

STEEL ■  
HECTOR  
■ DAVIS  
INTERNATIONAL™

Steel Hector & Davis LLP  
200 South Biscayne Boulevard  
Suite 4000  
Miami, FL 33131-2398  
305.577.7000  
305.577.7001 Fax  
www.steelhector.com

John T. Butler, P.A.  
305.577.2939  
jtb@steelhector.com

June 13, 2002

**VIA FEDERAL EXPRESS**

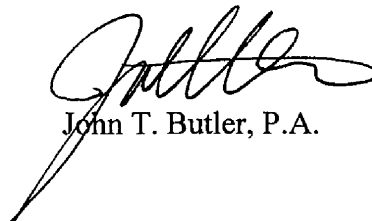
Blanca S. Bayó  
Director, Commission Clerk and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

**Re: Docket No. 020263-EI**

Dear Ms. Bayó:

Enclosed for filing are the original and seven (7) copies of Florida Power & Light Company's Response to CPV Gulfcoast, Ltd.'s Request for Leave to Amend Petition to Intervene and Amended Petition to Intervene Into Need Determination Proceedings, 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.

Sincerely,



John T. Butler, P.A.

Copy to: All parties of record

MIA2001 108396v1

DOCUMENT NUMBER-DATE

06199 JUN 14 8  
Rio de Janeiro Santo Domingo

Miami West Palm Beach Tallahassee Naples Key West London Caracas São Paulo

FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

**In re: Petition to Determine Need for  
an Electrical Power Plant in Manatee County  
by Florida Power & Light Company** )  
)  
)  
)  

---

**Docket No. 020263-EI  
Dated: June 14, 2002**

**FLORIDA POWER & LIGHT COMPANY'S RESPONSE TO  
CPV GULFCOAST, LTD.'S REQUEST FOR LEAVE TO  
AMEND PETITION TO INTERVENE AND AMENDED PETITION  
TO INTERVENE INTO NEED DETERMINATION PROCEEDING**

Florida Power & Light Company ("FPL") hereby responds as follows to the Request for Leave to Amend Petition to Intervene and Amended Petition to Intervene into Need Determination Proceeding that CPV Gulfcoast Ltd. ("CPVG") has filed in the above docket. The grounds for FPL's response are as follows:

1. CPVG has consolidated into a single pleading a request for leave to amend its April 23, 2002, petition to intervene and a proposed amended petition. FPL has no objection to CPVG's request for leave to amend its petition. The remainder of this response is addressed to the propriety of CPVG's amended petition.

2. CPVG did not submit a bid in response to FPL's August 2001 Request for Proposals ("RFP"). In its initial petition to intervene, CPVG argued that it should be permitted to intervene nonetheless because it was allegedly misled by FPL's not identifying Manatee Unit 3 in the August 2001 RFP as one of the next planned generating units. FPL objected to CPVG's being granted intervention on those grounds. However, FPL noted that it had subsequently published a supplemental RFP in April 2002 and that, if CPVG submitted a bid in response to the

supplemental RFP, FPL would have no objection to CPVG's being granted intervenor status on that basis.

3. CPVG has submitted a bid in response to the supplemental RFP. FPL acknowledges that CPVG is accordingly entitled to intervene in a need-determination proceeding that is based upon the supplemental RFP. However, FPL has three concerns about CPVG's requested intervention that it wants to bring to the Commission's attention.

4. First, CPVG has specifically petitioned to intervene in this docket, which relates to a determination of need for Manatee Unit 3. This docket has been held in abeyance pending the outcome of the supplemental RFP. FPL does not yet know whether Manatee Unit 3 will be selected as part of the portfolio that best meets FPL's capacity needs in the 2005-2006 time frame covered by the supplemental RFP. If Manatee Unit 3 is not part of the winning portfolio, there will be no further need for proceedings in this docket, rendering CPVG's request to intervene in this docket moot. FPL respectfully requests that the Commission defer ruling on CPVG's request to intervene in this docket until FPL has determined whether or not Manatee Unit 3 is part of the winning portfolio and thus whether this docket needs to remain open.

5. Second, the Commission has previously granted intervention in this docket to CPVG's sister company, CPV Cana, Ltd. ("CPV Cana"), premised exclusively on CPV Cana's having submitted a bid in response to FPL's August 2001 RFP.<sup>1</sup> CPV Cana has not submitted a bid in response to FPL's supplemental RFP, which CPVG acknowledges is the relevant test for standing to intervene. There is no legitimate basis for CPV Cana to remain a party to this docket.

---

<sup>1</sup> The sole basis pled by CPV Cana to intervene, and the Commission's sole stated basis for granting intervention, was CPV Cana's status as a bidder in response to FPL's August 2001 RFP. See Petition to Intervene of CPV Cana, Ltd., dated April 12, 2002, at ¶16; Order No. PSC-02-

If further proceedings in this docket are appropriate based on the results of the supplemental RFP, then FPL respectfully requests the Commission to determine that CPV Cana is no longer a party.

