

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to determine
need for Hines Unit 3 in Polk
County by Florida Power
Corporation.

DOCKET NO. 020953-EI
ORDER NO. PSC-03-0210-CFO-EI
ISSUED: February 12, 2003

ORDER GRANTING FLORIDA POWER CORPORATION'S THIRD REQUEST FOR
CONFIDENTIAL CLASSIFICATION (DOCUMENT NO. 13796-02)

On December 18, 2002, Florida Power Corporation (FPC), pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, filed its Third Request for Confidential Classification. The Request seeks confidential treatment for information in Exhibits or portions of Exhibits 6, 7, 8, 9, and 10 submitted in the Hines 3 need determination hearing conducted on December 3, 2002. The Exhibits are assigned Document Nos. 13209-02, 13210-02, 13211-02, 13212-02, and 13213-03.

Exhibits 6, 7, 8, 9, and 10 contain detailed descriptions of the proposals FPC received in response to the Request for Proposals (RFP) required by Rule 25-22.082, Florida Administrative Code (Bid Rule). A matrix identifying the lines and pages of the Exhibit that FPC claims is confidential is contained in Attachment A to this Order.

In support of its Request, FPC explains that the following paragraph was included in its RFP:

The bidders should mark all confidential and proprietary information contained in the proposals as "Confidential." While Florida Power will use its best efforts to protect the confidentiality of such information and only release such information to the members of the evaluation team, management, agents and contractors, and as necessary and consistent with applicable laws and regulations, to its affiliates and regulatory commissions, in no event shall Florida Power be liable to a Bidder for any damages of whatsoever kind resulting from Florida Power's failure to protect the confidentiality of Bidder's information. By submitting a proposal, the Bidder agrees to allow Florida Power to use the results of the RFP as evidence in any

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proceeding before the Florida Public Service Commission (FPSC). To the extent Florida Power wishes to use information that a Bidder considers to treat such information as confidential and to limit its dissemination, but Florida Power makes no assurance of the outcome of any such petition.

Seven bids were received and all bidders requested confidential treatment. FPC has not disclosed the bids to the public.

FPC states that according to Section 366.093(3)(d), Florida Statutes, "information concerning bids" the "disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms" is considered proprietary confidential business information. FPC explains that if bidders thought their bids would be made public, they might not bid at all, or they might withhold sensitive and important information needed to fully understand the costs and benefits of their proposals. In either case, FPC claims that its ability to contract for goods and services on favorable terms would be impaired.

Florida law presumes that documents submitted to governmental agencies shall be public records. The only exceptions to this presumption are the specific statutory exemptions provided in the law and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This presumption is based on the concept that government should operate in the "sunshine." Rule 25-22.006(4)(c), Florida Administrative Code, provides that it is the Company's burden to demonstrate that the documents fall into a statutory exemption or that the information is proprietary confidential business information, the disclosure of which will cause the Company or its ratepayers harm.

Section 366.093, Florida Statutes, defines "proprietary confidential business information" as:

[I]nformation, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless

disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public.

Upon review of the filings submitted, I find that the highlighted information contained in Exhibits 6, 7, 8, 9, and 10, which is identified in Attachment A to this order, satisfies the definition of proprietary confidential business information. For the reasons provided by FPC, these exhibits contain information which, if disclosed, would impair FPC's ability to contract for goods or services. In addition, FPC maintains control over the information, and FPC treats it as confidential. FPC's Third Request for Confidential Classification is therefore granted.

Pursuant to Section 366.093(4), Florida Statutes, confidential protection may only be granted for a period of 18 months unless the entity making the request shows good cause why the period should be extended. FPC did not specify a duration for the confidential status of the document, so the document will be granted confidential status for 18 months.

Based on the foregoing, it is

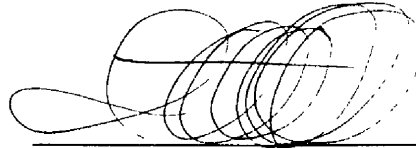
ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that Florida Power Corporation's Third Request for Confidential Classification is granted. It is further

ORDERED that pursuant to Section 366.093(4), Florida Statutes, and Rule 25-22.006, Florida Administrative Code, any confidentiality granted to the documents specified herein shall expire eighteen (18) months from the date of issuance of this Order in the absence of a renewed request for confidentiality pursuant to Section 364.183. It is further

ORDERED that this Order will be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period.

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By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 12th day of February, 2003.



BRAULIO L. BAEZ
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; or (2) 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 the Commission Clerk and Administrative Services, in the form

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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.

