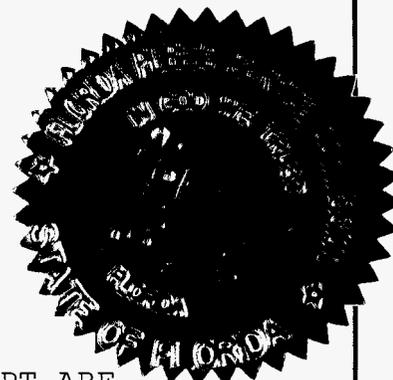


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 040206-EI

In the Matter of

PETITION TO DETERMINE NEED FOR  
TURKEY POINT UNIT 5 ELECTRICAL  
POWER PLANT, BY FLORIDA POWER  
& LIGHT COMPANY.



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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER RUDOLPH "RUDY" BRADLEY  
Prehearing Officer

DATE: Monday, May 24, 2004

TIME: Commenced at 9:30 a.m.  
Concluded at 10:41 a.m.

PLACE: Betty Easley Conference Center  
Hearing Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR  
Chief, Office of Hearing Reporter Services  
FPSC Division of Commission Clerk and  
Administrative Services  
(850) 413-6732

## 1 APPEARANCES:

2 JON C. MOYLE, ESQUIRE, Moyle Law Firm, 118 North  
3 Gadsden Street, Tallahassee, Florida 32301, appearing on behalf  
4 of Calpine Energy Services, L.P.

5 R. WADE LITCHFIELD and NATALIE F. SMITH,  
6 Florida Power & Light Company, 700 Universe Blvd.,  
7 Juno Beach, Florida 33408-0420, and CHARLES A.  
8 GUYTON, ESQUIRE, Steel Law Firm, 215 S. Monroe St.,  
9 Suite 601, Tallahassee, Florida 32301, appearing on  
10 behalf of Florida Power & Light Company.

11 STEPHEN C. BURGESS, ESQUIRE, Office of Public  
12 Counsel, 111 West Madison Street, Room 812, Tallahassee,  
13 Florida 32399-1400, appearing on behalf of the Office of Public  
14 Counsel

15 JENNIFER BRUBAKER, ESQUIRE, FPSC General Counsel's  
16 Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida  
17 32399-0850, appearing on behalf of the Commission Staff.

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## P R O C E E D I N G S

1  
2 COMMISSIONER BRADLEY: I would like to officially  
3 call this prehearing conference to order. The first order of  
4 business is to have the notice read. Please read the notice.

5 MS. BRUBAKER: Pursuant to notice, this time and  
6 place has been established in Docket 040206-EI, petition to  
7 determine need for Turkey Point Unit 5 electrical power plant  
8 by Florida Power and Light Company for a prehearing. The  
9 purpose of the prehearing is set forth more fully in the  
10 notice.

11 COMMISSIONER BRADLEY: Thank you.

12 The next order of business is to take appearances.

13 Mr. Guyton.

14 MR. GUYTON: Charles A. Guyton with the law firm of  
15 Steel Hector and Davis, appearing on behalf of Florida Power  
16 and Light Company. Also with me are Wade Litchfield and  
17 Natalie Smith, both attorneys representing Florida Power and  
18 Light Company.

19 MR. MOYLE: John Moyle, Jr., with the Moyle Flanigan  
20 Law Firm entering an appearances on behalf of Calpine Energy  
21 Services, and appearing this morning mainly, Mr. Prehearing  
22 Officer, to let you know that late Friday we filed a notice of  
23 voluntary dismissal. So as a courtesy I wanted to come out and  
24 make sure everybody was aware of that and that you were aware  
25 of that. But I don't anticipate being involved in the

1 prehearing other than making this appearance and making sure  
2 everyone was on the same page with respect to the fact that  
3 Calpine is not going to be participating in the case.

