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April 19, 2002

KAREN D. WALKER
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VIA HAND DELIVERY

Blanca S. Bayo
Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

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COMMISSION CLERK

Re: In re: Petition to determine need for an electrical power plant in Manatee County by Florida Power & Light Company, Docket No. 020263-EI

Dear Ms. Bayo:

On behalf of South Pond Energy Park, LLC ("South Pond") enclosed for filing in the captioned matter are the original and fifteen (15) copies of South Pond's Petition for Leave to Intervene. A diskette containing this filing in Wordperfect format is also enclosed.

- AUS _____
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For our records, please acknowledge your receipt of this filing on the enclosed copy of this letter. Thank you for your consideration.

Sincerely,

HOLLAND & KNIGHT LLP

Karen D. Walker

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04363 APR 19 02

FPSC-COMMISSION CLERK

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April 19, 2002

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Enclosure

cc: Parties of Record
Mr. R. L. Wolfinger

TAL1 #250177 v1

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 020263

Filed: April 19, 2002

**SOUTH POND ENERGY PARK, LLC'S PETITION FOR LEAVE TO
INTERVENE**

South Pond Energy Park, LLC ("South Pond"), pursuant to Chapter 120, Florida Statutes, Sections 366.07 and 403.519, Florida Statutes, and Rules 25-22.039, 25-22.082, 28-106.201 and 28-106.205, Florida Administrative Code, respectfully requests leave to intervene in this proceeding and states:

Intervenor Information

1. South Pond is a limited liability company formed under the laws of the State of Maryland with its principal office in Baltimore, Maryland. South Pond is authorized to transact business in Florida. South Pond's full name and address are:

South Pond Energy Park, LLC
111 Market Place, Suite 200
Baltimore, Maryland 21202

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

D. Bruce May, Jr.
Karen D. Walker
HOLLAND & KNIGHT LLP
P.O. Drawer 810
Tallahassee, Florida 32302

DOCUMENT NUMBER-DATE

04363 APR 19 02

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and

R.L. Wolfinger
South Pond Energy Park, LLC
c/o Constellation Power Source
111 Market Place, Suite 500
Baltimore, MD 21202-7110

3. South Pond is a developer of an independent power project in Hardee County, Florida. South Pond is wholly owned by subsidiaries of Constellation Energy Group, Inc. ("Constellation"). In the course of their business, Constellation's affiliates and subsidiaries distribute gas and electricity through Baltimore Gas and Electric, trade and market electricity, and generate electricity for wholesale sales. Constellation, through its affiliates, owns and operates the Oleander Power Project – a 680 MW combustion turbine plant located in Cocoa, Florida, which has power purchase contracts to supply electrical capacity to Seminole Electric Cooperative and Florida Power & Light Company ("FPL").

Affected Agency

4. The affected agency is the Florida Public Service Commission (the "Commission"), 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

Statement of Affected Interests

5. In August of 2001, 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 South Pond.

6. South Pond timely submitted a response to FPL's RFP by the September 27, 2002 due date. In its response, South Pond offered the full output of a 750 MW new dual fuel combined cycle plant to be located in Hardee County and directly connected to the FPL system for FPL's dedicated use.

7. On or about January 15, 2002, FPL informed South Pond that FPL intends to construct all of the capacity identified in the RFP. In a press release issued that same day, FPL announced that it intends to build 1,900 MW of additional generating capacity, including 800 MW at its Martin site ("Martin Unit 8") and 1,100 MW at its Manatee site ("Manatee Unit 3").

8. On March 22, 2002, FPL filed its petition in this docket, in which it asks the Commission to determine, pursuant to Section 403.519, Florida Statutes, that there is a need for Manatee Unit 3.

