

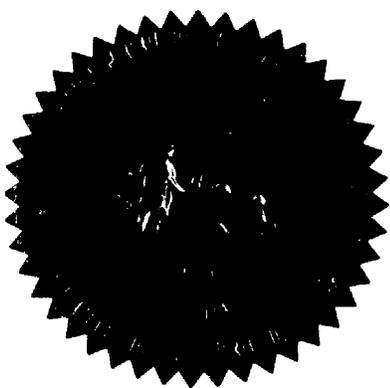
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**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

**DOCKET NO. 001748-EC**

**In the Matter of**

**PETITION FOR DETERMINATION OF  
NEED FOR THE OSPREY ENERGY  
CENTER IN POLK COUNTY BY  
SEMINOLE ELECTRIC COOPERATIVE  
AND CALPINE CONSTRUCTION  
FINANCE COMPANY, L.P.**



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**PROCEEDINGS:            PREHEARING CONFERENCE**

**BEFORE:                    COMMISSIONER LILA A. JABER  
                                  Prehearing Officer**

**DATE:                        Tuesday, January 30, 2001**

**TIME:                        Commenced at 1:30 p.m.  
                                  Concluded at 1:45 p.m.**

**PLACE:                      Betty Easley Conference Center  
                                  Room 148  
                                  4075 Esplanade Way  
                                  Tallahassee, Florida**

**REPORTED BY:            TRICIA DeMARTE  
                                  Official FPSC Reporter  
                                  (850) 413-6736**

DOCUMENT NUMBER - DATE  
**01479 FEB-16**  
FPSC-RECORDS/REPORTING

**1 APPEARANCES:**

**2 ROBERT SCHEFFEL WRIGHT, Landers & Parsons,**  
**3 310 West College Avenue, Tallahassee, Florida 32302,**  
**4 appearing on behalf of Calpine Construction Finance**  
**5 Company, L.P.**

**6 JOSEPH A. McGLOTHLIN, McWhirter, Reeves,**  
**7 McGlothlin, Davidson, Dekker, Kaufman, Arnold &**  
**8 Steen, 117 South Gadsden Street, Tallahassee,**  
**9 Florida 32301, appearing on behalf of Seminole**  
**10 Electric Cooperative, Inc.**

**11 RACHAEL N. ISAAC and ROBERT V. ELIAS, FPSC**  
**12 Division of Legal Service, 2540 Shumard Oak**  
**13 Boulevard, Tallahassee, Florida 32399-0850,**  
**14 appearing on behalf of the Commission Staff.**

15

**16 ALSO PRESENT:**

**17 GARL ZIMMERMAN, Seminole Electric Cooperative**  
**18 TIMOTHY WOODBURY, Seminole Electric Cooperative**

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1                   **COMMISSIONER JABER: Mr. McGlothlin.**

2                   **MR. McGLOTHLIN: Joe McGlothlin, 117 South**  
3 **Gadsden Street, Tallahassee, appearing for Seminole**  
4 **Electric Cooperative. With me are Tim Woodbury and**  
5 **Garl Zimmerman of Seminole.**

6                   **MS. ISAAC: Rachael Isaac and Bob Elias on**  
7 **behalf of the Commission Staff.**

8                   **COMMISSIONER JABER: Thank you. Okay.**  
9 **Ms. Isaac, do we have any preliminary matters that we**  
10 **should go through before we discuss the actual draft**  
11 **prehearing order?**

12                   **MS. ISAAC: No.**

13                   **COMMISSIONER JABER: Would you propose we handle**  
14 **the confidentiality matters at the end? Is that --**

15                   **MS. ISAAC: Yes.**

16                   **COMMISSIONER JABER: Okay. I'll tell you, it**  
17 **was not my inclination to go page by page of the**  
18 **prehearing order, so if you-all -- if the parties have**  
19 **changes to the prehearing order, I would ask that you just**  
20 **let me know one at a time, Schef. So are there any**  
21 **changes that you have not already given to Staff and that**  
22 **have not been incorporated in the draft already?**

23                   **MR. WRIGHT: There's one very minor, probably a**  
24 **writo (phonetic) on my part as opposed to a typo, and that**  
25 **would be on Page 10 of the draft prehearing order in the**

1 positions statement under Issue 7. In the fourth line  
2 from the bottom, it currently reads, "Supply available in  
3 the geographic area." It should read, "Supply available  
4 in that geographic area."

5 COMMISSIONER JABER: Thank you. Are there any  
6 other changes that you have?

7 MR. WRIGHT: No, ma'am.

8 COMMISSIONER JABER: Mr. McGlothlin?

9 MR. MCGLOTHLIN: I know of no changes. I  
10 received this latest draft only when I arrived, but we've  
11 had an opportunity to look at this earlier draft, so I'm  
12 sure that this will be fine or very close.