IDENTIFICATION MATRIX OF INFORMATION FOR WHICH CONFIDENTIAL
CLASSIFICATION IS SOUGHT WITH JUSTIFICATION

DOCUMENTS	PAGE/LINE	JUSTIFICATION
Hines 3 Hearing Exhibit 6	p. 2, all text lines; Bidder B	§ 366.093(3)(d) This Bidder specific analysis of Bidder B's ability to obtain the necessary environmental and other permits, if disclosed, would tend to identify the location of Bidder B's proposed plant, the status of its permits, and other detailed confidential information about Bidder B's proposed project and identity. This information, including the location of the Bidder B's proposed project, was provided as part of the confidential information submitted in response to the RFP. Moreover, each Bidder's identity has been kept confidential insofar as it was given in the context of bid- specific

DOCUMENTS	PAGE/LINE	JUSTIFICATION
		information to ensure the maintenance of the confidential nature of the bids. The disclosure of this information would impair the utility's efforts to contract for such services on favorable terms.
Hines 3 Hearing Exhibit 6	p. 3, all text lines; Bidder C	§ 366.093(3)(d) This Bidder specific analysis of Bidder C's ability to obtain the necessary environmental and other permits, if disclosed, would tend to identify the location of Bidder C's proposed plant, the status of its permits, and other detailed confidential information about Bidder C's proposed project and identity. This information, including the location of the Bidder C's proposed project, was provided as part of the confidential information

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		submitted in response to the RFP. Moreover, each Bidder's identity has been kept confidential insofar as it was given in the context of bid specific information to ensure the maintenance of the confidential nature of the bids. The disclosure of this information would impair the utility's efforts to contract for such services on favorable terms.
Hines 3 Hearing Exhibit 6	p.4, all text lines, Bidder D	§ 366.093(3)(d) This Bidder specific analysis of Bidder D's ability to obtain the necessary environmental and other permits, if disclosed, would tend to identify the location of Bidder D's proposed plant, the status of its permits, and other detailed confidential information about Bidder D's proposed

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		project and identity. This information, including the location of the Bidder D's proposed project, was provided as part of the confidential information submitted in response to the RFP. Moreover, each Bidder's identity has been kept confidential insofar as it was given in the context of bid specific information to ensure the maintenance of the confidential nature of the bids. The disclosure of this information would impair the utility's efforts to contract for such services on favorable terms.
Hines 3 Hearing Exhibit 6	p.5, all text lines, Bidder F	§ 366.093(3)(d) This Bidder specific analysis of Bidder F's ability to obtain the necessary environmental and other permits, if

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		disclosed, would tend to identify the location of Bidder F's proposed plant, the status of its permits, and other detailed confidential information about Bidder F's proposed project and identity. This information, including the location of the Bidder F's proposed project, was provided as part of the confidential information submitted in response to the RFP. Moreover, each Bidder's identity has been kept confidential insofar as it was given in the context of bid specific information to ensure the maintenance of the confidential nature of the bids. The disclosure of this information would impair the utility's efforts to contract for such services on

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Hines 3 Hearing Exhibit 7	Paragraph 1; Sentences 2 and 3	favorable terms. § 366.093(3)(d) This analysis of Bidder F's comments on the proposed terms and conditions of power purchase agreement set forth in the RFP would tend to reveal confidential information about the Bidder's project. This information has been kept confidential and its disclosure would impair the utility's efforts to contact for such services on favorable terms.
Hines 3 Hearing Exhibit 7	Paragraph 2, only sentence	§ 366.093(3)(d) This analysis of Bidder F's comments on the proposed terms and conditions of power purchase agreement set forth in the RFP would tend to reveal confidential information about the Bidder's project. This information has been kept confidential and its disclosure

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		would impair the utility's efforts to contact for such services on favorable terms.
Hines 3 Hearing Exhibit 6	Paragraph 4, Text under Title Section 1, Right of First Refusal	§ 366.093(3)(d) This analysis of Bidder F's comments on the proposed terms and conditions of power purchase agreement set forth in the RFP would tend to reveal confidential information about the Bidder's project or position on certain contractual terms. This information has been kept confidential and its disclosure would impair the utility's efforts to contact for such services on favorable terms.
Hines 3 Hearing Exhibit 7	Paragraph 5, Text under Title Section 2 Adjustments to Fixed Payments	§ 366.093(3)(d) This analysis of Bidder F's comments on the proposed terms and conditions of power purchase agreement set forth in the RFP would tend to reveal confidential

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		information about the Bidder's project or position on certain contractual terms. This information has been kept confidential and its disclosure would impair the utility's efforts to contact for such services on favorable terms.
Hines 3 Hearing Exhibit 7	Paragraph 6, Text under Title Section 3 Default and Security	§ 366.093(3)(d) This analysis of Bidder F's comments on the proposed terms and conditions of power purchase agreement set forth in the RFP would tend to reveal confidential information about the Bidder's project or position on certain contractual terms. This information has been kept confidential and its disclosure would impair the utility's efforts to contact for such services on favorable terms.

