

MCWHIRTER REEVES

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March 29, 2002

VIA HAND DELIVERY

ORIGINAL

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

Re: Docket No. 020262

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:

- Reliant Energy Power Generation, Inc.'s Petition to Intervene.

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

Sincerely,

Joseph A. McGlothlin

JAM/mls

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McWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, DECKER, KAUFMAN, ARNOLD & STEEN, P.A.

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R. Vin
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Determination of Need
for Proposed Electrical Power Plant in
Martin County of Florida Power and
Light Company

Docket No. 020262
Filed: March 29, 2002

RELIANT ENERGY POWER GENERATION, INC.'S PETITION TO INTERVENE

Pursuant to Chapter 120, Florida Statutes, Sections 403.519 and 366.07, Florida Statutes, and Rules 25-22.039, 25-22.082, 28-106.201 and 28-106.205, Florida Administrative Code, Reliant Energy Power Generation, Inc., through its undersigned counsel, submits its Petition to Intervene,¹ and in support thereof states:

1. The name and address of the Petitioner is:

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

2. Copies of all pleadings, notices, and orders in this Docket should be provided to:

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
Telecopier: 202-783-8127

¹ While styled a petition, the Commission has held that the timing of a response to a request for leave to intervene is governed by the rules on responses to motions.

3. Reliant Energy Power Generation, Inc. (“Reliant”) is a developer of independent power projects throughout the United States, including Florida. In the course of its business, Reliant sells wholesale bulk power to retail-serving utilities through power purchase agreements. In Florida, Reliant owns approximately 600 MW of oil-fired generation (the “Indian River” units) that it acquired from the Orlando Utilities Commission. Reliant is developing a 460 MW peaking project in Osceola County, 306 MW of which is operational. Reliant has entered agreements to purchase, for resale in Florida’s wholesale market, the output of 630 MW of combustion turbines being constructed by El Paso Merchant Energy and approximately 470 MW of combustion turbines 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. As described below, Reliant has proposed to provide additional capacity.

4. Statement of Affected Interests. In August of 2001, pursuant to Rule 25-22.082, F.A.C., Florida Power & Light Company (“FPL”) issued a Request for Proposals (“RFP”) in which it solicited competitive alternatives to the next planned generating units in its generation expansion plan. In the RFP, FPL identified a total of 1750 MW of incremental generating capacity, which it planned to build at its Ft. Myers, Martin, and Midway sites unless it received more cost-effective proposals from wholesale providers such as Reliant.

5. On or about September 27, 2002, Reliant timely submitted a response to FPL’s RFP in which Reliant offered three separate capacity proposals totaling 800 MW. Reliant indicated in its submission that Reliant was prepared to negotiate with respect to each of the proposals.

6. On or about January 15, 2002, FPL informed Reliant by letter that FPL intends to construct all of the capacity identified in the RFP.

7. On or about January 15, 2002, in a press release FPL announced that it intends to build 1,900 MW of additional generating capacity, including 800 MW on its Martin site and 1,100 MW on its Manatee site.

8. On March 22, 2002, FPL filed its petition in this docket, in which it asks the Commission to award an affirmative determination of need associated with its intent to construct combined cycle generating plants on its Martin site.

9. As a respondent to and participant in FPL's RFP, Reliant's substantial interests will be affected by the Commission's decision in this docket.² Reliant is in the business of providing wholesale power to retail-serving utilities on terms that are cost-effective to the retail-serving utility's customers. Reliant's proposals to FPL were designed to compete with FPL's self-build options and with the proposals of other respondents to the RFP. In this proceeding, FPL will allege that its self-build option is superior to the alternatives presented to FPL during the RFP process. Pursuant to Section 403.519, Florida Statutes, the Commission is to consider whether the proposal embodied in the petition is the most cost-effective alternative. Reliant submits that a finding by the Commission that Reliant's proposals do not comprise a portion of the most cost-effective solution to FPL's capacity needs will affect Reliant's substantial interests by denying it the opportunity to go forward with the capacity proposals that Reliant delineated in its response to the RFP.

