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April 5, 2002

**-VIA HAND DELIVERY-**

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

**Re: Docket Nos. 020262-EI and 020263-EI**

Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light Company are the original and seven (7) copies of the Response of Florida Power & Light Company to Reliant Energy Power Generation, Inc.'s Petition for Leave to Intervene.

If there are any questions regarding this transmittal, please contact me at (850) 222-2300.

Very truly yours,

*Charles A. Guyton*  
Charles A. Guyton

Enclosure  
cc: Counsel of record

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

<b>In re: Petition To Determine Need For an Electrical Power Plant in Martin County by Florida Power &amp; Light Company.</b> _____	) ) ) ) )	<b>Docket No. 020262-EI</b>  <b>Dated: April 5, 2002</b>
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<b>In re: Petition To Determine Need For an Electrical Power Plant in Manatee County by Florida Power &amp; Light Company.</b> _____	) ) ) ) )	<b>Docket No. 020263-EI</b>  <b>Dated: April 5, 2002</b>
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**RESPONSE OF FLORIDA POWER & LIGHT COMPANY  
TO RELIANT ENERGY POWER GENERATION, INC.'S  
PETITION FOR LEAVE TO INTERVENE**

Florida Power & Light Company ("FPL") hereby files this response to Reliant Energy Power Generation, Inc.'s ("Reliant's") March 29, 2002 Petition for Leave to Intervene ("Petition") in these dockets. With Reliant's requested intervention in FPL's need determination cases, the Commission is confronted with two cases in which Reliant seeks to raise the same or substantially the same issues regarding FPL's compliance with the Commission's bidding rule, Rule 25-22.082, Florida Administrative Code ("F.A.C."). FPL's position is that to the extent that Reliant raises issues that are appropriately considered by the Commission, Reliant should only be allowed to raise the issues in one proceeding. Either Reliant's complaint proceeding, Docket No. 020175-EI should be dismissed and Reliant should be allowed to address FPL's compliance with the Commission's bidding rule in FPL's need cases, or Reliant should be denied intervention in FPL's need cases and limited to its complaint proceeding. Allowing Reliant to raise the same issues in the contemporaneous complaint proceeding and the need cases is at odds with the principles of administrative efficiency and res judicata. It is a redundancy that neither the

Commission nor FPL can afford and in which Reliant should not be indulged. The proper alternative is for the Commission to dismiss Reliant's complaint proceeding and allow Reliant to raise its bidding rule compliance issue (properly framed), along with issues contemplated by Section 403.519, Florida Statutes, in FPL's need cases. In support of this response, FPL states:

1. In the Petition, Reliant identifies several disputed issues of material fact which relate to FPL's RFP and compliance with Rule 25-22.082, F.A.C.:

- 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?

Petition at 4. While FPL does not endorse any of the issues raised by Reliant, it is clear that each of these issues raised in Reliant's Petition relate to the RFP undertaken by FPL pursuant to Rule 25-22.082, F.A.C. (sometimes hereinafter the "RFP Rule" or the "Rule") or the Commission's authority under the Rule. Like the issues of material fact raised in the Reliant Complaint, a number of the issues Reliant identifies in its Petition as disputed issues of material fact question

in some fashion FPL's compliance with the RFP rule and/or address the Commission's potential response under the Rule.

2. Further, Reliant asserts in its Petition a Statement of Ultimate Facts Alleged. In that Statement, the following allegations relate to FPL's RFP and FPL's compliance with Rule 25-22.082, F.A.C.:

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

...

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.

Petition at 4-5. Again, putting aside the question of whether these are appropriate issues, considering the Complaint filed by Reliant, it is apparent that Reliant seeks to try the same case in two different dockets.

3. If there were any question about whether Reliant is attempting to open the same contest on the same facts on two separate fronts before this Commission, all doubt has been removed by reference to Reliant's preliminary list of need case issues distributed by Reliant's attorneys at a Commission Staff meeting with interested parties on April 3, 2002. In that issue list Reliant identified the following issues (among others):

1. Does Rule 25-22.082 require FPL to seek competitive alternatives to the proposed 4-on-1 Manatee combined cycle unit

through the issuance of an RFP prior to the filing and processing of a petition to determine need for this specific unit?

2. Does Rule 25-22.082 require FPL to seek competitive alternatives to the 4-on-1 Martin 8 combined cycle unit through an RFP prior to the filing and processing of a petition to determine need for this specific unit?

3. Did the information that FPL supplied to potential bidders in Table I through VI of the RFP satisfy the requirement of Rule 25-22.082 that FPL provide to potential bidders an estimate of the costs of its self-build option?

4. Did the information that FPL supplied to potential bidders in its RFP document satisfy the requirement of Rule 25-22.082 that FPL provide potential bidders with the technical parameters and data specified in the rule?

5. Does Rule 25-22.082 require an investor-owned utility to incorporate within its RFP terms that are commercially feasible? If so, did FPL's RFP comply with this requirement of the rule?

