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**Florida Power**  
CORPORATION

**JAMES A. MCGEE**  
SENIOR COUNSEL

October 19, 1998

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

Dear Ms. Bayó:

Enclosed for filing are an original and fifteen copies of Petition of Florida Power Corporation for waiver of Rule 25-22.082, F.A.C., Selection of Generating Capacity.

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.

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Very truly yours,

*James A. McGee*  
James A. McGee

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GENERAL OFFICE

3201 Thirty-fourth Street South • Post Office Box 14042 • St. Petersburg, Florida 33733-4042 • (727) 866-5184 • Fax: (727) 866-4931

A Florida Progress Company

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Petition of Florida Power Corporation for waiver of Rule 25-22.082, F.A.C., Selection of Generating Capacity.

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Docket No. \_\_\_\_\_

Submitted for filing:  
October 20, 1998

**PETITION**

Florida Power Corporation (Florida Power, or the Company), pursuant to Section 120.542, F.S., and Rule 25-22.082(9), F.A.C., hereby petitions the Florida Public Service Commission (the Commission) for a waiver of Rule 25-22.082, F.A.C., entitled "Selection of Generating Capacity," as such rule may apply to the filing of a petition with the Commission to determine the need for a proposed advanced technology, combined-cycle electric generating plant to be located at Florida Power's Hines Energy Complex in Polk County, Florida. As will be more fully explained below, the requested waiver is based on the unique cost, scheduling, site, environmental, and utility control advantages of the proposed new plant, coupled with a commitment by Florida Power to absorb the additional fixed costs of the plant in its existing base rates until at least 2006 (five years after the plant's in-service date). Collectively, these factors ensure that Florida Power's customers will receive a greater benefit from the construction of its proposed plant than could be provided by any other supply alternative, including any selected under Rule 25-22.082, F.A.C. In support of this petition, Florida Power states as follows:

1. Petitioner, Florida Power, is a public utility subject to the jurisdiction of the Commission under Chapter 366, Florida Statutes. Florida Power's General Offices are located at 3201 34<sup>th</sup> Street South, St. Petersburg, Florida, 33711.

2. All notices, pleadings and other communications required to be served on petitioner should be directed to:

James A. McGee, Esquire  
Post Office Box 14042  
St. Petersburg, FL 33733-4042  
Facsimile: (727) 866-4931

For express deliveries by private courier, the address is:

3201 34th Street South  
St. Petersburg, FL 33711

### Background

3. By petition filed in Docket No. 910759-EI, Florida Power requested the Commission to determine the need for four 235 megawatt, natural gas-fired combined-cycle generating units to be placed in service between 1998 and 2000 at a new power plant site in Polk County, which were then referred to as Polk County Units 1 through 4. By Order No. 25805, issued February 25, 1992, the Commission approved the need for Polk County Units 1 and 2, but deferred a decision on Units 3 and 4 because of several uncertainties regarding the timing of these units' need, including whether a further expansion of the load management program beyond the level projected by Florida Power, or an increase in the estimated amount of contracted cogeneration capacity, might delay the need for these units. The order allowed Florida Power to return to the Commission when the timing of additional needs beyond that satisfied by the approved units became clearer.

4. The Polk County plant site is now known as the Hines Energy Complex. Units 1 and 2 were subsequently redesigned and combined into a single, advanced technology 500 megawatt unit using a so called "two-on-one" configuration<sup>1</sup> and has

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<sup>1</sup> Under this configuration, the exhaust gases from two 150 megawatt advanced technology combustion turbine-generator units are fed into waste heat recovery steam generators that power a single 200 megawatt steam turbine-generator unit.

been designated as Hines 1. The unit is currently in the final stages of construction, with commercial operation scheduled for later this year, at which time it is expected to become one of the most efficient generating plants in the Southeast. Similarly, former Units 3 and 4 have also been redesigned as a virtual twin of Hines 1 and is designated as Hines 2.

#### Recent Experience

5. Florida Power's last Ten-Year Site Plan, as of December 31, 1997, projected an in-service date for Hines 2 in late 2004. However, because of concerns raised by Staff regarding the adequacy of reserves statewide, and this past summer's extreme weather experience which brought these concerns into sharper focus, Florida Power now proposes to accelerate the in-service date of Hines 2 to the summer of 2001.

6. During the past summer's record-setting heatwave, Florida Power exceeded the previous record summer peak demand set in 1997 on 30 separate days. The peak demand of 8,004 megawatts on July 2nd exceeded the 1997 summer peak by over 540 megawatts and the forecasted 1998 summer peak by over 400 megawatts. In addition, this past summer's experience reinforced the concern that when extreme weather patterns are wide spread throughout the nation or the Southeast region, purchased power provides little or no assistance in meeting critical capacity conditions. During the record and near-record peak demands experienced during the summer, emergency purchases were largely unavailable, and in those instances when purchases were available, they could only be made at unprecedented high prices.