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	Paragraph 2, e-mail discussion of Bidder C's, D's, and F's fuel transportation plans confidentially provided in connection with their bids and relative rankings.	§ 366.093(3)(d) This comparative analysis of various Bidders' fuel supply plans would reveal confidential information provided by the Bidders about their fuel supply plans. This information has been kept confidential and if disclosed would impair the utility's efforts to contact for such services on favorable terms.
Hines 3 Hearing Exhibit 8	Paragraph 3, e-mail discussion of Bidder D's fuel transportation plan confidentially provided in connection with its bid	§ 366.093(3)(d) This comparative analysis of Bidder D's fuel supply plans would reveal confidential information provided by the Bidders about their fuel supply plans. This information has been kept confidential and if disclosed would impair the utility's efforts to contact for such services on favorable terms.

DOCUMENTS	PAGE/LINE	JUSTIFICATION
Hines 3 Hearing Exhibit 8	Paragraph 4, e-mail discussion of various Bidders' fuel transportation plans, confidentially provided in connection with their bids.	§ 366.093(3)(d) This comparative analysis of various Bidders' fuel supply plans would reveal confidential information provided by the Bidders about their fuel supply plans. This information has been kept confidential and if disclosed would impair the utility's efforts to contact for such services on favorable terms.
Hines 3 Hearing Exhibit 9	p. 1, April 30, 2002 e-mail from Bart White to Dan Roeder at 9:50 a.m. containing comments on the transmission/interconnection analysis for Bidder F.	§ 366.093(3)(d) This Bidder specific transmission impact information, if disclosed, would tend to identify the location of Bidder F's proposed plant and potentially Bidder F's identity. The location of the Bidder F's proposed project was provided as part of the confidential information submitted in response to the RFP. Moreover,

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		<p>each Bidder's identity has been kept confidential insofar as it was given in the context of bid specific information to ensure the maintenance of the confidential nature of the bids. The disclosure of this information would impair the utilities' efforts to contract for such services on favorable terms.</p>
<p>Hines 3 Hearing Exhibit 9</p>	<p>bottom p. 1 and top p.2; April 30, 2002, e-mail from Bart White to Dan Roeder at 8:06 a.m. containing comments on the transmission/interconnection analysis for Bidder D.</p>	<p>§ 366.093(3)(d) This Bidder specific transmission impact information, if disclosed, would tend to identify the location of Bidder D's proposed plant and potentially Bidder D's identity. The location of the Bidder D's proposed project was provided as part of the confidential information submitted in response to the RFP. Moreover,</p>

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		<p>each Bidder's identity has been kept confidential insofar as it was given in the context of bid specific information to ensure the maintenance of the confidential nature of the bids. The disclosure of this information would impair the utilities' efforts to contract for such services on favorable terms.</p>
<p>Hines 3 Hearing Exhibit 9</p>	<p>Bates page FPC 002613-14; Transmission Planning Analysis and Interconnection Costs for Bidder C's proposal; all text</p>	<p>§ 366.093(3)(d) This Bidder specific transmission impact information, if disclosed, would tend to identify the location of Bidder C's proposed plant and potentially Bidder C's identity. The location of the Bidder C's proposed project was provided as part of the confidential information submitted in response to the RFP. Moreover; each Bidder's</p>

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		<p>identity has been kept confidential insofar as it was given in the context of bid specific information to ensure the maintenance of the confidential nature of the bids. The disclosure of this information would impair the utilities' efforts to contract for such services on favorable terms.</p>
<p>Hines 3 Hearing Exhibit 9</p>	<p>Bates page 002614-15; Transmission Planning Analysis and Interconnection Costs for Bidder D's proposal; all text</p>	<p>§ 366.093(3)(d) This Bidder specific transmission impact information, if disclosed, would tend to identify the location of Bidder D's proposed plant and potentially Bidder D's identity. The location of the Bidder D's proposed project was provided as part of the confidential information submitted in response to the RFP. Moreover; each Bidder's</p>

