file an objection or ask at this hearing for the right
12 to very briefly respond from a witness who is already
13 here. I think I have about seven or eight questions of
14 Mr. Killian that would respond to this, and I think
15 we're prejudiced and denied our rights if we don't have
16 a chance to respond to this opinion about would we ever
17 have been able to get financing when it was never an
18 issue before rebuttal testimony.

19 CHAIRMAN CLARK: Thank you, Mr. Ross. I'm
20 going to deny the objection and also deny the request to
21 supplement your rebuttal testimony. I believe
22 Mr. Morrison's testimony is in response to Panda's
23 allegation that its ability to meet the milestone dates
24 has been jeopardized solely as a result of Florida
25 Power's actions. I think Mr. Morrison's testimony goes

1 to the issue of what else might have been a factor in
2 meeting those milestones.

3 To the extent that you -- that Mr. Killian
4 didn't initially bolster his allegation, I think
5 that's -- it could have been done and should have been
6 done at that time.

7 So I will allow Mr. Morrison's testimony and
8 deny your request to provide further rebuttal testimony
9 by Mr. Killian. Go ahead.

10 MR. FROESCHLE: Mr. Morrison has attached to
11 his testimony Exhibit Nos. BAM-1 through -- excuse me --
12 37. And we ask that they be marked as Composite Exhibit
13 No. 32.

14 CHAIRMAN CLARK: Exhibit 32 -- Exhibits BAM-1
15 through 37 attached to Mr. Morrison's rebuttal testimony
16 will be marked as Composite Exhibit 32. And just to be
17 clear, that will be the exhibits that are the
18 confidential exhibits. Those will be the exhibit
19 numbers, but I understand what's attached here is
20 redacted.

21 (Exhibit No. 32 marked for identification.)

22 CHAIRMAN CLARK: It is the confidential
23 exhibit you want in the record; is that right?

24 MS. BROWN: Yes, I would think so. I hate to
25 interject, but --

1 MR. MCGEE: That contains the confidential
2 exhibits. That contains a complete set of the exhibits,
3 some of which are confidential.

4 CHAIRMAN CLARK: It's our procedure to put the
5 confidential exhibit in the record and they will be kept
6 confidential.

7 MR. FROESCHLE: Thank you.

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**AMENDED
REBUTTAL TESTIMONY OF
BRIAN A. MORRISON**

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

2 A. Brian A. Morrison, 800 Third Avenue, Suite 2300, New York, NY
3 10022.

4
5 **Q. By whom are you employed and in what capacity?**

6 A. I am employed by Morrison & Kibbey Ltd. as a Managing Director.

7
8 **Q. What type of an organization is Morrison & Kibbey, Ltd.?**

9 A. Morrison & Kibbey Ltd. is an investment banking firm.

10
11 **Q. What specifically do you do for Morrison & Kibbey?**

12 A. Like my other partners, I am responsible for assisting our clients in
13 developing new corporate financing strategies and the implementation
14 of these strategies.

15
16 **Q. Please describe your educational and business background.**

17 A. Education

18 1971-1975 Georgetown University BS - Mathematics

19 Scholarships: George F. Baker Trust

20 Francis Ouimet Foundation

1 1977-1979 Harvard Business School MBA - Finance
 2 Scholarships: George F. Baker Trust
 3 Danforth Memorial Fellowship

4 Business

5 1993-Present Morrison & Kibbey Ltd. Managing Director
 6 1986-1993 Hicks Morrison & Co. Managing Director
 7 1985-1986 Amvest Capital Corp. Senior Vice President
 8 1982-1985 Dean Witter Reynolds First Vice President
 9 1979-1982 Shearson/American
 10 Express Assist. Vice President
 11 1976-1978 Citibank, N.A.

12 A copy of my resume is attached as Exhibit No. 32 (BAM-1).

13
 14 **Q. Have you worked in the area of financing of cogeneration projects?**

15 **A. Yes extensively.**

16
 17 **Q. In what capacity?**

18 **A. In our role acting as financial advisor and placement agent we have**
 19 **developed and/or implemented financing plans for over 40 power**
 20 **projects representing in excess of 1,350 MW of generating capacity.**

21
 22 **Q. For how many cogeneration projects have you worked on financing?**

23 **A. 16, totalling over 540 MW.**

24
 25 **Q. What is the purpose of your testimony?**

1 A. The purpose of my testimony is to rebut the direct testimony pre-filed
2 by Panda-Kathleen, L.P., that stated that "Panda's ability to meet the
3 construction start date of January 1, 1996, and the in-service date of
4 January 1, 1997, has been jeopardized solely as a result of Florida
5 Power's actions in attempting to disown the contract." (Emphasis
6 added.) Testimony of Ralph Killian, page 37, lines 9-13.

7
8 **Q. On what do you base the testimony contained herein?**

9 A. I based my testimony on my review of the Panda/Florida Power Standard
10 Offer Contract, the Commission's Rule 25-17.0832, F.A.C., documents
11 produced by Panda in discovery, and on my direct experiences in
12 representing numerous private power developers in assisting in the
13 development and implementation of various types of project financing
14 structures.

15
16 **Q. Are you familiar with Panda's corporate structure as it pertains to this**
17 **proceeding?**

18 A. Yes. Three corporate entities appear in the documents: Panda-Kathleen,
19 L.P.; Panda-Kathleen Corporation; and, Panda Energy Corporation.
20 Florida Power entered into a Standard Offer Contract with Panda-
21 Kathleen, L.P., a Delaware Limited Partnership. Panda-Kathleen
22 Corporation is the general partner to Panda-Kathleen, L.P. and is a
23 subsidiary of the parent corporation, Panda Energy Corporation. Except
24 where my testimony pertains specifically to one of these entities, I will
25 refer to these various Panda corporations as Panda.

1 Q. Are you aware that Panda-Kathleen, L.P., has failed to meet the
2 construction start date of January 1, 1996?

3 A. Yes.
4

5 Q. Are you also aware that on January 25, 1995, Florida Power filed a
6 Petition for Declaratory Statement with the Florida Public Service
7 Commission raising issues of the interpretation and application of Rule
8 25-17.0832, F.A.C., with respect to the Panda/Florida Power Standard
9 Offer Contract?

10 A. Yes.
11

12 Q. Based on your review of documents and your experience in the financing
13 of the development of power facilities, was Panda-Kathleen, L.P.'s,
14 failure to meet the construction start date "solely the result of Florida
15 Power's actions?"

16 A. No.
17

18 Q. What reasons would you cite for Panda-Kathleen, L.P.'s failure to meet
19 its construction start date?

20 A. Panda was experiencing difficulty in a number of areas prior to January
21 25, 1995. I've outlined below some of the issues that lenders were
22 aware of and expressed concern about regarding the Panda-Kathleen
23 project. The first issues involved the regulatory issues of whether
24 Florida Power would be required to purchase power in excess of 74.9
25 MW under the Panda/Florida Power Standard Offer Contract and the

1 Commission's Cogeneration Rules, and whether Florida Power would
2 have to make capacity payments to Panda after 20 years under that
3 same contract. Second, Panda-Kathleen, L.P., had been unable to
4 secure an independent thermal host and had decided to use a subsidiary
5 of Panda Energy Corporation to build and operate the thermal host for
6 its own facility. Finally, the economics of the project in general lead to
7 Panda-Kathleen, L.P., "mothballing" the project for a period of time.
8 These issues would lead any lender to more carefully analyze both the
9 project and the financial condition of the developer. See Exhibit No. 32
10 (BAM-2); Exhibit No. 32 (BAM-3); Exhibit No. 32 (BAM-4); Exhibit
11 No. 32 (BAM-5); Exhibit No. 32 (BAM-6); Exhibit No. 32 (BAM-7); Exhibit
12 No. 32 (BAM-8); Exhibit No. 32 (BAM-9); Exhibit No. 32 (BAM-10);
13 Exhibit No. 32 (BAM-11); Exhibit No. 32 (BAM-12); Exhibit No. 32 (BAM-
14 13); Exhibit No. 32 (BAM-14); Exhibit No. 32 (BAM-15); Exhibit No. 32
15 (BAM-16); Exhibit No. 32 (BAM-17); Exhibit No. 32 (BAM-18); and,
16 Exhibit No. 32 (BAM-19).

17
18 **Q. Please describe the steps typically followed by the developer of a
19 cogeneration project in obtaining financing for the project.**

20 **A. Typically, a developer will have completely finalized the site acquisition,
21 the power purchase agreement, the outstanding permit issues, the fuel
22 supply, the equipment configuration, the Engineering Procurement &
23 Construction contract, the insurance policies and the thermal contract,
24 if any.**

1 Q. Based on the documents produced by Panda which you have reviewed,
2 at what stage in the process of obtaining financing was Panda-Kathleen,
3 L.P., on January 24, 1995?

4 A. Based upon my review of the documents provided, there still seemed to
5 be a significant number of items to be resolved in all of the
6 aforementioned areas which would be of concern to any institutional
7 lender from a due diligence standpoint. One of the potential investors,
8 Calpine, citing among other issues the overall economics of the project
9 and the distilled water plant issues, informed the Kathleen Project Team
10 on January 23, 1995, that it had dropped out of the project as Panda-
11 Kathleen Corporation's equity partner. As to the other lenders, I did not
12 see detailed term sheets or indications of interest from Morgan Stanley
13 or ABB Capital which outlined their specific intent on providing financing
14 to this project at this time under certain terms and conditions. See
15 Exhibit No. 32 (BAM-3); Exhibit No. 32 (BAM-4); Exhibit No. 32 (BAM-6);
16 Exhibit No. 32 (BAM-20); Exhibit No. 32 (BAM-21); Exhibit No. 32
17 (BAM-22); Exhibit No. 32 (BAM-23); Exhibit No. 32 (BAM-24); Exhibit
18 No. 32 (BAM-25); and, Exhibit No. 32 (BAM-26).

19
20 Q. In terms of the time required to obtain financing, was this project on
21 track to obtain the necessary financing in order to meet the contractual
22 milestones for commencing construction and commencing operation?

23 A. No. In order to meet the commercial operations date of January 1,
24 1997, Panda-Kathleen, L.P.'s, management readily admits that the
25 financing for the project needed to be in place before December 31,

1 1994. See Exhibit No. 32 (BAM-20); Exhibit No. 32 (BAM-21); Exhibit
2 No. 32 (BAM-22); Exhibit No. 32 (BAM-23); Exhibit No. 32 (BAM-24);
3 Exhibit No. 32 (BAM-25); and, Exhibit No. 32 (BAM-37).

4
5 **Q. To your knowledge, was Panda-Kathleen, L.P.'s, financing for the**
6 **project in place by that date?**

7 **A. No. Lenders were still conducting due diligence without having issued**
8 **a firm commitment to the fund project. See Exhibit No. ___ (BAM-20);**
9 **Exhibit No. 32 (BAM-21); Exhibit No. 32 (BAM-22); Exhibit No. 32**
10 **(BAM-23); Exhibit No. 32 (BAM-24); Exhibit No. 32 (BAM-25); Exhibit**
11 **No. 32 (BAM-26); and, Exhibit No. 32 (BAM-27).**

12
13 **Q. Do you believe that Panda-Kathleen, L.P., would have been able to**
14 **obtain financing after January 24, 1995, if Florida Power had not filed**
15 **the Petition for Declaratory Statement on January 25, 1995?**

16 **A. No. The regulatory issues concerning the size of the facility and the**
17 **length of time that Florida Power would be required to make capacity**
18 **payments had to be resolved before a lender would likely agree to**
19 **finance the project. Even before Florida Power filed its Petition, lenders**
20 **were aware of and concerned about those issues. The letter dated June**
21 **23, 1994, from Ted Hollon of Panda to David Gammon of Florida Power**
22 **outlines concern on behalf of prospective lenders regarding the issue of**
23 **what price, if any, Florida Power was going to pay for power delivered**
24 **by the project in excess of the 74.9 MW limit in the standard offer**
25 **contract. See Exhibit No. 32 (BAM-5); Exhibit No. 32 (BAM-6); Exhibit**

1 No. 32 (BAM-23); Exhibit No. 32 (BAM-24); Exhibit No. 32 (BAM-25);
2 and, Exhibit No. 32 (BAM-27).
3

4 **Q. What does the concern of lenders expressed in Ted Hollon's letter**
5 **indicate to you?**

6 A. Since this issue had still not been resolved prior to the January 25,
7 1995 filing by FPC, I would have to believe that this was still a major,
8 unresolved due diligence item for any of the prospective financial
9 institutions, since these excess power sales appear to represent
10 approximately 35% of the project's total revenue stream. See Exhibit
11 No. 32 (BAM-27); and, Exhibit No. 32 (BAM-28).
12

13 **Q. Would the concern expressed by these prospective lenders be sufficient**
14 **to interfere with financing for the project?**

15 A. Definitely. Financial institutions would not close on non-recourse
16 financing of this magnitude without having satisfactory answers to these
17 questions.
18

19 **Q. Would other lenders be likely to have similar questions?**

20 A. Certainly.
21

22 **Q. You stated previously in your testimony that the lack of a secured**
23 **thermal host would have interfered with Panda-Kathleen, L.P.'s, meeting**
24 **its milestone dates. Please elaborate.**

1 A. It is clear from the documents that Panda-Kathleen, L.P., had a problem
2 securing a thermal host for the project. Panda-Kathleen, L.P., first
3 attempted to contract with Erly Juice. When those efforts were
4 unsuccessful, Panda-Kathleen, L.P., apparently decided it would have a
5 subsidiary of Panda Energy Corporation be the thermal host for the
6 facility. Several problems remained, however. The thermal host facility
7 had yet to be designed, and financing had to be obtained, not only for
8 the cogeneration facility, but also for the thermal host facility. Lenders
9 would have to have the design in hand to review, and would also have
10 to look even more carefully at Panda's financial structure before
11 approving the lending for Panda's enhanced needs. See Exhibit No. 32
12 (BAM-6); Exhibit No. 32 (BAM-7); Exhibit No. 32 (BAM-8); Exhibit
13 No. 32 (BAM-13); Exhibit No. 32 (BAM-14); Exhibit No. 32 (BAM-16);
14 and, Exhibit No. 32 (BAM-17).

15
16 Q. You referred previously to the fact that Panda-Kathleen, L.P.,
17 "mothballed" the project for a period of time. What does "mothballing"
18 the project mean to you?

19 A. It means stopping all progress on the project until certain obstacles
20 could be surmounted.

21
22 Q. Do you often see developers "mothball" their projects as Panda-
23 Kathleen, L.P., did?

24 A. Occasionally, but usually the project is "shelved" because of economic
25 reasons and these projects typically never get completed in the original

1 configuration. For instance, if fuel costs or availability became an issue,
2 a developer may shelve a project until they could resolve the
3 outstanding fuel issues. One resolution might take the form of changing
4 fuels or co-firing with another less expensive or readily available fuel.
5 This could also be done in the event that the project loses its thermal
6 host. This seemed to be the case with Panda-Kathleen, L.P., and its
7 negotiations with Erly Juice.