4 COMMISSIONER BRADLEY: Thank you, Mr. Moyle.

5 MR. BURGESS: Yes, Mr. Chairman. My name is Steve  
6 Burgess, I'm here for the Office of Public Counsel.

7 MS. BRUBAKER: And Jennifer Brubaker on behalf of the  
8 Florida Public Service Commission.

9 COMMISSIONER BRADLEY: I believe that there are some  
10 preliminary matters. Mr. Moyle, I think, has somewhat alluded  
11 to those issues, some of those issues. But, staff, I need to  
12 have you --

13 MS. BRUBAKER: That's correct. The primary  
14 preliminary matter is simply to acknowledge that Calpine has  
15 withdrawn from the proceeding. What staff would suggest, in  
16 light of that withdrawal, is that we continue the hearing for a  
17 time, perhaps a half-hour or hour would be sufficient to permit  
18 staff and the remaining parties to discuss further stipulation  
19 of issues, which might help streamline the actual hearing  
20 process itself. I believe a half-hour to an hour would be  
21 sufficient, in that regard.

22 COMMISSIONER BRADLEY: Very well. This prehearing  
23 conference is continued until it reconvenes at --

24 MS. BRUBAKER: 10:30.

25 COMMISSIONER BRADLEY: Okay. Thank you.

1 (Recess.)

2 COMMISSIONER BRADLEY: This prehearing is now  
3 reconvened.

4 Ms. Brubaker, if you could please brief me on the  
5 status of your discussions with the parties.

6 MS. BRUBAKER: Certainly. We appreciate the time and  
7 believe it was very fruitful. As we go through the draft  
8 prehearing order, we will point out the sections that will need  
9 to be revised pursuant to our discussions during the  
10 convenance. But I don't think there are any preliminary  
11 matters at this point that need to be addressed. I think  
12 everything can be raised as we go through the different  
13 sections of the draft prehearing order.

14 COMMISSIONER BRADLEY: Okay. And that was my next  
15 question, I was going to ask if there are any preliminary  
16 matters. And I will ask that just for the sake of the record.

17 MS. BRUBAKER: Staff has none.

18 COMMISSIONER BRADLEY: It is my intent to proceed  
19 through the draft prehearing order section-by-section in a  
20 fairly quick manner. If there are any questions,  
21 clarifications, or changes that need to be made, please let me  
22 know by all means. We will begin with Section I, that is the  
23 conduct of proceedings. Section II, case background. I will  
24 just go through it.

25 MS. BRUBAKER: For the case background, staff would

1 simply ask permission to modify the background to reflect  
2 Calpine's withdrawal from the proceedings.

3 COMMISSIONER BRADLEY: Okay. Section III,  
4 jurisdiction.

5 MS. BRUBAKER: None.

6 COMMISSIONER BRADLEY: Section IV, procedure for  
7 handling confidential information.

8 MS. BRUBAKER: We don't expect any. No, that  
9 shouldn't be an issue.

10 COMMISSIONER BRADLEY: And let me explain why I'm  
11 going through this section-by-section in spite -- well, even  
12 though I have been informed that -- even though in spite of  
13 what I have been informed of, there is always the possibility  
14 that the deal may unravel. So I just want to put these issues  
15 on the record.

16 MS. BRUBAKER: Certainly.

17 COMMISSIONER BRADLEY: And just in case the deal  
18 unravels, I have seen them stay together and I have seen them  
19 unravel, as it relates to Section V, procedure for handling  
20 confidential information, just in case, the parties need to be  
21 cautioned that if they plan to use confidential information at  
22 the hearing, they must have enough copies to distribute to the  
23 Commissioners, staff, the parties, and the court reporter in  
24 red folders. In addition, the confidential information should  
25 be highlighted. Just in case. Section V, post-hearing

1 procedures.

2 MS. BRUBAKER: No changes.

3 COMMISSIONER BRADLEY: Section VI, prefiled testimony  
4 and exhibits.

5 MS. BRUBAKER: No changes.

6 COMMISSIONER BRADLEY: Section VII, order of  
7 witnesses.

8 MS. BRUBAKER: Commissioner, with regard to the order  
9 of witnesses, I believe FPL would like the final prehearing  
10 order to reflect a change in the order of the witnesses, and I  
11 will let Mr. Guyton speak to that.

