

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-02-1268-PCO-EI
ISSUED: September 17, 2002

ORDER GRANTING MOTION TO REMOVE INTERVENOR AS A PARTY

By motion filed August 27, 2002, Florida Power & Light Company ("FPL") seeks to have CPV Cana, Ltd. ("CPV Cana") removed as a party to these proceedings and to have CPV Cana's allegations dismissed as moot. CPV Cana filed its response to FPL's motion on September 4, 2002. As set forth below, FPL's motion is granted.

On March 22, 2002, Florida Power & Light Company ("FPL") filed petitions for determinations of need for electrical power plants at its Martin and Manatee facilities ("petitions"). These petitions were assigned Docket Nos. 020262-EI and 020263-EI, which have been consolidated. Prior to filing its petitions, FPL issued a Request for Proposals ("initial RFP") for capacity to meet its needs for 2005 and 2006. In response, several bidders, including CPV Cana, Ltd. ("CPV Cana"), submitted proposals. FPL ultimately chose its own proposal to construct and operate the proposed Martin Unit 8 and Manatee Unit 3, which are the subject of its Petitions.

On April 12, 2002, CPV Cana petitioned to intervene in these consolidated dockets. In its petition to intervene, CPV Cana challenged the validity of FPL's initial RFP process and alleged that FPL failed to comply with the requirements of Rule 25-22.082, Florida Administrative Code. CPV Cana asserted that its substantial interest in being selected as an alternative capacity supplier would be affected by the Commission's decision in these dockets, and it was entitled to intervene to protect those interests and to challenge FPL's initial RFP process. By Order No. PSC-02-0556-PCO-EI, issued April 24, 2002, the Commission granted CPV Cana's petition to intervene.

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On April 22, 2002, FPL filed an emergency motion to hold in abeyance the proceedings in these dockets so that it could issue a supplemental RFP to address the technical and procedural concerns raised by the respondents to its initial RFP who intervened in these dockets, including CPV Cana. In its motion, FPL asked that the procedural schedule for these dockets be suspended and not reinstated until FPL amended its petitions for determination of need at the conclusion of the supplemental RFP process. FPL suggested that if it ultimately selected its own generation projects after the supplemental RFP process, the need determination proceedings should resume when it filed supplemental testimony and exhibits describing the new RFP process. FPL stated that if it ultimately selected a bidder's proposal in lieu of one or both of FPL's proposed Martin and Manatee units, it would file a new need determination petition in September. By Order No. PSC-02-0571-PCO-EI, issued April 26, 2002, the Commission granted FPL's request to hold these proceedings in abeyance so that it could begin its supplemental RFP process, with any supplemental testimony and exhibits to be filed by July 16, 2002.

CPV Cana did not respond to the supplemental RFP. Instead, CPV Gulfcoast, L.P., an affiliate of CPV Cana, submitted proposals to the supplemental RFP. Pursuant to an agreement with FPL, CPV Gulfcoast was permitted to rely upon the RFP fee paid by CPV Cana in the initial RFP process.

On July 17, 2002, after completion of the supplemental RFP process, FPL filed a motion for leave to amend its petitions to present analyses of the proposals filed in response to the supplemental RFP. In its motion, FPL indicated that it determined to proceed with the construction of both Martin Unit 8 and Manatee Unit 3. Along with its motion, FPL filed amended petitions and a detailed need study and direct testimony concerning the analyses of its power supply options.

By motion filed August 27, 2002, FPL seeks to have CPV Cana removed as a party to these proceedings and to have CPV Cana's allegations dismissed as moot. In its motion, FPL states that under the terms of the supplemental RFP, no bids responsive to the initial RFP would be considered unless they were resubmitted. FPL further states that bidders resubmitting bids or submitting new

bids were not required to pay an evaluation fee if they had paid a fee pursuant to the initial RFP, unless they submitted more proposals in response to the supplemental RFP. FPL notes that CPV Gulfcoast, pursuant to an agreement with FPL, was permitted to rely upon the fee paid by CPV Cana in the initial RFP process. FPL asserts that its supplemental RFP, not its initial RFP, is now at issue in these proceedings. FPL concludes that CPV Cana surrendered its party status as an intervenor in these proceedings when it did not submit a bid in response to the supplemental RFP, because CPV Cana cannot demonstrate that its substantial interests will be affected by these proceedings. FPL also concludes that any issues or allegations raised by CPV Cana in these proceedings are now moot and should be dismissed.