8
9 **Q. What does the fact that the project was mothballed for a period of time**
10 **indicate to you in terms of Panda-Kathleen, L.P., meeting its milestone**
11 **dates?**

12 **A. While one cannot directly relate Panda-Kathleen, L.P.'s, mothballing of**
13 **the project to its failure to meet the construction start date, the**
14 **mothballing is an additional symptom of a troubled project.**

15
16 **Q. In addition to the issues already discussed, did you see any evidence**
17 **that Panda-Kathleen, L.P., would not likely be able to obtain financing**
18 **for its project?**

19 **A. Yes.**

20
21 **Q. Please describe those issues.**

22 **A. The evidence that I saw that would indicate that Panda-Kathleen, L.P.,**
23 **would not be likely to obtain financing for the Panda-Kathleen project is**
24 **as follows:**

- 1 ● Panda-Kathleen, L.P.'s, initial 1994 financing plan was to fund the
2 project with rated, senior taxable debt via the public or private
3 (144a) markets with a term of 25+ years through the firm of Smith
4 Barney. This term, especially for non-investment grade, taxable
5 debt, seems quite long. (The 144a debt market which is comprised
6 primarily of institutional debt investors has been very active in the
7 private placement of rated, corporate debt issues. It wasn't until
8 early 1993 that independent power projects began to test the
9 viability of this market for project financing. Even then, many
10 investors did not think that independent power projects belonged
11 in the 144a marketplace because of the complexity of issues
12 involved with these types of project financing.) Also, by the latter
13 part of 1994, all discussion of Smith Barney and this financing had
14 disappeared which would lead anyone to believe that there was no
15 market for this type of issue with the interest rate and amortization
16 schedule required by the Panda-Kathleen project. See Exhibit
17 No. 32 (BAM-29); and, Exhibit No. 32 (BAM-30).
- 18 ● I reviewed several draft Indication of Interest letters from Bank of
19 Tokyo (BOT) over a period of several months beginning in October
20 1994 and continuing into 1995. The actual scope of the BOT
21 financing structure changed from (i) an approximate 18 month
22 construction loan with a 13-15 year permanent loan; into, (ii) a
23 construction loan with a 2 year bridge loan. These documents
24 comprise a series of draft terms sheets that continue discussions
25 into early 1995 with no firm commitment letter from BOT. See

1 Exhibit No. 32 (BAM-23); Exhibit No. 32 (BAM-24) and Exhibit
2 No. 32 (BAM-25).

- 3 ● In the latter half of 1994, after Smith Barney was unable to market
4 a long-term debt issue with a 25 + year term for the project, Merrill
5 Lynch was hired to arrange a Medium Term Note (MTN) issue with
6 a term of 25-30 years. This seems a bit puzzling since a MTN issue
7 would typically have a term of only 3-7 years and require the issuer
8 to have an investment grade rating. See Exhibit No. 32 (BAM-30);
9 and, Exhibit No. 32 (BAM-31).
- 10 ● In August of 1994, Panda Energy Corporation took it upon itself,
11 without the assistance of any of its many financial advisors, to
12 issue an Investment Memorandum in order to place \$15 million in
13 limited partnership interests in the Panda-Kathleen project. This
14 effort seems to have come up empty since there is no further
15 discussion on the topic except for reference to Calpine as a
16 potential equity investor. See Exhibit No. 32 (BAM-32); and,
17 Exhibit No. 32 (BAM-33).
- 18 ● In a letter dated January 23, 1995, Calpine dropped out as a
19 potential equity investor citing, among other things, numerous
20 concerns such as the capital cost of the project, the operating costs
21 of the project, issues revolving around the distilled water plant, and
22 the overall inadequate economics of the project. See Exhibit No. 32
23 (BAM-26).

24 Any of these factors alone could cause any financial institution to pass
25 on this transaction until such issues were resolved.

1 Q. Are you familiar with the original configuration for the facility proposed
2 by Panda-Kathleen, L.P., at the time Panda-Kathleen, L.P., submitted its
3 standard offer?

4 A. Yes. The various documents indicated that Panda-Kathleen, L.P.,
5 considered several different equipment configurations in order to
6 generate a net capacity delivered of not more than 75MW.

7
8 Q. Have you analyzed those original configurations from a financial
9 perspective?

10 A. Yes. I reviewed a truncated spreadsheet analysis dated December 23,
11 1993 for the 75MW Panda-Kathleen project. See Exhibit No. 32 (BAM-
12 19).

13
14 Q. Was the project as originally configured a viable project?

15 A. No. The project proforma analysis had significant negative cashflows
16 for the first four years (1997-2000) and coincidentally had debt service
17 coverage ratios of less than 1.0x during each of those four years. This
18 analysis showed that the project would not be able to make all of its
19 scheduled debt payments during each of those four years. See Exhibit
20 No. 32 (BAM-19).

21
22 Q. Have you analyzed the internal financial structure of Panda Energy
23 Corporation?

24 A. Yes.

1 Q. Did you find any problems with the internal financial condition of Panda
2 Energy Corporation which would make it unlikely that Panda-Kathleen,
3 L.P., would be able to obtain the necessary financing for the project?

4 A. Yes. Panda Energy Corporation continually lost money over the period
5 1991-1994 recording a significant cumulative net income loss, and it
6 posted a sizeable negative net worth position by December 31, 1994.
7 This also indicates that Panda Energy Corporation has accumulated
8 substantial losses during its operating years prior to 1991. So, the fact
9 that Panda Energy Corporation had continually lost money could possibly
10 limit the arena for potential project equity partners since Panda Energy
11 Corporation would probably continue to be in dire need of operating
12 capital at the corporate level. See Exhibit No. 32 (BAM-34); Exhibit
13 No. 32 (BAM-35); and, Exhibit No. 32 (BAM-36).

14
15 Q. In your opinion, was the Panda-Kathleen project a viable candidate for
16 financing on January 24, 1995?

17 A. No. The project had gone through so many changes since the
18 "mothballing", including several different financial advisors, that it
19 appears that the Panda-Kathleen management team was grasping at
20 straws during the last quarter of 1994 in order to come up with some
21 structure that was bankable. This concludes with Merrill Lynch
22 proposing a medium term note financing on January 19, 1995, with a
23 30 year term and interest only for 7 years, a highly unorthodox proposal
24 which indicated the desperate straits of Panda-Kathleen, L.P. in
25 obtaining financing. See Exhibit No. 32 (BAM-31).

1 Q. Does this conclude your testimony?

2 A. Yes.

1 BY MR. FROESCHLE:

2 Q Mr. Morrison, would you give us a brief
3 summary of your testimony?

4 A Certainly. The purpose of my testimony was,
5 as you stated earlier, it is my opinion that the overall
6 economics of the Panda-Kathleen project led several
7 equity investors not to proceed with an investment in
8 that project. This began in June of 1994 with ABB
9 capital, and then finally ended with Calpine Corporation
10 in January of 1995. Calpine cited several reasons for
11 dropping out of the project as an equity partner just
12 two days prior to the filing by Florida Power, which
13 initiated this proceeding.

14 Among others, the reasons included their
15 concerns about projections for both capital and
16 operating costs of the project, the distilled water
17 facility, as well as their concern for the overall
18 economics of the deal being too thin.

19 In addition to many of these same issues being
20 raised seven months earlier by ABB Capital in June of
21 1994, ABB was also questioning, at that time, issues of
22 whether Florida Power would be required to purchase
23 power in excess of the 74.9 megawatts under the standard
24 offer contract, and also whether Florida Power would be
25 required to have made capacity payments after the

1 20-year period.

2 It is also my opinion that the Panda-Kathleen
3 project team did not determine in a timely fashion a
4 specific approach to financing this facility. This
5 resulted in an ever-changing scheme to arrange debt for
6 the project. Beginning in July 1994 Smith Barney
7 attempted to arrange a 144A debt placement. This debt
8 placement would not require a construction loan
9 facility.

10 When this type of financing did not seem
11 viable, the Bank of Tokyo Trust Company and the
12 Bayerische Vereinsbank were approached to provide a
13 credit facility which continued to change in its scope
14 over time. Initially that credit facility discussed a
15 construction loan and a term facility which would come
16 into place after the construction loan -- construction
17 of the facility was completed. This ultimately turned
18 into a construction loan with a two-year term loan, a
19 bridge loan facility.

20 This then led Panda to Merrill Lynch, who
21 considered sponsoring a medium-term note program for the
22 project, and in order to successfully market such a
23 medium-term note program, the facility would have to
24 have received an investment grade credit rating from
25 both Standard & Poor's and Moody's Investor Services.

1 This ultimately led to a serious timing
2 problem for the projects towards the end of 1994 and the
3 beginning of 1995 because financing still had not been
4 completed. Panda needed its prospective equity partner
5 to firmly commit to the transaction as soon as possible,
6 but it seemed to only have one prospect by the latter
7 part of January 1995.

8 When Calpine decided not to proceed on January
9 23rd, 1995, Panda knew that the critical component to
10 its most recent financing scheme was gone. Without the
11 equity firmly committed at that point, there would be no
12 credit facility forthcoming from the Bank of Tokyo, as
13 well as the German bank, because they had a condition
14 precedent to their financing that would require a firm
15 unconditional commitment of the equity partner.

16 Although there's no single reason to point out
17 any prospective equity partner's final lack of interest
18 in financing this project, the absolute lack of a firm,
19 fully-committed equity partner at such a late date in
20 the development of this project was definitely an
21 important factor in Panda's inability to meet the
22 construction start date of January 1, 1996 and the
23 in-service date of January 1, 1997.

24 CHAIRMAN CLARK: Does that conclude your
25 summary?

1 WITNESS MORRISON: It does.

2 CHAIRMAN CLARK: Mr. Ross?

3 MR. ROSS: Mr. Silverman, will cross-examine
4 this witness.

5 CHAIRMAN CLARK: Mr. Silverman.

6 CROSS-EXAMINATION

7 BY MR. SILVERMAN:

8 Q Mr. Morrison, from the summary you just
9 described, your testimony has changed somewhat since --
10 from what is listed in your amended rebuttal testimony;
11 is that correct?

12 A Has changed in what way?

13 Q Okay, in your amended rebuttal testimony, did
14 you discuss Panda's relationships with its rating
15 agencies?

16 A I discussed that there would be a need for an
17 investment grade rating.

18 Q Did you discuss that Panda knew its equity
19 financing was gone?

20 A It knew its equity financing was gone as of
21 January 23rd, 1995.

22 Q But you stated in your summary that Panda knew
23 that its only source of equity financing was gone and
24 that therefore the project was not financeable. Can you
25 point me to where you obtained those facts regarding

1 Panda's state of mind?

2 A When Calpine declined and dropped out of the
3 financing, from the documents I reviewed preparing this
4 testimony, there was no other indication of any other
5 equity party involved moving forward on this
6 transaction.

7 Q But you stated that Panda knew that its equity
8 financing was gone and therefore that it couldn't
9 finance the project, and you have no basis --

10 A If I just stated Panda knew, it's my opinion
11 that Panda should have known. I'll amend that
12 statement.

13 Q Talk about the preparation for your prefiled
14 rebuttal testimony. Is it still your testimony that
15 your opinion is based on the documents and items
16 identified on Page 3, which is listed as the Panda-
17 Florida Standard Offer Contract, the Commission's Rule,
18 documents produced by Panda and on your direct
19 experience as representing numerous private power
20 developers?

21 A Yes.

22 Q Isn't it true that when you drafted your
23 opinion, you had never reviewed the lender's own files?

24 A I had reviewed some documents from the lenders
25 but I had not reviewed the complete set of documents

1 from the lender.

2 Q Isn't it true that when you drafted your
3 testimony, you didn't know that Panda had an executed
4 indication of interest from its lenders?

5 A When I drafted the testimony I said that they
6 had received an indication of interest and had not seen
7 the executed indication of interest.

8 Q It's true that in your amended testimony
9 attaches several drafts of an indication of interest; is
10 that correct?

11 A That's correct.

12 Q But when you formed your opinion, you didn't
13 know whether or not Panda had gotten a final executed
14 indication of interest from --

15 A I had not seen a final executed indication of
16 interest.

17 Q And you now -- and is it your testimony that
18 you now know that Panda did receive an executed
19 indication of interest?

20 A Well, through the deposition that I had with
21 yourself earlier this month, you presented that
22 document.

23 Q Okay. I would like to present the witness
24 with a document marked as Exhibit 143. This document,
25 in particular, Panda will be requesting confidential

1 classification for since it is the terms of financing
2 for Panda. Our motion will be identical to the motion
3 filed for the drafts.

4 MS. BROWN: I would like to ask Mr. Silverman
5 if he's prepared copies of the documents that are
6 unredacted to be treated confidentially for review.

7 MR. SILVERMAN: We will provide that.

8 MS. BROWN: Well, I thought the --

9 MR. SILVERMAN: It will be filed with the
10 court reporter.

11 CHAIRMAN CLARK: Just a minute. Is this a
12 redacted version?

13 MR. SILVERMAN: No.

14 CHAIRMAN CLARK: So this is a confidential
15 document you've just handed us?

16 MR. SILVERMAN: Yes.

17 CHAIRMAN CLARK: So you're going to pick it up
18 at the --

19 MR. SILVERMAN: We're not going to mark it as
20 an exhibit.

21 CHAIRMAN CLARK: All right.

22 (Pause)

23 MR. SILVERMAN: We will provide redacted
24 copies in the next couple of minutes that will be filed.

25 CHAIRMAN CLARK: If you want this as an

1 exhibit, we file -- the exhibit is the confidential
2 document and we keep it confidential in the confidential
3 portion of the record, but that is the one that is
4 marked as an exhibit.

5 MR. SILVERMAN: And that's what we would
6 request, which I guess would be --

7 CHAIRMAN CLARK: Exhibit 33 is Exhibit 143
8 from Mr. Morrison's deposition taken when?

9 MR. SILVERMAN: February 7th, 1996.

10 CHAIRMAN CLARK: And it's my understanding you
11 will file the appropriate request for confidential
12 treatment. And let me just tell you right now, it's
13 your responsibility to get these confidential copies
14 picked up from everyone you've given them to.

15 MR. SILVERMAN: We understand.

16 (Exhibit No. 33 marked for identification.)

17 BY MR. SILVERMAN:

18 Q Mr. Morrison, isn't it true that this document
19 is an executed indication of interest from the Bank of
20 Tokyo Trust Company?

21 A It is.

22 Q Is it also an executed indication of interest
23 from Bayerische Vereinsbank, which will I spell at the
24 appropriate time?

25 A It is.

1 Q And you had not seen this document?

2 A I had seen the unsigned version of this
3 document.

4 Q Okay. When you prepared your testimony, isn't
5 it true you didn't know whether or not Panda had made a
6 presentation to the rating agencies?

7 A I did not review any documents that indicated
8 that they had approached the rating agencies.

9 Q So it's two issues: One, you did not know
10 whether or not Panda had any discussions with the rating
11 agencies, correct?

12 A That's correct.

13 Q And you didn't know whether Panda had prepared
14 any written presentations to the agency, is that --

15 A That is correct.

16 Q Isn't it correct that you did not review any
17 of the computerized pro forma information that was
18 provided by Panda to Florida Power in this case?

19 A I reviewed several printed schedules but not
20 the actual computerized disks prior to our deposition.

21 Q Were you aware --

22 CHAIRMAN CLARK: Mr. Silverman, let him
23 finish his answer and then you can ask another question.

24 WITNESS MORRISON: I think I was finishing
25 saying prior to our deposition when we discussed that.

1 BY MR. SILVERMAN:

2 Q And when you were preparing your testimony,
3 were you aware that Panda had provided Florida Power
4 with 53 disks of current pro forma information?

5 A I may have been aware they provided disks, but
6 I did not receive them to be reviewed.

7 Q Talk a little bit about your background. Am I
8 correct that you've had over 15 years of experience in
9 the investment banking business?

10 A That is correct.

11 Q And we can agree that there was a standard
12 offer contract in effect between Panda and Florida Power
13 in this case?

14 A As I understand that, yes.

15 Q Okay. Isn't it correct that you have not been
16 involved in any cases where there was a power purchase
17 agreement between a utility and a project developer
18 where the developer couldn't get financing?