7. Most important, particularly to Florida Power, the prolonged heatwave provided the Company with a practical demonstration that reliance on dispatchable DSM programs for a substantial portion of its generating reserves can be problematic. Since its beginnings in the early 1980's, with the Commission's approval and encouragement, Florida Power has become recognized as a national leader in the use of direct load control programs as an alternative to the construction of additional generating capacity for meeting peak demand. Over this period, Florida Power's residential load management has grown steadily to become by far the largest in the state, and has provided an increasingly large portion of the Company's overall reserves. Traditionally, dispatchable DSM programs such as load management have been viewed as providing the functional equivalent of the reserves that would have been provided by the generating plants that these DSM programs avoided. However, as became apparent when the recent heatwave repeatedly strained the Company's reserves, the human element inherent in these DSM programs imposes certain practical limitations on the extent to which the programs can be used during prolonged periods of high demand without exceeding customer tolerance levels -- limitations that do not exist with real "bricks and mortar" generating plants.

8. Limiting the use of dispatchable DSM programs in a manner that balances customer tolerance with the economic incentive given to customers for their participation is essential to preserve the long term viability of these programs. If these practical limitations on the use of dispatchable DSM programs are not taken into account and, instead, the programs are simply called upon whenever needed irrespective of customer tolerance levels, the effect will be an uncontrolled

deterioration of the programs in the form of rampant attrition and a corresponding loss of the programs' contribution to reserves available to meet peak demand. As last summer's extreme weather demonstrated, using the residential load management program in a prolonged manner that exceeded the tolerance level of many customers resulted in the loss of nearly ten percent of the program's participants in the month of June alone.

9. Florida Power's need to take into account the practical limitations inherent in its dispatchable DSM programs when determining the extent of their use to meet peak demand will necessarily impact these programs' contribution to, and the quality of, the Company's reserves in the future. In recognition of the affect that this will have on system reliability, as well as other significant planning considerations that will be addressed in the Company's later need filing, Florida Power has concluded that the timely addition of new generating capacity is necessary. This new capacity will strengthen system reliability by increasing the reserves available to Florida Power for meeting both winter and summer peak demand conditions, enable the Company to use its dispatchable DSM programs within the limits of customer tolerance by decreasing the proportion of its reserves provided through these programs, and provide Florida Power with additional flexibility in responding to unanticipated events and conditions such as unexpected attrition of DSM program participants or abnormal weather extremes like the record-breaking experience of this past summer.

## Advantages of Hines 2

10. Against this increasingly apparent need for additional capacity, the unique characteristics of Hines 2 provides Florida Power with the means to address this need in the most expeditious and cost-effective manner possible. As an initial matter, it should be noted that Hines 2 (previously Polk Units 3 and 4) had been originally scheduled for completion in the 1999-2000 time frame when submitted to the Commission for need approval in 1991. As a result, the unit has the advantage of considerable advance planning and design, as well as the scheduling and cost advantages of previously secured equipment and construction options. Even more important to the unit's ability to be placed in service quickly is the availability of an existing plant site, selected because of its minimal environmental impact, with an infrastructure capable of accommodating Hines 2 with only minor additions. The infrastructure already in place at the Hines Energy Complex includes extensive site development (core sampling, excavation, fill, access roads, etc.), a 2,600 acre cooling pond, complete intake and discharge structures, a fully sized natural gas lateral pipeline, an existing transmission system requiring no additional upgrades,<sup>2</sup> as well as all common facilities and manpower requirements needed to support two-unit operations at the site. Finally, Hines 2 will be able to take advantage of the significantly foreshortened permitting process using abbreviated supplemental procedures authorized under the Power Plant Siting Act for existing sites that have already been subjected to the Act's extensive certification process. Since most of the significant environmental issues associated with the site were resolved when Hines 1 was certified, the time required to complete the supplemental permitting process

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<sup>2</sup> An upgrade needed to an existing interconnection with Tampa Electric Company is already in the early planning stages.

for Hines 2 is expected to be reduced substantially, resulting in a minimal impact on the unit's construction schedule.

11. Moreover, satisfying Florida Power's need for capacity with Hines 2 will improve the balance of its total capacity resources between Company-owned generation and purchased power. Florida Power currently has a higher proportion of its total capacity resources provided by purchased power than any other major Florida utility. The diminished level of utility control over the long-term costs and operations of purchased power, as evidenced by the Company's experience with its long-term cogeneration contracts, weighs heavily against an even higher reliance on this capacity resource.

12. Compounding the concern over an undue reliance on purchased power is the practice of the major bond rating agencies to impute a portion of a utility's long-term purchased power obligations to the debt component of its capital structure, which necessitates a commensurate infusion of additional, higher cost equity capital to maintain (in the eyes of the rating agencies) the utility's debt/equity ratio and, thus, its bond rating. In fact, however, the need to add real equity to offset imputed debt *increases*, rather than maintains, the percentage of equity in the utility's actual capital structure, (and with no additional utility asset to support the increased equity). The resulting increase in the utility's overall cost of capital means that its customers may pay for the equity associated with purchased power twice; once for the higher cost of capital reflected in the utility's base rates, and again for the seller's equity costs reflected in the price of the purchased power. The addition of Hines 2 to Florida Power's mix of capacity resources will avoid an exacerbation of these purchased power concerns.



