

## 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

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In re: Petition to determine  
Need for an electrical power  
Plant in Manatee County by  
Florida Power & Light Company.

Docket No. 020263-EI

Filed: September 11, 2002

**PREHEARING STATEMENT OF  
CPV CANA, LTD.**

Pursuant to Order No. PSC-02-0992-PCO-EI, CPV Cana, Ltd. files its Prehearing Statement.

**A. APPEARANCES:**

Jon C. Moyle, Jr.  
Florida Bar No. 727016  
Cathy M. Sellers  
Florida Bar No. 0784958  
Moyle, Flanigan, Katz, Raymond & Sheehan, P.A.  
The Perkins House  
118 North Gadsden Street  
Tallahassee, Florida 32301

**On behalf of CPV Cana, Ltd., Intervenor**

**B. WITNESSES AND SUBJECT MATTER OF TESTIMONY:**

Doug Egan (bias and unfairness in FPL's process of conducting RFP)  
Mike Green (bias and unfairness in FPL's process of conducting RFP)  
Sam Waters (adverse witness: aspects of FPL RFP and evaluation of bids)  
Daisy Iglesias (adverse witness: process in which bids were evaluated)

These are the witnesses identified at this time who may be called. To the extent that

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other witnesses become known or available as discovery continues, the right to call additional witnesses is reserved.

**C. EXHIBITS:**

Exhibit--(DFE-1)      Biography

Exhibit--(DFE-2)      Letter of Michael Caldwell dated February 11, 2002

Exhibit--(DFE-3)      Steve Sim e-mail of 1/10/02

Exhibit--(DFE-4)      Sam Waters e-mail of 10/31/01

Exhibit--(DFE-5)      Steve Sim e-mail to Daisy Iglesias of 7/18/01 and RFP evaluation

Documents produced during discovery

Documents listed by other parties

Documents introduced in depositions

**D. STATEMENT OF BASIC POSITION:**

The FPL self-build options are not the most cost effective alternative. The RFP was not conducted in a fair and impartial manner. FPL's self-build cost estimates are not based on firm numbers but aggressive estimates. FPL cannot meet its burden of proving its self-build options are the most cost effective alternatives when it has failed to enter into contracts for the major cost components of its self-build proposals, rejected bids that the RFP required to be firm, and refuses to be bound by the terms of its self-build cost estimates. Further, FPL did not properly account for certain risks associated with its self-build option and unfairly imposed an equity penalty further casting uncertainty and doubt on the objectivity of its analysis.

FPL conducted its RFP in an unfair manner that was inequitably skewed to favor FPL's self-build options. The RFP and evaluation favored FPL's self build options. All the criteria used to evaluate responses to the RFP were not disclosed to bidders in

advance of the bids being submitted, something that is unfair to the bidders.

**E. STATEMENT OF ISSUES AND POSITIONS:**

**ISSUE 1:** Is the output of Florida Power & Light Company's Martin Unit 8 fully committed for use by Florida retail electric customers?

**CPV Cana:** No position at this time

**ISSUE 2:** Is the output of Florida Power & Light Company's Manatee Unit 3 fully committed for use by Florida retail electric customers?

**CPV Cana:** No position at this time.

**NEED FOR ADDITIONAL GENERATING CAPACITY:**

**ISSUE 3:** Does Florida Power & Light Company have a need for Martin Unit 8, taking into account the need for electric system reliability and integrity?

**CPV Cana:** While FPL may have a need for Martin Unit 8, the process it used to fill that need, along with its failure to secure firm contracts for the major cost components of the Martin 8 unit, results in the Martin 8 Unit not being the most cost effective alternative. Moreover, Martin Unit 8 is not needed in 2005 as the plant is being proposed with a 2005 in-service date to meet a 15 megawatt shortfall from a 20% reserve figure. Thus, ratepayers are not benefited and the petition should be denied.

**ISSUE 4:** Does Florida Power & Light Company have a need for Manatee Unit 3, taking into account the need for electric system reliability and integrity?

**CPV Cana:** No position at this time.

**ISSUE 5:** Does Florida Power & Light Company have a need for Martin Unit 8, taking into account the need for adequate electricity at a reasonable cost?

**CPV Cana:** While FPL may have a need for Martin Unit 8, the process it used to fill that need, along with its failure to secure firm contracts for the major cost components of the Martin 8 unit results in the Martin 8 Unit not being the most cost effective alternative. Moreover, Martin Unit 8 is not needed in 2005 as the plant is being proposed with a 2005 in-service date to meet a 15 megawatt shortfall from a 20% reserve figure. Thus, ratepayers are not benefited and the petition should be denied.

