

ORIGINAL

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 March 19, 2002.

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COMMISSION
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PETITION TO INTERVENE

Pursuant to Sections 120.569 and 120.57(1), Florida Statutes, and Rules 25-22.039 and 28-106.205, Florida Administrative Code (F.A.C.), CPV Cana, Ltd. ("CPV Cana"), through its undersigned counsel, files this Petition to Intervene in the above-referenced proceeding, and in support thereof, states the following:

1. The name, address, and telephone number of CPV Cana, Ltd., are:
CPV Cana, Ltd.
35 Braintree Hill Office Park
Suite 107
Braintree, MA 01284
(781) 848-0253

CPV Cana received notice of this proceeding when the Complaint by Reliant Energy was filed with the Florida Public Service Commission ("Commission").

2. The name, address, and telephone number of CPV Cana's attorneys in this case are:

Jon C. Moyle, Jr.
Cathy M. Sellers
Moyle Flanigan Katz Raymond & Sheehan, P.A.
118 North Gadsden Street
Tallahassee, FL 32301
(850) 681-3828

AUS
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All filings, correspondence, and other documents and communications should be directed to Mr. Moyle and Ms. Sellers at this address and phone number.

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3. Florida Power & 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 southern Florida and Florida’s east coast.

CPV Cana’s Substantial Interests Are Affected in this Proceeding

4. CPV Cana’s substantial interests will be affected by this proceeding as discussed herein.

a. CPV Cana, Ltd. is an Exempt Wholesale Generator engaged in the business of providing bulk wholesale power to retail-serving utilities in Florida, such as FPL. CPV Cana is in the process of developing a 245 MW combined cycle natural gas-fired electric power generating facility in St. Lucie County, Florida, which is projected to be fully operational by 2004.

b. In August 2001, FPL issued a Request for Proposals (“RFP”) pursuant to Section 403.519, Florida Statutes, and Rule 22-25.082, F.A.C. (the “Bid Rule”), for 1,750 MW of additional generation capacity. In the RFP, FPL identified certain potential capacity additions at its Martin, Ft. Meyers, and Midway sites as the next planned generating units in its generation expansion plan that it intended to construct unless participants in the RFP presented more cost effective alternatives in their responses to the RFP.

c. CPV Cana obtained a copy of the RFP, attended the bidders’ conference, and submitted a response that proposed to meet approximately 245 MW of FPL’s generation capacity needs as identified and set forth in the RFP.

d. In January 2002, FPL informed CPV Cana that it intended to construct 1,900 MW of additional generating capacity, which included all of the capacity it had identified in the August 2001 RFP, with an in-service date of 2005 – 2006. Thus, FPL did not accept CPV Cana’s response to the RFP. FPL’s actions in preparing the RFP and, ultimately, in rejecting CPV Cana’s and others’ bids in response to the RFP violate

Section 403.519, Florida Statutes, and the Bid Rule, Rule 25-22.082, F.A.C., and these violations injure CPV Cana's substantial interests.

e. Specifically, FPL's RFP stated that its cost to construct the capacity identified in the RFP would be approximately \$429 per installed KW on average. After rejecting all responses to the RFP, including CPV Cana's response, FPL then estimated that its self-build option would average approximately \$579 per installed KW -- approximately thirty-five percent higher than the cost estimate stated in its RFP upon which CPV Cana and others relied in responding. CPV Cana's submittal in response to the RFP would have provided a more cost-effective alternative than the cost that FPL states as its projected cost of constructing the additional capacity itself. The misleading and artificial cost estimates provided in the RFP violate both the spirit and the letter of the Bid Rule by creating impediments to competitors, including CPV Cana, through FPL's misrepresentation of the cost of the self-build alternative. This inaccurate and misleading information prevented CPV Cana and others from being able to respond to the RFP in a meaningful, accurate, and competitive manner.

f. Additionally, CPV Cana expended substantial resources to prepare and submit its response to FPL's RFP, which specifically identified capacity additions at its Martin, Ft. Meyers, and Midway sites as the projects for which CPV Cana and others were competing to provide additional generation capacity. After its receipt of bidders' responses to its RFP, FPL then announced its intent to add 1,100 MW of capacity at its Manatee site, without giving bidders, including CPV Cana, any opportunity to submit competitive alternative proposals for provision of the capacity at that site. In doing so, FPL violated the express provisions of the Bid Rule and specifically, Section 25-22.082(4)(a)1., F.A.C., and that violation injured CPV Cana by depriving it of the opportunity to propose more cost-effective alternatives for the provision of generation capacity at the Manatee site.

