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May 17, 2002

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0870

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COMMISSION
CLERK

Re: Docket No.: 020175

Dear Ms. Bayo:

On behalf of Reliant Energy Power Generation, Inc., enclosed for filing and distribution are the original and 15 copies of the following:

- ▶ Amended Complaint of Reliant Energy Power Generation, Inc. Against Florida Power and Light Company and, 05326-02
- ▶ Reliant's Motion for Leave to Amend Complaint Against FPL. 05325-02

Please acknowledge receipt of the above on the extra copy of each and return the

stamped copies to me. Thank you for your assistance.

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Sincerely,

Joe McGlothlin

Joseph A. McGlothlin

JAM/bae
Enclosure

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 020175

Filed: May 17, 2002

**AMENDED COMPLAINT OF RELIANT ENERGY POWER GENERATION, INC.
AGAINST FLORIDA POWER AND LIGHT COMPANY**

Pursuant to Rules 25.22-036 and 28-106.201, Florida Administrative Code, Reliant Energy Power Generation, Inc., through its undersigned counsel, files its Amended Complaint against Florida Power and Light Company for violation of Rule 25-22.082, Florida Administrative Code, and alleges:

INTRODUCTION

1. The name, address and telephone number of Complainant is:

Reliant Energy Power Generation, Inc.
P.O. Box 61867 (77208-1867)
1111 Louisiana Street, 43rd Fl.
Houston, Texas 77002
Telephone: (713) 207-7469
Facsimile: (713) 207-0141

2. The name, address and telephone number of Petitioner's representatives for service during the course of this proceeding are:

Joseph A. McGlothlin
McWhirter, Reeves, McGlothlin, Davidson,
Decker, Kaufman, Arnold & Steen, P.A.
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Michael G. Briggs
Reliant Energy, Inc.
801 Pennsylvania Avenue, Suite 620
Washington, D.C. 20004
Telephone: (202) 783-7220
Facsimile: (202) 783-8127

3. The name and address of the affected agency is:

The Florida Public Service Commission
2450 Shumard Oak Boulevard
Tallahassee, Florida 32399-0870

STATUTORY AUTHORITY

4. This Amended Complaint is filed pursuant to Sections 403.519 and 366.07, Florida Statutes, and Rules 25-22.082, 25-22.036(2) and 28-106.201, Florida Administrative Code.

PARTIES

5. Florida Power and Light Company ("FPL") is an investor-owned electric utility subject to the Commission's jurisdiction. FPL serves retail customers in a service area that encompasses much of south Florida and Florida's east coast.

6. Reliant Energy Power Generation, Inc. ("Reliant") is an Exempt Wholesale Generator engaged in the business of providing bulk wholesale power to retail-serving utilities such as FPL. Reliant owns approximately 600 MW of existing generating capacity that it acquired from Orlando Utilities Commission. Reliant is constructing a peaking facility (306 MW of the planned 459 MW is operational) in Osceola County, and has entered contracts to purchase, for resale in Florida's wholesale market, the output of approximately 630 MW of combustion turbines being constructed by El Paso Merchant Energy and approximately 470 MW being constructed by Mirant Americas Development, Inc. To date, in Florida the total generating capacity that Reliant has acquired, is building, or has contracted to purchase and resell to retail-

serving utilities amounts to 2,160 MW. Reliant is evaluating other potential capacity additions.

RELIANT'S SUBSTANTIAL INTERESTS

7. As set forth in detail below, Reliant's substantial interests, as a provider of bulk wholesale power in Florida, are affected significantly by FPL's failure to comply with this Commission's bidding rule. The clear purpose of that rule is to require the appropriate issuance of RFPs and evaluation of responses so as to encourage providers to present cost-effective options to a retail-serving, investor-owned utility's self-build proposal. As set forth below, Reliant responded to an RFP issued by FPL in August 2001. While FPL has since issued a revised RFP, the revised document fails to cure all of the abuses of the original RFP that led to the filing of Reliant's initial Complaint. Moreover, as described below, FPL has denied that any of its actions that it has sought to remedy through the issuance of a revised RFP violated Rule 25-22.082, F.A.C. Further, FPL has announced its intent to evaluate the responses to the revised RFP on the basis of cost projections other than those contained in the RFP -- a fundamentally unfair and biased procedure. Unless the Commission oversees the RFP process to prohibit such self-serving and anticompetitive measures FPL's actions will deprive Reliant of the ability to compete on fair terms for the opportunity to provide that power.

