

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition To Determine Need For an Electrical Power Plant in Martin County by Florida Power & Light Company.

Docket No. 020262-EI

In re: Petition To Determine Need For an Electrical Power Plant in Manatee County by Florida Power & Light Company.

Docket No. 020263-EI

Dated: May 20, 2002

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COMMISSION CLERK

PETITION FOR LEAVE TO INTERVENE AND SUGGESTION FOR DELAY

Pursuant to Rules 25-22.039 and 28-106.205, Florida Administrative Code, the Florida Action Coalition Team ("F.A.C.T."), files this Petition for Leave to Intervene as a full party respondent in these proceedings and suggests a delay in the approval of the need determinations pending review of the "bidding rule" in Docket No. 020398-EI, and in support thereof states as follows:

I. Background

An entity wishing to construct a power plant with a steam cycle of greater than 75 MW must receive certification from the Governor and Cabinet pursuant to the Power Plant Siting Act (PPSA), found at Sections 403.501-518, Florida Statutes. A statutory prerequisite to PPSA certification is an affirmative Determination of Need finding by the Commission pursuant to Section 403.519, Florida Statutes. Since January, 1994, the Commission has interposed a rule requirement, per Rule 25-22.082, Florida Administrative Code (the "Bidding Rule"), that investor-owned electric utilities must first issue Requests for Proposals (RFPs) prior to seeking a Determination of Need from the Commission for a new unit.

The expressed logic of the Bidding Rule was that the RFP process would help ensure that not only was the capacity of the new generating unit necessary in the public interest (the

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ostensible goal of the Determination of Need), but that the capacity would also be achieved at the least-cost to the advantage of the utility's ratepayers and the state as a whole. Although RFPS have been utilized on a number of occasions since 1994, no bidders have been successful in winning the right to build the subject generating units, which have always been constructed by the IOU seeking the new capacity. Furthermore, large blocks of repowering capacity have been added by the IOUs and their cost sought for recovery through base rate, or other, proceedings, without the benefit of the Bidding Rule's least-cost analysis since such capacity additions are not covered by the rule.

The generating capacity additions sought in these two dockets will total 2032 MW (winter).

Prior to filing its petitions for Need Determinations in the instant dockets on March 22, 2002, FPL engaged in a capacity solicitation process per the current Bidding Rule through which it issued RFPS and ultimately accepted and analyzed some 81 proposals submitted by some 15 organizations. As stated in its petitions filed in these proceedings, FPL compared the RFP proposals to its own "self-build" projects, which are the subjects of these dockets, which projects FPL states were, in turn, the most cost-effective of a number of alternative self-build projects it had considered.

Subsequent to the filing of the petitions in these dockets, many of the organizations who had submitted unsuccessful RFPS to FPL sought intervention in these dockets and alleged or suggested, among other things, that FPL had inappropriately and unfairly evaluated the RFP proposals by: specifying inappropriate evaluation criteria; unfairly and incorrectly applying the evaluation criteria utilized; prejudicing the comparison of RFP alternatives in favor of the self-build option by failing to include all costs attributable to the self-build option and by changing the targeted self-build option after the bidders had submitted their proposals.

On April 22, 2002, FPL filed its Emergency Motion To Hold Proceedings In Abeyance in the instant Need Determination dockets seeking to toll the procedural schedule in these dockets so as to allow it to issue a supplemental Request for Proposals. FPL alleged in its motion that several of the unsuccessful earlier bidders had intervened in these dockets and attempted to open collateral dockets in which they “have attempted to transform the licensing of FPL’s units into a debate over technical, procedural aspects of the bidding process.” While stating that it had fully complied with the current Bidding Rule, FPL suggested that a suspension of the Need Determination dockets to allow the supplemental RFPS would “refocus the need proceeding on the purpose of the statute” and “give bidders yet another opportunity to see if they can provide more cost-effective alternatives than those identified by FPL.” “In order to address various concerns raised by the bidders” FPL said it would eliminate or modify several provisions of the initial RFP. FPL suggested it could receive and evaluate the supplemental RFPS and resume the FPL Need Determination proceedings in these dockets, if appropriate, by July 16, 2002.

By its Interim Order On Procedure, entered April 26, 2002, the Commission approved FPL’s motion and directed its staff to prepare a new schedule anticipating hearings to be held October 2-4, 2002.

