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ADMINISTRATIVE LAW  
GOVERNMENTAL LAW  
PUBLIC UTILITY LAW

RECORDS AND  
REPORTING

October 12, 2000

VIA HAND DELIVERY

Ms. Blanca Bayo  
Director, Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

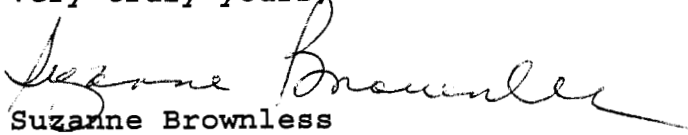
RE: Petition for determination of need by Florida Power  
Corporation for Hines Unit 2 Power Plant

Dear Ms. Bayo:

Attached please find the original and 15 copies of Panda  
Energy International, Inc.'s Petition for Leave to Intervene and  
Expedited Ruling to be filed in the above-styled docket. Also  
attached is a copy to be stamped and returned to us for our files.

Thank you for your attention to this matter. Please contact  
me if you have any questions or need any additional information  
regarding this filing.

Very truly yours,

  
Suzanne Brownless  
Attorney for PEII

c: 3245

APP       
CAF cc: Steve Crain  
CMP   1    
COM   5    
CTR       
ECR   3    
LEG       
OPC       
PAI   1    
RCO       
SEC   1    
SER   1    
OTH   1  

*Done 10/13/00*

DOCUMENT NUMBER-DATE  
13025 OCT 12 8  
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination )  
of Need by Florida Power ) DOCKET NO. 001064-EI  
Corporation for Hines Unit 2 )  
Power Plant )  
\_\_\_\_\_ )

PETITION FOR LEAVE TO INTERVENE AND EXPEDITED RULING

Pursuant to Rules 25-22.039 and 28-106.201, Florida Administrative Code, Panda Energy International, Inc. (Panda Energy), files this Petition For Leave to Intervene as a full party respondent in this proceeding and in support thereof states as follows:

I. Intervenor Information

1. The name and address of the affected agency are:

Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

2. The name and address of the petitioner are:

Panda Energy International, Inc.  
4100 Spring Valley, Suite 1001  
Dallas, Texas 75244

3. All pleadings, motions, orders and other documents directed to the petitioner are to be served on:

Suzanne Brownless, Esq.  
Suzanne Brownless, P.A.  
1311-B Paul Russell Road  
Suite 201  
Tallahassee, Florida 32301  
Phone: (850) 877-5200  
FAX: (850) 8878-0090

and

Steven W. Crain, P.E.  
Panda Energy International, Inc.  
4100 Spring Valley, Suite 1001  
Dallas, Texas 75244

DOCUMENT NUMBER-DATE

13025 OCT 12 8

Phone: (972) 980-7159  
FAX: (972) 455-3888

## II. Substantial Interest

4. Panda Energy has a right by virtue of Rule 25-22.082, Florida Administrative Code, to intervene in this need determination proceeding.

5. In order to fulfill the requirements of Rule 25-22.082, Florida Administrative Code,<sup>1</sup> Florida Power Corporation (FPC) issued a Request for Proposal (RFP) on January 26, 2000, to solicit competitive supply-side alternatives to the construction of Hines Unit 2. Panda Energy timely submitted a bid which contained a series of supply-side options to FPC to supply this need from its proposed Panda Leesburg Power Partners, L.P. 1,000 MW power plant.<sup>2</sup> Panda Energy's bid, along with that of the only other bidder, was ultimately rejected by FPC.

6. For the purposes of the Bidding Rule a "participant" is defined as: "a potential generation supplier who submits a proposal in compliance with both the schedule and informational requirements of a utility's RFP." Further, a "participant may include utility and non-utility generators as well as providers of turnkey offerings and other utility supply side alternatives."<sup>3</sup> Panda

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<sup>1</sup> This rule is commonly referred to as the "Bidding Rule".

<sup>2</sup> Panda Energy has a need determination application for this power plant currently pending at the Commission. In re: Petition for determination of need for an electrical power plant in Lake County by Panda Leesburg Power Partners, L.P., Docket No. 000288-EU.

