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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination)
of Need for an Electrical Power)
Plant in Polk County by Calpine)
Construction Finance Company, L.P.)

RECORDS AND)
DOCKET NO. ~~00042-111~~)
Submitted for filing: November 10, 2000

FLORIDA POWER'S RESPONSE TO AMENDED PETITION
FOR DETERMINATION THAT THE COMMISSION'S BID RULE
DOES NOT APPLY TO CALPINE OR FOR A WAIVER OF THAT RULE

Florida Power Corporation ("FPC") responds to Calpine's Amended Petition for a determination that Commission Rule 25-22.082, Fla. Admin. Code ("Bid Rule") does not apply to Calpine or, alternatively, for a waiver of that rule by urging the Commission to dismiss Calpine's Amended Petition and its related need proceeding.

In its Amended Petition, Calpine stands the law on its head. Under existing law, load serving retail utilities like FPC can file a petition for a determination of need under Section 403.519 to get authorization to build electrical power plants (either their own or somebody else's) that those utilities need to satisfy specific, identified retail needs. When such a utility files a need case, the utility must demonstrate that it has selected the most cost-effective alternative available to meet its needs. Toward this end, this Commission adopted the Bid Rule to provide a procedure that retail, investor-owned utilities must follow in order to show to the Commission that they have sought and pursued possible market options that might be more cost-effective than the utility's self-build alternative. Thus, the Bid Rule provides that "Prior to filing a petition for determination of need for an electrical power plant pursuant to Section 403.519,

Florida Statutes, each investor-owned electric utility shall evaluate supply-side alternatives to its next planned generating unit by issuing a Request for Proposals (RFP)." Rule 25-22.082 (2) (emphasis added).

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FPSC-BUREAU OF RECORDS

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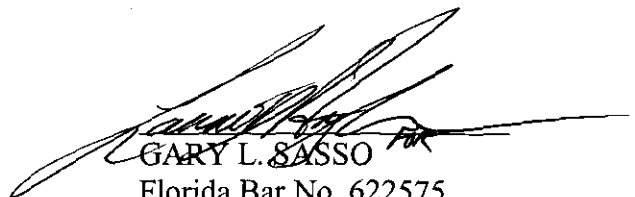
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In short, the Bid Rule presupposes that the utilities to which it applies are appropriately authorized under state law to file a need petition. The reason why Calpine has gotten the Commission into a legal and regulatory conundrum about how to apply the Bid Rule to Calpine's need case is because Calpine has no standing to file a need petition. Ruling favorably on Calpine's Amended Petition would amount to succumbing to Calpine's "Alice in Wonderland" premise. We submit that the proper response to Calpine's Amended Petition is to dismiss Calpine's need case as jurisdictionally flawed and at the same time to dismiss Calpine's Amended Petition either as moot or also as jurisdictionally flawed.

Whether the Bid Rule applies to Seminole is presently irrelevant because Seminole has not petitioned for a determination of need. If and when Seminole does petition for a determination of need, the Commission can then determine whether the Bid Rule applies to Seminole.

Respectfully submitted,

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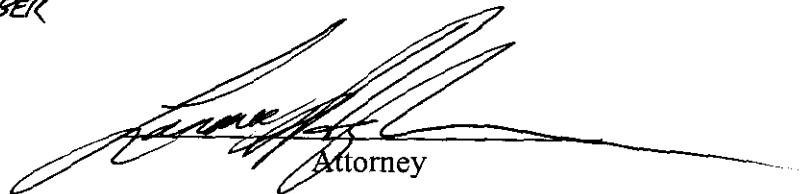
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and U.S. Mail to Robert Scheffel Wright as counsel for Calpine Construction Finance Company, L.P. and other counsel of record as indicated by ** and via U.S. Mail to all other parties of record this 10TH day of ~~October~~, 2000.

NOVEMBER



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