19 A I'm sorry, could you repeat the question?

20 Q Isn't it true that you have not been
21 personally involved in any situation where there was a
22 power purchase agreement between a utility and a
23 cogeneration developer where the developer could not get
24 financing?

25 A From the standpoint of where we were actively

1 involved as financial advisors?

2 Q That's correct.

3 A I believe that's correct, yes.

4 Q And isn't it correct you have never been
5 involved in any situation where the -- where a utility
6 declined to agree with a cogenerator to give the
7 necessary clarifications or assignments necessary to
8 complete financing?

9 A We have been involved in situations where
10 there may have been issues that had to be satisfied on
11 behalf of the lending institutions, and typically,
12 through the normal course of documentation, those
13 ultimately get resolved and you close on financing.

14 Q Okay, I will touch on that in a minute. In
15 your testimony on Page 4, you have cited three factors
16 by which Panda would not be able to obtain financing:
17 Regulatory factors, thermal host problems and, quote,
18 "mothballing"; is that correct?

19 A Those were three that I mentioned on Page 4.

20 Q Discuss those one at a time. First we'll
21 discuss what you identified as regulatory factors. By
22 regulatory factors, do you mean the dispute upon which
23 the parties are proceeding today?

24 A What I mean is the -- what I had identified in
25 my testimony, that's the issue of purchasing power in

1 excess of the 74.9 megawatts, as well as making capacity
2 payments for beyond the 20-year period, that's correct.

3 Q And you stated in your deposition that your
4 understanding of the dispute regarding the size issue is
5 that the contract says that FPC would only purchase 49.9
6 megawatts of power; is that correct?

7 A 49.9.

8 Q 74.9, I'm sorry.

9 A You lost me. Could you restate your
10 question?

11 Q Isn't it true that you have stated that your
12 view of the size issue is that the contract only
13 provides that Florida Power would purchase only 74.9
14 megawatts of power?

15 A I believe that's correct.

16 Q And you've stated in your testimony that you
17 thought the contract disputes were a major holdup to
18 getting financing; is that correct?

19 A I would have to go back and review that, but
20 contract disputes would be an issue that a lender would
21 take concern with.

22 Q And isn't it true that you've stated that you
23 had not seen any declarative statement that this, quote,
24 "regulatory factors" was an unresolvable issue; is
25 that correct?

1 A That I have not -- let me just restate your
2 question, that I did not see a declarative statement
3 that said it was an unresolvable issue?

4 Q Yes.

5 A That's correct.

6 Q And as you've testified before, Bank of Tokyo
7 and the German bank did execute an indication of
8 interest to provide lending for this project; is that
9 correct?

10 A That is correct. An indication of interest
11 just means that now they have all decided to go forward
12 and the bank will then put into motion their team to
13 complete the due diligence, and that due diligence
14 process will involve technical review, as well as review
15 of all the other documents and contracts involved in the
16 transaction.

17 Q Did you personally review the bank's due
18 diligence?

19 A Preparing this testimony?

20 Q Yes.

21 A Their personal due diligence and interview
22 bank officers? No.

23 Q Have you seen any documents describing that
24 due diligence?

25 A Some of the documents -- I have seen some,

1 yes.

2 Q But it is your opinion that the due diligence
3 would have revealed problems that would have led these
4 lenders not to complete financing?

5 A Well, the documents that I had reviewed were
6 up through the end of January, mid to late January, and
7 they still had not completed their due diligence at that
8 point in time.

9 Q Let me address what you had identified as the
10 thermal host problem. Isn't it your testimony that your
11 concern regarding thermal host is that the lack of a
12 thermal host would affect the QF status of the project;
13 is that correct?

14 A That's correct.

15 Q And you have -- isn't it your testimony that
16 the economic effect of the thermal host in this case is
17 de minimus?

18 A The way this project, the pro forma was
19 designed, the revenue stream from the thermal host was
20 minimal.

21 Q Attached to your testimony as BAM-17, if you
22 could refer to that. Isn't it true that FERC approved
23 Panda's use of a distilled water facility in this case?

24 A Yes, yes.

25 Q So as far as FERC was concerned, the distilled

1 water facility was okay?

2 A Seemed to be.

3 Q Isn't it true that the lenders in this case
4 obtained a legal opinion from Mudge, Rose, the New York
5 law firm, that the steam use is not particularly -- is
6 not a particularly stringent requirement for FERC?

7 A That was a document you presented to me at the
8 deposition. I'm not so sure that was a legal opinion
9 that they obtained from Mudge, Rose, other than it was a
10 memo from Bayerische Vereinsbank sent to Bank of Tokyo
11 Trust Company to let them know that they had come across
12 this document from Mudge, Rose that detailed discussions
13 about the thermal hosts.

14 Q But it is your testimony that the lenders in
15 this case were in possession of a legal opinion from
16 Mudge, Rose in which the QF -- the thermal use of a
17 cogeneration project was not deemed to be of major
18 concern?

19 A Again, I don't know if you could characterize
20 it as a legal opinion. It was a memo sent via fax from
21 Bayerische Vereinsbank to Bank of Tokyo Trust Company.
22 I don't think it was -- you mean was it a specific
23 opinion addressed to them?

24 Q I would like to mark as -- request to mark as
25 an exhibit a memorandum from the Mudge, Rose Energy

1 Group regarding the use of thermal energy by QFs, and I
2 believe that is No. 34.

3 CHAIRMAN CLARK: A document from the Mudge,
4 Rose, Guthrie, Alexander and Ferdon law firm -- I assume
5 it's a law firm -- entitled Advisory Memorandum on New
6 Developments and Energy Regulation. Is that --

7 MR. SILVERMAN: Yes.

8 CHAIRMAN CLARK: And it's attached cover page,
9 which is a telefax transmittal sheet. That will be
10 marked as Exhibit 34.

11 (Exhibit No. 34 marked for identification.)

12 BY MR. SILVERMAN:

13 Q And if you could briefly describe who was
14 sending this fax to whom?

15 A Evidently this woman, Mary Power -- I believe
16 that's her name. Yes, it's up at the top of the fax
17 transmittal sheet. She is sending this to Kirk Edelman
18 -- Mary Power is with Bayerische Vereinsbank, and she
19 is sending this to Kirk Edelman, who is evidently the
20 lead person on the Bank of Tokyo Trust team, and her
21 note says, "I thought the attached also might interest
22 you."

23 MS. BROWN: Excuse me. Chairman Clark, may I
24 interrupt just for a minute and clarify whether this
25 document is to be treated confidentially. I see some

1 blocked out redacted portions of it and --

2 MR. SILVERMAN: That was highlighting from the
3 original as it was produced by --

4 MS. BROWN: Oh, okay.

5 BY MR. SILVERMAN:

6 Q If you could turn to Page 2 of this document,
7 which is Page 2 of the memo, and read the second to last
8 paragraph.

9 A Page 2 of the memo, second to the last
10 paragraph?

11 Q Yes.

12 A "So the Federal Energy Regulatory Commission
13 remains loathe to police the use of thermal output for
14 applications that may seem uneconomic or even frivolous,
15 thereby running the risk of certifying as QFs a number
16 of PURPA machines."

17 Q Okay, just to -- when you prepared your
18 testimony regarding the thermal host issue, had you
19 reviewed the water -- the contract between
20 Panda-Kathleen and Lakeland Water Company?

21 A I don't believe I had seen any final signed
22 contract, no.

23 Q Were you aware whether or not a contract had
24 been prepared?

25 A I don't believe so, but I'm sure one would

1 have prior to closing the financing.

2 Q Okay. Isn't it true that Panda used a
3 distilled water facility as its host in the Brandywine
4 project?

5 A I'm not aware of that.

6 Q In your -- so let me just sum up the thermal
7 host issues. You have -- it is your testimony that the
8 reason that thermal hosts are a problem is because the
9 lack of a thermal host threatens QF status, correct?

10 A That's correct.

11 Q And that FERC has approved Panda's distilled
12 water use as the thermal host in this case, correct?

13 A That's correct.

14 Q Okay. And the -- at least some legal advice
15 in the possession of the lenders states that thermal --
16 that the FERC is not particularly stringent policing
17 thermal hosts; is that correct?

18 A That is correct as, I guess you'd call it,
19 legal advice from -- in the hands of the lenders, but
20 the lenders also had in their hands the technical review
21 from Brown & Root, who were hired as due diligence
22 technical advisors, and Brown & Root definitely pointed
23 out in that document to their clients, to these two
24 lenders, that their concern was -- they also had concern
25 with the distilled water facility, and not specifically

1 from the standpoint of FERC certification, but more so
2 from an EPC standpoint and how the distilled water
3 facility actually affected the overall operations of
4 this cogeneration facility.

5 Q And once again, it was your testimony --

6 CHAIRMAN CLARK: I'm sorry, Mr. Morrison, you
7 used the term EPC.

8 WITNESS MORRISON: Yeah, I'm sorry, EPC
9 connotes engineering procurement and construction.

10 CHAIRMAN CLARK: Okay.

11 BY MR. SILVERMAN:

12 Q Let's address the third -- we'll get back to
13 the Brown & Root document. The third issue is what you
14 referred to as mothballing. Isn't it true that
15 mothballing is not a term used by you in working with
16 these projects, but you adopted that term because you
17 saw it in a Panda document?

18 A That was a term that I saw in one of the
19 internal Panda memorandums.

20 Q Isn't it true that it's your testimony that
21 you were asked not to focus on any reason for the
22 mothballing other than the economics of the project?

23 A I don't know if I was specifically asked not
24 to focus on any other issues. My standpoint, I was
25 focusing primarily on economic issues of the project.

1 Q Do you recall your deposition in this case on
2 February 7, 1996?

3 A We would have to go back and look specifically
4 at it.

5 Q Do you recall our --

6 A Sure, the date, absolutely.

7 Q And do you recall testifying on Page 98, Line
8 13 to 20, question: "Okay, is it your testimony that
9 any reasons besides the economics were a reason for the
10 mothballing?"

11 And then Mr. Froeschle had objected, I
12 believe, asked and answered. And then you replied, "I
13 was not asked to focus on any other reasons for that."
14 Do you recall making that statement?

15 A Well, yes, I obviously made the statement
16 because it's right in front of us. Let me just review
17 this question again. I think it goes back -- my
18 response there is that I was asked to -- Mr. Silverman,
19 I was asked to respond to the economics of the
20 transaction, the financing of this facility, in looking
21 at that. So I think that's what that statement is.
22 That is not a declarative statement that someone from
23 Florida Power asked me not to focus on anything.

24 Q Were you present this afternoon for the
25 testimony of Mr. Gwynn?

1 A I believe I was, yes.

2 Q And did you hear Mr. Gwynn testify that the
3 moth -- that the extension of the milestone dates on
4 this project was because Florida Power asked for it?

5 A I can't recall. I was sitting over here, but
6 I was taking lots of notes, not on that topic.

7 Q When you were preparing your opinion, did you
8 determine whether or not -- who had asked for the
9 extension?

10 A Who had asked for the extension in the
11 milestone --

12 Q In the milestone dates.

13 A Which extension was that now?

14 Q The extension from the 1993 document, in which
15 the milestone dates were extended -- when the
16 construction date was extended, to January 1st, 1996.
17 Do you know -- or let me strike that. You had testified
18 that by mothballing you meant that the project was
19 extended past its original inception date; is that
20 correct?

21 A No, I believe the term "mothballing" means
22 that it was put on the shelf for some reason, to
23 reconsider the project.

24 Q And by "put on the shelf" in this case, isn't
25 it correct that the parties entered into an arrangement

1 whereby the milestone dates would be extended for a
2 certain period of time?

3 A I believe that's correct.

4 Q Did you -- when you prepared your prefiled
5 testimony, do you know who requested that extension?

6 A I can't recall.

7 Q Okay. Okay, isn't it true that you base your
8 opinion that -- strike that. You don't know why the
9 project was mothballed, do you?

10 A The term "mothballing" was used in an internal
11 memo at Panda. I do not know specifically why they
12 mothballed the project.

13 Q But you're speculating that it was because of
14 economics, correct?

15 A From some of the pro forma analysis that I
16 reviewed back in that time frame, which included
17 analyses based upon a -- what was then deemed to be a
18 smaller-sized project, those analyses pointed to the
19 fact that this project was not going to be readily
20 financeable.

21 Q By a smaller project, isn't it true you're
22 talking about a 75 megawatt project; is that correct?

23 A The analyses that I reviewed were titled 75
24 megawatts.

25 Q Okay, if you could refer to those analyses,

1 which are in your testimony, I think it's BAM-19. Isn't
2 it true that this is the document that you relied upon
3 for your testimony that the 75 megawatt project was not
4 solvent economically?

5 A It's not the whole document. I referred to
6 what is the third page in this document which is
7 entitled Schedule B.

8 Q Okay. If you could refer -- but it is your
9 testimony that you felt that the project was not viable
10 economically because -- you're referring to the project
11 being a 75 megawatt project; is that correct?

12 A That's correct. I reviewed this one schedule,
13 Schedule B.

14 Q If you could refer to Page 2 of that document,
15 the right-hand side, the first entry, if you could read
16 for me what the plant capacity of this project was to
17 be.

18 A Certainly. Let me just ask a question,
19 clarifying question. My whole document here is listed
20 as confidential, so I've got to look towards my counsel
21 to decide is this something I can --

22 Q These are things that were not requested
23 confidentiality. We do that at our risk.

24 A So it says 112,100 kilowatts.

25 Q Do you know what that equals in megawatts?

1 A It would be 112.1 megawatts.

2 Q If you could refer to the bottom of the page
3 where it says "equipment description."

4 A It states one ABB 11N steam turbine HRSG.

5 Q And this is the document that you relied upon
6 for your opinion?

7 A Not that page. I relied on Page 2.

8 Q Okay, but you -- you relied on the numbers on
9 Page 2 -- I'm sorry, Page 3 of this document?

10 A Excuse me, Schedule B is what is in the title.

11 Q Excuse me, you relied on Schedule B for your
12 opinion that the 75 megawatt project was not
13 economically viable; is that correct?

14 A Well, the Schedule B is entitled Panda Energy
15 Corporation, 75 megawatt project.

16 Q And the plant capacity is 112 megawatts; is
17 that correct?

18 A Well, there were later schedules of a similar
19 fashion that cited the actual pro forma analyses at 115
20 megawatts.

21 Q On the Schedule B, and we can go -- I guess
22 it's two pages, you talked about relying upon this
23 document for your opinion that the project was not
24 viable economically. Did you review any of the bases
25 for the entries regarding net income on this page?

1 A No, there was none provided.

2 Q So you don't know what the backup is for those
3 net income numbers?

4 A No.

5 Q Okay.

6 A The only thing to go on past the net income is
7 that you're showing a project for 75 -- entitled 75
8 megawatts, where during the first four years the project
9 has a cumulative cash flow loss of close to
10 \$10 million. So that was the basis of my opinion that
11 it would be extremely difficult, if not impossible, to
12 finance that type of project.

13 Q Okay, but your opinion is based on a 75
14 megawatt project with an output of 112 megawatts; is
15 that correct?

16 A It was based on Schedule B.

17 Q I would like to talk about some of the other
18 issues you have raised in your prefiled testimony. You
19 discussed the dropout of Calpine; is that correct?

20 A That's correct.

21 Q And you listed in your summary what you state
22 are a number of reasons for the dropout of Calpine.

23 A That's correct.

24 Q Is that correct? Isn't it true that none of
25 these statements are contained in the document from

1 Calpine?

2 A Excuse me?

3 Q Isn't it true that none of those statements
4 that you discuss regarding the reasons for the Calpine
5 dropout are contained in any sort of document authored
6 by Calpine?