**ISSUE 6:** Does Florida Power & Light Company have a need for Manatee Unit 3, taking into account the need for adequate electricity at a reasonable cost?

**CPV Cana:** No position at this time.

**CONSERVATION:**

**ISSUE 7:** Are there any conservation measures taken by or reasonably available to Florida Power & Light Company that might mitigate the need for Martin Unit 8?

**CPV Cana:** No position at this time.

**ISSUE 8:** Are there any conservation measures taken by or reasonably available to Florida Power & Light Company that might mitigate the need for Manatee Unit 3?

**CPV Cana:** No position at this time.

**FUEL AVAILABILITY:**

**ISSUE 9:** Has Florida Power & Light Company adequately ensured the availability of fuel commodity and transportation to serve Martin Unit 8?

**CPV Cana:** No. It has failed to secure firm contracts for fuel supply or transportation.

**ISSUE 10:** Has Florida Power & Light Company adequately ensured the availability of fuel commodity and transportation to serve Manatee Unit 3?

**CPV Cana:** No. It has failed to secure firm contracts for fuel supply or transportation.

**COST-EFFECTIVENESS:**

**ISSUE 11:** Did Florida Power & Light Company properly and accurately value the use of existing infrastructure at the Martin plant site in determining the construction cost of Martin Unit 8?

**CPV Cana:** No position at this time.

**ISSUE 12:** Did Florida Power & Light Company properly and accurately value the use of existing infrastructure at the Manatee plant site in determining the construction cost of Manatee Unit 3?

**CPV Cana:** No position at this time.

**ISSUE 13:** Did Florida Power & Light Company's Supplemental Request for Proposals, issued on April 26, 2002, satisfy the requirements of Rule 25-22.082, Florida Administrative Code?

**CPV Cana:** No. Having failed to comply with Rule 25-22.082 in its initial RFP (failure to properly identify its next planned generating unit, failure to short list any bidders), FPL issued a supplemental RFP. The bid rule was not complied with during the supplemental RFP in that FPL listed a methodology to be used to evaluate alternative generating proposals which was not followed, as additional criteria, not listed in the supplemental RFP, were used in evaluating bids. This is a clear violation of section 4(d) of the rule.

**ISSUE 14:** Was Florida Power & Light Company's decision not to consider proposals to construct generating capacity on property owned by Florida Power & Light Company appropriate?

**CPV Cana:** FPL should impute as a cost of its self-build option the market value of the property that could be sold for ratepayers' benefit if FPL were to purchase power from a respondent to an RFP.

**ISSUE 15:** Was the process used by Florida Power & Light Company to evaluate Martin Unit 8, Manatee Unit 3, and projects submitted in response to its Supplemental Request for Proposals, issued on April 26, 2002, fair, reasonable, and appropriate?

**CPV Cana:** No.

(a) Did FPL administer the evaluation process so as to provide to non-FPL participants a fair opportunity to win the RFP?

**CPV Cana:** No. The process used to evaluate Manatee Unit 3, Martin Unit 8 and the responses received by FPL in response to it initial RFP and supplemental RFP was not fair, reasonable and accurate. An 'apples to apples' comparison was not performed and not all the same criteria FPL used to evaluate outside proposals were used in evaluating FPL's self-build options. FPL designed an evaluation process to favor its self-build options and assure that it would be "the winner" of the RFP. For example, it made experience in the Florida labor market an evaluation criterion, thus ensuring that a number of proposals from certain bidders would not be evaluated favorably. Also, it "aggressively estimated" its numbers in order to win the RFP, and it is unlikely that FPL's self-build units will come on line at the estimated numbers.

(b) Did FPL apply to its self-build options the standards and criteria that it applied to respondents?

**CPV Cana:** No. FPL did not impose on itself the requirement that payments received by bidders be limited to their bids. It still refuses to be bound by its numbers. FPL did not give assurance that its self-build projects would be available on time backed up with a completion guarantee, something that was required of all proposals.

- (c) Were the evaluation criteria used by FPL in evaluating the bids disclosed to the bidders prior to the submission of bids?

**CPV Cana:** While some evaluation criteria was disclosed to bidders prior to submitting bids, a number of criteria were not disclosed, something that is fundamentally unfair.

**ISSUE 16:** In its evaluation of Martin Unit 8, Manatee Unit 3, and projects filed in response to its Supplemental Request for Proposals, issued on April 26, 2002, did Florida Power & Light Company employ fair and reasonable assumptions and methodologies?

