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August 27, 2002

**VIA HAND DELIVERY**

Blanca S. Bayó, Director  
Division of the Commission Clerk &  
Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

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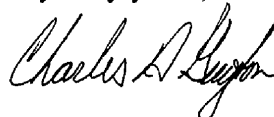
**Re: Docket Nos. 020262-EI and 020263-EI**

Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light Company ("FPL") are the original and seven (7) copies of FPL's Motion To Remove Intervenor CPV Cana As A Party And To Dismiss As Moot CPV Cana's Allegations, together with a diskette containing the electronic version of same. The enclosed diskette is HD density, the operating system is Windows 2000, and the word processing software in which the document appears is Word 2000.

If there are any questions regarding this transmittal, please contact me at 222-2300.

Very truly yours,



Charles A. Guyton

AUS \_\_\_\_\_ CAG:gc  
CAF \_\_\_\_\_ Enclosure  
CMP \_\_\_\_\_  
COM 5 \_\_\_\_\_ Copy to: Counsel for All Parties of Record  
CTR \_\_\_\_\_  
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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE  
09056 AUG 27 2002  
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination of Need )  
for Proposed Electrical Power Plant in )  
Martin County of Florida Power and )  
Light Company )  
\_\_\_\_\_ )

DOCKET NO. 020262-EI

In re: Petition for Determination of Need )  
For Proposed Electrical Power Plant in )  
Manatee County of Florida Power and )  
Light Company )  
\_\_\_\_\_ )

DOCKET NO. 020263-EI

Filed: August 27, 2002

**FLORIDA POWER & LIGHT COMPANY'S MOTION  
TO REMOVE INTERVENOR CPV CANA AS A PARTY  
AND TO DISMISS AS MOOT CPV CANA'S ALLEGATIONS**

Florida Power & Light Company ("FPL"), pursuant to Rules 28-106.204 and 28-106.205, Florida Administrative Code, hereby moves to remove intervenor CPV Cana Ltd. ("CPV Cana") as a party from the proceedings in these dockets. The grounds for this motion are as follows:

1. On August 13, 2001, FPL issued a Request for Proposals ("RFP") for 1,150 MW of capacity to meet its 2005 needs, and an additional 600 MW of capacity for its 2006 needs.

2. In response to the RFP, 15 bidders, including CPV Cana, submitted proposals to FPL, which undertook extensive analysis of the proposals and its self-build options. FPL determined that the most cost effective proposals were two units that FPL proposed to construct and operate which are known as Martin Unit 8 and Manatee Unit 3. On March 22, 2002, FPL filed in the Public Service Commission ("the Commission") its initial Petitions for Determination of Need for an Electrical Power Plant for the Martin and Manatee units.

3. On April 12, 2002, CPV Cana Ltd. ("CPV Cana") filed a Petition to Intervene in the initial Determination of Need proceeding. FPL responded that it did not object to the intervention of CPV Cana, which was a respondent to FPL's initial Request for Proposals and, as

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such, was entitled under Rule 25-22.082 to intervene in this proceeding. However, in its Response to the Petition to Intervene of CPV Cana Ltd., FPL disputed CPV Cana's allegations of the ultimate facts and CPV Cana's prayer for relief, which FPL asserted was premature, overbroad and inappropriate for resolution in this proceeding.

4. On April 24, 2002, the Commission issued an Order granting the petition of CPV Cana to intervene in FPL's initial Determination of Need proceeding. No. PSC-02-0556-PCO-EI ("Order"). In its order, the Commission duly noted FPL's objections to CPV Cana's factual allegations and request for relief and stated that such objections "will be addressed at the appropriate time in this proceeding." Order at 2.

5. During the initial stage of this proceeding prior to FPL's issuance of the Supplemental RFP, CPV Cana did meet the requirements for standing to intervene based on the fact that CPV Cana was one of the organizations that responded to FPL's initial RFP and thus was entitled to intervene and to be granted party status.

6. However, in response to concerns by various bidders as to the original RFP procedure, FPL asked the Commission on April 22, 2002, to suspend the Need Determination proceeding so that FPL could conduct a supplemental RFP to address the objections of the bidders. On April 26, 2002, the Prehearing Officer ordered that the need determination proceedings be held in abeyance pending the Supplemental RFP and FPL's evaluation of proposals submitted. Order No. PSC-02-0571-PCO-EI.

