

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 020263-EI  
Filed April 23, 2002.

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COMMISSION  
CLERK

PETITION TO INTERVENE OF CPV GULFCOAST, LTD.

Pursuant to Chapter 120, Florida Statutes, Sections 403.519 and 366.07, Florida Statutes ("F.S."), and Rules 25-22.039, 25-22.082, 28-106.201, and 28-106.205, Florida Administrative Code (F.A.C.), CPV Gulfcoast, Ltd., ("CPV Gulfcoast"), through its undersigned counsel, files this Petition to Intervene and in support, states the following:

- 1. The name, address, and telephone number of CPV Gulfcoast, Ltd., are:

CPV Gulfcoast, Ltd.  
35 Braintree Hill Office Park  
Suite 107  
Braintree, MA 01284  
(781) 848-0253

- 2. The name, address, and telephone number of CPV Gulfcoast's attorneys in this matter are:

Jon C. Moyle, Jr.  
Cathy M. Sellers  
Moyle Flanigan Katz Raymond & Sheehan, P.A.  
118 North Gadsden Street  
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(850) 681-3828

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Done 4/24/02

All filings, correspondence, and other documents and communications should be directed to Mr. Moyle and Ms. Sellers at this address and phone number.

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*RJM*

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3. Florida Power & Light Company (“FPL”) is an investor-owned electric utility subject to the Commission’s jurisdiction. FPL serves retail customers in a service area that encompasses much of southern Florida, including Manatee County.

4. CPV Gulfcoast, Ltd. is an Exempt Wholesale Generator engaged in the business of providing bulk wholesale electric power to retail-serving utilities in Florida, such as FPL. CPV Gulfcoast is in the process of developing an approximately 250 MW combined cycle natural gas-fired electric power generating facility in Manatee County, Florida. CPV Gulfcoast’s 250 MW facility is projected to be fully operational by 2004.

5. The affected agency is the Florida Public Service Commission (“Commission”), 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850.

**CPV Gulfcoast's Substantial Interests Are Affected by this Proceeding**

6. To have standing to intervene and participate as a party in this proceeding, CPV Gulfcoast must demonstrate that its substantial interests will be affected by this proceeding. To do so, CPV Gulfcoast must allege and show that as a result of this proceeding: (1) it will suffer, or is in eminent danger of suffering, an injury in fact of sufficient immediacy to entitle it to participate in this proceeding; and (2) that its alleged injury falls within the zone of interest this proceeding is designed to protect. Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d. 478 (Fla. 2d DCA 1981). As discussed herein, CPV Gulfcoast's substantial interests will be affected by this proceeding, so it is entitled to intervene and participate as a party.

a. The Electrical Power Plant Siting Act makes the Commission's Determination of Need issued pursuant to Section 403.519, F.S., a condition precedent to a utility being granted approval to modify its site to add proposed generating capacity at certified electric generating facilities. A key element of any Determination of Need proceeding is that the Commission consider whether a utility's proposed electric generating capacity or capacity addition is the most cost-effective alternative. This need determination requirement is implemented in part by the Commission's "Bid Rule," Rule 22-25.082, F.A.C. This rule requires a utility proposing the addition of generating capacity to solicit competitive proposals for supply-side alternatives to the proposed capacity through the Requests for Proposals (RFPs) process, and then to evaluate those proposed alternatives to select the most cost-effective alternative.

b. The Commission's Bid Rule, Rule 25-22.082(4)(a), F.A.C., states in pertinent part:

- (4) Each utility's RFP shall include, at a minimum:
- (a) a detailed technical description of the utility's next planned generating unit or units on which the RFP is based, as well as the financial assumptions and parameters associated with it, including, at minimum, the following information:
1. a description of the utility's next planned generating unit(s) and its proposed location(s);
  2. the MW size;
  3. the estimated in-service date;
  4. the primary and secondary fuel type;
  5. an estimate of total direct cost;
  6. an estimate of the annual revenue requirements;
  7. an estimate of the annual economic value of deferring construction;
  8. an estimate of the fixed and variable operation and maintenance expense;
  9. an estimate of the fuel cost;
  10. an estimate of the planned and forced outage rates, heat rate, minimum load and ramp rates, and other technical details;