13 COMMISSIONER JABER: Staff, did you give the  
14 court reporter the latest version of the draft?

15 MS. ISAAC: Yes.

16 COMMISSIONER JABER: All right. Is there  
17 anything that we need to go through for you on the draft?

18 MS. ISAAC: No. I just wanted to let you know  
19 we have been -- Staff has been discussing the draft  
20 prehearing order with the parties, and we're trying to  
21 come to a point where we can recommend approval of these  
22 positions to the Commissioners. This is subject on the  
23 Commissioners' desire to cross-examine the witnesses and  
24 also subject to their desire of approving the bench vote  
25 request.

1                   **COMMISSIONER JABER: Okay. I think you're**  
2 **referring to the request filed by Mr. Wright for an**  
3 **expedited decision, and I noticed that was just filed**  
4 **yesterday. So I'll take that under advisement.**

5                   **Obviously, I'd like Staff to check with the**  
6 **other Commissioners and make sure that they're not**  
7 **interested in cross-examining those witnesses before we**  
8 **excuse them.**

9                   **MR. WRIGHT: Absolutely. All of our witnesses**  
10 **are scheduled to be here, and as many of them as the**  
11 **Commission wants to cross-examine will be present.**

12                   **COMMISSIONER JABER: Okay. So there won't be a**  
13 **ruling on that motion today.**

14                   **MR. WRIGHT: Thank you.**

15                   **COMMISSIONER JABER: All right. Ms. Isaac, I**  
16 **think that brings us to the confidentiality matters. Do**  
17 **you have recommendations?**

18                   **MS. ISAAC: Yes. Staff is ready to make**  
19 **recommendations on two of the pending confidentiality**  
20 **requests. First, one filed on December 4th, 2000.**  
21 **Seminole Electric filed a request for confidential**  
22 **classification and motion for permanent protective order**  
23 **relating to certain information contained in Volume 1 of**  
24 **the exhibits to the need petition, as well as information**  
25 **in the prefiled direct testimony of Garl Zimmerman.**

1                   **This document has been labeled "Document Number**  
2 **15488-00." Staff believes this information requested is**  
3 **proprietary confidential business information which could**  
4 **affect Seminole's negotiations with Calpine in the future,**  
5 **and we recommend that this request and motion be granted**  
6 **and that the information be kept confidential for a period**  
7 **of 18 months starting from the day the order memorializing**  
8 **your decision is issued.**

9                   **COMMISSIONER JABER: Okay. Your recommendation**  
10 **is that I grant the request for confidentiality but for a**  
11 **period that will expire in 18 months as opposed to ruling**  
12 **on the company's request for permanent protective order?**

13                   **MS. ISAAC: Well, the permanent protective order**  
14 **goes to another issue. It's a discovery matter, how we**  
15 **can use the information in discovery in the future, and**  
16 **we're granting that too. We're just limiting the**  
17 **protective order and the request for confidentiality to**  
18 **18 months.**

19                   **COMMISSIONER JABER: Is there any objection to**  
20 **that?**

21                   **MR. McGLOTHLIN: It's my understanding that**  
22 **if it's -- we would prefer to have a permanent protective**  
23 **order. If that is denied, then we would request the**  
24 **ability to either renew our request at the time or to**  
25 **request return of the information alternatively.**

1                   **COMMISSIONER JABER:** Staff, does our statute  
2 bind us to the 18 months, or is that just Commission  
3 practice to keep the 18 months as a time frame?

4                   **MR. ELIAS:** The statute specifies a period of 18  
5 months unless good cause is shown for a longer period. It  
6 may be that by the time the 18 months expires, it might be  
7 appropriate to return this material. So that would be our  
8 preferred approach is to do it that way.

9                   **COMMISSIONER JABER:** And Seminole is not  
10 prevented from refileing at the end of 18 months if you  
11 decide to keep the information here?

12                   **MR. ELIAS:** That's correct.

13                   **COMMISSIONER JABER:** I think, Mr. McGlothlin,  
14 that I will grant your request for a specific time period,  
15 which is 18 months --

16                   **MR. MCGLOTHLIN:** All right.

17                   **COMMISSIONER JABER:** -- and that be done without  
18 prejudice, so to speak, that you can at the end of the 18  
19 months, or just prior to that, I suppose, seek  
20 confidential classification again --

21                   **MR. MCGLOTHLIN:** Very well.

22                   **COMMISSIONER JABER:** -- with the appropriate  
23 justification. I think Staff makes a good point that they  
24 might return the information --

25                   **MR. MCGLOTHLIN:** Right.

1                   **COMMISSIONER JABER:** -- so that your request is  
2 not needed.

3                   **MR. McGLOTHLIN:** Very good.

