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November 14, 2000

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

VIA FEDERAL EXPRESS

In re: Petition for Determination of Need of Hines Unit 2 Power Plant
Docket No: 00164-EI


Dear Ms. Bayo:

Florida Power Corporation ("FPC" or the "Company") is filing herewith an original and fifteen (15) copies and disc of Florida Power Corporation's Post-Hearing Statement of Issues and Positions and Brief in Support of its Petition for Determination of Need for an Electrical Power Plant.

We request you acknowledge receipt and filing of the above by stamping the additional copy of this letter and returning it to me in the self-addressed, stamped envelope provided.

If you or your Staff have any questions regarding this filing, please contact me at (727) 821-7000.

Very truly yours,


Gary L. Sasso

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No.: 001064-EI
Submitted for Filing:
November 15, 2000

FLORIDA POWER CORPORATION'S
POST-HEARING STATEMENT OF ISSUES AND POSITIONS
AND BRIEF IN SUPPORT OF ITS PETITION FOR DETERMINATION
OF NEED FOR AN ELECTRICAL POWER PLANT

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No.: 001064-EI

Submitted for Filing: November 15, 2000

**FLORIDA POWER CORPORATION'S POST-HEARING STATEMENT OF ISSUES
AND POSITIONS AND BRIEF IN SUPPORT OF ITS PETITION FOR
DETERMINATION OF NEED FOR AN ELECTRICAL POWER PLANT**

On August 7, 2000, pursuant to Section 403.519, Fla.Stats., and Rules 25-22.080-.081, F.A.C., Florida Power Corporation ("FPC" or the "Company"), petitioned the Florida Public Service Commission ("PSC" or the "Commission"), for an affirmative determination of need for its Hines Unit 2 power plant ("Hines 2"). The Commission held a hearing on FPC's petition on October 26-27, 2000. Based on the record in this case, FPC submits that the requirements of Section 403.519 have been conclusively established and that the Commission should therefore grant FPC's petition.

Pursuant to the Pretrial Order, FPC submits herein its Post-Hearing Statement of Issues and Positions and its Brief in Support of its Petition for Determination of Need for an Electrical Power Plant.

I. FPC'S POST-HEARING STATEMENT OF ISSUES AND POSITIONS

FPC's Basic Position.

* FPC needs Hines 2 commencing in winter 2003/04 to provide crucial power plant support for reliability reserves, to diversify generating resources, and to provide adequate electricity at a reasonable cost. As stipulated, FPC cannot mitigate this need through conservation. Hines 2 is FPC's most cost-effective alternative to meet this need. *

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

* Yes, as stipulated by Staff and FPC. *

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. As stipulated, Hines 2 will be fully committed to meet FPC's obligation to provide ratepayers reliable, reasonable cost service without precluding FPC from making wholesale sales inside and outside Florida when it is in the best interests of FPC's ratepayers. The entire Hines plant counts toward FPC's reserve margin. *

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?

* Yes. Beginning in winter 2003/04 and continuing thereafter, FPC needs to add Hines 2 to its system to meet its minimum Reserve Margin planning requirements, to reduce its reliance on dispatchable demand-side resources, and to increase the amount of reserves that are comprised of hard assets. *

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?

* Yes. Hines 2 is a highly efficient, environmentally benign combined cycle unit. It will provide ratepayers considerable cost benefits through substantial fuel savings, added diversity on FPC's system, economies of scale associated with the Hines site, and significant cost-effectiveness from an installed cost that is below market for equivalent units. *

Issue 5: Has Florida Power Corporation met the requirements of Rule 25-22.0826, F.A.C., Selection of Generating Capacity, by conducting a fair bid process?

* Yes. FPC's RFP and bidding process complied with the PSC's bid rule. The RFP was well crafted to encourage competitive bids, and FPC administered the process and evaluated the resulting bids fairly and appropriately. *

Issue 6: Is it reasonable to obligate Florida Power Corporation's retail customers for the costs of the Hines 2 unit for the expected life of the unit? (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, Florida Statutes?

* Yes. FPC sought approval to build Hines 2 only after conducting a rigorous internal review of supply-side and demand-side options and after soliciting and thoroughly evaluating competing proposals submitted in response to its RFP. In the end, Hines 2 was the most cost-effective supply-side alternative to meet FPC's need. *

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?

* As stipulated, there are no conservation measures taken by or reasonably available to FPC that might mitigate the need for the proposed power plant. *

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?

* Yes. *

II. BRIEF IN SUPPORT OF FPC'S PETITION

A. Introduction.

FPC has demonstrated that it is entitled to a determination by the Commission that Hines 2 is needed within the meaning of Section 403.519, Fla.Stats. Specifically, FPC needs Hines 2 to maintain system reliability and integrity beginning in the winter of 2003/04, as FPC moves to implement its agreement to raise its minimum Reserve Margin planning criterion to 20 percent. Hines 2 will shore up FPC's reserves with hard assets, thereby reducing FPC's almost total reliance in recent years on load management (among other demand-side management ("DSM") programs), to meet its Reserve Margin requirements. FPC's reliability need cannot be met, as the Commission Staff agreed, through more load management or other conservation measures. Additional supply-side generation resources are necessary to ensure the continued reliability and integrity of FPC's system.

FPC plans to meet its reliability need with Hines 2, a combined cycle unit that has been shown to be a state-of-the-art, highly efficient, environmentally benign power plant. Hines 2 is available to FPC at a cost significantly below the current market for equivalent units, providing at least \$20 million but potentially as high as \$40 million in savings to FPC's ratepayers. Hines

2 will also increase the fuel and operational diversity on FPC's system and will achieve approximately \$40 million in fuel savings, thereby providing FPC's ratepayers additional benefits that will be returned to them in lower cost electricity over the life of the Hines 2 unit.

Hines 2 fared very well when compared internally to other supply-side alternatives and when compared to supply-side generation available on the market. An internal review of generation alternatives led FPC to conclude that Hines 2 was the best available generation resource. When Hines 2 was subsequently evaluated against resources available in the market through the Company's Request for Proposals ("RFP"), Hines 2 proved to be the most cost-effective resource for FPC's ratepayers.

In sum, FPC demonstrated conclusively that it needs Hines 2 for reliability, that Hines 2 will provide FPC's ratepayers adequate, reasonable cost electricity, and that Hines 2 is the most cost-effective generation resource available to meet FPC's need. No competent and substantial contrary evidence exists in the record. It follows that FPC's petition for determination of need for Hines 2 should be granted.

B. FPC has Met the Applicable Statutory Standard for its Petition.

Section 403.519 governs FPC's petition for a determination of need for Hines 2. It provides that the Commission "shall take into account the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, ... whether the proposed plant is the most cost-effective alternative available ... [and] the conservation measures taken by or reasonably available ... which might mitigate the need for the proposed plant" §403.519, Fla.Stats. As we show below, each element of Section 403.519 has been affirmatively established by the preponderance of the evidence in this proceeding and, accordingly, FPC's petition should be granted.

1. Electric System Reliability and Integrity.

FPC has a demonstrated need for 530 MW commencing in the winter of 2003/04 to maintain its system reliability and integrity. As Ben Crisp, FPC's Director of Integrated Resource Planning and Load Forecasting, explained, FPC's need comes from (i) expected growth in demand from FPC's customers, (ii) FPC's decision to increase its minimum Reserve Margin planning criterion from 15 percent to 20 percent at that time, (iii) FPC's need to shore up its reserves with hard assets and thereby reduce its reliance on dispatchable DSM programs to meet energy demand during peak demand periods, (iv) FPC's need to enhance fuel and dispatch diversity on its system, and (v) FPC's need for a state-of-the-art highly efficient unit to reduce fuel costs and operating costs. (Tr. 124-29, 141, 145-47, 287-90, 338-39; FPC Comp. Ex. 5, JBC-1, p. 40). The evidence supporting each of the reasons behind FPC's reliability need for 530 MW beginning in the winter of 2003/04 is undisputed, and we will address each in turn.

a. Hines 2 meets FPC's growing demand in FPC's service area.

FPC serves one of the faster growing areas of the country. (Comp. Ex. 5, JBC-1, p. 3). To project the growth in demand for electricity in its service area, FPC relies on the research efforts of both internal and external independent sources to gather and analyze demographic information in the area, and FPC employs the latest long-term forecasting and short-term econometric models typically used in the industry to project demand growth from such information. (Id., pp. 8-18). From this effort, FPC's annual retail customer growth is projected to be 1.6 percent over the next ten years. (Id.). Its retail sales growth is projected to be approximately 2.3 percent during the same period. (Id.). This means a growing demand for capacity and energy from FPC's system over time and the corresponding obligation on FPC's part to meet that demand with additional capacity.

b. Hines 2 helps FPC meet its agreement to a minimum 20 percent Reserve Margin.

At the same time that customer demand for energy and capacity is growing on FPC's system, FPC is moving to increase its minimum Reserve Margin requirement to 20 percent --- compared to the previous 15 percent minimum. A higher minimum Reserve Margin criterion necessarily requires significant new capacity resources over the planning horizon. (*Id.*, p. 41; Tr. 1125). The 530 MW provided by Hines 2 is just part of the new capacity that FPC must obtain in the next ten years to meet the minimum 20 percent Reserve Margin requirement.

Agreement on implementation of a 20 percent minimum Reserve Margin criterion was reached between the investor-owned utilities ("IOUs") in peninsular Florida just last year in the Reserve Margin docket, Docket No. 981890-EU, Order No. PSC-99-2507-S-EU. In that docket, the Commission Staff had expressed grave concern with the drop in utility reserve margins below historic levels of 30-40 percent, Staff wanted higher reserve margins of at least 20 percent, and Staff proposed 20 percent and then supported the stipulation for a minimum planned Reserve Margin requirement of 20 percent. The Commission further expressed its concerns about the adequacy of the reserve margins planned for Peninsular Florida and, hence, the need for more capacity in the State. Order No. PSC-99-2507-S-EU, p. 3. In response to these concerns, FPC agreed that: "The twenty percent (20%) reserve margin planning criterion will be a minimum; no maximum or cap will be represented or implied by this criterion." (*Id.* at p. 8, ¶ 2). FPC agreed to "implement the twenty percent reserve margin criterion over a transition period of four years," making this fully effective no later than the summer of 2004. (*Id.* at p. 9, ¶ 5). Further, as part of the terms of the stipulation, FPC agreed to satisfy this increased criterion "based on generating capacity owned by the IOUs or capacity for which there is a firm commitment to

these IOUs.” (Id. at p. 8, ¶ 4) (emphasis added). The Commission accepted this agreement among the IOUs. See Docket No. 981890-EU, Order No. PSC-99-2507-S-EU.

At roughly the same time, the Commission Staff continued to voice its own concerns for more capacity in the State in its Review of Electric Utility 1999 Ten-Year Site Plans (December 1999). There, Staff made clear its concern that “[i]f utilities ... hesitate to build new needed generating units, capacity shortages may become a certainty in the near future.” (p. 40). The Commission echoed these same concerns in its decision concerning FPC’s request for a bid waiver on the Hines 2 plant. In re: Florida Power Corp., Docket No. 981360-EI, Order No. PSC-99-0232-FOF-EI, 1999 WI 177535 (Feb. 9, 1999). The Commission expressed its concern that “planned reserve margins” are much lower than “historically acceptable levels.” (Id., p. 2). The Commission further stated that “[t]he uncertainty as to what the reserve margin should be is exacerbated by the fact that a high percentage of the planned reserve margin is in the form of load management and other non-firm loads,” noting in particular with respect to FPC, that “FPC has relied on load management more than any other electric utility in the nation.” (Id., p. 3). In short, the Commission and its Staff have in recent years repeatedly called upon FPC and other retail utilities to build significant new capacity to improve both the quantity and quality of the utilities’ reserves.