9. South Pond has standing to intervene as a party in this proceeding. Intervention in a Commission proceeding is granted to those entities whose substantial interests are subject to determination or will be affected through the proceeding. Fla. Admin. Code R. 25-22.039. As a respondent to the RFP, and a participant in FPL's RFP process, South Pond's substantial interests will be affected by the Commission's decision in this docket. South Pond 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. South Pond submitted a

proposal that was responsive to FPL's RFP. 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. In this proceeding, FPL alleges that its self-build option is more cost-effective than the alternatives presented to FPL during the RFP process. A finding by the Commission that FPL's self-build option is the most cost-effective solution to FPL's capacity needs would directly affect South Pond's substantial interests by denying South Pond the opportunity to sell the capacity it bid in its RFP.

10. Not only are South Pond's substantial interests directly affected in this proceeding, those interests are of the type that this proceeding is designed to protect. See *Agrico Chemical Company v. Department of Environmental Regulation*, 406 So.2d 478 (Fla. 2d DCA 1981). A primary purpose of a need determination proceeding is to ensure that an investor-owned utility adds capacity in the most cost-effective manner when evaluated from the perspective of the utility's ratepayers. The purpose of this proceeding thus coincides with South Pond's interest, which is to offer and provide FPL with the most cost-effective supply of electrical power.

11. South Pond is also entitled to intervene as a party pursuant to Florida Administrative Code 25-22.082. Subsection 8 of that rule contemplates that developers of wholesale generation projects like South Pond who respond 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. South Pond is a participant in FPL's RFP process within the meaning of the rule. Participation by South Pond in this proceeding will protect South Pond's interests, and assist the Commission in ensuring that the most cost-effective option is secured for the benefit of FPL's ratepayers.

Disputed Issues of Material Fact

12. South Pond anticipates that the issues of disputed fact in this case will include, but are not limited to:

- a. Whether FPL's RFP enables the Commission to fulfill its statutory responsibility to determine the most cost-effective generating unit under Section 403.519, Florida Statutes.
- b. Whether FPL's RFP specifies inappropriate criteria to be applied in the comparison of generation supply alternatives.
- c. Whether FPL applied the criteria in its RFP fairly and correctly to its own self-build proposal and other proposals submitted by the respondents.
- d. Whether FPL prejudiced the comparison of alternatives, including South Pond's proposal, in favor of FPL's self-build option by imposing risks and costs on respondents that were not similarly imposed on FPL's self-build option.
- e. Whether FPL prejudiced the comparison of alternatives, including South Pond's proposal, in favor of FPL's self-build

option by failing to include all of the costs attributable to its self-build option.

- f. Whether FPL adhered to the terms and conditions of its RFP.
- g. Whether FPL's proposal to construct, own and operate 1900 MW of additional capacity serves to manage the risks borne by FPL's ratepayers cost-effectively, relative to an alternative portfolio of resources containing more purchased power, including power purchased from South Pond.
- h. Whether FPL failed to prove that proposed Manatee Unit 3 is the most cost-effective alternative for meeting FPL's capacity needs.
- i. Whether FPL failed to prove its entitlement to an affirmative determination of need for Manatee Unit 3.
- j. What actions should the Commission take to ensure that FPL contracts with the providers of the most cost-effective options available to FPL's ratepayers?

Statement of Ultimate Facts Alleged

13. Ultimate facts alleged by South Pond include, but are not limited to, the following:

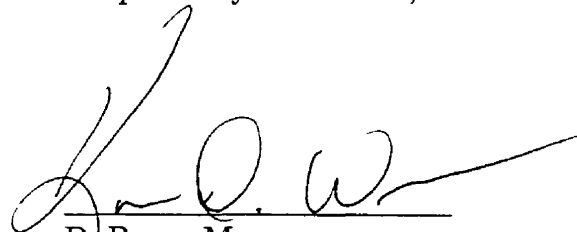
- a. FPL failed to design its RFP in a manner that affords fair and meaningful competition in the selection of additional generating capacity.