4                   **COMMISSIONER JABER:** Okay. So show that as  
5 granted for a period of 18 months.

6                   **Is there another one?**

7                   **MS. ISAAC:** Yes. The second one, filed on  
8 January 10th, 2001 by Seminole Electric, was a request for  
9 confidential classification and motion for permanent  
10 protective order relating to certain information contained  
11 in Volume 1 of the revised exhibits to its amended joint  
12 petition filed in this docket.

13                   **This document has been labeled "Document Number**  
14 **00440-01."** Staff believes this information is also  
15 **confidential business information which could affect**  
16 **Seminole's negotiations with Calpine in the future, and we**  
17 **recommend that this request and motion be granted and that**  
18 **the information be kept confidential for a period of 18**  
19 **months starting from the day the order is issued**  
20 **memorializing your decision.**

21                   **COMMISSIONER JABER:** Mr. McGlothlin, any  
22 **objection to the 18 months versus the permanent protective**  
23 **order request here?**

24                   **MR. McGLOTHLIN:** With the understanding that we  
25 **could either seek to have it returned or seek to renew our**

1 request, we have no objection.

2 COMMISSIONER JABER: Okay. Show that as  
3 granted, Ms. Isaac, with the same caveats.

4 And I see there's one more.

5 MS. ISAAC: Yeah, there's one more pending  
6 motion Staff is still reviewing and will bring you a  
7 written recommendation by tomorrow.

8 COMMISSIONER JABER: That's fine.

9 MR. McGLOTHLIN: Seminole also submitted a  
10 request for confidential classification on January 8th  
11 relating to the PPA. Was that covered in the earlier  
12 ruling?

13 MS. ISAAC: That's not the one that we're  
14 talking about that has to do with the PPA?

15 MR. McGLOTHLIN: For clarification, on  
16 January 8th, we sought a ruling on a request for  
17 confidential treatment of the PPA provisions, and then  
18 today, we filed one seeking protection of a late-filed  
19 exhibit to a deposition, which, I believe, is maybe the  
20 one you were referring to a moment ago.

21 COMMISSIONER JABER: When did you do that?

22 MR. McGLOTHLIN: That was today.

23 COMMISSIONER JABER: Oh, today.

24 MR. McGLOTHLIN: Yes.

25 MS. ISAAC: No. The one I was referring to is

1 the one that you're saying is January 8th. It was  
2 stamped --

3 MR. McGLOTHLIN: I see.

4 MS. ISAAC: -- on mine as January 10th. And he  
5 also did file one today relating to the Late-Filed Exhibit  
6 Number 1 to Garl Zimmerman's deposition, and we haven't  
7 reviewed that. We just received it.

8 COMMISSIONER JABER: I'll tell you what would be  
9 helpful to me, Rachael, if you, in the rulings section,  
10 make sure you reference the document number, I think that  
11 will be much clearer, because you're using a filed date  
12 and I think he's -- or actually, you're using a stamped  
13 date, and he's referring to some filed dates.

14 MS. ISAAC: Okay.

15 COMMISSIONER JABER: So just make sure that you  
16 label the rulings according to the document numbers, and  
17 we'll be fine.

18 And to the degree, Mr. McGlothlin, that you  
19 think something is missing from the rulings section, bring  
20 that to Ms. Isaac's attention, and we'll issue a separate  
21 ruling --

22 MR. McGLOTHLIN: Very good.

23 COMMISSIONER JABER: -- on it in a subsequent  
24 order. Is that all right?

25 MS. ISAAC: That's fine.

1                   **COMMISSIONER JABER: Okay. Any other**  
2 **preliminary matter or a matter that needs to come before**  
3 **us before we conclude the prehearing conference?**

4                   **MS. ISAAC: One more modification was requested**  
5 **by Calpine earlier. We didn't put it in the draft**  
6 **prehearing order. It had to relate to verbiage on the**  
7 **bench decision. Let me get you that. It's part of their**  
8 **joint request for the expedited decision on Page 4.**

9                   **They refer to the Gulf Power Bay County need**  
10 **determination which in the prehearing order stated,**  
11 **"Pursuant to discussion at the prehearing conference, the**  
12 **possibility of a bench vote exists; therefore, all parties**  
13 **shall be prepared for ten-minute oral argument at the**  
14 **close of the hearing." And Staff recommends that this be**  
15 **included in the prehearing order also.**

16                   **COMMISSIONER JABER: That what be included in**  
17 **the prehearing order?**

18                   **MS. ISAAC: This statement about the ten-minute**  
19 **oral argument at the close of hearing provided that**  
20 **there's a bench vote decision.**

21                   **COMMISSIONER JABER: Mr. Wright, I assume this**  
22 **was part of your request; right?**

23                   **MR. WRIGHT: Yes, ma'am. It was a joint motion,**  
24 **us and -- Calpine and Seminole. We noted that in the**  
25 **prehearing order in the Bay County need determination case**

1 it was noticed that a bench vote was possible. That was  
2 also mentioned in the discussion at the conclusion of the  
3 Bay County hearing right before the Commissioners voted to  
4 grant that need determination. So we thought it would be  
5 helpful and appropriate for similar notice of the  
6 possibility of a bench vote to be included in the  
7 prehearing order just in an abundance of caution as a  
8 matter of public notice.

