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August 22, 2002

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Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0870

Re: Docket Nos. 020262-EI and ⁰²⁰²⁶³~~010163~~-EI

Dear Ms. Bayo:

On behalf of Florida Partnership for Affordable Competitive Energy, I am enclosing for filing and distribution the original and 15 copies of the following:

- Florida Partnership for Affordable Competitive Energy's Amended Petition to Intervene

Please acknowledge receipt of the above on the extra copy and return the stamped copy to me. Thank you for your assistance.

Sincerely,

Joseph A. McGlothlin

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Done 8/23/02

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power and Light
Company for a Determination of Need
For a power plant proposed to be located
In Martin County

Docket No. 020262-EI

In re: Petition of Florida Power and Light
Company for a Determination of Need
For a power plant proposed to be located
In Manatee County

Docket No. 020263-EI

Filed: August 22, 2002

**FLORIDA PARTNERSHIP FOR AFFORDABLE COMPETITIVE ENERGY'S
AMENDED PETITION TO INTERVENE**

Pursuant to Chapter 120, Florida Statutes, Sections 403.519 and 366.07, Florida Statutes, and Rules 25-22.039, 25-22.082, 28-106.205, Florida Administrative Code, The Florida Partnership for Affordable Competitive Energy ("Florida PACE" or "PACE"), through its undersigned counsel, submits its Amended Petition to Intervene,¹ and in support thereof states:

1. The name and address of the affected agency is:

The Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850.

2. The name and address of the Petitioner is:

Florida Partnership for Affordable Competitive Energy
P.O. Box 11062
Tallahassee, FL 32301
Telephone: (813) 224-7770
Telecopy: (813) 221-7778

3. Copies of all pleadings, notices, and orders in this Docket should be provided to:

Michael Green
1049 Edmiston Place
Longwood, Florida 32779
mgreenconsulting@earthlink.net

¹ While styled a petition, the Commission has held that the timing of a response to a request for leave to intervene is governed by the rules on responses to motions. The original petition to intervene was filed on August 16, 2002. PACE is amending its petition to intervene to more fully identify its members and to correct the reference to those members who currently have Intervenor status.

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4. Statement of Affected Interests. PACE is a statewide trade association of independent power producers (IPPs), working together to promote a competitive wholesale electricity marketplace that will benefit all Floridians. The PACE member companies are Constellation Power, Inc. (“Constellation”), Calpine Eastern Corporation. (“Calpine”), PG&E National Energy Group (“PG&E”), Mirant Americas Development, Inc. (“Mirant”), Reliant Energy Power Generation, Inc. (“Reliant”) and Competitive Power Ventures, Inc. (“CPV”).

5. In January of 2002, Florida Power and Light Company (“FPL”) announced its intent to spend \$1.1 billion to build approximately 1900 MW of new generating capacity. The instant dockets were initiated by FPL’s petitions seeking “determinations of need” for FPL’s proposed units, Martin 8 and Manatee 3. On April 26, 2002, FPL issued a revised Request For Proposals in which it solicited cost-effective alternatives to its proposed units.

6. The decision on FPL’s request for two determinations of need relating to some 1900 MW of capacity will affect the substantial interests of PACE’s members by affecting their opportunity to provide cost-effective alternatives to public utility-owned capacity. Inasmuch as one purpose of the proceeding is to ascertain whether Petitioner has proposed the most cost-effective capacity solution, PACE’s interests are of the type that this proceeding is designed to protect. *Agrico Chemical Company v. Department of Environmental Regulation*, 406 So.2d 478 (Fla. 2d DCA 1981); *Royal Palm Square Associates v. Servco*, 623 So.2d 533 (2d DCA, 1993). See *Florida Optometric Association v. Department of Professional Regulation*, 567 So.2d 928 (Fla. App., 1st DCA, 1990); *Florida Medical Association v. Department of Professional Regulation*, 426 So.2d 1112 (Fla. App., 1st DCA, 1983). Moreover, the nature of the interests

warrants intervention by PACE. To have standing to bring suit on behalf of its members, a trade or professional association must demonstrate that:

[1] a substantial number of its members, although not necessarily a majority, are "substantially affected" by the challenged rule[;] . . . [2] the subject matter of the rule [is] within the association's general scope of interest and activity[;] and [3] the relief requested [is] of the type appropriate for a trade association to receive on behalf of its members.