11. a description and estimate of the costs required for associated facilities such as gas laterals and transmission interconnection;
  12. a summary of all major assumptions used in developing the above estimates;
- (b) a schedule of critical dates for solicitation, evaluating, screening of proposals, and subsequent contract negotiations;
- (c) a description of the price and non-price attributes to be addressed by each alternative generating capacity proposal, including, but not limited to:
1. technical and financial viability;
  2. dispatchability;
  3. deliverability (interconnection and transmission);
  4. fuel supply;
  5. water supply;
  6. environmental compliance;
  7. performance criteria;
  8. pricing structure; and
- (d) a detailed description of the methodology to be used to evaluate alternative generating proposals on the basis of price and non-price attributes.

Rule 25-22.082, F.A.C. (emphasis added).

The Bid Rule specifies the information that, at minimum, must be included in the RFP, to enable the utility to solicit and evaluate alternative supply proposals in a meaningful manner. One of the first criteria specified in the rule is that the RFP identify the facility at which the proposed capacity will be located and its proposed location. Rule 25-220.82(4)(a)1., F.A.C. Identifying the facility and its location in the RFP are absolutely essential because the specific information, and the accuracy of that information, sought by the rest of the required items in the RFP obviously depends on which facility the capacity is

proposed to be added, and the where the facility is located.<sup>1</sup>

c. Pursuant to Section 403.519, F.S., and the Bid Rule, in August 2001 FPL issued an RFP that solicited competitive alternatives for 1,750 MW of additional generation capacity to be added at FPL's Martin, Ft. Meyers, and Midway sites. The in-service date for this additional capacity was projected as 2005 – 2006. Critically, FPL's RFP did not identify its Manatee facility as one of the facilities and locations at which it planned to add generation capacity, nor did it solicit alternatives for the capacity addition at the Manatee facility. FPL's failure to do so clearly violates the most basic of the Bid Rule requirements that the utility give notice of and solicit proposals for a specific facility at a specific location. Rule 25-22.082(4), F.A.C.

d. CPV Gulfcoast obtained a copy of FPL's August 2001 RFP. The RFP did not provide any indication whatsoever that FPL planned to add capacity at its Manatee facility located in Manatee County. CPV Gulfcoast, located in Manatee County, did not submit a proposal in response to the RFP. However, had the RFP provided notice that FPL was going to seek to add capacity at the Manatee facility, CPV Gulfcoast, due to its location in Manatee County, would have submitted a proposal in response to the RFP. FPL's derogation of the Bid Rule's basic information requirements with respect to which

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<sup>1</sup> For example, if the facility and location of the facility were not stated in the RFP, it would be extremely difficult, if not impossible, for a potential capacity provider to prepare an accurate and competitive response to an RFP with respect to such Bid Rule items as the total direct cost, fixed and variable operation and maintenance costs, cost estimates for associated facilities such as gas laterals and transmission interconnection, a discussion of actions necessary to comply with environmental requirements, deliverability, fuel supply, and water supply, to name a few.

facilities it proposed to add capacity deterred CPV Gulfcoast from responding to its RFP, thereby depriving CPV Gulfcoast of any meaningful opportunity to participate in the RFP process.

e. In January 2002, FPL rejected all proposals submitted in response to its RFP and announced that it would instead construct 1,900 MW of additional generating capacity, of which approximately 1,100 MW would be provided by expanding its Manatee facility. As previously noted, FPL's proposed addition of capacity at its Manatee facility was nowhere mentioned in the RFP, even though the proposed Manatee addition constitutes almost 60% of FPL's proposed new capacity addition.

f. In the RFP, FPL estimated its cost to construct the additional capacity in the RFP as approximately \$429 per installed KW, on average. However, after choosing the self-build option, FPL subsequently revised its cost estimates, raising the estimate to approximately \$579 per installed KW, on average. This increase constitutes an approximately thirty-five percent (35%) increase in the projected cost of the additional capacity, and that cost is subject to further increase over time. Had CPV Gulfcoast been provided notice of FPL's intent to construct capacity at its Manatee facility, CPV Gulfcoast would have responded with a competitive proposal that would have provided a more cost-effective alternative than the projected cost of FPL self-build option.

g. On March 22, 2002, FPL filed a Petition for Determination of Need for an Electrical Power Plant, seeking an affirmative Determination of Need for approximately 1,100 MW of additional generation capacity at its Manatee facility.

