

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for
Determination of Need of Hines
Unit 2 Power Plant.

DOCKET NO. 001064-EI
ORDER NO. PSC-00-1960-PHO-EI
ISSUED: October 24, 2000

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on October 11, 2000, in Tallahassee, Florida, before Commissioner Lila A. Jaber, as Prehearing Officer.

APPEARANCES:

GARY L. SASSO, ESQUIRE, J. MICHAEL WALLS, ESQUIRE, JILL H. BOWMAN, ESQUIRE, Carlton Fields, P.O. Box 2861, St. Petersburg, Florida 33731-2861 and ROBERT A. GLENN, ESQUIRE, Florida Power Corporation, P.O. Box 2861, St. Petersburg, Florida 33731
On behalf of Florida Power Corporation (FPC).

DEBORAH D. HART, ESQUIRE, and KATRINA D. WALKER, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission Staff (STAFF).

PREHEARING ORDER


I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

II. CASE BACKGROUND

Pursuant to Section 403.519, Florida Statutes, and Rules 25-22.080 and 25-22.081, Florida Administrative Code, on August 7, 2000, Florida Power Company (FPC) petitioned for a determination of need for an electrical power plant to be located at the Hines Energy Complex in Polk County, Florida. These proceedings are held to determine whether the proposed Hines Unit 2 meets the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, whether the proposed plant is the

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FPC-RECORDS/REPORTING

most cost-effective alternative available, whether there are any conservation measures which can mitigate the proposed power plant, and any other matters within the Commission's jurisdiction which it deems relevant, according to the requirements of Section 403.519, Florida Statutes.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 366.093, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the

confidential nature of the information is preserved as required by statute.

- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the

prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties and staff has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. **However, oral summaries shall be limited to five minutes.** Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

Direct

| <u>Witness</u> | <u>Proffered By</u> | <u>Issue #</u> |
|-------------------|---------------------|----------------|
| John B. Crisp | FPC | 3, 4, 5, 7 |
| Alan S. Taylor | FPC | 3, 5, 7, 9 |
| Robert D. Niekum | FPC | 3, 4 |
| Eric G. Major | FPC | 4 |
| W. Jeffrey Pardue | FPC | 4 |
| Peter M. O'Neill | FPC | 3, 4 |
| Billy R. Dickens | Staff | 4, 7 |

Rebuttal

| <u>Witness</u> | <u>Proffered By</u> | <u>Issue #</u> |
|----------------------|---------------------|----------------|
| John Flynn | FPC | 4, 7 |
| Charles J. Cicchetti | FPC | 4, 7 |

VII. BASIC POSITIONS

FPC: FPC seeks an affirmative determination of need for the Hines 2 power plant to enable the Company to meet its obligation to maintain electric system reliability and integrity and to continue to provide adequate electricity to its ratepayers at a reasonable cost.

FPC recently agreed to increase its Reserve Margin planning criterion from a minimum of 15 percent to a minimum of 20 percent, effective no later than the summer of 2004. The Company needs to add substantial new capacity to its system in order to meet this planning objective. In its planning judgment, the Company has determined to implement this new planning criterion in the winter of 2003/04. The Company has relied increasingly over the last decade upon dispatchable demand-side resources to reduce the "firm" load that must be protected by planning reserves. This has included placing a large number of willing customers on load-management or interruptible service in exchange for

reduced tariffs. Due to the Company's experience with its Residential Energy Management Program over the last two years (i.e., attrition by customers concerned about interruptions), the Company believes that it is prudent to reduce its reliance on dispatchable demand-side alternatives.

This is important because we are facing a period of some uncertainty about how the Company's new Energy Management program will be received by residential customers, which creates the need for more "insurance" in the form of additional hard generating assets before the Summer of 2004, and it is FPC's judgment in any event that the Company should carry more supply-side assets than it has in the past. This will better address concerns expressed by the Commission Staff that FPC has relied too much on demand-side resources as a percentage of total reserves--in view of changes to unit ratings, volatility in weather and consumption patterns, and other concerns----and enhance the Company's electric system reliability and integrity.

Further, building the Hines 2 plant will enable FPC to continue to provide adequate electricity to its ratepayers at a reasonable cost. It will provide needed diversity, efficiency, and cost-effectiveness to the Company's fleet, enabling the Company to achieve substantial fuel savings for its ratepayers over the life of the plant. The projected installed cost for Hines 2 is well below the current market estimates for equivalent units because of previously negotiated favorable equipment option terms.