<sup>3</sup> Rule 25-22.082((1)(c)), Florida Administrative Code.

clearly falls within the definition of participant for the purposes of the Bidding Rule.

7. Section (8) of the Bidding Rule<sup>4</sup> states as follows:

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The Commission shall not allow potential suppliers of capacity who were not participants to contest the outcome of the selection process in a power plant need determination proceeding.

8. As is clear from the language of Section (8) stated above, independent power producers (IPP) or other supply side providers are prohibited from being granted intervenor status in an investor owned utility need determination unless they have participated in the utility's associated RFP. This language is the direct result of issues raised by investor owned utilities at the Bidding Rule workshops held in 1993 prior to the adoption of the Bidding Rule in 1994.

8. In 1992 the Commission had granted Ark Energy, Inc./CSW Development I, Inc. and Nassau Power Corporation, two IPPs, intervention in the Cypress Energy need determination case.<sup>5</sup> The rationale of the Commission for admitting both IPPS as parties to the docket was the fact that they were "competing alternatives" to the project proposed by Florida Power and Light Company (FPL) and

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<sup>4</sup> Rule 25-22.082(8), Florida Administrative Code.

<sup>5</sup> In re: Joint petition to determine for electric power plant to be located in Okeechobee County by Florida Power and Light Company and Cypress Energy Partners, Limited Partnership, 92 FPSC 8:18 (1992); In re: Joint petition to determine for electric power plant to be located in Okeechobee County by Florida Power and Light Company and Cypress Energy Partners, Limited Partnership, 92 FPSC 8:376 (1992).

should be allowed to "demonstrate that they can provide the utility with power at a lower cost." 92 FPSC 8:18 (1992); 92 FPSC 8:376 (1992). Ark Energy and Nassau Power did successfully argue that both of their gas-fired combined cycle plants were more cost-effective supply-side alternatives than the coal plant proposed by Cypress Energy and Florida Power & Light Company (FPL). As a result of this finding, the Cypress Energy need determination application was denied.<sup>6</sup>

9. With this event fresh in their minds, the investor-owned utilities successfully argued at the Bidding Rule workshops that IPPs should not be allowed to sandbag them at their need determination with offers of lower cost capacity unless that offer had been timely made and evaluated at the same time as all other supply-side alternatives. To do otherwise, the investor-owned utilities argued was to undermine the integrity of the entire RFP process itself.

10. Concomitant with the IOU's "right" to limit intervention in need determinations to IPPs and alternative power suppliers who had been participants in the RFP associated with that identified utility need was the "right" of unsuccessful bidders/participants in that RFP to contest the outcome of the RFP in that same proceeding.

11. In short, implicit in the prohibition that nonparticipant

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<sup>6</sup> In re: Joint petition to determine for electric power plant to be located in Okeechobee County by Florida Power and Light Company and Cypress Energy Partners, Limited Partnership, 92 FPSC 11:363 (1992).

in an RFP "shall not" be granted intervention in associated need determinations, is the right for RFP participants to be granted intervention in those same proceedings. This is the opportunity under the Bidding Rule for Panda Energy to challenge the outcome of the January 26, 2000 RFP and to question the evaluation methodologies used by FPC to reach that decision.

12. Panda Energy has a right established by the Bidding Rule to intervene in this need determination proceeding.

### III. Disputed Issues of Fact and Law

13. The following issues have been identified by Panda Energy as disputed issues of material fact:

- Issue 1: Is Florida Power Corporation an "applicant" within the meaning of the Siting Act and Section 403.519, Florida Statutes?
- Issue 2: Is the output of the proposed Hines Unit 2 "fully committed for use" by Florida's electric customers who purchase electric power at retail rates?
- 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?
- 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?
- Issue 5: Has Florida Power Corporation met the requirements of Rule 25-22.082, Florida Administrative Code, "Selection of Generating Capacity", by conducting a fair bid process?
- Issue 6: Given the uncertainty in today's energy market, is it prudent for Florida Power Corporation to commit to a thirty-year rate base energy unit?
- Issue 7: Is the proposed Hines Unit 2 the most cost-effective alternative available, as this criterion

is used in Section 403.519?

