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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Declaratory Statement  
Regarding Eligibility for Standard  
Offer Contract and Payment Thereunder  
by Florida Power Corporation

Docket No. 950110-EI

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**PANDA - KATHLEEN, L.P.'S  
MOTION FOR PROTECTIVE ORDER**

Pursuant to Rule 25-22.037(2), F.A.C., and Rule 1.280(c), Florida Rules of Civil Procedure, Panda-Kathleen, L.P. ("Panda"), by and through its undersigned counsel, files this Motion for Protective Order requesting the Commission to issue its protective order that depositions in this or any other action currently noticed by Florida Power Corporation ("FPC") to commence on September 18, 1996, not be taken until such a time as the issue set forth herein are resolved by the Commission or a court of competent jurisdiction, and in support of said Motion states as follows:

1. Through presuit investigations in 1995, Panda has discovered substantial evidence that, in violation of the Sherman and Clayton Acts, FPC has been engaged in the systematic exclusion of at least nine (9) cogenerators, including Panda, from the wholesale electric power market in FPC's service area in Florida. Those discoveries occurred in May and June, 1995, some four (4) months after FPC filed a petition at this Commission (January 25) seeking to invoke this Commission's jurisdiction - and assistance - in discovering FPC's power purchase agreement with Panda, executed in 1991 and approved by this Commission in its October 22, 1992, order. Panda and Florida Power are presently litigating all Federal antitrust and state pendent jurisdiction issues in the U.S. Federal

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District Court for the Middle District of Florida, filed in late June after Panda had completed its presuit investigation.

2. As an essential first step, Panda has sought FPC's documents regarding its planning for and treatment of the Florida cogenerators in contract with FPC. FPC has massively resisted production of such documents, many of which FPC has been forced to produce in three (3) other lawsuits now pending against FPC by Florida cogenerators. Until FPC is required to produce those documents, any expensive oral depositions obviously would be premature and wasted.

On September 5, counsel for Panda and FPC met to discuss Federal court issues. Panda presented to FPC an extensive, 20-page outline of the documents FPC concealed from production. FPC, to date, has produced no further documents.

3. Yet, on September 8, 1995, Florida Power Corporation ("Florida Power") filed an Amended Notice of Taking Depositions (Attachment A). The notice sets the depositions of seven (7) employees of Panda for the dates of September 18, 19, 20, 25, 26, 27 and 28 in Dallas, Texas. Notably, FPC has reneged on its earlier commitments to produce documents [Panda has produced all of its documents, without complaint from FPC]; and to conduct post-document production depositions on an agreed, double-track schedule.

4. On September 12, 1995, Panda filed a Motion to Abate or Stay Proceedings, Motion to Dismiss and a Supporting Memorandum in this action which is currently pending before this Commission. It is not only appropriate, but required by law, for the Commission to stay its activities - and the conduct of FPC by granting this Motion - until FPC and the Commission staff have the time required by the Commission's Rules to reply to Panda's

Motions and Memorandum; those motions have been heard; and a final decision (after appeal if necessary) is rendered. Indeed, given that the Commission lacks jurisdiction in this proceeding, any further actions are void. Additionally, until the issue of jurisdiction is finally resolved, it would be a clear waste of the valuable time and resources of the Commission and the parties to proceed in complex discovery, issue designations and the like.

5. Panda has filed a Motion to Compel Florida Power to produce the documents requested by Panda, in accordance with Rule 37, Fed.R.Civ.P., and that motion is now pending in the court action. Likewise, Panda has filed its Motion for Protective Order in that action, under Rule 37, Fed.R.Civ.P., to defer FPC's identically-noticed deposition of Panda employees.

6. The taking of depositions in this action prior to the production of documents would be wasteful and costly due to the fact that information expected to be contained in such documents would be highly relevant to any deposition taken in this action and would, therefore, almost assuredly necessitate redepositon of any person deposed prior to the production of such documents.

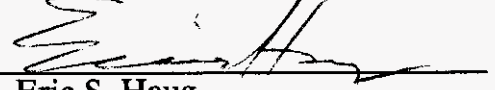
7. Lead counsel for Panda, Ray G. Besing, is unavailable on the dates on which Florida Power set the depositions of seven (7) Panda employees. Mr. Besing will be attending a required Continuing Legal Education course at Southern Methodist University during the dates of September 18, 19 and 20 and must be in court ordered depositions September 21, 22 and 23 out of state.