7 A No, I am referring to Exhibit BAM-26 to my
8 testimony, which appears to be an internal -- another
9 internal memorandum amongst the Panda team and they are
10 discussing specifically a phone call that they received
11 from Calpine earlier that day enumerating these reasons
12 as to why Calpine dropped out of the project.

13 Q So you are relying on internal Panda
14 statements as to why Calpine dropped out; is that
15 correct?

16 A That is correct. I guess there's nothing else
17 to rely upon. I didn't see anything from Calpine.

18 Q You didn't review any Calpine documents in
19 preparing your opinion?

20 A There was a Calpine term sheet that was -- or
21 back from the -- this internal memo was dated January
22 23rd, 1995. When they dropped out there was a Calpine-
23 Panda correspondence with a term sheet that was
24 probably -- I forget the date, but it was back in
25 December of 1994.

1 Q Isn't it true that Calpine had lost a
2 substantial amount of money on its cogeneration
3 investments in the year prior to their dropout of the
4 Panda project?

5 MR. FROESCHLE: Objection to the question.
6 There's no foundation for the statement which counsel
7 has made.

8 MR. SILVERMAN: I think he can answer the
9 question. He's testified as to his opinion as to why
10 Calpine dropped out. And we're going to get to an
11 exhibit in a minute.

12 CHAIRMAN CLARK: That's correct. Well, are
13 you going to substantiate your --

14 MR. SILVERMAN: Yes.

15 CHAIRMAN CLARK: Well, then, let's do it.

16 BY MR. SILVERMAN:

17 Q In preparing your testimony, did you review
18 Calpine's annual statement?

19 A I did not.

20 Q Did you review their quarterly statements?

21 A I did not.

22 Q I'm going to ask you to refer to Page 4 of
23 Calpine's quarterly statement for the quarter ending
24 September 30th, 1994. Isn't it true that their income
25 statement shows a loss of \$2,381,000 from unconsolidated

1 investments in power projects?

2 A No. For the quarter ended September 30th,
3 it's 598,000.

4 Q I'm sorry, for the nine months ended September
5 30th, 1994, isn't it true --

6 A For the nine-month period ended September 30th
7 it shows a figure of \$2,381,000 loss, but you would have
8 to read that in connection with their total revenue for
9 that same period of close to \$65 million, and then what
10 you would also have to do is read that in connection
11 with their balance sheet to see that Calpine, at that
12 same time period of September 30, 1994 had total assets
13 in excess of \$400 million. So I would believe that a
14 loss of 2.4 million, approximately, for a period of nine
15 months, you know, would not be a cause for concern
16 because they still showed and reported positive net
17 income.

18 Q You've stated that you would have to do all
19 that balancing to make a determination from this income
20 statement, correct?

21 A You would have to do a lot more than that.
22 You would have to look in to see exactly what was
23 causing -- that may have been a one-time charge
24 associated with one of their facilities.

25 Q Isn't it true you didn't do any of that

1 analysis before drawing your opinion that Calpine pulled
2 out for other reasons?

3 A No, I based my analysis straight off of an
4 internal memo that cited specifically four or five
5 reasons why Calpine dropped out of the project.

6 Q Do you know whether or not Calpine wanted to
7 participate in the O&M contract of this facility?

8 A I believe from the earlier correspondence
9 between Calpine and Panda there was a discussion that
10 they would be considered for the O&M of the facility.

11 Q But isn't it true you don't know how those
12 discussions turned out?

13 A I do not have any idea how they turned out.

14 Q And you don't know what demands Calpine made
15 on the Panda-Kathleen project?

16 A I do not know.

17 Q Isn't it true you have no idea whether Panda
18 had potential investors other than Calpine?

19 A If they had, it was not alluded to in any of
20 the documents that were put forth by Panda.

21 Q Did you review all the Panda's document
22 production?

23 A I believe I reviewed -- I can't say I reviewed
24 all of it, because I don't know what all of it would
25 have consisted of, but I believe I went through most of

1 it, and I did not see any other references to potential
2 equity partners other than their discussion in June of
3 1994 with ABB Capital, which lasted for a period of
4 about seven to ten days in parry and correspondence, and
5 then also the fact that Panda went out with its own
6 investment memorandum to sell \$15 million equity
7 interest in the project. And I don't know what that
8 generated in terms of interest. There was no list that
9 basically identified people that were coming forward,
10 other than Calpine. All of the time schedules that were
11 included in the documentation that I reviewed, which
12 were prepared by Panda and scheduled to close on or
13 before the end of December 1994, because that was a
14 critical date in their mind, those time schedules then
15 started to identify in there Calpine as being the equity
16 investor.

17 Q Talk a little bit about the time schedules
18 that you referred to. You stated that Panda -- Panda's
19 schedule was that they needed to close by December 31st,
20 1994?

21 A Actually, I stated that in their schedules
22 they were saying December 15th.

23 Q That was their -- that was Panda's final
24 deadline date?

25 A That was the date they were targeting.

1 Q Was that the final deadline date that they
2 were targeting?

3 A Back in August, July/August --

4 Q So you're saying --

5 A -- 1994 they were working up to a --

6 CHAIRMAN CLARK: Let him answer. July or
7 August of what year? I'm sorry.

8 WITNESS MORRISON: July/August of 1994, there
9 were internal documents at Panda that basically dictated
10 that they had a very aggressive -- in their minds a very
11 aggressive closing schedule and had to have this deal
12 closed by December 15th of 1994.

13 As we got into this document you showed me
14 just a few moments ago -- I forget what it was
15 identified -- what it was numbered, this was the
16 executed indication of interest from Bank of Tokyo Trust
17 Company and Bayerische Vereinsbank dated November 17th,
18 and it made absolutely no sense that they were going to
19 have a deal closed in less than 30 days time with a
20 major holiday in there that people usually take two or
21 three days off from. So their schedule was starting to,
22 I believe, lapse, and they were getting towards the end
23 of the year, and then there was -- this all just started
24 to snowball into January of 1995.

25 BY MR. SILVERMAN:

1 Q Isn't it true that the closing date for this
2 transaction was March of 1995?

3 A Of which transaction?

4 Q Of the financing of -- isn't it true that the
5 closing date for the financing of the Panda project was
6 scheduled for March of 1995?

7 A I saw many successive -- I saw dates that they
8 scheduled up to December 15th of 1994, and then, as I
9 previously stated, that schedule started to encounter
10 delays and started to move into January and then started
11 to move beyond that.

12 Q Brown & Root was retained as a lender's
13 technical advisor, correct?

14 A That's correct.

15 Q Okay, I'm the presenting witness with a
16 document.

17 CHAIRMAN CLARK: Mr. Silverman, what am I
18 supposed to do with the quarterly report pursuant to
19 Section 13 or 15-D of the Securities and Exchange Act of
20 1934?

21 MR. SILVERMAN: I'm sorry, I thought I had
22 requested marking it. If we could mark that as Exhibit
23 35.

24 CHAIRMAN CLARK: It's Form 10Q filed by
25 Calpine Corporation.

1 (Exhibit No. 35 marked for identification.)

2 BY MR. SILVERMAN:

3 Q Isn't it true that Brown & Root found that a
4 closing by March of 1995 was very aggressive, but in
5 their opinion achievable?

6 A I'd have to go -- can you point me to their --

7 CHAIRMAN CLARK: You might have gotten ahead
8 of me. Do you want this marked as Exhibit 36?

9 MR. SILVERMAN: Yes, please.

10 CHAIRMAN CLARK: Exhibit 36 is the Brown --
11 and I guess Root. I can't tell because you've got a
12 routing request --

13 MR. SILVERMAN: Brown & Root, R-O-O-T.

14 CHAIRMAN CLARK: And this is -- what is the
15 title of it?

16 MR. SILVERMAN: Technical Review of
17 Panda-Kathleen, Limited Partnership.

18 CHAIRMAN CLARK: Okay.

19 (Exhibit No. 36 marked for identification.)

20 BY MR. SILVERMAN:

21 Q If you could read the first full paragraph --
22 first sentence of the first full paragraph of Page 2.

23 A Yes. "The 16-month schedule from the time of
24 financial closing, assumed to be no later than March 1,
25 1995, to guaranteed substantial completion on July 1,

1 1996, is very aggressive but in our opinion achievable."

2 Q Did you review any of the lender's closing
3 schedules in forming your opinion in this case?

4 A Forming this testimony opinion?

5 Q Yes.

6 A No.

7 Q Okay --

8 CHAIRMAN CLARK: Mr. Silverman, can you again
9 give us the citation of the paragraph or the information
10 that Mr. Morrison just read?

11 MR. SILVERMAN: Pardon me. That was the Brown
12 & Root document at Page -- sorry, Page 2, and that was
13 Exhibit 136.

14 CHAIRMAN CLARK: Where are we supposed to be
15 looking?

16 MR. SILVERMAN: First full paragraph, it says
17 Page 2.

18 COMMISSIONER KIESLING: I must be looking at
19 something different than you are. I'm looking at Page 2
20 and this is what's on my Page 2 --

21 MR. SILVERMAN: I'm sorry, it's Page 2 of the
22 report which is attached to the fax, which would be Page
23 7 of the document.

24 CHAIRMAN CLARK: Okay, I have it. Thank you.
25 I'm sorry, Mr. Silverman, go ahead.

1 BY MR. SILVERMAN:

2 Q Isn't it true that you had criticized the use
3 of medium-term notes as a means of financing in this
4 case?

5 A Medium-term notes have not -- at this point in
6 time, this time frame, December of '94 or January '95,
7 were not a common way to finance this type of power
8 facility.

9 Q Have you personally ever been involved in the
10 use of medium-term notes for financing?

11 A Not for a power facility.

12 Q Isn't it true you don't know how the price of
13 these notes is determined?

14 A Specifically, we have never priced a deal, but
15 I could follow very quickly how pricing of a medium-term
16 note issue would track with 144A issue, would track with
17 a pension fund type of issue. So if your question is
18 have we actually closed a deal and priced a deal, the
19 answer is no.

20 Q You have criticized Panda for switching
21 methods of funding; is that correct?

22 A That's correct.

23 Q Isn't it true you have no idea which of those
24 methods was most advantageous for Panda?

25 A I have no idea which one was most

1 advantageous, but my discussion with you on that point
2 in particular involved the fact that goes back to the --
3 my earlier statement that the Panda project team had not
4 formed a financing plan on a timely basis to arrange the
5 financing for this project.

6 What they should have done was back in early
7 1994, first quarter, beginning of second quarter, lined
8 up the options, decided on which one was the most
9 advantageous for them and selected it and gone for it.
10 To be out in the marketplace with Smith Barney chasing
11 down a 144A issue, which there's no discussion on what
12 happened to it, one can only surmise that that issue was
13 not marketable.

14 And so then Panda decided to go to Bank of
15 Tokyo and Bayerische Vereinsbank to come up with a
16 traditional type of financing, more of a construction
17 loan with a term facility, and then that turned into a
18 construction loan with a two-year bridge loan, and then
19 it evolved into the Merrill Lynch medium-term note
20 issue. To our way of thinking, and the way we advise
21 our clients, you're not in the seventh and eighth inning
22 deciding, gee, which bat am I going to use to play in
23 the ball game? You have decided up front which
24 financing instrument you have selected for the project,
25 and you go and you actually close it with that.

1 Q But isn't it true you don't know which of the
2 methods that they decided among were the most
3 advantageous to them?

4 A I never saw final pricing on any of them.

5 Q And isn't it true you never did any analysis
6 on your own?

7 A Because I had -- on which one was the most
8 advantageous to them?

9 Q That's correct.

10 A No, because we did not see final -- I did not
11 see final pricing.

12 Q You have stated that Panda's financial
13 situation had given lenders concern; is that correct?

14 A I'm sorry?

15 Q Excuse me.

16 CHAIRMAN CLARK: Did you withdraw that
17 question?

18 MR. SILVERMAN: Yes, I withdraw that
19 question.

20 BY MR. SILVERMAN:

21 Q Isn't it true that in your criticizing Panda's
22 financial information, you didn't examine any of Panda's
23 other business activities, other than the Kathleen
24 project?

25 A Criticizing Panda's financial state, do you

1 mean, their financial condition? In looking at their
2 annual audited reports?

3 Q That's correct.

4 A I reviewed their annual audited reports and
5 looked at the consolidated statement of Panda. I
6 believe it's called Panda Energy Corporation, and their
7 consolidated subsidiaries. Is that what you're
8 referring to?

9 Q That's correct. Isn't it true that Panda was
10 working on other projects during the years 1991 to 1994
11 besides this project?

12 A I'm sure they were.

13 Q Isn't it true you don't know Panda's financial
14 circumstances before 1991?

15 A I do not specifically know, but if you look at
16 their negative net equity at the end of that year, it is
17 obvious to anyone reading those balance sheets that they
18 have accumulated a loss position in prior years, so that
19 not only did they lose money from '91 to '94, they
20 obviously lost money prior to '91. So other than that
21 basis of opinion, I did not -- and didn't have any
22 documents to go into why they lost money in the earlier
23 years.

24 Q Isn't it true you don't know what Panda's
25 current assets are?

1 A That I don't know what Panda's current assets
2 are? As of what date?

3 Q As of this date.

4 A Today. February 19th, 1996, I have no idea
5 what their current assets are.

6 Q And isn't it true you don't know whether Panda
7 could or did obtain new equity for this project after
8 the dropout of Calpine?

9 A That Panda could or would?

10 Q Let me rephrase the question. It's true that
11 you don't know whether Panda found another lender to --
12 another investor to replace Calpine, correct?

13 MR. FROESCHLE: Excuse me. I would object at
14 this time. He appears to be asking questions that are
15 outside the scope of the direct testimony. If he is
16 asking him if he's reviewed any documents since his
17 deposition and since his prefiled testimony was filed,
18 perhaps we could go from that position, but --

19 CHAIRMAN CLARK: I think he's just asking him
20 if he has seen any documents or if he knows that Panda
21 has replaced Calpine as an equity partner. Is that your
22 question?

23 MR. SILVERMAN: Yes.

24 CHAIRMAN CLARK: Mr. Morrison, would you
25 please answer that?

1 WITNESS MORRISON: Certainly. There was a
2 document that I reviewed prior to this testimony. I
3 think it was May of '95, whereby, again, I believe it
4 was an internal Panda document, whereby they were
5 discussing, I think the engineering people at Panda were
6 discussing with the financial people how to team up with
7 General Electric and General Electric Capital Corp. on
8 trying to do a new design for the facility and tie in GE
9 capital as part of the financing. That's the only other
10 reference that I had.

11 BY MR. SILVERMAN:

12 Q And you had not reviewed that document when
13 preparing your rebuttal testimony; is that correct?

14 A On the rebuttal testimony?

15 Q That's the --

16 A The original testimony. No, I had seen a
17 reference to that document, but -- I don't know what
18 your question is. I had seen that prior to this
19 testimony being prepared.

20 Q Okay.

21 CHAIRMAN CLARK: Are you about to wrap it up,
22 Mr. Silverman?

23 MR. SILVERMAN: Two more questions.

24 CHAIRMAN CLARK: Good.

25 BY MR. SILVERMAN:

1 Q And it's true that Brown & Root stated that
2 the closing by March of 1995 is aggressive but
3 achievable; is that correct?