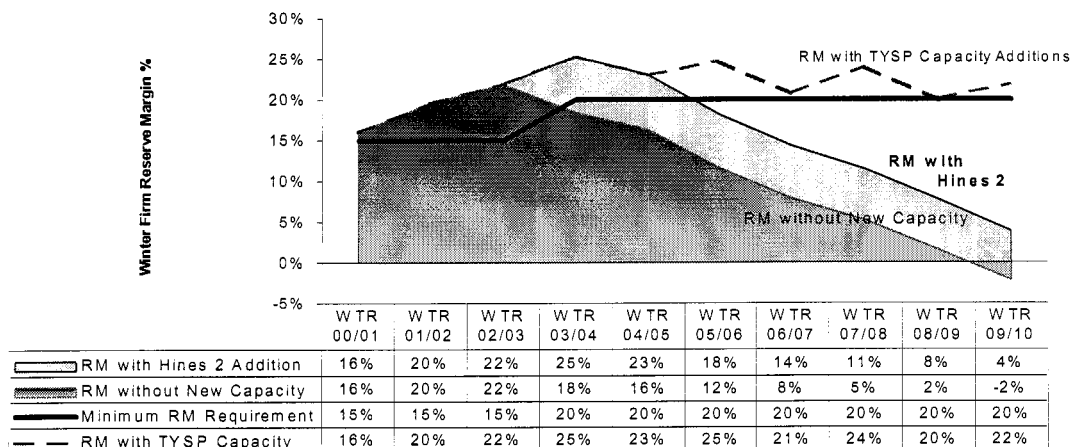
By proposing to add the 530 MW of capacity to FPC’s system represented by Hines 2, FPC has responded to the call of the Commission and its Staff to improve the quantity and quality of its reserves. With Hines 2 on line in the winter of 2003/04, FPC will bring its Reserve Margins back to percentages more acceptable to the Commission and the Commission Staff, based on their recent expressions of concern over utility reserve margins. FPC will enhance its Reserve Margins by bringing Hines 2 forward to commence operation just six months prior to

the end of the transition period established by the IOUs to implement the 20 percent minimum Reserve Margin requirement. Order No. PSC-99-2507-S-EU, pp. 7-11. By putting Hines 2 in service by November 30, 2003, FPC will ensure that the Company will maintain planning reserves above the 20 percent minimum for the winter peak of 2003/04 and beyond. (FPC Comp. Ex. 5, JBC-1, p. 42, Table 10; App. O). Indeed, upon commencing operation of Hines 2 in the winter of 2003/04, FPC will not need to build or contract for additional supply-side resources until 2005 to meet or exceed its 20 percent minimum Reserve Margin planning criterion. (Id.).

But make no mistake about it, Hines 2 is needed for the winter of 2003/04 and for the long term. FPC's 2000 Ten-Year Site Plan ("TYSP") shows that FPC will need other generating resources of equal size to Hines 2 in 2005, 2007, and 2009, in addition to Hines 2 to meet FPC's minimum Reserve Margin planning criterion into the future. (FPC Comp. Ex. 5, JBC-1, App. D). The 530 MW represented by Hines 2 is a critical component to maintaining system reliability and integrity while continuing to meet ratepayer demands. (Tr. 287-291; FPC Comp. Ex. 5, JBC-1, p. 42, Table 10). If Hines 2 were removed from FPC's base expansion plan, FPC could not meet its minimum 20 percent Reserve Margin criterion each winter season from 2003/04 to 2009/10, even with other planned capacity additions in the plan.¹ (Staff Comp. Ex. 10, p. 000065). As the undisputed evidence, including the following Reserve Margin chart from page 42 of FPC's Need Study shows, Hines 2 is critical to FPC meeting its Reserve Margin requirements in the winter of 2003/04 and beyond. (FPC Comp. Ex. 5, JBC-1, p. 42).

¹ This is true with or without the 50 MW capacity divestiture planned as a result of the pending merger between FPC and Carolina Power & Light Co. ("CP&L"). It is also true for all but two of the summer seasons from 2004 to and including 2009. (Comp. Ex. 10, pp. 000065).

FPC Winter Firm Reserve Margin (RM) %
Impact of Hines 2 on Reserve Margin



It bears further emphasis that the 20 percent Reserve Margin is a minimum threshold; it is not a maximum or a cap that cannot or must not be exceeded by the utility. (Tr. 287). The agreement by the IOUs reflects this understanding, and the Commission accepted it, in recognition of the fact that a utility cannot meet the 20 percent Reserve Margin requirement with mathematical precision each year and in view of the fact that utilities may, and perhaps should, conclude in their planning judgment that additional reserves are needed. Order No. PSC-99-2507-S-EU.

In fact, FPC needs to bring the entire 530 MW of Hines 2 on line in the winter of 2003/04 to maintain system reliability and integrity. And FPC's decision to bring Hines 2 on line in the winter of 2003/04 will be the most cost-effective means to meet its ratepayers' need for reliable electricity at a reasonable cost at that time and in the future. As Mr. Crisp explained, FPC has a long-term need for 530 MW that begins in the winter 2003/04 and extends throughout FPC's planning horizon. (Tr. 287-90, 332). FPC's system needs rapidly absorb and surpass the full capacity of Hines 2 to meet FPC's ratepayers' needs for energy and capacity. (See, e.g., Comp.

Ex. 10, p. 000065). Mr. Crisp made this very clear, in answer to Staff's question concerning the exact amount of megawatts required to reach 20 percent reserves in just that first winter season that Hines 2 commences operation: "We don't need 130, ma'am. We need 530 megawatts, as specified by our concerns over the overall growth rates, our DSM program, our exposure to DSM cancellations. We explained this in the ten-year site plan workshop, Commissioners, where we are almost totally exposed to DSM in our reserves and we are trying to get up to a point to where we have got some concrete and steel we can lean on. That is why we need the 500 megawatts, not 100 megawatts. 100 megawatts, we would go buy that in a heartbeat. I'm sorry, when you lose a coal unit or something like that, you would go past that 100 megawatts very quickly." (Tr. 295).

In sum, FPC has conclusively established that it needs the entire capacity of Hines 2 commencing in the winter of 2003/04 and continuing thereafter over the life of Hines 2 to meet the minimum 20 percent Reserve Margin requirement.

c. Hines 2 shores up FPC's total reserves with hard assets.

It is beyond dispute that FPC in recent years has tested the limits of dispatchable DSM programs to reduce the "firm" load that must be protected by planning reserves. In connection with its compliance with the Florida Energy Efficiency and Conservation Act ("FEECA"), FPC has relied increasingly on DSM to meet its minimum Reserve Margin planning criterion. This increasing reliance on DSM to reduce FPC's "firm" load that must be protected by planning reserves has led FPC to the point where in certain years, including this one, all or almost all of FPC's total reserves came from DSM resources. (Tr. 283-284).

FPC's increasing reliance on DSM to meet its Reserve Margin planning criterion has caused both the Commission and the Commission Staff considerable concern. As noted above,

the Commission itself pointed out in FPC's bid waiver docket that its concerns with the appropriate level of reserves were "exacerbated by the fact that a high percentage of the planned reserve margin is in the form of load management and other non-firm load" and that "FPC has relied on load management more than any other electric utility in the nation." Order No. PSC-99-0232-FOF-EI, p. 3. (emphasis added). Similarly, the Commission Staff has been critical of the Company's increasing reliance in recent years on dispatchable DSM resources to make up a significant part of the Company's total reserves. See Reserve Margin Docket, Docket No. 981890-EU.

At the same time, the Company's residential load management program has been hit in recent summers with significant attrition when called upon on a more frequent basis than in past years to supply needed reserves. Under the Company's load management program, willing customers have in the past accepted load management, i.e., interruption in electric service to one or more electrical appliances at times of peak load, in exchange for reduced tariffs. In the last two years, however, particularly during recent, abnormally hot summers, the Company has experienced attrition by customers dissatisfied with service interruptions as load management was increasingly called into play. (Tr. 125-128; Comp. Ex. 5, JBC-1, pp. 23-24, 42-44). Under such circumstances where there was both more frequent and longer use of load management to reduce the firm load at peak times, FPC found that a significant number of customers in the program were no longer willing to accept the trade-off of interruptions in electric service for lower tariffs. (Id.). Rather, they left the load management program for continuous electric service, as they had the right to do, thereby diminishing the benefit to FPC of the program in reducing FPC's firm load at times of the summer peaks. (Tr. 289-90). As a result, the Company

was forced to take a hard look at the continued viability of its residential load management program.

FPC's recent experience with its dispatchable demand-side resources showed that, even though such resources continue to provide important, cost-effective resources when used appropriately, FPC must count more on generating units to meet its customers' needs in the future than on the willingness of a significant number of customers to accept frequent curtailment in their electric service. (Tr. 126-27). FPC revised its residential load management program accordingly, moving to a more limited, winter-only program and favoring more supply-side generating capacity as a part of its total reserves. (Tr. 126; Comp. Ex. 5, JBC-1, pp. 23-24, App. K).

By moving to a winter program under its revised DSM plan, FPC will forego reliance on load management in the summer when, in recent years, such reliance has no longer proved to be cost-effective or sustainable. (Id.; Tr. 298-99). FPC also will reduce its overall reliance on DSM. This gradual reduction in the effect of the program on FPC's firm load is reflected in FPC's revised DSM plan. (Comp. Ex. 5, JBC-1, App. K). FPC submitted its revised DSM program to the Commission in December 1999, and the Commission approved it in April of this year. Docket No. 991789-EG, Order No. PSC-00-0750-PAA-EG. FPC's recent experience with its dispatchable load management program demonstrates that FPC's decision to reduce its reliance on dispatchable demand-side alternatives was certainly prudent from a reliability perspective.

Significantly, FPC faces a period of uncertainty in 2003/04 about how implementation and use of the Company's existing and new residential load management programs will be accepted by the Company's retail customers during the transition period from one to the other

and into the future. (Tr. 126). This uncertainty creates the need for the addition of Hines 2 to the Company's fleet in the winter of 2003/04. (Tr. 289-90).

As Mr. Crisp further explained, while FPC has done its best to project the benefits of each program in reducing FPC's peak load, FPC cannot know with any reasonable degree of certainty what those benefits will be precisely because FPC is in a period of transition from a program that experienced significant attrition in recent years to another program with which FPC has no experience. (Tr. 126, 283-84, 287-90). Because the actual benefits in the reduction of FPC's firm load at peak times may at times vary significantly from FPC's projections during this transitional period and beyond, FPC plans to add supply-side generating resources to shore up its reserves. (Id.). Until FPC has more experience with its revised residential load management program, prudent planning dictates that FPC should have additional "hard assets" in reserve.

Adding "hard assets" to FPC's total reserves is even more important when the degree to which FPC has relied on its DSM programs as part of its total reserves in recent years is taken into account. Moving into this summer, such programs make up nearly all of FPC's total reserves. (Tr. 283-84). At the time that Hines 2 will come on line (the winter of 2003/04), FPC's estimated firm load at time of peak load is 8,231 MW, and its estimated non-firm load at the time of peak is 1,150 MW, which results in a total peak load without load control of 9,381 MW. Without Hines 2 in service, FPC's firm supply-side resources (power plants on its system and firm power purchase agreements) would be 9,748 MW, which is 1,517 MW greater than the estimated firm peak load. (Comp. Ex. 5, JBC-1, pp. 43-44). FPC's Reserve Margin without Hines 2 would be 18 percent (based on reserves of 1,517 MW comparing FPC's firm load (8,231 MW) to its firm capacity (9,748 MW) available to serve that load). (Id.). But FPC's available firm capacity compared to its estimated total load --- firm and non-firm load --- would be much

lower without Hines 2. FPC would have only 367 MW of firm supply-side capacity reserves in excess of its estimated total load without Hines 2 in the winter of 2003/04, a mere 24 percent of FPC's total reserves. (Id.).

With Hines 2, FPC's Reserve Margin rises from 18 percent to 24 percent in the winter of 2003/04 but, more dramatically, FPC's firm supply-side capacity reserves increases from 367 MW to 934 MW. This means that the percentage of firm supply-side capacity rises from 24 percent to 45 percent of total reserves. (Id.). This impact from the addition of Hines 2 in the winter of 2003/04 is graphically illustrated by the following table from FPC's Need Study. (Comp. Ex. 5, JBC-1, p. 44).