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		identity has been kept confidential insofar as it was given in the context of bid specific information to ensure the maintenance of the confidential nature of the bids. The disclosure of this information would impair the utilities' efforts to contract for such services on favorable terms.
Hines 3 Hearing Exhibit 9	Bates page 002615-17; Transmission Planning Analysis and Interconnection Costs for Bidder F; all text	§ 366.093(3)(d) This Bidder specific transmission impact information, if disclosed, would tend to identify the location of Bidder F's proposed plant and potentially Bidder F's identity. The location of the Bidder F's proposed project was provided as part of the confidential information submitted in response to the RFP. Moreover; each Bidder's

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		identity has been kept confidential insofar as it was given in the context of bid specific information to ensure the maintenance of the confidential nature of the bids. The disclosure of this information would impair the utilities' efforts to contract for such services on favorable terms.
Hines 3 Hearing Exhibit 10	Bastes page 001861; Screening Analysis Cost Summary Sheet for All Bidders and Hines 3; Bidder B Pricing Information; Spreadsheet grouping 1.	§ 366.093(3)(d) This includes confidential bid pricing and technical plant information submitted by Bidder B. Disclosure of this pricing information would result in the disclosure of confidential information contained in Bidder B's bid, which would impair the utilities' efforts to contract for such services on favorable terms.

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Hines 3 Hearing Exhibit 10	Bates page 001861; Screening Analysis Cost Summary Sheet for All Bidders and Hines 3; Bidder C Pricing Information; Spreadsheet grouping 2.	§ 366.093(3)(d) This includes confidential bid pricing and technical plant information submitted by Bidder C. Disclosure of this pricing information would result in the disclosure of confidential information contained in Bidder C's bid, which would impair the utilities' efforts to contract for such services on favorable terms.
Hines 3 Hearing Exhibit 10	Bates page 001861; Screening Analysis Cost Summary Sheet for All Bidders and Hines 3; Bidder D Pricing Information; Spreadsheet grouping 3.	§ 366.093(3)(d) This includes confidential bid pricing and technical plant information submitted by Bidder D. Disclosure of this pricing information would result in the disclosure of confidential information contained in Bidder D's bid, which would impair the utilities' efforts to contract for

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		such services on favorable terms.
Hines 3 Hearing Exhibit 10	Bates page 001861; Screening Analysis Cost Summary Sheet for all Bidders and Hines 3; Bidder F Pricing Information; Spreadsheet grouping 5	§ 366.093(3)(d) This includes confidential bid pricing and technical plant information submitted by Bidder F. Disclosure of this pricing information would result in the disclosure of confidential information contained in Bidder F's bid, which would impair the utilities' efforts to contract for such services on favorable terms.
Hines 3 Hearing Exhibit 10	Bates page 001863; Screening Analysis Cost Summary Sheet for All Bidders and Hines 3; Bidder B Pricing Information; Spreadsheet grouping 1.	§ 366.093(3)(d) This includes confidential bid pricing and technical plant information submitted by Bidder B. Disclosure of this pricing information would result in the disclosure of confidential information contained in Bidder B's bid, which

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		would impair the utilities' efforts to contract for such services on favorable terms.
Hines 3 Hearing Exhibit 10	Bates page 001863; Screening Analysis Cost Summary Sheet for All Bidders and Hines 3; Bidder C Pricing Information; Spreadsheet grouping 2.	§ 366.093(3)(d) This includes confidential bid pricing and technical plant information submitted by Bidder C. Disclosure of this pricing information would result in the disclosure of confidential information contained in Bidder C's bid, which would impair the utilities' efforts to contract for such services on favorable terms.
Hines 3 Hearing Exhibit 10	Bates page 001863; Screening Analysis Cost Summary Sheet for All Bidders and Hines 3; Bidder D Pricing Information; Spreadsheet grouping 3.	§ 366.093(3)(d) This includes confidential bid pricing and technical plant information submitted by Bidder D. Disclosure of this pricing information would result in the disclosure of confidential

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		information contained in Bidder D's bid, which would impair the utilities' efforts to contract for such services on favorable terms.
Hines 3 Hearing Exhibit 10	Bates page 001863; Screening Analysis Cost Summary Sheet for all Bidders and Hines 3; Bidder F Pricing Information; Spreadsheet grouping 5	§ 366.093(3)(d) This includes confidential bid pricing and technical plant information submitted by Bidder F. Disclosure of this pricing information would result in the disclosure of confidential information contained in Bidder F's bid, which would impair the utilities' efforts to contract for such services on favorable terms.