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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In re: Petition for Determination
of Need for Electric Power Plant in
Polk County by Calpine Construction
Finance Company, L.P.**)
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)

Docket No. 000442-EI

Filed: July 10, 2000

**FLORIDA POWER & LIGHT COMPANY'S
MOTION TO DISMISS THE NEED PETITION**

Florida Power & Light Company ("FPL"), pursuant to Rule 28-106.204, Florida Administrative Code, moves to dismiss the Petition For Determination Of Need For An Electrical Power Plant filed on June 19, 2000 (hereinafter the "Petition") by Calpine Construction Finance Company, L.P. ("Calpine") and states:

The Commission lacks authority to entertain Calpine's Petition, and the Petition should be dismissed for the following reasons, each of which are more fully developed in the contemporaneously filed supporting legal memorandum:

- (i) Calpine is not a proper applicant for a determination of need under Section 403.519, Florida Statutes;
- (ii) Calpine's Petition fails to allege or demonstrate a utility specific need for the project based on the criteria of Section 403.519, Florida Statutes;
- (iii) Calpine's Petition improperly asks the Commission to presume that certain of the need criteria of Section 403.519, Florida Statutes, will be met;
- (iv) Calpine's Petition fails to meet the minimum pleading requirements of Rule 25-22.081, Florida Administrative Code;
- (v) Calpine has failed to follow the competitive bidding requirements of Rule 25-22.082, Florida Administrative Code and proposes to enter into contracts with Florida retail utilities in circumvention of Rule 25-22.082;
- (vi) Calpine's Petition advances a theory which is inconsistent with the theory of the Siting Act; and

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- (vii) Calpine's Petition shows on its face that its plant would constitute an unnecessary and uneconomic duplication of facilities.

Any one of these grounds supports the dismissal of the Calpine Petition. Collectively, they demonstrate that the Petition should be summarily dismissed. Given Calpine's clear disregard of Supreme Court precedent and its failure to meaningfully distinguish itself from Duke New Smyrna, Calpine's Petition should be dismissed with prejudice.

Respectfully submitted,

Steel Hector & Davis, LLP
Suite 601, 215 S. Monroe St.
Tallahassee, Florida 32301

Attorneys for Florida Power
& Light Company

By: 
Matthew M. Childs, P.A.
Charles A. Guyton

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Florida Power & Light Company's Motion To Dismiss The Need Petition in Docket No. 000442-EI was served by Hand Delivery (*) or mailed this 10th day of July 2000 to the following:

Blanca S. Bayó, Director *
Records and Reporting
Florida Public Service Commission
4075 Esplanade Way, Room 110
Tallahassee, Florida 32399-0850

Alycia Lyons Goody, Esq.
Regional Counsel
Calpine Eastern Corporation
The Pilot House, 2nd Floor, Lewis Wharf
Boston, Massachusetts 02110

Robert Elias, Esquire. *
Legal Division
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 370
Tallahassee, FL 32399-0850

Tim Eves
Director, Business Development
Two Urban Centre
4890 West Kennedy Blvd., Suite 600
Tampa, FL 33609

Robert Scheffel Wright, Esq.*
John T. LaVia, III, Esq.
Landers & Parsons, P.A.
310 West College Avenue
Tallahassee, FL 32301

By: Charles A. Guyton
Charles A. Guyton