h. CPV Gulfcoast's substantial interests will be affected by this proceeding. Pursuant to Section 403.519, F.S., in this proceeding the Commission will address whether

FPL's proposed self-build option for the capacity addition at the Manatee facility is the most cost-effective alternative available. However, FPL's complete failure to properly identify the Manatee facility and solicit proposals for the Manatee capacity addition under the prescribed procedures in the Bid Rule directly resulted in CPV Gulfcoast being denied any opportunity to demonstrate that it could provide a more cost-effective alternative than FPL's self-build option at the Manatee facility.<sup>2</sup> CPV Gulfcoast's substantial interest in participating in the RFP process was injured by FPL's failure to follow fundamental requirements of the Bid Rule with respect to identifying the Manatee facility as a site for proposed capacity addition. Further, CPV Gulfcoast's substantial interest would be immediately and directly injured by any Commission determination that FPL's self-build option is the most cost-effective alternative for the generation capacity addition to the Manatee plant--particularly since CPV Gulfcoast was essentially deprived of any meaningful opportunity to participate in the RFP process due to FPL's misinformation in its RFP. Village Park Mobile Home Association v. Department of Business Regulation, 506 So. 2d. 426, 433 (Fla. 1<sup>st</sup> DCA 1987). For these reasons, CPV Gulfcoast has suffered an injury in fact of sufficient immediacy and directness to entitle it to participate as a party in this proceeding.

i. Furthermore, CPV Gulfcoast's interest falls within the zone of interest of this proceeding. A key purpose of this Determination of Need proceeding is to ensure that the

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<sup>2</sup> In essence, FPL's RFP process was so fundamentally flawed that it had the effect of eliminating potential capacity providers from participating in the RFP process, thereby limiting the "available" alternatives to be considered in determining the most cost-effective alternative.

most cost-effective capacity addition alternatives for FPL's proposed additions to the Manatee facility are selected. As previously stated, CPV Gulfcoast's substantial interest in this proceeding is to provide, and be eligible to provide, the most cost-effective alternative for the proposed additional generation capacity at the Manatee facility. Again, had FPL followed the Bid Rule's mandate to identify facility and the location of the facility at which it planned to add capacity, CPV Gulfcoast would have submitted a proposal to provide a portion of the capacity that FPL now seeks to add. As such, CPV Gulfcoast's substantial interest clearly falls within the zone of interest of this proceeding.

j. In sum, CPV Gulfcoast has standing as a person whose substantial interests will be affected by this proceeding, to intervene and participate as a party to this proceeding.

k. Rule 25-22.082(1)(c), F.A.C., contemplates that participants in utilities' RFPs are entitled to intervene and participate as parties in the "Determination of Need" proceedings associated with the RFPs. The Rule appears to contemplate that persons who were not participants to the RFP process should not be allowed to contest the outcome of the selection process in a Determination of Need proceeding. Rule 25-22.082(8), F.A.C. As previously discussed, the only reason CPV Gulfcoast did not submit a response to FPL's RFP is because FPL failed--in clear derogation of the Bid Rule--to identify the Manatee facility as one at which it proposed to add generation capacity. Had the RFP identified the Manatee facility, CPV Gulfcoast would have participated in the RFP. To exclude CPV Gulfcoast from this need determination process because it did not participate--through no fault of its own and specifically because of FPL's misleading and inaccurate RFP--would in effect reward FPL for violating the Bid Rule by excluding potential



competitors who may provide more cost-effective alternatives from participating in this proceeding.<sup>3</sup>

I. Further, CPV Gulfcoast notes that this Determination of Need proceeding may be CPV Gulfcoast's sole forum in which to seek redress for its injury resulting from FPL's failure to follow the Bid Rule. In In re: Complaint of Reliant Energy Power Generation, Inc., Against Florida Power & Light Company, Docket No. 020175-EI, FPL has taken the position that the appropriate forum for raising complaints about its failure to comply with the Bid Rule is this Determination of Need proceeding, and has moved to dismiss Reliant's Complaint. If the Commission accepts FPL's position, CPV Gulfcoast would not have any forum, other than this Determination of Need proceeding, in which to advance its position that FPL's Petition for Determination of Need for the Manatee facility should be dismissed and FPL should be ordered to issue a new RFP specifically addressing its proposed capacity addition at the Manatee facility, to provide CPV Gulfcoast (and others) a meaningful opportunity to submit competitive, cost-effective proposals to FPL's self-build option.

