

STEEL
HECTOR
& DAVISSM

Steel Hector & Davis LLP
215 South Monroe, Suite 601
Tallahassee, Florida 32301-1804
850.222.2300
850.222.8410 Fax
www.steelhector.com

May 24, 2002

Charles A. Guyton
850.222.3423

- VIA HAND DELIVERY -

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

RECEIVED-FPSC
02 MAY 24 PM 11:13
COMMISSION
CLERK

IN RE: **Docket No. 020175-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 Response in Opposition to Reliant's Motion for Leave to Amend Complaint, together with a diskette containing the electronic version of same. The enclosed diskette is HD density, the operating system is Windows 2000, and the word processing software in which the document appears is Word 2000.

If you or your Staff have any questions regarding this transmittal, please contact me.

Very truly yours,



Charles A. Guyton

- AUS _____
- CAF _____
- CMP _____
- COM _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- MMS _____
- SEC 1
- OTH _____

CAG/gc
Enclosure
cc: Joseph A. McGlothlin
Martha Carter Brown
TAL_1998/42473-1

RECEIVED & FILED



FPSC-BUREAU OF RECORDS

Miami West Palm Beach Tallahassee Naples Key West London Caracas

DOCUMENT NUMBER-DATE

05587 MAY 24 02

São Paulo Rio de Janeiro Santo Domingo

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Reliant Energy Power)
Generation, Inc. Against Florida Power &)
Light Company)

Docket No. 020175-EI
Filed: May 24, 2002

FLORIDA POWER & LIGHT COMPANY'S RESPONSE IN OPPOSITION
TO RELIANT'S MOTION FOR LEAVE TO AMEND COMPLAINT

Florida Power & Light Company ("FPL"), hereby responds to Reliant's Motion to Amend Complaint Against FPL, and states:

1. Reliant filed its Initial Complaint against FPL on February 28, 2002, alleging that FPL violated Rule 25-22.082, Florida Administrative Code ("the Bid Rule") in its Request for Proposals ("RFP") that was issued on August 13, 2001 ("initial RFP"). On March 20, FPL filed a motion to dismiss, arguing *inter alia* that the Initial Complaint sought relief that is inconsistent with the Public Service Commission's ("Commission") Bid Rule and is not authorized by the statutes the Bid Rule implements.

2. On April 26, FPL issued a Supplemental RFP in order to give bidders who responded to FPL's initial RFP another opportunity to provide alternatives that are more cost-effective than those identified by FPL. FPL's intent in issuing the Supplemental RFP was to address the various Bid Rule compliance issues about which Reliant, as well as the intervenors in the Need Determination dockets (Docket Nos. 020262-EI and 020263-EI), had complained and to test the assertions of frustrated bidders that they would have provided more cost-effective proposals if they had been apprised that Martin Unit 8 and Manatee Unit 3 were FPL's self-build options.

3. As a result of the issuance of the Supplemental RFP, the Initial Complaint became moot. On May 14, FPL filed an amended motion to dismiss arguing, *inter alia*, this mootness. In response to FPL's amended motion, Reliant filed its Motion for Leave to Amend. In the Motion for Leave to Amend, Reliant admits that the Supplemental RFP addresses some of the issues raised in Reliant's Initial Complaint, but argues that not all of Reliant's issues were addressed to its satisfaction.

4. In reviewing Reliant's proposed Amended Complaint, it is clear that while Reliant has narrowed the scope of the relief it seeks, it still seeks relief beyond that contemplated by the Bid Rule and the statutes it implements. Reliant is still seeking to have the Commission actively oversee the bidding process, and to decide in advance of the bid review that FPL's bid procedure is improper. In essence, Reliant seeks to have the Commission conduct the bidding process itself, rather than allowing FPL to do so. As set forth more fully in FPL's Amended Motion to Dismiss at 11-14, this relief is not authorized by the Commission's Bid Rule, as it is the utility which has the obligation to conduct the RFP and evaluate the responses, while the Commission reviews the utility's conduct in the ensuing determination of need. Reliant's proposed Amended Complaint seeks to involve the Commission far more deeply than it is authorized to be in the bid process. Moreover, FPL has voluntarily offered to allow the Commission Staff to monitor FPL's Supplemental RFP evaluation and the Commission has accepted the offer, making the need for more formal Commission involvement unnecessary.

5. While FPL recognizes the general rule of liberality in allowing amendments to pleadings, amendment may properly be refused where the amendment would be futile. See generally, Spradley v. Stick, 622 So.2d 610, 613 (Fla. 3d DCA 1995). FPL objects to the present amendment as futile. FPL's Amended Motion to Dismiss, to which Reliant has responded,

establishes that the relief sought in both the Initial Complaint and the proposed Amended Complaint are beyond the scope of the Commission's current Bid Rule, which is the rule under which the Commission implements the statutory authority upon which Reliant relies. Accordingly, the Commission should refuse the present request to amend the complaint and rule instead on FPL's Amended Motion to Dismiss. Alternatively, FPL requests that the Commission hold the motion to amend in abeyance until it has ruled on the Amended Motion to Dismiss.

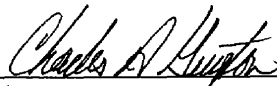
Conclusion

For the foregoing reasons, the Commission should deny the Motion to Amend, or alternatively hold it in abeyance until it has ruled on the pending Amended Motion to Dismiss.

Respectfully submitted,

R. Wade Litchfield, Esq.
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408-0420
Telephone: 561-691-7101

Steel Hector & Davis LLP
215 South Monroe Street
Suite 600
Tallahassee, Florida 32301
Telephone: 850-222-2300

By: 
Charles A. Guyton
William K. Hill, P.A.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Florida Power & Light Company's Response In Opposition to Reliant's Motion for Leave to Amend Complaint was served by U.S. Mail upon the following this 24th day of May, 2002:

Joseph A. McGlothlin
McWhirter, Reeves, McGlothlin, Davidson
Decker, Kaufman, Arnold & Steen, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301

Martha Carter Brown
Staff Attorney
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

By: 
Charles A. Guyton

MIA2001 106840v1