BACKGROUND

8. In Section 403.519, Florida Statutes, captioned "Exclusive forum for determination of need," the Florida Legislature articulated the criteria that the Commission is to apply to a petition for a determination of need. This determination is a condition precedent to the certification hearing required for any capacity addition that exceeds the threshold of the Florida Electrical Power Plant Siting Act ("Siting Act"). The criteria include the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, a

consideration of whether a proposed unit is the most cost-effective alternative available to meet the specified need, and other matters within the Commission's jurisdiction which it deems relevant. Section 403.519 provides that the Commission can begin a proceeding to determine the need for an electrical power plant subject to the Siting Act on its own motion.

9. In 1994, the Commission promulgated Rule 25-22.082, Florida Administrative Code. This rule requires retail-serving, investor-owned utilities subject to the Commission's jurisdiction to issue a Request for Proposals prior to filing with the Commission a petition for a determination of need associated with an electrical power plant requiring Siting Act review. The intent of the rule is to encourage the universe of potential providers to submit cost-effective alternatives to the utility's self-build option. The rule also seeks to ensure that the utility conducts a thorough and fair evaluation of all available alternatives before proposing to construct generating capacity of its own and obligating retail customers to the long-term costs and risks associated with that course. To safeguard the integrity of the RFP process, the rule requires the utility to provide certain detailed information regarding the utility's own self-build option(s) to potential respondents to the RFP, so that they may formulate proposals tailored to the needs of the utility's system.

10. In August of 2001, pursuant to Rule 25-22.082, Florida Administrative Code, FPL issued an RFP. In the RFP, FPL identified additional capacity requirements of 1,150 MW in 2005 and 600 MW in 2006, or a total requirement of 1,750 MW. In the RFP, FPL identified certain potential capacity additions at its Martin, Ft. Myers, and Midway sites as the "next planned generating units" in its generation expansion plan that it intended to construct unless participants presented better alternatives in their responses to the RFP.

11. Reliant obtained a copy of the RFP. Based on its analysis of the information in the RFP package, Reliant submitted three separate proposals totaling 800 MW of capacity to FPL. Reliant's response included both base load and peaking capacity proposals.

12. In January 2002, FPL informed Reliant that FPL intends to construct all of the capacity that it identified in the RFP. FPL rejected all responses to the RFP and announced its intent to construct 1,900+ MW of incremental generating capacity, with an in-service date of 2005.

13. On February 28, 2002, Reliant filed a Complaint against FPL in which Reliant alleged that, in order to favor its self-build options, FPL violated both the letter and the spirit of the Commission rule 25-22.082 in designing and processing its August 2001 RFP. Reliant alleged that FPL's August 2001 RFP violated Rule 25-22.082 in the following respects:

a. Rule 25-22.082, requires a utility to inform potential participants of the estimated cost of the utility's own self-build option. Implicitly, the rule requires the utility to provide *accurate* information. In the August 2001 RFP, FPL claimed its cost of constructing the essentially combined cycle capacity identified as its self-build option to be, on average, approximately \$429 per installed KW. Reliant asserted in its Complaint that FPL provided unrealistic and artificially low estimates of the cost of its self-build options to potential bidders in its RFP package.

b. In the RFP, FPL instructed participants that they must be willing to hold open their bids for a period of 365 days. Given the dynamic and changing nature of the market for generation, this was an unreasonable and unrealistic term, designed to penalize and discriminate against potential participants and favor FPL's own self-build options. FPL did not place the same limitation on its own self-build projections.

c. The RFP stated that participants would be required to post completion security in the amount of \$50,000 per MW. Further, FPL's RFP indicated that a participant would be required to agree to terms that would allow FPL to draw down the *entire amount* of completion security in the event the bidder was a single day late in meeting the specified capacity availability date. To illustrate, with respect to a participant who intended to propose 500 MW (the approximate size of a combined cycle unit large enough to realize important economies of scale), this term translates to the risk that the participant would have to pay FPL \$25,000,000 if the participant experienced a delay of a single day. This requirement was onerous and unnecessary to the legitimate purpose of establishing reasonable security in the event of a delay.

d. In a section of the RFP document called “Regulatory Provisions,” FPL specified that any contract between FPL and the selected winner would be subject to *complete termination* in the event the Commission failed to allow cost recovery of all of the costs FPL incurred pursuant to the contract. Rather than seeking to protect FPL’s legitimate interests, FPL instead used the provision to threaten a complete, unilateral abrogation of the contract.

e. In the “Regulatory Provisions,” FPL also reserved the right to *terminate* a contract between a bidder and FPL in the event current law is changed to allow owners of power plants having a steam component of greater than 75 MW and selling at wholesale to apply for a determination of need on a merchant basis (whether or not the winning bidder with whom FPL had contracted chose to submit such a petition), or in the event the State of Florida “otherwise deregulates Florida’s electric utility industry.” Reliant asserted that the purposes of this condition were to prevent prospective bidders from advocating such changes in law and/or to impose the risk of complete and total abrogation of the contract by FPL on potential bidders.

