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September 5, 2002

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VIA HAND DELIVERY

Blanca S. Bayó, Director
Division of the Commission Clerk &
Administrative Services
Florida Public Service Commission
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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 In Limine To Exclude Two Witnesses For CPV Gulfcoast, Ltd. and CPV Cana, Ltd., 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,

Elizabeth C. Daley

ECD:gc
Enclosure
Copy to: Counsel for All Parties of Record

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Prehearing Officer in this proceeding required in the Scheduling Order that “[e]ach party shall prefile, in writing, all testimony that it intends to sponsor Failure to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony.” *Scheduling Order at 6.*

2. Prefiled direct testimony for all intervenors’ witnesses was due to be filed in the Commission on August 20, 2002, a full four weeks after the Prehearing Officer issued the Scheduling Order on July 23, 2002. *Scheduling Order at 9.* Every intervenor had the same amount of time for prefilings testimony.

3. As of September 4, 2002, fourteen days after the deadline for prefilings of intervenor testimony, CPV had not prefiled testimony for Mr. Green or Mr. Caldwell, as required by the Scheduling Order. However, CPV’s Response to FPL’s First Set of Interrogatories (“Response”) was mailed five days prior to the deadline for prefilings testimony.

4. In its Response, CPV merely listed “Mike Green” and “Michael Caldwell,” with no further identifying information, as fact witnesses whom CPV expects to call to testify in the October hearing in this proceeding. *CPV Gulfoast Ltd.’s Response to Interrogatory No. 1.*

5. CPV stated in its Response only that Mr. Green would testify as to the alleged “[u]nfairness of FPL’s RFP process and related matters” and that Mr. Caldwell would testify as to FPL’s alleged “desire to keep competitors out of the state of Florida.” *Id.* This extremely broad response to FPL’s interrogatory omits all identifying information about CPV’s two witnesses and also fails to provide a description of their expected testimony that sufficiently allows the Commission, the Commission Staff, and FPL to prepare for the hearing.

6. FPL has prefiled testimony for every witness it plans to call to testify at the Need Determination hearing. Although CPV had the same amount of time as all other intervenors to

prepare prefiled testimony, CPV has chosen to ignore the Commission's direction as to Mr. Green and Mr. Caldwell. FPL will be at an unfair disadvantage in the hearing if FPL has no opportunity to review prefiled testimony of these two live witnesses for intervenor CPV. FPL needs to review this expected testimony in order to gain further understanding of CPV's positions in opposition to FPL's Petition for Determination of Need. With no prehearing opportunity to discover the positions of Mr. Green and Mr. Caldwell, FPL is unable to prepare adequately to rebut any allegations that these witnesses might present. CPV should not be allowed to ignore without consequence the Prehearing Officer's clear requirement of prefiled testimony.

WHEREFORE, undersigned counsel respectfully requests that this Commission enter an order excluding the testimony of CPV fact witnesses Mike Green and Michael Caldwell on the grounds that CPV has not met the Commission's clear requirement in its Scheduling Order of prefiling testimony of its witnesses.

Respectfully submitted,

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

I HEREBY CERTIFY that on this 5th day of September 2002, a copy of Florida Power & Light Company's Motion in Limine To Exclude Two Witnesses for CPV Gulfcoast Ltd. and CPV Cana Ltd. was served by hand delivery (*) or electronically (**) and U.S. Mail to the following:

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