

April 22, 2002

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-VIA HAND DELIVERY-

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

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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 Florida Power & Light Company's Emergency Motion to Hold Proceedings in Abeyance.

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

Very truly yours,



Charles A. Guyton

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power & Light Company for a determination of need for a power plant proposed to be located in Martin County) **Docket No. 020262-EI**
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In re: Petition of Florida Power & Light Company for a determination of need for a power plant proposed to be located in Manatee County) **Docket No. 020263-EI**
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) **April 22, 2002**
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FLORIDA POWER & LIGHT COMPANY'S EMERGENCY MOTION TO HOLD PROCEEDINGS IN ABEYANCE

Florida Power & Light Company ("FPL") hereby moves for an emergency order holding proceedings in abeyance to allow FPL to issue a supplemental Request for Proposals. FPL proposes that the procedural schedule be immediately tolled as discussed herein and not be reinstated until, if at all, FPL amends its need filing after the conclusion of the rebid. In support thereof, FPL states:

1. On August 13, 2001, FPL issued a Request for Proposals ("RFP") for the capacity need that is ultimately at issue in these parallel proceedings. After conducting a pre-bid workshop and addressing various comments from potential bidders, FPL received proposals from 15 organizations in that RFP process. It then set about to carefully evaluate those proposals along with various "self-build" options, to determine the most cost-effective generation portfolio to meet FPL's capacity needs for 2005 and 2006.

2. Based on its analysis, and that of an independent evaluator, FPL determined that the portfolio consisting of the two generating units that are the subject of these proceedings

would be the most beneficial option available to meet FPL's needs. FPL then proceeded to attempt to license these units in an expeditious manner, so as to meet the required in-service date of June 2005.

3. In the interim, several of the bidders have intervened in these proceedings and attempted to open collateral dockets with the Commission. In each case, many of the issues raised have not related directly to whether the chosen alternatives are the most cost-effective available to FPL and its customers. The various interveners have attempted to transform the licensing of FPL's units into a debate over technical, procedural aspects of the bidding process. This, of course, is not the intended focus of section 403.519, Florida Statutes, pursuant to which these need-determination proceedings are conducted.

4. FPL has fully complied with the Commission's Bid Rule, Rule 25-22.082, Florida Administrative Code. In doing so it has identified the most cost-effective alternative for its customers to meet its customers need in 2005 and 2006. However, there are bidders who maintain that they could have provided more cost-effective alternatives if FPL had complied with the Bid Rule in a different fashion.

5. To refocus the need proceeding on the purpose of the statute -- granting an affirmative determination of need for units that are needed and cost-effective -- and to give bidders yet another opportunity to see if they can provide more cost-effective alternatives than those identified by FPL, FPL intends to reopen the bidding process to allow bidders to submit supplemental proposals. In order to addresses various concerns raised by the bidders, FPL will:

- a. List the Martin Conversion, Martin Unit 8, and the Manatee Combined Cycle Unit, Manatee Unit 3, as FPL's next-planned generating units, and provide FPL's

cost-estimates for those units (with FPL reserving its right to refine its cost-estimates).

- b. Eliminate the RFP provision allowing FPL to cancel the contract if the Legislature enacts changes to restructure the wholesale power market.
- c. Modify the Regulatory Out provision of the RFP so that if the Commission disallowed costs pursuant to the contract, FPL's obligation under the contract would be to pay only the costs allowed.
- d. Modify the Completion Security provision of the RFP, including a revision so that the entire Completion Security would not become due upon one day's failure to achieve the anticipated completion date.
- e. Modify the requirement that bids are to remain open from 390 to 120 days.
- f. Delete from the terms of the RFP the prohibition on gas tolling arrangements.

Previous bidders would be allowed one free proposal for each proposal previously submitted. Proposals from new bidders and additional proposals from prior bidders in excess of the proposals they originally submitted will be charged a fee of \$10,000, consistent with the fees from the prior RFP process.

6. Time is of the essence in this supplemental RFP process, as it will be a challenge for any developer (be it FPL or an outside proposer) to meet the required in-service date. It is therefore critical that the process begin as soon as possible. The proposed schedule is as follows:

April 26, 2002	FPL to issue supplemental RFP document
May 24, 2002	Proposals due to FPL
June 18, 2002	Short list of best proposals announced; initial negotiations begun
July 2, 2002	End of initial negotiation period
July 16, 2002	Resumption of FPL need proceedings if FPL's units are selected
August 2002	Contract signed between FPL and any selected proposer(s)
September 2002	New need filing if a bidder is selected in lieu of one or both of FPL's units.
September 2002 (on	Need Determination Hearing on FPL options, if necessary

or before the 13 th)	
December 2002	Need Determination Hearing on bidder unit(s)

7. At the end of the supplemental RFP process, FPL will take one of three courses of action, depending on the results of the RFP. If outside proposal(s) are selected following the initial negotiation period, FPL will ask for additional time to complete negotiations and apply as a co-applicant for those unit(s). FPL anticipates it would then withdraw the application for one or both of the current planned units as appropriate. If one or both of the two planned FPL units remain as part of the most cost-effective generation portfolio, on or about July 16, 2002, FPL will supplement it need filings to summarize the reissuance of the RFP and the resulting evaluation and choice and ask that these suspended need proceedings be resumed. It is also possible that a combination of these two approaches will be used if the most cost-effective portfolio is a combination of FPL and outside bidder generating units.