7. The Supplemental RFP was announced on April 26, 2002, and detailed Supplemental RFP documents were sent that same day to all bidders that had previously submitted proposals. In response to the Supplemental RFP, FPL received 53 proposals from 16 bidders, many of

which were participants in the prior request for proposals. Of these, four proposals were later withdrawn and another 18 declared ineligible, leaving 31 proposals that were evaluated by FPL.

8. CPV Cana was not among the bidders who submitted proposals in response to the Supplemental RFP. Instead, an affiliate of CPV Cana, CPV Gulfcoast, L.P., submitted proposals and, in so doing, relied upon the RFP fee originally paid by CPV Cana in order to avoid having to pay a new fee. Under the terms of the Supplemental RFP, no bids to the original RFP would be considered unless they were resubmitted. Parties resubmitting bids or submitting new bids did not have to pay an evaluation fee if they had paid a fee pursuant to the original RFP unless they submitted more proposals in response to the Supplemental RFP. In CPV's case, CPV Cana submitted proposals only in response to the original RFP. As a courtesy, at CPV Cana's request, FPL agreed to apply its fees from the original RFP to CPV Gulfcoast's proposal in response to the Supplemental RFP. Thus, CPV Cana, by failing to submit a bid in response to the Supplemental RFP, has surrendered its previous party status as an intervenor in this proceeding. A person is accorded party status only if the person can show a substantial interest in the outcome of the proceeding by demonstrating 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. In re: Joint Petition for Determination of Need for An Electric Power Plant in Volusia County, Order No. PSC-0535-FOF-EM (March 22, 1999)(reiterating the test for standing in an administrative procedure that was provided by Florida courts in Agrico Chem. Co. v. Dep't of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981) and Florida Soc. of Ophthalmology v. State Bd of Optometry, 532 So. 2d 1279 (Fla. 1<sup>st</sup> DCA 1988), and subsequent cases.)

9. Because CPV Cana did not submit a proposal in response to the Supplemental RFP, which is the subject of the present proceeding, CPV Cana cannot now demonstrate a substantial interest in the proceeding. It is FPL's Supplemental RFP, not its original RFP, that is at issue in these proceedings. Rule 25-22.082(8), Florida Administrative Code, specifically states:

The Commission shall not allow potential suppliers of capacity who were not participants to contest the outcome of the selection process in a power plant need determination proceeding.

Therefore, the substantial interest and statutory entitlement that CPV Cana asserted in its April 12, 2002 petition no longer exist.

10. Moreover, any issues or allegations that CPV Cana raises in the present proceeding are now moot as to CPV Cana because of the changed circumstances described above. Montgomery v. HRS, 468 So. 2d 1014 (Fla. 1<sup>st</sup> DCA 1985). Mootness occurs in two basic situations, "when the issues presented are no longer 'live' or [when] the parties lack a legally cognizable interest in the outcome." Montgomery, 468 So. 2d at 1016, citing Powell v. McCormack, 395 U.S. 486 (1969). In this proceeding, CPV Cana's allegations in its petition to intervene regarding FPL's original RFP are no longer live. Moreover, CPV Cana did not respond to FPL's invitation to submit a supplemental proposal and thus has no legally cognizable interest in the outcome. Therefore, this Commission should dismiss as moot any issues or allegations by CPV Cana.

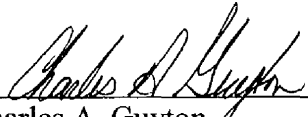
11. FPL has discussed this motion with counsel for CPV Cana and CPV Cana is opposed to FPL's motion.

WHEREFORE, FPL respectfully requests that this Commission remove CPV Cana as a party to this proceeding because (a) CPV lacks substantial interest and (b) CPV's allegations are moot, and (c) CPV Cana lacks a legally cognizable interest in the outcome of this proceeding.

Respectfully submitted,

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By   
Charles A. Guyton  
Florida Bar No. 0398039

**CERTIFICATE OF SERVICE**  
**Docket Nos. 020262-EI and 020263-EI**

I HEREBY CERTIFY, that on this 27 day of August, 2002, a copy or courtesy copy (\*) of Florida Power & Light Company's Motion to Remove Intervenor CPV Cana As a Party and to Dismiss As Moot CPV Cana's Allegations was served electronically (\*\*) and by hand delivery or United States Mail to the following:

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