Florida Board of Medicine v. Florida Academy of Cosmetic Surgery, 808 So. 2d 243, 250 (Fla. 1st DCA 2002), citing *Florida Home Builders v. Dept. of Labor and Employment Security*, 412 So. 2d 351, 353-54 (Fla. 1982); *Farmworkers Rights Organization, Inc. v. Dept. of Health and Rehabilitative Services*, 417 So. 2d 753, 754-55 (Fla. 1st DCA 1982)(extending the standard for associational standing to apply to section 120.57 proceedings). Florida's courts have extended the concept of associational standing to apply to associations other than trade or professional associations. *NAACP v. Florida Board of Regents*, 2002 Fla. App. LEXIS 2012; 27 Fla. L. Weekly D 462 (Fla. 1st DCA 2002). As this Petition to Intervene demonstrates, PACE satisfies the requirements for associational standing.

7. The purpose of this proceeding is to ensure that the most cost-effective capacity additions, evaluated from the ratepayers' perspective, are selected. The subject matter of this docket thus coincides with the interests of PACE, whose members strive to provide the most cost-effective electrical power. Rule 25-22.082, Florida Administrative Code, contemplates that developers of wholesale generation projects who respond to and participate in the Request for Proposals (RFP) of an investor-owned utility will be permitted to intervene in the "determination of need" proceeding associated with that RFP to protect their interests. As is apparent in exhibits offered by FPL in these dockets (see Exhibit SRS-2), four of the six PACE members are RFP participants within the meaning of the rule; and two (CPV and South Pond Energy Park, LLC) are currently intervenors in the dockets.² Thus, PACE can affirmatively show that a substantial

²South Pond Energy Park, LLC is a project specific limited liability company established and wholly owned by Constellation to develop, own and operate a power generation facility in Hardee County, Florida. Calpine, Reliant, and Mirant were also granted intervenor status, but have since withdrawn from the dockets.

number of its members' substantial interests are affected by these cases. At the same time, PACE's petition to intervene will not conflict with the rule authorizing intervention by individual participants. The rule that requires an individual developer to have participated in the RFP prior to intervening is designed to prevent a situation in which the developer could cause a delay by "sitting out" an RFP and then presenting an unevaluated project in the related "determination of need" proceeding. As a trade association, the entity PACE does not submit bids or develop projects; nor will its participation in this case involve advocacy in support of a specific alternative. Accordingly, participation by PACE will assist the Commission and will be consistent with the intent of Rule 25-22.082, Florida Administrative Code.

8. PACE's intervention in these dockets will protect its members' substantial interests with regard to issues that affect the common interests of PACE members'. While individual PACE members who have intervened in this docket may address the specifics of their own proposals, PACE will address, on behalf of the full membership, issues in which all members have a common interest. These include issues relating to appropriateness of scoring criteria, fairness of process, and an evaluation of whether FPL has met its burden of proof regarding the cost-effectiveness of its proposals. PACE's intervention in this docket will streamline the litigation process by affording PACE the ability to represent its members on certain common issues, thereby achieving efficiency. At the same time that PACE protects its members' interests through its participation in this docket, it will assist the Commission to ensure that the most cost-effective option is secured for the benefit of FPL's ratepayers.

9. Further, to the extent the decision in these dockets may have precedential effect on future proceedings, by intervening in these dockets PACE can ensure its members' positions on matters of policy and procedure are considered.

10. Disputed Issues of Material Fact. PACE anticipates that the issues of disputed fact in this case will include, but are not limited to:

- a. Was the extended FPL RFP process conducted fairly?

- b. Did FPL's selection process take into account all risks to ratepayers associated with FPL's proposed units?
- c. Has the FPL met its burden to demonstrate that its selection process was thorough, evenhanded and fair?
- d. Has FPL met its burden to demonstrate that its proposed units are the most cost-effective alternatives available for ratepayers?
- e. If FPL has not met its burden, what action should the Commission take?

11. Statement of Ultimate Facts Alleged. PACE alleges that FPL's selection process was flawed, that among other things, FPL has not recognized in the evaluation of alternatives all risks to ratepayers associated with its self-build proposals; and thus FPL has failed to carry its burden of demonstrating that the proposed units are the most cost-effective alternatives available. It would be in ratepayers' best interests to deny FPL's request and place into effect protocols that will ensure the selection of the most cost-effective choices.

WHEREFORE, PACE requests the Commission enter an order allowing it to intervene as a full party in this docket.


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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Florida Partnership for Affordable Competitive Energy's Amended Petition to Intervene, was on this 22nd day of August 2002, served via (*) Hand delivery and U.S. Mail to the following:

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