8. The supplemental RFP will alleviate many, if not all, of the Bid Rule compliance concerns raised by interveners and allow them a second chance to bid for FPL's capacity needs. If these cases proceed, it will allow the focus to remain where it should be under section 403.519 -- whether the unit is the most cost-effective option for FPL's customers. This will lead to a far more streamlined proceeding than one focused on technical issues regarding the procedures of the bidding process. If these cases do not proceed after suspension, it will be because there are more cost-effective alternatives to meet FPL's needs. In either case the interests of FPL's customers will be served.

9. As noted, if FPL is to complete this supplemental RFP in time for the planned 2005 in-service dates to be met, the process must begin immediately with the reissuance of the RFP this week. For that reason, FPL asks that the Commission rule on this motion on an

expedited basis so that FPL may begin this process within the necessary time limitations. Any delay will likely jeopardize the ability of FPL or any bidder to meet the required in-service date.

10. While it is uncertain whether Martin Unit 8 and Manatee Unit 3 might be selected as the most cost-effective alternatives in the reissued RFP, if they are identified as the best alternatives to meet the needs of FPL's customers, it is also important that the current need proceedings be suspended rather than reinitiated. Today we are at day 31 in a proceeding that is supposed to be heard within 90 days and decided within 135 days. If the need cases were withdrawn and reinitiated, the clock would start again, but if they are suspended, the clock would merely be suspended. The difference would mean one less month that the schedule for the proposed units' permitting, construction and commercial operation would be pushed back. With the suspension for the reissuance, the schedule will already be extended three months; reinitiating the schedule would make the delay four months. The three month delay already more than eats up the entire contingency in FPL's licensing and construction schedule, but an additional month of delay would effectively preclude FPL's self-build options from being available to meet a Summer 2005 need.

11. Suspension does not prejudice the parties. In fact, it works to their advantage in several important aspects. First and foremost, it provides bidder interveners with another opportunity to bid. Second, it allows them to bid against Martin Unit 8 and Manatee Unit 3 (with full awareness that FPL may have at the time it performs its analysis more refined cost estimates for those units, so they should be prepared to submit their best proposals). Third, in addition to listing Martin Unit 8 and Manatee Unit 3 as its next planned generating units, FPL is removing from its RFP many of the terms about which the interveners have complained, which should result in a much narrower, much more focused proceeding, if these cases are resumed. Fourth, if

the cases are resumed, the parties will have at the time FPL supplements its filing access to all confidential information FPL includes in its supplemental filing. Fifth, there is significant outstanding discovery, and even if the case is suspended, FPL is prepared to respond during the suspension to discovery outstanding through April 19, 2002, to which it does not object or has not objected, although it will respond within 30 rather than 20 days. In that sense the interveners and Staff would be better off than if the case were fully suspended in that they will be given answers much sooner. Sixth, if the cases are resumed, the parties have agreed to arrangements for access to the confidential software FPL used to perform its initial evaluation and will use to perform its supplemental evaluation and arrangements for access to other confidential discovery responses, subject to approval by the Prehearing Officer. Whether approved before suspension or immediately after the suspension is lifted (FPL prefers before but does not want that to slow down the issuance of an order on its motion to hold matters in abeyance), access to confidential information should not slow down the processing of the cases.

12. Further, FPL commits to continue to work with the Commission Staff and the parties to make these cases proceed quickly if suspended. FPL has already undertaken the following to facilitate the quick handling of these cases: (a) filed an extensive need filing with much more data than is typically provided, (b) taken the lead to address access to confidential information, (c) not insisted that bidders be denied access to other bidders' information, (d) agreed to expedite discovery objections and responses, (e) agreed to provide all parties access to materials provided to other parties in discovery, even if it had not been requested by all parties, and (f) secured intervener access to confidential software for purposes of this case at no cost.

13. FPL has conferred with counsel for the interveners and potential interveners. Counsel for Calpine, Mirant and Reliant Energy have stated that they do not oppose the concept

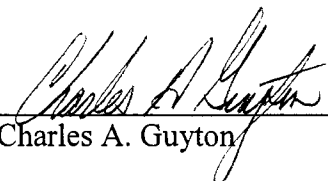
of holding the need determination petitions in abeyance while FPL pursues a supplemental RFP process. However, they cannot support certain aspects of the proposed new process as described by FPL's counsel, and accordingly, they will file responses to the motion on an expedited basis. Counsel for Competitive Power Ventures ("CPV") has stated CPV takes no position on the emergency motion. Counsel for South Pond has stated that he could not reach his client to respond to FPL's inquiry. FPL has also conferred with counsel for Commission Staff, who states that Staff does not object to holding the matter in abeyance, but Staff may object to FPL's requested timing of the hearing after resumption of the proceedings.

WHEREFORE, FPL respectfully requests that (a) these proceedings be placed in abeyance so that FPL may issue its supplemental RFP, (b) that even though the proceedings be held in abeyance, that the Prehearing Officer approve the procedures the parties have negotiated for access to proprietary software and access to confidential information, and (c) that even though the proceeding is to be held in abeyance, FPL will respond within 30 days to all discovery outstanding as of April 19, 2002 to which FPL has not objected or does not object.

Respectfully submitted,

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By: 
Charles A. Guyton

CERTIFICATE OF SERVICE
Docket Nos. 020262-EI and 020263-EI

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Emergency Motion To Hold Proceedings In Abeyance has been furnished by e-mail (*), facsimile (**), or hand delivery (***) and United States Mail this 22nd day of April, 2002, to the following:

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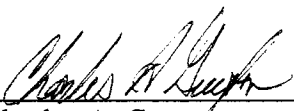
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