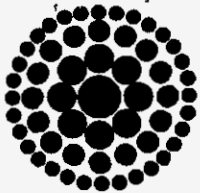


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**Florida  
Power**  
CORPORATION

**JAMES A. MCGEE**  
SENIOR COUNSEL

**ORIGINAL  
FILE COPY**

September 18, 1995

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

Re: Docket No. 950110-EI

Dear Ms. Bayó:

ACK  \_\_\_\_\_

AFA \_\_\_\_\_ Enclosed for filing in the subject docket are fifteen copies of Florida Power Corporation's Memorandum in Opposition to Panda's Motion to Stay Proceeding.

APP \_\_\_\_\_

CAF \_\_\_\_\_

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

CTR \_\_\_\_\_

EAG  \_\_\_\_\_

LEG \_\_\_\_\_

LIN 3 \_\_\_\_\_

OPC \_\_\_\_\_

RCH \_\_\_\_\_

SEC 1 \_\_\_\_\_

WAS Jam/jb \_\_\_\_\_

QTH Enclosure \_\_\_\_\_

Very truly yours,

*James A. McGee*  
James A. McGee *McGee*

cc: Parties of Records

RECEIVED & FILED  
*[Signature]*  
FPSC BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

09242 SEP 19 95

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

FILE COPY

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

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**Docket No. 950110-EI**

**Submitted for filing:  
September 19, 1995**

**FLORIDA POWER CORPORATION'S RESPONSE IN OPPOSITION TO PANDA'S MOTION TO STAY PROCEEDING**

Florida Power Corporation ("FPC") hereby responds to Panda-Kathleen, L.P. ("Panda's") MOTION TO STAY OR ABATE PROCEEDINGS. By contemporaneously filed responses, FPC also opposes Panda's Motion To Dismiss, which challenges the Commission's jurisdiction, and Panda's Motion For Protective Order, which seeks to prevent FPC from deposing Panda's witnesses.

FPC's petition in this proceeding was filed January 25, 1995. Panda promptly intervened, filed its own competing petition, and asked the Commission for an evidentiary hearing on the issues raised by the pending petitions. The Commission scheduled the requested evidentiary hearing for February 19, 1996. This proceeding thus had been pending almost 8 full months before Panda, for the first time, challenged the Commission's jurisdiction and moved for a stay of this proceeding. The Motion to Stay should be summarily denied.

In the first place, a stay at this juncture makes no sense. Regardless of the outcome of Panda's belated jurisdictional challenge, FPC will be moving forward with the depositions in the federal case. On Friday, September 15, 1995, after Panda filed its Motion to Stay this proceeding, the federal court rejected Panda's

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efforts to preclude depositions in the federal case, and entered an order that allows the depositions to start on September 25, 1995.

In light of the federal court's decision, it would be far more efficient to simply allow this proceeding to continue so that the depositions and document discovery occurring in the federal case can also be used in this proceeding. If the Commission were to stay this proceeding, even for a short period, FPC and Panda might then have to redo the very depositions that will be taken in the federal case, thus engaging in wasteful duplication of effort where the issues in federal court overlap with the issues in this proceeding. Notably, Panda expressly agreed that discovery in the federal case could be used in this proceeding and vice versa. There is no reason why discovery should not proceed for purposes of this case as well as the federal case, especially since there are no issues presented here that are not also raised there.

This is particularly the case in light of FPC's need to prepare for the evidentiary hearing that has been scheduled herein, at Panda's request, for February 19, 1996. Obviously, if the Commission were to determine it lacked jurisdiction, this concern would become moot. But if the Commission concludes it has jurisdiction, as FPC believes it should, FPC is greatly concerned that Panda's next move will be to argue that since there was a stay, it cannot now prepare for its own evidentiary hearing. FPC would be prejudiced if that hearing were not held and the pending dispute remained unresolved.

As this Commission well knows, there is a "time is of the essence" clause in the Panda Standard Offer Contract. Panda has already sought and obtained substantial delays in its milestone obligations. In addition, Panda has now sought, as part of its requested relief in this proceeding, a day for day extension (for each

day this proceeding is pending) of its obligation to meet the previously extended milestones. Thus, if a stay of this proceeding were now granted, Panda might obtain an even greater extension than it could seek if the proceeding continues as scheduled.

Quite apart from this, FPC will be further prejudiced if the uncertainty as to FPC's obligations is not resolved. While delay may well work to Panda's benefit by giving it additional time to try to figure out how it can fulfill its contractual obligations, it will work to the substantial detriment of FPC and FPC's ratepayers. FPC needs to know when (if ever) Panda will place its facility in-service, and it needs to know what amount of energy it will be required to purchase, and at what price. Any delay in resolving those issues will prejudice FPC's ability to plan for the future.

For these reasons, the Motion to Stay should be denied. However, if the Commission decides to issue a stay, it should make clear that it will not later permit Panda to delay the February 1996 evidentiary hearing based on that stay.

Respectfully submitted,

**OFFICE OF THE GENERAL COUNSEL  
FLORIDA POWER CORPORATION**

James P. Fama  
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Senior Counsel

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Jeffery A. Froeschle

Corporate Counsel

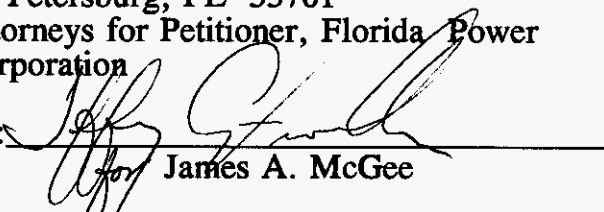
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P.O. Box 14042

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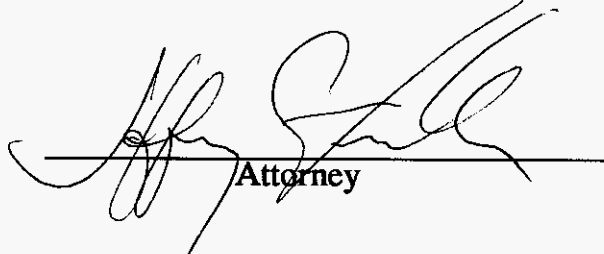
and

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Attorneys for Petitioner, Florida Power  
Corporation

By:   
James A. McGee

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of Florida Power Corporation's Response in Opposition to Panda's Motion to Stay Proceeding has been furnished by regular U.S. Mail and/or Federal Express to John R. Marks, III, Esquire, of Katz, Kutter, Haigler, Alderman, Marks, Bryant & Yon, P.A., 106 East College Avenue, Suite 1200, Tallahassee, FL 32301, Robert Vandiver, Esq., Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, Martha Carter Brown, Esquire, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, Ken Sukhia, Esquire, Fowler, White, Gillen, Boggs Villareal and Banker, P.A., 101 North Monroe Street, Suite 1090, Tallahassee, FL 32301 and Ray Besing, Esquire, 1100 St. Paul Place, 750 North St. Paul, Dallas, Texas 75201, this 18th day of September, 1995.

  
Attorney