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February 28, 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
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Re: New Complaint

Dear Ms. Bayo:

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

- Complaint of Reliant Energy Power Generation, Inc. Against Florida Power and Light Company.

Please acknowledge receipt of the above on the extra copy of each and return the stamped copies to me. Thank you for your assistance.

Sincerely,

Joseph A. McGlothlin

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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. _____

Filed: February 28, 2002

**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 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.
117 South Gadsden Street
Tallahassee, Florida 32301
Telephone: (850) 222-2525
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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 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. FPL's actions, described below, prevented the RFP process from fairly identifying the most cost-effective source of power for ratepayers, and effectively deprived Reliant of the ability to compete on fair terms for the opportunity to provide that power.

FACTS

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. According to public announcements by FPL, FPL rejected all responses to the RFP and intends to construct 1,900 MW of incremental generating capacity, with in-service dates in the years 2005 and 2006.

13. By the filing of this complaint, Reliant does not dispute FPL's need for the 1,900 MW of incremental generating capacity that it identified in the RFP and afterwards.

14. Reliant alleges 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. As a result, to protect the interests of ratepayers, the Commission should act affirmatively and decisively to enforce the policy to require fair and meaningful competition that is embodied in Rule 25-22.082.

RELIANT'S ALLEGATIONS

FPL Violated Rule 25.22.082 By Understating The Costs Of Its Self-Build Option

15. 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 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 asserts that FPL provided unrealistic and artificially low estimates of the cost of its self-build options to potential bidders in its RFP package. (Subsequently, after announcing that it had rejected all responses to the RFP, FPL publicly estimated its self-build cost of adding 1,900 MW to be \$1.1 billion, or \$579 per installed KW – a difference of 35%.¹) Such artificial and misleading "avoided cost" information has the effect of creating impediments to competing alternatives by distorting the self-build alternative with which respondents compete and/or by creating a false and prejudicial standard by which to gauge submissions.

FPL Placed Onerous And Commercially Infeasible Terms In The RFP

16. In the RFP, FPL instructed participants that they must be willing to hold open

¹ By pointing out the discrepancy, Reliant does not imply any view on its part that the latter figure accurately portrays all of FPL's "self-build" costs, nor does it appear that FPL has identified or committed to the amount it

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.

17. 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. A more reasonable provision, sufficient for FPL's purposes, would be an amount designed to secure the actual cost of replacement firm capacity and energy as it is incurred over a reasonable period of time. Such a provision would properly recognize that the degree of protection that FPL's customers reasonably require is a function of the extent of any delay.

18. 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.

19. In the "Regulatory Provisions," FPL also reserved the right to *terminate* a contract

would ultimately seek to recover from ratepayers.

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.” The provision does nothing to protect the interests of ratepayers under the contract. Reliant asserts 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. Neither purpose comports with the intent of Rule 25-22.082.

20. Under the terms of the 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.

21. Separate terms of the RFP informed participants that their prospects would suffer if they submitted proposals containing “exceptions” to the RFP requirements. FPL thus 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.

**In Violation of Rule 25-22.082, FPL Changed its Target Self-Build Option
After The RFP Participants Had Submitted Their Proposals**

22. 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.

The RFP Eliminated An Entire Class Of Potentially Advantageous Contractual Arrangements

23. In the 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. By refusing to consider such arrangements, FPL effectively undermined the intent of the rule to identify, for the benefit of customers, all potential alternatives.

**FPL Breached The Terms Of Its RFP By Failing To Negotiate With
The Respondents Who Submitted The Best Bids**

24. 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. Upon information and belief, 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.

**The Totality Of The Circumstances Demonstrates That FPL Subverted
The Intent Of Rule 25-22.082, And Directly Violated Its Terms**

25. Reliant alleges 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, and the clear policy of this Commission.

26. Reliant’s allegations in paragraphs 15 through 24, *supra*, provide a statement of the material facts which it believes FPL will claim to be in dispute. Paragraph 25, *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

27. 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. For instance, Rule 25-22.082, which the Commission adopted as part of its implementation of Section 403.519, F.S., requires an investor-owned utility that proposes to build an electrical power plant that triggers the Siting Act to conduct an RFP prior to filing a petition for a determination of need for that unit. Reliant submits the Commission has authority under Sections 403.519 and Rule 25-22.082, to rectify FPL's "Manatee violation" by requiring FPL to conduct a proper RFP for the 1,100 MW of the proposed Manatee additions for which competitive alternatives have never been sought.

28. Further, 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. Accordingly, with respect to the 1100 MW of capacity that FPL proposes to build at Manatee, that triggers the Siting Act, but that has never been the subject of an RFP, Reliant submits the Commission can and should -- not only require FPL to solicit proposals through an RFP -- but take measures to ensure that the "Manatee RFP" is designed and processed to identify the most cost-effective option for FPL's ratepayers.

29. With respect to FPL's announced intent to proceed with 800 MW of the self-build Martin options that were described in the August 2001 RFP, Reliant submits a different remedy should be applied. Section 403.519 authorizes the Commission to begin a proceeding to determine the need for a proposed electrical power plant that is subject to the Siting Act on its own motion. In light of the demonstrable deficiencies in FPL's RFP process, the Commission can and should, on its own motion, expeditiously conduct a proceeding to identify the proposals among the responses to the August 2001 RFP that most cost-effectively supply the 800 MW of capacity that was included in FPL's flawed and prejudicial RFP in the form of Martin self-build options

WHEREFORE, pursuant to Rule 25-22.036(2), Florida Administrative Code, and Sections 120.569 and 120.57, Florida Statutes, Reliant Energy Power Generation, Inc. requests the Commission to conduct an evidentiary hearing on its Complaint, and, upon the completion of

appropriate proceedings:

(1) Rule that, in the preparation and processing of its RFP, FPL violated both the letter and the spirit of Rule 25-22.082, Florida Administrative Code;


(2) Declare FPL's RFP to be a nullity;

(3) With respect to the 1,100 MW of needed capacity represented by FPL's extra -- RFP Manatee proposal, require FPL to issue a new RFP soliciting alternative proposals to this previously untested option. Reliant requests the Commission to require FPL to submit the new RFP to the Commission for review of its terms and conditions in advance of its issuance. Reliant also requests the Commission to require FPL to utilize a neutral, independent evaluator to score submissions. Further, the Commission should require FPL to submit a binding "self-build" bid to the independent evaluator, to be reviewed at the same time and in the same manner as the other bids;

(4) With respect to the remaining 800 MW capacity need represented by Martin capacity additions that were identified in the RFP, conduct an evaluation of the responses, including the response of Reliant, that were submitted to FPL, and award determinations of need to the proposals that, when combined, constitute the most cost-effective alternatives from the perspective of ratepayers, appropriately taking into account price-related and non-price-related attributes that provide value to ratepayers. Reliant requests the Commission to utilize an

independent evaluator for this purpose, and to require FPL to submit a binding “self-build” bid for the independent evaluator’s review.

- (5) Provide such other 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 28th day of February 2002, served via (*) Hand delivery to the following:

(*)Mary Ann Helton
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

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