- b. FPL violated Rule 25-22.082 by changing its target self-build option after the RFP participants submitted their proposals in response to the RFP.
- c. FPL failed to adhere to the terms of its RFP by, among other deficiencies, changing its target self-build option after the RFP participants submitted their proposals, and by failing to negotiate with a short list of bidders.
- d. When incorporated in a power purchase contract, South Pond's proposal 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.
- e. Any attempt by FPL to penalize South Pond's proposal in the scoring of the submissions by ascribing to South Pond's proposal a negative impact on FPL's cost of capital is unwarranted and prejudicial to South Pond, and ultimately to FPL's ratepayers.
- f. FPL's RFP applied inappropriate criteria, thereby prejudicing the proposals submitted by South Pond and the other respondents.
- g. FPL's RFP prevents the Commission from fulfilling its statutory responsibility to determine the most cost-effective generating unit under Section 403.519, Florida Statutes.

- h. FPL has failed to demonstrate and prove that Manatee Unit 3 is the most cost-effective means of meeting its capacity needs.
- i. FPL has failed to demonstrate and prove its entitlement to an affirmative determination of need for Manatee Unit 3.

WHEREFORE, South Pond requests that the Commission: (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 for Manatee Unit 3, (3) require FPL to issue a revised RFP pursuant to directives designed to ensure reasonable criteria and a fair evaluation; and (4) take any and all other actions necessary to ensure that the best interests of FPL's ratepayers are served.

Respectfully submitted,



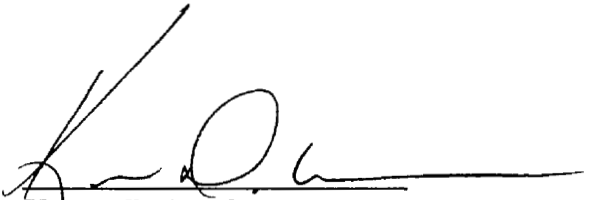
D. Bruce May
Florida Bar No. 354473
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P.O. Drawer 810
Tallahassee, Florida 32302
(850) 224-7000

Attorneys for South Pond
Energy Park, LLC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for Leave to Intervene was furnished by hand delivery to Martha Brown, Lawrence Harris, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, Jack Shreve, Office of Public Counsel, 111 West Madison Street, Room 812, Tallahassee, Florida 32301, Charles A. Guyton, Steel, Hector & Davis, 215 South Monroe Street, Suite 601, Tallahassee, Florida 32301, Bill Walker, 215 South Monroe Street, Suite 810, Tallahassee, Florida 32301; Joseph A. McGlothlin, McWhirter, Reeves, McGlothlin, Davidson, Decker, Kaufman, Arnold & Steen, P.A., 117 South Gadsden Street, Tallahassee, Florida 32301; Suzanne Brownless, Suzanne Brownless, P.A., 1311 -B Paul Russell Road, Suite 201, Tallahassee, Florida 32301; Robert Scheffel Wright, Diane K. Kiesling, John T. LaVia, III, Landers & Parsons, P.A., 310 West College Avenue, Tallahassee, Florida 32301; and Jon C. Moyle, Jr., Cathy M. Sellers, Moyle, Flanigan, Katz, Raymond & Sheehan, P.A., 118 North Gasden Street, Tallahassee, Florida 32301 and by U.S. Mail to: John T. Butler, Steel Hector & Davis, 200 S. Biscayne Boulevard, Suite 4000, Miami, Florida 33131-2398; Jay Molyneaux, 700 Universe Boulevard, Juno Beach, Florida 33408-0420; Michael G. Briggs, Reliant Energy, Inc., 801 Pennsylvania Avenue, Suite 620, Washington, D.C. 20004; Beth Bradley, Mirant Corporation, 1155 Perimeter Center West, Atlanta, Georgia 30338-5416;

and Joseph A. Regnery, Senior Counsel, 2701 North Rocky Point Drive, Suite 1200,
Tampa, Florida 33607 this 19th day of April, 2002.



Karen D. Walker

TAL1 #250164 v1