

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for
determination of need for Hines
Unit 2 Power Plant by Florida
Power Corporation.

DOCKET NO. 001064-EI
Filed: SEPTEMBER 25, 2000

STAFF'S OBJECTIONS TO FLORIDA POWER CORPORATION'S
FIRST SET OF INTERROGATORIES TO STAFF AND
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
AND MOTION FOR PROTECTIVE ORDER

Pursuant to Rule 28-106.206, Florida Administrative Code, and Rules 1.280(c), 1.340(a), and 1.350(b), Florida Rules of Civil Procedure, and pursuant to the Order Establishing Procedure herein, Order No. PSC-00-1561-PCO-EI, the Staff of the Florida Public Service Commission, by and through its undersigned attorney, hereby objects to Florida Power Corporation's (FPC) First Set of Interrogatories to Staff (Nos. 1-6) and First Request for Production of Documents (Nos. 1-18), and requests that the Prehearing Officer issue a protective order relieving Staff from the responsibility of responding to same. As grounds therefore, Staff states:

1. On August 7, 2000, FPC filed its petition for determination of need for the Hines Unit 2 Power Plant. The petition was set for a full evidentiary hearing on October 26-27, 2000, by Order No. PSC- 00-1561-PCO-EI, issued August 30, 2000.

2. On September 15, 2000, FPC filed its First Set of Interrogatories to Staff (Nos. 1-6) and First Request for Production of Documents (Nos. 1-18), which are attached hereto as

DOCUMENT NUMBER-DATE

12068 SEP 25 8

FPSC-RECORDS/REPORTING

Exhibit A.

3. Pursuant to Rule 28-106.206, Florida Administrative Code, parties may obtain discovery through the means and in the manner provided in the Florida Rules of Civil Procedure. Rule 1.280(b), Fla.R.Civ.P., provides that parties may obtain discovery regarding any relevant matter, as long as the information sought appears to be "reasonably calculated to lead to the discovery of admissible evidence." However, Rule 1.280(c), Fla.R.Civ.P., allows persons from whom discovery is sought to move for a protective order to protect them "from annoyance, embarrassment, oppression, or undue burden or expense...."

4. Staff specifically objects to Interrogatory Number 6 on the grounds that it is overbroad, vague, subject to multiple interpretations, and unduly burdensome.

5. Staff specifically objects to FPC's Requests for Documents Nos. 1, 2, 3, 7, 8, 9, 10 and 11 as privileged work product. The requests essentially ask for Staff's strategies, workpapers, mental impressions, and conclusions concerning the case at bar.

6. Staff specifically objects to Requests for Documents Nos. 4, 5, 6, 10, and 11 as overbroad. These requests could encompass every document in every docket that could conceivably impact on FPC's or any other utility's capacity needs.

7. As set forth in detail below, Staff objects to the requests noted in paragraphs 5 and 6 above, and asks that the

Prehearing Officer issue a protective order relieving Staff from the responsibility of responding to the interrogatories or providing the documents on the grounds that they cause an undue burden on Staff by impinging on Staff's role as an advisor to the Commission, improperly seek analysis and conclusions from Staff on a pending matter, and seek protected work product.

8. Pursuant to the Commission's Statement of Agency Organization and Operations (1999), Staff's primary duty is to "represent the public interest and see that all relevant facts and issues are clearly brought before the Commission for its consideration." (See p.11, Parties) However, Staff is not a real party in interest in any proceeding before the Commission. South Florida Natural Gas Co. v. Public Service Commission, 534 So.2d 695 (Fla. 1988). One of Staff's primary functions is to provide legal and technical advice on matters pending before the Commission. The Commission uses its staff to "test the validity, credibility, and competence of the evidence presented." South Florida Natural Gas, at 698.

9. Rule 25-22.033(5), Florida Administrative Code, prohibits a staff member who testifies in a case from discussing the merits of that case with any Commissioner during the pendency of that case. This prohibition extends to participating in the preparation of recommendations and at the agenda conference. Further, Section 120.66(1), Florida Statutes (1999), permits only advisory staff

members who do not testify on behalf of the Commission in a formal proceeding to communicate with the Commissioners.

10. If Staff is required to respond to these discovery requests and Staff's responses are introduced as evidence, those Staff members responding could not perform their advisory function because they would be excluded from further participation in analysis of the case and preparation of Staff's recommendation. In addition, subjecting Staff to these discovery requests could have a chilling effect in that Staff members might become hesitant to form any kind of opinion or conduct fact-finding in future cases if their opinions or fact-finding efforts would subject them to compelled discovery or testimony.

