

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for
determination of need for the
Osprey Energy Center in Polk
County by Seminole Electric
Cooperative and Calpine
Construction Finance Company,
L.P.

DOCKET NO. 001748-EC
ORDER NO. PSC-01-1028-FOF-EC
ISSUED: April 26, 2001

The following Commissioners participated in the disposition of
this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

Pursuant to Section 403.519, Florida Statutes, and Rule 25-22.081, Florida Administrative Code, Calpine Construction Finance Company, Inc. (Calpine) and Seminole Electric Cooperative, Inc. (Seminole) filed a Joint Petition for Determination of Need for the Osprey Energy Center, to be located in Polk County, Florida, on December 4, 2000. An Amended Petition was filed on January 8, 2001. The Amended Exhibits included a redacted version of the Power Purchase Agreement (PPA) between Calpine and Seminole (Document 00277-01). On February 21, 2001, this Commission issued Order No. PSC-01-0421-FOF-EC, granting the need petition.

On January 8, 2001, Seminole filed a Request for Confidential Treatment and Motion for Permanent Protective Order with respect to the information that Seminole and Calpine had redacted from the PPA. By Order No. PSC-01-0366-CFO-EC, issued February 12, 2001, the Prehearing Officer in this docket granted in part and denied in part the request and motion. On February 22, 2001, Calpine filed a Motion for Reconsideration of part of Order No. PSC-01-0366-CFO-

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EC. Calpine seeks reconsideration of those portions of the order which relate to the definition and structure of performance criteria under the PPA and information that relates to the pricing terms of the PPA. Seminole supports Calpine's motion.

Calpine argues in its Motion for Reconsideration that the information in question is held as confidential, proprietary business information by Calpine and that its public disclosure would harm Calpine's competitive interests. Calpine seeks reconsideration of the information redacted from the following portions of the PPA: (a) the information at page 9, lines 18-22, page 23, lines 28-35, page 24, lines 1-2 (all of which Calpine alleges is related information); and (b) the information at page 19, lines 30-31.

Calpine asserts that the information contained in page 9, lines 18-22, page 23, lines 28-35, and page 24, lines 1-2, relates to the definition and structure of performance criteria under the PPA. Calpine alleges that these provisions are not standard in negotiations relating to PPAs in other states. Calpine maintains that if disclosed, this information may be used by potential purchasing utilities in other states as a negotiating position in future negotiations with Calpine.

To support Calpine's position, an affidavit of Joseph Regnery was submitted along with Calpine's Motion. Therein, Mr. Regnery states the following is true with respect to the information on page 9, lines 18-22, page 23, lines 28-35, and page 24, lines 1-2: the information was specifically negotiated between the parties; Calpine treats the information as confidential, proprietary business information; Calpine negotiates PPAs in Florida and in other states that have different performance criteria than that identified in the redacted information identified by the page and line numbers above; the specific performance criterion employed by the Seminole-Calpine PPA is not standard in PPAs negotiated by Calpine with other utilities; and the disclosure of such information would be injurious to Calpine's competitive interests by disclosing it to others.

Calpine alleges that the information contained in page 19, lines 30-31, relates and refers directly to the pricing terms contained in the PPA. Calpine asserts that disclosure of this

information could be used against Calpine or Seminole by other entities negotiating with them. Calpine argues that the information referred to by the text on page 19, lines 30-31, was granted confidential protection by the Confidentiality Order. See Order No. PSC-01-0366-CFO-EC, page 2. Calpine believes that allowing the information on page 19, lines 30-31 to be disclosed would render the redaction of the material located on page 16, line 7 through page 17, line 17, meaningless. Calpine also describes these two findings as inconsistent.

The applicable standard of review for a motion for reconsideration is whether the motion identifies some point of fact or law that was overlooked or not considered by the decision maker in rendering its order. Diamond Cab Co. v. King, 146 So. 2d (Fla. 1962). The mere fact that a party disagrees with the order is not a valid basis for reconsideration. Id. Further, reweighing of the evidence is not a sufficient basis for reconsideration. State v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958).