4 A That is correct.

5 Q And isn't it true that you don't know whether
6 Panda could have closed by March 1st, 1995?

7 A Without an equity partner, there is absolutely
8 no way they could close on their financing with the
9 banks.

10 Q Do you recall answering this question at your
11 deposition?

12 A You'll have to refresh my memory.

13 Q I would ask you to refer to Page 158, if you
14 could read --

15 CHAIRMAN CLARK: 158?

16 MR. SILVERMAN: Yes.

17 BY MR. SILVERMAN:

18 Q Isn't it true that you were asked at your
19 deposition: "You have no knowledge as to whether Panda
20 could have closed the" --

21 A I'm sorry, what line are you on?

22 Q 158 at the bottom. We'll start again. "So to
23 make it clear for the last time, you have no knowledge
24 as to whether Panda could have closed the MTN financing
25 by March 1, 1995?"

1 And your answer was, "At this point, no, I
2 have no knowledge." Is that correct?

3 A That's what I stated.

4 MR. SILVERMAN: We have no further questions.

5 CHAIRMAN CLARK: Thank you. Staff?

6 MS. BROWN: Just two, Chairman Clark.

7 CROSS-EXAMINATION

8 BY MS. BROWN:

9 Q Mr. Morrison, Mr. Ross said earlier that you
10 had agreed that the initiation of this proceeding
11 effectively put the Panda project on hold with financing
12 institutions until the issues will be resolved. Have
13 you agreed to that?

14 A That if this proceeding was going on, a
15 financial institution such as Bank of Tokyo Trust
16 Company and Bayerische Vereinsbank would want to see
17 this resolved --

18 Q That's the question.

19 A -- prior to closing on any financing, that's
20 correct.

21 Q Panda has testified here that once this
22 proceeding is concluded and all of the issues are
23 resolved, it will take them at least 18 months to secure
24 financing again, and they have asked that the milestone
25 dates in their contract be extended for at least that

1 period of time.

2 In your opinion, as an expert in financing of
3 this kind of project, is an 18-month time period
4 extension of milestone dates a reasonable amount of time
5 for Panda to secure new financing for the project?

6 A That -- from my opinion, 18 months, due to
7 where this whole process kind of went on hold, would be
8 a tremendous amount of time for them to secure
9 financing. My opinion would be that it would be
10 somewhat less than 18 months to secure financing.

11 Q Just to make sure I understand, this
12 proceeding is going on now, it's going to come to a
13 conclusion at some point, and it's my understanding that
14 it is at that point that Panda has asked for 18 more
15 months to secure financing because they really can't
16 start again until this proceeding is over. With that in
17 mind, do you think 18 months is too long a period of
18 time?

19 A Absolutely.

20 Q And what do you think would be a reasonable
21 period of time to extend the milestone dates?

22 A If we were approached today -- let me answer
23 it this way. If we were approached today by a client
24 such as Panda with a project ready to go forward, we
25 would commit to arrange financing anywhere from 90 to

1 120 days, with 180 at the outside.

2 COMMISSIONER GARCIA: Didn't you state in your
3 earlier testimony that you had never done one of those
4 projects?

5 WITNESS MORRISON: Oh, no, we have financed
6 projects such as this all the time.

7 COMMISSIONER GARCIA: This type of project,
8 cogeneration type project?

9 WITNESS MORRISON: Yes. I think the question
10 was a medium-term note issue. We had never seen a
11 medium-term note issue, which would be in the three to
12 five, seven-year time frame of financing, to be done on
13 a 30-year project with 30-year time horizons. It's sort
14 of a -- pardon the phrase -- sort of a bastardization of
15 a medium-term note issue which connotes three to seven
16 years in a financing period.

17 But to get back to your question, six months,
18 I believe, 180 days, because they don't have to go back
19 and start all over again. It's just you pick up from
20 where you left off and go forward.

21 BY MS. BROWN:

22 Q What is your opinion about the part of Panda's
23 testimony where they say they will have to get back into
24 the queue to arrange their equipment, delivery of their
25 equipment?

1 MR. SILVERMAN: Madam Chairman, I would just
2 like to object for the record. If the witness is going
3 to be supplementing his prefiled testimony by reviewing
4 things after his deposition and changing -- and, in
5 effect, changing his direct testimony on the basis of
6 documents that were reviewed subsequent to that, I think
7 that he should have done that when he filed his
8 testimony in the first place.

9 CHAIRMAN CLARK: Just so I'm clear, are you
10 asking the question based on the exhibits that
11 Mr. Silverman has put forth today? Are those the
12 documents you're referring to in your question?

13 MR. FROESCHLE: The documents I'm referring
14 to -- Mr. Silverman, in his cross-examination, has asked
15 whether Mr. Morrison had reviewed a number of
16 documents. And for the sake of time I didn't want to go
17 through each one of them. I was just asking as a group,
18 has he since that deposition had an opportunity to
19 review each of the documents which Mr. Silverman has
20 asked him about in his cross-examination.

21 CHAIRMAN CLARK: Go ahead.

22 WITNESS MORRISON: Let me just recharacterize
23 your question if I may. The documents that
24 Mr. Silverman presented during our deposition earlier
25 this month, as certain documents, some of which are here

1 today and have been presented as exhibits, yes, I have
2 reviewed all of those documents, and then some of the
3 others that haven't been presented here today that you
4 presented me during our deposition.

5 CHAIRMAN CLARK: He says he's reviewed them.

6 BY MR. FROESCHLE:

7 Q Has that review changed any of your opinions
8 or any of your conclusions stated in your prefiled
9 testimony?

10 A No, it has not.

11 MR. SILVERMAN: We would object to the
12 inclusion of that into the record. That's essentially
13 supplemental testimony regarding post -- a
14 post-testimony review of documents. He testified in
15 this case essentially four weeks ago, or three weeks
16 ago. And it's improper for him to now attempt to
17 change, supplement or rebut any portion of anybody
18 else's testimony.

19 CHAIRMAN CLARK: Mr. Silverman, these
20 questions are being asked on redirect in response to
21 questions you asked on cross-examination. I believe
22 they're fair redirect.

23 MR. FROESCHLE: I have no other questions.

24 CHAIRMAN CLARK: Exhibits?

25 MR. FROESCHLE: Move for the admission of

1 exhibit -- Composite Exhibit 32.

2 CHAIRMAN CLARK: Composite Exhibit 32 will be
3 admitted in the record.

4 (Exhibit No. 32 received into evidence.)

5 MR. SILVERMAN: And Madam Chairman we would
6 request to retrieve Exhibits 33 and 36, since we'll be
7 seeking confidential treatment on those. We move them
8 all into the record, but I would like to retrieve those
9 two.

10 CHAIRMAN CLARK: I didn't know you were asking
11 for confidential treatment of 36. I only knew you were
12 asking for confidential treatment of 33. Make it clear
13 for me.

14 MR. SILVERMAN: We are seeking confidential
15 treatment for 36.

16 CHAIRMAN CLARK: You will need that also.

17 MR. SILVERMAN: And we will file the
18 appropriate motion.

19 CHAIRMAN CLARK: You need to come retrieve
20 those documents, then. Let me be clear. You can leave
21 those documents with the court reporter with the
22 understanding -- you should have put them in a red
23 envelope.

24 (Exhibit Nos. 33, 34, 35 and 36 received into
25 evidence.)

1 MS. BROWN: Chairman Clark, I would feel
2 comfortable if Florida Power Corporation also would --
3 okay.

4 CHAIRMAN CLARK: We're putting our documents
5 up here and we are going to take a break into quarter
6 till 8 and then we will start with the next witness --
7 who is the next witness?

8 MR. ROSS: If it's all right, we would like to
9 have Mr. Shanker do his rebuttal next because he's got
10 to get going. He's got to get to Jacksonville tonight.

11 CHAIRMAN CLARK: Is that acceptable to Florida
12 Power Corp.?

13 (Witness Morrison excused.)

14 * * *

15 CHAIRMAN CLARK: I would just remind everyone,
16 for the last three witnesses I have a total of a half an
17 hour. Okay?

18 (Recess from 7:35 p.m. until 7:45 p.m.)

19 CHAIRMAN CLARK: We'll reconvene the hearing.
20 Mr. Shanker.

21 ROY J. SHANKER
22 was called as a witness on behalf of Panda-Kathleen,
23 L.P., and having been duly sworn, testified as follows:

24 CHAIRMAN CLARK: Go ahead, Mr. Ross.

25 DIRECT EXAMINATION

1 BY MR. ROSS:

2 Q Would you please state your name and business
3 address for the record, Mr. Shanker?

4 A My name is Roy J. Shanker. My office is at
5 9113 Burning Tree Road, Bethesda, Maryland.

6 Q Do you have before you a couple of a documents
7 that constitute your prefiled rebuttal testimony in this
8 proceeding?

9 A Yes, I do.

10 Q Do you have any changes or corrections that
11 you wish to make to your prefiled testimony at this
12 time?

13 A No, I don't.

14 Q Is the prefiled testimony true and accurate?

15 A Yes, it is.

16 Q If you were asked the same questions today
17 would you give the same answers?

18 A Yes, I would.

19 MR. ROSS: Chairman, we move that the prefiled
20 rebuttal testimony of Mr. Shanker be placed into the
21 record as though read here.

22 CHAIRMAN CLARK: The prefiled rebuttal
23 testimony Mr. Roy J. Shanker will be inserted in the
24 record as though read.

25

1 PREFILED REBUTTAL TESTIMONY OF ROY J. SHANKER
2 ON BEHALF OF
3 PANDA KATHLEEN LIMITED PARTNERSHIP
4

5 Q. Could you please describe your background and
6 qualifications.

7 A. My name is Roy J. Shanker. My address is 9113 Burning
8 Tree Road, Bethesda, Maryland. I am an independent
9 consultant in the natural resources area, with the
10 majority of my practice being focused on independent
11 power projects and associated technical and financial
12 issues. I have worked on these issues since 1976. I
13 have appeared as an expert witness before the Florida
14 Public Service Commission (FPSC) on a number of
15 occasions, including several Annual Planning Hearing
16 dockets which specifically addressed questions related to
17 the value of deferral capacity methodology and its
18 implementation.

19
20 Q. Could you describe the purpose and scope of your
21 testimony.

22 A. I have been retained as an expert by Panda to testify on
23 the methods of computing the capacity payments provided
24 in the standard offer contract (the "Contract") between
25 Florida Power Corporation ("FPC") and Panda-Kathleen,

1 L.P. ("Panda").

2

3 Q. In preparation for this testimony, have you reviewed any
4 documents?

5 A. Yes. I have reviewed a number of documents related to
6 the Contract, particularly with respect to calculation
7 and payment of capacity payments as addressed in Article
8 VIII and Appendix C of the Contract. In this context I
9 reviewed the related FPSC regulations (Rule 25-17.0832);
10 the Contract; and several technical papers written on the
11 value of deferral capacity calculation methodology.

12

13 Q. What is your opinion of amount of capacity payments that
14 FPC is obligated to pay Panda for years 21 through 30 of
15 the Contract?

16 A. Based on my review, I have concluded that the
17 analytically correct level of capacity payments for the
18 Panda project during years 21-30 would be payments based
19 on the final value of capacity payments for year 20 (as
20 shown in appendix to the Panda contract), escalated
21 annually at the rate of 5.1%. This result is totally
22 consistent with the application of the Value of Deferral
23 capacity valuation methodology. That methodology has no
24 property which would limit the term of service or
25 compensation for the contracted capacity to the life of

1 the first in a series of avoided units. This conclusion
2 is independent of any legal interpretation of the FPSC
3 regulations and the FPSC order approving the Contract.

4

5 Q. What is Value of Deferral methodology?

6 A. Qualifying Facilities (QF's) as defined by the Public
7 Utility Regulatory Policies Act of 1978 (PURPA) are to be
8 compensated for their energy and capacity based on the
9 purchasing utility's avoided costs. That is the costs
10 that the utility would have incurred but for the
11 generation of the QF. There are a number of different
12 methodologies for the calculation of avoided energy and
13 capacity costs. In Florida, the Value of Deferral (VOD)
14 methodology was adopted for the valuation and
15 compensation of firm generation capacity sold by QF's to
16 utilities. The VOD established the value of QF supplied
17 capacity by estimating the savings that a utility would
18 realize by being able to delay the construction of its
19 next planned unit. In the underlying theory, an infinite
20 series of capacity additions of new generation plants is
21 planned, with each plant having a useful life of L years.
22 The purchase of the QF capacity allows the utility to
23 delay or defer that series of plants for the life of the
24 QF contract, D years. The value of that deferral is
25 represented by the difference in the revenue requirements

1 for the capital and non-fuel operating expenses of two
2 infinite streams or series of plants; one stream that
3 commences at the original date of the utility's planned
4 capacity additions, and the other which commences D years
5 later. The computations in the FPSC regulations are a
6 mathematical representation of this difference in value
7 of the two streams or series. It explicitly contemplates
8 payments that can extend in time well beyond the life of
9 the first avoided unit in the series.

10

11 Q. How is "L" computed and used under that methodology?

12 A. In making the computation, L, the life of the avoided
13 plant, is an input to the process, and represents the
14 utility's estimate of a technical property of each plant
15 in the future avoided stream of plants. It is a physical
16 characteristic, and not tied to the length of the
17 contract obligation, D, which is set by mutual agreement
18 of the two parties. Logically, there is no reason that
19 D cannot be greater than L, because that would mean that
20 the string of deferred units is delayed beyond the useful
21 life of the first unit, and into the life of some
22 subsequent unit. There is another way to visualize the
23 use of "L" in the VOD calculation. As structured, the
24 annual payments have a constant real value, that is they
25 escalate annually by the anticipated general rate of

1 inflation. Thus, one can consider the annual payments as
2 the equivalent of avoiding one year's use or consumption
3 of the capital plant of the avoided generation facility
4 by the utility. Thus, a contract of L years (the life of
5 the underlying avoided plant), has L years of constant
6 real capacity payments, or the equivalent compensation,
7 for the full value of the avoided or deferred plant.
8 (See "A Primer on the FPSC Qualifying Facility Firm
9 Capacity Pricing Formula, 1986, page 9). Again, L is a
10 property of the plant, not the Contract.

11

12 Q. How does the VOD provide for the computation of capacity
13 payments when the ^{contract} ~~avoided unit~~ exceeds the life of the
14 ~~contract?~~ ^{avoided unit?}

15 A. Either of the above two views is helpful in understanding
16 the payments that are appropriate when the life of the
17 contract (D) exceed the life of the plant being deferred
18 (L). In the first view, when the deferral period is
19 lengthened, the value of the deferral just continues to
20 grow. FPC just continues to avoid the need for the
21 avoided plant, and the value of the deferral in time of
22 the delayed string of future plants just continues to
23 increase. There is no logical limit to the value of the
24 deferral, as the underlying theory assumed there would
25 always be string or series of plants to be displaced. In

1 the case of the Panda contract, there is no difference in
2 the value FPC receives from the series of plant being
3 deferred from the end of year one to the end of year two,
4 or from the end of year 19 to the end of year 20, versus
5 the deferral from the end of year 20 to the end of year
6 21, and so on out to the end of the contract. This leads
7 to the direct conclusion that the appropriate payments
8 for the period of year 21 through year 30 are simply the
9 continued escalation of the original real annual capacity
10 rate paid in year one.

11

12 Q. How does that computation work under the second view of
13 VOD that you described above?

14 A. The second view of the VOD is, as discussed above, where
15 each year of operation is the equivalent of avoiding the
16 use or consumption of one year's life of the avoided
17 plant. In this context, a 30 year contract is the
18 equivalent of avoiding one and one half of the continuing
19 series of avoided plants. Thus again, given that each
20 annual payment is the equivalent one year's capital value
21 of a plant of L years, and a contract of L years is the
22 equivalent of avoiding the first of the series of plants,
23 additional capacity compensation in the form of a single
24 years real capacity value is appropriate for each
25 contract year longer than L, where the second plant in

1 the series is now being avoided or displaced. The key
2 observation here is that consistent with the underlying
3 assumptions of the value of deferral methodology, the
4 Panda plant continues to give incremental capacity value
5 for each year of service of the contract, regardless of
6 whether the contract term is greater or less than L, the
7 life of each of the avoided units in the displaced
8 string.