11. FPC's requests for information that Staff has gathered in its review, specifically that evidence which Staff intends to use at hearing in this docket, is, by its own terms, a request for work product. This information was gathered by Staff in preparation for hearing in this docket.

12. Staff's mental impressions concerning the proposed power plant and legal analysis concerning the need determination are protected from discovery, without exception, under the provisions of Rule 1.280(b)(3), Fla.R.Civ.P.

13. The Commission has consistently recognized the concerns raised in this pleading by Staff in past orders protecting non-testifying members of Staff from discovery, including

interrogatories, depositions, and requests for admissions. See Order No. PSC-97-1372-PHO-EQ, issued October 29, 1997, in Docket No. 961184-EQ; Order No. PSC-94-1562-PCO-WS, issued December 14, 1994, in Docket No. 930945-WS; Order No. PSC-95-0137-PCO-SU, issued January 27, 1995, in Docket No. 940963-SU; Order No. PSC-94-0425-PCO-WS, issued April 11, 1994, in Docket No. 930880-WS; and Order No. 17910, issued July 27, 1987, in Docket No. 860960-WS.

WHEREFORE, the Staff of the Florida Public Service Commission requests that the Prehearing Officer issue a protective order relieving Staff from the undue burden of responding to Interrogatory No. 6 of FPC's First Set of Interrogatories to Staff and Nos. 1-11 of FPC's First Request for Production of Documents.

Respectfully submitted this 25th day of September, 2000.



DEBORAH D. HART
Florida Bar Number 305022
Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
(850) 413-6199

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following by U. S. Mail this 26th day of September, 2000:

Gary L. Sasso, Esquire
Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A.
Post Office Box 2861
St. Petersburg, Florida, 33731

Florida Power Corporation
James A. McGee, Esquire
Post Office Box 14042
St. Petersburg, Florida 33733-4042



Deborah D. Hart
Florida Bar No. 305022
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FLORIDA PUBLIC SERVICE COMMISSION
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(850) 413-6199

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

SEP 15 2000

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

Docket No.: 001064-EI

Submitted for Filing: September 15, 2000

**FLORIDA POWER CORPORATION'S
FIRST SET OF INTERROGATORIES TO STAFF**

Pursuant to Rule 1.340, Florida Rules of Civil Procedure, and Rule 28-106.206, Florida Administrative Code, Florida Power Corporation ("FPC") hereby serves its First Set of Interrogatories on the Staff of the Florida Public Service Commission ("PSC Staff").

DEFINITIONS

For purposes of these interrogatories, the following definitions apply:

A. "And" and "or" shall be construed in the disjunctive or conjunctive as necessary in order to bring within the scope of each request all documents which might otherwise be construed to be outside its scope.

B. "Communication" shall mean any oral or written utterance, notation or statement of any nature whatsoever, by and to whomever made, including, but not limited to, correspondence, conversations, dialogues, discussions, interviews, meetings, consultations, agreements, and other understandings between or among two or more people.

C. "You" or "your" means the Staff of the Florida Public Service Commission and any of its agents, employees, representatives, or other person acting or purporting to act on behalf of the Staff of the Florida Public Service Commission.

D. "Project" means the FPC Hines 2 power plant at the Hines Energy Complex in Polk County, Florida on which FPC based its petition for a determination of need to the Florida Public Service Commission in this Docket.

- E. "PSC" means the Florida Public Service Commission.
- F. "PSC Staff" means the Staff of the Florida Public Service Commission.

INSTRUCTIONS

A. If any interrogatory calls for a document or non-written communication which you claim to be privileged, state the grounds upon which the claim of privilege is made and identify each document or non-written communication. In identifying such document or communication, you may substitute for a summary of its contents, principal terms or provisions, a statement of the subject matter to which it relates. The fact that an interrogatory calls in part for documents or non-written communications which you claim to be privileged is not a basis for you to fail to identify fully all documents or non-written communications called for by such interrogatory as to which no privilege is claimed.

B. If you cannot answer any interrogatory fully and completely after exercising due diligence to make inquiry and secure the information to do so, please so state and answer the interrogatory to the extent you deem possible. Specify the portion of such interrogatory you claim you are unable to fully and completely answer, and further specify the facts on which you rely to support your contention that you are unable to answer the interrogatory fully and completely.

C. Please use the space provided for your answer, if adequate; if not, attach additional sheets with the required information.

