



Florida Power

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JAMES A. MCGEE

SENIOR COUNSEL

January 4, 1999

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

Re: Docket No. 981360-EI

Dear Ms. Bayó:

Enclosed for filing in the subject docket are an original and fifteen copies of Florida Power Corporation's Response in Opposition to Edison Mission Energy's Petition for Leave to Intervene. A copy of the certificate of service will be filed shortly.

ACK _____

AFA _____

APP _____

CAF _____

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OPC _____

RCH _____

SEC _____

WAS _____

OTH _____

Please acknowledge your receipt of the above filing on the enclosed copy of this letter and return to the undersigned. Also enclosed is a 3.5 inch diskette containing the above-referenced document in Microsoft Word Office 97 format. Thank you for your assistance in this matter.

Very truly yours,

James A. McGee /kvc
James A. McGee

JAM/kma
Enclosure

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GENERAL OFFICE

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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RECORDS AND
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In re: Petition of Florida Power Corporation for waiver of Rule 25-22.082, F.A.C., Selection of Generating Capacity.

Docket No. 981360-EI

Submitted for filing:
January 4, 1999

**RESPONSE OF FLORIDA POWER CORPORATION
IN OPPOSITION TO EDISON MISSION ENERGY'S
PETITION FOR LEAVE TO INTERVENE**

Florida Power Corporation (Florida Power) hereby responds in opposition to the Petition for Leave to Intervene (the Petition) filed by Edison Mission Energy (Edison Mission) and, in support hereof, states as follows:

1. In its 14-page Petition, Edison Mission devotes slightly more than two pages to its alleged standing to intervene. Edison Mission uses the majority of its Petition to address and argue the merits of Florida Power's request to waive Rule 25-22.082, F.A.C., (the Bid Rule), a discussion that is not germane to the intervention sought by Edison Mission. While not wishing to belabor this response in the same manner, Florida Power is compelled to offer several brief comments on Edison Mission's argument.

- a. Edison Mission contends that the Commission "cannot possibly" satisfy its statutory duty under Section 403.519, F.S., to make specific findings whether Florida Power's proposed generating facility is the most cost-effective alternative in a subsequent need determination proceeding if the

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Bid Rule is waived. This is ludicrous. Only several months ago, the Commission satisfied this same statutory duty in the Kissimmee/FMPA need determination case in which the Bid Rule did not even apply. Moreover, the Bid Rule itself recognizes that its application may not always be in the best interests of a utility's ratepayers. In any event, the burden will be on Florida Power, not the Commission, to demonstrate in a subsequent need case that its proposed facility is the most cost-effective alternative.

- b. Edison Mission complains that Florida Power's commitment to forego any increase in the base rates of its customers to recover the fixed capital and operating costs of its proposed Hines Unit 2 for at least five years after the unit's in-service date will "undermine the purpose of the Bidding Rule" by preventing a "fair comparison" between the costs of Hines 2 and the costs of purchase power alternatives.¹ Apparently, fairness is in the eye of the beholder. The very purpose of this commitment by Florida Power is to offer its customers a rate benefit substantially greater than could be realistically expected from a more time consuming RFP process. While Edison Mission may see this as unfair to prospective bidders like itself, there is nothing unfair about it to Florida Power's customers, and they, not alternative power suppliers, are the intended beneficiaries of the Bid Rule. In addition, Edison Mission's complaint about the unfairness

¹ Edison Mission's comments about the effect of Florida Power's base rate commitment on other potential power supply bidders makes it unclear whether Edison Mission understands that this commitment applies only in the event Florida Power's request for a waiver of the Bid Rule is granted. In that case, Edison Mission's concern over a "fair comparison" between Hines 2 and alternative power suppliers will be moot.

of Florida Power's rate commitment implicitly recognizes the underlying premise of the waiver request; *i.e.*, that it is highly unlikely any prospective bidders would be willing to offer a similar commitment.

2. Edison Mission's requested intervention is based on a fundamental failure to properly distinguish between the instant Bid Rule waiver proceeding and the need determination proceeding that would follow the granting of the waiver. The resulting confusion about the nature and relationship of these two separate and distinct proceedings infects each of Edison Mission's three points (paragraphs 18, 19 and 20) in support of its intervention.

3. First, in paragraph 18, Edison Mission mistakenly concludes that granting Florida Power's request to waive the Bid Rule would deprive it of the opportunity to participate in the subsequent need determination proceeding. This would occur, according to Edison Mission, because of subsection (8) of the Bid Rule, which states: "The Commission shall not allow potential suppliers of capacity who were not participants to contest the outcome of the selection process in a power plant need determination proceeding." (Emphasis added.) Clearly, the emphasized phrase refers to participation in the RFP process established by the Bid Rule, just as does the reference to "the selection process" which follows. Since there would be no RFP process in which to participate if the Bid Rule were waived, subsection (8) of the Rule would just as clearly be inapplicable to a potential supplier of capacity such as Edison Mission and would not bar its participation in the subsequent need determination proceeding.

4. Second, in paragraph 19, Edison Mission repeats its contention that the Commission's ability to satisfy its duty under Section 403.519, F.S., will be affected in this proceeding.² As discussed above, the Commission is not being called upon in this proceeding to make any findings under Section 403.519 with respect to cost-effectiveness or otherwise. Those findings are for a subsequent need determination proceeding, and Florida Power's burden to demonstrate a basis for such findings in that proceeding will be unchanged by granting the waiver requested in this proceeding.

5. Finally, in paragraph 20, Edison Mission notes that the Commission granted intervention to a potential alternative supplier of power in a currently pending need determination proceeding³ and suggests that this somehow supports its

² Edison Mission apparently believes the Commission must make a finding under Section 403.519 as to whether Florida Power's proposed facility is the most cost-effective alternative in order to rule on the requested waiver. Edison Mission states in paragraph 19:

"The Commission cannot fulfill this obligation [to make a cost-effectiveness finding pursuant to Section 403.519] based on generic representations by FPC that its construction of the proposed facility will be less costly to its ratepayers than purchased power ..."

Needless to say, the representations in Florida Power's waiver petition were never intended to provide the kind of detailed, analytical evaluation that would be expected in a need proceeding to support a finding of cost-effectiveness required by Section 403.519.

³ It should be noted that neither of the Joint Petitioners in that proceeding (Docket No. 981042-EM) had issued an RFP to satisfy their respective need prior to filing for a determination of need from the Commission, nor was this omission questioned by the power supplier/intervenor.