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April 10, 2002

VIA HAND DELIVERY

Blanca Bayo, Director
Division of Records and Reporting
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

RECEIVED-FPSC
APR 10 PM 2:50
COMMISSION
CLERK

RE: Docket No. 020262-EI *03997-02*
Petition to determine need for an electrical power plant
in Martin County by Florida Power & Light Co.

Docket No. 020263-EI *03998-02*
Petition to determine need for an electrical power plant
in Manatee County by Florida Power & Light Co.

Dear Ms. Bayo:

Attached please find the originals and fifteen copies each of the Petition For Leave To Intervene in the above-cited dockets to be filed on behalf of Mirant Corporation. Also attached is a copy of each pleading to be stamped and returned to our office.

Should you have any questions or need any additional information, please contact me.

Very truly yours,

Suzanne Brownless
Suzanne Brownless

AUS _____
CAF _____
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ECR _____
GCL _____
OPC lcc: _____
MMS _____
SEC T _____
OTH Hdq _____

Beth Bradley

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination)
of Need for Proposed Electrical) DOCKET NO. 020263-EI
Power Plant in Manatee County of)
Florida Power & Light Company)
_____)

PETITION FOR LEAVE TO INTERVENE

Pursuant to Rules 25-22.039, 25-22.082, 28-106.201, 28-106.205, Florida Administrative Code, Mirant Corporation (Mirant), files this Petition For Leave to Intervene as a full party respondent in this proceeding and in support thereof states as follows:

I. Intervenor Information

1. The name and address of the affected agency are:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

2. The name and address of the petitioner are:

Mirant Corporation
1155 Perimeter Center West
Atlanta, Georgia 30338

3. All pleadings, motions, orders and other documents directed to the petitioner are to be served on:

Suzanne Brownless, Esq.
Suzanne Brownless, P.A.
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Tallahassee, Florida 32301
Phone: (850) 877-5200
FAX: (850) 878-0090

DOCUMENT NUMBER-DATE

03998 APR 10 88

FPSC-COMMISSION CLERK

and

Beth Bradley, Director of Market Affairs
Mirant Corporation
1155 Perimeter Center West
Atlanta, Georgia 30338
Phone: (678) 579-3055
FAX: (678) 579-5819

II. Substantial Interest

4. Mirant is a global competitive energy company and a leader in power generation, energy risk management and power marketing. The company has extensive operations in North America, South America-Caribbean, Europe and Asia. In North America, Mirant has 16,000 MW of generating capacity, including its most recent addition, the 480 MW Shady Hills Generating Plant, located in New Port Richey, Florida. The company's trading and marketing entity, Mirant Americas Energy Marketing, LP, is one of the leading natural gas and power marketing firms in the nation. Mirant is currently evaluating other potential capacity additions in Florida.

5. In order to fulfill the requirements of Rule 25-22.082, Florida Administrative Code,¹ Florida Power & Light Company (FPL) issued a Request for Proposal (RFP) in August of 2001, to solicit competitive supply-side alternatives to the construction of 1750 MW of incremental generating capacity which it planned to construct at its Ft. Myers, Martin and Midway sites. Mirant timely submitted a bid on September 28, 2001, which offered 800 MW of firm capacity and energy to FPL. Mirant's bid, along with 81 other bids, was

¹ This rule is commonly referred to as the "Bidding Rule".

ultimately rejected by FPL by letter dated January 14, 2002.

6. On March 22, 2002, FPL filed the petition initiating this docket requesting that it be awarded a determination of need for the construction of Manatee Unit 3, a combined cycle generating plant, on the grounds that this unit, in combination with Martin Unit 8, is the most cost-effective means of meeting FPL's capacity needs in 2005 and 2006.

7. As a participant in FPL's bidding process, Mirant has a right by virtue of Rule 25-22.082, Florida Administrative Code, to intervene in this need determination proceeding. See: In re: Petition for determination of need for Hines Unit 2 Power Plant by Florida Power Corporation, 00 F.P.S.C. 10:353, 354 (2000) (Order PSC-00-1959-PCO-EI, issued October 24, 2000, Order Granting Intervention by Panda Energy International, Inc. and Granting in Part and Denying in Part Panda's Expedited Motion to Produce Confidential Information).