In addition, the plant is the most cost-effective alternative available to FPC. FPC determined to seek approval to build Hines 2 only after conducting a rigorous internal review of supply-side and demand-side options and after soliciting and evaluating competing proposals submitted by interested third-party suppliers. After a thorough analysis of the two bids it received in response to its Request for Proposals, FPC concluded that

the Hines 2 plant was the most cost-effective supply-side alternative available to FPC to meet its need for power.

The Company has attempted to avoid or defer constructing the unit by considering and pursuing demand-side options reasonably available to it, but the Company has nonetheless concluded that it cannot avoid or defer its need to build the unit.

For all these reasons, as more fully developed in FPC's Need Study (and the Confidential Section of that Study) and supporting appendices and tables, and its pre-filed testimony and exhibits, FPC respectfully requests that the PSC grant a favorable determination of need for the Hines 2 plant.

FPC must register its objection to Staff's attempt to raise an issue that the Commission may not and should not consider in this proceeding, namely, preliminary issue 6. This issue is outside the scope of the Commission's jurisdiction, and, in any event, falls outside the proper scope of this proceeding. Through preliminary issue 6, Staff asks the Commission to take up the unknown impact on ratepayers of potential deregulation at some point in time in the future if the costs of the Hines 2 power plant are placed in FPC's rate base over the course of the expected life of the Hines 2 plant. The Commission does not have jurisdiction to act on this issue in this proceeding since it fundamentally concerns the Florida Legislature's prerogative to restructure existing laws and to provide for any transition from existing rules and regulations. Moreover, Staff seeks through this issue to propose that the Commission violate Supreme Court-decreed principles of prudence review, which provide that the Commission must not assess the prudence of utility decisions based on hindsight (i.e., looking at circumstances that developed after the decision at issue was made). Finally, Staff's proposal calls upon the Commission to assert the power to deny FPC a reasonable rate of return on costs prudently incurred, in violation of FPC's rights under the Florida statutes and the Florida and United States constitutions. For all these

reasons, FPC has moved the Commission to strike Staff's Preliminary Issue Number 6 and the testimony proffered by Staff on this issue from this proceeding.

STAFF: Except where Staff has testified, Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions. Testifying staff's positions are set forth in his testimony.

VIII. ISSUES AND POSITIONS

ISSUE 1: Stipulated. See Section X, Proposed Stipulations.

ISSUE 2: Stipulated. See Section X, Proposed Stipulations.

ISSUE 3: Is there a need for the proposed Hines Unit 2, taking into account the need for electric system reliability and integrity, as this criterion is used in Section 403.519, Florida Statutes?

POSITIONS

FPC: Yes. FPC recently agreed to increase its Reserve Margin planning criterion from a minimum of 15 percent to a minimum of 20 percent, effective no later than the summer of 2004. The Company needs to add substantial new capacity to its system in order to meet this planning objective. The Company has relied increasingly over the last decade upon dispatchable demand-side resources to reduce the "firm" load that must be protected by planning reserves. This has included placing a large number of willing customers on load-management or interruptible service in exchange for reduced tariffs. Due to the Company's experience with its Residential Energy Management Program over the last two years (i.e. attrition by customers concerned about interruptions), the Company believes that it is prudent to reduce its reliance on dispatchable demand-side alternatives. (Crisp, Niekum, Major, Pardue, O'Neill)

STAFF: No position at this time pending the evidence adduced at hearing.

ISSUE 4: Is there a need for the proposed Hines Unit 2, taking into account the need for adequate electricity at a reasonable cost, as this criterion is used in Section 403.519, Florida Statutes?

POSITIONS

FPC: Yes. The Hines 2 power plant will be a state-of-the-art, highly efficient, environmentally benign unit, and it will be built at a site planned and well suited for expansion of FPC's generation system. It will provide needed diversity, efficiency and cost-effectiveness to the Company's fleet, enabling the Company to achieve substantial fuel savings for its ratepayers over the life of the plant. The projected installed cost for Hines 2

is well below the current market estimates for equivalent units because of previously negotiated favorable equipment option terms. (Crisp, Niekum, O'Neill, Cicchetti)

STAFF: For testifying staff, it is not reasonable to bind retail customers for the long term, given changes in the market and regulatory scheme. (Dickens)
For nontestifying staff, no position is taken at this time pending the evidence adduced at hearing.