TABLE 11

| Reserve Levels With and Without Hines 2 | | |
|--|----------------------------|------------------------------|
| Winter 2003/2004 | | |
| | Without Hines 2 | Including Hines 2 |
| Normal Weather Peak Demand (Before DLC) | 9,381 | 9,381 |
| DLC Capability | 1,150 | 1,150 |
| Firm Demand (After All DLC) | 8,231 | 8,231 |
| Total Available Capacity | 9,748 | 1,0315 |
| Supply Reserves (Before DLC) | 367 | 934 |
| Total Reserves (Including DLC) | 1,517 | 2,084 |
| Firm Reserve Margin | 18% | 25% |
| Supply % of Total Reserves | 24% | 45% |

Without Hines 2, in the event of extreme weather or unavailable capacity due to the loss of a unit on FPC's system, FPC would have to continue to rely heavily on DSM programs to reduce the firm load to a level that was manageable with FPC's firm supply-side resources. FPC's load management customers would have to accept their non-firm service for the duration of that event -- something that FPC's load management customers have been increasingly unwilling to do in recent years, and something that its new customers might not be willing to do as FPC transitions to its new program.

Indeed, while such non-firm load is available as a resource if needed, it is not really a comparable substitute for generation since it cannot be used as often or for extended periods without eventually affecting customer participation levels. (Comp. Ex. 5, JBC-1, p. 44). As Mr. Crisp vividly explained at the hearing:

We gathered information from the DSM programs to see what the cancellations were and how much we were using the DSM programs, and we also correlated that or compared that to our forced outages of our larger units. And we found that we have --- we have four or five large units. And as we lose a large unit during a peaking period we were going into DSM very quickly and were leaning on DSM very hard. So these sensitivity analyses were showing us that we did not have the robustness of concrete and steel to keep us away from that overburdened use of DSM that was causing us the cancellations. What happens when we get into the cancellations is that takes megawatts out of the reserves, so it is kind of like a death spiral. The more cancellations there are the more you lean on DSM. And then the more you lean on DSM the more cancellations there are.

(Tr. 289-90) (emphasis added). Hines 2 will, therefore, reduce the stress on FPC's load management programs, both existing and in transition, by adding firm supply-side resources to the total reserves on FPC's system.

Further, with FPC's reduction in its overall reliance on DSM to reduce FPC's firm load, additional capacity must be added to provide FPC with necessary reserves. Because DSM makes up a significant part of FPC's total reserves, FPC's reduction in its reliance on DSM means that

the impact of such programs on FPC's firm load is necessarily diminished, resulting in "additional" firm load. (Comp. Ex. 5, JBC-1, App. O). To meet this "additional" firm load, supply-side generation must be added, hence, the need for additional generating capacity of Hines 2.

In sum, FPC's need for 530 MW in the winter of 2003/04 and beyond is well-established and hardly debatable, given this Commission's previous expressions of concern over utility reserve margins and the make-up of utility reserves -- in particular, FPC's reserves. With certainty, Hines 2 will satisfy FPC's continuing load growth, FPC's agreement to implement a minimum 20 percent Reserve Margin planning criterion no later than and, hence, appropriately before the summer of 2004, and FPC's need to increase the portion of its total reserves attributable to firm capacity. It is undisputed, then, that Hines 2 is needed to enhance FPC's electric system reliability and integrity.

By the same token, FPC demonstrated that there will be adverse consequences to FPC and its ratepayers if Hines 2 is not completed in the requested time frame. If Hines 2 is delayed, FPC will not be able to satisfy its minimum 20 percent Reserve Margin planning criterion by the winter of 2003/04. This will expose FPC's ratepayers to a risk of interruption of service in the event of unanticipated forced outages, or other exigencies for which FPC maintains reserves, and the risk of the transition to the Company's new load management program, for all the reasons given above. Further, for all the reasons given below, a delay in Hines 2 will defer or possibly eliminate the estimated fuel savings from, and the below market pricing of, Hines 2. The estimated cost impacts of a one- to two-year delay, absent the potential reliability impacts and impacts from the loss of the other potential benefits from Hines 2 described herein, range from

\$40-\$70 million (cumulative present worth revenue requirements (“CPWRR”)). (Comp. Ex. 5, JBC-1, p. 64).

2. Adequate Electricity at Reasonable Cost.

FPC has demonstrated by uncontradicted evidence that Hines 2 will provide its ratepayers with adequate electricity at a reasonable cost. To begin with, Hines 2 is a state-of-the-art, highly efficient combined cycle unit. (Tr. 128). Combined cycle units are the preferred technology of independent power producers and utilities alike, engaged in developing electrical power plants today. The preference for technology of this type is demonstrated by the most recent need determination proceedings before this Commission --- Gulf Power Company, the City of Lakeland, and the joint petition of Kissimmee Utility Authority and the Florida Municipal Power Authority to name a few --- which all involved self-built, combined cycle units. See, e. g., Gulf Power Co., Order No. PSC-99-1478-FOF-EI, City of Lakeland, Order No. PSC-99-0931-FOF-EM, KUA and FMPA, Order No. PSC-98-1301-FOF-EM. Similarly, in this docket, the intervenor Panda Energy International, Inc. (“Panda”), bid in response to FPC’s RFP combined cycle technology of a similar, albeit somewhat less efficient combustion turbine technology (of a different manufacturer) than Hines 2. (Tr. 459-60).

Hines 2 will consist of two nominal 170 MW Westinghouse 501 F combustion turbines, two unfired heat recovery steam generators, one nominal 190 MW steam turbine, and a closed-cycle cooling water system. (Tr. 425; Comp. Ex. 5, JBC-1, p. 55). It is a dual-fuel unit capable of operating on natural gas, its primary fuel, or distillate oil. (Id.). FPC has provided adequate assurances through stipulated testimony that the primary and secondary fuels for Hines 2 will be available at a reasonable cost. (Tr. 401-418). FPC demonstrated that its natural gas fuel forecast is in line with the natural gas forecasts of a number of widely recognized and generally accepted

fuels forecasts and, thus, it reasonably reflects FPC's future fuel costs. (Tr. 411, Comp. Ex. 14, RDN-3). Further, FPC has shown that adequate gas and gas transportation will not only be available for Hines 2, but the opportunity to negotiate with competing gas pipeline companies provides the opportunity for even lower transportation rates in the future and, therefore, for Hines 2 as well. (Tr. 412-13, 416-17).

Hines 2 will have a high equivalent availability factor of approximately 94 percent, which takes into account a low 4 percent forced outage rate and all scheduled maintenance outages. (Tr. 429-30). Hines 2 also will have an excellent heat rate, operating on average at a net heat rate of 6,975 Btu/kWh. (Tr. 429). The beneficial heat rate, high availability, and responsiveness of Hines 2, among other attributes, will provide the Company with a low-cost, highly-flexible source of power. (Tr. 432).

The heat rate for Hines 2 in fact approaches the lowest heat rates for generating units in operation today. (Comp. Ex. 5, JBC-1, p. 55). This means that Hines 2 will generate more energy per unit of gas than existing generation plants. (Id., p. 56). As a result, Hines 2 will allow FPC to reap significant fuel savings for its ratepayers over the life of the Hines 2 unit. This undisputed benefit from Hines 2 has been conservatively estimated to be in the range of \$40 million per year. (Tr. 128, 146).

On top of the undisputed fuel savings from Hines 2, FPC will be able to obtain the operational benefits of Hines 2 at an installed cost significantly below the current market price for equivalent units. The total installed cost for Hines 2 (less an estimated \$5.6 million for transmission costs), is approximately \$198 million. (Tr. 432, Comp. Ex. 15, EGM-5). Compared to current market prices for equivalent units, based on prices obtained from an outside, independent consultant to FPC, Hines 2 is at least \$21 million less expensive,

considering the purchase price for the equipment alone. (Tr. 462-64). Together with other favorable contract terms between FPC and Siemens Westinghouse, FPC's equipment supplier for Hines 2, the undisputed capital cost savings from Hines 2 over equivalent units on the market today is estimated to be between \$20 million and \$40 million. (Comp. Ex. 5, JBC-1, p. 62; Tr. 428, 463).

FPC was able to obtain this below market equipment cost for Hines 2 because FPC had the foresight to negotiate an option with Siemens Westinghouse for Hines 2 at the time it negotiated for and obtained the equipment for its Hines 1 combined cycle unit. (Tr. 432). Since then, FPC has been able to preserve its beneficial equipment pricing and other favorable contract terms and conditions (including, for example, performance guarantees and liquidated damages provisions), with Siemens Westinghouse for Hines 2. (Tr. 428). Siemens Westinghouse certainly recognizes FPC's favorable price and contract terms for Hines 2 compared to what it can get from buyers in the current market for equivalent units. Thus, Siemens Westinghouse refused to entertain the possibility of FPC selling its Hines 2 option on the market when FPC broached the subject. (Tr. 467-468). As a result of FPC's favorable contract with Siemens Westinghouse for Hines 2, FPC's ratepayers have the unique ability to obtain the operational benefits of a state-of-the-art, highly efficient combined cycle technology at a below market capital cost.

Cost savings associated with sharing common site utilities and equipment for both the Hines 1 unit and Hines 2 will further contribute to the reasonable cost of electricity from Hines 2. Hines 2 will be located at FPC's Hines Energy Complex ("HEC") in Polk County, Florida. (Tr. 422). HEC is an existing power plant site, currently containing power block 1, the Hines 1 combined cycle unit. Hines 2 will be constructed next to Hines 1. (Tr. 423-424). The site

utilities and equipment that will be shared by Hines 2 and Hines 1 include the site access road, cooling pond, effluent supply pipeline, water treatment and wastewater disposal, gas lateral, transmission facilities, and buildings located at HEC. (Tr. 424; Comp. Ex. 5, JBC-1, p. 62). Because FPC can use the existing site improvements for both units, FPC does not have to design and construct such improvements for Hines 2. Therefore, location of Hines 2 at the HEC will save the Company site development costs the Company otherwise would have incurred. (Tr. 424). Additionally, FPC will achieve economies of scale from the construction and operation of Hines 2 at the HEC, from shared spare parts with its sister unit Hines 1 located adjacent to it, to shared site facilities, including an existing cooling pond that is sufficient to serve both Hines 1 and Hines 2. (Tr. 338-39). FPC's ratepayers benefit because FPC will save additional engineering and construction costs and achieve economies of scale in operation by locating Hines 2 at the HEC. (Tr. 425).

Hines 2 will further assist FPC in providing reasonable cost electricity to its ratepayers --- and will contribute to FPC's system reliability and integrity --- by adding diversity and flexibility to FPC's supply-side mix. FPC currently has only two other comparable natural gas-fired combined cycle units (Hines 1 and Tiger Bay) in its fleet. (Tr. 129). The make-up of the rest of FPC's supply-side resources reflects a significant amount of coal-fired capacity, both from FPC's own units and through purchased power contracts, and oil and nuclear capacity. (Tr. 128-29). Adding Hines 2 to FPC's fleet therefore enhances the fuel diversity on FPC's system. (Id., Tr. 339).

In addition, Hines 2 has its own built-in fuel diversity because it is a dual-fueled unit. The flexibility to move back and forth between natural gas and distillate oil in the event of price spikes in either fuel type will save FPC's ratepayers significant fuel costs. (Tr. 267, 339). In

either case, whether it is using the different fuels available at Hines 2 or using the gas-fired Hines 2 among the coal, oil, and nuclear units on FPC's system, the reliability and integrity of FPC's system is enhanced. (Tr. 128-29). Multiple power sources from different fuels ensures FPC's ratepayers that they will continue to have reliable, consistent electric service in the event of shortages or price spikes in certain fuels. (Tr. 267, 339).

In addition to adding diversity to FPC's fleet of generating assets in terms of fuel, the technology, age, and flexibility of Hines 2 within FPC's dispatch stack further enhances the diversity of FPC's system. Hines 2 is well-suited for the intermediate service FPC plans for it on FPC's system to back up the Company's substantial baseload and peaking capacity in nuclear, coal, coal-by-wire, and cogeneration contracts priced on the basis of coal units. (Comp. Ex. 5, JBC-1, p. 46). Its technology is flexible enough, as Mr. Crisp explained, "to ramp up and ramp down ... at a moment's notice or [go] on computerized automatic generation control, so it can follow a load by itself." (Tr. 339). In this way, FPC can meet the challenges of intermediate service on FPC's system while remaining capable of shifting to baseload operation if prevailing economic or operating conditions warrant the shift. (Comp. Ex. 5, JBC-1, p. 46). Such operational flexibility enhances FPC's ability to provide its ratepayers with reliable and reasonable cost electricity.

