

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Joint Petition for)
Determination of Need for the) DOCKET NO. 001748-EC
Osprey Energy Center in)
Polk County by Seminole) FILED: JANUARY 29, 2001
Electric Cooperative, Inc.,)
and Calpine Construction)
Finance Company, L.P.)
_____)

JOINT PETITIONERS' MOTION FOR EXPEDITED DECISION

Joint Petitioners Seminole Electric Cooperative, Inc. ("Seminole"), and Calpine Construction Finance Company, L.P. ("Calpine"), pursuant to Commission Rule 28-106.204, Florida Administrative Code ("F.A.C."), hereby respectfully move the Commission to expedite its decision on the Amended Joint Petition for Determination of Need for the Osprey Energy Center filed herein by Seminole and Calpine. Seminole and Calpine respectfully ask that the Commission decide the issues in this proceeding by a decision from the bench at the conclusion of the hearing, which is scheduled to be held on February 12 and 13, 2001, and issue its order as soon as practicable thereafter. The requested expedited decision would promote the just, speedy, and inexpensive determination of the issues presented in this case, conserve Commission time and resources, conserve Seminole's and Calpine's time and resources, and avoid delay in the related environmental permit proceedings, i.e., the site certification proceedings under the Florida Electrical Power Plant Siting Act.

The requested expedited decision would also benefit Seminole, Seminole's Member cooperative utility systems, and those systems' member-consumers by providing enhanced planning and operational flexibility and the opportunity to take advantage of an additional cost-effective power supply resource as early as possible.

PROCEDURAL BACKGROUND

On December 4, 2000, Seminole and Calpine initiated this docket by filing their Joint Petition for Determination of Need for the Osprey Energy Center, together with supporting exhibits and the testimonies and exhibits of four Seminole witnesses and six Calpine witnesses. On January 8, 2001, Seminole and Calpine filed their Amended Joint Petition and Amended Exhibits, together with a motion for leave to file same. That motion was granted by Commission Order No. 01-0120-PCO-EC on January 17, 2001.

Calpine and Seminole have responded to all of Staff's interrogatories and document production requests, and the Staff have completed all noticed depositions. (Seminole expects to file the only three late-filed deposition exhibits requested by the Commission Staff in the near future.) Pursuant to the Order Establishing Procedure, Seminole and Calpine timely filed their direct testimony, and the filing dates for intervenor, Staff, and rebuttal testimony have all passed without any such testimony being filed. At the present time, there are no intervenors in this proceeding.

APPLICABLE LAW

Applicable statutory law allows bench decisions and expedited orders as requested by Seminole and Calpine, and recent, applicable Commission precedent similarly supports Seminole's and Calpine's request for an expedited decision via a bench vote.

Section 120.569(2)(1), Florida Statutes, provides in pertinent part as follows.

Unless the time period is waived or extended with the consent of all parties, the final order in a proceeding which affects substantial interests must be in writing and include findings of fact, if any, and conclusions of law separately stated, and it must be rendered within 90 days [] after the hearing is concluded, if conducted by the agency

Thus, the only statutory requirement relating to the timing of orders following hearings is that such orders must be issued within 90 days following the hearing, where, as here, the hearing is conducted by the decision-making agency.

The Commission has historically rendered decisions from the bench in Fuel and Purchased Power Cost Recovery and Energy Conservation Cost Recovery proceedings, and has recently rendered decisions from the bench in at least three need determination cases. See In Re: Petition to Determine Need for Cane Island Power Park Unit 3 and Related Facility in Osceola County by Kissimmee Utility Authority and Florida Municipal Power Agency, 1998 WL 916485 (Fla. P.S.C., October 7, 1998), and Hearing

Transcript at 128; In Re: Petition by City of Lakeland for Determination of Need for McIntosh Unit 5 and Proposed Conversion from Simple to Combined Cycle, 1999 WL 397327 (Fla. P.S.C., May 10, 1999), and Hearing Transcript at 89; and In Re: Petition of Gulf Power Company to Determine Need for Proposed Electrical Power Plant in Bay County, 1999 WL 686062 (Fla. P.S.C., August 2, 1999, and Hearing Transcript at 242 ("Gulf Power Bay County"). The prehearing order for the Gulf Power Bay County need determination hearing provided notice that the Commission would consider disposing of the issues in that case via a bench vote, as follows:

Pursuant to discussion at the Prehearing Conference, the possibility of a bench vote exists. Therefore, all parties shall be prepared for ten minute oral argument at the close of the hearing.