ISSUE 5: Has Florida Power Corporation met the requirements of Rule 25-22.0826, Florida Administrative Code, "Selection of Generating Capacity", by conducting a fair bid process?

POSITIONS

FPC: Yes. Pursuant to Rule 25-22.082, Florida Administrative Code, FPC issued a Request for Proposals ("RFP") on January 26, 2000, to solicit competitive proposals for supply-side alternatives to its planning and bid evaluation benchmark, Hines 2. As required by that rule, FPC filed its RFP with the PSC on January 26, 2000.

Through its RFP, FPC endeavored to attract all proposals that might offer lower cost supply-side resources or provide more economic value to FPC and its ratepayers. The only real limitations FPC placed on potential proposals were that the capacity offered to FPC had to be dedicated solely to FPC's use and subject to economic dispatch by FPC. FPC sought proposals that might offer FPC superior value and other attributes from anyone interested in responding to the RFP.

FPC sent its RFP to more than 50 independent power producers and electric utilities, published the RFP on the Company's internet website, and published notice of the RFP in several national and local newspapers and in various widely disseminated trade journals. FPC requested notification from potential bidders by February 10, 2000, expressing their interest in submitting a

proposal in response to the RFP, called a Notice of Intent to Bid ("NOI"). FPC set up a pre-bid meeting for interested parties on February 18, 2000, to provide an opportunity for any interested person to ask questions about the RFP or to discuss the RFP.

Thirteen companies submitted NOIs on the project, and representatives of twelve entities attended the optional pre-bid meeting. A member of the PSC Staff also attended the pre-bid meeting. At that meeting, and in response to questions raised before the meeting, FPC said that it would entertain proposals by bidders to build their power plants at the HEC. FPC also identified a contact person to handle all questions about the RFP. Before the time for submissions of bids arrived, FPC provided answers to various inquiries from potential bidders. FPC circulated questions of general interest - and FPC's answers - to all potential bidders that had submitted an NOI. FPC also posted a transcript of the pre-bid meeting and the answers to the potential bidder's questions on its website.

In its RFP, FPC had set March 27, 2000 as the deadline for bids. Although numerous potential bidders had expressed an intention to bid, two bidders in fact submitted proposals for FPC's consideration. Both bidders requested that the terms of their proposals be treated as confidential.

After a thorough analysis of the two bids, FPC concluded that the Hines 2 plant was the most cost-effective supply-side alternative available to FPC to meet its need for power. (Crisp, Taylor)

STAFF: No position at this time pending the evidence adduced at hearing.

ISSUE 6: Stricken pursuant to Order No. PSC-00-1933-PCO-EI.

ISSUE 7: Is the proposed Hines Unit 2 the most cost-effective alternative available, as this criterion is used in Section 403.519?

POSITIONS

FPC: Yes. FPC determined to seek approval to build Hines 2 only after conducting a rigorous internal review of supply-side and demand-side options and after soliciting and evaluating competing proposals submitted by interested third-party suppliers. After a thorough analysis of the two bids it received in response to its Request for Proposals, FPC concluded that the Hines 2 plant was the most cost-effective supply-side alternative available to FPC to meet its need for power. (Crisp, Taylor, Cicchetti)

STAFF: For testifying staff, it is not reasonable to bind retail customers for the long term, given changes in the market and regulatory scheme. (Dickens)
For nontestifying staff, no position is taken at this time pending the evidence adduced at hearing.

ISSUE 8: Stipulated. See Section X, Proposed Stipulations.

ISSUE 9: Based on the resolution of the foregoing issues, should the Commission grant Florida Power Corporation's petition to determine the need for the proposed Hines Unit 2?

POSITIONS

FPC: Yes. For the foregoing reasons, as more fully developed in the testimony and exhibits filed by FPC in this proceeding, the Commission should grant FPC's petition for a determination of need for the proposed Hines Unit 2. (Crisp, Taylor)

STAFF: No position at this time.