- (a) Were the assumptions regarding operating parameters that FPL assigned to its own proposed units reasonable and appropriate?

**CPV Cana:** CPV Cana would adopt the position of PACE.

- (b) When modeling and quantifying the costs of all options, did FPL appropriately and consistently quantify and take into account the impact of variable O&M costs associated with bidders' proposals and variable O&M costs associated with its own self-build options, so as to result in a fair comparison of purchased and self-built alternatives?

**CPV Cana:** CPV Cana would adopt the position of PACE.

- (c) When modeling and quantifying the costs of all options, did FPL fairly and appropriately compare the costs of projects having different durations?

**CPV Cana:** CPV Cana would adopt the position of PACE.

- (d) When modeling and quantifying the costs of all options, did FPL employ assumptions regarding the gas transportation costs for the proposals that were fair, reasonable, and appropriate?

**CPV Cana:** CPV Cana would adopt the position of PACE.

- (e) When modeling and quantifying the costs of all options, including its own, did FPL appropriately and adequately take cycling and start-up costs into account?

**CPV Cana:** CPV Cana would adopt the position of PACE.

- (f) When modeling and quantifying the costs of all options, did FPL appropriately and adequately take into account the impact of seasonal variations on heat rate and unit output?

**CPV Cana:** CPV Cana would adopt the position of PACE.

- (g) Did FPL act in a fair, reasonable and appropriate manner in not considering further a proposal from TECO on the basis that TECO's reserve margin requirements might be impaired?

**CPV Cana:** No. FPL decided not to further consider a competing proposal from TECO based on a concern that TECO's reserve margin might be negatively impacted. FPL did not discuss this issue with TECO, but unilaterally made the decision not to move forward with negotiations with TECO without raising the concern with TECO. It is TECO's responsibility to maintain its reserve margins, not FPL's responsibility to maintain TECO's reserve margins.

**ISSUE 17:** Was Florida Power & Light Company's decision to apply an equity penalty cost to projects filed in response to its Supplemental Request for Proposals appropriate? If so, was the amount properly calculated?

**CPV Cana:** No. FPL's equity penalty is just that, a penalty against outside proposals. The equity penalty is particularly burdensome to proposals that offer large amounts of capacity over long periods of time. Constructing and operating a power plant imposes many risks that can be shifted to an Independent Power Producer and away from the utility's ratepayers through a power purchase contract. Even if one assumes, for purposes of argument, that a power purchase contract increases the utility's financial risk, to single out that factor while failing to consider the universe of risks associated with construction and purchasing unfairly skews the comparison in favor of the self-build options.

**ISSUE 18:** Did FPL negotiate with the short-listed bidders in good faith?

**CPV Cana:** No. In its initial RFP, FPL never conducted negotiations, so it could not have negotiated in good faith. In its supplemental RFP, FPL provided short-listed bidders with an extensive purchased power agreement with little time to review and comment on the proposed agreement. FPL

rejected a competing proposal from TECo without ever discussing the reasons for the rejection, concern about a reserve margin requirement, with TECo.

**ISSUE 19:** If the Commission grants FPL's petition for a determination of need authorizing it to construct its proposed Manatee 3 and Martin 8 units, should FPL be required to limit any requested rate base increase to the amount bid?

**CPV Cana:** Yes, FPL should be required to limit any requested rate base increase to amount bid. Imposing this condition is likely the only manner in which the statutory requirement that the most cost effective alternative be selected can be attained. If FPL does not commit to limit its recovery to the amounts specified in its proposals, the Commission should take that factor into account when reviewing the aggressive nature of the assumptions underlying its proposals.

**ISSUE 20:** If the answer to the above issue is no, is each of FPL's proposals based on sound and reasonable estimates, such that the Commission may conclude that the Commission and FPL's ratepayers may realistically expect FPL to implement the non-binding proposal at the stated cost?

**CPV Cana:** No. FPL "won" the FPL RFP on the basis of aggressive cost estimates and unrealistic assumptions that place much doubt on its ability to implement its proposals without significant overruns which, in the absence of a commitment on its part, will be presented to ratepayers for payment. The Commission should not rely on estimates when competitive firm bids, with firm pricing, were offered by outside proposals, but rejected.

**ISSUE 21:** If the Commission grants FPL's proposal to construct Manatee 3 and/or Martin 8, are consumers estopped from challenging the prudence of the investment in any subsequent rate case?

**CPV Cana:** No position at this time.

**ISSUE 22:** Has FPL met its burden of proof to demonstrate that it has fairly chosen the most cost-effective alternatives available?

