

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: November 15, 2002

RECEIVED-FPSC
NOV 15 PM 3:14
COMMISSION CLERK

AMENDED 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 Amended Petition to Intervene into this proceeding, and in support, states the following:

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

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

2. The name and address of Petitioner PACE are:

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

AUS _____
CAF _____
CMP _____
COM _____
CTR _____
ECR _____
GCL _____
OPC _____
MMS _____
SEC _____
OTH _____

RECEIVED & FILED 1

[Signature]
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

12575 NOV 15 02

FPSC-COMMISSION CLERK

Done 11/18/02

Jon C. Moyle, Jr.
Cathy M. Sellers
Moyle Flanigan Katz Raymond & Sheehan, P.A.
118 North Gadsden Street
Tallahassee, FL 32301
Telephone: (850) 681-3828
Telefax: (850) 681-8788
Email: jmoylejr@moylelaw.com; csellers@moylelaw.com

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, 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 directly determine whether any of PACE's members, all of which are

independent power producers and five out of six who submitted bids in response to the RFP, can construct and operate power plants to provide cost-effective alternatives to FPC's proposed self-build option for providing new electric generation capacity.

7. FPC has failed to demonstrate that its proposed Hines 3 self-build option is the most cost effective alternative, as required by Section 403.519, F.S., when compared to the proposals submitted by PACE's members. Specifically, FPC's water supply -- and, therefore, its cost for water -- is in serious question, as evidenced by the Objection of Southwest Florida Water Management District, attached as Exhibit A.¹ In addition, FPC's projected heat rate in the Hines 3 Need Determination Study is stated at approximately 6,900 BTU/kWh, which conflicts with the approximately 7,300 BTU/kWh heat rate stated in FPC's 2002 Ten-Year Site Plan (Schedule 9). This calls into question the correctness of FPC's heat rate projection in the Hines 3 Need Determination Study -- the answer to which could result in an approximately \$3.6 million per year cost difference in the Hines 3 self-build proposal. Further, FPC's reliance on unspecified wholesale need, as a significant component of the total need, upon information and belief, biased its evaluation against appropriate combinations of smaller and shorter term purchases from PACE's members and other suppliers. Indeed, FPC recently announced a business strategy to increase wholesale sales, calling into question whether this business strategy was a factor used in FPC's self-selection of the Hines 3 unit. (See Exhibit B.) Also, in evaluating the cost of "filler" supply alternatives, FPC assigned excessive cost to those "filler" supplies in comparing the self-

¹ PACE recognizes that the Southwest Water Management District's Objection is directed to the proposed modification of the site certification conditions for the Hines facility, which involves environmental, rather than need determination, issues. However, the District's Objection calls into question the water supply source for Hines 3. Clearly, the cost-effectiveness of the Hines 3 self-build option cannot be determined with any degree of certainty or accuracy until a firm water supply source is identified and factored into FPC's cost-effectiveness determination. Accordingly, the District's Objection, attached as Exhibit A, is directly germane to the cost-effectiveness issues in this need determination proceeding.

build option with the proposed alternatives submitted by PACE's members. Succinctly put, FPC's cost effectiveness analyses were defective because FPC failed to identify and account for all costs, benefits, and risks that would be imposed on FPC's customers by FPC's self-build option, as compared to the proposals submitted by PACE's members and others. This failure substantially affects 5 of the 6 PACE members who responded to FPC's RFP.

8. To have standing to intervene in this proceeding on behalf of its members, 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. 1st DCA 1982). As discussed herein, PACE meets all of these standing requirements.

9. A key purpose of this proceeding is to ascertain whether FPC's selected self-build option is the most cost-effective electric generating capacity alternative. PACE seeks to intervene in this proceeding to assert and protect the interests of its member companies, of whom five out of six submitted responses to FPC's RFP but were not selected due to FPC's flawed cost-effectiveness evaluation process detailed above. Clearly, these member companies – which constitute a substantial number of PACE's members – were directly and immediately injured by not being selected to supply power to FPC pursuant to FPC's RFP evaluation process. Further, the subject matter of this proceeding -- which is to determine whether, pursuant to Section 403.519, Florida Statutes, FPC's self-build option is the most cost-effective alternative compared to other capacity alternatives submitted in the RFP process – falls squarely within PACE's scope

of interest and activity, which includes ensuring that its members' proposals were accurately and fairly evaluated in FPC's RFP process.² Finally, PACE seeks to participate in this proceeding to assert its members' interests in probing the accuracy and fairness of FPC's RFP evaluation process in this particular case, not in a generic sense. Such participation, which may well result in FPC's self-build option being determined not the most cost-effective, is appropriate relief for PACE to receive on behalf of its members. PACE meets all of the associational standing requirements of Florida Home Builders and therefore should be allowed to intervene and represent the interests of its participating members in this proceeding.³