Finally, the environmental benefits associated with Hines 2 cannot be overlooked as a contributing factor in providing FPC's ratepayers with reasonable cost electrical service. Hines 2 provides FPC with a cost-effective means to meet its Clean Air Act compliance requirements. Its primary fuel is natural gas, which is a relatively clean fuel source. (Comp. Ex. 5, JBC-1, pp. 50-51). Further, it has a very efficient technology and will therefore use less fuel and create a lesser environmental impact per unit of electric service. (Id.). Hines 2 will also help reduce

overall sulfur dioxide emissions for FPC's fleet, which reduces FPC's reliance on the market for purchasing sulfur dioxide emission credits to meet FPC's overall emission targets. (Id.; Tr. 341). Accordingly, Hines 2 gives FPC the ability to improve its environmental stance within its fleet, with the resulting economic benefits flowing to FPC's ratepayers. (Tr. 341).

FPC has demonstrated conclusively the ability of Hines 2 to provide FPC's ratepayers with adequate electricity at a reasonable cost. There is no evidence to the contrary and, in point of fact, the evidence shows that granting FPC's petition will give FPC's ratepayers the unique ability to obtain low cost electricity from a state-of-the-art technology at a below market opportunity, and denying the petition would forfeit that opportunity.

3. Most Cost-Effective Alternative Available.

The Company reached the conclusion that Hines 2 was the most cost-effective alternative available to it to meet its reliability needs only after an exhaustive internal review of both demand-side and supply-side options and a complete, critical look at Hines 2 compared to the alternatives available on the market from FPC's RFP process. (Tr. 129-39; Comp. Ex. 5, JBC-1 and Conf. JBC-3, with appendices). Both analyses, the Company's internal planning process and the Company's RFP and resulting bid evaluation, have been laid out in detail in this proceeding and subjected again to a critical review by the Commission, its Staff, and the intervenor Panda. (See, e.g., Comp. Ex. 5, JBC-1 and JBC-3; Comp. Exs. 6, 7, and 10). The result, however, remains the same. After that review and considering all the evidence, Hines 2 is demonstrably the most cost-effective alternative available to meet FPC's reliability needs.

We will address in turn the evidence demonstrating that Hines 2 was the most cost-effective alternative available to FPC in its internal, Integrated Resource Planning ("IRP") evaluation of supply-side and demand-side options and in its RFP process and evaluation.

a. FPC's IRP Process Shows that Hines 2 is the Most Cost-Effective Alternative to meet FPC's Need.

FPC selected Hines 2 as its next-planned unit only after carefully evaluating its system needs and planning options through its on-going IRP process. (Tr. 129-33). Through its IRP process, the Company assesses whether it has any future capacity needs by examining its forecasts for customer growth, energy consumption, and peak demand. (Tr. 129-30;Comp. Ex. 5, JBC-1, pp. 7-21, 27). Having identified a capacity need in the winter of 2003/04 from this examination, FPC first evaluated that need against a wide range of supply-side alternatives. FPC's initial screening of supply-side options narrowed the field to certain conventional technologies, e.g., combined cycle, combustion turbine, and pulverized coal, that were then evaluated in the Company's production cost model, in this case the PROVIEW optimization program, and ranked based on the CPWRR, with the supply-side alternative with the lowest CPWRR ranked first. (Tr. 131;Comp. Ex. 5, JBC-1, pp. 27-28, 30-35). FPC subsequently evaluated the top few plans from this analysis for the best mix for FPC of cost, timing, construction, system compatibility, and strategic benefits. (Tr. 131-32;Comp. Ex. 5, JBC-1, pp. 28-29, 36-39). From this evaluation FPC selected Hines 2 as its next-planned supply-side alternative. (Tr. 133-135). The plan with Hines 2 coming on line in November 2003 provided FPC's ratepayers the lowest CPWRR and provided FPC with significant timing, system compatibility and flexibility, and other operational and strategic benefits. (Tr. 133-35, 338-39;Comp. Ex. 5, JBC-1, pp. 47-52).

It is worth emphasis at this point that no one, not the Commission, Staff, and not Panda, disputed FPC's use of production cost models like PROVIEW to arrive at the supply-side alternative with the lowest CPWRR in FPC's IRP process. The CPWRR analysis resulting in the

selection of Hines 2 as FPC's next-planned unit in FPC's IRP process was accepted without question, as well it should be. The IRP process employed by FPC, including the use of PROVIEW production cost models to determine the supply-side generation alternative with the lowest CPWRR is the industry standard, has long been used by FPC and the other electric utilities located in Florida, and is consistent with the requirements of the Energy Policy Act of 1992. (Comp. Ex. 5, JBC-1, p. 7). The Commission itself has historically used CPWRR as the basis for determining the cost-effectiveness of a proposed power plant, as the Commission acknowledged just last year in its most recent need determination proceeding. In re: Gulf Power Co., Docket No. 990325-EI, Order No. PSC-99-1478-FOF-EI. There, the Commission re-affirmed that CPWRR is the basis for determining the cost-effectiveness of a proposed plant, finding that Gulf Power Company's Smith Unit 3 was the most cost-effective alternative because it was expected to offer positive net present value savings over the next best alternative. (Id. at p. 4). It necessarily follows that FPC's use of production cost models to determine the CPWRR of a proposed supply-side generation alternative is beyond question the accepted method in this State to determine which generation alternative is the most cost-effective whenever it is done, either internally in the IRP process or as part of the RFP evaluation.

FPC did not end its internal analysis of supply-side alternatives with the CPWRR production cost analysis however. FPC subsequently subjected its Hines 2 base plan to sensitivity analyses on load, fuel, and financial forecasts in its production cost model. (Tr. 134-35; Comp. Ex. 5, JBC-1, pp. 37-39). These sensitivities included high and low load, high and low fuel forecasts, and holding the current differential price of oil and gas to coal constant over time. (Id.; Tr. 134). The base plan proved to be robust no matter which sensitivity was analyzed. None of the sensitivities pointed to any change in FPC's base plan. (Id.; Tr. 134-35). Hines 2

proved to be FPC's preferred next-planned generating alternative, subject to identifying superior alternatives through the Company's RFP process. (Id.).

Once FPC evaluated its potential supply-side alternatives to meet its need, and before proceeding with its RFP, FPC conducted a careful screening of the demand-side resources reasonably available to it to determine if its need might be mitigated in whole or in part from FPC's DSM resources. (Tr. 131-32;Comp. Ex. 5, JBC-1, pp. 35-37). An extensive analysis of available DSM resources had already been performed by FPC in the DSM Goals and DSM Plan proceedings (Docket Nos. 971005-EG and 991789-EG, respectively), at which time FPC assessed the cost, performance, viability, and cost-effectiveness of a wide range of dispatchable and non-dispatchable DSM options and arrived at a DSM plan. (Tr. 131-32). FPC's DSM plan, containing its demand-side plan and strategies and the results of its demand-side screening analysis, was submitted to the Commission for approval and in fact reviewed and approved by the Commission. (Tr. 132;Comp. Ex. 5, JBC-1, App. L).

FPC's best demand-side alternatives from its DSM plan were analyzed with its best supply-side alternative in a production cost program that optimized the available demand-side and supply-side options in a ten-year plan that provided the lowest revenue requirements for FPC's ratepayers while still providing reliable, efficient service. (Tr. 132-33). As a result of this analysis it was clear that FPC's capacity needs beginning in the winter of 2003/04 could not be mitigated through even the most cost-effective demand-side alternatives available to FPC. (Id.;Tr. 139-40). This much is undisputed for, as noted above at page 3, the Commission Staff stipulated in this proceeding that there are no conservation measures taken by or reasonably available to FPC that might mitigate the need for Hines 2. FPC can meet its capacity needs in the winter of 2003/04 only through its available supply-side alternatives.

That supply-side alternative was, based on FPC's exhaustive internal IRP process, the base plan with Hines 2 as the Company's next-planned unit coming on line in November 2003. It remained only to test that generation alternative against the market to see if a better generation resource or resources were available from other sources. (Tr. 135). As shown at the hearing and below, the undisputed evidence is that a more cost-effective alternative was not available on the market and Hines 2 remains FPC's most cost-effective alternative to meet its needs in the winter of 2003/04 and beyond.

b. FPC's RFP and Bid Evaluation Process Demonstrated that Hines 2 Was the Most Cost-Effective Alternative Available to Meet FPC's Need.

FPC's RFP was, based on the unrefuted evidence presented at the hearing in this docket, well crafted, clear, fair to all interested bidders, and designed to encourage their participation in the RFP process. (Tr. 135-37, 316-20, 358-60, 368-70, 390-94, 397-98). Likewise, the unrefuted evidence demonstrated that FPC's RFP process and bid evaluation was thorough, fair, and appropriately based on standard industry analytical methods. (Tr. 137-38, 321-25, 353-55, 360-67, 370-71, 394-95, 398-99). It follows that the selection of Hines 2 as the most cost-effective resource alternative for FPC to meet its reliability need was a valid one. (Id.). Indeed, FPC's decision to proceed with the construction of Hines 2 was, based on all the evidence before FPC as a result of the RFP process and bid evaluation, beyond a doubt the correct one. (Id.).

In point of fact, no contrary evidence was ever offered, either at the time of the RFP process and bid evaluation or at the hearing in this docket. All Panda and the Commission Staff offered at the hearing in response to FPC's evidence is suggestion and innuendo; they certainly have offered no evidence that the RFP process was unfair or that there was a more cost-effective alternative available to meet FPC's reliability need than Hines 2.

For example, the mere fact that FPC selected Hines 2 as its next-planned unit and that turned out to be the most cost-effective alternative in the RFP process does not mean that result was pre-determined or that the process was unfair. If that is all that it takes to reject a utility's prudent decision to select the self-build option, the ability of utilities to plan to meet their obligation to serve is at an end. For every time they project a unit coming on line to supply future capacity needs and take prudent steps to preserve that option they will be foreclosed from selecting it later in a RFP, even if it is the most cost-effective option. Such an absurd result cannot be what was intended. Indeed the Commission's bid rule requires the utility to identify its next-planned unit in its RFP, thus, it is logically impossible for the specification by the utility of its next-planned unit to violate the Commission's requirements. See Rule 25-22.082, F.A.C. Moreover, the Commission and Staff have made clear in the TYSP review process, whether or not the next-planned unit is ultimately constructed by the utility, the utility must make plans for such units coming on line in the event they are needed to ensure the reliability and integrity of the electric grid in the State. See, e.g., Staff's Review of Electric Utility Ten-Year Site Plans, (December 1999).

Of course, such prudent planning is exactly what FPC undertook by reserving its production slot for the Hines 2 equipment with Siemens Westinghouse in advance of and throughout the RFP process and evaluation of the bids. FPC's preservation of that production slot during that time --- it did not "buy" the equipment as Panda tried to suggest in its questions -- was necessary to maintain FPC's right to the Hines 2 equipment in the event the equipment was needed. (Tr. 243, 441-43, 460). As Eric Major explained, "in today's marketplace, with lead times on combustion turbines being as far out as four years, any developer or utility can't wait until all approvals are in hand to construct a facility. They must reserve production slots

and put some dollars at risk to assure they'll have equipment to go forward with the project.” (Tr. 442).

FPC's decision to exercise its option on the Hines 2 equipment with Siemens Westinghouse was certainly prudent. It preserved savings in the range of \$20 to \$40 million for FPC's ratepayers in the event that Hines 2 was selected in the RFP process that otherwise would have been lost if FPC had not put up the money to maintain its option on Hines 2 last year. (Tr. 469-70). And, as Eric Major further explained, FPC's decision to exercise the option was consistent with what every other entity planning new generation resources in fact does in the industry, including independent power producers like Panda. (Tr. 442, 469).

Likewise, the mere fact that there were only two bidders in response to FPC's RFP does not mean that either the RFP or the RFP process was unfair. Remember first that 13 entities expressed an interest in submitting a bid after receiving the RFP, which demonstrates that the RFP was capable of and did in fact attract interest from potential bidders. (Tr. 136, 359). From the bidders' perspective, in fact, the number of potential competitors responding to the RFP was 13, (14, including FPC). They knew that 13 had expressed an interest in the RFP, but they were never told throughout the RFP and bid evaluation that there were only two bidders. (Tr. 321-22). For all the two bidders who responded to the RFP knew, there were up to 13 bidders, and they had to “sharpen the pencil” on their bids accordingly. (Tr. 322).