INTERROGATORIES

1. To the extent that the testimony filed by or on behalf of the PSC Staff in this docket contains any opinions, please provide the factual and legal bases considered and accepted in formulating those opinions.

2. To the extent that the testimony filed by or on behalf of the PSC Staff in this docket contains any opinions, please provide the factual and legal bases considered and rejected in formulating those opinions.

FPC'S FIRST SET OF INTERROGATORIES TO STAFF
(NOS. 1 – 6)
DOCKET NO. 001064-EI

3. To the extent that the testimony filed by or on behalf of the PSC Staff in this docket contains any opinions, please describe what compensation was provided, if any, to the witness providing those opinions.

4. To the extent that the testimony filed by or on behalf of the PSC Staff in this docket contains any opinions, please describe the qualifications, if any, of the witness providing those opinions, including but not limited to all education and experience, a list of the publications authored by the witness within the preceding five (5) years, and a list of any other cases and proceedings in which the witness has testified as an expert at trial, by deposition, or by affidavit in the preceding five (5) years.

FPC'S FIRST SET OF INTERROGATORIES TO STAFF
(NOS. 1 - 6)
DOCKET NO. 001064-EI

5. To the extent that any computer models were relied on in any way in the preparation of the testimony filed by or on behalf of the PSC Staff in this docket, please (a) describe the computer model(s) used; (b) identify by whom the model(s) was used; (c) identify all inputs and assumptions used in the model(s); (d) describe the results or output of all runs using the computer model(s); (e) describe in detail any sensitivity analyses that were conducted by the PSC Staff; and (f) describe or list all backup or source material.

6. To the extent that either (i) the testimony does not explicitly contain the answer or (ii) the answer has not been provided in response to any of the preceding interrogatories, please identify the factual and legal bases for the testimony filed by or on behalf of the PSC Staff in this docket.

FPC'S FIRST SET OF INTERROGATORIES TO STAFF
(NOS. 1 - 6)
DOCKET NO. 001064-EI

I HEREBY CERTIFY that I am authorized to answer these interrogatories on behalf of the Staff of the Florida Public Service Commission, and that the answers to these interrogatories are true and correct.

By: _____
As Its: _____

STATE OF FLORIDA

COUNTY OF _____

BEFORE ME THE UNDERSIGNED AUTHORITY, personally appeared _____, who, being first duly sworn, deposes and says that he/she has read the foregoing answers and that they are true.

SWORN AND SUBSCRIBED BEFORE ME THIS _____ day of _____, 2000.

(Affix Seal)

Notary Public

Printed Name

Commission Expiration Date

Serial Number

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: September 15, 2000

**FLORIDA POWER CORPORATION'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rule 1.350, Fla. Rules of Civil Procedure, and Rule 28-106.206, Florida Administrative Code, Florida Power Corporation ("FPC") hereby serves its First Request for Production of Documents upon the Staff of the Florida Public Service Commission ("PSC Staff").

INSTRUCTIONS

A. You are requested to produce the documents designated herein at Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A., NationsBank Tower, Suite 2300, One Progress Plaza, St. Petersburg, Florida 33701, during normal business hours (between 8:00 a.m. and 5:00 p.m., Monday through Friday), on or before the time required for production of the documents under the Florida Rules of Civil Procedure, or at such other place and time as to which the parties may mutually agree.

B. If the documents otherwise required to be produced by this request are withheld, please identify the document by stating its date, author, recipients and your reasons for withholding the document.

C. If any request is objected to, set forth all reasons for the objections. If any document is withheld under a claim of attorney-client privilege or work product doctrine or any other claim of privilege, identify the document requested and state the grounds for the assertion of the privilege in sufficient detail to permit the Commission to adjudicate the validity of the

claims. Identify the document withheld by date; author; sender; recipient, including all persons who were shown, had access to, or received a copy; format; title; present location; and give a general description of the subject matter of the document. If you object in part to any request, produce all documents included in the remainder of the request.

D. Documents should be produced separately for each paragraph of this request, or, alternatively, should be identified as produced with respect to the particular paragraph or paragraphs to which they are responsive.

DEFINITIONS

A. "You" or "your" means the PSC Staff and any of its agents, employees, representatives, or other person acting or purporting to act on behalf of the PSC Staff.

B. "Project" means the FPC Hines 2 power plant at the Hines Energy Complex in Polk County, Florida on which FPC based its petition for a determination of need to the Florida Public Service Commission in this Docket.

