

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Petition for determination)
of need for Hines Unit 2 by) DOCKET NO. 001064-EI
Florida Power Corporation.)
_____)

REPLY OF PANDA ENERGY INTERNATIONAL, INC.
TO FPC'S RESPONSE IN OPPOSITION TO
PANDA'S PETITION TO INTERVENE

Panda Energy International, Inc. (PEII), by and through its undersigned counsel, files its Reply to FPC's Response in Opposition to Panda's Petition to Intervene and in support thereof states as follows:

1. The gist of FPC's argument against the right of PEII to intervene in this need determination proceeding is that the 1,000 MW power plants from which PEII would supply FPC with 250-500 MW of capacity are merchant power plants which cannot be permitted under the Florida Supreme Court's recent decision in Tampa Electric Co. v. Garcia (Tampa Electric), 25 Fla.L. Weekly S294 (Fla. April 20, 2000), revised 25 Fla.L. Weekly S730 (Fla. Sept. 28, 2000). Specifically, it is FPC's contention that the Tampa Electric decision requires that there must be a retail utility which "has a specific, committed need for all of the electric power to be generated by the proposed plant" for the plant to be permissible as an IPP under the Florida Power Plant Siting Act. FPC Response at 1. Since in FPC's opinion PEII's plants cannot be permitted, FPC argues that it can reject these bids, and Panda's substantial interest in this proceeding, as a matter of law. FPC's Response at 2.

2. Even if one accepts FPC's interpretation of the Tampa

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Electric case as true on this point, it is a matter of public record that FPC is not the only retail electric utility which will need additional electric capacity in the 2003-2004 timeframe. The most recent Florida Reliability Coordinating Council (FRCC) Ten Year Site Plan identifies approximately 11,000 MW of additional capacity needed within Florida from 2000-2010.

3. PEII is diligently working to sell the balance of the capacity associated with each of these plants to other retail load serving entities in Florida. PEII would note that even FPC is not arguing that the Supreme Court has said that the entire capacity of an IPP must be committed to just one Florida retail utility. Given the Commission's decision at this Tuesday's agenda in the Calpine Need Determination docket¹, in which FPC's motion to dismiss was denied based on Calpine's representation that it would *secure* a contract with a Florida retail utility/utilities for the output of its proposed power plant, it is disingenuous for FPC to use this argument to disqualify PEII as an intervenor in this case. While the details of PEII's bid cannot change, *other facts* can change which affect the ability of PEII to construct these power plants.

4. There is, even under FPC's own interpretation of the Tampa Electric case, a very viable and legal means by which PEII

¹ In re: Petition for determination of need for the Osprey Energy Center by Calpine Construction Finance Company, L.P., Docket No. 000442-EI.

can construct the power plants it has bid.² FPC's argument should be rejected by the Commission as spurious.

5. Finally, PEII rejects FPC's assertion that it has no substantial interest in this proceeding other than the merits of its own bid. FPC's Response at 3. A possible outcome of cross examination of FPC's witnesses at hearing may lead to the complete rejection of the Hines Unit 2 RFP process and an order requiring that this capacity be rebid. PEII, as a bona fide bidder in FPC's RFP, also has a substantial interest in the integrity of FPC's bidding process, and this is the proceeding in which challenges to the RFP process itself are to be made.³

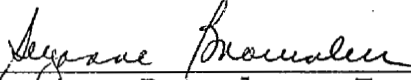
6. PEII has both a right under Rule 25-22.082, Florida Administrative Code, (Bidding Rule) and a substantial interest in the integrity of the entire generation selection process used by FPC at issue in this proceeding which satisfies the Agrico

² Additionally, PEII would note that a portion of these proposed plants, as outlined in PEII's bid proposal, will be used as backup for the MWs committed to FPC. PEII in this instance is using the "extra" MW at its proposed power plants to provide a "reserve margin" for its facility. PEII would also note that Mr. Crisp testified at his deposition that there is 400 MW, or 75%, of the capacity associated with the Hines Unit 2 plant which is in "excess" of that needed to meet the 2003-2004 20% reserve margin needs of FPC, the major reason given by FPC in support of this need petition. If FPC is "fully committed" to meeting its identified retail load demand from the Hines Unit 2 plant, PEII is "fully committed" to meet its bid capacity as well.

³ PEII also notes that it paid a *nonrefundable* \$10,000 fee to FPC to process and evaluate its bid. Regardless of the ultimate disposition of its own bid, PEII has the right to assure itself that this money was legitimately solicited.

Chemical⁴ two-prong test for standing to intervene.

WHEREFORE, PEII requests that this Commission grant it full party status in this proceeding.


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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 20th day of October, 2000:

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⁴ Agrico Chemical Co. v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981).