Second, having two bidders in response to an RFP, while on the low side, is not at all uncommon in such solicitations. Alan Taylor, the independent consultant with PHB Hagler Bailly retained by FPC to assist in developing the RFP and to monitor the RFP and bid evaluation process, noted that, in his 9 years of experience in resource acquisition, competitive bidding solicitations, and market analysis, he has “seen a number of solicitations similar to this

where there had only been two or three main bidders to compete with the resource.” (Tr. 175). It does not follow then that just because there were ultimately only 2 bidders out of 13 interested parties that something was wrong with the RFP process.

Rather, the number of bidders here says a lot more about the competitiveness of the Hines 2 self-build option and the real interests of the potential pool of independent power producers (“IPPs”) in responding to such resource solicitations. Alan Taylor explained it this way:

... I think, that what we’re seeing --- around the country, I’ve certainly seen in solicitations over the last 12 to 24 months as [sic] a dramatic run-up in the costs of these new resources, largely because the turbine market is very, very tight. And bidders who are interested in bidding projects are using their scarce turbine resources in placing them in the places where they think they can make the most money. So, where market prices have been running up in some of the deregulative [sic] markets, California and New York and so forth -- they’re placing their turbines there. So, to some extent, I think that what you have here is Florida Power had a very cost-effective resource that was being put forward. And a lot of the IPPs simply said I’d rather go bid in some markets where I think that the immediate competition is going to be the IPP next to me, and they’re probably in the same boat. So, they were looking for markets where, basically, their competition was in the same boat. ...

(Tr. 396-97). Simply put, FPC had only 2 bidders because the IPPs know a good deal when they see it. Some of them in fact told Ben Crisp informally at the conclusion of the solicitation that FPC had a “great project” and suggested that they might be able to “do business next time.” (Tr. 308; 167). They had determined at this time, however, that they could take “their plant options, their combined cycle options and go elsewhere in the nation, and, in fact, make more money.” (Tr. 309). Sometimes, therefore, a low response to an RFP simply means that the utility’s self-build option was too good to warrant the bidder investing the time, effort, and expense of putting together a bid. By all accounts, that is the case with FPC’s RFP.

Indeed, because the Commission’s decision concerning the most cost-effective alternative available to FPC must be made based on the evidence presented there can be only one decision

in this proceeding: FPC's RFP process was fair and thorough, and Hines 2 was in fact the most cost-effective alternative for FPC, as we now show.

(1). FPC's RFP and RFP Process was Fair.

FPC initiated its RFP on January 26, 2000 by filing it with the Commission, mailing it directly to approximately 50 IPPs and electric utilities, making it available on the Company's website, and by widely circulating notice of the RFP in newspapers of general circulation and trade journals. (Tr. 135;Comp. Ex. 5, JBC-1, pp. 53-54). On February 10th, FPC invited interested bidders to indicate their intent to bid, and 13 did. (Tr. 136, 359). Later, on February 18th, the Company held a pre-bid meeting for the purpose of entertaining any questions regarding its RFP. Representatives from 13 potential bidders (and the Commission Staff) attended the meeting. (Id.). Questions and answers were posted on the Company's website, and the Company remained willing to entertain any questions about the RFP or Hines 2, specifically identifying a point person within the Company to respond to such questions. (Tr. 136, 320;Comp. Ex. 5, JBC-1, p. 54). On March 27, 2000, the deadline for the submittal of bids in response to the RFP, the Company received 2 bids. (Tr. 137).

The Company carefully evaluated these bids over the next two months, ultimately advising the two bidders at the end of May that their bids had not been selected. During this two-month period, the Company requested and received information missing from the bid responses that was required in the RFP and received clarifications of the information that was submitted by the bidders. (Tr. 137-38;Comp. Ex. 5, Conf. JBC-3, App. 3-4). The Company also held meetings with both bidders, providing them the opportunity to explain their bids and ask questions about the evaluation process. (Tr. 319-20, 324-25).

Not once during this entire period of time between January 26 and the end of May 2000 did any bidder or potential bidder ever question the fairness of the RFP, the RFP process, or the bid evaluation process, despite the frequent and varied opportunities to do so, if they were so inclined. (Tr. 320). Panda in particular never questioned the fairness of the RFP or bid evaluation process at any time, even though Panda submitted a bid and interacted closely with FPC during the two-month evaluation of its bid. (Tr. 319-20). It simply did not occur to Panda to question the RFP or the process that it had lived with for months until Panda hired a lawyer to intervene on the eve of the hearing. The reason it had never occurred to Panda, or any other bidder or potential bidder for that matter, to question the RFP or the process was, of course, that they were demonstrably fair.

FPC's RFP complied with the Commission's bid rule, Rule 25-22.082, F.A.C., by identifying Hines 2 as the Company's next-planned unit, putting forth the details of the Hines 2 option, describing the evaluation process and the factors involved, and inviting interested parties to make alternative proposals that might offer superior value and other attributes. (Tr. 135-36, 357-58). In this regard, the RFP had very few limitations. The RFP provided only that capacity must be available no later than November 30, 2003 and be dedicated solely to FPC's use. (Tr. 357, Comp. Ex. 5, JBC-2). Beyond that, the RFP encouraged utilities and developers to submit creative proposals to FPC. (Tr. 136).

In preparing its RFP, FPC followed the lead of prior RFPs in this State, in particular the Gulf Power RFP, which was filed with and approved by the Commission in the Gulf Power need determination proceeding in 1999. (Tr. 316-19; Ex. 11). FPC's description of the methodology used to evaluate the RFP proposals was similar to if not more detailed than the description of the evaluation methodology provided in the Gulf Power RFP. (Tr. 318-19). Alan Taylor, who FPC

hired to assist it in developing a fair RFP, also reviewed the Gulf Power RFP and concluded that FPC's RFP was consistent with it and other solicitations he had been involved with or reviewed. (Tr. 370).

The RFP consisted of 33 pages including data tables, forms, and other attachments. (Tr. 357; Comp. Ex. 5, JBC-2). It provided prospective bidders with the key financial and operating data for Hines 2, explained that production cost models would be used in the proposal evaluation process and provided the bidders data forms to complete for the bidders' information for those models, and provided the tentative timeline for bidder requirements, meetings, due dates, and the solicitation review process. (Tr. 357-58; Comp. Ex. 5, JBC-2). In this regard, Alan Taylor concluded that the RFP was well crafted and struck an appropriate balance between supplying the potential bidders with too little information or so much information that the sheer volume of what must be taken into account to respond to the bid became such a burden that it actually discouraged responses to the RFP. (Tr. 369-70). Mr. Taylor independently determined that the RFP was fair, clear, and encouraged participation, and that FPC had conducted a fair bid process. (Tr. 371, 394).

While Panda's eleventh-hour criticism of FPC's RFP process as unfair through its attorney at the hearing is, at best, disingenuous, the only two reasons given by Panda to suggest that the process was unfair can be quickly dismissed because they lack any merit at all. Panda first suggests that the RFP was unfair because it did not identify the exact name of the production cost models FPC was going to use to evaluate the bids. Neither did the Gulf Power RFP, which the Commission and Staff accepted without question just last year in the Gulf Power need determination proceeding. In re: Gulf Power Co., Docket No. 990325-EI, Order No. PSC-99-1478-FOF-EI. The reason is the production cost models used by FPC are standard in the

industry and universally used by utilities to evaluate resource options, both internally and as a result of solicitations. Mr. Taylor explained that FPC's "use of the models was consistent with what I've seen across the country." (Tr. 398-99).

Panda, of course, understood this when it received the RFP and responded to it. Panda never complained about the lack of this information in the RFP; in fact, Panda never even inquired about the production cost models that FPC was going to use to evaluate its bid, either before or after it had submitted its bid. (Tr. 319-20). If the name of the exact production cost model that was going to be used was so important that the lack of that name in the RFP rendered it unfair, as Panda suggests, one would expect Panda to at least ask about it at some point in the process. Panda did not do so because it obviously was not important to know that information to participate in the RFP process.

Panda next suggests that the RFP process was unfair because FPC did not go to a "short list" and thereby give Panda the opportunity to negotiate further with FPC. What Panda wants the Commission to infer is that it should have been provided the opportunity to submit another, less expensive bid without offering any evidence that Panda would have in fact offered FPC a more cost-effective alternative to Hines 2 to meet FPC's reliability need in such negotiations. In fact, the inference suggested by Panda's questions is contradicted by the evidence of what Panda did (or did not do), and the evidence of Mr. Crisp's experience in nine other RFPs involving over 4,000 MW of capacity. (Tr. 319-26).

Panda was in fact asked by FPC on more than one occasion in the RFP process to improve its bid. Panda steadfastly refused to extend the length of its capacity offers to match FPC's 25-year need. (Tr. 323-24). Further, with each one-year extension offered beyond its initial 2-year offer the capacity got more expensive, not less expensive. (Comp. Ex. 5, Conf.

JBC-3, pp. 3-4). Similarly, when FPC asked Panda to increase its 250 MW offer to meet FPC's 530 MW need Panda complied with a second block of capacity at a much higher cost. (Tr. 323). For Panda even to suggest now that the cost of its proposal might have improved with "short list" negotiations is directly contradicted by what Panda did in response to the negotiations that did take place. (Tr. 278, 325).

Further, Panda had every incentive to put its best foot forward with its initial bid. For all Panda knew it was competing with up to 13 other bidders. (Tr. 321-22). This fact alone demonstrates that Panda had to make its best offer in its initial bid if it had any hopes of even making it to the purported "short list." (Tr. 322). This practice of submitting the "rock bottom" best price in the opening bid is in fact consistent with Mr. Crisp's experience. As Ben Crisp explained:

Q: Based on your experience, what have you observed about the nature of opening bids?

A: Opening bids are, I guess, in the terms of some of the people that do these things, are called a beauty contest. That's where everybody puts in their best – they put their best foot forward. They know they've got a considerable amount of competition, and they've got to come in the lowest that they possibly can to get on the short list. That's the intent is to try to get on out there and beat everybody else at the first few steps. So, it is the best possible price you can put forward.

Q: And based on your experience, what happens to the price after that beauty contest offer[], typically, as you go through discussions and negotiations?

A: Prices become higher.

(Tr. 321). Bid terms may indeed change in "short list" negotiations, but the cost to the purchaser will get more, not less, expensive. That is because those negotiations are over contract terms and conditions and, with every term and condition that the capacity purchaser wants, the purchaser can be expected to pay an additional price for it. (Tr. 322-23).

Mr. Crisp's experience was confirmed by what Panda did not do in this case. When Panda was told that FPC was not going to pursue Panda's proposal, Panda never suggested that its initial proposal was not its best offer. (Tr. 325-26). Panda never volunteered another, less expensive proposal, or even suggested that it had more value to give FPC. (Tr. 326). Panda never even indicated that it wanted to continue with negotiations with FPC. (Id.). Panda never gave FPC any reason to believe that its proposal would get any better. (Id.).

In short, FPC's RFP and its RFP process was from all of the evidence demonstrably fair. FPC set out both internally and through the use of an outside, independent consultant to make the RFP and the resulting solicitation process as fair as possible, and FPC did just that.

(2). FPC's Bid Evaluation Process was Fair, Thorough, and Demonstrated Hines 2 was the Most Cost-Effective Alternative.

FPC's bid evaluation process was also a fair and thorough one. FPC proceeded with its evaluation of the bids only after soliciting the information sought in its RFP that the bidders left out and clarifying with the bidders individually the information that they provided. (Tr. 137-38; Comp. Ex. 5, Conf. JBC-3, pp. 3-5, App. 3-4). From there, FPC evaluated the comparative economics of each proposal using both an initial screening model and a more complete, more detailed model with proforma spreadsheets in a more rigorous supplemental screening of the proposals. (Tr. 360-63; Id. at pp. 6-9). The production cost models used in both the initial and supplemental screening process, the PROSCREEN and PROSYM models respectively, simulate the dispatch of resource options on a utility's system in search of the lowest cost options necessary to meet the utility's demand. (Id.). PROSCREEN is a monthly dispatch model, and PROSYM is an hourly production cost model. (Tr. 361). The resulting ranking of the resource

options in PROSCREEN and PROSYM is based on CPWRR. (Comp. Ex. 5, Conf. JBC-3, pp. 6-9).