10. 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. Did FPC's selection process take into account all costs, benefits, and risks associated with FPC's proposed self-build option and with all other available

² FPC's reliance on City of Sunrise v. South Florida Water Management District, 615 So. 2d 746 (Fla. 4th DCA 1993) and other cases disallowing standing on the basis of competitive economic injury is misplaced. City of Sunrise involved a challenge to the proposed issuance of a water use permit under Chapter 373, F.S., and that statute made abundantly clear that competitive economic injury was not a cognizable consideration in determining whether the permit should be issued. By contrast, in this case, the RFP and Need Determination processes are, by definition, competitive processes involving the determination of which proposal is most cost-effective from an economic perspective. Moreover, the Commission's existing Rule 25-22.082(8), F.A.C., clearly recognizes that the interests of bidders rejected by the utility in RFP processes under the Rule are within the zone of interests to be protected in any subsequent need determination proceeding; the Rule directly implies that participants whose proposals were rejected by the utility in an RFP process will have standing to challenge the utility's selection process in a subsequent need determination proceeding. Thus, it is indisputable that competitive economic interests are within the zone of interest of this proceeding, and PACE's interest in ensuring that its members' proposals were accurately and fairly evaluated in determining the most cost-effective option fall squarely within the zone of interest of this proceeding.

³ In Florida Home Builders Ass'n. v. Department of Labor and Employment Security, 412 So. 2d 351 (Fla. 1982), the Florida Supreme Court expressly rejected the position, advanced by FPC in its Memorandum in Opposition to PACE's intervention, that the participation of individual member companies provides an adequate opportunity for participation. In addition to noting that cost considerations may bar effective individual member participation in administrative proceedings, the Court stated that denying trade associations the opportunity to represent the interests of their injured members defeats a key purpose of the Florida Administrative Procedure Act to enhance access to agency proceedings by substantially affected persons. Id. at 352-353.

options, including those proposals submitted by PACE's members, for its needed new electric power generation capacity?

b. Did FPC's selection process accurately consider and evaluate the competing proposals submitted by PACE's members?

c. Will the Objection of the Southwest Florida Water Management District to FPC's proposed water use for the Hines 3 unit adversely affect the project's estimated costs?

d. Was the recently announced business strategy of FPC for increasing wholesale sales in the State of Florida a factor that was considered during FPC's evaluation process?

e. Did FPC disclose to the bidders that FPC's business strategy to increase wholesale sales in Florida would be used in reviewing responses to the RFP, i.e., was this part of a detailed description of the methodology to be used to evaluate alternative generating proposals on the basis of non-price attributes, as required by Rule 25-22.082? (PACE contends such disclosure was not made, in violation of the Rule.)

f. 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?

g. Is FPC's proposed Hines 3 plant needed, taking into account the need for system reliability and integrity?

h. Is the proposed Hines 3 plant needed, taking into account the need for adequate electricity at a reasonable cost?

i. If FPC has not demonstrated that the Hines 3 facility is needed, what action should the Commission take?

11. Statement of Ultimate Facts Alleged. PACE alleges that FPC failed to accurately consider and evaluate several factors, and the risks associated with those factors, with respect to its own self-build proposal, as compared to other available power supply options, including those options reflected in PACE's members' individual proposals. Accordingly, 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.

12. Statutes and Rules Entitling PACE to Relief. PACE is entitled to relief in this proceeding pursuant to Sections 403.519, 120.569, and 120.57(1), Florida Statutes, and Rule 25-22.082, Florida Administrative Code.

WHEREFORE, PACE respectfully requests the Commission to enter an Order granting it permission to intervene and participate as a party to this proceeding, and, ultimately, to enter an Order denying FPC's Petition for Determination of Need for the Hines 3 Power Plant.

Respectfully submitted this 15th day of November, 2002.



Jon C. Moyle, Jr.
Florida Bar No. 0727016
Cathy M. Sellers
Florida Bar No. 0784958
Moyle Flanigan Katz Raymond & Sheehan, P.A.
118 North Gadsden Street
Tallahassee, FL 32301
Telephone: (850) 681-3828
Telefax: (850) 681-8788
EMail: jmoylejr@moylelaw.com
csellers@moylelaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all listed below, by hand delivery to those listed below with an asterisk, and by overnight mail to those listed below without an asterisk on this 15th day of November, 2002:

Lawrence Harris, Esquire*
Marlene Stern, Esquire*
Legal Division
Florida Public Service Commission
Gunter Building
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Gary L. Sasso, Esquire**
Jill H. Bowman, Esquire**
Carlton Fields Law Firm
Post Office Box 2861
St. Petersburg, Florida 33731-2861

