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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

FILE COPY

CASE NO. 950110-EI

In re: Petition for Declaratory )  
Statement Regarding Eligibility )  
for Standard Offer Contract and )  
Payment Thereunder by Florida )  
Power Corporation, )  
)  
)  
)  
\_\_\_\_\_ )

**PANDA'S OBJECTIONS TO THE  
PREFILED TESTIMONY OF ROBERT  
DOLAN**

Panda-Kathleen L.P. ("Panda") hereby files its objections to certain portions of the prefiled direct and rebuttal testimony of Robert Dolan, filed on behalf of Florida Power Corporation ("FPC"), and states:

FPC has put forth the prefiled testimony of Robert Dolan regarding the background of the Panda-FPC negotiations. However, several sections of Mr. Dolan's testimony are pure hearsay and double-hearsay, and are not permitted under the Commission's rules. Accordingly, these portions of Mr. Dolan's prefiled testimony should not be admitted into evidence.

Commission Rule 25-22.48 and Fla. Stat. § 120.58(1)(a) state that "[h]earsay evidence may be used to supplement or explain other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions" (emphasis added). Hearsay evidence which does not supplement or explain other evidence is not admissible in an administrative proceeding. State Dept. of Admin. v. Porter, 591 So.2d 1108, 1109 (2d DCA 1992). As discussed below, several

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sections of Mr. Dolan's testimony are pure hearsay which do not supplement other evidence in this case.

The specific sections of testimony upon which Panda objects are:

I. Page 7, lines 11 through 20

Q. Please briefly describe the essence of the communications between Panda and Florida Power on the subject of Panda's facility size between when the Panda Contract was signed in 1991 and mid-1994.

A. From the time the contract was signed in late 1991 and approved by the Commission in early 1992 through mid-1994, it is my understanding that Panda consistently represented that it intended to construct a facility with a net capacity of 74.9 MW. The only variance from that 74.9 MW size that were discussed between Florida Power and Panda representatives was the possibility that [there] (sic) would occasionally be infrequent times when the output would be slightly above 74.9 MW for short periods of time.

This statement by Mr. Dolan is double hearsay, in that there is no evidence that Mr. Dolan was present in any of the alleged discussions with Panda. Mr. Dolan's testimony does not supplement or explain other evidence, since no other evidence was presented by FPC on this issue. Accordingly, this statement does not meet the requirements of Rule 25-22.048, and should not be admitted into evidence.

II. Page 8, line 23 though Page 9, line 3

Panda's Darol Lindloff contacted Florida Power's Allen Honey in September or October [of] 1992 and again mentioned the possibility that Panda might construct a facility greater than the 74.9 MW permitted under the terms of the contract -- specifically, that it might, during irregular short periods, produce as much as 80 MW.

Panda did not inform Florida Power at this time that it was contemplating a facility as large as 115 MW.

This statement by Mr. Dolan is double hearsay, in that there is no evidence that Mr. Dolan was personally involved in any such communications. In fact, Mr. Dolan's testimony states on its face that the alleged conversations involve only Allen Honey of FPC, who is not testifying in this case. Mr. Dolan's testimony does not supplement or explain other evidence, since no other evidence was presented by FPC on this issue. Accordingly, this statement does not meet the requirements of Rule 25-22.048, and should not be admitted into evidence.

III. Page 9, line 18 through Page 10, line 2

At a meeting in late June, 1994, Panda's representative informed Florida Power's representatives for the first time that it was now planning to construct a facility with a net capacity of 115 MW. Florida Power's representative responded at the time by advising Panda that Florida Power did not consider a facility of this size to be consistent with the standard offer contract's 75 MW limitation adopted and approved under the Commission's rules, and by urging Panda, if it intended to pursue the enlarged facility, to obtain a ruling from the Commission regarding the continued availability of the standard offer contract.

This statement by Mr. Dolan is double hearsay, in that there is no evidence that Mr. Dolan was personally involved in any such communications. Mr. Dolan was not FPC's "representative" during the alleged conversations discussed in Mr. Dolan's testimony. Mr. Dolan's testimony does not supplement or explain other evidence, since no other evidence was presented by FPC on

this issue. Accordingly, this statement does not meet the requirements of Rule 25-22.048, and should not be admitted into evidence.

