

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Waiver of Rule 25-22.082(8),
Florida Administrative Code.

Docket No.020263-EI
Filed April 26, 2002.

CPV GULFCOAST LTD'S
PETITION FOR WAIVER OF RULE 25-22.082(8).
FLORIDA ADMINISTRATIVE CODE

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Pursuant to Section 120.542, Florida Statutes, Sections 403.519 and
366.07, Florida Statutes ("F.S."), Rule Chapter 28-104, Florida Administrative Code
("F.A.C."), and Rule 25-22.082(9), F.A.C., CPV Gulfcoast, Ltd., ("CPV Gulfcoast"),
through its undersigned counsel, files this Petition for Waiver of Rule 25-22.082(8),
F.A.C., 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:

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Cathy M. Sellers
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118 North Gadsden Street
Tallahassee, FL 32301
(850) 681-3828

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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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 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. Prior to filing this Petition for Waiver, CPV Gulfcoast filed a Petition to Intervene in Docket No. 020263-EI, In re: Petition for Determination of Need for Proposed Electric Power Plant in Manatee County by Florida Power & Light Company, seeking to intervene and participate as a party in that proceeding. A copy of CPV Gulfcoast’s Petition to Intervene is attached as Exhibit A. For the reasons explained in this Petition, CPV Gulfcoast did not submit a response to FPL’s August 2001 RFP.

Background

6. 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 through the Commission’s “Bid Rule,” Rule

22-25.082, F.A.C. The Bid Rule requires a utility proposing the addition of generating capacity to solicit competitive proposals for supply-side alternatives to the proposed capacity through the RFP process, and then to evaluate those proposed alternatives to select the most cost-effective alternative.

7. The Bid Rule, Section 25-22.082(4)(a), F.A.C., 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.¹ One of the first and most

¹
The Bid Rule, Rule 25-22.082(4), 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).

fundamental criteria specified in the rule is that the RFP identify the facility at which the proposed capacity will be located or added and the facility's 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.²

8. 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. These facilities were the only ones identified in the RFP. Critically, the RFP did not identify its Manatee facility as one of the facilities and locations at which it planned to add generation capacity, nor did the RFP solicit alternatives for the now-proposed capacity addition at the Manatee facility. However, notwithstanding its complete failure to identify the Manatee facility as a site for the addition of generation capacity, as discussed in paragraph 6.e. herein, FPL now proposes to add substantial new generating capacity at the Manatee facility. FPL's failure to identify the Manatee facility in the RFP clearly violates the most basic Bid Rule requirement 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.

9. CPV Gulfcoast obtained a copy of FPL's August 2001 RFP. Specifically because the RFP only identified sites (Martin, Midway, and Ft. Meyers) for which CPV Gulfcoast determined that it could not propose a competitive alternative, CPV Gulfcoast

² 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.

made the reasonable, prudent business judgment, based on the information in the RFP, not to respond to the RFP.

10. In January 2002, FPL rejected all proposals submitted in response to its RFP, and instead announced that it would construct 1,900 MW of additional generating capacity. Approximately 1,100 MW of this new capacity would be provided by expanding its Manatee facility. As previously noted, the proposed addition of capacity at FPL's Manatee facility was not mentioned in its RFP³, and for that reason, CPV Gulfcoast made the decision not to respond. Had the RFP provided notice that FPL would seek to add capacity at the Manatee facility, CPV Gulfcoast would have submitted a proposal.

11. In its 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.

12. 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. In re: Petition for Determination of Need for Proposed Electric Power Plant in Manatee County by Florida Power & Light Company, Docket No. 020263-EI.

³ The additional capacity FPL now proposes to construct at the Manatee facility constitutes almost 60% of its proposed new capacity additions. Thus, its RFP sought competitive alternatives for less than half of its proposed capacity additions. Permitting FPL to largely circumvent the Bid Rule by changing its capacity addition proposal after the close of the RFP process contravenes the purpose of the Bid Rule and Section 430.519, F.S., to solicit proposals for more cost-effective alternatives to the proposed capacity.

13. Pursuant to Section 403.519, F.S., in this need determination 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 identify the Manatee facility and solicit proposals for the Manatee capacity addition under 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.⁴

**CPV Gulfcoast is Entitled to a Waiver of Rule 25-22.082(8), F.A.C.
Pursuant to Section 120.542, F.S.**

14. As previously stated, CPV Gulfcoast did not submit a response to FPL's August 2001 RFP. This is because the RFP did not identify FPL's Manatee plant as one of the facilities at which it proposed to add capacity. Had the RFP identified the Manatee facility, CPV Gulfcoast would have responded with a competitive proposal that may well have provided a more cost-effective alternative than the projected cost of FPL self-build option. As a direct result of FPL's implementation of the Bid Rule (and through no fault of its own), CPV Gulfcoast effectively was deprived of the opportunity to propose a potentially competitive alternative to FPL's self-build option.