9

10 Q. Do the FPSC regulations reflect the application of VOD
11 that you have described?

12 A. Yes. The two conceptual views of the VOD payments when
13 D exceeds L are confirmed by the straight forward
14 application of the formula contained in the FPSC rules.
15 These rules were presented by FPC itself, as shown in
16 Exhibit 3 to the Panda filing of March 14, 1995. They
17 were correct when originally calculated, and remain so.

18

19 Q. Would the payment of capacity payments to Panda for years
20 21 through 30 of the Contract provide a windfall to
21 Panda?

22 A. No, there would be no windfall. As discussed above, the
23 VOD methodology is based on the displacement of a series
24 of plants, one after the other, out into the future.
25 When the displacement is longer than the life of the

1 first plant, it simply extends to displace the second,
2 and so on. Thus clearly what FPC would be paying for is
3 the displacement of one and one half plants, and the
4 associated revenue requirements of both. Thus Panda
5 continues to give direct capacity benefits in the period
6 from year 21-30, and should properly receive compensation
7 for this service. The consistent level of compensation
8 is explicitly calculated by the VOD methodology. FPC's
9 argument in this regard is disingenuous at best, as it is
10 predicated on the assumption that after the end of the
11 useful life of the first plant, FPC would not replace the
12 retired capacity.

13

14 Q. FPC has argued that, by paying capacity payments for
15 years 21 through 30 of the contract, FPC would be paying
16 more than if it had built the plant itself. Is this
17 accurate?

18 A. This is not true. The value of deferral methodology
19 payments in the Panda contract are calculated so that
20 there is a constant real payment for capacity in each
21 year of the contract. Utility revenue requirements do
22 not make this assumption, and due to conventional rate
23 based accounting are significantly "front end loaded"
24 versus payments under the VOD method as implemented by
25 the FPSC. Thus FPC's own revenue requirements for the

1 avoided plant would be significantly more accelerated.
2 In terms of both cash flow and present value of the
3 revenue requirement, over a 30 year contract life
4 representing one and one half avoided units, rate payers
5 would be better off with payments made to Panda than if
6 FPC constructed the facility itself and rate based it.
7 Only at the end of 40 years (or any multiple of L) would
8 the present value of the revenue requirements be equal,
9 and rate payers are always worse off with the utility
10 rate based plant in terms of cash flow.

11

12 Q. FPC has argued that it is only obligated to make
13 available energy payments to Panda during years 21
14 through 30 of the Contract. Would this provide a
15 windfall to FPC?

16 A. Yes. Aside from the fact that FPC does indeed continue
17 to receive capacity benefits, as discussed above, FPC is
18 logically incorrect in this argument for other reasons as
19 well. The value of deferral methodology is intended to
20 compensate the QF's not only for avoided capacity, but
21 also for avoided fixed operations and maintenance costs
22 (O&M). If one were to accept FPC interpretation of the
23 Panda contract, a simple question then arises -- how did
24 FPC intend to compensate Panda for such fixed O&M
25 expenses during years 21-30. Certainly no party would

1 have presumed that these payments were to be foregone
2 regardless of whether there was any continuing capacity
3 value, and, obviously, the facility must continue to be
4 operated and maintained. It would be equally true that
5 no responsible investor or lender would invest money in
6 a facility, even if fully amortised, if there was no
7 provision for meeting proper operating expenses of the
8 last third of the contract. Yet, FPC's position would be
9 that such compensation was not to be made.

10

11 Q. In sum, is it your conclusion that the capacity value of
12 the Panda facility for years 21 through 30 of the
13 contract is properly represented using the VOD
14 methodology resulting in a series of payments continuing
15 to escalate at 5.1% from the year 20 rate?

16 A. Yes.

17

18 Q. Does this conclude your testimony?

19 A. Yes.

1 BY MR. ROSS:

2 Q And you have no exhibits attached to your
3 prefiled testimony, correct?

4 A My resume, actually, I believe was left out
5 but that is an exhibit, yes.

6 CHAIRMAN CLARK: Hold on. I have no exhibit.

7 COMMISSIONER KIESLING: Me either.

8 MR. ROSS: We don't need to attach it.

9 WITNESS SHANKER: I'm sorry, Your Honor. I
10 was informed that it wasn't attached when it was
11 distributed, as apparently it wasn't. I was asked to
12 bring a copy, but if you don't want to enter it, that's
13 fine.

14 BY MR. ROSS:

15 Q You've testified in front of this commission
16 several times; have you not?

17 A Yes, on numerous occasions.

18 Q I don't think they'll need another copy of
19 your resume. Would you please provide a summary of your
20 rebuttal testimony?

21 A Yes. I was asked by Panda to comment upon the
22 implementation and the proper payments that would be
23 made under the value of deferral methodology in the
24 context of their contract with Florida Power Corp. My
25 observations were as follows: That conceptually, the

1 value of deferral methodology is based upon calculating
2 the difference in the stream of costs for the utility --
3 two different streams. The first stream would represent
4 an infinite or continuous series of plants that would go
5 on line at the date of the avoided unit. The second
6 stream would be the same, conceptually, as the first,
7 but deferred in time by the small -- by the deferral
8 period, that is the term of the contract between the
9 qualifying facility and the utility.

10 Conceptually, because it is the difference
11 between two infinite streams, that is one plant of the
12 avoided unit replaced over time again and again out to
13 the horizon, and because that's the predicate for the
14 methodology and the computation, there's conceptually no
15 limit on the term of the contract in terms of the period
16 of time that the deferral can take place.

17 This can be visualized in two different
18 fashions. The first is just simply looking at that
19 stream being displaced one year at a time out through
20 the term of the contract. In this context, the value of
21 deferral, or the savings to the utility from not having
22 put in use its own funds and build a plant, is
23 represented by the savings or the one year's consumption
24 of the avoided plant or the avoided consumption of the
25 avoided plant. So you just keep stacking those up over

1 time.

2 A second way to visualize this is that what is
3 being displaced is multiples, in this context, of the
4 avoided plant over time. We have that stream, that
5 infinite string of plants out over time. We have, in
6 this context, a 20-year useful life for the facility,
7 and the Panda facility, as defined in the contract of a
8 30-year term, implemented as per the contract, would
9 result in effectively the displacement in the first one
10 and a half of those facilities out into the horizon.

11 The key notion is that the facility
12 continually offers the capacity value of the
13 displacement over its life. And as such, in this
14 context, if it's displacing 30 years of a 20-year
15 facility, it's displacing one and a half of that
16 infinite stream of plants and continues to offer value
17 out into the horizon.

18 It's no different than asking the question:
19 Does the facility itself need to be replaced at the end
20 of its term? And the answer is yes.

21 The key observation from that is that the life
22 of the plant, the 20-year value that is in the
23 Attachment C, Appendix C, to the facility, is an input
24 to the process, not an output. It's an assumption that
25 you go into this with as a physical property of the

1 plant, and that as such, FPC set that in its standard
2 offer contract, and as implemented, the correct
3 implementation then would be to continue the payments
4 along with the continual escalation, as per the table,
5 at 5.1 percent a year out to the horizon of 30 years.

6 MR. ROSS: Thank you. We tender Mr. Shanker
7 for cross-examination.

8 CHAIRMAN CLARK: Mr. McGee.

9 CROSS-EXAMINATION

10 BY MR. MCGEE:

11 Q Good evening, Mr. Shanker. It's nice to see
12 you again.

13 Would I be correct that your testimony
14 essentially describes how you believe that capacity
15 payments should be determined for years 21 through 30 in
16 the event that the Commission determines that payments
17 are required for that period?

18 A I think the better statement is that I looked
19 at the contract and my judgment and my opinion is based
20 on how I would implement payments under the contract for
21 periods year 21 through 30.

22 Q And in describing this value of deferral
23 methodology that should be applied for years 21 through
24 30, whose testimony are you rebutting?

25 A My understanding is the Company has proposed,

1 and I saw it in the -- I guess Mr. Dolan, as to whether
2 or not there needed to be any capacity payments made or
3 how they should be made during the period from years 21
4 on, and I am addressing how those payments should be
5 made.

6 Q Well, we have two issues with respect to the
7 20- versus 30-year period in this case. Have you
8 reviewed the prehearing order?

9 A Yes, I have.

10 Q The fundamental issue is Issue No. 2, and
11 that's the question of whether capacity payments should
12 be made for 20 years or 30 years. The follow-up issue
13 is No. 3, which is in terms of in the event the
14 Commission requires payments for that extra period, how
15 should you do it?

16 A And I think my response to those issues is
17 that they should be made for 30 years. That's what the
18 contract states, and that the payments for year 21
19 through 30 would be those starting at the value in year
20 20, and then continuing to escalate at 5.1 percent.

21 Q I understand that's what you're saying.

22 COMMISSIONER KIESLING: Mr. McGee, you trailed
23 off at the end of the last question. Could you just try
24 to remember to face the mike? Thank you.

25 MR. MCGEE: It's difficult sometimes to --

1 COMMISSIONER KIESLING: Well, then, slide down
2 the table.

3 BY MR. MCGEE:

4 Q I understand that that's what your testimony
5 contends. I'm trying to identify any portion in
6 Mr. Dolan's testimony where he describes how the
7 capacity payments should be made in year 21 through 30.
8 Can you point that out to me?

9 A I don't have his testimony here.

10 Q And mine, I believe, was confiscated by a
11 previous Panda witness.

12 CHAIRMAN CLARK: Mr. McGee, you need to try
13 and speak up because the rain is making a lot of noise.

14 WITNESS SHANKER: I think on Page 17 there's a
15 discussion that the schedule provides for contract
16 payments for the plant -- economic plant life, 20
17 years. Addition to scheduled capacity payments is
18 defined only through 2016. There's no agreement as to
19 whether the price will be paid after that.

20 BY MR. MCGEE:

21 Q And that goes to Issue No. 2, that's a
22 question whether the Commission should require it for 20
23 years or require it for 30 years. What I'm asking, is
24 there anything in Mr. Dolan's testimony that you're
25 rebutting on how you go about calculating for that

1 additional period of time in the event the Commission
2 decides in Panda's favor?

3 A On Page 18, What would be the effect of the --
4 if they were to receive capacity payments -- at the
5 bottom, Line 21 -- If Panda were to receive payments for
6 28 years three months instead...Florida Power and its
7 ratepayers would be forced to pay more. I'm commenting
8 on what the more is, and what's the appropriate more.

9 MR. MCGEE: If that is the basis of his
10 testimony, Madam Chairman, I would move to strike his
11 testimony from Page 2, Line 13 through Page 7, Line 17,
12 the testimony he's referred to of Mr. Dolan, is making
13 argument.

14 CHAIRMAN CLARK: I'm sorry, you need to speak
15 louder. I can barely hear you.

16 COMMISSIONER KIESLING: Can't hear a word
17 you're saying.

18 CHAIRMAN CLARK: Get right close to that
19 microphone.

20 MR. MCGEE: Based on his answer to that
21 question, I would move to strike Mr. Shanker's testimony
22 from Page 2, Line 13, to Page 7, Line 17, testimony that
23 he's referred to of Mr. Dolan's, is argument put forward
24 on why the period -- the term of capacity payments
25 should be 20 years.

1 There's nothing in Mr. Dolan's testimony that
2 addresses how you go about the calculation. And in the
3 beginning of Mr. Shanker's testimony, he indicates
4 simply that he's been retained as an expert by Panda to
5 testify on the methods of computing capacity payments.
6 He indicates on the following page the material the
7 documents that he's reviewed in preparing his
8 testimony. Nowhere in there is a reference to
9 Mr. Dolan's testimony. It's not clear that he's even
10 read it.

11 Now I will admit that beginning at the bottom
12 of Page 7 and through the rest, there is rebuttal to
13 arguments that have been put forward by Florida Power.
14 Those go to the underlying question of whether the term
15 should be 20 years or 30, but as to the method of
16 calculation, this should have come in as direct.

17 WITNESS SHANKER: Your Honor, I didn't get the
18 complete --

19 CHAIRMAN CLARK: Mr. Shanker, I don't think
20 this is for you to answer. There's been an objection to
21 Mr. Shanker's testimony that it is not in rebuttal to
22 any testimony of Mr. Dolan, or anyone else, I would
23 assume. Would you respond to that, please?

24 MR. ROSS: Yes, I will. First of all, no
25 objection was raised when we entered his testimony into

1 the record. I think objection is too late. But this
2 witness is directly responding to, as he's already
3 pointed out, Florida Power's position concerning whether
4 there should be payments for the last 20 years, and then
5 he started to read and he was cut off -- there's a
6 section of Mr. Dolan's testimony of what would be the
7 effect if Panda were to receive capacity payments for
8 more than the Commission-approved 20-year plant life,
9 and Mr. Dolan goes on in his testimony to make a whole
10 argument about how this would have to be done. He goes
11 through how the revenue requirements of a unit with a
12 20-year life after 20 years would have to be
13 calculated. He concludes that it would be an
14 unwarranted windfall to Panda to give them these
15 payments. And this is directly what Mr. Shanker is
16 responding to, that it's not a windfall because this is
17 how it should be done, and why it's not a windfall.

18 CHAIRMAN CLARK: Mr. McGee.

19 MR. MCGEE: In the portion of Mr. Shanker's
20 testimony beyond Page 7, Line 17, there is a discussion
21 of the windfall argument and that has not been moved to
22 strike.

23 CHAIRMAN CLARK: Mr. McGee, I think the
24 testimony is responsive to the notion of whether it is a
25 windfall. He's stating why it's appropriate to

1 calculate the capacity payments in the way he's
2 calculated and why it doesn't result in a windfall. I
3 think the testimony is in rebuttal to Mr. Dolan's
4 testimony and I will allow it.

5 And moreover, it seems to me that it's
6 appropriate to make the objection at the time it is
7 offered to be inserted in the record.

8 MR. MCGEE: I simply wanted to have
9 Mr. Shanker give me the opportunity to identify some
10 portions of his testimony that I had overlooked and
11 that's why I wanted to give him the benefit of
12 answering. But I'll move along.

13 BY MR. MCGEE:

14 Q Mr. Shanker, am I correct that the effect of
15 applying your value of deferral methodology that you
16 describe for 30 years would be to defer one and a half
17 units, one and a half avoided units, if you will?

18 A That's -- I said there were two ways to
19 visualize the impact. The first is the year-by-year
20 value of avoiding the investment in capital plant for 30
21 years. Each year, each value represents the avoidance
22 of the need for Florida Power Corp. to consume one year
23 of life of the plant. Another way to visualize it is
24 the deferral for a year -- a year and a half -- for one
25 and a half lifetimes of the need for the plant, or

1 essentially one and a half of the plants. Either way
2 may help as a visualization of what's taking place.

3 Q The one and a half units, though, is a fair
4 characterization of an effect --

5 A Is the displacement of that infinite stream
6 such that it avoids the requirement for the first one
7 and a half units.

8 Q Can you tell me, then, what would be the
9 characteristics of this second unit? We know the
10 characteristics of the first unit. They're specified in
11 the particular schedule that's in the standard offer
12 contracts. What would the characteristics be of the
13 second unit?