On May 9, 2002, PSC staff filed a recommendation in Docket No. 020398-EI, which addressed proposed revisions to the Bidding Rule. The recommendation cited the history of the rule, its inapplicability to repowering capacity additions, the Florida Energy 2020 Study Commission’s recommendations for rule changes, this Commission’s February 7, 2002 workshop to discuss the staff “strawman” rule revision and the comments thereto submitted by the IOUs and the bidders. Staff’s recommendation rejects most of the bidders’ proposed rule modifications as being inappropriate, but suggests several proposed rule revisions, which, if adopted, could be viewed as favorably expanding the RFP process to the advantage of the bidders

and ratepayers, if they resulted in lower cost projects. Staff's recommendation, which is scheduled to be heard at the May 21, 2002 Agenda Conference, doesn't ask for authority to formally propose its revisions to the Bidding Rule, but merely seeks "approval to move forward with the rule making process by scheduling a rule development workshop to discuss the revisions shown. . . ." Staff does not propose a timetable for such a workshop.

II. 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:

Florida Action Coalition Team  
Post Office Box 100  
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3. All pleading, motions, orders and other documents directed

to the petitioner should be served on:

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### III. Substantial Interest

4. Florida Action Coalition Team (“F.A.C.T.”) is a statewide, non-partisan grassroots organization with thousands of advocate members active in taxpayer, consumer, healthcare, environmental and public utility issues, among others. Among F.A.C.T.’s members are a number who are retail residential customers of Florida Power & Light Company (FPL), whose Requests for Proposals (RFP) are being considered in the above-styled dockets.

5. Petitioner’s members include residential customers of FPL whose rates will be impacted by the decisions the Commission makes in these dockets. The cost of electricity represents one of the larger variable costs in many of Petitioner’s members’ household budgets and the level of FPL’s future rates will depend upon whether the Commission approves the self-build projects sought by FPL in these dockets, determines that one or more of the RFP projects is more cost-effective, or determines that some mix of the supply side and demand side alternatives will best meet the capacity needs of FPL’s customers and in the least-cost manner. Therefore, Petitioner and its customer members will be substantially affected by any action the Commission takes in this docket and meet the two-prong test of Agrico Chemical Company v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981) for proving substantial interests has been met.

### IV. Disputed Issues of Fact and Law

6. The following issues have been identified by F.A.C.T. as disputed issues of material fact:

- a. Is there a need for the proposed Manatee and Martin units, taking into account the need for electric system reliability and integrity, as this criterion is used in Section 403.519, F.S.?

- b. Is there a need for the proposed Manatee and Martin units, taking into account the need for adequate electricity at a reasonable cost, as this criterion is used in Section 403.519, F.S.?
  - c. Has FPL met the requirement of Rule 25-22.082, F.A.C., by conducting a fair bidding process?
  - d. Are the proposed Manatee and Martin units the most cost-effective alternatives available, as this criterion is used in Section 403.519, F.S.?
  - e. Are there any conservation measures taken by or reasonably available to FPL which might mitigate the need for the proposed power plants?
  - f. 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?
7. The following has been identified by F.A.C.T. as an ultimate fact:
- a. FPL has failed to demonstrate that the proposed Manatee and Martin units are the most cost-effective means of meeting its capacity needs.

V. Suggestion For Further Delay Pending Modification Of Bidding Rule

8. FPL has, to date, concluded its Manatee and Martin self-build options are the most cost-effective using a combined cost for the two of \$566 million. The rates necessary to carry this level of investment over the 30 or more years of the lives of these units will range into the billions of dollars. Consequently, even a savings of several million dollars on the initial cost of these projects can have substantially greater lifetime project savings for both FPL and its ratepayers.

9. It appears probable that the Staff suggested revisions to the Bidding Rule, standing alone, could, if adopted, result in initial project costs for the Manatee and Martin capacity

additions lower than those currently accepted by FPL as the least-cost self-build “winning” projects. If other rule proposals submitted by the collective project bidders were adopted by the Commission, even greater savings could potentially be realized.

10. FPL has already delayed the current Need Determination schedule by wisely seeking to supplement the RFPS and it appears that the further delay necessary to consider revisions to the Bidding Rule under an expedited hearing schedule would not unduly and adversely impact the selection of units necessary to meet FPL’s capacity needs.

WHEREFORE, Florida Action Coalition Network requests that this Commission: (1) Grant it intervenor status in these consolidated dockets as a full party respondent; and (2) Further modify and extend, if necessary, the scheduled hearings in these dockets so as to allow a rule hearing on the proposed revisions to the Bidding Rule so that the revisions, if any, can be utilized by FPL in evaluating the RFPS submitted for the capacity to be met by the Manatee and Martin units.

Respectfully submitted,

/s/ Michael B. Twomey  
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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this petition has been served by

U.S. Mail or email this 20<sup>th</sup> day of May, 2002 on the following:

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