PROSCREEN and PROSYM are standard production cost models in the electric utility industry that are universally used by the electric utilities in this State and elsewhere in the country. (Comp. Ex. 5, JBC-1, p. 7). The use of them by FPC in the bid evaluation process, as well as the manner in which they were used by FPC in that process, was valid and consistent with bid evaluation processes across the country. (Tr. 364, 366, 369, 398-99). Further, the use of CPWRR from such production cost models has historically been relied upon by the Commission to determine the cost-effectiveness of a proposed power plant. In re: Gulf Power Co., Docket No. 990325-EI, Order No. PSC-99-1478-FOF-EI.

As an added check on the validity of FPC's evaluation of the bids, Alan Taylor conducted his own, independent evaluation of the bids. (Tr. 391-92). In addition to overseeing the fairness of the RFP, Mr. Taylor was also engaged to oversee the bid evaluation process and provide an independent review of the responses to the RFP. (Tr. 369, 391). To do this, Mr. Taylor developed a spreadsheet model called a response surface model before the bids were opened and used it to corroborate the evaluation results. (Tr. 376, 387). In this manner, Mr. Taylor was able to "mirror" the analysis done by FPC even though he did not exactly duplicate it. (Tr. 377, 386-89).

This response surface model looked at the variable costs of resources and how those resources might be dispatched and affect the total production cost of FPC. It included the size of the resource, the resource's fuel price, its heat rate, and its variable operation and maintenance ("O&M") expenses. (Tr. 387-88). Mr. Taylor obtained this information on each resource at issue in the RFP -- Hines 2, Panda's proposal, and Bidder B's proposal --- directly from

Attachment D to the RFP (for Hines 2) and his own copies of the bidders' proposals, which he himself obtained at the opening of the bids. (Tr. 388). In this way, Mr. Taylor was able to conduct his own, independent evaluation of the bids. (Tr. 392).

The results of both FPC's initial and supplemental screening was that Hines 2 proved to be the most cost-effective alternative available to FPC to meet its reliability need on price factors alone. The next best alternative to Hines 2 was at least \$66 million dollars more expensive than Hines 2. (Crisp Corrected Conf. Test., p. 8; Comp. Ex. 5, Conf. JBC-3, App. 6).

FPC did not end its analysis there; instead, FPC conducted sensitivity analyses to test for the plausible impact of changes in the price and availability of natural gas, the primary fuel for Hines 2. (Tr. 363). These sensitivities included a high-fuel case, a low-fuel case, and a case involving a scenario in which a proposed competing gas pipeline was developed and that lower cost gas transportation was available to FPC. (Comp. Ex. 5, Conf. JBC-3, p. 11). In each sensitivity run, Hines 2 still proved to be the most cost-effective alternative for FPC and its ratepayers, with the alternative under the closest sensitivity run even more expensive than Hines 2. (Id.). After its thorough analysis of the two bids, FPC concluded that Hines 2 was the most cost-effective supply-side alternative available to FPC and its ratepayers to meet its need for power. (Tr. 138-39, 147).

Mr. Taylor, in his independent evaluation of the bids against Hines 2, agreed that Hines 2 was at least \$66 million less expensive than the next best alternative among the bid proposals. (Tr. 370). He further agreed with FPC's sensitivity results; Hines 2 remained the least-cost option by at least \$69 million dollars in present value terms. (Tr. 363). Mr. Taylor concluded, based on his own fair evaluation of the bids, that the development of Hines 2 would yield the

lowest cost among the available alternatives and that it would best serve the interests of FPC's ratepayers and the public. (Tr. 366-67, 394).

Panda's sole complaint about FPC's bid evaluation analysis is that FPC should have, according to Panda, compared Hines 2 against Panda (and the other bidder) over a five-year or ten-year period of time, rather than the 25-year planning period used by FPC. (Tr. 116-17). Panda went so far as to say that FPC should not have considered Hines 2 beyond this 5- to 10-year period of time, even if there had been no RFP process. (Id.). Panda justified its position by pointing only to unspecified "turmoil in the electric market and in the wholesale market that's taking place at this time." (Id.). The Commission Staff, based on some of its questions and the testimony it offered at the hearing, may share Panda's concerns regarding the length of FPC's planning period. The evidence set forth in the hearing, however, conclusively demonstrates that (i) Panda's "complaint" regarding the duration of the comparison between Hines 2 and Panda in the bid evaluation analysis is baseless, and (ii) both the stated and unstated concerns regarding the impact of the alleged "turmoil" in the market on the determination that must be made by the Commission in this proceeding are completely unfounded. We will address each point in turn.

(a) FPC's analysis demonstrated that Hines 2 was the most cost-effective alternative in each year.

Panda ignores the fact that there is a year-by-year comparison of Panda to Hines 2 in FPC's production cost model runs that underlie FPC's analysis of the bids. This information was provided in detail by FPC to Staff in response to Staff's interrogatories and entered in evidence by Panda. (Comp. Ex. 7). As this evidence shows, Panda's proposal is more expensive for FPC and its ratepayers than Hines 2 each year, beginning with the first year of partial (2003) and complete (2004) operation of the combined cycle units in both resource options and continuing

for each and every year. (Id.; Tr. 204, 219, 333). Even if the comparison of the Panda combined cycle resource option to Hines 2 is limited to a five-year, or a ten-year period, Hines 2 is still the most cost-effective resource option for FPC. (Tr. 333). Indeed, beginning in the very first year, Hines 2 is more cost-effective for FPC and its ratepayers than the Panda option. (Tr. 204, 333).

This is no surprise to Panda. Panda's bid was more expensive than Hines 2 at the outset and only got more expensive as Panda added option years to its 2-year proposal. (Comp. Ex. 5, Conf. JBC-3, pp. 3-4, App. 1; Tr. 323). Further, when FPC asked for more capacity from Panda, and Panda responded with another 250 MW block, it was even more expensive than the first 250 MW block of capacity Panda offered FPC. (Id.). In sum, the difference in cost between Panda and Hines 2 was present at the beginning of the analysis, in the very first years of the comparison between Panda and Hines 2. (Tr. 333). No evidence to the contrary was offered or even specifically suggested by Panda.²

That cost difference had nothing to do with variations in the long-term price of fuel or cost of capital compared to FPC's fuel forecasts or contract option for Hines 2, as Staff tried to suggest in its questions. (Tr. 304-05). Hines 2 was more cost-effective than the best case for the

² Much was made by Panda about the capacity credit given each resource in the production cost model runs in the bid evaluation process for the market value of any capacity in excess of FPC's 20 percent minimum Reserve Margin planning criterion. (Tr. 382-384). The unrefuted evidence, however, is that this was done simply to place the portfolio of resource options in that process --- Hines 2, Panda, and Bidder B --- on a level playing field with respect to the amount of capacity. (Tr. 399). The capacity of each proposal was "capped" at the 20 percent Reserve Margin requirement in those production cost model runs to compare each resource option to the others on the same basis. In other words, what was important was the relative cost differences among the resource options rather than the absolute numbers in order to provide an easy "apples-to-apples" comparison. (Tr. 399-400). FPC could have run the models in the bid evaluation process with the "cap" at the full 530 MW capacity need. FPC in fact did this run for Hines 2 in its base expansion plan. (Comp. Ex. 10, pp. 000023-000024). Had FPC done the same runs for Panda and Bidder B as it did for Hines 2 in its base expansion plan they would have had higher

Panda proposal by approximately \$60 million and, as Ben Crisp explained, that cost impact was attributable to substituting Panda for Hines 2 for Panda's 2-year proposal and not to assumptions FPC was making about fuel up to 25 years out. (Tr. 333-34). Moreover, any savings achieved by Panda as a result of changes in the price of fuel over time, or even any improvement in its heat rate and thus the efficiency in burning that fuel over time, would go to Panda and its shareholders because Panda bid a fixed heat rate and a fuel price indexed to the gas prices in the Florida market. (Tr. 329-31). Under Panda's proposal, FPC and its ratepayers would not benefit from any potential increase in efficiency at Panda's proposed unit or any future, potential below-market gas arrangements Panda might be able to negotiate. (Id.).

Left with the unrefuted approximately \$60 million increase in the cost of the best case for the Panda proposal compared to the cost of Hines 2, Staff questioned the significance of that difference. Staff pointed out that difference was only 4/10ths of 1 percent over the 25-year planning horizon compared to the total system revenue requirements. (Tr. 304-05). Of course, this is an "apples to bananas comparison," to use Ben Crisp's words. (Tr. 337). If you use the total production cost over the 25-year time frame for the entire FPC fleet " [e]very single unit, nuclear, coal, peakers, everything," as the denominator, as Staff did, then the cost savings associated with any one plant will always be a very small percentage of the total system cost. (Id.).

Looking at Hines 2 alone, however, and comparing the approximately \$360 million cumulative revenue requirements of that unit over its life span to the approximately \$60 million savings achieved by selecting Hines 2 over the next most cost-effective alternative, FPC's

costs than Hines 2 in the same amounts as the differences in costs between Hines 2 and each bidder in the runs done for the bid evaluation process. (Tr. 399).

ratepayers will receive about an 18 percent savings by selecting Hines 2 over the Panda proposal. (Tr. 337; Late-filed Ex. 12). Over \$60 million dollars, therefore, represents significant savings to FPC's ratepayers, (Tr. 338); even more so when one considers that it is calculated at straight-line depreciation, which places more capacity costs at the front end or early years of the project. (Tr. 334). If the cost of Hines 2 were averaged over the 25-year period and compared to the Panda proposal, the savings from selecting Hines 2 would be much more attractive. (Tr. 335). Moreover, the approximately \$60 million savings from selecting Hines 2 over Panda do not take into account the additional benefits expected from Hines 2 over the life of the plant from such factors as economies of scale achieved with Hines 1, dispatch flexibility benefits, added fuel diversity, and the ability to retire older, less efficient units in the future, to name a few. (Tr. 338-40; Comp. Ex. 5, JBC-1, App. D, p. 70; Tr. 534, 537).

It remains to note that FPC used a 25-year bid evaluation period because FPC has a 25-year need. (Tr. 125, 332). That is, of course, why FPC did not stop the production cost models at 5 years. (Tr. 332). FPC needs the 530 MW from Hines 2 for the entire 25-year period to meet its minimum Reserve margin planning criterion. (*Id.*). FPC's need does not end after two, five, or even ten years. As demonstrated by the graph above from page 42 of FPC's Need Study, removal of the 530 MW from Hines 2 from FPC's plan leaves a substantial gap over the entire 25-year period because FPC must add additional capacity of similar size in 2005, 2007, and 2009 just to keep up with its reliability needs and satisfy the minimum Reserve Margin planning criterion.

For this reason, Staff's suggestion that FPC should build a combustion turbine instead of Hines 2 makes no sense. All the evidence points to FPC's reliability need for the full capacity of Hines 2, as Ben Crisp repeatedly explained: "It is a reliability need, it is augmented by superb

economics. That is what I have been talking about with relationship to these factors in the ten-year site plan. Reliability comes first and then the economics provide the best possible solution to the ratepayer.” (Tr. 296). Building a combustion turbine does not meet FPC’s reliability need, and it also is more expensive for the ratepayers. As Mr. Crisp further explained:

Well, what Staff asked us to do was to force a peaker in, in the first – instead of building Hines 2 in the first year. And when we did, we forced the peaker in. The expense was considerably higher than the Hines option. And by that, it was \$148 million higher than the revenue requirements for the Hines project. It also ultimately, when you put the peaker in, it only satisfies the need for one year. We immediately had to follow it up again with the Hines 2 project right behind that.

(Tr. 336; Comp. Ex. 10, p. 000064). In sum, FPC needs all the capacity from Hines 2 to meet its reliability needs, and Hines 2 is the most cost-effective alternative to meet that need for FPC and its ratepayers.

FPC finds it quite remarkable for Staff to question FPC’s decision to continue to plan beyond an arbitrary 5-year period to meet its long-term reliability needs. The Commission and Staff have been especially intolerant of unspecified purchases even in the last five years of the utilities’ ten-year site plans. (Tr. 332-33; 546-50). And Staff has called on the investor-owned utilities in Florida to build capacity to meet the State’s long-term capacity needs and to prevent capacity shortages. Staff’s Review of Electric Utility 1999 Ten-Year Site Plans, (December 1999). FPC has stepped forward to meet that call with, a state-of-the-art, highly efficient, below-market cost combined cycle unit. Even Staff’s witness, Mr. Billy Dickens, agreed that FPC’s proposal to build Hines 2 satisfies the Commission’s concerns in this regard. (Tr. 550). The unrefuted evidence establishes conclusively that Hines 2 is the most cost-effective alternative for FPC and its ratepayers and that it will meet the long-term capacity needs of FPC and the other IOUs in the State of Florida that Staff has complained about for at least the last three years.