C. "PSC" means the Florida Public Service Commission.

D. "PSC Staff" means the staff of the Florida Public Service Commission.

E. "Document" or "Documents" means any written, graphic, electronic, magnetic, or other means of preserving thought, expression, or information and all tangible things from which information can be processed or transcribed, including the originals and all non-identical copies whether by reason of any notation made on such copy or otherwise, whether produced internally or received from some other source within the possession, custody, or control of the PSC Staff, or its agents, including, but not limited to, computer printouts and other computer materials (including, but not limited to "e-mail" or similar correspondence or stored information, graphic or aural records or representations of any kind, including without limitation, photographs, charts,

graphs, plans, microfiche, microfilm, videotape recordings, motion pictures, and electronic mechanical or electric recordings or representations of any kind (including without limitation, tapes, cassettes, disks and recordings), including all drafts, attachments, and enclosures associated with any of the foregoing.

F. "Relating to" means constituting, containing, embodying, reflecting, identifying, stating, referring to, dealing with, tending to prove or disprove, or in any way pertaining to.

G. The terms "and" and "or" are to be treated as synonymous and interchangeable as sometimes indicated by usage of the terms "and/or."

DOCUMENT REQUESTS

Please produce all of the following documents which are in your possession, custody, or control, including all such documents in the possession, custody or control of your partners, employees, agents, attorneys, accountants, and others acting on your behalf.

1. All documents relied upon in any way to formulate or prepare the testimony filed by or on behalf of the PSC Staff in this docket.
2. All documents generated in connection with the testimony filed by or on behalf of the PSC Staff in this docket.
3. All documents considered and rejected in the course of preparing the testimony filed by or on behalf of the PSC Staff in this docket.
4. All documents received and/or obtained by the PSC Staff from any entity other than FPC that in any way relate to this docket.
5. All correspondence by, from, or between the PSC Staff and any entity other than FPC that in any way relates to this docket.

6. All documents reflecting, mentioning, constituting, or relating to communications by, from, or between the PSC Staff and any entity other than FPC that in any way relates to this docket.

7. All documents relating to your calculations or determination that the Project would be or would not be needed by FPC to fulfill its obligation to serve.

8. All documents created by or for you that in any way relate to any concern you might have about viability of or need for the Project.

9. All documents other than the documents produced or provided by FPC that you have received and/or obtained which relate in any way to the need for the Project.

10. All correspondence by, from, or between the PSC Staff and any entity other than FPC that in any way relates to the need for the Project.

11. All documents reflecting, mentioning, constituting, or relating to communications by, from, or between the PSC Staff and any entity other than FPC that in any way relates to the need for the Project.

12. All computer models used in any way to formulate or prepare the testimony filed by or on behalf of the PSC Staff in this docket, including but not limited to, all assumptions, inputs, outputs, results, sensitivities, and back-up or source materials.

13. All documents provided to any expert or consultant retained by or on behalf of the PSC Staff to assist in, or for the purpose of, formulating or preparing the testimony filed by or on behalf of the PSC Staff in this docket.

14. All resumes, curriculum vitae, or other documents identifying the qualifications of any expert or consultant retained by or on behalf of the PSC Staff to assist in, or for the purpose of, formulating or preparing the testimony filed by or on behalf of the PSC Staff in this docket.

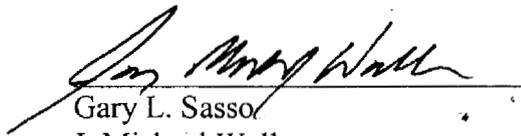
15. All articles, treatises, or similar documents prepared or written by any expert or consultant retained by or on behalf of the PSC Staff to assist in, or for the purpose of, formulating or preparing the testimony filed by or on behalf of the PSC Staff in this docket.

16. All documents identifying the trials and proceedings in which any expert or consultant retained by or on behalf of the PSC Staff to assist in, or for the purpose of, formulating or preparing the testimony filed by or on behalf of the PSC Staff in this docket testified in by way of deposition, affidavit, or otherwise.

17. All documents containing or representing the testimony by way of deposition, affidavit, or otherwise, of any expert or consultant retained by or on behalf of the PSC Staff to assist in, or for the purpose of, formulating or preparing the testimony filed by or on behalf of the PSC Staff in this docket.

18. All documents on which you intend to rely at the final hearing in this docket.

Respectfully submitted this 14th day of September, 2000.



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and

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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, as counsel for Florida Public Service Commission, and via U.S. Mail to all other interested parties of record as listed below on this 14th day of September, 2000.


Attorney

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