IV. Page 10, lines 8 through 10

In response to the June proposed modification, David Gammon of Florida Power faxed to Panda another copy of the *Polk Power Partners* decision

This statement by Mr. Dolan is hearsay, in that there is no evidence that Mr. Dolan was personally involved in any such fax. Mr. Dolan's testimony does not supplement or explain other evidence, the alleged fax is not attached, and no other evidence was presented by FPC on this issue. Accordingly, this statement does not meet the requirements of Rule 25-22.048, and should not be admitted into evidence.

V. Page 18, lines 13 through 19

Moreover, Florida Power has not engaged in any conduct subsequent to acceptance of the standard offer contract proposal submitted by Panda that has modified or even been intended to modify the contract on this issue. indeed, several times between 1991 and now, Panda has suggested various proposed contract modifications on this subject, and Florida Power has never accepted any one of them, much less sought permission from the Commission to accept any one of Panda's proposals.

This statement by Mr. Dolan is hearsay, in that there is no evidence that Mr. Dolan was personally involved in the alleged representations or requests by Panda. Mr. Dolan's testimony does not supplement or explain other evidence, and no other evidence was presented by FPC on this issue. Accordingly, this statement does

not meet the requirements of Rule 25-22.048, and should not be admitted into evidence.

VI. Page 22, lines 1 through 4

...Panda, as I understand it, was aware of the Commission's *Polk Power Partners* decision as early as 1992 and had received advice from its in-house counsel at the time that it could not construct a facility that was materially larger than 75 MW.

This statement by Mr. Dolan is hearsay, in that there is no evidence that Mr. Dolan was personally involved in the alleged discussions by Panda's in-house counsel. Mr. Dolan's testimony does not supplement or explain other evidence, and no other evidence was presented by FPC on this issue. Accordingly, this statement does not meet the requirements of Rule 25-22.048, and should not be admitted into evidence.

VII. Dolan Rebuttal, Page 9, lines 24 through 25

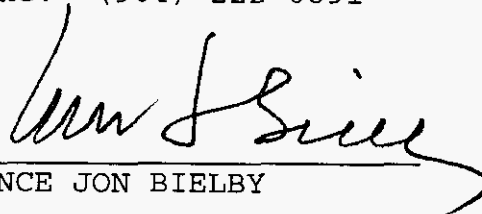
Suffice it to say that Florida Power has never agreed to make capacity payments to Panda beyond 20 years, nor could it have.

This statement by Mr. Dolan is hearsay. The statement attempts to rebut Panda's prefiled testimony that Allen Honey and David Gammon made statements regarding the contract, but Mr. Dolan has no personal knowledge of such statements. Mr. Dolan's testimony does not supplement or explain other evidence, and no other evidence was presented by FPC on this issue. Accordingly,

this statement does not meet the requirements of Rule 25-22.048,  
and should not be admitted into evidence.

Respectfully submitted,

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By:   
LORENCE JON BIELBY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing  
has been furnished by U.S. Mail/~~Hand Delivery~~<sup>AND</sup>/Telecopy to Donald R.  
Schmidt, Esquire, and Steven Dupre, Esquire, Post Office Box 2861,  
Saint Petersburg, Florida 33731, by U.S. Mail/~~Hand Delivery~~<sup>AND</sup>  
/Telecopy to Robert Vandiver, Esquire, and Martha Carter-Brown,  
Esquire, Florida Public Service Commission, 2450, Shumard Oak  
Boulevard, Tallahassee, Florida 32399-0892, by U.S. Mail/~~Hand~~  
~~Delivery~~<sup>AND</sup>/Telecopy to James A. McGee, Esquire, and Jeffery A.  
Froeschloe, Esquire, Post Office Box 14042, St. Petersburg, Florida  
33733-4042, this 16<sup>th</sup> day of FEB., 1996.

  
LORENCE JON BIELBY