13. As an additional basis for the waiver requested by Florida Power apart from the multi-faceted advantages associated with Hines 2 itself, and for purposes of this petition only, Florida Power commits that it will not initiate any proceeding to increase its current base rates which includes the capital costs and non-fuel operating and maintenance expenses associated with Hines 2 for a period of at least five years from the unit's commercial operation date (or through mid-2006 based on the unit's current in-service schedule).<sup>3</sup> This commitment is conditioned upon the understanding that these capital costs and non-fuel O&M expenses will be considered legitimate utility expenditures for surveillance reporting purposes when Hines 2 is placed in commercial operation, and that this commitment will be effective only when an order issued by the Commission granting this petition in its entirety becomes final and non-appealable.

14. In summary, the unique cost, scheduling, site, environmental, and utility control advantages of Hines 2 would be exceedingly difficult for any other supply alternative to match. When coupled with Florida Power's commitment that Hines 2's fixed costs will not increase customer rates until at least 2006 while immediately flowing through the unit's fuel savings to customers, the advantages of Hines 2 would be virtually impossible to match. Florida Power believes it would be counter-productive for all concerned to engage in a lengthy bid solicitation and evaluation process only to confirm this conclusion, and in doing so, frustrate the unit's most beneficial characteristics -- a short in-service schedule followed by reduced rates.

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<sup>3</sup> Florida Power's intent in making this commitment is to preserve the *status quo* of its current base rates with respect to Hines 2 during the five-year term. Accordingly, by its terms, the commitment does not apply to a base rate proceeding initiated by anyone other than Florida Power, nor does it apply if Florida Power's current base rates (*i.e.*, those rates approved in Docket No. 910890-EI) have been reduced before Hines 2 is placed in service.

These advantages of Hines 2, which ensure that customers will receive the greatest possible benefit from the selection this unit to meet Florida Power's capacity needs, warrants the waiver of Rule 25-22.082, F.A.C.

#### Criteria for Waiver of Rule 25-22.082

15. Rule 25-22.082, F.A.C., (the Bid Rule, or the Rule) requires investor-owned electric utilities to solicit and evaluate bids for new generating capacity as a prerequisite for requesting a determination of need from the Commission. Subsection (9) of the Rule provides the criteria for waiving this bidding requirement by stating that:

"The Commission may waive this rule or any part thereof upon a showing that the waiver would likely result in a lower-cost supply of electricity to the utility's general body of ratepayers, increase the reliable supply of electricity to the utility's general body of ratepayers, or is otherwise in the public interest." (Emphasis added.)

In addition, Section 120.542 (2), F.S., provides the following two-prong standard for granting waivers or variances to the requirements of an agency rule:

"Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness." (Emphasis added.)

16. Since the operation of Hines 2 is expected to lower average fuel costs, the overall effect of the base rate commitment described in paragraph 13 above will be to reduce retail rates when Hines 2 is placed in service. Thus, in accordance with subsection (9) of the Bid Rule, the requested waiver "would likely result in a lower-cost supply of electricity to [Florida Power's] general body of ratepayers." In addition, eliminating the time consuming bid solicitation and evaluation process will advance the availability of Hines 2's capacity to meet system peak demand, and

thereby "increase the reliable supply of electricity to [Florida Power's] general body of ratepayers." Moreover, it would not be efficient or "in the public interest" to ask potential capacity suppliers to bid against what amounts to a zero-cost alternative from the ratepayers' perspective that these suppliers cannot possibly match.

17. The requested waiver of the Bid Rule would also serve the purpose of the underlying statute, namely, Section 403.519, F.S., which grants the Commission exclusive authority to determine the need for new electric generating capacity required for certification under the Power Plant Siting Act, Sections 403.501 - 403.518, F.S. The purpose of Section 403.519, *inter alia*, is to ensure that a utility's customers receive the benefit of the most cost-effective generation supply alternative in satisfying the utility's need for new capacity. The Bid Rule seeks to further this purpose by requiring the utility to engage in a rigorous process designed to identify the lowest cost supply alternative, on the premise that, through the ratemaking process, the least cost alternative is synonymous with the alternative that provides the lowest rates to the utility's customers.

18. In this case, however, Florida Power's commitment not to initiate base rate recovery of the capital and non-fuel O&M costs associated with Hines 2 means that customers will not only be provided new capacity at the least cost, it will be provided at *no* cost for at least five years. And when the unit's expected fuel savings are taken into account, customers will actually receive a rate *reduction*. Thus, the requested waiver will serve the purpose of Section 403.519, F.S., by ensuring that Florida Power's customers receive a greater benefit by meeting the Company's need for new capacity with Hines 2 than could be provided by adherence to the Bid Rule.