**CPV Cana:** No. FPL has not met its burden of proof given self-build cost estimates are not based on firm numbers but aggressive estimates. FPL cannot meet its burden of proving its self-build options are the most cost effective alternatives when it has failed to enter into contracts for the major cost components of its self-build proposals, rejected bids that the RFP required to be firm, and refuses to be bound by the terms of its self-build cost estimates. Further, FPL cannot meet its burden of proof when it conducted its RFP in an unfair manner that was inequitably skewed to



favor FPL's self-build options.

**ISSUE 23:** What would be the impact on ratepayers if the Commission were to deny either or both of FPL's petitions?

**CPV Cana:** No position at this time.

**ISSUE 24:** Is Florida Power & Light Company's Martin Unit 8 the most cost-effective alternative available?

**CPV Cana:** No position at this time.

**ISSUE 25:** Is Florida Power & Light Company's Manatee Unit 3 the most cost-effective alternative available?

**CPV Cana:** No.

**ISSUE 26:** Based on the resolution of the foregoing issues, should the Commission grant Florida Power & Light Company's petition for determination of need for Martin Unit 8?

**CPV Cana:** No. The Commission should deny the petition and move to require a fair and unbiased selection process that will provide outcomes in which the Commission and the utility's rate payers can have confidence.

**ISSUE 27:** Based on the resolution of the foregoing issues, should the Commission grant Florida Power & Light Company's petition for determination of need for Manatee Unit 3?

**CPV Cana:** No position at this time.

**F. STIPULATED ISSUES:**

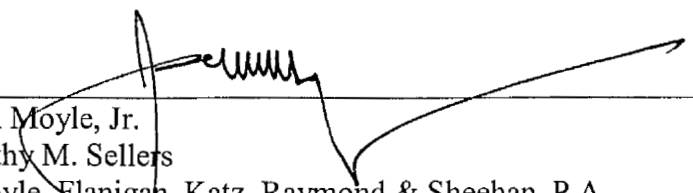
None at this time.

**G. PENDING MOTIONS:**

FPL has filed a motion to dismiss CPV Cana as a party to this proceeding. CPV is opposing the motion.

**H. OTHER MATTERS:**

CPV Cana has listed some witnesses who are not under its control. Thus, pre-filed testimony for these witnesses was not able to be filed. CPV Cana plans to call these witnesses at hearing and present direct examination at that time as is authorized by section 120.57(1)(b), and Rule 28-106.213, F.A.C.



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Jon Moyle, Jr.  
Cathy M. Sellers  
Moyle, Flanigan, Katz, Raymond & Sheehan, P.A.  
The Perkins House  
118 North Gadsden Street  
Tallahassee, Florida 32301

Attorneys for CPV Cana, Ltd.

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail and U.S. Mail to those listed below without an asterisk, and by e-mail and hand delivery to those listed below with an asterisk on this 11th day of September, 2002:

\*Martha Carter Brown, Esquire  
\* Larry Harris, Esquire  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Joseph A. McGlothlin, Esquire  
Vicki G. Kaufman, Esquire  
McWhirter, Reeves, et al.  
117 South Gadsden Street  
Tallahassee, Florida 32301

Jack Shreve, Esquire  
Office of the Public Counsel  
c/o Florida Legislature  
111 West Madison Street, Room 812  
Tallahassee, Florida 32399-1400

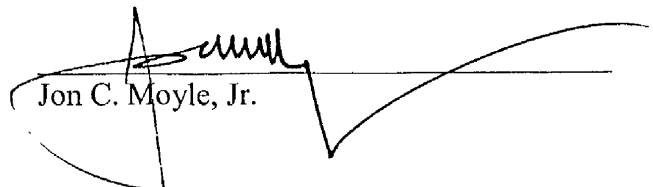
\*Charles A. Guyton, Esquire  
Steel, Hector & Davis, LLP  
215 South Monroe Street, Suite 601  
Tallahassee, Florida 32301

Mr. William G. Walker, III, Vice-President  
Florida Power & Light Company  
215 South Monroe Street, Suite 810  
Tallahassee, Florida 32301-1859

R. Wade Litchfield, Esquire  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, Florida 22408-0420

David Bruce May, Esquire  
Holland & Knight, LLP  
315 South Calhoun Street, Suite 600  
Post Office Box 810  
Tallahassee, Florida 32302-0810

Michael B. Twomey, Esquire  
Post Office Box 5256  
Tallahassee, Florida 32314-5256

  
Jon C. Moyle, Jr.