14 A In the value of deferral methodology, it
15 explicitly assumes that the entire infinite stream is
16 identical. That's the underlying premise and is
17 contained -- effectively, it's in the rules, actually,
18 if you look at it. The difference in the calculations,
19 if you go into the rules, you'll see something I think
20 represented symbolically as ISAVIN (Phonetic), and that
21 is, if you work through all the mathematics -- and
22 there's documents that summarize the Commission's own
23 summaries of those rules -- it's based on a difference
24 between the first stream of an infinite stream of
25 identical units and the second stream. So each unit in

1 the stream is the avoided unit.

2 CHAIRMAN CLARK: If I understand you
3 correctly, it assumes that the unit it avoids in the
4 21st year is the same unit it avoided in the 20th year?

5 WITNESS SHANKER: It is the second of a
6 continual stream of identical units.

7 CHAIRMAN CLARK: And it has identical cost
8 characteristics?

9 WITNESS SHANKER: Right, except they're
10 escalated by the anticipated capital inflation rate.
11 But other than that, yes. Same performance, everything
12 else.

13 CHAIRMAN CLARK: So if it's a coal unit, it
14 was a coal unit. If it's a natural gas, it's natural
15 gas.

16 WITNESS SHANKER: Right. It's one of the
17 predicates of the methodology.

18 CHAIRMAN CLARK: Despite the fact that in the
19 later year they may need a different unit?

20 WITNESS SHANKER: Except if you think about
21 it, the -- conceptually there could be a need for a
22 different unit, but that would be incremental to the
23 base of capacity that's already there. You sort of take
24 the established capital base and keep renewing it out,
25 and then you're substituting for the slot in the capital

1 base. That's one of the premises of the methodologies,
2 Your Honor.

3 CHAIRMAN CLARK: Okay.

4 WITNESS SHANKER: So it needs that assumption
5 in order to work and it's consistent with the
6 methodology.

7 BY MR. MCGEE:

8 Q Mr. Shanker, on Page 8, Line 10, 11, 12, you
9 indicate that -- well, you make the statement, "Florida
10 Power's argument in this regard," and you're speaking
11 to -- referring to Panda receiving 30 years of capacity
12 payments for deferring a 20-year unit -- that, "it is
13 disingenuous at best, as it is predicated on the
14 assumption that after the end of the useful life of the
15 first plant, Florida Power would not replace the retired
16 capacity."

17 A That's -- yes.

18 Q Isn't it true, Mr. Shanker, that your argument
19 is predicated on the assumption that the plant specified
20 in the contract will not only be replaced, but will be
21 replaced at exactly the same cost as the first unit?

22 A At the same escalated cost. And it's not my
23 argument. It's what the assumptions are in the way that
24 the value of deferral methodology is structured. There
25 are lots of other ways to value what might be the worth

1 of a facility after the end of the first lifetime. This
2 commission uses a rule methodology for calculation that
3 explicitly assumes this. The assumptions are built into
4 the methodology the Commission has adopted. So you sort
5 of have to go with them if you want to continue to
6 implement it consistently.

7 Q Wouldn't it be more accurate, Mr. Shanker, to
8 say that the Commission's methodology provides a means
9 for handling a stream of avoided units? That
10 methodology doesn't require the utility to have an
11 infinite stream of avoided units, does it?

12 A Well, you could refire the plant after ten
13 years, too, but when you calculate the value of deferral
14 methodology, you assume the plant is there for its
15 lifetime and for the stream. It's an input assumption.
16 I can assume anything else that you wish, but you'll get
17 a completely different result. This method has certain
18 tenets that go with it. If you want to compensate
19 consistent with that, you got to play with all the rules
20 of the methodology. I mean, there's lots of other
21 avoided cost methodologies, some of which I think I
22 recommended to the Commission a long time ago. This is
23 the one they've adopted, and it has certain logical and
24 consistent implementations.

25 Q Moving perhaps slightly away from the realm of

1 theory into maybe some more practical considerations,
2 given the changes that lie directly ahead for the
3 electric utility industry in general, wouldn't you agree
4 that it's speculative to assume at this point in time
5 what will occur in the year 2017 when that 20-year
6 period is over and that plant will have to be replaced?

7 A Not with respect to this calculation. It may
8 have been speculative in the context of whether or not
9 Florida Power Corp. should have entered into a 30-year
10 contract, but once it did, this contract specifies,
11 mechanically, how you calculate the payments under the
12 value of deferral methodology.

13 Q Mr. Shanker --

14 A You're suggesting that I'm speculating on the
15 replacement. What I'm telling you is this methodology
16 has a mechanical implementation such that under the
17 terms of the contract, the correct way to calculate the
18 value in the year -- in the 21st year, is to take the
19 20th year calculation and escalate it by 5.1 percent.
20 That's the ramification of the contractual agreement
21 that you entered into and the Commission approved.

22 Q Mr. Shanker, didn't you say on top of Page 3
23 of your testimony that you reached your conclusion --
24 let me read it. "This conclusion is independent of any
25 legal interpretation of the FPSC regulations and the

1 FPSC order approving the contract."

2 A That's right. It's based on the contract. I
3 thought that's what I just said.

4 Q I thought I understood you to say that Florida
5 Power shouldn't have entered into a 30-year contract.

6 A No, that's not what I'm saying. You asked me
7 if it was -- my opinion was based on a speculative
8 judgment about what would replace the avoided unit at
9 the end of its life. At least that's what I understand
10 you to ask. And what I'm answering is, one needs to
11 make no assumptions, speculative or any otherwise, to
12 mechanically implement the terms of the contract. And
13 it's that contract that references the value of deferral
14 methodology. It specifically refers to the values in
15 Appendix C, and it's -- you've chosen the mechanism.
16 You've chosen the formula. It's turning the crank.
17 This is the correct way to implement once you've done
18 that. You can't come up with any other implementation
19 for compensation in years 21 through 30 of this
20 agreement other than what I'm recommending without going
21 outside of the contract. I can implement this based
22 strictly on what's in the contract.

23 Q Were you here this afternoon when Mr. Dolan
24 responded to Staff questions and provided an exhibit
25 that showed a methodology that --

1 A Right, and Mr. Dolan's methodology could not
2 be implemented from the material that is in the
3 contract. If you asked him -- and I wish the Commission
4 would -- he had to come up with a new K factor, based on
5 a 30-year life to come up with his exhibit, whatever,
6 Exhibit 21. If you go to Attachment C in the contract,
7 you'll see that one of the characteristics of the
8 avoided unit, which is dependent on the life of the
9 unit, is something called the K factor. And it
10 represents the present value of a dollar of revenue
11 requirement for the life of the facility. Okay? And
12 that means it is specifically predicated on the useful
13 life, the 20-year life of the facility. You can't
14 mechanically turn the crank of the value of deferral
15 methodology without a K factor. If you have a 20-year K
16 factor, and that's the only one that appears in this
17 contract, that's what you have to use.

18 In order to do what Mr. Dolan did, he could
19 not have done it without calculating a new K factor
20 based on 30 years. So he had to go outside and say,
21 let's assume that instead of the assumption here being
22 20-year useful life, it's 30-year useful life. Well, if
23 you change the assumptions, you change the payments.
24 But that's not in the contract.

25 Q And 30 years is not listed as the term for the

1 capacity payments on that same Schedule C that you
2 referred to, is it? It's listed --

3 A Schedule C shows how you would calculate under
4 the value of deferral for 20 years. The contract shows
5 a term that is, I guess in the version I saw is -- and
6 that's, I guess, another issue, some month in 2025. I'm
7 not sure which month, March or April, something like
8 that. So mechanically it doesn't say these are only the
9 payments for 20 years; it says these are the payments
10 for 20 years. It gives you a methodology under the
11 value of deferral. It gives you all the information you
12 need to know, and you can implement it for each year
13 thereafter. You just use the same K factor, come up
14 with the same numbers and just effectively wind up
15 mechanically multiplying it by 5.1 percent a year.
16 That's the net effect of the implementation of the
17 calculation. It's right there. There is no magic.
18 This is a contract provision, and it tells you the
19 methodology.

20 Q Thank you, Mr. Shanker.

21 CHAIRMAN CLARK: You have no further
22 questions?

23 MR. MCGEE: None.

24 CHAIRMAN CLARK: Thank you. Staff?

25

CROSS-EXAMINATION

1 BY MS. BROWN:

2 Q Mr. Shanker, at the prehearing conference
3 Staff asked Panda to prepare an exhibit that
4 demonstrated how they would calculate capacity payments
5 for the years 21 through 30, or whatever the ending year
6 is. We're passing that out to you, and I will ask you
7 if you've had a chance to look at this. Are you
8 familiar with it?

9 A Yes. This was prepared by Panda. I've had a
10 chance to review it. It's consistent with my
11 recommendation. And I make only one observation, is
12 that there is a present value summary and that seems to
13 be on a monthly payment, so I would suggest you sort of
14 ignore that, as opposed to an annual. But other than
15 that, the values are consistent with what I would
16 recommend.

17 MS. BROWN: We would like to have that exhibit
18 marked for identification.

19 CHAIRMAN CLARK: That will be marked as
20 Exhibit 37. It's Capacity Payments for Term of FPC-
21 Panda Standard Offer Contract. And it has Mr. Shanker's
22 name on it.

23 MS. BROWN: We have no further questions.

24 (Exhibit No. 37 marked for identification.)

25 CHAIRMAN CLARK: Commissioners? I do have a

1 question. I didn't quite understand -- on Page 5, the
2 question talks about payments when the avoided unit
3 exceeds the life of the contract. And the answer seems
4 to talk when the life of the contract exceeds the
5 avoided unit. Have I missed something?

6 WITNESS SHANKER: I think that's backwards,
7 Your Honor. You're correct.

8 CHAIRMAN CLARK: So what needs to be fixed?

9 WITNESS SHANKER: That's interesting. I read
10 this thing a dozen times. "How does the value of
11 deferral provide for the computation of capacity
12 payments when the life of the contract exceeds the life
13 of the avoided unit," should be the question.

14 CHAIRMAN CLARK: Okay.

15 WITNESS SHANKER: I apologize. I don't think
16 anyone else caught that either.

17 CHAIRMAN CLARK: Let me ask a question. If at
18 the end of the economic life of this avoided unit -- do
19 you disagree that the life of the avoided unit in this
20 debate is identified as 20 years?

21 WITNESS SHANKER: The life of the unit is 20
22 years. And I would like to point out that if you read
23 the definitions in the rule, there's really no
24 distinction between useful life and economic life in the
25 rule. It is strictly the life of the unit, and that's

1 an input that was set by Florida Power Corp.

2 CHAIRMAN CLARK: Tell me -- explain to me why
3 you use 5.1 percent as an escalator.

4 WITNESS SHANKER: That, if we go to Appendix
5 C -- and actually I think it's also on the exhibit that
6 was just added -- it's one of the assumptions of the
7 annual escalation rate. It's the input. Again, at that
8 point in time, that was the expected annual escalation
9 rates. The effective property of the calculation is to
10 take a one-year deferral, which is actually how the
11 Florida rule works, and then the subsequent year's value
12 has the same real value, which is effectively just
13 escalating it by the anticipated escalation rate, annual
14 inflation rate.

15 CHAIRMAN CLARK: And that has apparently been
16 assumed to be 5.1 percent?

17 WITNESS SHANKER: That, again, was an input.

18 CHAIRMAN CLARK: If, at the end of the -- if
19 after 20 years, had the unit been built by Florida Power
20 Corporation and it was no longer used and a cheaper unit
21 was put in, given that situation, as opposed to the
22 contract that you're recommending, in the year 21, would
23 the cost be more to the ratepayers or less under the
24 contract?

25 WITNESS SHANKER: It's hard to say because I

1 guess the real question is, in the base plan did the --
2 what did the Company anticipate putting in in year 21,
3 and did the existence of a firm commitment for 30 years
4 change it.

5 If they had assumed something cheaper to begin
6 with -- and I'm not sure that makes sense, because the
7 whole plan would evolve differently, you wouldn't see it
8 as a one-to-one substitution that way -- it may
9 increase, it may decrease. If you could tie the
10 replacement specifically to this plant that was cheaper
11 than what was anticipated, then this would be more
12 expensive. If the presence of this commitment allowed
13 them to avoid and run up in capital plant costs that
14 were more expensive and the load shape changed, and
15 different things came in, so you don't -- can't point to
16 a one-to-one substitution, it's conceivable that the
17 ratepayers could be better off. If you assumed that the
18 assumption is one to one, this is for that plant and it
19 was cheaper, then, of course the ratepayers would be
20 paying more.

21 CHAIRMAN CLARK: Okay. Mr. Ross, do you have
22 redirect?

23 MR. ROSS: I have no redirect.

24 CHAIRMAN CLARK: Okay. Exhibits.

25 MR. ROSS: I believe it's just the

1 Commission's exhibit.

2 MS. BROWN: Staff moves Exhibit 36.

3 CHAIRMAN CLARK: 37. Exhibit 37 will be moved
4 in the record without objection.

5 (Exhibit No. 37 received into evidence.)

6 CHAIRMAN CLARK: Thank you, Mr. Shanker.

7 (Witness Shanker excused.)

8 * * *

9 CHAIRMAN CLARK: Mr. Killian.

10 RALPH KILLIAN

11 was called as a witness on behalf of Panda-Kathleen,
12 L.P., and having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. ROSS:

15 Q Mr. Killian you've already given us your name
16 and address. You have before you a copy of your
17 prefiled rebuttal testimony?

18 A Yes, I do.

19 Q And that testimony remains true and accurate?

20 A Yes, it does.

21 Q Do you have any changes or corrections you
22 wish to make to your rebuttal testimony?

23 A No, I do not.

24 Q If you were asked the same questions today,
25 would you give the same answers?

1 A Yes, I would.

2 Q I would move into the record Mr. Killian's
3 rebuttal testimony as though it were read.

4 CHAIRMAN CLARK: The prefiled rebuttal
5 testimony of Mr. Ralph Killian will be inserted into the
6 record as though read.

7 BY MR. ROSS:

8 Q And you also have, I believe it's two
9 exhibits, attached to your prefiled rebuttal testimony,
10 designated as RK-1 and RK-2, correct?

11 A Yes.

12 Q And those are the exhibits that you refer to
13 in your rebuttal testimony?

14 A Yes, it is.

15 MR. ROSS: Thank you. I would like to have
16 those marked as Composite Exhibit 38.

17 CHAIRMAN CLARK: They will be marked as
18 Composite Exhibit 38.

19 (Exhibit No. 38 marked for identification.)
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

REBUTTAL TESTIMONY OF RALPH KILLIAN

ON BEHALF OF PANDA-KATHLEEN, L.P.

DOCKET NO. 950110-EI

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Q. Have you reviewed the prefiled testimony of Robert Dolan in this case?

A. Yes.

Q. On pages 9 through 11 of Mr. Dolan's testimony, Mr. Dolan describes a series of communications between FPC and Panda in 1994 concerning the size of Panda's plant. Is Mr. Dolan's testimony accurate?

A. No. Mr. Dolan's testimony in that regard is inaccurate in several significant respects.

Q. Did you have any discussions with FPC employees in 1994 regarding the size of the Panda-Kathleen Plant?

A. Yes. On June 22, 1994, I attended a meeting with Pete O'Neil and David Gammon of FPC. At that meeting, we discussed that Panda would be seeking to permit a plant configuration using either a GE Frame7 or an ABB11N1, either of which would result in a plant with a net generating capacity of approximately 115MW.

1 Q. At that meeting, did you discuss whether FPC would
2 purchase power from Panda in excess of the 74.9 MW
3 Committed Capacity?

4 A. Yes. I recall that we discussed the fact that Panda
5 may have energy available in excess of 74.9 MW, and we
6 discussed the time periods when such additional energy
7 would be made available to FPC.

