

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination  
of Need for Hines Unit 3 Power Plant.

Docket No. 020953-EI  
Filed: October 31, 2002

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COMMISSION  
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PETITION TO INTERVENE OF  
FLORIDA PARTNERSHIP FOR AFFORDABLE COMPETITIVE ENERGY

Pursuant to Chapter 120, Florida Statutes, Sections 403.519 and 366.07, Florida Statutes, and Rules 25-22.039, 25-22.082, and 28-106.205, Florida Administrative Code ("F.A.C."), the Florida Partnership for Affordable Competitive Energy ("PACE"), through its undersigned counsel, hereby files this Petition to Intervene into this proceeding, and in support, states the following:

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

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

2. The name and address of Petitioner PACE are as follows:

Florida Partnership for Affordable Competitive Energy  
1049 Edmiston Place  
Longwood Florida 32779  
Telephone: 407-389-0994  
Telefax: 407-865-5639

3. Copies of all pleadings, notices, and orders in this docket should be provided to:

Michael Green  
1049 Edmiston Place  
Longwood, FL 32779  
Email: [mgreenconsulting@earthlink.net](mailto:mgreenconsulting@earthlink.net)

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*Done 11/01/02*

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FPSC-COMMISSION CLERK

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4. Statement of PACE's substantial interests. PACE's substantial interests are affected by this proceeding. PACE is a statewide trade association of independent power producers, working together to promote a competitive wholesale electricity marketplace in Florida that will benefit all Floridians. PACE's member companies are Calpine Energy Corporation, Competitive Power Ventures, Inc., Constellation Power, Inc., Mirant Americas Development, Inc., PG&E National Energy Group, and Reliant Energy Power Generation, Inc.

5. This proceeding involves Florida Power Corporation's ("FPC") petition filed with the Florida Public Service Commission ("Commission"), requesting the Commission to issue a determination of need regarding FPC's proposal to construct a 582 megawatt ("MW") power plant, the Hines 3 power plant, that is proposed to be located at the Hines Energy Complex in Polk County, Florida. FPC filed a petition with the Commission on September 4, 2002, seeking a determination of need for the Hines 3 power plant. FPC issued its Request for Proposals ("RFP") on November 26, 2001. Following the conduct of the RFP process, FPC selected the Hines 3 self-build option as the most cost-effective supply-side alternative for the provision of the 582 MW of new electric generating capacity.

6. The substantial interests of PACE's members will be affected by the Commission's decision regarding FPC's request for a determination of need to allow it to construct 582 MW of electric generating capacity at the Hines 3 power plant. Specifically, this proceeding will affect the opportunity for PACE members, all of which are independent power

producers, to provide cost-effective alternatives to FPC's proposed self-build option for providing new electric generation capacity. Inasmuch as a key purpose of this proceeding is to ascertain whether FPC has proposed the most cost-effective electric generating capacity alternative, PACE's interest is the type of interest that this proceeding is designed to protect. Agrico Chem. Co. v. Dept. of Env'tl. Reg., 406 So. 2d 478 (Fla. 2d DCA 1981). To have standing to bring suit on behalf of its members, a trade association, such as PACE, must demonstrate that a substantial number – although not necessarily a majority – of its members' substantial interests are affected by the proceeding, that the subject matter of the proceeding is within the association's general scope of interest and activity, and that the relief requested is of the type appropriate for the association to receive on behalf of its members. Florida Home Builders Assoc. v. Dept. of Labor and Employment Sec., 412 So. 2d 351 (Fla. 1982); Farmworkers Rights Org., Inc. v. Dept. of Health and Rehabilitative Serv., 417 So. 2d 753 (Fla. 1<sup>st</sup> DCA 1982).

7. One of the chief purposes of this proceeding is to ensure that the most cost-effective capacity additions, evaluated from the perspective of FPC's the ratepayers, is selected. The subject matter of this proceeding thus coincides with the interest of PACE, whose members strive to provide the most cost-effective electric power. Rule 25-22.082, F.A.C., contemplates that developers of wholesale generation projects who respond to and participate in the RFPs issued by investor-owned utilities will be permitted to intervene in the "determination of need" proceeding associated with that RFP, to protect their interests. Five of PACE's six member companies filed responses to FPC's RFP and so were participants in FPC's RFP within the meaning of Rule 25-22.082, F.A.C. Accordingly, a substantial number of PACE's members' substantial interests are affected by this proceeding, the primary purpose of which is to ensure that, pursuant to the conduct of the RFP process under Rule 25-22.082, the most cost-effective

power supply alternative is selected. In the recent determination of need proceeding for Florida Power & Light Company's proposed Manatee Unit 3 and Martin Unit 8 electric generating facilities, PACE satisfied the associational standing requirements announced in Florida Home Builders, and was granted intervention. Order No. PSC-02-1205-PCO-EI (Sept. 4, 2002).