W. Douglas Hall, Esquire*
Carlton Fields Law Firm
Post Office Drawer 190
Tallahassee, Florida 32302-0190

James A. McGee, Associate General Counsel**
Progress Energy Service Company, LLC
Post Office Box 14042
St. Petersburg, Florida 33733

Myron Rollins, Esquire
Black & Veatch
Post Office Box 8405
Kansas City, Missouri 64114

Mr. Paul Darst
Department of Community Affairs
Division of Resource Planning/Mgmt.
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

Mr. Buck Oven
Department of Environmental Protection
Siting Coordination Office
2600 Blairstone Road
Tallahassee, Florida 32301

Mr. Greg Holder, Regional Director
Fish & Wildlife Conservation Commission
3900 Drane Field Road
Lakeland, Florida 33811-1299

Mr. Paul Lewis, Jr.*
Florida Power Corporation
106 East College Avenue, Suite 800
Tallahassee, Florida 32301-7740

Bruce May, Esquire
Holland & Knight Law Firm
Post Office Drawer 810
Tallahassee, Florida 32302-0810

Mr. Vincent Akhimie
Polk County Board of Commissioners
Post Office Box 2019
Bartow, Florida 33831

Mr. R. Douglas Leonard
Regional Planning Council 07
555 E. Church Street
Bartow, Florida 33830-3931

St. Johns River Water Management District
Post Office Box 1429
Palatka, Florida 32178-1429



Jon C. Moyle, Jr.

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN RE:

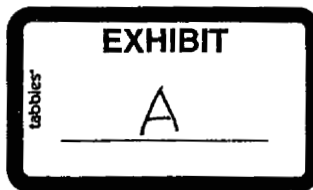
Florida Power Corporation)
Hines Energy Complex)
Request to Modify Conditions)
Of Certification)

Site Certification No. PA 92-33SA
DEP Case No. PA 92-33 E

OBJECTION OF SOUTHWEST FLORIDA WATER
MANAGEMENT DISTRICT

The Southwest Florida Water Management District ("District"), by and through its undersigned counsel, pursuant to Section 403.516(1)(b), Florida Statutes (F.S.), hereby objects to the issuance of the Department of Environmental Protection's ("DEP") Proposed Order Modifying Conditions of Certification for Florida Power Corporation's ("FPC") Hines Energy Complex ("Hines"), stating as follows:

1. On October 8, 2002, DEP gave notice of its intent to modify the Conditions of Certification for Hines, and included a proposed Order Modifying the Conditions of Certification.
2. Hines is located in Polk County and is within the Southern Water Use Caution Area (SWUCA) established by the District. Water use caution areas are declared by the District when regional action is necessary to address cumulative water withdrawals that are causing or may cause adverse impacts to the water and related land resources or the public interest. Specifically in the SWUCA, the District has a concern that the cumulative adverse impacts of withdrawals from the Upper Floridan aquifer have resulted in salt water intrusion along coastal areas, caused long-term



declines in Upper Peace River flows and have lowered lake levels in the Highlands Ridge area within Polk and Highlands Counties.

3. The proposed Order Modifying the Conditions of Certification for Hines, if issued, would allow Upper Floridan groundwater to be used at Hines in connection with certain water supply shortages experienced by FPC in the operation of the first 940 MW of electrical power generation, or Power Blocks 1 and 2.

4. The existing Conditions of Certification for Hines provide that no process or cooling water shall be withdrawn from the Upper Floridan aquifer in support of the first 940 MW of generating capacity. The authorized sources of process and cooling water in support of such generating capacity is limited to existing water on site, on-site rainwater and stormwater capture, reuse of internal wastewater streams, and reuse of treated wastewater from the City of Bartow sewage treatment plant. This limitation in the use of groundwater was instituted based upon the finding that available reclaimed water and water cropping would be more than sufficient to supplement the cooling pond to meet the increased cooling requirements related to Power Block 2 operation.

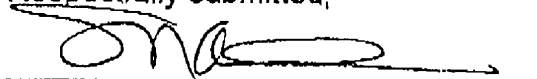
5. Approval of the proposed Modification of Conditions of Certification for Hines would result in some quantity of Upper Floridan aquifer groundwater being used in support of the first 940 MW of generating capacity.