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?

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

14. The following issue has been identified as a legal issue:

Issue 10: Does the recent Supreme court decision in Tampa Electric Company v. Garcia, et al., 25 Fla. L. Weekly S294 (Fla. April 20, 2000), revised, 25 Fla. L. Weekly S730 (Fla. Sept. 28, 2000) require that the capacity of an investor-owned public utility power plant be "fully committed" for use by Florida retail customers?

#### IV. Ultimate Facts Alleged

15. While there is a need on Florida Power Corporation's system for 530 MW of capacity in order to meet its reserve margin target of 20% by 2004, the Hines Unit 2 plant is not the most cost-effective means of doing so. That being the case, the need determination for construction of the Hines Unit 2 should not be granted.

#### V. Request For Expedited Ruling

16. The final hearing in this proceeding is scheduled for October 26-27, 2000. The discovery period in this proceeding has been set to close on October 20, 2000. To date John B. Crisp, the witness identified by FPC as testifying concerning the RFPs and the method of evaluating the bids received pursuant to the RFP, has not been deposed by Staff. Further, yesterday, October 11, 2000, FPC filed corrected direct testimony for Mr. Crisp.

17. Due to the late revision of Mr. Crisp's testimony and attached exhibits, deposing Mr. Crisp before yesterday would have been of limited value. However, in order to comply with the Commission's schedule, it will be necessary to depose Mr. Crisp before October 20th. Much of the information contained in Mr. Crisp's testimony and exhibits has been redacted due to FPC's request that this information be kept confidential. A meaningful deposition cannot be conducted until Panda Energy has access to the data associated with the bids and the details of the bid evaluation process.

18. There are only two bidders: Panda Energy and one other. Obviously, Panda Energy has its own bid. The data associated with the evaluation process, FPC's own data/bidding scores and the bid and bidding scores of the other bidder are the information which Panda Energy needs access to. Panda Energy is willing to execute a confidentiality agreement with regard to these materials and will promptly provide an agreement acceptable to Panda Energy to FPC.

19. For these reasons, Panda Energy requests that the Commission shorten the time in which Florida Power Corporation has to file a response to this Petition for Leave to Intervene from seven days to four days, or by noon on October 16, 2000, so that Commission can render its decision on that same date. Further, Panda Energy requests that the Commission require that FPC execute a confidentiality agreement concerning all materials supplied to the Commission within 24 hours of granting intervention and produce John Crisp for deposition prior to October 20, 2000.



WHEREFORE, Panda Energy International, Inc. requests that this Commission:

a) Grant it intervenor status in this proceeding as a full party respondent;

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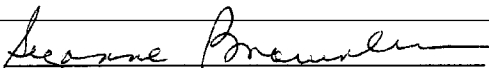
b) Require Florida Power Corporation to file its response to this pleading on or before Monday, October 16, 2000 at noon;

c) Require Florida Power Corporation to execute a confidentiality agreement concerning all materials supplied to the Commission within 24 hours of granting intervention; and

d) Produce John B. Crisp for deposition in the week of October 16, 2000 after confidential documents are made available .

Respectfully submitted this 12<sup>th</sup> day of October, 2000 by:

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Suzanne Brownless, Esq.  
Suzanne Brownless, P.A.  
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Suite 201  
Tallahassee, Florida 32301  
Phone: (850) 877-5200  
FAX: (850) 8878-0090

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was provided by U.S. Mail to all parties listed below and also by (\*)Hand Delivery and/or (\*\*) Facsimile as indicated on this 12<sup>th</sup> day of October, 2000:

(\*\*) Gary L. Sasso, Esq.  
James Michael Walls  
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200 Central Avenue  
St. Petersburg, FL 33701  
FAX: (727) 822-3768

(\*\*)Robert A. Glenn, Esq.  
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Counsel Group  
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(\*) Deboarh D. Hart, Esq.  
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Suzanne Brownless, Esq.

c: 3244