12 MR. GUYTON: I think perhaps the easiest way to work  
13 through that, Commissioner, is just to give you the order  
14 number of the witnesses as they are currently listed now. Mr.  
15 Avera would become the third witness, Mr. Dewhurst the fourth  
16 witness -- I'm sorry.

17 Mr. Avera would become the fourth witness; Mr.  
18 Dewhurst the third witness, Mr. Green, seven; Mr. Hicks, nine;  
19 Mr. Mennes, five; Mr. Reppen; six; Mr. Silva, one; Doctor Sim,  
20 two; Mr. Taylor, ten; and Mr. Yupp, eight.

21 MS. BRUBAKER: And, Commissioner, also with regard to  
22 this section, as we will refer to later in Section X which has  
23 to do with the exhibit list, staff is proposing entering a  
24 composite exhibit at the hearing which will be composed of  
25 certain sections of deposition transcripts as well as some

1 responses to staff discovery. With the admission of that  
2 composite exhibit, staff can excuse from cross-examination all  
3 of FPL's witnesses. Provided, of course, that yourself and the  
4 other Commissioners on the panel don't have any questions,  
5 those witnesses can be stipulated, because I believe, also, the  
6 Office of Public Counsel is willing to waive cross on those  
7 witnesses.

8 I simply bring that up for your information. I can  
9 certainly check with the other Commission offices to see if  
10 there will be any questions. But to bring up in this section  
11 regarding the witnesses, it is staff's belief that barring  
12 Commissioner questions these witnesses could be excused.

13 COMMISSIONER BRADLEY: Okay. Thank you.

14 MR. BURGESS: We waive cross. We do waive  
15 cross-examination.

16 COMMISSIONER BRADLEY: Okay. Thank you, Mr. Burgess.  
17 Anyone else?

18 Okay. Section VII, basic positions. Any response?

19 MS. BRUBAKER: No.

20 COMMISSIONER BRADLEY: Section IX, issues and  
21 positions.

22 MS. BRUBAKER: With regard to this section,  
23 Commissioner, during our break staff consulted with both the  
24 Office of Public Counsel and FPL, and we believe that all  
25 issues can be stipulated to. However, with the note that OPC

1 does not object to the stipulations, they don't actually take a  
2 position inasmuch. With that, and your approval, we would  
3 propose that the issues section indicate that all of these  
4 issues have been moved as proposed stipulations, which would  
5 then need to be ruled upon at the hearing.

6 COMMISSIONER BRADLEY: Any comments, Mr. Burgess?

7 MR. BURGESS: She has characterized our position  
8 correctly.

9 COMMISSIONER BRADLEY: Thank you.

10 MR. GUYTON: Commissioner Bradley, there is one  
11 change to FPL's position on Issue 5 at Page 10.

12 COMMISSIONER BRADLEY: Okay.

13 MR. GUYTON: At staff's request, the sentence in the  
14 last paragraph there that reads, "FPL's analyses also show that  
15 the portfolio, including the 252 megawatt bid by Calpine was  
16 310 million CPVRR more expensive than Turkey Point Unit 5," be  
17 removed. And with that I think we are all in agreement that  
18 that issue can be stipulated.

19 COMMISSIONER BRADLEY: Okay. Is there anyone who has  
20 anything to add to that or any comments, or a comment?

21 MR. BURGESS: No, sir.

22 COMMISSIONER BRADLEY: Okay. Section X, exhibit  
23 lists.

24 MS. BRUBAKER: With regard to the exhibit list,  
25 again, I would simply state that staff wishes to -- proposes

1 entering into the hearing a composite exhibit which will be  
2 consistent of sections from deposition transcripts, as well as  
3 some discovery responses, and staff would like to add that to  
4 this section in the final prehearing order.