(b) Regardless of what is or is not allegedly going on in the “market,” Hines 2 still is the most cost-effective alternative.

Panda and Staff further objected to FPC’s evaluation of the bids against Hines 2 for the 25-year period of FPC’s need on the ground that a five-year period is more appropriate based on unspecified “turmoil” in the market and unspecified “economic uncertainty due to the advent of electric generation restructuring,” respectively. (Tr. 116-17, 505). To protect ratepayers from the “market,” Panda undoubtedly would have the Commission force FPC into a short-term, no more than five-year resource option, presumably its own proposal, even though Hines 2 is the most cost-effective alternative. Staff, on the other hand, would have the Commission impose on FPC a periodic prudence review of Hines 2, at least every five years. (Tr. 510-11, 556). Both “proposals” rely on wholly unsubstantiated and unspecified “market” conditions and, as a result, are completely unfounded.³

Panda’s proposal in response to FPC’s RFP in fact shows the folly of the Commission entertaining any short-term option for FPC’s ratepayers as a hedge against the market. Tellingly, Panda steadfastly refused to extend its initial offer beyond 5 years despite FPC’s requests to do so. (Tr. 323-24). Panda was betting that capacity costs beyond 5 years were going up, not down, and Panda wanted to be free to sell its capacity at the market price at that time. (Tr. 255, 324). Indeed, when Panda offered FPC additional capacity, it was much more expensive than the initial block of capacity it had offered FPC, demonstrating that Panda was unwilling to commit additional capacity without being paid a premium for it. (Tr. 323). Had Panda instead projected

³ Panda’s proposal, of course, cannot be supported by FPC or the Commission for the completely separate but equally significant reason that it is not a legally viable proposal in this State and, therefore, must be rejected as a matter of law under the Florida Supreme Court’s “Duke” decision. Tampa Electric Co. v. Garcia, 767 So.2d 428, 25 Fla. L. Weekly S294, 25 Fla. L. Weekly S370 (Fla. April 20, 2000), rehearing denied (Sept. 28, 2000); (Tr. 254-55).

prices to be lower more than 5 years in the future, Panda would have offered to enter into a long-term purchase power contract with FPC. (Tr. 335). The fact that Panda refused to sell FPC capacity for more than 5 years conclusively confirms that, rather than protecting FPC and its ratepayers by giving them a “bridge” to lower market prices at that time, a five-year, short-term option instead exposes them to the significant risk of higher market prices at that time. (Tr. 232-33, 260-61).⁴

The Commission’s Order No. PSC-00-0504-PAA-EQ, granting FPC’s request for a rule waiver and approving FPC’s Standard Offer Contract, does not suggest a different conclusion. Staff asked the Commission to take notice of this Order (and other, similar orders with respect to Florida Power & Light Company’s Standard Offer Contract). But Staff did not ask any FPC witness a single question about that Order at the hearing. FPC can only assume, then, that Staff wants the Commission to consider that Order in this proceeding because FPC had petitioned the Commission there for a waiver of its rule requiring a minimum ten-year term for such contracts, without having, however, the benefit of an explanation from FPC’s witnesses.⁵ In any event, the

⁴ Panda and Staff made frequent reference to an internal, confidential management memo that contained an evaluation of Hines 2 at the end of the Company’s five year financial forecast. (Comp. Conf. Ex. 6). The fact that FPC was trying to project the financial impact of possible future developments on the Hines 2 option, if it was selected, does not mean that those impacts were in fact known at that time or that they would for sure occur in five years. (Tr. 299-300). Rather, they merely reflect financial sensitivities performed in accordance with FPC’s internal, five-year time frame for such forecasts. (Id.; Tr. 239-240). In any event, FPC’s projections with respect to Hines 2 only confirm what Panda demonstrated by its limited proposal in response to FPC’s RFP: In the future, it is better to own capacity than to have to buy it.

⁵ This is true as well for a number of the other orders and filings contained in Staff’s Request for Official Recognition, which FPC received the day the hearing started. The vast majority of them were not raised in any argument made by Staff at the hearing, and none of FPC’s witnesses were asked about them. If they are important enough to Staff to be brought to the Commission’s attention in this proceeding, in all fairness FPC should not be left to guess why that is the case. For this reason, FPC urges the Commission to give them little or no weight,

Order makes clear that FPC's petition was one of two filed at the same time in that docket; the second one was a petition by FPC to waive the rule requiring FPC to hold an open solicitation period for the standard offer contract prior to issuance of an RFP. Placed in this context, it becomes clear why FPC's petition for waiver of the ten-year requirement for standard offer contracts is not "proof" that FPC should not build Hines 2 now, after the RFP has revealed it is the most cost-effective alternative for FPC and its ratepayers.

FPC was asking for the rule waivers to prevent any delay in the RFP process to determine the most-cost effective alternative for FPC to meet its 530 MW need beginning in the winter of 2003/04. At that time, FPC did not know if less expensive alternatives to Hines 2 to meet FPC's reliability need of 530 MW were available on the market; that was, of course, exactly what the RFP process was designed to tell FPC. Yet, FPC certainly knew from past experience that long-term cogeneration contracts had proved not to be cost-effective supply-side resources for the Company.

As Staff witness Billy Dickens testified, the actual cost to utilities for producing power turned out, over time, to be much lower than cogen contract prices. (Tr. 550-51). As he further acknowledged, these mandatory cogen contracts failed to provide utilities with the same cost-effective flexibility and optionality as utility-owned units. (Tr. 554, 567). When FPC and other utilities have been forced by regulation under the Public Utility Regulatory Policy Act ("PURPA") to enter into cogeneration contracts, such long-term contractual commitments have proven, over time, to be (in Mr. Dickens' words) a "bad experience," which presented a "real predicament" for the utilities in Florida and a "conundrum" for the Commission. (Tr. 554, 567).

especially given the uncontroverted evidence presented at the hearing by FPC to support its present petition.

(It is revealing that Mr. Dickens was not able to make the same empirical criticism of utility-built units). Based on the fact that history has proven that FPC could do far better for its ratepayers than enter into long-term cogen contracts, FPC asked the Commission to relieve it of the obligation to enter into 10-year standard offer agreements.

Further, FPC has no reluctance to enter into small, cost-effective, short-term contracts to satisfy small, short-term needs. As Mr. Crisp testified, if the Company needed only 100 MW for only one year, he might buy that capacity “in a heartbeat.” (Tr. 295). Mr. Crisp was adamant, however, that FPC has a long-term need for the full 530 MW of Hines 2, commencing in the winter of 2003/04. (See, e.g., Tr. 287, 295-96, 332). Thus, whatever may be happening in the market for short-term purchases of small MW blocks is irrelevant to FPC’s actual need in this case. To satisfy its actual need in this, FPC followed the Commission’s rules, issued an RFP, and determined that there were no competitive market alternatives available to meet that need.

Further, in filing its petitions for rule waivers, FPC was concerned that the standard offer contract process might in fact delay the RFP process and thereby potentially impact on FPC’s ability to meet its reliability need beginning in the winter of 2003/04. FPC’s reliability need was 530 MW and, in FPC’s judgment, there was at most 40 MW from cogeneration resources reasonably available to FPC to meet its need due to recent rule changes that focused more on small Qualifying Facilities (“QFs”) of less than 0.1 MW to provide cogeneration resource options to utilities. Order No. PSC-00-0504-PAA-EQ, March 7, 2000, pp. 3-4. The lack of sufficient cogeneration resources to meet FPC’s 530 MW need, and the potential for delay in the RFP process while the standard offer contract was outstanding, combined to present the very real risk that FPC’s ability to meet its Reserve Margin planning criterion might be frustrated. (Id.).
The Commission agreed:

We agree with FPC that allowing the issuance of the RFP at the same time as the open solicitation period will satisfy the underlying purposes of the statute by encouraging [QFs]. FPC has stated that recent revisions to the cogeneration rules focus the rules more closely upon QFs less than 0.1 MW. Therefore, neither FPC nor its ratepayers will be at a disadvantage if FPC issues a RFP for Hines Unit 2 while the standard offer contract is outstanding. If the waiver were not granted, FPC's efforts to meet the new 20% reserve margin would be frustrated. A delay in the RFP process would "seriously jeopardize" FPC's ability to bring Hines 2 on line by the November 2003 in-service date. We believe that these two concerns constitute "substantial hardship" within the meaning of [the rule].

(Id. at p. 4) (emphasis added).

Thus, FPC's preference for a short-term standard offer contract does not in any way conflict with FPC's determination in this case to meet its 530 MW long-term need by building Hines 2. The fact that FPC was hesitant to enter into long-term cogen contracts is in fact perfectly consistent with FPC's preference to build its own plant to meet its long-term need. FPC correctly petitioned the Commission to be relieved of any obligation to enter into still more long-term cogen contracts based on its empirical experience that it has been able to produce or purchase power at lower costs, over time, than costs incurred under the PURPA mandate.

Putting to one side Staff's mistaken reliance on FPC's petitions for rule waivers to argue for Staff's about-face preference for short-term contracts, the Commission does not have jurisdiction to consider Staff's proposal.⁶ Mr. Dickens made clear his proposal originated in

⁶ Staff's "proposal" was put before the Commission under an "issue" the Commission may not properly address or resolve in this proceeding. Under that issue, Staff's issue 6, the Commission was asked to consider whether FPC's ratepayers should be obligated for the costs of Hines 2 for its full 25-year life. FPC moved to strike Staff's issue 6 and the accompanying testimony and proposal of Staff's witness on that issue, Mr. Billy Dickens. The Commission granted FPC's motion to strike the issue but tried to divorce Staff's proposal in Mr. Dickens' testimony from that issue. Instead, the Commission proposed the consideration of Staff's proposal under the issue of the cost-effectiveness of Hines 2.

Staff's proposal, however, cannot be divorced from issue 6. This was made abundantly clear when Mr. Dickens purported to strike issue 6 from his pre-filed testimony identifying the issue he was "here to address" at the hearing, but immediately responded on cross-examination that issue 6 was still his purpose for providing testimony in this case. (Tr. 502, 504, 515). As

Staff's policy bureau and represents a change to the existing regulatory framework. (Tr. 515-16, 519). Under his proposal, FPC builds Hines 2, its costs go into the rate base, and FPC gets full cost recovery on a cost-of-service basis for the first five years. (Tr. 561). However, if after five years a more cost-effective alternative becomes apparent, FPC might be denied future cost recovery, even though the decision to build Hines 2 is perfectly appropriate today, which he agreed is the case. (Tr. 560-61). But, neither during the first five years nor at any time after five years, does FPC get the upside of the market risk if Hines 2 proves to out-perform the market at that time. (Tr. 561-62).⁷ This proposal is not the law today, as Mr. Dickens freely admits, but in his words he proposes only an "amendment" to existing law. (Tr. 513, 533). Whether he calls it an amendment, or something else, it is still a change in the law that the Commission does not have the statutory authority to make.

FPC plans to build Hines 2 for its ratepayers, and every bit of it will count toward FPC's reserves for those ratepayers. Whatever might happen in the electric market in Florida in the future, Mr. Dickens agrees the indisputable fact remains that, at this time, the retail electric market in Florida is regulated, and FPC must meet its obligation to serve, as it plans to do with

Mr. Dickens honestly admitted, his proposal on Staff's behalf is what issue 6 is all about and, accordingly, one cannot be separated from the other. (Tr. 515). As a result of this evidence, the Commission should revisit FPC's Motion to Strike and grant it in its entirety without proceeding any further to consider the substance of Staff's proposal.

⁷ It is true that Mr. Dickens offered at the hearing that it would be appropriate for the Commission to consider "some type of pecuniary incentive or reward" if, during his proposed periodic, future prudence review, Hines 2 still proved to be the best available technology and most cost-effective resource for FPC's ratepayers. (Tr. 544-45). But he did not mean that "incentive or reward" to include a return of the "market" price differential FPC otherwise would have earned from FPC's ratepayers to FPC's shareholders. (Tr. 561-62, 617-18). Hence, under his proposal, FPC still faces the future downside risk of the denial of cost recovery, and FPC will receive nothing close to the full upside benefits of selling at market prices. Mr. Dickens' concession, therefore, is really no concession at all. (Tr. 637-39). His proposal is still asymmetrical, in addition to being illegal.