IX. EXHIBIT LIST

| <u>Witness</u> | <u>Proffered</u> | <u>ID #</u> | <u>Description</u> |
|----------------|------------------|-------------|--------------------|
| | <u>By</u> | | |

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|---------------------|-----|--|---|
| John B. Crisp | FPC | <u> </u> JBC-1 | FPC's Need Study for Hines 2 (with attachments), a composite exhibit |
| | FPC | <u> </u> JBC-2 | FPC's Notice of Filing Request for Proposals (dated January 26, 2000) |
| John B. Crisp | FPC | <u> </u> (Confidential) JBC-3 Appendices 1-8 | FPC's Confidential Section of its Need Study, Bidder A and B proposals, correspondence regarding required and supplemental information, FPC's evaluations of the bidder's proposals on economic and non- price attributes grounds, a composite exhibit. |
| Alan S. Taylor | FPC | <u> </u> AST-1 | Mr. Taylor's curriculum vitae |
| Robert D. Niekum | FPC | <u> </u> RDN-1 | FPC's Fuels Forecast |
| | FPC | <u> </u> RDN-2 | FPC's Base, High and Low Case Natural Gas Forecasts |

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| | FPC | <u> </u> RDN-3 | FPC's Natural Gas Forecast Compared to Other Industry Forecasts |
| | FPC | <u> </u> RDN-4 | Estimated Gulf Coast Gas Reserves |
| | FPC | <u> </u> RDN-5 | Gas Transportation Options |
| Eric G. Major | FPC | <u> </u> EGM-1 | Hines Energy Complex Map |
| Eric G. Major | FPC | <u> </u> EGM-2 | Site Arrangement- Overall Plan |
| | FPC | <u> </u> EGM-3 | Site Arrangement- Power Block Area |
| | FPC | <u> </u> EGM-4 | Typical Combined Cycle Schematic |
| | FPC | <u> </u> EGM-5 | Installed Cost Estimate for Hines Unit 2 |
| | FPC | <u> </u> EGM-6 | Project Schedule for Hines 2 Unit |
| Peter M. O'Neill | FPC | <u> </u> PMO-1 | Map of FPC's Existing Generation Plants, Substations and Transmission Lines |

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|-------------------------|-----------|----------------------------|---|
| | FPC | <u> </u> PMO-2 | Map of Transmission Network in the Vicinity of the Hines Energy Complex |
| Charles J. Cicchetti | FPC | <u> </u> CJC-1 | Mr. Cicchetti's curriculum vitae |
| | FPC/Staff | <u> </u> | All documents listed in FPC's and Staff's Requests for Official Recognition |
| | Staff | <u> </u> | FPC's Responses to Staff's Interrogatories |
| | Staff | <u> </u> | Any documents produced in response to Staff's Request for Production |
| | Staff | <u> </u> | Affidavit of Publication of Notice in <u>Lakeland Ledger</u> |
| | Staff | <u> </u> | FPC's Petitions for waiver of 10- year minimum term in standard offer contract rule |

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

Staff supports the following FPC proposed stipulations:

1. **Issue 1: Is Florida Power Corporation an "applicant" within the meaning of the Siting Act and Section 403.519, Florida Statutes?**

Yes. FPC is an "applicant" within the meaning of the Siting Act and Section 403.519, Florida Statutes.

2. **Issue 2: Is the output of the proposed Hines Unit 2 fully committed for use by Florida customers who purchase electrical power at retail rates?**

Yes. The proposed Hines Unit 2 will be fully committed to helping FPC meet its obligation to provide reliable electric service to ratepayers at a reasonable cost. This does not preclude FPC from making wholesale sales inside and outside the state when it is in the best interests of FPC's retail ratepayers. The entire Hines 2 plant will count toward FPC's reserve margin.

3. **Issue 8: Are there any conservation measures taken by or reasonably available to Florida Power Corporation which might mitigate the need for the proposed power plant?**

There are no conservation measures taken by or reasonably available to FPC which might mitigate the need for the proposed power plant.

XI. PENDING MOTIONS

FPC's Third Request for Confidential Classification (filed October 18, 2000).

It is therefore,

ORDERED by Commissioner Lila A. Jaber, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

3. **Issue 8: Are there any conservation measures taken by or reasonably available to Florida Power Corporation which might mitigate the need for the proposed power plant?**

There are no conservation measures taken by or reasonably available to FPC which might mitigate the need for the proposed power plant.

XI. PENDING MOTIONS

FPC's Third Request for Confidential Classification (filed October 18, 2000).

It is therefore,

ORDERED by Commissioner Lila A. Jaber, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Lila A. Jaber, as Prehearing Officer, this 24th day of October, 2000.



LILA A. JABER
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.