CPV Cana filed its response to FPL's motion on September 4, 2002. In its response, CPV Cana notes that in its petition to intervene it raised numerous issues concerning the fairness of FPL's initial RFP process. CPV Cana asserts that these issues remain viable and that CPV Cana is "substantially interested in the determination of these issues." CPV Cana contends that the Commission should view FPL's supplemental RFP as supplementing, rather than superseding, the initial RFP process. CPV Cana contends that if FPL's supplemental RFP is viewed as superseding the initial RFP, FPL should be required to withdraw its original need determination petitions and refile them. CPV Cana asserts that it "has raised issues concerning the basic fairness, accuracy, and integrity of the entire RFP process which is the basis for this need determination proceeding", and that "[t]hese issues are germane and, indeed, integral to the core purpose of this need determination proceeding - whether FPL's self-selected self-build option is the most cost-effective alternative available for meeting [FPL's] projected generation capacity needs." Therefore, CPV Cana concludes that its substantial interests continue to be affected by this proceeding. Finally, CPV Cana asserts that the Commission's Order granting party status to CPV Cana is the law of the case in this proceeding because the facts upon which the decision was predicated continue to be the facts of the case.

Intervention in Commission proceedings is governed by Rule 25-22.039, Florida Administrative Code, which provides that persons who have a substantial interest in a Commission proceeding and wish to intervene must demonstrate that they are entitled to participate

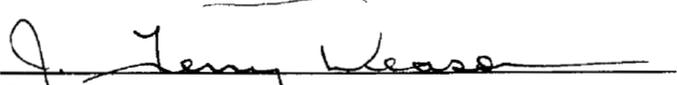
in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that the person's substantial interests are subject to determination or will be affected through the proceeding. To show a substantial interest in the outcome of the proceeding, a person must demonstrate that he or she will suffer injury in fact of sufficient immediacy and that the injury is of a type or nature which the proceeding is designed to protect. Agrico Chemical Co. v. Dep't of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981).

Because CPV Cana did not submit a proposal responsive to FPL's supplemental RFP and permitted its evaluation fee from the initial RFP to be applied to its affiliate's proposal in the supplemental RFP, it can no longer demonstrate that its substantial interests are subject to determination or will be affected through these proceedings. Regardless of whether FPL's supplemental RFP is viewed as superseding or merely supplementing its initial RFP, CPV Cana could not have expected its proposal in the initial RFP to remain a viable basis for intervention when it effectively abandoned that proposal by not resubmitting the proposal and by permitting its evaluation fee to be applied to CPV Gulfcoast's proposal in the supplemental RFP. Further, Rule 25-22.082(8), Florida Administrative Code, prohibits potential suppliers of capacity who did not participate in the RFP process to contest the outcome of the selection process in the need determination proceeding. The facts upon which CPV Cana was granted party status as an intervenor in this docket are no longer the facts of the case. Based on the foregoing, FPL's motion to remove CPV Cana as a party to these dockets is granted.

It is unnecessary to address FPL's motion to dismiss as moot any issues or allegations raised by CPV Cana. Given the removal of CPV Cana as a party to these proceedings, CPV Cana will clearly not be in a position to pursue those issues and allegations. Further, dismissing issues and allegations raised by CPV Cana as moot at this time may give the unintended impression that remaining parties are precluded from raising the same or similar matters in these proceedings. A decision on whether specific issues are appropriate to be addressed and resolved in these dockets shall be made in the due course of these proceedings.

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By ORDER of Commissioner J. Terry Deason as Prehearing Officer, this 17th day of September, 2002.


J. TERRY DEASON
Commissioner and Prehearing Officer

(S E A L)

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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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review 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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the

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Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.