g. CPV Cana expended substantial time, resources, and money in responding to FPL's August 2001 RFP under the assumption that FPL intended in good faith to comply with the Bid Rule, such that CPV Cana (and others) would have a real, legitimate, and fair opportunity to compete to provide the generation capacity FPL proposed to add to its Martin, Ft. Meyers, and Midway facilities. However, FPL's actions detailed above demonstrate that FPL did not comply with, or in good faith intend to comply with, the requirements of the Bid Rule in soliciting alternatives for providing the capacity. FPL's noncompliance with the Bid Rule effectively resulted in CPV Cana's inability to meaningfully compete to provide the additional capacity, and further resulted in CPV Cana not being awarded a contract for provision of the additional capacity. These alleged injuries to CPV Cana's substantial interests clearly fall within the zone of interest this proceeding is designed to protect — specifically, ensuring the integrity and functioning of the Bid Rule in FPL's RFP process with respect to its August 2001 RFP and its applicability to CPV Cana, as a bidder whose response was incorrectly and inappropriately rejected by FPL.

Disputed Issues of Material Fact

5. The facts alleged in Paragraph 4 above constitute disputed issues of material fact in this proceeding.

Ultimate Facts Alleged

6. In its August 2001 RFP, FPL understated and misrepresented its self-build option costs, which resulted in an inaccurate and unfair RFP process that was designed to, and had the effect of, improperly undercutting competitors, including CPV Cana, who were seeking in good faith to respond to FPL's RFP and to compete for the opportunity to construct the needed additional generation capacity. Additionally, after rejecting all bids

submitted in response to the RFP seeking additional capacity at the Martin, Ft. Meyers, and Midway sites, FPL then “switched” its proposal to provide for the addition of significant generation capacity at its Manatee site — which is tantamount to FPL announcing it is going to construct additional capacity without giving any other entities, including CPV Cana, the opportunity to submit proposals for a more cost-effective alternative. This latter action clearly violates both the intent and the express provisions of the Bid Rule. For these reasons, FPL’s actions in conducting its August 2001 RFP violate Rule 25-22.082, F.A.C.

Statutes and Rules Entitling CPV Cana to Relief in this Proceeding

7. The statutes and rules at issue in this proceeding that entitle CPV Cana to relief are Sections 366.07 and 403.519, Florida Statutes, and Rule 25-22.082, F.A.C.

Relief Requested by CPV Cana

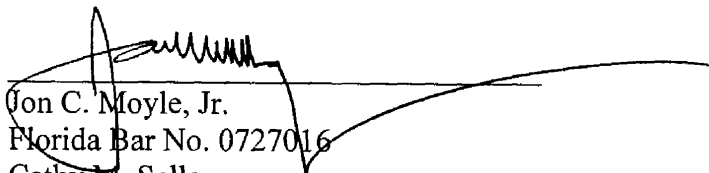
8. CPV Cana respectfully requests the Florida Public Service Commission (“Commission”) to grant CPV Cana intervention into this proceeding to participate as a party.

9. CPV Cana further requests the Commission to require FPL to conduct a proper RFP according to the requirements of Rule 25-22.082, F.A.C., for the 1,100 MW of Manatee generation capacity for which most cost effective alternatives have not been sought by FPL.

10. CPV Cana further requests the Commission to conduct a full investigation of FPL’s RFP process with respect to the Martin, Ft. Meyers, and Midway generation capacity request and to establish a process for awarding the contract for provision of the

additional generation capacity at the Martin, Ft. Meyers, and Midway sites to the most cost-effective alternative proposal.

Respectfully submitted this 19th day of March, 2002.



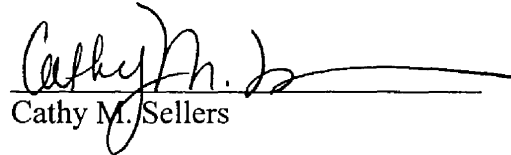
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition to Intervene was served by U.S. Mail and telefax this 19th day of March, 2002, to the following persons:

Mr. Bill Walker
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Tallahassee, FL 32301-1859

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