5 COMMISSIONER BRADLEY: Any comments?

6 MR. BURGESS: (Indicating no.)

7 MR. GUYTON: There are three changes to FPL exhibits  
8 that I need to go over for purposes of the record. At Page 13,  
9 there is an exhibit under Mr. Dewhurst labeled MPD-1. We will  
10 be refileing that. Some of the graphics did not appear in the  
11 copy that we filed. We will be refileing that that has the  
12 complete graphics in there later this week. The exhibit won't  
13 change other than it will just become more complete.

14 At Page 16 there are references to Mr. Silva's  
15 exhibits RS-3 and RS-5. The references in the prehearing order  
16 are correct, but the filing that we made reversed those two  
17 exhibits. We will refile those so that they are properly  
18 labeled, along with the other exhibit that I just referred to.

19 And then in our prehearing statement, we asked that  
20 an additional exhibit be made part of the record. We were  
21 going to use it as a demonstrative exhibit during opening, and  
22 it will be sponsored by Doctor Sim. So we would propose that  
23 that be added at Page 18 as SRS-14. I have provided copies  
24 earlier to parties in our meeting, but I want to make sure that  
25 you and the court reporter have a copy.

1 MS. BRUBAKER: And just so the record is clear, any  
2 changes to the exhibits staff will make sure are also provided  
3 to the other Commissioners on the panel.

4 COMMISSIONER BRADLEY: Thank you.

5 MR. GUYTON: And, Commissioner Bradley, as it regards  
6 Mr. Dewhurst's initial exhibit, the one that we are going to  
7 add the graphics for, we have previously given a copy to staff  
8 counsel, and I'm going to give a copy to Mr. Burgess now.

9 COMMISSIONER BRADLEY: Okay.

10 MR. BURGESS: Thanks.

11 MS. BRUBAKER: And I believe, Commissioner, that  
12 completes the changes to that section.

13 COMMISSIONER BRADLEY: Okay. But, first of all, let  
14 me ask Mr. Burgess if he has any comments.

15 MR. BURGESS: No, that's fine. This is what was  
16 discussed in the break.

17 COMMISSIONER BRADLEY: Okay. Thank you. Section XI,  
18 proposed stipulations.

19 MS. BRUBAKER: For this section, Commissioner, again  
20 to reflect that staff is agreeable to stipulating to Issues 1  
21 through 8, to FPL's position as the stipulated position.  
22 Again, this section should reflect that OPC does not object to  
23 these stipulations. And with your permission, this would be  
24 reflected in the prehearing order as a proposed stipulation  
25 which would need the approval of the full panel at hearing.

1 COMMISSIONER BRADLEY: Mr. Burgess?

2 MR. BURGESS: Yes, correct.

3 MS. BRUBAKER: Also, I'm sorry, Commissioner.

4 COMMISSIONER BRADLEY: Yes.

5 MS. BRUBAKER: There are actually two outstanding  
6 motions, they are both motions to compel filed by FPL, that  
7 with the withdrawal of Calpine Energy Services, LP, I believe  
8 are moot. And I have discussed with counsel for FPL, and I  
9 believe they are willing to withdraw those motions.

10 MR. GUYTON: We will orally withdraw them. To save  
11 everybody more paper, we don't intend to file written  
12 withdrawals, we orally withdraw them at this time.

13 MS. BRUBAKER: That should be sufficient.

14 COMMISSIONER BRADLEY: That would come under  
15 Section XII, pending motions?

16 MS. BRUBAKER: Yes, sir.

17 COMMISSIONER BRADLEY: Okay. Do you have any other  
18 notions?

19 MR. GUYTON: There are no others that I am aware of.  
20 I want to go back and cover an exhibit to make sure that there  
21 is no confusion in the record, at the appropriate time.

22 COMMISSIONER BRADLEY: So you want to go back to  
23 Section X, exhibit list?

24 MR. GUYTON: If we may.

25 COMMISSIONER BRADLEY: You may.

1 MR. GUYTON: I referred earlier to SRS-14, this  
2 exhibit that I handed out to everyone. You will notice that  
3 there is a yellow highlighted item there. That is not -- I  
4 repeat -- that is not confidential. I understand that yellow  
5 highlighting is sometimes seen as confidential. It is not our  
6 intent to treat that as confidential. We just wanted the  
7 record to reflect that.