Gulf Power Bay County, 1999 WL 778221 at *5.

DISCUSSION

Granting Seminole's and Calpine's motion for expedited decision, including a bench vote and an order issued as soon as practicable thereafter, is consistent with applicable statutory law and also with applicable Commission precedent. Granting this motion will conserve Commission time and resources, conserve Seminole's and Calpine's time and resources, and promote the speedy, orderly, efficient, and inexpensive administration of justice. See Rule 28-106.211, F.A.C. (providing for the issuance of orders "to promote the just, speedy, and inexpensive

determination of all aspects of the case”)

Because an affirmative determination of need is a condition precedent to conducting the site certification hearing, granting Seminole’s and Calpine’s motion can reasonably be expected to enable the Osprey Energy Center to be brought into commercial operation sooner than without the requested expedited decision. The Osprey Project’s earlier availability will, pursuant to the Power Purchase Agreement (“PPA”) between Seminole and Calpine, provide Seminole with (a) substantial flexibility in meeting its future needs, (b) an alternative economical source of energy, and (c) significantly reduced risk exposure, all of which accrue to the benefit of Seminole, its Member systems, and those systems’ member-consumers. Similar benefits may also be available to other Peninsular Florida load-serving utilities that might elect to purchase any of the Osprey Project’s output that Seminole elects not to purchase. These are valuable, tangible benefits to Florida utilities and their retail electric consumers.

If this Motion is granted, Seminole and Calpine will, consistent with the Commission’s procedure in Gulf Power Bay County, be prepared to present oral argument at the conclusion of the hearing. Seminole and Calpine will rely on their position statements responding to the identified issues that are contained in the Prehearing Order and voluntarily waive their rights to submit additional proposed findings of fact, conclusions of law, orders, and memoranda on the issues pursuant to Rule 28-106.215,

F.A.C., Section 120.57(1)(b), Florida Statutes.

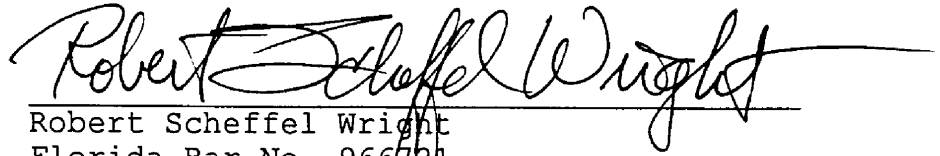
Granting this motion will not prejudice any party. As of the date of this motion, there are no intervenors, and given that the deadline for submitting intervenor testimony has passed and that the deadline for completion of discovery is now only one week away, there is no due process impediment to the disposition of this case by a bench decision and an expedited order thereafter.

CONCLUSION

Granting Seminole's and Calpine's joint motion for expedited decision and bench ruling will conserve Commission time and resources, conserve Seminole's and Calpine's time and resources, and allow the site certification process for the Osprey Energy Center to proceed expeditiously. In turn, the earlier availability of the Osprey Project will provide substantial benefits to Seminole and potentially to other Peninsular Florida load-serving utilities that might elect to purchase the Osprey Project's output.

WHEREFORE, for the reasons set forth above and particularly because of the benefits to be provided thereby, Seminole and Calpine respectfully request that the Commission grant their joint motion for expedited decision and that the Prehearing Officer provide appropriate notification that a bench vote is possible in the Prehearing Order to be issued in this docket.

Respectfully submitted this 29th day of January, 2001.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery (*), or U.S. Mail, on this 29th day of January, 2001, to the following:

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