

STEEL  
HECTOR  
& DAVIS<sup>SM</sup>

RECEIVED-FPSC

02 MAY 10 PM 4:34

COMMISSION  
CLERK

ORIGINAL

Steel Hector & Davis LLP  
215 South Monroe, Suite 601  
Tallahassee, Florida 32301-1804  
850.222.2300  
850.222.8410 Fax  
www.steelhector.com

Charles A. Guyton  
850.222.3423

May 10, 2002

- VIA HAND DELIVERY -

Blanca S. Bayó, Director  
Division of the Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

**IN RE:** Complaint of Reliant Energy Power Generation, Inc.  
Against Florida Power and Light Company  
Docket No. 020175-EI

Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light Company are the original and seven (7) copies of Florida Power & Light Company's Response In Opposition to Calpine Energy Services, L.P.'s Petition to Intervene, together with a diskette containing the electronic version of same. The enclosed diskette is HD density, the operating system is Windows 2000, and the word processing software in which the document appears is Word 2000.

If you or your Staff have any questions regarding this transmittal, please contact me.

Very truly yours,



Charles A. Guyton

AUS \_\_\_\_\_  
CAF \_\_\_\_\_  
CMP \_\_\_\_\_  
COM S \_\_\_\_\_  
CTR \_\_\_\_\_  
ECR \_\_\_\_\_  
GCL \_\_\_\_\_  
OPC \_\_\_\_\_  
MMS \_\_\_\_\_  
SEC I \_\_\_\_\_  
OTH \_\_\_\_\_

Enclosure

cc: Joseph A. McGlothlin  
Martha Carter Brown  
Robert Scheffel Wright

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER - DATE

05095 MAY 10 02

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Reliant Energy Power )  
Generation, Inc. Against Florida Power & )  
Light Company )

Docket No. 020175-EI

Filed: May 10, 2002

**FLORIDA POWER & LIGHT COMPANY'S RESPONSE IN OPPOSITION  
TO CALPINE ENERGY SERVICES, L.P.'S PETITION TO INTERVENE**

Florida Power & Light Company ("FPL"), hereby responds to Calpine Energy Services, L.P.'s ("Calpine") Petition to Intervene (the "Petition"), and states:

On May 3, 2002, Calpine petitioned to intervene raising essentially the same issues as Reliant. However, for the reasons discussed in FPL's Motion to Dismiss, the bases for the relief claimed in the Petition are fundamentally flawed. Like Reliant's Complaint, Calpine's Petition is deficient both substantively and procedurally.

Most importantly for present purposes, the Reliant Complaint is now moot. Reliant's Complaint alleges that FPL violated Rule 25-22.082, Florida Administrative Code ("the Bid Rule") in a Request for Proposals ("RFP") that was issued on August 13, 2001 ("initial RFP") to solicit proposals for evaluation and determination by FPL of the most cost-effective electrical generating units for FPL's 2005 and 2006 capacity need. On March 22, 2002, FPL petitioned for determinations of need for Martin Unit 8 and Manatee Unit 3, the two units that FPL determined from its evaluation of the initial RFP responses to be the most cost-effective, least risk options to meet FPL's 2005 and 2006 need. In those proceedings, many intervenors raised issues regarding FPL's compliance with the Bid Rule that are the same issues raised in the Reliant Complaint.

On April 22, 2002, FPL filed an Emergency Motion to Hold Proceedings in Abeyance in the FPL Need Determination dockets in order to allow FPL to issue a supplemental Request for

DOCUMENT NUMBER-DATE  
05095 MAY 10 02  
FPSC-COMMISSION CLERK

Proposals (“Supplemental RFP”). The stated purposes of the Supplemental RFP are (1) to give the disappointed bidders another opportunity to provide alternatives that are more cost-effective than those identified by FPL; and (2) to refocus FPL’s Need Determination on Section 403.519, Florida Statutes, which simply authorizes the Commission to make a single determination as to whether the proposed units FPL presents to the Commission in its Petition for Need Determination are the most cost-effective for FPL’s customers. In its Emergency Motion, FPL stated its intent to change its Supplemental RFP to address the various Bid Rule compliance issues about which Reliant (and now Calpine), as well as the Need Determination intervenors, had complained. This would allow the Commission and the parties to focus on the best unit for FPL’s customers rather than Bid Rule compliance issues.

On April 26, 2002, FPL issued its Supplemental RFP, rendering moot all allegations in Reliant’s Complaint as to the initial RFP and the process of selecting the most cost-effective option for FPL’s Need Determination. The mootness of the Reliant Complaint likewise renders the present Petition moot.

Additionally, as set forth more fully in the Motion to Dismiss, the Reliant Complaint fails to state a cause of action based on any alleged violation of the intent of the Bid Rule. Moreover, the Reliant Complaint was untimely filed. Both Reliant and Calpine had months to file a complaint but chose not to. For these reasons, which are discussed in greater detail in FPL’s Motion to Dismiss, the Petition to intervene should be denied.

FPL recognizes that the issues raised herein will likely be influenced by the Commission’s decision on FPL’s Motion to Dismiss, as the same issues are implicated there. Indeed, if Reliant’s Complaint is dismissed then Calpine’s Petition would be rendered moot,

since there would be no proceeding in which to intervene. For that reason, the Commission should defer ruling on Calpine's Petition until such time as it decides FPL's Motion to Dismiss.

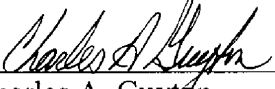
**Conclusion**

For the foregoing reasons the Commission should deny Calpine's Petition.

Respectfully submitted,

R. Wade Litchfield, Esq.  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, Florida 33408-0420  
Telephone: 561-691-7101

Steel Hector & Davis LLP  
215 South Monroe Street  
Suite 601  
Tallahassee, Florida 32301  
Telephone: 850-222-2300

By:   
Charles A. Guyton  
Fla. Bar No. 0398039

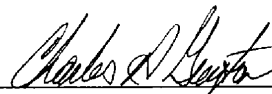
## CERTIFICATE OF SERVICE

I hereby certify that a copy of Florida Power & Light Company's Response In Opposition to Calpine Energy Services, L.P.'s Petition to Intervene was served by U.S. Mail upon the following this 10<sup>th</sup> day of May, 2002:

Joseph A. McGlothlin  
McWhirter, Reeves, McGlothlin, Davidson  
Decker, Kaufman, Arnold & Steen, P.A.  
117 South Gadsden Street  
Tallahassee, Florida 32301

Martha Carter Brown  
Staff Attorney  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Robert Scheffel Wright  
Landers & Parsons, P.A.  
310 West College Avenue  
Tallahassee, Florida 32302

By:   
Charles A. Guyton

MIA2001 106840v1