



Department of Environmental Protection

Lawton Chiles
Governor

Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Virginia B. Wetherell
Secretary

In the Matter of an
Application for Permit by:

Mr. Robert W. Carter, Chairman
Panda Energy International, Inc.
4100 Spring Valley, Suite 1001
Dallas, TX 75244

DEP File No. 1050257-002-AC
Panda-Kathleen, L.P.
Kathleen Cogeneration Plant
Polk County

NOTICE OF PERMIT DENIAL

The Applicant, Panda-Kathleen, L.P., applied on February 7, 1997, to the Department of Environmental Protection for a permit to modify their existing construction permit issued in 1995 related to an electrical power cogeneration facility near Lakeand, Polk County, Florida.

The Department has permitting jurisdiction under the provisions of Chapter 403, Florida Statutes (F.S.), and Florida Administrative Code (F.A.C.) Chapters 62-4, 62-210, and 62-212. The Department has determined that a review for the Prevention of Significant Deterioration (PSD), a determination of Best Available Control Technology (BACT) and an air construction permit is required for the proposed work.

The Department hereby denies the permit for the following reasons:

1. The application to modify the existing PSD permit was submitted on February 7, 1997, with the intentions of submitting additional information to the proposed revisions to both the technical analysis and the actual permit within the following weeks. The information was never submitted.
2. The applicant's consultant Environmental Consulting & Technology (ECT), Inc. submitted a letter on March 4, 1997, informing the Department that contractual issues have affected the Kathleen cogeneration project. They asked the Department to place the review of the recently submitted application on hold until the contractual matters were resolved.
3. The Department in its letter of March 5, 1997 acknowledged the applicant's request to put the application on hold. The Department requested the applicant to submit the additional information about the project as early as possible.
4. The permit engineer in a telephone request during January 1998 requested the applicant to provide an update on the status of the project and, if appropriate, to withdraw the application. The application was still considered incomplete after eleven (11) months of submittal of application.

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5. ECT submitted another letter on January 19, 1998, in response to the Department's telephone request, indicating that the status of the project was pending. The project was awaiting a ruling from the Florida Public Service Commission (PSC) within the subsequent three (3) months. The Department was not notified of any further development regarding the PSC ruling.
6. The permit engineer in a telephone conversation with ECT in July 1998 re-iterated the importance of providing additional information to complete the application. The application at this stage was incomplete after seventeen (17) months of submittal.
7. The Department in a letter dated September 22, 1998, gave the applicant thirty (30) days after receipt of the letter to provide the requested information or show good cause that an extension is required. The letter made reference to Rule 62-4.055(1) F.A.C. which gives the applicant ninety (90) days after the Department mails a timely request for additional information to submit that information to the Department. Failure of an applicant to provide the timely requested information shall result in denial of the application.
8. Based on the above facts, the Department is issuing this notice of permit denial.

A person whose substantial interests are affected by the Department's permit denial may petition for an administrative proceeding (hearing) under sections 120.569 and 120.57 of the Florida Statutes. The petition must contain the information set forth below and must be filed (received) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station #35, Tallahassee, Florida, 32399-3000. Petitions filed by the permit applicant or any of the parties listed below must be filed within fourteen days of receipt of this Notice of Permit Denial. Petitions filed by any persons other than those entitled to written notice under section 120.60(3) of the Florida Statutes must be filed within fourteen days of receipt of this Notice of Permit Denial. A petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under sections 120.569 and 120.57 F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention will be only at the approval of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205 of the Florida Administrative Code.

A petition that disputes the material facts on which the Department's action is based must contain the following information: (a) The name and address of each agency affected and each agency's file or identification number, if known; (b) The name, address, and telephone number of the petitioner, the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination; (c) A statement of how and when petitioner received notice of the agency action or proposed action; (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate; (e) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and (f) A demand for relief.

A petition that does not dispute the material facts upon which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301.

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any such final decision of the Department on the application have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above. The failure of any person to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under sections 120.569 and 120.57 F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention will be only at the approval of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205 of the Florida Administrative Code.

This Notice constitutes final agency action unless a petition is filed in accordance with the above paragraphs or unless a request for extension of time in which to file a petition is filed within the time specified for filing a petition and conforms to Rule 62-110.106, F.A.C. Upon timely filing of a petition or a request for an extension of time this Notice will not be effective until further Order of the Department.

Any party to this Notice of Permit Denial has the right to seek judicial review pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the Department in the Legal Office; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 (thirty) days from the date this Notice is filed with the Clerk of the Department.

Executed in Tallahassee, Florida.



Howard L. Rhodes, Director
Division of Air Resources
Management

CERTIFICATE OF SERVICE

The undersigned duly designated deputy agency clerk hereby certifies that this NOTICE OF PERMIT DENIAL and all copies were sent by certified mail (*) and copies were mailed by U.S. Mail before the close of business on 11-10-98 to the person(s) listed:

Mr. Robert W. Carter, Panda Energy International, Inc.*
Mr. Jeffrey L. Meling, P.E., ECT
Mr. Gregg Worley, EPA
Mr. John Bunyak, NPS
Mr. Bill Thomas, DEP

Clerk Stamp

FILING AND ACKNOWLEDGMENT
FILED, on this date, pursuant to §120.52,
Florida Statutes, with the designated
Department Clerk, receipt of which is hereby
acknowledged.

Kun Jober 11-10-98
(Clerk) (Date)

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- Addressee's Address
- Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to: Robert W. Carter, Chairman Panda Energy Int'l, Inc 4100 Spring Valley, Suite 1001 Dallas, TX 75244	4a. Article Number 2 333 612 496
5. Received By: (Print Name)	4b. Service Type <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Certified <input type="checkbox"/> Express Mail <input type="checkbox"/> Insured <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> COD
6. Signature: (Addressee or Agent) X <i>[Signature]</i>	7. Date of Delivery 11/13/55
PS Form 3811, December 1994	8. Addressee's Address (Only if requested and fee is paid)

102595-97-B-0179 Domestic Return Receipt

Thank you for using Return Receipt Service.

2 333 612 496

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided.
Do not use for International Mail (See reverse)

Sent to	Robert Carter
Street & Number	Panda-Kathleen
Post Office, State, & ZIP Code	Dallas, TX
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$
Postmark or Date	11-10-98
	1050257-002-AC

PS Form 3800, April 1995