

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Fuel and Purchased Power)
Cost Recovery Clause and Generating)
Performance Incentive Factor)
_____)

DOCKET NO. 040001-EI

DATED: October 26, 2004

COMMISSION
CLERK

**MOTION TO QUASH AND RESPONSE TO SUBPOENA FOR DEPOSITION
ISSUED BY FLORIDA POWER & LIGHT COMPANY TO CALPINE
CORPORATION**

Calpine Corporation ("Calpine") hereby respectfully moves the honorable Florida Public Service Commission ("Commission") to quash the Subpoena for Deposition, dated October 20, 2004 ("Subpoena;" copy attached hereto as "Exhibit A"). The Subpoena was presented to Calpine by Florida Power & Light Company ("FPL"). Calpine is not a party to this docket. Although Power Systems Mfg., LLC ("Power Systems"), an affiliate of Calpine, petitioned to intervene in this docket, FPL opposed Power Systems' petition and Power Systems was denied intervention by Commission Order No. PSC-04-1018-PCO-EI, issued on October 19, 2004. The Subpoena is deficient on its face in multiple ways and should be quashed. Notwithstanding the facial deficiencies of the Subpoena, Calpine is pleased to cooperate with FPL to schedule a proper deposition of a Calpine representative.

As the Commission is aware, FPL has submitted a proposal to extend certain

CMP _____
COM 5 _____
CTR _____
ECR _____
GCL _____
OPC _____
MMS _____
RCA _____
SCR _____
SEC 1 _____
OTH kimp. _____
_____ wholesale arrangements with Southern Company without testing that proposal through a formal request for proposals ("RFP") process. Importantly, the Subpoena delivered by FPL evidences an interest by it in an alternative supply proposal proffered by Calpine to FPL, which proposal represents (Calpine believes) a more cost-effective wholesale resource for Florida ratepayers than the proposed extension of the FPL arrangement with Southern Company. Thus, Calpine is pleased to provide relevant information about the alternative supply proposal, subject to an appropriate protective order for certain

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

Done
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confidential, proprietary business information, because it remains convinced that the immediate and long-term interests of Florida ratepayers are best served by FPL testing its proposed extension of wholesale arrangements with Southern Company against other wholesale supply options.

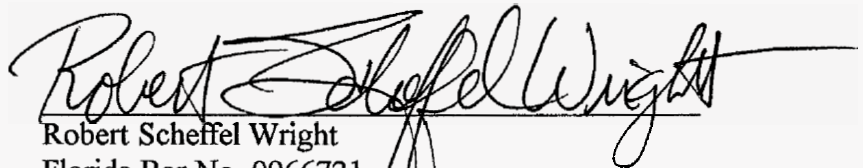
The Subpoena is improper because it was not prepared or issued in accordance with Rule 25-22.045, Florida Administrative Code (“F.A.C.”). That Rule provides that subpoenas are to “be issued by the presiding officer or the Division of the Commission Clerk and Administrative Services on subpoena forms supplied by the Commission.” The Subpoena does not appear to have been so issued. In addition, the Subpoena fails to specify a time for the deponent to appear and, significantly, the date specified for an appearance is ambiguous. In calendar year 2004, there is no Friday, October 28, 2004. For these reasons, Calpine respectfully moves to have the Subpoena quashed.

If FPL cures the facial deficiencies of its Subpoena and has the presiding officer or Commission Clerk properly issue it, Calpine will be pleased to have the appropriate Calpine representative(s) address the matters identified in the Subpoena. With regard to issue one listed on Exhibit A to the Subpoena, Mr. Churbuck has been granted intervention in his capacity as an individual FPL customer, and accordingly, FPL can depose Mr. Churbuck as a party to the case with regard to questions relating to that issue. With regard to issues two through six of Exhibit A to the Subpoena, Mr. Jerry Fudge, a Power Marketing Director for Calpine responsible for marketing power products out of the Hillabee Energy Center, can attend a telephone deposition. For informational purposes, and in an attempt to cooperate with FPL in its desire to learn more about Calpine’s alternative proposal, attached as Exhibit B to this Motion is a copy of the indicative proposal that was submitted to FPL as well as background information regarding the Hillabee Energy Center (attached hereto as “Exhibit C”). Please be advised that Calpine has sent indicative proposals similar in nature to other importers of power into Florida, particularly Progress Energy-Florida and The Electrical Authority.