6. The District is of the opinion that the location of power plants in the SWUCA, where they must rely upon Upper Floridan groundwater for process or cooling water, is not in the best interests of the public. Further, it is the District's position that it is not good public policy to allow power plants to rely upon groundwater when there are other areas that have sufficient alternative sources of water available. In this instance,

FPC can make greater use of alternative sources of water including reuse of wastewater. In the event that reuse is insufficient, the District and DEP have recently approved two merchant power plants from which Florida Power could purchase additional power as needed to supply its customers, without additional allocation of groundwater for Hines.

THEREFORE, the District objects to the issuance of DEP's Proposed Order Modifying Conditions of Certification for the Hines Energy Complex.


Respectfully submitted,



Martha A. Moore
Assistant General Counsel
Southwest Florida Water Management District
2379 Broad Street
Brooksville, Florida 34604
(352) 796-7211 extension 4660

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing document has been furnished to the following by U.S. Mail on this 5th day of November 2002.


Martha A. Moore

Scott A. Goorland, Senior Assistant General Counsel
Florida Department of Environmental Protection
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Douglas S. Roberts, Esquire
Carolyn S. Raeppe, Esquire
Hopping Green Sams & Smith
Post Office Box 6526
Tallahassee, Florida 32314

Colin Roopnarine, Asst. General Counsel
Department of Community Affairs
2470 Centerview Drive
Tallahassee, Florida 32399-2100

Harold A. McLean, General Counsel
Florida Public Service Commission
Gerard Gunter Building
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Sheauching Yu, Esquire
Assistant General Counsel
Florida Department of Transportation
605 Suwannee Street, MS 58
Tallahassee, Florida 32399-0450

Ross Stafford Burnaman, Esquire
Florida Fish and Wildlife Conservation Commission
620 South Meridian Street
Tallahassee, Florida 32399-1600

Norman White, Esquire
Central Florida Regional Planning Council
555 East Church Street
Bartow, Florida 33830

Mark Carpanini, Esquire
Polk County Attorney's Office
Drawer AT012
P.O. Box 9005
Bartow, FL 33830-9005

Robert A. Glen, Esquire
Florida Power Corporation
P.O. Box 14042
St. Petersburg, FL 33733

L:\PRIVATE\Warril Moore\FPCHines\ObjectionPleading.doc

RECEIVED
FEB 10 2005
10:00 AM
FBI - TAMPA

Electric Power Daily

PROGRESS TO 'AGGRESSIVELY' COURT DEALS WITH PUBLIC POWER; Q3 FALLS

Progress Energy Friday said its Florida Power subsidiary will become increasingly "aggressive" over the next two or three years about selling wholesale power to municipal utilities and electric cooperatives in the state.

A spokesman for Raleigh, North Carolina-based Progress told analysts that the company's Carolina Power & Light unit already is a very active wholesaler, with about 4,000 MW in long-term deals with munis and co-ops in North and South Carolina.

Company officials, however, said Florida Power "pretty much abandoned the wholesale market" a few years ago. That strategy will change. The spokesman said the utility expects to sharply increase the amount of wholesale power it sells next year and in 2004.

Progress also said it would continue to gradually expand Progress Ventures, its unregulated generation unit, which currently has 1,550 MW of merchant peaking capacity in the southeastern U.S. and another 1,550 MW under construction. The unit has said its goal is to have at least 75% of its capacity under medium- or long-term wholesale contracts by the end of 2003.

Progress Energy Friday reported third-quarter net income of \$151.9-million (70 cents/share) on revenues of \$2.352-billion, down sharply from the \$366.4-million (\$1.78/share) on revenues of \$2.33-billion it reported for third-quarter 2001.

While its key operating units showed marginal year-on-year gains, Progress noted that the current quarter's earnings included an after-tax charge of \$224.8-million (\$1.04/share) related the writedown it took on its telecommunications industry assets, which include Progress Telecome, Caronet and Interpath.

Moody's Investor Service said it had placed the long-term debt rating of Progress Energy on review for downgrade in response to Progress' announcement it would write down its telecommunication assets. "Because of this writedown, Progress Energy's debt to capital ratio will remain at approximately 64% at the end of the third quar-

ter, further delaying the deleveraging plan anticipated after the acquisition of Florida Progress in 2000," Moody's said.

The plan had already been delayed earlier this year following the issuance of new debt to finance expansion of Progress Ventures merchant generation portfolio, the rating agency said.

At the time of its purchase of Florida Progress the company said it intended to reduce its debt-to-capital ratio to 55% in two to four years.

Moody's said the Progress Energy ratings under review are: its Baa1 senior unsecured debt rating and the shelf registrations for the issuance of senior unsecured debt, (P)Baa1; junior subordinated debt (P)Baa2; trust preferred stock, (P)Baa2; and preferred stock, (P)Baa3. About \$4-bil in debt securities are affected, Moody's said.

EXHIBIT

tabbles

B