

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-01-0248-PCO-EC
ISSUED: January 29, 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 GRANTING PETITION FOR DETERMINATION THAT RULE 25-22.082(2),
FLORIDA ADMINISTRATIVE CODE, DOES NOT APPLY

BY THE COMMISSION:

On December 4, 2000, Seminole Electric Cooperative, Inc. (Seminole) and Calpine Construction Finance Company, L.P. (Calpine), filed a Joint Petition for Determination of Need for an Electrical Power Plant. Seminole and Calpine propose to construct a 529 megawatt (MW) natural gas-fired, combined cycle generating plant (the Osprey Project) in Polk County, Florida, expected to commence commercial operation in the second quarter of 2003. On December 7, 2000, Calpine also filed a Petition for Determination that Commission Rule 25-22.082(2), Florida Administrative Code, Does Not Apply, or in the Alternative, for Waiver of Commission Rule 25-22.082(2), Florida Administrative Code (the Bidding Rule). Rule 25-22.082, Florida Administrative Code, *Selection of Generation Capacity*, requires investor-owned electric utilities (IOUs) to solicit bids for supply-side alternatives prior to filing a petition for a determination of need for new generation under Section 403.519, Florida Statutes. Seminole is in agreement with Calpine's petition concerning Rule 25-22.082(2), Florida Administrative Code. Notice of the waiver request was published in

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the Florida Administrative Weekly (FAW) on December 29, 2000. No parties have filed responses to this petition. An administrative hearing on Seminole and Calpine's Joint Petition for Determination of Need is set for February 12 and 13, 2001.

Calpine alleges that it is developing the Osprey Energy Center as a wholesale contract power plant. Calpine further alleges that it has committed the Osprey Project's output, via the Memorandum of Understanding (MOU)¹, to Seminole to serve the needs of Seminole's member cooperative utilities.

Calpine states two reasons that the proposed Osprey Project is not subject to the Bidding Rule. First, Calpine states that it is a wholesale-only utility, therefore, the Osprey Project will not be a rate-based power plant where captive electric customers could be required to pay for the Osprey Project's costs through regulated rates. Secondly, Calpine contends that the Osprey Project's output is committed to Seminole pursuant to the MOU, and Seminole, an electric cooperative, is not subject to the Bidding Rule.

Wholesale-Only Utility

Calpine maintains that the Bidding Rule was not intended to apply to a competitive wholesale utility like Calpine. Calpine states that neither itself nor the Osprey Project has a statutory obligation to directly serve retail customers nor any corresponding ability to bind such captive customers to pay for the Project's costs. Instead, Calpine argues that retail-serving utilities will only pay for the capacity and energy purchased from Calpine, and they will only buy power when the purchase represents the most cost-effective alternative available to serve an identified need. According to Calpine, the Osprey Project promotes the fundamental purpose of the Bidding Rule by making an additional, cost-effective power supply option available to retail-serving utilities.

Electric Cooperatives

¹ Although Calpine and Seminole relied on their MOU in the Petition for Determination that Rule 25-22.082(2), Florida Administrative Code, Does Not Apply, the parties have entered into a Power Purchased Agreement (PPA), as of December 14, 2000.

Calpine alleges that the Bidding Rule does not apply to it or the Osprey Project because Seminole, a Cooperative utility exempt from the rule, is purchasing the Osprey Project's output to meet the needs of Seminole and its member cooperative utility systems. Calpine states that by its express terms, the Bidding Rule is inapplicable to Seminole, since the Rule applies only to investor-owned utilities that propose power plants subject to Section 403.519, Florida Statutes.

The Bidding Rule requires IOUs to "evaluate supply-side alternatives to its next planned generating unit by issuing a Request for Proposals (RFP)." Rule 25-22.082, Florida Administrative Code. By Order No. PSC-93-1846-FOF-EU, issued December 29, 1993, this Commission exempted municipal and cooperative electric utilities from compliance with the Bidding Rule requirements of Rule 25-22.082(2), Florida Administrative Code.

Since the Bidding Rule was adopted, we have never required cooperative or municipal utilities to comply with its requirements. See, for example, Order No. PSC-97-0659-FOF-EM, issued June 9, 1997, Order No. PSC-98-1301-FOF-EM, issued October 7, 1998, and Order No. PSC-99-0931-FOF-EM, issued May 10, 1999. Calpine has alleged that Seminole has contracted to purchase the facility's output. Therefore, we hereby grant Calpine's Petition for a Determination that the Bidding Rule does not apply to Calpine or the Osprey Energy Center.

It is important to note that in our analysis, we do not reach the question of whether Calpine, as a wholesale contract plant, is exempt from the Bidding Rule. We base our decision to grant the Petition on the allegation that Seminole is a cooperative utility which has contracted to purchase the output of the facility. In considering this need determination, we will take into account Seminole's need for electric reliability and integrity, Seminole's need for adequate electricity at a reasonable cost, the conservation measures taken by or reasonably available to Seminole, and whether the proposed plant is the most cost-effective alternative for Seminole. Therefore, we did not believe it was necessary to reach the question of whether Calpine is subject to the Bidding Rule. Furthermore, since we are granting the Petition

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based on Seminole's status as an electric cooperative, we are not reaching Calpine's alternative request for waiver of the Rule.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Calpine's Petition for a Determination that Rule 25-22.082(2), Florida Administrative Code, does not Apply to Calpine or the Osprey Energy Center, is hereby granted. It is further

ORDERED that this docket shall remain open pending the hearing.

By ORDER of the Florida Public Service Commission this 29th Day of January, 2001.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

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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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.