Hines 2. (Tr. 527, 531-32). FPC's obligation to serve carries with it a corresponding right to a fair rate of return on its investment, again a point even Mr. Dickens must accept. (Tr. 532). That is the regulatory compact as a matter of state law. (*Id.*). See §366.041, Fla.Stats. (listing matters the Commission can consider in setting "just, reasonable, and compensatory rates, provided that the public utility "shall not be denied a reasonable rate of return upon its rate base ..."). The Commission does not have jurisdiction to consider any changes to that regulatory compact no matter how well-intentioned they might be.

The Commission will search in vain for any legislative authority giving it the power to adopt Mr. Dickens' proposal. That authority simply does not exist, for even Mr. Dickens concedes that his proposal is premised on the "advent of electric generation restructuring," which has not occurred. (Tr. 538, 595). In other words, Mr. Dickens was not "speaking about a regulated environment." (Tr. 534). As he put it, his proposal was premised on a "transition" period when "we move from regulated to a lesser regulated environment." (Tr. 538). Absent legislative "restructuring" the Commission has no authority to proceed in this manner. See Tampa Electric Co. v. Garcia, 767 So.2d 428, 25 Fla. L. Weekly S294, 25 Fla. L. Weekly S730, (Fla. April 20, 2000), rehearing denied, (Sept. 28, 2000). See also Mathis v. Florida Dep't of Corrections, 726 So.2d 389, 391 n. 4 (Fla. 1st DCA 1999) (indicating that agencies are "creatures of statute and only have such powers as statutes confer"); Southern States Utilities v. Florida Public Service Comm'n, 714 So.2d 1046, 1051 (Fla. 1st DCA 1998) ("the PSC, like other administrative agencies, is a creature of statute [and] the Commission's powers, duties, and authority are those and only those that are conferred expressly or impliedly by statute of the State"). Accord Consumers Power Co. v. Michigan Public Service Comm'n, 596 N.W. 2d 126, 1999 WL 462507 (Mich. June 29, 1999) (holding that "PSC exceeded its authority in ordering

the electric utilities to transmit electricity produced and sold by other suppliers to customers in the service area of the utility”).

Not only will the Commission exceed its jurisdiction by altering in any way the regulatory compact, it will violate FPC’s constitutional rights. FPC, as a regulated utility, is entitled to a fair rate of return, and it has been long-established that a denial of that right is a taking of property in violation of the Florida and United States Constitutions. E.g., Gulf Power Co. v. Bevins, 289 So.2d 401, 403, n. 1, 407 (Fla. 1974); Covington & L. Turnpike Road Co. v. Sanford, 164 U.S. 578, 593 (1896); Bluefield Water Works & Improvement Co. v. Public Service Comm’n of West Virginia, 262 U.S. 679 (1923).

Staff’s proposal for periodic reconsideration of the “cost recovery” for Hines 2 unfairly and impermissibly charges FPC with the benefit of hindsight, which the Florida Supreme Court has repeatedly held the Commission may not do. Florida Power Corp. v. Public Service Comm’n, 424 So. 2d 745, 747 (Fla. 1982) (holding that “[h]indsight should not serve as the basis for liability [for the costs of a nuclear outage] in this instance”); Florida Power Corp. v. Public Service Comm’n, 456 So. 2d 451, 452 (Fla. 1984) (reversing Commission order with respect to rates for the same nuclear outage because “[t]he lack of procedures which might have prevented the accident, suggested by the [Commission], amounts to an application of the 20-20 vision of hindsight”). “Hindsight” proof, simply put, is a totally inappropriate basis for evaluating the costs of management decisions, but that is exactly what Mr. Dickens will have the Commission use in his “periodic” prudence reviews.

The Commission may not cure this problem, as Staff suggests, by telling FPC in advance that the Commission intends to deny future cost recovery at some future date based on information that is not available to FPC today. Merely warning FPC that the Commission may

later violate the law makes that future violation no less improper. By the same token, the Commission may not somehow create statutory power that it does not possess by purporting to preserve such power as a condition of granting a need determination. If the Commission has the power to deny cost recovery in the future, placing a condition in FPC's need order is not necessary. If the Commission does not have that power (which in fact is the case), the Commission cannot grant such power to itself by putting language in one of the Commission's own orders. Only the Legislature can grant power to the Commission.⁸

For all these reasons, the Commission would plainly exceed its legitimate authority if it pursues Staff's proposal. Yet the Commission need not even undertake that risk under the present circumstances. At the heart of Staff's proposal, according to Mr. Dickens, is the concern that over the life of a long-term asset, fuel costs will exceed fuel forecast scenarios: This risk is what he attempts to address with his proposal. (Tr. 529-30). But he agrees that both the utility and an IPP will be affected by such price volatility and that, in either event, whether the utility builds its own unit or buys power from the IPP, the fuel costs will be passed on to the utility's ratepayers. (Tr. 528-29, 530-31).

Moreover, Mr. Dickens' concerns about the risks of unidentified, unknown "market distortions" have nothing to do with the current regulated market, as even he freely conceded.

⁸ In the few need orders where the Commission imposed conditions on the grant of the need, those conditions in each case represented promises which were part of the utility's proof that its proposed resource option was needed and cost-effective at that time. In re: Petition for Determination of Need for a Proposed Electrical Power plant and Related Facilities in Polk County by Tampa Electric Co., Docket No. 910883-EI, Order No. PSC-92-0002-FOF-EI, 92 FPSC 3:19; In re: Petition of Seminole Electric Cooperative, Inc. et. al., Docket No. 880309-EC, Order No. 27335, 89 FPSC 12:262. What Staff proposes to do here is completely different; Staff wants to impose a condition on FPC's need that in no way is based on the circumstances that form the bases today for FPC's need determination. Rather, Staff asks the Commission to

(Tr. 538-39). Mr. Dickens pointed out that he was “reading tea leaves” and had no better idea of whether there in fact will be a deregulated market of some type in Florida, what it will look like, or when it will come than anyone else in the room. (Tr. 520, 523, 552, 575). He admitted he had no evidence to support his assumptions, his conclusions, or his proposal and was not offering any. (Tr. 520). He further repeatedly conceded that his concerns about the future “downside” risk of being locked into a long-term asset at a cost well above the market might never materialize, and that he might just as well be wrong and the costs of the long-term asset might in fact be well below the market prices in the future. (Tr. 540-41, 543-44, 556-57, 559-560). He refused to assign even a 1 percent probability that market conditions would improve after 5 years. (Tr. 560). Therefore, his proposal is not built on competent, substantial evidence that the decision to build Hines 2 today is imprudent, but is premised on gross speculation that the plant may be bested in the future. Mr. Dickens offers no rational justification for the Commission to forgo what even he admits is the most cost-effective alternative available to FPC at this time. (Tr. 560).

In point of fact, the Commission can make matters much worse by accepting Mr. Dickens’ proposal. Mr. Dickens admitted as much when he testified as follows:

- Q. But you would agree that in a truly competitive market that a market actor, a firm, under principles of microeconomics would expect to get and would hope to get prices when they’re up and prices when they’re down?
- A. Yes.
- Q. And if you were to take away the upside risk and impose – take away the upside benefit and impose the risk of having just to accept the downside market prices, you would create exposure to investors in the company participating in that market; correct?

impose a condition on FPC’s need order for some future, unknown and hypothetical circumstance, and the Commission has never done that before.

A. Yes, the possibility of risk exposure would be present.

Q. And you agree as an economist that when the market perceives that there is greater risk exposure, the market will demand a greater return on capital?

A. That's correct, yes.

Q. And that can translate into a higher cost of goods and services?

A. Typically that would be reflected in an upward adjustment in prices.

(Tr. 562-63; Tr. 582). Dr. Cicchetti, an economist and former Chairman of the Wisconsin Public Service Commission retained by FPC to assess Staff's proposal, echoed Mr. Dickens' testimony in this regard. As Dr. Cicchetti explained, Staff's proposal "will actually be creating new levels and elements of risk that will increase the cost of money for the regulated firms in Florida. And when you increase the cost of money for regulated firms, you will raise the price that consumers will pay under regulation." (Tr. 614-15).

The effect of this proposal, Dr. Cicchetti continued, is that the Commission will reduce the likelihood that IOUs will want to build. (Tr. 628). Mr. Dickens said that was not what Staff wanted to do, claiming his proposal was not intended to be a "showstopper or subterfuge." (Tr. 513-514). But that is the exact effect Staff's proposal will have on the IOUs in the State. As Dr. Cicchetti explained,

Now, if that's true [his belief that it will reduce the likelihood that IOUs will want to build], then the only relationships you'll see develop will be non-utility generators who will come forward and know they have a desperate buyer on their hands, somebody who can't build themselves because they can't finance it, and raise their rates to collect the money, and they will only get them to build -- or they will only come up in agreement where they come in at prices that are by any standard of comparison too expensive with much higher implicit rate of returns with these kinds of offerings coming forward like we've seen laid out for us by Panda. That is just really expensive alternatives for short-term duration, and that's not good for the Florida consumer as well. So I think any way if you follow his policy, you will see more of what you are seeing here which are a bad set

of IPPs coming forward and when utilities decide they can't build because they can't finance it because of these five-year prudence reviews, I think that's the bad policy idea.

(Tr. 629). Mr. Dickens even reluctantly agreed that it is inappropriate and unfair to later deny the utility cost recovery for costs associated with its resource when the utility made the right decision at the time it had to commit to a generating resource. (Tr. 553). In short, no one ultimately believes this proposal is a good policy idea, especially in this case when it is unrefuted that FPC made the "right decision" with respect to Hines 2.

Indeed, what evidence there is in this case demonstrates that the Commission should forgo Staff's proposal. The Commission simply does not need it. The Commission has the most-cost effective alternative for FPC and its ratepayers right now in the form of Hines 2. Mr. Dickens testified that FPC had demonstrated that it had met all of the conditions appropriate for the Commission to grant a favorable determination of need (with the exception of his proposal), and that FPC had elected the most cost-effective alternative available to it today. (Tr. 556, 560).

Alan Taylor and Dr. Cicchetti, both of whom independently reviewed FPC's selection, concurred. (Tr. 366-67, 370; Tr. 620, 630-31). And, FPC has amply demonstrated by a preponderance of the evidence that is the case at the hearing, as outlined herein. In the words of Dr. Cicchetti, "go ahead with the best choice you can make now on what's on the table with some reasonably open bidding process and review process and go with it, but don't take your good choice and make it more costly if it's your choice." (Tr. 645). That "good choice" is indisputably Hines 2 and the Commission should accordingly reject Staff's proposal and grant FPC's petition.

4. Possible Mitigation of the Need through Conservation.

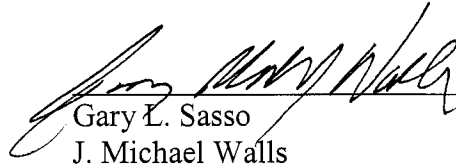
It was stipulated by the parties that there are no conservation measures taken by or reasonably available to FPC which might mitigate the need for Hines 2. In fact, the Commission has noted with concern that FPC has the largest DSM in the nation. Docket No. 981360-EI, Order No. PSC-99-0232-FOF-EI, 1999 WL 177535, p. 3.

C. Conclusion

For all of the foregoing reasons, and based on the preponderance of the evidence presented at the hearing, the Commission should grant FPC's Petition for Determination of Need for an Electrical Power Plant.

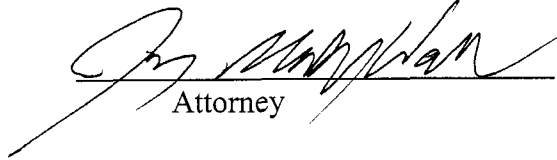
Respectfully submitted this 15th day of November, 2000.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true and correct copy of the foregoing has been furnished by Federal Express to Deborah Hart, Esq., as counsel for the Public Service Commission, and to Suzanne Brownless, Esq., as counsel for Panda International, Inc., and by U.S. Mail to all other interested persons of record as listed below on this 14th of November, 2000.


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