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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 June 7, 2002.

WITHDRAWAL OF PETITION FOR WAIVER OF RULE 25-22.082(8), F.A.C.

Pursuant to Sections 120.542, 120.569 and 120.57, Florida Statutes ("F.S."), Rule Chapters 28-104 and 28-106, Florida Administrative Code ("F.A.C.") and Rule 25-22.082, F.A.C., CPV Gulfcoast, Ltd., through its undersigned counsel, files this Withdrawal of 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 names, 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 in this matter should be directed to Mr. Moyle and Ms. Sellers at this address and telephone number.

- 3. Florida Power & Light Company ("FPL") is an investor-owned electric utility subject to the Florida Public Service Commission's jurisdiction. FPL provides

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CAF _____
CMP _____
COM 5
CTR _____
ECR _____
GCL _____
OPC _____
MMS _____
SEC _____
OTH None

Done 6/10/02

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retail electric service to 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 megawatt (“MW”) combined cycle natural gas-fired electric power generating facility in Manatee County, Florida, with potential to develop additional generating capacity. CPV Gulfcoast’s 250 MW facility is projected to be fully operational by 2004.

5. The affected agency in this proceeding is the Florida Public Service Commission (“Commission”), 2450 Shumard Oak Boulevard, Tallahassee, FL 32399-0850.

6. By way of background, in August 2001, FPL distributed a Request for Proposals (RFP) and solicited bids to construct approximately 1100 MW of new generating capacity, which, according to FPL’s RFP, would be constructed at its Martin, Ft. Meyers, and Midway electric generating facilities. The RFP did not identify the Manatee facility as a site for the addition of new generating capacity.

7. In January 2002, FPL rejected all of the bids and announced that it would itself construct approximately 1900 MW of new generating capacity, approximately 1100 MW of which would be constructed at the Manatee facility even though RFP’s failed to identify the Manatee facility for new capacity addition.

8. On March 22, 2002, FPL filed a Petition for Determination of Need for an Electrical Power Plant, seeking a determination of need for approximately 1100 MW at its Manatee facility.

9. On April 23, 2002, CPV Gulfcoast filed a Petition to Intervene in this proceeding. In connection with that Petition, on April 26, 2002, CPV Gulfcoast filed a Petition for Waiver of Rule 25-22.082(2), F.A.C., requesting the Commission to waive the Bid Rule's requirement that it have been a bidder in FPL's August 2001 RFP process in order to intervene and participate as a party in FPL's need determination process. In its Petitions, CPV Gulfcoast explained that it had not submitted a response to FPL's RFP because the RFP had not identified the Manatee facility as a site for capacity addition, and further stated that it would have submitted a response had the RFP accurately represented that FPL intended to construct capacity at the Manatee facility. CPV Gulfcoast argued that to deny CPV Gulfcoast's Petition to Intervene would reward FPL's noncompliance with the Bid Rule and would unfairly deprive CPV Gulfcoast of the opportunity to participate in the need determination, through no fault of its own.

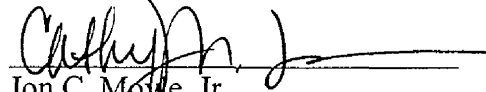
10. On April 22, 2002, in response to strenuous objections by parties to the August 2001 bid process regarding FPL's numerous violations of the Bid Rule, FPL moved to abate its need determination proceeding, pending its conduct of a Supplemental RFP process. The Commission granted FPL's emergency motion to hold the need determination in abeyance and subsequently granted FPL an emergency waiver of the timeframes set forth in Rule 25-22.080, F.A.C., for the purpose of enabling FPL to conduct a Supplemental RFP.

11. On April 26, 2002, FPL released its Supplemental RFP to prospective bidders. The deadline for submitting responses was May 24, 2002. The Supplemental RFP identified its Manatee facility as a site at which capacity would be added. CPV Gulfcoast timely submitted a response to the Supplemental RFP.

12. Rule 25-22.082(8), F.A.C., defines “participant” as “a potential generation supplier who submits a proposal in compliance with both the schedule and informational requirements of a utility’s RFP.” Per this definition, CPV Gulfcoast is now a “participant” within the meaning of Rule 25-22.082, F.A.C., by virtue of having submitted a bid in response to FPL’s Supplemental RFP. As such, CPV Gulfcoast is now entitled, pursuant to the Bid Rule, to participate as a party in FPL’s need determination proceeding, which is being supplemented by additional generation capacity alternatives garnered through the Supplemental RFP process.¹

13. For these reasons, CPV Gulfcoast no longer needs to obtain a waiver of Rule 25-22.082(8), F.A.C., in order to intervene and participate in FPL’s need determination proceeding. Accordingly, CPV Gulfcoast hereby withdraws its Petition for Waiver of Rule 25-22.082, F.A.C., which was filed with the Commission on April 26, 2002.

Respectfully submitted this 7th day of June, 2002.



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¹ CPV Gulfcoast has contemporaneously filed a Request for Leave to Amend Petition to Intervene and Amended Petition to Intervene, seeking to intervene into this need determination proceeding. In the Amended Petition to Intervene, CPV Gulfcoast discusses in detail the reasons why it has standing to intervene and participate in this proceeding as a person whose substantial interests will be affected, and by provision of the Bid Rule.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of CPV Gulcoast, Ltd.'s Withdrawal of Petition for Waiver of Rule 25-22.082(8) has been furnished by U.S. Mail on this 7th day of June, 2002 to those listed below without an asterisk, and by hand delivery to those marked with an asterisk:

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