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April 29, 2002

Charles A. Guyton  
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**-VIA HAND DELIVERY-**

Ms. Blanca S. Bayó, Director  
Division of the Commission Clerk and  
Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 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 are the original and seven (7) copies of Florida Power & Light Company's Emergency Petition for Waiver of Rule 25-22.080(2).

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

Very truly yours,

Charles A. Guyton

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Enclosures

*Done* 5/01/02

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

<b>In re: Petition of Florida Power &amp; Light Company for a determination of need for a power plant proposed to be located in Martin County</b>	) ) ) ) ) _____)	<b>Docket No. 020262-EI</b>
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<b>In re: Petition of Florida Power &amp; Light Company for a determination of need for a power plant proposed to be located in Manatee County</b>	) ) ) ) ) _____)	<b>Docket No. 020263-EI</b>  <b>April 29, 2002</b>
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**FLORIDA POWER & LIGHT COMPANY’S EMERGENCY  
PETITION FOR WAIVER OF RULE 25-22.080(2)**

Florida Power & Light Company (“FPL”), pursuant to Rule 28-104.002, Florida Administrative Code (“FAC”) hereby moves for an emergency waiver of the time limitations of Rule 25-22.080(2), FAC to reschedule the final hearing in these proceedings to October 2-4, 2002. In support thereof, FPL states:

1. On April 22, 2002, FPL filed its Emergency Motion to Hold Proceedings in Abeyance. The purpose of that motion was to allow FPL to issue a supplemental Request for Proposals (“RFP”) and give bidders another opportunity to see if they can provide superior alternatives to those identified by FPL, while at the same time addressing various concerns raised by the bidders.

2. On April 26, 2002, the prehearing officer granted FPL’s Emergency Motion to Hold Proceedings in Abeyance, noting that FPL would be filing an emergency motion for waiver of the time limitations of Rule 25-22.080(2) so that the final hearing may be held on October 2-4, 2002. If FPL resumes one or both need proceedings, it will supplement or revise its testimony,

petitions and need study on or about July 16, 2002. A rescheduling of the final hearing date and associated post-hearing proceedings would be necessary, as evaluation of the supplemental RFP will not be complete by the time of the present scheduled hearing dates.

3. Rule 25-22.080(2) sets forth strict time limitations for processing a determination of need proceeding and provides as follows:

Within 7 days following receipt of a petition, or in its order commencing a proceeding on its own motion, the Commission shall set a date for hearing, which shall be within 90 days of receipt of the petition or of issuance of its order. Following the hearing, each party may make submittals to the Commission on a time schedule to be determined in accordance with the requirements of each proceeding, but terminating no later than 120 days from the receipt of the petition. The matter will be placed before the Commission on an agenda which will permit a decision no later than 135 days from the date of receiving the petition or the issuance of the order commencing the proceeding. A petition for reconsideration must be filed within 5 days of the Commission's decision.

The time limitation on the final hearing set forth in this rule could not be met given the granting of FPL's Emergency Motion to Hold Proceedings in Abeyance. Therefore, FPL requests of the time limitations of Rule 25-22.080(2) so that the final hearing may be rescheduled from June 19-21 to October 2-4.

4. The name and address of the Petitioner are Florida Power & Light Company, 9250 West Flagler Street, Miami, Florida 33102. The name and address of FPL's representatives to receive communications regarding this Petition are:

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5. Section 120.542, Florida Statutes, authorizes a waiver of rule requirements by state agencies. It provides:

Variations and waivers *shall* be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. . .

§ 120.542(2), Fla. Stat. (emphasis added). Thus, a requested waiver of an administrative rule must (as denoted by the use of the word "shall") be granted when the party requesting the waiver shows that (i) the purpose of the underlying statute would be achieved and (ii) the application of the rule would create a legal, economic or other substantial hardship.

6. Here both criteria are met. The underlying statute, section 403.519 provides that the Commission is to determine whether a proposed unit is needed based upon: "the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and

whether the proposed plant is the most cost-effective alternative available.” The requested rule waiver will not prevent the purposes of the statute from being achieved.

7. Indeed, the rule waiver will further the purposes of the statute, such as securing adequate reliable electricity at reasonable cost and choosing the most cost-effective alternative available to meet FPL’s capacity needs. Every bidder will be given another opportunity to provide a superior alternative to FPL. If a proposal is submitted that is superior to the current planned units, it will be chosen. Conversely, if the FPL units remain the superior options, the interveners’ primary concerns regarding the RFP process will be removed, leading to a simpler and more streamlined need certification process that focuses on the requirements of section 403.519. In either case, the supplemental RFP and the rescheduling of the need hearing will accomplish the purposes of section 403.519, by guaranteeing that the best choice is made and that FPL’s customers will benefit accordingly.

8. Waiving the requirement of a hearing within 90 days of filing will not prejudice any party to this proceeding given the procedural commitments that FPL has proposed herein and in the Emergency Motion to Hold Proceedings in Abeyance. Moreover, failure to grant the rule waiver would create an undue hardship on both FPL and the other parties. The various interveners have raised numerous issues with respect to the RFP that FPL will address in the supplemental RFP. If the rule waiver is denied, the parties will be forced to continue in expensive litigation over issues that could ultimately have been resolved through the supplemental RFP process.

9. Finally, as noted in FPL’s Emergency Motion to Hold Proceedings in Abeyance, suspension (and rescheduling of the hearing) will not prejudice the parties. In fact, it works to

their advantage in several important aspects as, it (i) provides bidder interveners with another opportunity to bid (ii) allows them to bid against Martin Unit 8 and Manatee Unit 3 and (iii) addresses many of the concerns they have raised with the Commission.

10. This Petition for Rule Waiver should be decided on an emergency basis pursuant to Rule 28-104.004, FAC. The hearing date is less than 45 days away and therefore the typical 90-day processing time for a rule waiver would be inadequate. Given the need to proceed expeditiously with the supplemental RFP and to alleviate the parties from the requirements of continuing ongoing litigation that may ultimately be rendered moot, the requested rule waiver should be entered as soon as possible. Any substantial delay will create undue hardship for all parties. Therefore, FPL requests that a decision on this Emergency Petition for Rule Waiver be made in 30 days pursuant to Rule 28-104.004, FAC.

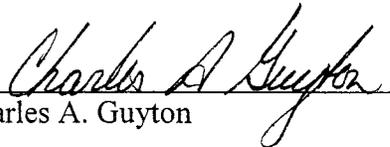
11. FPL has conferred with counsel for the interveners and is aware of no objection to the requested rule waiver, conditioned upon a revised schedule with (i) FPL filing its supplemental materials on July 16, 2002, and (ii) the final hearing being held on October 2-4, should FPL proceed with one or both of the planned units.

WHEREFORE, FPL respectfully requests that an emergency waiver of the time limitations Rule 25-22.080(2) be entered to allow the final hearing to be rescheduled to October 2-4, 2002.

Respectfully submitted,

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By:   
Charles A. Guyton

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

I **HEREBY CERTIFY** that a true and correct copy of Florida Power & Light Company's Emergency Petition for Waiver of Rule 25-22.080(2) has been furnished by e-mail (\*), or facsimile (\*\*), and United States Mail this 29th day of April, 2002, to the following:

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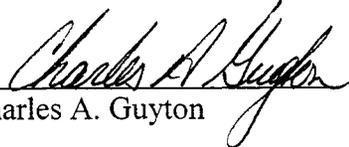
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