f. Under the terms of the August 2001 RFP, a participant was required to pay a fee of \$9,000 for each proposal it wished to submit. (No evaluation fees were required of small power producers or cogenerators of a small size.) Such a multiple fee structure stifles the willingness of potential participants to offer variations of their proposals and therefore reduces the potential universe of options.

g. Separate terms of the August 2001 RFP informed participants that their prospects would suffer if they submitted proposals containing “exceptions” to the RFP requirements. Reliant asserted that FPL designed the RFP to have the effect of either excluding participants or penalizing their scores when they refused or took exception to unrealistic and unreasonable terms, thereby prejudicing their proposals relative to FPL’s self-build options.

h. Rule 25-22.082 explicitly requires the utility to identify the self-build option for which alternatives are being sought, including the operating parameters, the costs of the self-build option, and its location. In light of the obvious and significant implications for transmission impacts, the location of the self-build option is a critical component of a respondent’s analysis of the utility’s self-build “target” and the formulation of a proposal. In the RFP, FPL identified specific capacity additions at its Martin and Midway sites as the “targets” that the participants were invited to try to “beat” with their submissions. After Reliant and others had expended significant resources (and paid expensive application fees) necessary to craft proposals designed to be attractive alternatives to these specific self-build options, FPL violated the express requirements of the rule by announcing its intent to proceed with the construction of 1,100 MW of capacity at its Manatee site. The Manatee proposal was *not mentioned* in the RFP document. At no point in the RFP did FPL notify Reliant of its intent to change the “target”—i.e., the basis for Reliant’s efforts to devise a proposal that would serve the interests of FPL’s customers better than the options identified by FPL.

i. In the August 2001 RFP, FPL emphasized that it would reject any proposal that would require FPL to supply fuel to a power plant owned by a participant. Such “tolling” arrangements -- i.e., commercial terms pursuant to which the purchaser of the output of the unit also supplies fuel to the unit -- are common in the power generation industry. They are an

effective means of combining the strengths of different entities so that the overall commercial arrangements are as efficient and cost-effective to the retail ratepayers as possible. Reliant asserted that, by refusing to consider such arrangements, FPL effectively undermined the intent of the rule to identify, for the benefit of customers, all potential alternatives.

j. Rule 25-22.082, contemplates that a retail-serving utility conducting an RFP will identify and negotiate with a short list of bidders. In its RFP package, FPL stated it would develop a short list and negotiate with individual bidders on that list. FPL built a “negotiation period” of approximately 5 months into its RFP process. FPL did not prepare a short list and did not negotiate with any of the bidders. With this failure, FPL abandoned any ability to demonstrate that its self-build proposal is superior to the submitted alternatives.

k. Reliant alleged that, by understating the costs of its self-build option to potential competitors, by imposing onerous, punitive, and commercially infeasible terms on participants, by penalizing exceptions to those terms, and by unilaterally abandoning the RFP process altogether, FPL designed and conducted the RFP so as to thwart competition to its self-build option, in defiance and in direct violation of Rule 25-22.082.

14. On March 22, 2002, FPL filed petitions to determine need for its proposed Martin 8 and Manatee 3 units. Docket Nos. 020262 and 020263 were assigned to the petitions related to Martin 8 and Manatee 3, respectively. From the petitions it became clear that neither Martin 8 nor Manatee 3 was identified in the August 2001 FRP as FPL’s “next planned generating units,” as required by Rule 25-22.082, F.A.C.

15. On April 11, 2002, Calpine Energy Services, L.P. and Reliant Energy Power Generation, Inc. filed in Docket Nos. 020262 and 020263 their Joint Motion for Final Summary Order. In the Joint Motion, Calpine and Reliant asserted that FPL had failed to satisfy a condition precedent to the filing of a petition to determine need, in that neither Martin 8 nor Manatee 3 had been the subject of an RFP, as required by Rule 25-22.082, F.A.C.

16. On April 22, 2002, FPL filed in Docket Nos. 020262 and 020263 an “Emergency Motion to Hold Proceeding in Abeyance.” In this pleading, FPL proposed to issue a revised RFP in which it would:

- Identify Martin 8 and Manatee 3 as its “next planned generating units;”
- Eliminate the regulatory “change of law” provision that was the subject of Reliant’s Complaint;
- Modify the completion security provision that was the subject of Reliant’s Complaint;
- Modify the regulatory out clause that was the subject of Reliant’s Complaint;
- Remove the prohibition against tolling arrangements that was the subject of Reliant’s Complaint;
- Modify the condition requiring bidders to hold bids open for 390 days, that was the subject of Reliant’s Complaint;
- Remedy the failure to identify and negotiate with a short list of participants, that was the subject of Reliant’s Complaint.