9 COMMISSIONER JABER: I see. Not necessarily the  
10 reference to the Gulf Power case, but that --

11 MR. WRIGHT: No.

12 COMMISSIONER JABER: -- it's possible to have a  
13 bench decision.

14 MR. WRIGHT: Yes, ma'am.

15 COMMISSIONER JABER: I'll tell you the way we've  
16 handled that in the past and the way I'll handle it here  
17 is that in ruling on your motion, it will be clear in the  
18 prehearing order that a bench decision has been granted or  
19 has been denied. So I think that would serve as  
20 appropriate notice. It will be clear in the prehearing  
21 order whether a bench decision might occur.

22 That's your concern, right, that adequate notice  
23 be given of a bench decision?

24 MR. WRIGHT: Yes. Naturally, we'd like to have  
25 a bench vote, but in addition, we're concerned about

1 notice.

2 **COMMISSIONER JABER: Bob?**

3 **MR. ELIAS: What we did in the Bay County -- in**  
4 **the Gulf need determination was just add that verbiage to**  
5 **the end of the section on the conduct of proceedings. It**  
6 **does not foreclose a ruling up or down on the question of**  
7 **the propriety of a bench decision in a case, and it can be**  
8 **deferred to the Commission or the panel assigned to the**  
9 **case. But it's just a -- as Mr. Wright said, it's just a**  
10 **way of notifying everybody, parties, public, and other**  
11 **Commissioners, that that possibility exists right in the**  
12 **prehearing order.**

13 **COMMISSIONER JABER: I see. So regardless of**  
14 **the ruling --**

15 **MR. ELIAS: Yes.**

16 **COMMISSIONER JABER: -- it's additional notice**  
17 **that a decision in that regard can be made at the start of**  
18 **the hearing?**

19 **MR. ELIAS: Well, at the hearing.**

20 **COMMISSIONER JABER: Okay. All right. That's**  
21 **fine. And you would propose adding that to the conduct of**  
22 **proceedings section?**

23 **MR. ELIAS: It would be the last paragraph in**  
24 **the conduct of proceedings.**

25 **COMMISSIONER JABER: That's fine. Ms. Isaac,**

1 anything else?

2 **MS. ISAAC:** No, I think that's all.

3 **COMMISSIONER JABER:** Parties?

4 **MR. McGLOTHLIN:** Commissioner, this isn't  
5 business to be handled during the prehearing conference,  
6 but our witnesses were deposed on the 25th, and we've been  
7 working to prepare some late-filed exhibits. If the Staff  
8 would be available to us for about ten minutes, I think  
9 once we have a bit more internal review and share some  
10 things with Calpine to make sure that any confidentiality  
11 concerns have been satisfied, we may be able to deliver  
12 the balance of those exhibits today.

13 **COMMISSIONER JABER:** That's a good idea. Staff?

14 **MS. ISAAC:** That's fine.

15 **COMMISSIONER JABER:** They will make themselves  
16 available after the prehearing conference.

17 Let me take an opportunity to commend the  
18 parties on how far you-all have gotten in this case. I  
19 really appreciate your hard work in reaching resolution on  
20 this case and the work you have done with some of the  
21 other parties that we don't see here today because of your  
22 hard work. So you are hereby commended. Thank you.

23 **MR. McGLOTHLIN:** Thank you.

24 **MR. WRIGHT:** Thank you.

25 **COMMISSIONER JABER:** And this concludes the

1 prehearing conference.

2 (Hearing concluded at 1:45 p.m.)

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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON )

4

5 I, TRICIA DeMARTE, Official FPSC Commission  
6 Reporter, do hereby certify that the Prehearing Conference  
in Docket No. 001748-EC was heard by the Florida Public  
Service Commission at the time and place herein stated.

7

8 It is further certified that I stenographically  
9 reported the said proceedings; that the same has been  
transcribed under my direct supervision; and that this  
transcript, consisting of 16 pages, constitutes a true  
transcription of my notes of said proceedings.

10

11 I FURTHER CERTIFY that I am not a relative,  
employee, attorney or counsel of any of the parties, nor  
12 am I a relative or employee of any of the parties'  
attorney or counsel connected with the action, nor am I  
financially interested in the action.

13

DATED this 1st day of February, 2001.

14

15



16

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FPSC Official Commission Reporter  
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