8. In addition to its right of intervention based upon the Bidding Rule, Mirant's substantial interests will be affected by the Commission's decision in this docket. Pursuant to §403.519, Fla. Stat., the FPSC must consider whether FPL's Manatee Unit 3 and Martin Unit 8 constitute the most cost effective alternatives available to meet FPL's capacity needs. The Commission's finding that Mirant's bid does not constitute the most cost-effective alternative to meet FPL's needs directly affects Mirant's substantial interests by denying Mirant the opportunity to sell the capacity it bid in its RFP.

9. Further, the two-prong test of Agrico Chemical Company v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981) for proving substantial interest has been met by Mirant. Mirant will, as demonstrated above, sustain an injury in fact of sufficient immediacy and Mirant's interest is of the type this proceeding is designed to protect: assurance that Florida ratepayers are provided with the most cost-effective capacity alternatives to meet their projected electricity needs.

III. Disputed Issues of Fact and Law

10. The following issues have been identified by Mirant as disputed issues of material fact:

- Issue 1: Is the output of the proposed Manatee Unit 3 "fully committed for use" by Florida's electric customers who purchase electric power at retail rates?
- Issue 2: Is there a need for the proposed Manatee Unit 3, taking into account the need for electric system reliability and integrity, as this criterion is used in Section 403.519?
- Issue 3: Is there a need for the proposed Manatee Unit 3, taking into account the need for adequate electricity at a reasonable cost, as this criterion is used in Section 403.519?
- Issue 4: Has Florida Power & Light Company met the requirements of Rule 25-22.082, Florida Administrative Code, "Selection of Generating Capacity", by conducting a fair bidding process?
 - a. Did FPL specify inappropriate evaluation criteria to be applied to its comparison of alternatives?
 - b. Did FPL apply the evaluation criteria fairly and correctly?
 - c. Did FPL prejudice the comparison of alternatives, including Mirant'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. Did FPL change its targeted self-build option after the bidders had submitted their proposals?
- e. Did FPL delay its decision making beyond that in its August RFP?
- f. Were changes in the market environment between September, 2001 and January, 2002 reflected in FPL's self-build option to the detriment of the bidders?

Issue 5: Is the proposed Manatee Unit 3 the most cost-effective alternative available, as this criterion is used in Section 403.519?

- a. 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 Mirant?

Issue 6: Are there any conservation measures taken by or reasonably available to Florida Power & Light Company which might mitigate the need for the proposed power plant?

Issue 7: What action should the Commission take to ensure that FPL contracts with the suppliers of the most cost-effective options available to FPL's ratepayers?

Issue 8: Based on the resolution of the foregoing issues, should the Commission grant Florida Power & Light Company's petition for determination of need for the proposed Manatee Unit 3?

IV. Ultimate Facts Alleged

11. Ultimate facts alleged by Mirant include, but are not limited to the following:

- a. FPL applied inappropriate criteria to its evaluation of Mirant's proposal(s) resulting in the improper rejection of Mirant's bid, including, but not limited to, imputing

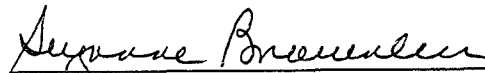
cost of capital impacts associated with entering into a capacity purchase agreement with Mirant;

- b. FPL has failed to demonstrate that Manatee Unit 3 is the most cost effective means of meeting its capacity needs.
- c. Mirant's bid capacity constitutes the most cost-effective means of ensuring adequate and reliable electricity to FPL's ratepayers at a reasonable cost.

WHEREFORE, Mirant requests that this Commission:

- 1. Grant it intervenor status in this proceeding as a full party respondent;
- 2. Upon completion of this proceeding, dismiss or deny FPL's petition for need determination for Manatee Unit 3;
- 3. Require FPL to rebid this capacity pursuant to directives designed to ensure that reasonable criteria are fairly applied in evaluating all bids; and
- 4. Take any and all other actions necessary to ensure that ratepayer's best interests are served.

Respectfully submitted this 10th day of April, 2002 by:



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General Counsel
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1155 Perimeter Center West
Atlanta, Georgia 30338
Phone: (678) 579-3055
FAX: (678) 579-5819

ATTORNEYS FOR MIRANT CORPORATION

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was provided by U.S. Mail to all parties listed below and also by (*) facsimile as indicated on this 10th day of April, 2002:

(*) Charles A. Guyton
Steel, Hector & Davis
215 South Monroe Street
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Tallahassee, FL 32301

(*) Bill Walker
Florida Power & Light Co.
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801 Pennsylvania Ave., Suite 620
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Suzanne Brownless, Esq.

c: 3556