8
9 Q. Did you discuss whether Panda would confirm the
10 discussions of that meeting with FPC in writing?

11 A. Yes. Panda was to write a letter to FPC on the issues
12 discussed in the meeting, and FPC would respond.

13

14 Q. Did Panda write and send such a letter?

15 A. Yes. Panda sent a letter confirming our understanding
16 of the meeting. A copy of that letter, dated June 23,
17 1994, is attached as Exhibit "A".

18

19 Q. Did FPC agree to the terms contained in that letter?

20 A. No.

21

22 Q. Did you have any further conversations with FPC
23 pertaining to the size of the plant?

24 A. Yes. After Panda sent the June 23, 1994 letter, I had
25 a conversation with David Gammon and one of FPC's

1 outside lawyers. During that conversation, we agreed
2 to jointly prepare a letter confirming the parties'
3 understanding as to Panda's right to build a plant
4 with a net generating capacity of 115 MW, and the
5 payments by FPC to Panda for power provided to FPC in
6 excess of the 74.9 MW Committed Capacity. Panda's
7 representatives then proceeded to enter into telephone
8 negotiations with FPC's representatives over the terms
9 of such a letter. During those negotiations, Panda's
10 representatives went through the proposed letter word
11 by word with FPC's representatives, in order to come
12 up with a letter that reflected the views of both
13 Panda and FPC. My August 8, 1994 letter to FPC
14 reflects the language that FPC's representatives
15 requested for inclusion in the letter. A copy of my
16 August 8, 1994 letter is attached as Exhibit "B".

17

18 Q. Did FPC agree to sign the August 8, 1994 letter?

19 A. No.

20

21 Q. Did FPC tell you why they did not agree to sign the
22 letter?

23 A. Yes. David Gammon told me that he brought the letter
24 to Robert Dolan for approval, and that Mr. Dolan
25 refused to allow FPC to sign the letter because it was

1 not to FPC's advantage to sign the letter.

2

3 Q. Have FPC's actions prevented Panda from meeting the
4 milestone dates contained in the standard offer
5 contract?

6 A. Yes. By virtue of FPC's actions, including but not
7 limited to its filing of the petition in this case,
8 its refusal to sign a clarification letter for Panda's
9 financiers, and its disruption of Panda's
10 relationships with its vendors, Panda has been unable
11 to commence construction of the project.

12

13 Q. How long would it take for Panda to be able to
14 commence construction of Panda-Kathleen facility?

15 A. Due to the disruptions from FPC that I just described,
16 Panda has "lost its place in line" for the confirmed
17 delivery of the equipment it needs to build the Panda-
18 Kathleen plant. Even though FPC's actions have
19 already disrupted the commencement of construction of
20 the Panda-Kathleen plant for over 12 months (and
21 counting), it will now take Panda at least 18 months
22 to be able to commence construction, due to the loss
23 of confirmed delivery dates for equipment.

24 Q. Does this conclude your testimony?

25 A. Yes, it does.

1 BY MR. ROSS:

2 Q Mr. Killian, could you give us a brief summary
3 of your rebuttal testimony?

4 A Yes, I will.

5 Q In my rebuttal testimony I discuss
6 conversations with Florida Power Corp. regarding the
7 size of the plant in our effort to clarify this issue
8 with Florida Power Corp. In the summer of 1994 Panda
9 attempted to develop a clarification letter with Florida
10 Power Corp. Panda and Florida Power Corp. spent
11 considerable time and effort in an attempt to reach an
12 agreement on the words of a clarification letter.
13 Eventually we agreed, at least at the staff level, we
14 thought, we agreed to the words -- in conjunction with
15 an outside attorney on the part of Florida Power Corp.,
16 we agreed to the words of a clarification letter.

17 When submitted, finally sent to Florida Power
18 Corp. in the agreed-upon words, Florida Power Corp.
19 ultimately refused to sign this clarification letter.

20 As a direct result of actions that Florida
21 Power Corp. has taken by filing this proceeding, Panda
22 was unable to complete its financing.

23 Additionally, Panda has lost its place in line
24 for the confirmed delivery of the equipment necessary to
25 build this plant.

1 It will now take Panda at least 18 months to
2 begin construction due to the loss of the confirmed
3 delivery dates for this equipment.

4 That concludes my summary.

5 MR. ROSS: Thank you. We tender the rebuttal
6 testimony -- rather tender Mr. Killian for cross of his
7 rebuttal testimony.

8 CHAIRMAN CLARK: Mr. McGee?

9 MR. MCGEE: No questions.

10 CHAIRMAN CLARK: Staff?

11 CROSS-EXAMINATION

12 BY MS. BROWN:

13 Q Mr. Killian, you said it will take you at
14 least 18 months to begin -- I guess begin construction,
15 or complete construction?

16 A Begin construction.

17 Q Begin construction. Now on what do you base
18 that 18-month time frame, specifically?

19 A Yes. It will take approximately six months to
20 go to financial closing. After that, we will place the
21 order and payment for the equipment. It will take
22 approximately 12 months for the equipment to be
23 manufactured, so that we can begin construction once the
24 equipment is available and we can bring it to the site.
25 So the two parts are six months for financing, 12 months

1 to get in line for the equipment and get it manufactured
2 and delivered to the site.

3 Q And you have to have financing before you can
4 order the equipment?

5 A Yes, they want to be paid.

6 Q And you have to have the equipment delivered
7 before you can begin any kind of construction on the
8 project?

9 A At least scheduled delivery within a
10 reasonable time after the start of construction, within
11 a month or two.

12 Q So how much longer after that would you
13 anticipate -- and an estimate is really all I need --
14 your project coming on line?

15 A Approximately 18 months after we start
16 construction we would anticipate that the project would
17 go on line.

18 Q So you're asking the Commission to extend the
19 milestone dates for this contract three years?

20 A To go commercial operations, that is correct.

21 Q How set in stone are these --

22 CHAIRMAN CLARK: Let me be clear. When was --
23 wasn't it January '97, the in-service date of this
24 unit?

25 WITNESS KILLIAN: Yes, ma'am.

1 CHAIRMAN CLARK: So you're asking for two
2 years from then, is that right? Or three years?

3 WITNESS KILLIAN: What I'm saying is, we were
4 already in the queue for the equipment. We were just a
5 month or so away from financing. What I'm suggesting is
6 that it's going to take us 18 months to begin
7 construction. Construction will take approximately
8 another 18 months to complete.

9 CHAIRMAN CLARK: Just so I'm clear, it's three
10 years from the date of a decision in this case?

11 WITNESS KILLIAN: Yes, ma'am.

12 CHAIRMAN CLARK: Okay.

13 BY MS. BROWN:

14 Q Your response to Chairman Clark brought up
15 another question, if I might. You said that when -- I
16 understood you just to say that you were already in
17 queue for the equipment and a month away from financing
18 when this proceeding was initiated. But you told me
19 earlier that you would take six months to completely
20 finance the project before you could even get in queue
21 for the equipment. What's the difference?

22 A Well, we already had a contract, EPC contract
23 signed with Walsh Construction, whereby they had done
24 some preliminary engineering on the project and had
25 identified the equipment and the slots in the factory.

1 Once we lost the order, the slots went away. Now we've
2 got to reinstitute the slot, the manufacturing slot, to
3 be able to get the steam turbine and the rest of the
4 equipment built.

5 Q But if before you didn't have to do that after
6 your financing was established, why do you say you have
7 to do that this time? That's the question.

8 A The slots had already been identified when we
9 were negotiating the financing, the manufacturing
10 slots. They had not been identified at this point in
11 time. We have to basically start from scratch.

12 Q When you get a Commission decision, why can't
13 you then start initiating the manufacturing slots while
14 at the same time you are trying to finance the project
15 again? Because it sounds to me like that's what you did
16 last time.

17 A We will reinstitute discussions with our EPC
18 contractors, but we may not -- we can't guarantee we
19 would get the same kind of manufacturing slots we had
20 when we -- when this thing was stopped. So you will
21 begin discussion with the manufacturer at that point to
22 try to get a slot as soon as possible, but there's no
23 guarantee that you're going to get it before the six-
24 month period.

25 Q I understand, but it does appear to me that

1 what you've just said indicates that your 18-month time
2 frame may not be set in stone, and that in fact there
3 might be ways to lessen it.

4 A We're certainly going to try.

5 Q Okay, no further questions.

6 CHAIRMAN CLARK: Commissioners? Redirect?

7 MR. ROSS: Nothing.

8 CHAIRMAN CLARK: Exhibits?

9 MR. ROSS: Move in Composite Exhibit 38.

10 CHAIRMAN CLARK: Exhibit 38 is entered in the
11 record without objection.

12 (Exhibit No. 38 received into evidence.)

13 CHAIRMAN CLARK: Thank you, Mr. Killian.

14 (Witness Killian excused.)

15 * * *

16 J. BRIAN DIETZ

17 was called as a witness on behalf of Panda-Kathleen,
18 L.P., and having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. ROSS:

21 Q Mr. Dietz, you have before a copy of your
22 prefiled rebuttal testimony?

23 A I do.

24 Q And do you have any additions or corrections
25 to your prefiled rebuttal testimony?

1 A No, I do not.

2 Q And your prefiled testimony is true and
3 accurate?

4 A That is correct.

5 Q And if asked the same questions today, you
6 would give the same answers?

7 A That is correct.

8 Q I would move into the record Mr. Dietz's
9 prefiled rebuttal testimony as though read.

10 CHAIRMAN CLARK: The prefiled rebuttal
11 testimony of Mr. Brian Dietz will be inserted in the
12 record as though read.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

REBUTTAL TESTIMONY OF J. BRIAN DIETZ

ON BEHALF OF PANDA-KATHLEEN, L.P.

DOCKET NO. 950110-EI

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Q. Have you reviewed the prefiled testimony of Robert Dolan in this case?

A. Yes.

Q. In Mr. Dolan's testimony, he states that Panda intends to build a plant that will produce 115 MW or more at all times. Is Mr. Dolan's testimony accurate?

A. No. The planned Panda-Kathleen plant would have a net generating capacity of 115 MW at ISO conditions -- 59 degrees fahrenheit and 15 percent humidity. The normal climate conditions in Florida are much less conducive than ISO for the operation of a power plant, and the net generating capacity of the plant under normal climate conditions will usually be less than 115 MW. The net generating capacity of the plant would exceed 115 MW only on rare occasions.

Q. Could the effect of climate conditions be alleviated through the use of chillers?

A. Chillers could be used to mitigate the effects of temperature on combustion turbines. However, the use

1 of chillers would require substantial amounts of
2 electrical power or steam to operate. Accordingly,
3 Panda would need to design and construct a plant with
4 a net generating output substantially higher than 74.9
5 MW in order to use chillers to mitigate the effects of
6 temperature degradation and also meet Panda's
7 Committed Capacity obligations at all times.

8

9 Q. If the design of the Panda-Kathleen facility included
10 the use of chillers, would that have led to the
11 selection by Panda of different equipment from that
12 which was chosen?

13 A. No. The need for extra energy to run the chillers,
14 coupled with the other performance degradation factors
15 discussed in my prefiled direct testimony, would have
16 led to the selection of the same equipment that Panda
17 actually did choose. In addition, the emissions
18 requirements of 15 PPM of NOX would also lead to the
19 use of the equipment that Panda selected.

20

21 Q. Mr. Dolan has stated in his direct testimony, at page
22 15, that all of the other standard offer contracts
23 submitted to FPC during the 1991 open season involved
24 facilities less than 75 MW. Is this statement
25 correct?

1 A. No. I have reviewed the proposed plant configurations
2 of the other standard offer contracts proposals
3 submitted to FPC during the 1991 open season, and the
4 proposals of Noah IV, Destec, and Sparrow (as well as
5 Panda's proposal) would each have involved the
6 construction of a facility with a net generating
7 capacity in excess of 75 MW.

8

9 Q. Does this conclude your testimony?

10 A. Yes, it does.

11

1 BY MR. ROSS:

2 Q And we have no exhibits to your prefiled?

3 A That is correct.

4 Q Would you give us a brief summary of your
5 rebuttal testimony?

6 A Yes, the purpose of my rebuttal testimony is
7 to correct some of the information in Mr. Dolan's
8 testimony which may be misleading. In particular, there
9 are three issues. The first one is his assertion that
10 the facility that Panda would build would produce 115
11 megawatts at all times. In fact, the 115 megawatts is
12 at ISO conditions, which is 59 degrees Fahrenheit and
13 the appropriate relative humidity.

14 The average temperature at the Lakeland site
15 is about 77 degrees Fahrenheit. Therefore, the facility
16 will usually produce substantially less than the 115
17 megawatts on an average annual basis, if that facility
18 had been operated on a continuous basis.

19 The second point was the -- his point of the
20 use of chillers could alleviate all effects of
21 temperature degradation. In theory that is true.
22 Excuse me. But he neglects the fact that there's
23 substantially -- there will be a substantial increase in
24 the parasitic loads while reducing the effects of
25 climate degradation using the chillers. The chillers

1 themselves use a substantial amount of power.

2 And thirdly, he states that all other standard
3 offer contracts that were submitted to Florida Power
4 Corp. were less than the 75 megawatts. That is
5 inaccurate in that at least three submittals besides the
6 Panda facility were greater than the 75 megawatts. And
7 those were the Destec, the Noah 4 and the Sparrow
8 units. The information on the Sparrow unit was
9 introduced into testimony earlier today and during the
10 cross-examination by our counsel. That's all.

11 MR. ROSS: Thank you. Tender Mr. Dietz for
12 cross-examination on his rebuttal.

13 CHAIRMAN CLARK: Mr. Froeschle.

14 MR. FROESCHLE: No questions.

15 CHAIRMAN CLARK: Ms. Brown?

16 MS. BROWN: No questions.

17 CHAIRMAN CLARK: I assume there's no
18 redirect?

19 MR. ROSS: No redirect.

20 CHAIRMAN CLARK: No questions by the
21 Commissioners?

22 Thank you, Mr. Dietz.

23 WITNESS DIETZ: It's nice to be the caboose.

24 CHAIRMAN CLARK: Are there any further matters
25 we have to take up at this time?

1 MS. BROWN: Yes. You've reminded me.

2 Chairman Clark, may I just have a second?

3 CHAIRMAN CLARK: Uh-huh.

4 MS. BROWN: I have to read the CASR and I have
5 to find it.

6 CHAIRMAN CLARK: I think we're just looking
7 for the dates for when the briefs and transcripts are
8 due.

9 MS. BROWN: All right, transcripts will be due
10 March 6th. Briefs will be due March 25th, Staff
11 recommendation the 18th of May, agenda the 30th of May,
12 standard order -- I mean of April, standard order the
13 13th of May.

14 CHAIRMAN CLARK: Okay. Those are the --
15 Ms. Brown has just indicated the dates that the
16 transcripts are due and the briefs are due. Is there
17 anything further we need to take up at this time?

18 Thank you very much. This hearing is
19 adjourned.

20 (Hearing concluded at 8:30 p.m.)

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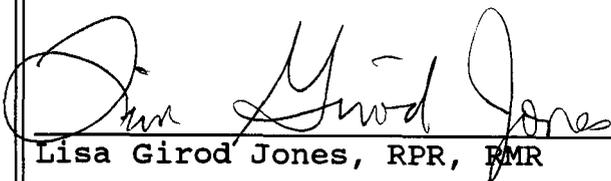
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I certify that the foregoing, Volumes 1 through 3, is a correct transcript from the record of proceedings in the above-entitled matter.



Lisa Girod Jones, RPR, FMR

2/29/96
Date