10. Reliant's interests are of the type that this proceeding is designed to protect. Agrico Chemical Company v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981); Royal Palm Square Associates v. Servco, 623 So.2d 533 (2d DCA, 1993). See Florida Optometric Association v. Department of Professional Regulation, 567 So 2d. 928 (Fla. App., 1st DCA, 1990); Florida Medical Association v. Department of Professional Regulation, 426 So.2d 1112 (Fla. App., 1st DCA, 1983). The purpose of the proceeding is to ensure that the most cost-effective capacity additions, evaluated from the perspective of the ratepayers' interests, are selected. The purpose of the proceeding thus coincides with Reliant's interest, which is to offer and provide the most cost-effective electrical power, thereby fulfilling its

² On February 28, 2002, Reliant filed a complaint against FPL in which Reliant alleges that FPL violated Rule 25-22.082 in the design of its August 2002 RFP. However, the matters identified in the complaint are not coextensive with the issues raised by FPL's petition in this docket. Reliant must participate in this proceeding to protect its full interests.

business purpose. Rule 25-22.082 contemplates that developers of wholesale generation projects such as Reliant who respond to and participate in the RFP of an investor-owned utility will be permitted to intervene in the “determination of need” proceeding associated with that RFP to protect their interests. Reliant is a participant within the meaning of the rule. At the same time that Reliant protects its interests through its participation in this docket, it will assist the Commission to ensure that the most cost-effective option is secured for the benefit of FPL’s ratepayers.

11. Affected Agency. The affected agency is the Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

12. Disputed Issues of Material Fact. Reliant anticipates that the issues of disputed fact in this case will include, but are not limited to:

- a. Did FPL specify inappropriate criteria to be applied in its comparison of alternatives?
- b. Did FPL apply the criteria fairly and correctly?
- c. Did FPL prejudice the comparison of alternatives, including Reliant’s proposals, in favor of FPL’s self-build option by failing to include all of the costs attributable to its self-build option?
- d. Does FPL’s proposal to construct, own and operate 1900 MW of additional capacity serve to manage the risks borne by ratepayers cost-effectively, relative to an alternative portfolio of resources containing more purchased power, including power purchased from Reliant?
- e. When all appropriate criteria are applied, and options are evaluated fairly, which alternatives constitute the most cost-effective combination of capacity additions available to FPL from ratepayers’ perspective?
- f. What action should the Commission take to ensure that FPL contracts with the providers of the most cost-effective options available to FPL’s ratepayers?

13. Statement of Ultimate Facts Alleged. Ultimate facts alleged by Reliant include, but are not limited to, the following:

- a. FPL applied inappropriate criteria, thereby prejudicing Reliant’s proposals.

- b. FPL has failed to demonstrate and prove its entitlement to an affirmative determination of need for the Martin proposal.
- c. When incorporated in a power purchase contract, Reliant's proposals would reduce the risk profile of FPL's portfolio of generation resources, thereby benefiting FPL's ratepayers. This benefit should be recognized in the evaluation of alternatives. Any attempt by FPL to penalize Reliant's proposals in the scoring of the submissions by ascribing to Reliant's proposals a negative impact on FPL's cost of capital is unwarranted and prejudicial to Reliant, and ultimately to FPL's ratepayers.
- d. The proposals that Reliant submitted to FPL in its RFP constitute a portion of the most cost-effective means of ensuring reliability and adequate electricity at reasonable cost to FPL's retail ratepayers.

WHEREFORE, Reliant Energy Power Generation, Inc. requests the Commission to (1) enter an order allowing it to intervene as a full party in this docket, and, upon completion of appropriate proceedings, (2) dismiss or deny FPL's petition for a determination of need associated with its Martin proposal, (3) on its own motion, conclude that Reliant Energy's proposals are part of the most cost-effective combination of resources available to provide capacity to FPL's ratepayers, (4) alternatively, require FPL to issue a revised RFP pursuant to directives designed to ensure reasonable criteria and a fair evaluation; and (5) take any and all other actions necessary to ensure that ratepayers' best interests are served.



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Attorneys for Reliant Energy Power Generation, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Reliant Energy Power Generation, Inc.'s Petition to Intervene was on this 29th day of March 2002 sent via (*) Hand Delivery and U.S. Mail, to the following names and addresses:

(*)Martha Brown
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Jack Shreve
Office of Public Counsel
C/o Florida Legislature
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