4. Fundamentally, these issues all address the same general issue that constitutes the thrust of the unauthorized Complaint that Reliant filed on February 28, 2002, and which FPL has moved to dismiss, two-wit, the allegation that FPL did not comply with Rule 25-22.082, F.A.C. Among the specific allegations in that Complaint were that FPL: (a) understated the costs of its self-build options in violation of Rule 25-22.082 (essentially a restatement of Question 3 of the Issue List); (b) placed onerous and commercially infeasible terms in the Request for Proposals ("RFP") (essentially the same issue as Question 5 of the Issue List); and (c) improperly changed its self-build option (the same subject matter as Issues 1-3 of the Issue List). Reliant raised other matters in its Complaint that are infirm for reasons stated in FPL's motion to dismiss, but what is demonstrably clear from a comparison of the Complaint and the issues Reliant seeks to raise in these proceedings is that the fundamental, overarching issue Reliant seeks to raise in both proceedings is FPL's compliance with Rule 25-22.082, F.A.C.

5. Reliant is attempting to subvert the administrative process by asking the Commission to consider identical claims based on the same facts arising out of the same incident, namely, FPL's RFP, in two different administrative dockets, the need determination proceedings and the complaint proceeding. To proceed with both actions would be a waste of time and resources for the Commission and all parties. Therefore, in the interest of efficiency and economy, the Commission should dismiss the Complaint, grant Reliant's intervention in the need cases and consider Reliant's issue of FPL's compliance with the RFP Rule, in FPL's need cases, consistent with Rule 25-22.082, F.A.C. In so stating, FPL is not endorsing Reliant's wording of the issues or Reliant's view of the Commission's authority to grant relief or waiving FPL's right to assert whether Rule 25-22.082, F.A.C., is a proper exercise of legislative authority by the Commission. FPL is merely stating that Reliant's rule compliance issue should be heard only once. Reliant is not prejudiced by dismissal of its Complaint and the Commission considering FPL's RFP Rule compliance in FPL's need cases.

6. The Commission has previously recognized that principles of administrative efficiency should result in claims being heard in only one docket and addressed them in the more appropriate docket. See, In re: Emergency Complaint Against Tampa Electric Co. ("TECO") by Peoples Gas System, Inc. ("Peoples"), Order No. PSC-95-0018-FOF-EU. Peoples filed a complaint alleging that TECO provided unauthorized incentives to choose electric water heaters, and TECO counterclaimed alleging that Peoples' Gas was using misleading advertising to promote gas over electricity and that Peoples' conservation programs were not cost efficient. As to the counterclaim, the Commission held that a docket had been opened to address comprehensively the cost-effectiveness of gas conservation programs; thus, a separate docket to address Peoples' Gas programs would be redundant. The Commission ruled that, in order

promote “the most efficient and fair means of handling these issues,” the substantially similar issues would be heard in a single docket.

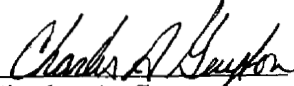
7. Moreover, if the complaint case and the need determination cases were allowed to proceed on parallel tracks, in addition to the obvious waste involved, the first Commission ruling on FPL’s compliance with Rule 25-22.082, F.A.C., would be res judicata as to the second proceeding. Given the required expediting of the need cases, the Commission’s determination in those cases would be preclusive to the Reliant Complaint, making the separate proceeding meaningless and wasteful. The Commission has held that res judicata principles apply to its administrative proceedings. In re: Certificates to Provide Water and Wastewater Service by Turkey Creek Utilities, Order No. PSC-95-1445-FOF-WS. Thus, there is no reason for Reliant to maintain both actions before the Commission. In fact, allowing such parallel litigation would only create unnecessary effort and expense for all parties and for the Commission.

WHEREFORE, FPL hereby files this response to the Petition to Intervene by Reliant and submits that either Reliant’s Complaint regarding FPL’s compliance with Rule 25-22.082, F.A.C., should be dismissed and Reliant should be allowed to intervene and raise the issue of FPL’s compliance with Rule 25-22.082, F.A.C., (not the “intent” of the rule but the actual text of the rule) in FPL’s need proceedings or Reliant’s petition to intervene should be denied. Reliant clearly should not be able to raise the issue of FPL’s compliance with Rule 25-22,082, F.A.C., in two proceedings. The proper alternative would be to grant Reliant’s intervention in FPL’s need proceedings and dismiss Reliant’s Complaint. In so stating, FPL is not endorsing Reliant’s statement of issues or Commission authority or waiving any right to challenge the RFP Rule.

R. Wade Litchfield, Esq.  
700 Universe Blvd.  
Juno Beach, FL 33408

Respectfully submitted,

STEEL HECTOR & DAVIS LLP  
215 S. Monroe St., Suite 601  
Tallahassee, FL 32301-1804

By:   
Charles A. Guyton



**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the Response of Florida Power & Light Company to Reliant Energy Power Generation, Inc.'s Petition for Leave to Intervene has been served by hand delivery (\*) or U.S. mail this 5<sup>th</sup> day of April, 2002 to the following:

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Florida Public Service Commission  
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Tallahassee, Florida 32399-0850

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By: Charles A. Guyton  
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