

State of Florida



Public Service Commission

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RECORDS AND REPORTING

DATE: DECEMBER 7, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF SAFETY AND ELECTRIC RELIABILITY (HARLOW, *POH TB*
J BREMAN, BOHRMANN) *WNE*
 DIVISION OF LEGAL SERVICES (ISAAC, ELIAS) *RUE used w/m ALM*
 DIVISION OF ECONOMIC REGULATION (LESTER, STALLCUP) *PL AS JDS*
 DIVISION OF COMPETITIVE SERVICES (MAKIN) *Day*

RE: DOCKET NO. 000442-EI - PETITION FOR DETERMINATION OF NEED FOR THE OSPREY ENERGY CENTER BY CALPINE CONSTRUCTION FINANCE COMPANY, L.P.

AGENDA: 12/19/00 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\000442D.RCM

CASE BACKGROUND

On June 19, 2000, Calpine Construction Finance Company, L.P., ("Calpine"), filed a Petition for Determination of Need for an Electrical Power Plant. Calpine proposes to construct a 527 megawatt (MW) natural gas-fired, combined cycle power plant in Polk County, Florida, expected to commence commercial operation in the second quarter of 2003. 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.

After oral argument before the Prehearing Officer, Florida Power & Light Company (FPL) and Florida Power Corporation (FPC) were granted leave to intervene in this docket, by Order No. PSC-

DOCUMENT NUMBER-DATE

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00-1687-PCO-EI, issued September 21, 2000. FPL and FPC filed Motions to Dismiss Calpine's Petition for Determination of Need. FPC filed a Motion to Dismiss Calpine's Petition for a Determination that Rule 25-22.082(2), Florida Administrative Code, does not Apply to Calpine or Alternative Request for Rule Waiver of 25-22.082(2), Florida Administrative Code. FPL also filed an Emergency Motion to Hold this Matter in Abeyance. At the October 17, 2000, Agenda Conference, the Commission denied the Motions to Dismiss and the Emergency Motion to Hold this Matter in Abeyance. The Commission deferred ruling on the bidding rule issue at the October 17, 2000, Agenda Conference. Since then, Calpine filed a joint Memorandum of Understanding (MOU) with Seminole Electric Cooperative, Inc. (Seminole), along with a Request for Specified Confidential Treatment.

On November 22, 2000, Calpine filed a Notice of Voluntary Dismissal of its Petition for Determination of Need and Request to Close the Docket. There was no filing in response. This recommendation addresses the status of the Commission's decision at the October 17, 2000, Agenda Conference, in light of the notice of voluntary dismissal, and all other pending motions in Docket 000442-EI. Jurisdiction over this matter is vested in the Commission by Section 403.519, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should Calpine's Notice of Voluntary Dismissal of its Petition for Determination of Need and Request to Close Docket in Docket 000442-EI be acknowledged?

RECOMMENDATION: Yes, the Commission should acknowledge Calpine's Notice of Voluntary Dismissal of its Petition for Determination of Need and Request to Close Docket. (ISAAC, ELIAS)

STAFF ANALYSIS: The Commission has previously considered the issue of whether an entity initiating a proceeding can subsequently voluntarily dismiss the petition. By Order No. PSC-94-0310-FOF-EQ, issued March 17, 1994, in Docket 920977-EQ, the Commission

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recognized that a party may voluntarily withdraw an initiating petition. But for the fact that the Commission took official action at the October 17, 2000, Agenda Conference, it would be appropriate to handle this matter administratively. Staff, therefore, recommends the Commission acknowledge Calpine's Notice of Voluntary Dismissal of its Petition for Determination of Need and Request to Close Docket.

ISSUE 2: Should the Commission, on its own motion, vacate its decision on the motions to dismiss and the emergency motion to abate the Calpine need determination proceeding made at the October 17, 2000, Agenda Conference?

RECOMMENDATION: Yes, the Commission should, on its own motion, vacate its decision on the motions to dismiss and the emergency motion to abate Calpine's need determination proceeding made at the October 17, 2000, Agenda Conference. Further, the pending motions addressed in the staff's analysis, should be moot. (ISAAC, ELIAS)

STAFF ANALYSIS: As stated in the case background, FPL and FPC, intervenors to this proceeding, filed motions to dismiss Calpine's Petition. FPL also filed an Emergency motion to hold the case in abeyance. These motions were denied by the Commission at the October 17, 2000, Agenda Conference. An Order was not yet issued when, on November 22, 2000, Calpine filed a Notice of Voluntary Dismissal of its Petition for Determination of Need and Request to Close the Docket.

In light of the voluntary dismissal of the petition, the Commission does not need to make a decision on these motions. The Commission has previously vacated its decision after a change in circumstances has warranted such action. See Docket No. 000499, Order No. PSC-00-1606-PAA-TI, rescinding a decision to grant a certificate; see also, Docket No. 970381-SU, Order No. PSC-98-1248-FOF-SU, granting motion to rescind previous order; Docket No. 992029, Order No. PSC-00-1214-FOF-TI, rescinding its previous order. If an Order in this docket is issued from the October 17, 2000, decision, it may be appealed or it may lead to confusion since there will be no final decision in the docket. Based on these reasons and in an effort to promote administrative judicial economy, staff recommends that the Commission vacate its decision on the motions to dismiss and the emergency motion to abate the Calpine need determination proceeding.

Four additional motions remain pending in this docket. First, in response to Calpine's petition for a determination that the bidding rule does not apply, FPC filed a motion to dismiss. Calpine, thereafter, responded in opposition to FPC's motion to dismiss. The other three pending motions were filed subsequent to the October 17, 2000, Agenda Conference. Calpine filed a request for confidentiality for its MOU with Seminole. After an initial time-extension to object to this request was granted, FPL filed a Motion to Further Extend the Deadline for Objecting to Calpine's Request for Confidential Classification. No response was filed.

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Calpine and Seminole, also filed a Joint Motion for Alternate Procedural Schedule or, in the Alternative, for Enlargement of Time to File Supplemental Testimony. FPL filed a timely response objecting to this request. However, based on Calpine's voluntary withdrawal of its Petition for a need determination, staff believes these motions are moot.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes. If the Commission approves staff's recommendation in Issue 1, no further action is required. The pending motions are moot and this docket should be closed.

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 1, this docket should be closed. The only remaining matters left in this docket will be pending motions which are moot in light of Calpine's voluntary dismissal of its petition. Upon the closing of this docket, Calpine's confidential information will be returned.