WHEREFORE, Calpine Corporation respectfully moves the Commission to quash the improperly prepared, improperly issued, and improperly specified Subpoena

presented to Calpine by FPL; notwithstanding its objections to FPL's improperly issued Subpoena, in the interests of fully informing the Commission and promoting the immediate and long-term interests of FPL's ratepayers, Calpine reiterates its above-stated offer to produce Mr. Jerry Fudge to address the matters numbered 2 through 6 in FPL's defective Subpoena, in a telephonic deposition to be conducted at a mutually agreeable time on Monday, November 1, 2004, or another mutually agreeable date.

Respectfully submitted this 26th day of October, 2005.



Robert Scheffel Wright
Florida Bar No. 0966721
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EXHIBIT A

FPL'S SUBPOENA TO CALPINE CORPORATION

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased Power)
Cost Recovery Clause and Generating)
Performance Incentive Factor)

DOCKET NO. 040001-EI

SUBPOENA FOR DEPOSITION

STATE OF FLORIDA:

TO: Corporate Representative
of Calpine Corporation
Island Center
2701 North Rocky Point Drive
Suite 1200
Tampa, Florida 33607

10-21-04
9:45 AM
[Signature]

YOU ARE HEREBY COMMANDED to appear at Esquire Deposition Services, 101 East Kennedy Boulevard, Suite 3350, Tampa, Florida 33602, on *Friday, October 28, 2004*. Pursuant to Rule 1.310(b)(6) of the Florida Rules of Civil Procedure, the corporate deponent is requested to designate one or more officers, directors, or managing agents or other persons to testify regarding the topics set forth in Exhibit A attached hereto. The oral examination will continue from day to day until completed.

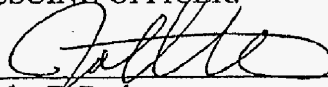
If you fail to:

- (1) appear as specified; or
- (2) object to this subpoena,

you may be in contempt of court. You are subpoenaed to appear by the following attorney, and unless excused from this subpoena by this attorney or the Florida Public Service Commission, you shall respond to this subpoena as directed.

Dated this 20th day of October, 2004.

ISSUING OFFICER:



John T. Butler

Florida Bar No. 283479

STEEL HECTOR & DAVIS

Attorneys for Florida Power &
Light Company

200 South Biscayne Boulevard

Miami, Florida 33131-2398

Telephone: (305) 577-2939

EXHIBIT A

- (1) Thomas K. Churbuck's intervention in Florida Public Service Commission ("Commission") Docket No. 040001-EL.
- (2) The contact an employee of Calpine, or an affiliated company, made with an employee of Florida Power & Light Company ("FPL") on Wednesday, October 13, 2004, concerning potential power sales from the Hillabee Energy Center project in Alabama to FPL in the event that the Commission does not approve FPL's proposed Unit Power Sales Replacement Contracts.
- (3) The current status of permitting, construction, testing and placing into commercial operation of the Hillabee Energy Center project in Alabama, and the schedule therefor.
- (4) How the Hillabee Energy Center project in Alabama will be financed.
- (5) The statement on p. 16 of Calpine's Form 10-K/A filed with the Securities and Exchange Commission on September 22, 2004, that Calpine "intend[s] to focus on completing projects already in construction and starting new projects only when financing is available and attractive returns are expected."
- (6) Calpine's revised capital expenditure program as described on p. 73 of Calpine's Form 10-K/A filed with the Securities and Exchange Commission on September 22, 2004.

EXHIBIT B

CALPINE'S INDICATIVE POWER SUPPLY PROPOSAL
TO FLORIDA POWER & LIGHT COMPANY

**Indicative Proposal to
Florida Power & Light
By
Calpine Energy Services, LP
October 19, 2004**

Buyer: Florida Power & Light (“Company”)
Seller: Calpine Energy Services, LP (“Calpine”)

Product: Day-Ahead Call on Capacity and Associated Energy, 5X16
Facility: Calpine’s Hillabee Energy Center
Quantity: 700 MW
Term: Five years, January 1, 2010 through December 31, 2014

Pricing: (Shown in 2010 dollars)
Capacity Price: \$5.90/kW-month (escalating @ 2.5% per year)
Energy Price: The sum of (i) the product of the (a) Fuel Cost and (b) Heat Rate;
and (ii) Variable O&M

Fuel Cost: *Gas Daily* Henry Hub Mid + \$0.50
Heat Rate: 6,800 Btu/kWh, no degradation

Variable O&M: \$2.25 per MWh for all hours scheduled and delivered (escalating @
2.5% per year)
Scheduling Fee: \$20,000 per schedule request

Delivery Point: High side of the Facility’s step-up transformer, interconnected to
the Southern Company Electric System
Availability: Unit Contingent
Scheduling: Buyer shall request energy delivery on a ‘next-day delivery’ basis
by submitting an energy delivery schedule to Seller no later than
8:15 AM, CPT. Once scheduled, Buyer to accept sixteen (16) hours
of energy.