6. Third, CPVG's amended petition to intervene goes beyond the allegations and prayers for relief necessary to intervention. The "Disputed Issues of Material Fact" identified in CPVG's amended petition implicitly criticize the basis upon which FPL will evaluate bids submitted in response to the supplemental RFP. FPL does not believe it would be productive to debate the proper scope of issues via its response to CPVG's amended petition. Rather, FPL reserves the right to challenge CPVG's issues during the issue-identification process, if further proceedings are conducted in this docket. CPVG's amended petition also alleges "ultimate facts" that FPL strongly disputes. The "ultimate facts" again implicitly challenge the basis for FPL's bid evaluation. It would be CPVG's burden to prove its alleged "ultimate facts" if there are further proceedings in this docket, which FPL is confident CPVG would be unable to do. Finally, the prayer for relief in CPVG's amended petition is inappropriately and insupportably overbroad. Paragraph 1 conventionally requests that CPVG be granted intervenor status, but Paragraphs 2-4 request relief that extends well beyond granting intervenor status and is premature and unsupported by CPVG's pleadings, much less any evidence. The Commission should deny as premature Paragraphs 2-4 of CPVG's prayer for relief.

WHEREFORE, FPL respectfully requests that (i) the Commission grant CPVG intervenor status in this docket only if the portfolio selected in response to FPL's supplemental RFP contains Manatee Unit 3, and (ii) if CPVG is granted intervention, the Commission (a)

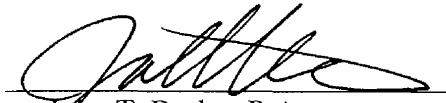
determine that CPV Cana is no longer a proper party in this docket, (b) clarify that the appropriateness of CPVG's "Disputed Issues of Law and Fact" will be considered during the issue-identification process in these dockets, and (c) deny as premature Paragraphs 2-4 of CPVG's prayer for relief.

Respectfully submitted,

R. Wade Litchfield, Esq.  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, Florida 33408-0420  
Telephone: 561-691-7101  
Fax: 561-691-7135

Steel Hector & Davis LLP  
200 S. Biscayne Blvd., Suite 4000  
Miami, Florida 33131-2398  
Telephone: 305-577-2939  
Fax: 305-577-7001

By:



John T. Butler, P.A.  
Fla. Bar No. 283479

**CERTIFICATE OF SERVICE**

**Docket No. 020263-EI**

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Response to CPV Gulfcoast, Ltd.'s Request for Leave to Amend Petition to Intervene and Amended Petition to Intervene into Need Determination Proceeding has been furnished by United States Mail this 13<sup>th</sup> day of June, 2002, to the following:

Martha Carter Brown, Esq.  
Lawrence Harris, Esq.  
Legal Division  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
Mbrown@psc.state.fl.us

Joseph A. McGlothlin, Esq.  
McWhirter, Reeves, McGlothlin, Davidson,  
Decker, Kaufman, Arnold & Steen, P.A.  
117 South Gadsden Street  
Tallahassee, Florida 32301  
Jmcglothlin@mac-law.com

Michael G. Briggs  
Reliant Energy, Inc.  
801 Pennsylvania Avenue, Suite 620  
Washington, DC 20004  
mbriggs@reliant.com

D. Bruce May, Jr., Esq.  
Karen D. Walker, Esq.  
Holland & Knight LLP  
315 South Calhoun Street, Ste. 600  
Tallahassee, Florida 32301  
dbmay@hkllaw.com

Michael B. Twomey, Esq.  
P.O. Box 5256  
Tallahassee, FL 32314-5256

Suzanne Brownless, Esq.  
Suzanne Brownless, P.A.  
1975 Buford Boulevard  
Tallahassee, FL 32308  
sbrownless@comcast.net

Robert Scheffel Wright, Esq.  
Diane K. Kiesling, Esq.  
John T. LaVia, III  
Landers & Parsons, P.A.  
310 West College Avenue  
Tallahassee, Florida 32301  
Schef@landersandparsons.com

Jack Shreve, Public Counsel  
c/o Florida Legislature  
111 West Madison Street  
Room No. 812  
Tallahassee, FL 32301

Jon C. Moyle, Jr., Esq.  
Cathy M. Sellers, Esq.  
Moyle Flanigan Katz Raymond &  
Sheehan, P.A.  
118 North Gadsden Street  
Tallahassee, Florida 32301  
jmoylej@moylelaw.com

James D. Beasley, Esq.  
Ausley & McMullen  
P.O. Box 391  
Tallahassee, FL 32302

Carol A. Licko, Esq.  
Hogan & Hartson, LLP  
Barclays Financial Center  
111 Brickell Avenue, Suite 1900  
Miami, FL 33131

By: \_\_\_\_\_

  
John T. Butler, P.A.