17. In response to FPL’s Emergency Motion, in Docket No.s 020262 and 020263 the Prehearing Officer issued Order No. PSC-02-0571-PCO-EI, dated April 26, 2002 in which he temporarily suspended the procedural schedule. In Docket No. 020175, the Commission deferred action on FPL’s pending motion to dismiss Reliant’s complaint.

18. On April 26, 2002, FPL issued its revised RFP. Under the terms of the revised RFP, potential participants must resubmit their bids or submit new bids by May 24, 2002.

Reliant intends to participate in the revised RFP process.

ALLEGATIONS

19. In its Emergency Motion to Hold Proceeding in Abeyance, in which FPL disclosed its intent to issue a revised RFP, and in the revised RFP, FPL purported to reserve the right to evaluate responses to the new RFP on the basis of cost projections for Martin 8 and Manatee 3 that differ from the projections that are the basis of the revised RFP.

20. It would be fundamentally unfair, and a violation of Rule 25-22.082, F.A.C., for FPL to identify the cost of its self-build options in the RFP document, only to lower its self-build costs after receiving bids from participants in the RFP process and thereby enhance its competitive position.

21. Similarly, it would be unfair and anticompetitive, and therefore a violation of Rule 25-22.082, for FPL to employ an artificially low estimate to obtain a determination of need, and thereafter increase the amount it seeks to recover from customers through rates.

22. In the revised RFP, FPL included as a term or condition a modified “regulatory out” clause that would enable FPL to place on the contracting wholesale provider 100% of the risk of regulatory disallowance of contract payments. In light of the fact that, unlike the situation with QFs, an EWG such as Reliant is not enforcing a mandatory obligation to purchase on FPL, such a one-way provision is self-serving, unwarranted and unfair, and represents an attempt to

discourage wholesale competition, in violation of Rule 25-22.082, F.A.C.

23. As stated in Paragraph 19, in its Emergency Motion to Hold Proceeding In Abeyance, FPL refused to acknowledge that any of the provisions that it proposed to delete from the earlier RFP was unfair or inappropriate. The defiant and unrepentant tone of FPL's pleading and FPL's misplaced "reservation of rights" provide evidence that continuous oversight of the RFP process is needed now as much as ever.

24. Commission oversight of the RFP process required by Rule 25-22.082 is needed to ensure the full, fair competition that is essential to the identification of the most cost-effective capacity addition from ratepayers' perspective.

25. Reliant's allegations in paragraphs 19 through 23, *supra*, provide a statement of the material facts which it believes FPL will claim to be in dispute. Paragraph 23, *supra*, provides a statement of the ultimate facts alleged. The rules and statutes entitling Reliant to relief are Section 366.07, 403.519, Florida Statutes, and rule 25-22.082, Florida Administrative Code.

RELIEF REQUESTED

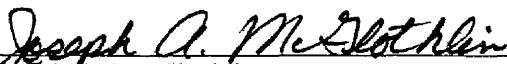
26. Reliant asserts that, in light of FPL's misuse of the RFP process, this Commission should take strong corrective action to protect the interests of the retail ratepayers to whom FPL is obligated to secure the most cost-effective sources of power. Reliant asserts that the

Commission has authority to address FPL's clear violation effectively.

27. For instance, Section 366.07, Florida Statutes, empowers the Commission, upon conducting a hearing and upon concluding that a practice of a public utility subject to its jurisdiction is insufficient, unjust, or unjustly discriminatory, to establish the practice that the public utility must follow thereafter. Reliant submits that FPL's practices in the area of formulating and processing the RFPs associated with units that trigger Siting Act reviews are insufficient and unjust.

WHEREFORE, Reliant Energy Power Generation, Inc., prays the Commission will:

1. Assert jurisdiction over this Amended Complaint;
2. Conduct appropriate proceedings thereon;
3. Prohibit FPL from changing the costs of its self-build option in response to bids received from Participants and (in the event FPL's self-build option is approved) require FPL to be bound, for ratemaking purposes, by the cost projections included in the revised April 26 RFP;
4. Prohibit FPL from attempting to shift all regulatory risk to the winning bidder;
5. Provide such additional relief as the Commission may deem appropriate.


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Attorneys for Reliant Energy Power Generation, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Complaint of Reliant Energy Power Generation, Inc. Against Florida Power and Light Company, was on this 17th day of May 2002, served via (*) Hand delivery to the following:

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Tallahassee, Florida 32399-0850

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