WHEREFORE, the Defendants respectfully request this Commission to enter an order prohibiting Florida Power from taking depositions in this action until such a time as

a court of competent jurisdiction determines that such discovery can proceed in this action.

THE LAW OFFICES OF  
RAY G. BESING, P.C.  
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By   
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101 N. Monroe Street, Suite 1090  
P. O. Box 11240  
Tallahassee, FL 32302  
904/681-0411

TRIAL COUNSEL FOR PLAINTIFF

LOCAL COUNSEL FOR PLAINTIFF

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile to Donald R. Schmidt, Esq., Carlton, Fields, Ward, Emmanuel, Smith and Cutler, P.A., One Harbour Place, 777 South Harbour Island Drive, Tampa, Florida 33602, attorney for Florida Power Corporation, and by hand delivery to Robert Vandiver, Esq., and Martha Carter-Brown, Esq., Florida Public Service Commission, 2450 Shumard Oak Blvd., Tallahassee, Florida 32399-0862, attorneys for the Public Service Commission, at 12:30 p.m. this 13th day of September, 1995.

  
Eric S. Haug, Esq.

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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

**Docket No. 950110-EI**

**Submitted for filing:  
September 8, 1995**

**AMENDED NOTICE OF TAKING DEPOSITION**

**To: John R. Marks, III, Esq.  
Gary P. Timin, Esq.  
Paul R. Ezatoff, Esq.  
Katz, Kutter, Haigler, Alderman,  
Marks, Bryant & Yon, P.A.  
105 East College Avenue, Suite 1200  
Tallahassee, Florida 32301**

**PLEASE TAKE NOTICE that Florida Power Corporation will take the deposition, by oral examination,, pursuant to Florida Rule of Civil Procedure 1.310, of the following persons, at the following dates and times and places.**

**The following depositions have been scheduled for the offices of Panda Energy Corporation, 4100 Spring Valley, Suite 1001, Dallas, Texas 75244 (or such other location upon which counsel for Florida Power Corporation and Panda-Kathleen L.P. may hereafter alternatively agree upon).**

<b>Name</b>	<b>Date</b>	<b>Time</b>
Ralph Killian	Monday, September 18, 1995	9:00 a.m.
Ted Holton	Tuesday, September 19, 1995	9:00 a.m.
Darol Lindloff	Wednesday, September 20, 1995	9:00 a.m.
James Adams, Jr.	Thursday, September 25, 1995 *	9:00 a.m.
James Wright	Friday, September 26 1995*	9:00 a.m.
Kyle Woodruff	Monday, September 27, 1995*	9:00 a.m.
Thomas Bagby	Tuesday, September 28, 1995*	9:00 a.m.

**ATTACHMENT "A"**

On September 1, 1995, Florida Power learned that Panda's Texas counsel had a previously scheduled conflict with some of the dates listed in the Notice of Taking Deposition. Florida Power is amending its notice to accommodate Panda's counsel's schedule. Amended dates are indicated by (\*).

These depositions shall be taken before a notary public or other person authorized by law to take depositions. These depositions are being taken for purposes of discovery, for use at hearing(s), or for any such other purposes as are permitted under the Florida Rules of Civil Procedure. The depositions will continue from hour to hour, day to day until completed.

Respectfully submitted,

OFFICE OF THE GENERAL COUNSEL  
FLORIDA POWER CORPORATION

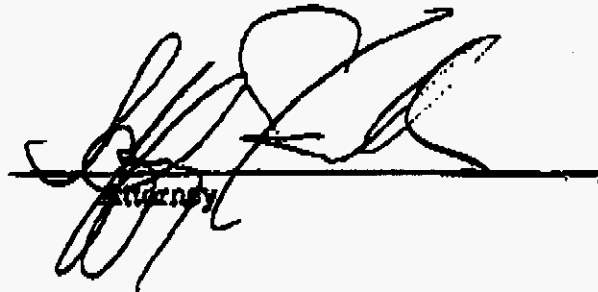
By



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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of Florida Power Corporation's Notice of Taking Deposition has been furnished to John R. Marks, III, Esquire, Gary P. Timin, Esquire, and Paul R. Ezatoff, Esquire of Katz, Kutter, Haigler, Alderman, Marks, Bryant & Yon, P.A., 106 East College Avenue, Suite 1200, Tallahassee, FL 32301, via Federal Express and to Martha Carter Brown, Division of Legal Services, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0850101 via U.S. Mail, this 7th day of September, 1995.



Attorney