Proprietary and Confidential

Other:

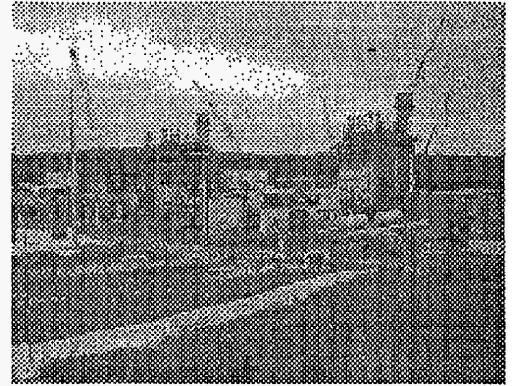
This proposal is based on the following assumptions:

- Calpine reserves the right to meet its contractual obligations resulting from definitive agreements by dispatching from its platform of assets, or by causing energy to be delivered from the market. Such platform of assets may include additional facilities other than those disclosed as part of this proposal.
- This term sheet is notional and intended to be used for discussion purposes only. This term sheet shall not be considered a binding obligation of either party and shall not constitute an offer of any type whatsoever. In addition, either party may terminate discussions at any time with or without notice to the other party. Neither party shall be subject to any penalty or claim as a result of the termination of the discussions between the parties. This term sheet is provided to Buyer on a confidential basis. The information contained herein is for the exclusive use of Buyer in its analyses and is not intended to be disclosed to other persons or organizations without the prior written consent of Seller. All agreements and commitments resulting from this proposal will be subject to approval of Seller's senior management and credit approvals. The proposed terms of this term sheet are subject to reconfirmation by Seller prior to any definitive agreement between the parties.

EXHIBIT C

BACKGROUND INFORMATION REGARDING CALPINE'S
HILLABEE ENERGY CENTER

DISCOVER ONE OF
ALABAMA'S NATIVE PLANTS.



WE LIVE HERE. WE WORK HERE. WE'RE CALPINE.

HILLABEE ENERGY CENTER

Plant Address	152 Brick Plant Road, Alexander City, AL 35010
Marketing	Jerry Fudge
Phone	(770) 423-7740
E-mail	jfudge@calpine.com
Calpine ownership interest	100%
Status	Construction (75% complete)
Commercial operation date	June 1, 2007
Baseload capacity	710 mw
Capacity w/ peaking	770 mw
Configuration	2x2x1 Combined-Cycle
Primary fuel type	Natural Gas
Alternative fuel type	N/A
Cooling system	Cooling Tower
Cogeneration	N/A
Power augmentation	Evaporative Cooling, Steam Injection
Combustion turbine(s)	Siemens Westinghouse 501G
Steam turbine	Siemens Westinghouse K36-25, N36-2x10.3 Reheat 301 mw
Heat recovery steam generator (HRSG)	Nooter/Eriksen
Air emissions control	DNL Technology
Control systems	Siemens TXP
Electrical interconnect	Alabama Power
Natural gas interconnect	Transco
Permits	All necessary permits in place
Transmission	700 MWs of Firm Point-to Point Transmission Service on the Southern Company Transmission System beginning June 1, 2007
Financing	Investment to date being rolled out of CCFC I Project Finance on a Third Party debt free basis. The remaining construction work to be paid for through Calpine equity or financed externally

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and fifteen copies of the foregoing has been filed with the Clerk's Office, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399 and that a true and correct copy of the foregoing has been served by U.S. Mail or hand delivery (*) or facsimile transmission (**) this 26th day of October, 2004.

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Jennifer Rodan, Esq.
Division of Legal Services
Florida Public Service Commission
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Tallahassee, FL 32399-0850

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Tallahassee, FL 32302

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West Palm Beach, FL 33402-3395

Florida Industrial Power Users Group
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McWhirter Reeves
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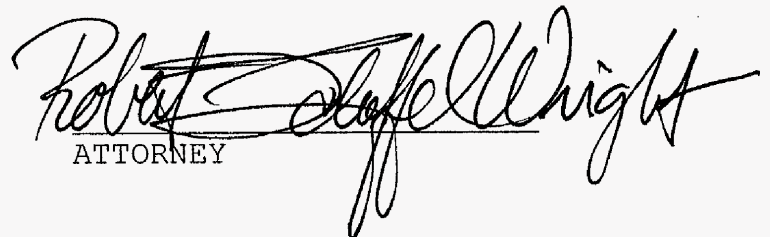
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