

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for  
determination of need for the  
Osprey Energy Center by Calpine  
Construction Finance Company,  
L.P.

DOCKET NO. 000442-EI  
ORDER NO. PSC-01-0082-FOF-EI  
ISSUED: January 9, 2001

The following Commissioners participated in the disposition of  
this matter:

E. LEON JACOBS, JR.  
LILA A. JABER  
BRAULIO L. BAEZ

ORDER ACKNOWLEDGING NOTICE OF VOLUNTARY DISMISSAL OF NEED  
PETITION, CLOSING DOCKET, AND VACATING DECISIONS DENYING MOTIONS  
TO DISMISS AND EMERGENCY MOTION TO ABATE

On June 19, 2000, Calpine Construction Finance Company, L.P., ("Calpine"), filed a Petition for Determination of Need for an Electrical Power Plant. Calpine proposed to construct a 527 megawatt (MW) natural gas-fired, combined cycle power plant in Polk County, Florida, expected to commence commercial operation in the second quarter of 2003. Calpine also filed a Petition for Determination that Rule 25-22.082(2), Florida Administrative Code, Does Not Apply, or in the Alternative, for Waiver of Rule 25-22.082(2), Florida Administrative Code.

After oral argument before the Prehearing Officer, Florida Power & Light Company (FPL) and Florida Power Corporation (FPC) were granted leave to intervene in this docket, by Order No. PSC-00-1687-PCO-EI, issued September 21, 2000. FPL and FPC filed Motions to Dismiss Calpine's Petition for Determination of Need. FPC filed a Motion to Dismiss Calpine's Petition for a Determination that Rule 25-22.082(2), Florida Administrative Code, does not Apply to Calpine or Alternative Request for Rule Waiver of 25-22.082(2), Florida Administrative Code. FPL also filed an Emergency Motion to Hold this Matter in Abeyance. At the October 17, 2000, Agenda Conference, the Commission denied the Motions to Dismiss and the Emergency Motion to Hold this Matter in Abeyance.

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FPSC-RECORDS/REPORTING

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The Commission deferred ruling on the bidding rule issue at the October 17, 2000, Agenda Conference. Since then, Calpine filed a joint Memorandum of Understanding (MOU) with Seminole Electric Cooperative, Inc. (Seminole), along with a Request for Specified Confidential Treatment.

On November 22, 2000, Calpine filed a Notice of Voluntary Dismissal of its Petition for Determination of Need and Request to Close the Docket. There was no filing in response. Jurisdiction over this matter is vested in this Commission by Section 403.519, Florida Statutes.

We have previously considered the issue of whether an entity initiating a proceeding can subsequently voluntarily dismiss the petition. By Order No. PSC-94-0310-FOF-EQ, issued March 17, 1994, in Docket 920977-EQ, the Commission recognized that a party may voluntarily withdraw an initiating petition. But for the fact that we took official action at the October 17, 2000, Agenda Conference, it would be appropriate to handle this matter administratively. Therefore, we hereby acknowledge Calpine's Notice of Voluntary Dismissal of its Petition for Determination of Need and Request to Close Docket.

As stated in the case background, FPL and FPC, intervenors to this proceeding, filed Motions to Dismiss Calpine's Petition. FPL also filed an Emergency Motion to hold the Case in Abeyance. We denied these motions at the October 17, 2000, Agenda Conference. We had not yet issued an order when, on November 22, 2000, Calpine filed a Notice of Voluntary Dismissal of its Petition for Determination of Need and Request to Close the Docket.

In light of the voluntary dismissal of the petition, we do not need to make a decision on these motions. This Commission has previously vacated its decision after a change in circumstances has warranted such action. See Docket No. 000499, Order No. PSC-00-1606-PAA-TI, rescinding a decision to grant a certificate; see also, Docket No. 970381-SU, Order No. PSC-98-1248-FOF-SU, granting motion to rescind previous order; Docket No. 992029, Order No. PSC-00-1214-FOF-TI, rescinding its previous order. If we issue an order reflecting the October 17, 2000, decisions, it may be appealed or it may lead to confusion since there will be no final

decision in the docket. Based on these reasons and in an effort to promote administrative efficiency, we hereby vacate our decisions on the Motions to Dismiss and the Emergency Motion to abate the Calpine Need Determination Proceeding.

Four additional motions remain pending in this docket. First, in response to Calpine's petition for a determination that the bidding rule does not apply, FPC filed a motion to dismiss. Calpine, thereafter, responded in opposition to FPC's motion to dismiss. The other three pending motions were filed subsequent to the October 17, 2000, Agenda Conference. Calpine filed a request for confidentiality for its MOU with Seminole. After an initial time-extension to object to this request was granted, FPL filed a Motion to Further Extend the Deadline for Objecting to Calpine's Request for Confidential Classification. No response was filed. Calpine and Seminole, also filed a Joint Motion for Alternate Procedural Schedule or, in the Alternative, for Enlargement of Time to File Supplemental Testimony. FPL filed a timely response objecting to this request. However, based on Calpine's voluntary withdrawal of its Petition for a Need Determination, these motions are moot.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Calpine's Notice of Voluntary Dismissal of its Petition for Determination of Need and Request to Close the Docket is hereby accepted. It is further

ORDERED that our decisions on the Motions to Dismiss and the Emergency Motion to Abate the Calpine Need Determination Proceeding are hereby vacated. It is further

ORDERED that this docket shall be closed, and upon closing of this docket, Calpine's confidential information shall be returned.

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By ORDER of the Florida Public Service Commission this  
9th Day of January, 2001.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

( S E A L )

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.