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June 29, 1995

Ms. Blanca Bayo, Director
Division of Records & Reporting
Florida Public Service Commission
2540 Shumarg Oak Boulevard
Tallahassee, Florida 32399-0850

RE: Standard Offer Contract for the Purchase of Firm Capacity and Energy
from a Qualifying Facility Less Than 75 MW or a Solid Waste Facility
Between Panda-Kathleen, L.P. and Florida Power Corporation
Docket No. 950110-EI

Dear Ms. Bayo:

Enclosed, please find the original and fifteen (15) copies of the Petition for
Formal Evidentiary Proceeding and Full Commission Hearing in reference to the above
matter.

If additional information is needed, please do not hesitate to contact me.

Sincerely,

John R. Marks, III

- ACK
- AFA Helton
- APP
- CAF
- CMU
- CTR JRM/lcg
- EAG**
- LEG Enclosures
- LIN 5
- GFC cc: David G. Mayer
- MSI
- SIS 1
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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

| | | |
|--|---|-----------------------|
| In re: Standard Offer Contract for the |) | |
| Purchase of Firm Capacity and Energy |) | Docket No. 950110-EI |
| From a Qualifying Facility Less Than 75 |) | |
| MW or a Solid Waste Facility between |) | Submitted for Filing: |
| Panda - Kathleen, L.P. and Florida Power |) | June 29, 1995 |
| Corporation |) | |

**PETITION FOR FORMAL EVIDENTIARY
PROCEEDING AND FULL COMMISSION HEARING**

Comes now, Panda-Kathleen, L.P. ("Panda"), by and through its undersigned attorneys, pursuant to section 120.57, Florida Statutes, and Rules 25-22.022, 25-22.025, and 25-22.036, Florida Administrative Code, and submits this petition seeking:

- (1) A formal evidentiary administrative proceeding pursuant to subsection 120.57(1), Florida Statutes, before the Florida Public Service Commission ("Commission") addressing all legal and factual issues raised in the parties' petitions for declaratory statements and the other filings submitted in this docket, and
- (2) An evidentiary hearing before the full Commission on all disputed legal and factual issues, leading to issuance of appropriate orders by the Commission resolving those issues to the full extent of the Commission's authority.

In support of this petition, Panda respectfully submits the following.

1. This docket was opened to consider the Petition for Declaratory Statement filed by Florida Power Corporation ("FPC") on January 25, 1995. On February 2, 1995, Panda petitioned to intervene in this docket and on March 6, 1995 was granted intervention as a substantially affected party. On March 14, 1995, Panda filed a Motion for Declaratory Statement and Other Relief. On March 24, 1995, FPC filed a Motion to ~~Strike Panda's Motion~~

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for Declaratory Statement and Other Relief. By its Order issued June 12, 1995, the Commission denied in part and granted in part FPC's Motion to Strike.

2. The competing requests for declaratory statements and other filings in this docket make clear that Panda and FPC are asserting diametrically opposed positions regarding the terms and continuing validity of their 1991 Standard Offer Contract for Purchase of Firm Capacity and Energy from a Qualifying Facility Less Than 75 MW or a Solid Waste Facility, as amended to date (the "Contract"). Without intending to formulate the ultimate legal issues for decision in this proceeding in a definitive manner, the parties' essential contentions may be summarized as follows.

(a) FPC contends that: (i) the Contract is no longer "available" to Panda -- meaning, evidently, that FPC is no longer bound by the Contract -- because Panda intends to construct plant facilities with a nominal output in excess of 75 MW; and (ii) should the Commission nevertheless determine that the Contract remains "available" to Panda, FPC has no obligation thereunder to make capacity or energy payments for more than twenty years.

(b) By contrast, Panda contends that: (i) the Contract remains legally binding on both parties and permits Panda, in the exercise of its business and engineering judgment, to construct and operate facilities with a nominal output at the plant in excess of 75 MW, in order to assure that the plant will deliver 74.9 MW of committed capacity and energy throughout the thirty-year contract term, under the worst design conditions and in compliance with the Contract and applicable law; (ii) the Contract obligates FPC to make capacity and energy payments for the full thirty-year contract term, and the prescribed formula for computing escalating capacity payments applies during each year; and (iii) various milestone dates in the Contract relating to planning, construction, and operation of the facility should be extended so that Panda will be

restored to a position equivalent to that it would have had under the Contract, had FPC not filed its Petition for Declaratory Statement.