8 COMMISSIONER BRADLEY: Okay. I think the next  
9 section that we need to deal with is Section XIII, pending  
10 confidentiality matters.

11 MS. BRUBAKER: Staff is aware of no changes to that  
12 section. Simply we will reflect that we anticipate that matter  
13 will be resolved probably during this week. We are continuing  
14 conversations with FPL in that regard, but it does not require  
15 a ruling at this time.

16 COMMISSIONER BRADLEY: Thank you. Section XIV,  
17 rulings.

18 MS. BRUBAKER: There are a couple of rulings. The  
19 first is although we believe the hearing is probably going to  
20 be greatly simplified, it may be appropriate for you to make a  
21 ruling that to the extent there are opening statements at the  
22 hearing, that they be limited to ten minutes each.

23 COMMISSIONER BRADLEY: I agree.

24 MS. BRUBAKER: And with that ruling, I will reflect  
25 that in that section. Also, it would be appropriate for you a

1 acknowledge Calpine's withdrawal from this proceeding, pursuant  
2 to its filing, I believe, on Friday afternoon.

3 COMMISSIONER BRADLEY: And I do acknowledge their  
4 withdrawal.

5 MS. BRUBAKER: Okay. And with that, that is all the  
6 rulings I am aware of at this time. Except it may just, as a  
7 procedural -- to make sure we are covered, I can also reflect  
8 in the rulings section that FPL's withdrawal of its motions to  
9 compel have been acknowledged.

10 COMMISSIONER BRADLEY: Thank you.

11 MR. GUYTON: If we are successful in stipulating  
12 witnesses, would that be reflected in the ruling, as well?

13 MS. BRUBAKER: I will need to consult with all the  
14 other Commissioners' offices on the panel. If they are willing  
15 to stipulate to the witnesses, it may be appropriate.  
16 Typically, the way we approach it is in the prehearing order we  
17 have an asterisk by each name for whom witnesses may be  
18 excused. Whether we know the witness will be excused by the  
19 time the prehearing order comes out will depend on whether it  
20 appears in the rulings sections or not.

21 Certainly I will just state for the record and for  
22 the benefit of the parties that I will pursue finding out from  
23 each Commissioner's office as soon as possible whether the  
24 witnesses can be excused. I know there is a great time  
25 constraint and travel issue for each of those witnesses. As

1 soon as I am aware of it, whether the prehearing order is  
2 issued or not, I will contact the parties and let them know.

3 MR. GUYTON: We would appreciate that. And to the  
4 extent we can get that ruling, that would be great. And,  
5 obviously, to the extent the Commission wants to hear  
6 testimony, we will make witnesses available.

7 MS. BRUBAKER: Thank you.

8 COMMISSIONER BRADLEY: Is there anything else to come  
9 before the prehearing officer at this time?

10 MS. BRUBAKER: Staff is aware of nothing.

11 MR. BURGESS: We have nothing.

12 MR. GUYTON: Florida Power and Light has nothing  
13 else.

14 COMMISSIONER BRADLEY: With that having been said,  
15 let me thank you for your participation. And this prehearing  
16 conference is adjourned.

17 (The prehearing conference concluded at 10:41 a.m.)  
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STATE OF FLORIDA )  
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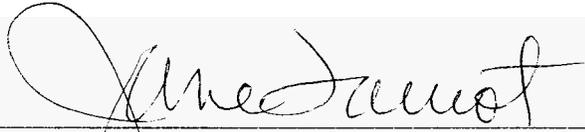
CERTIFICATE OF REPORTER

I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 25th day of May, 2004.



JANE FAUROT, RPR  
Chief, Office of Hearing Reporter Services  
FRSC Division of Commission Clerk and  
Administrative Services  
(850) 413-6732