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<sup>3</sup> To the extent Rule 25-22.082(8), F.A.C., may preclude CPV Gulfcoast from intervening and participating as a party to this Determination of Need proceeding, CPV Gulfcoast is filing under separate cover a Petition for Waiver of Rule 25-22.082(8), F.A.C., which, if granted, would enable CPV Gulfcoast, as a person whose substantial interests will be affected, to participate in this proceeding.

### **Disputed Issues of Material Fact**

7. The disputed issues of material fact that are anticipated to be addressed in this Determination of Need proceeding include, but are not limited to:

a. Did FPL's failure to identify its Manatee as a site for the addition of generating capacity violate the Bid Rule, and if so, did this violation fundamentally flaw the fairness, accuracy, and outcome of the RFP process?

b. In its RFP, did FPL specify inappropriate or incorrect criteria to be applied in its consideration of power supply generation alternatives?

c. Did FPL apply the appropriate criteria fairly and accurately in making its decision concerning provision of the additional generation capacity at the Manatee facility?

d. Did FPL fail to include all costs attributable to its self-build option in preparing its RFP?

e. Did FPL's failure to include all costs attributable to its self-build option in preparing its RFP prejudice the comparison of alternatives in favor of FPL's self-build option?

f. Does FPL's proposal to construct, own, and operate 1900 MW of additional capacity serve to cost-effectively manage the risks borne by ratepayers, relative to alternative resources that include more purchased power, including power purchased from CPV Gulfcoast?

g. Did FPL fail to comply with the terms of its RFP, and, if so, what action should the Commission take?

h. 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?

i. Assuming CPV Gulfcoast's requested intervention is granted, CPV Gulfcoast reserves the right to adopt any other issues raised by any other parties to this proceeding, and to take discovery, present testimony and cross-examination on, and otherwise participate with respect to those issues.

### **Statement of Ultimate Facts Alleged**

8. Ultimate facts alleged by CPV Gulfcoast include, but are not limited to:

a. FPL's RFP violated the Bid Rule, and that violation injured CPV Gulfcoast's substantial interests by depriving it of any opportunity to participate, meaningfully or otherwise, in the RFP process for the Manatee facility generation capacity addition.

b. FPL did not comply with the terms of its RFP in the Bid Rule process under Rule 25-22.082, F.A.C.

c. FPL has not demonstrated or proven its entitlement to an affirmative Determination of Need for the Manatee facility.

WHEREFORE, CPV Gulfcoast, Ltd., requests the Commission to:

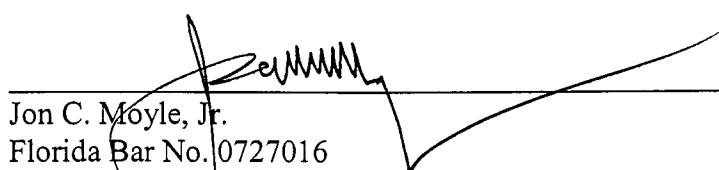
(1) Enter an Order granting permission to CPV Gulfcoast to intervene and participate as a full party to this proceeding;

(2) Dismiss or deny FPL's petition for a Determination of Need for its Manatee facility;

(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 ratepayers' best interests are served.

Respectfully submitted this 23rd day of April, 2002.



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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy was served by hand-delivery this 23rd day of April 2002, to: Martha Carter Brown, Esq. and Larry Harris, Esq., Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-9850; and Charles A. Guyton, Esq., Steel Hector & Davis, LLP, 215 South Monroe Street, Suite 601, Tallahassee, FL 32301, and by U.S. Mail to the following persons:

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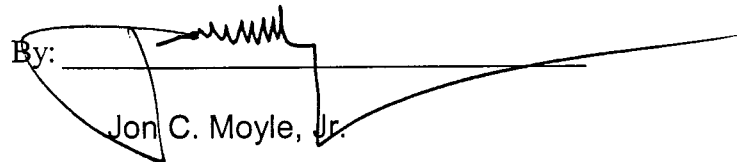
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