The Prehearing Officer did not agree that the information contained on page 9, lines 18-22, page 23, lines 28-35 and page 24, lines 1-2, warrants confidential protection. The Prehearing Officer found these terms to be commonly used in power purchase agreements and tariffs. See Order No. PSC-01-0366-CFO-EC at 4. Although Calpine alleges that the provisions in the text on page 9, lines 18-22, are not standard in other jurisdictions, we do not believe the information is proprietary, confidential business information as contemplated by Section 366.093, Florida Statutes. The information on page 9, lines 18-22, lists several commonly used performance criterion. The Prehearing Officer ordered that Section 7.1 of the PPA, which contains the definitions to these performance criterion and the manner in which the criterion are used, should be held confidential. The lines in question on page 9 merely infer that these terms are used in Section 7.1 of the PPA, without providing any additional information on the definitions or the manner in which the terms are employed. The Prehearing Officer stated that "[t]he definitions are general in nature and the information is not specific enough to affect competitive interests." Id. at 4. Furthermore, Order No. PSC-01-0366-CFO-EC states that Calpine "has not demonstrated how disclosure of this information would cause harm to the Parties." Id. at 4.

The information on page 23, lines 28-35, and page 24, lines 1-2, contains definitions of additional performance criteria used in the PPA. However, the Prehearing Officer found these performance criteria and the definitions provided are also commonly used, and therefore the information contained in this text is not specific enough in nature to impact competitive interests.

Lastly, the Prehearing Officer did not agree that the information contained on page 19, lines 30-31 should be protected under Section 366.093, Florida Statutes. The Prehearing Officer stated that "[t]his item is not specific enough in nature to impact competitive interests. Petitioner has not demonstrated how disclosure of this information would cause harm to the Parties." Id. at 4. These lines contain general information regarding pricing and as stated by Calpine, reference another section of the PPA which was granted confidentiality. The section which was granted confidential treatment contains specific pricing structure information, the disclosure of which could impair future negotiations. The information in question on page 19, while related to the information which was granted confidentiality, is general in nature. Further, we disagree with Calpine that the Prehearing Officer's order is internally inconsistent with regard to the confidentiality of these two sections.

Calpine has not met the standard for reconsideration. Calpine has not shown that Order No. PSC-01-0366-CFO-EC overlooked some fact or point of law that would produce a different result. Calpine has essentially reargued the points raised in its original request for confidentiality. The only new argument being advanced is that certain provisions used in the Seminole-Calpine PPA are not standard in other states, which does not meet the standard for reconsideration. The only information given to support Calpine's motion is conclusory, and the allegations that certain terms are not standard in power purchase agreements in other states. In addition, sufficient harm has not been demonstrated by Calpine, rather, Calpine's allegations of harm are conclusory. Calpine's allegations are insufficient to meet the reconsideration standard. Therefore, we hereby deny Calpine's Motion for Reconsideration.

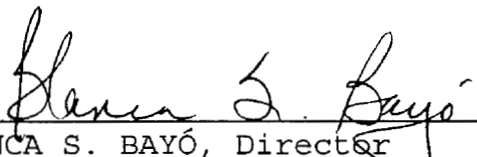
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Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Calpine Construction Finance Company, L.P.'s Motion for Reconsideration is hereby denied. It is further

ORDERED that this docket shall become final and the docket closed unless an appropriate petition for formal proceeding is received by the Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0863, by the close of business on the day indicated in the Notice of Further Proceedings or Judicial Review.

By ORDER of the Florida Public Service Commission this 26th ay of April, 2001.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

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Commissioner Palecki dissented in part.

Chairman Jacobs dissented in part with the following opinion:

I respectfully dissent in part from the majority decision. As stated by the majority of the Commission, the applicable standard of review for a motion for reconsideration is whether the motion identifies some point of fact or law that was overlooked or not considered by the decision maker in rendering its order. Diamond Cab Co. v. King, 146 So. 2d (Fla. 1962). This burden for reconsideration is a strict burden. I would agree to deny the Motion for Reconsideration with the exception of two narrow areas where I believe the company has met the burden. These areas include page 19, lines 30-31 and the two numbers on page 23, line 28.

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.