

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
ORDER NO. PSC-02-0970-PAA-EI
ISSUED: July 17, 2002

The following Commissioners participated in the disposition
of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING PETITION FOR RULE WAIVER

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service
Commission that the action discussed herein is preliminary in
nature and will become final unless a person whose interests are
substantially affected files a petition for a formal proceeding,
pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

In August of 2001, Florida Power and Light Company (FPL)
issued a Request for Proposals (RFP) for additional generating
capacity to fill its projected capacity needs in 2005 and 2006.
FPL evaluated numerous proposals from 15 respondents to the RFP,
along with several of its own proposals to supply the needed
capacity. In February of 2002, FPL announced that it would not
select any of the respondents to its RFP to build its capacity
additions, but instead would seek certification of two new power

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plants it would build itself on its existing Martin and Manatee plant sites. FPL filed its Petitions for Certification of the plants with the Department of Environmental Protection in February of 2002, and filed its Petitions for Determinations of Need on March 22, 2002. Several bidders, including CPV Cana, Ltd. (CPV Cana) intervened in the need determination dockets to challenge FPL's RFP process.

On April 22, 2002, FPL filed an Emergency Motion to Hold Proceedings in Abeyance, which was granted by the Prehearing Officer on April 26, 2002, in Order No. PSC-02-0571-PCO-EI. On April 24, 2002, CPV Cana filed a Response to the Motion for Abeyance, which also contained a Petition for Waiver of Rule 25-22.080, Florida Administrative Code, regarding the 90-day time period for the Commission to hold a hearing on the need determination petitions. Shortly thereafter, on April 29, 2002, FPL filed an Emergency Petition for Waiver of Rule 25-22.080, also requesting that the Commission waive the hearing timeframes of the rule so that FPL could conduct a supplemental RFP. We granted FPL's Emergency Petition for Rule Waiver in Order No. PSC-02-0703-PCO-EI, issued May 23, 2002.

This Order addresses CPV Cana's rule waiver petition. We have jurisdiction pursuant to Section 120.542, Florida Statutes, and Rule 28-104.005, Florida Administrative Code. For the reasons explained below, we deny CPV Cana's Petition.

DECISION

In its Petition for Rule Waiver, CPV Cana requested that we waive the time requirements for a need determination hearing found in Rule 25-22.080, Florida Administrative Code. CPV Cana also asked that we impose certain conditions on the waiver; namely that we actively oversee the second RFP process, preclude FPL from making material changes to its RFP document after submittal of bids, preclude FPL from changing its cost data after review of the bids, and preclude FPL from recovering any costs greater than those identified in the RFP for its self-build options if it declares itself the winner.

In light of our decision to grant FPL's Emergency Petition for Rule Waiver it appears that CPV Cana's Petition for Rule Waiver is moot. As defined by Black's Law Dictionary, "a case is 'moot' when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy. A question is 'moot' when it presents no actual controversy or where the issues have ceased to exist." As we have already waived Rule 25-22.080, there is no need for a second waiver. Our grant of FPL's rule waiver effectively eliminated this issue in controversy.

With regard to the conditions CPV Cana wishes to place on the second RFP process, we will not grant the relief requested. Section 120.542(1), F.S. states: "an agency may limit the duration of any grant of a variance or waiver or otherwise impose conditions on the grant only to the extent necessary for the purpose of the underlying statute to be achieved." In this instance, we have granted FPL's emergency rule waiver petition, which accomplishes the underlying purpose of the statute (Section 413.519, F.S.) and the instant rule waiver. The underlying purpose of the need determination statute is accomplished because waiving the ninety day time frame allows FPL to issue a second Request for Proposals process, which will assist us in determining whether the project presented is the most cost effective alternative available. Since the issue of waiver of Rule 25-22.080, Florida Administrative Code, is moot, and since the remaining relief requested by CPV Cana is not necessary to accomplish the underlying purposes of the statute, we deny the Petition.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that CPV Cana, Ltd.'s Petition for Wavier of Rule 22-25.080, Florida Administrative Code is denied. It is further

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ORDERED that these dockets shall remain open.

By ORDER of the Florida Public Service Commission this 17th
day of July, 2002.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

LDH

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 7, 2002.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.