15. Rule 25-22.082(8), F.A.C., states that the Commission "shall not allow potential suppliers of capacity who were not participants to contest the outcome of the selection process in a power plant need determination proceeding." "Participant" is

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FPL's RFP process was so fundamentally flawed that it had the effect of eliminating potential capacity providers, including CPV Gulfcoast, from participating in the RFP process, thereby limiting the "available" alternatives to be considered in determining the most cost-effective alternative.

defined as a “potential generation supplier who submits a proposal in compliance with both the schedule and informational requirements of a utility’s RFP.” Rule 25-22.082(1)(c), F.A.C.

16. Section 120.542, F.S., provides that a waiver to a rule shall be granted when the person subject to the rule demonstrates that application of the rule would create a substantial hardship or violate principles of fairness, and the purpose of the underlying statute will be achieved by other means. Rule 25-22.082(8) works a substantial hardship on CPV Gulfcoast and violates principles of fairness under the circumstances in this proceeding; furthermore, the purpose of the underlying statute, Section 403.519, F.S., will be met by granting the waiver.

17. As previously discussed, the sole reason CPV Gulfcoast did not submit a proposal in response to FPL’s August 2001 RFP is because it determined, specifically based on the information in FPL’s RFP, that it could not submit competitive proposals for the Martin, Midway, and Ft. Meyers sites. However, had the RFP identified the Manatee site as one at which capacity would be added, CPV Gulfcoast would have, upon information and belief, submitted a proposal for a more cost-effective alternative than FPL’s self-build option.

18. Also as previously noted, CPV Gulfcoast is a wholesale generator and seller of electric power. For CPV Gulfcoast to be able to conduct its business, it is essential that CPV Gulfcoast be able to meaningfully participate in the investor-owned utilities’ RFP processes. When an RFP is so fundamentally flawed that CPV Gulfcoast cannot even determine the identification and location of the facilities at which the utility intends to add capacity, CPV Gulfcoast (and, no doubt, other merchant power generators)

cannot meaningfully respond to the RFP. That is precisely what happened in this case. FPL's RFP was so fundamentally flawed that it did not identify the Manatee facility, even though the majority of its new capacity is proposed to be constructed at that facility. Furthermore, the RFP identified only facilities for which CPV Gulfcoast made the business determination that it could not submit competitive cost-effective alternative proposals. Based on that determination, CPV Gulfcoast made the business decision not to submit a proposal in response to FPL's RFP.

19. For these reasons, strictly applying Rule 25-22.082(8) to preclude CPV Gulfcoast from intervening into FPL's Need Determination for the Manatee facility works a substantial economic hardship on CPV Gulfcoast by depriving it of the opportunity to conduct its business through competing to provide power generation alternatives for FPL's now-proposed Manatee facility.⁵

20. Further, applying Rule 25-22.082(8) to exclude CPV Gulfcoast from participating in this need determination proceeding will violate principles of fairness, because the rule affects CPV Gulfcoast in a manner that significantly differs from the way it affects many other potential power suppliers. Specifically, numerous other merchant power generators submitted responses to FPL's RFP. They did so because they determined (for any number of reasons, possibly including location of their facilities in southeastern and southern Florida) that they were able to propose competitive alternatives for the Martin, Midway, and Ft. Meyers facilities. In contrast, due to CPV Gulfcoast's Manatee County location, CPV Gulfcoast determined that it could not competitively participate in the RFP to provide electric power for the Martin, Midway, or Ft. Meyers

⁵ This result would be particularly unfair in light of the fact that CPV Gulfcoast's decision not to participate in the RFP was solely due to misinformation provided by FPL in the RFP.

sites. Only after the RFP process was concluded did FPL announce its intention to construct capacity at the Manatee facility – for which CPV Gulfcoast would have submitted a proposal had that facility been identified and properly noticed under the Bid Rule.

21. Further, it would be fundamentally unfair to deny CPV Gulfcoast participation in this need determination proceeding, when its decision not to participate in FPL’s RFP process was strictly due to the inaccurate and misleading information in the RFP. Moreover, it would ratify and reward FPL’s inaccuracies in the RFP, and would send a clear message that all utilities need to do in order to discourage potential competitors (who may propose more cost-effective alternatives) from participating in their RFPs is to provide inaccurate or misleading information in the RFPs.⁶

22. In addition, waiving Rule 25-22.082(8), F.A.C., would achieve the purpose of Section 403.519, F.S., because it would enable CPV Gulfcoast to present a proposal that may be selected by the Commission as a cost-effective alternative to FPL’s self-build option.