8. Moreover, PACE's intervention will not conflict with the rule authorizing intervention by individual participants. The rule's provision stating that an individual developer must have participated in the RFP prior to intervening is designed to prevent a situation in which a developer could cause delay by "sitting out" an RFP and then presenting an unevaluated proposal in the related determination of need proceeding. As a trade association, PACE does not submit bids or develop projects, nor will its participation in this proceeding involve advocacy in support of a particular alternative. Rather, PACE's participation is aimed at ensuring that the most-cost effective alternative for the proposed electric generating capacity is selected. Accordingly, participation in this proceeding by PACE is consistent with the intent of Rule 25-22.082, F.A.C., and with Section 403.519, Florida Statutes. To this end, the Order granting PACE's Petition to Intervene into the determination of need proceeding for Manatee Unit 3 and Martin Unit 8 specifically determined that PACE's intervention neither conflicted with, nor was barred by, Rule 25-22.082. Order No. PSC-02-1205-PCO-EI (September 4, 2002), at 2-3.

9. PACE's intervention in this proceeding will protect its members' substantial interests with respect to issues that affect the common interests of PACE members. Specifically, these issues include the appropriateness of the RFP scoring criteria, the fairness of the RFP processes, and evaluating whether FPC has met its burden of proof to demonstrate the cost-effectiveness of its proposals. PACE's intervention also will streamline the litigation process by affording PACE the ability to represent its members' common interests with respect to certain

issues, thereby promoting efficiency. At the same time, PACE's participation will assist the Commission in ensuring that the most cost-effective option is secured for the benefit of FPC's ratepayers. In fact, PACE recently was granted intervention in the need determination proceeding for the Manatee 3 and Martin 8 Units based, in part, on these grounds. Order No. PSC-02-1205-PCO-EI (Sept. 4, 2002).

10. Further, to the extent that the decision in this docket may have precedential effect in future proceedings, PACE can ensure that its members' positions on policy and procedure are considered by intervening in this proceeding.

11. Disputed Issues of Material Fact. PACE anticipates that the disputed issues of material fact in this proceeding will include, but not necessarily be limited to:

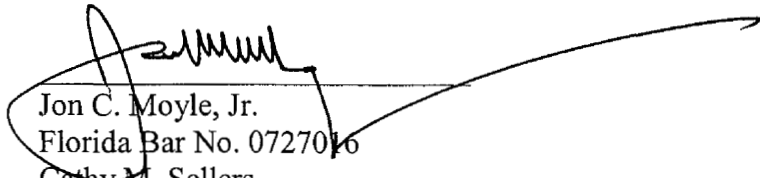
- a. Was the RFP process conducted in a fair manner?
- b. Did FPC's selection process take into account all risks to ratepayers associated with FPC's proposed new electric power generation capacity?
- c. Has FPC met its burden to demonstrate that its selection process was thorough, even-handed, and fair?
- d. Has FPC met its burden to demonstrate that its proposed self-build option for its new electric generation capacity is the most cost-effective alternative, from the ratepayers' perspective?
- e. Has FPC met its burden to demonstrate that its proposed Hines 3 plant is needed, taking into account the need for system reliability and integrity?
- f. Has FPC met its burden to demonstrate that its proposed Hines 3 plant is needed, taking into account the need for adequate electricity at a reasonable cost?
- g. If FPC has not met this burden, what action should the Commission take?

12. Statement of Ultimate Facts Alleged. PACE alleges that FPC's selection process failed to properly recognize all risks to FPC ratepayers associated with its self-build proposal, so that, ultimately, FPC has not met its burden to demonstrate that the proposed Hines 3 power

plant is the most cost-effective alternative available to provide new electric generating capacity. Accordingly, it would be in the ratepayers' best interest to deny FPC's petition for determination of need, and instead to place into effect protocols that will ensure the selection of the most cost-effective choices.

WHEREFORE, PACE respectfully requests the Commission to enter an Order granting it permission to intervene and participate as a party to this proceeding.

Respectfully submitted this 31st day of October, 2002.



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by overnight mail to those listed below without an asterisk, hand delivery to those listed below with an asterisk ("\*"), and by e-mail to all listed below on this 31st day of October, 2002:

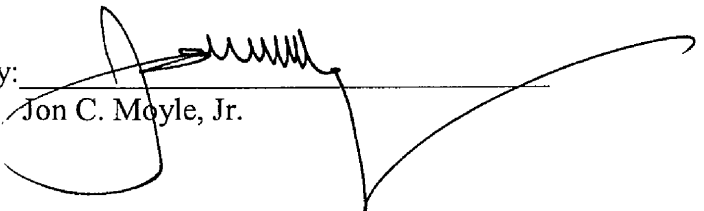
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By:   
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