3. In its June 12, 1995 Order (No. PSC-95-0692-FOF-EI), the Commission decided to sever from this docket Panda's request for an order extending the milestone dates, reasoning that this issue was "inappropriate for a declaratory judgment proceeding" (page 2). At that time, the Commission apparently expected to resolve the other issues identified above by ruling on the parties' requests for declaratory statements, without an evidentiary hearing. The issue of extending milestone dates under the Contract was left to be addressed in another manner.

4. At staff's request, the parties have submitted proposed factual stipulations and have met with staff to discuss an efficient and expeditious means of resolving the issues raised in their earlier submissions. Around this same time, Panda engaged the undersigned counsel to represent it in these proceedings.

5. At a meeting on June 20, 1995, among Commission staff, Panda's counsel, and attorneys and other representatives of FPC, Panda requested and proposed that a formal evidentiary proceeding be convened, leading to a hearing before the full Commission, to resolve all the issues identified above. Among the reasons given in support of this proposal were, and remain, that there are disputed issues of material fact between the parties that bear on all such issues. Although the parties have not at this stage developed a comprehensive list of disputed material facts, the presence of such disputed facts is amply demonstrated by:

- (a) The divergent contentions of the parties in their respective requests for incompatible declaratory statements;
- (b) Each party's having filed factual submissions in this docket that take issue with the characterization in the other party's papers of events pertaining to the Contract;

- (c) The parties' having submitted proposed factual stipulations in draft that differ in important respects; and
- (d) FPC's May 8, 1995, "Answer in Opposition to Panda-Kathleen, L.P.'s Motion for Declaratory Statement and Other Relief," which details material facts to which Panda takes strong objection and which Panda intends to contravene through future submissions.

Panda submits that all these circumstances demonstrate the need for a formal evidentiary hearing pursuant to section 120.57(1), applicable rules of the Commission, and the Florida Rules of Civil Procedure, to allow the parties adequate opportunity for discovery, proof, and argument on all legal and factual issues requiring resolution by the Commission.

6. At the June 20, 1995, meeting, Commission staff indicated that it considers that an evidentiary hearing is appropriate in these circumstances and that the parties are entitled to due process procedures and protections to assert their contentions and resolve their disagreements that are subject to Commission jurisdiction. Further, FPC representatives in attendance acknowledged that material facts are in dispute and indicated that FPC would consider consenting to or not opposing a petition for a formal evidentiary proceeding. Panda's counsel understands that a hearing date has been identified in February, 1996.

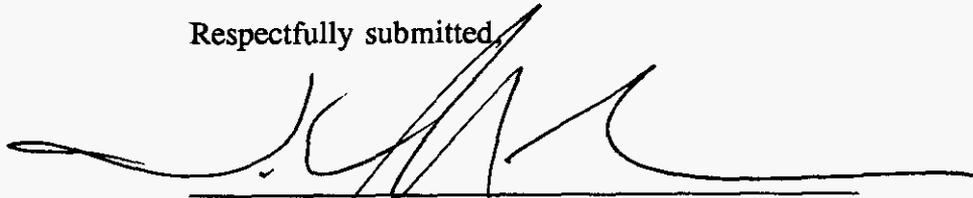
7. Under its Rules 25-22.022, 25-22.025 and 25-22.035, the Commission has the right, and in these circumstances an obligation, to convene and conduct a formal evidentiary proceeding under section 120.57(1), Florida Statutes. As already acknowledged in prior orders, both Panda and FPC are persons whose substantial interests will be affected and determined by the Commission in this proceeding. As a standard offer contract, the Contract is among the tariffs filed by FPC. To the extent permitted by applicable law, the Commission has jurisdiction

to make determinations respecting the Contract and to grant appropriate relief, consistent with that requested in earlier filings in this docket.

8. As agreed at the June 20, 1995, meeting, in view of this petition, it will no longer be necessary or appropriate for the Commission to rule on either party's request for declaratory statement. However, staff and the parties expressed a preference for continuing this proceeding under the same docket, and converting the prior declaratory statement proceeding into a formal evidentiary proceeding. This procedure is acceptable to Panda and, it is believed, to FPC.

WHEREFORE, Panda hereby respectfully petitions the Commission to enter an order (1) granting Panda's request for a formal evidentiary proceeding on all the legal issues identified above and on factual issues pertinent thereto, (2) providing that the evidentiary proceeding will supersede and displace both requests for declaratory statements previously filed by the parties, (3) scheduling a hearing before the full Commission on or about February 19, 1996, and (4) granting such other relief and measures as the Commission deems proper or expedient.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition for Formal Evidentiary Proceeding and Full Commission Hearing has been served by United States mail, postage prepaid, to James A. McGee, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733-4042, this 29th day of June, 1995.



Gary P. Timin