23. The requested waiver would constitute a permanent waiver of Rule 25-22.082(8), F.A.C.

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This need determination proceeding may be CPV Gulfcoast’s sole forum in which to seek redress for its injury as a result of 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 in its August 2001 RFP process is the Determination of Need proceeding. Thus, FPL has moved to dismiss Reliant’s Complaint. If the Commission accepts FPL’s position, CPV Gulfcoast would not have any forum, other than the determination of need proceeding, in which to seek redress for its injury due to FPL’s violation of the Bid Rule and to advance its position that in order to provide CPV Gulfcoast (and others) a meaningful opportunity to submit competitive, cost-effective alternatives for the Manatee facility, FPL’s Petition for Determination of Need should be dismissed and FPL should be ordered to issue a new RFP specifically addressing the addition of capacity at the Manatee facility.

**CPV Gulfcoast is Entitled to a Waiver
Under Rule 25-22.082(9), F.A.C.**

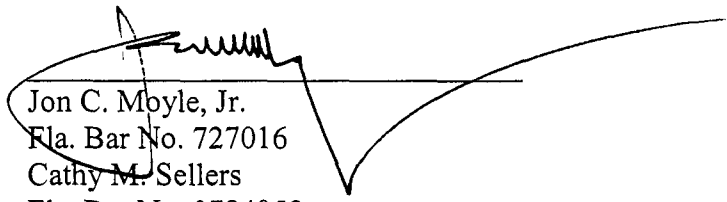
24. Rule 25-22.082(9), F.A.C., authorizes the Commission to waive all or part of Rule 25-22.082 upon a showing that the waiver likely would result in a lower cost supply of electricity to the utility's general body of ratepayers, increase the reliable supply of electricity to the utility's general body of ratepayers, or is otherwise in the public interest. Allowing CPV Gulfcoast to participate as a party in this need determination proceeding would likely result in a lower cost supply of electricity to FPL's ratepayers and help increase the reliable supply of electricity to FPL's ratepayers. CPV Gulfcoast will aim to propose a more cost-effective alternative than FPL's self-build option, which will help meet FPL's projected power demand. Moreover, allowing CPV Gulfcoast to participate as a party in this proceeding will further the public interest because it will send the clear signal that the Commission will not allow utilities to exclude potential competitors from participating in the RFP process by issuing inaccurate and misleading RFPs to which competitors will not, or cannot meaningfully, respond.

Relief Requested

For the reasons discussed herein, CPV Gulfcoast is entitled under Section 120.542, F.S., to a waiver of Rule 25-22.082(8), F.A.C. Moreover, granting CPV Gulfcoast's request for a waiver of Rule 25-22.082(8) would further the public benefits referenced in Rule 25-22.082(9), F.A.C. For these reasons, CPV Gulfcoast respectfully requests the Commission to enter an Order waiving application of Rule 25-22.082(8),

F.A.C., to CPV Gulfcoast, thereby enabling CPV Gulfcoast to intervene and participate as a party to this proceeding.

Respectfully submitted this 26th day of April, 2002.



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Cathy M. Sellers
Fla. Bar No. 0784958
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of CPV Gulcoast, Ltd.'s Petition for Waiver of Rule 25-22.082(8) has been furnished by U.S. Mail on this 26th day of April, 2002, to those listed below without an asterisk, and by hand delivery to those marked with an asterisk:

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Larry Harris, Esquire*
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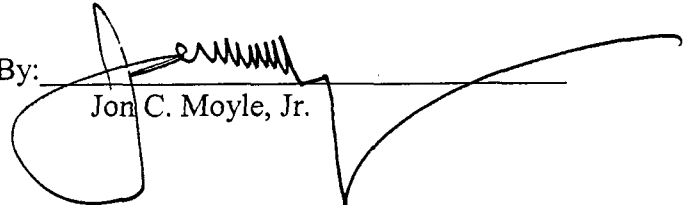
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By:


Jon C. Moyle, Jr.

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-EP
Filed April 23, 2002.

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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
Tallahassee, FL 32301
(850) 681-3828

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

EXHIBIT A

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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.¹

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

¹ 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.² 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. 1st 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

² 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.³

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.

³ 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:

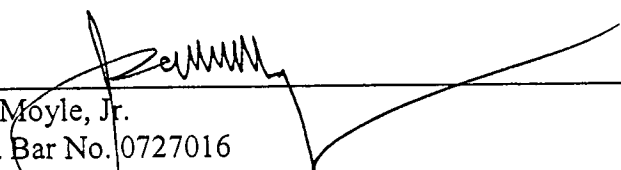
(1) Enter an Order granting permission to CPV Gulfcoast to intervene and participate as a full party to this proceeding;

(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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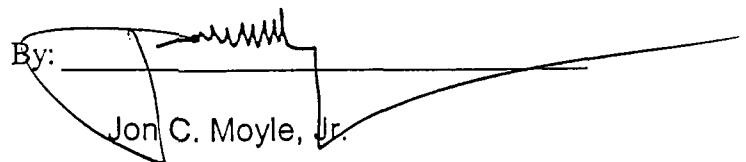
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