

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: FEBRUARY 22, 2001
Electric Cooperative, Inc.,)
and Calpine Construction)
Finance Company, L.P.)
_____)

CALPINE CONSTRUCTION FINANCE COMPANY'S
MOTION FOR RECONSIDERATION

Calpine Construction Finance Company, L.P. ("Calpine"), pursuant to Commission Rule 25-22.0376, Florida Administrative Code ("F.A.C."), hereby respectfully moves the Commission to reconsider in part Commission Order No. PSC-01-0366-PCO-EC, Order Granting in Part and Denying in Part Request for Confidential Classification and Motion for Permanent Protective Order (Document No. 00277-01) (the "Confidentiality Order"). In the Confidentiality Order, the Prehearing Officer granted most of the requests for confidential protection sought by Seminole Electric Cooperative, Inc. ("Seminole"), Calpine's co-petitioner in this proceeding, but denied several requests. The subject information is contained in the Power Purchase Agreement ("PPA") between Calpine and Seminole. In summary, Calpine does not challenge most of the Prehearing Officer's decisions denying confidential protection, but seeks reconsideration of a limited number of those decisions on the grounds that the information in question is held as confidential, proprietary business information by

Calpine and that its public disclosure would harm Calpine's competitive interests.

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. The Amended Exhibits included a redacted version of the PPA between Seminole and Calpine. Also on January 8, 2001, Seminole filed a request for confidential treatment and motion for permanent protective order with respect to the information that Seminole and Calpine had agreed to redact from the PPA filed as part of the public record in this proceeding. Seminole's request and motion were granted in part and denied in part by the Confidentiality Order on February 12, 2001.

The subject information was identified in the Confidentiality Order by page and line number. Calpine seeks reconsideration of the information redacted from the following portions of the PPA: (A) the information at page 9, lines 18-22, page 23, lines 28-35, and page 24-lines 1-2, all of which relates to the same subject matter; and (B) the information at page 19, lines 30-31. Calpine does not seek reconsideration of the denial of confidential protection to the information redacted from: page

8, lines 3-4; page 10, line 10; page 11, line 12; page 14, line 17-18; or page 14, lines 23-30.

APPLICABLE LAW

Section 366.093(3), Florida Statutes (2000), protects from disclosure proprietary, confidential business information which includes

information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public.

Section 366.093(3)(d), Florida Statutes (2000), specifically includes within the definition of proprietary, confidential business information

Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms.

Information found to be proprietary, confidential business information is exempt from disclosure pursuant to Chapter 119, Florida Statutes, Florida's public records statute. Fla. Stat. § 366.093(2) (2000).

To obtain reconsideration, the moving party is required to show that the subject order overlooked some fact or point of law

that would produce a different result. See Diamond Cab Co. v. King, 146 So. 2d 889, 891 (Fla. 1962); Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981); In Re: Initiation of Show Cause Proceedings Against Accutel Communications, 2000 W.L. 898008 (Fla. P.S.C., June 25, 2000) (Order No. PSC-00-1149-FOF-TI, Order Granting Motion for Reconsideration); In Re: Fuel and Purchased Power Cost Recovery Clause, 1998 W.L. 614900 (Fla. P.S.C., Aug. 10, 1998) (Order No. PSC-98-1080-FOF-EI, Order Granting Reconsideration, Denying Reconsideration and Clarifying Order No. PSC-98-0073-FOF-EI). The mere fact that a party disagrees with the subject order is not a valid basis for reconsideration. Diamond Cab, 146 So. 2d at 891. A request to re-weigh the evidence is not a sufficient basis to warrant reconsideration. State v. Green, 104 So. 2d 817 (Fla. 1st DCA 1958).

DISCUSSION

The information with respect to which Calpine seeks reconsideration is information that Calpine holds and treats as confidential and proprietary. Calpine believes that the public disclosure of this information would be damaging to Calpine's competitive interests. Since the Confidentiality Order generally denied protection to this information on the grounds that the information was general and not specific in nature and that Calpine and Seminole had not satisfactorily demonstrated how or why the disclosure thereof would harm their competitive interests, Calpine will here explain in as much detail as

possible (without disclosing the specific information) why Calpine believes that the disclosure of the subject information will be damaging to its competitive interests. With regard to the information relating to performance criteria, Calpine believes that reconsideration of the Confidentiality Order is warranted because it appears that the decision to deny protection may have been based upon the Commission's general experience with such information in Florida, while overlooking the possibility that the specific terms in the PPA may not be standard in other jurisdictions. With specific respect to the information relating to the pricing structure of the PPA, Calpine would submit that the decision not to grant protection to the information at page 19, lines 30-31, appears to overlook the fact that the subject information refers directly to other information that was granted confidential protection by the Confidentiality Order.

A. Information Relating to Performance Criteria

The information redacted by Seminole and Calpine from page 9, lines 18-22, page 23, lines 28-35, and page 24, lines 1-2, relates to the definition and structure of performance criteria under the PPA. While at first blush, the subject information may appear standard relative to other power purchase agreements in Florida, with which the Commission and Staff are familiar, Calpine avers that these provisions are not standard in power purchase agreements, and in the negotiations relating to such power purchase agreements, in other states. Calpine does

business in such other states, and accordingly, Calpine desires that this information not be disclosed so that it cannot be used by potential purchasing utilities in other states as a negotiating position "floor" in future negotiations with Calpine. See the attached Affidavit of Joseph Regnery, which avers these matters.

B. Information Relating to Pricing Terms

The information redacted from page 19, lines 30-31, relates and refers directly to the pricing terms contained in the PPA. The reference at page 19, lines 30-31, is explicit to a feature of the pricing terms that is confidential to both Calpine and Seminole. Accordingly, both Calpine and Seminole believe that the public disclosure of this information could be used by other entities negotiating with either Calpine or Seminole to the competitive harm of Calpine or Seminole.

The information referred to by the material on page 19, lines 30-31, was in fact redacted from the PPA and granted confidential protection by the Confidentiality Order; specifically, the information at page 19, lines 30-31, refers to the information redacted from page 16, line 7 through page 17, line 17, of the PPA. See Confidentiality Order at 2. Allowing the information relating to pricing terms located at page 19, lines 30-31, would render the redaction of the related material located at page 16, line 7, through page 17, line 17, meaningless and would, in Calpine's belief, render the Confidentiality Order

internally inconsistent by both redacting and not redacting similar, related information regarding the pricing terms of the PPA.

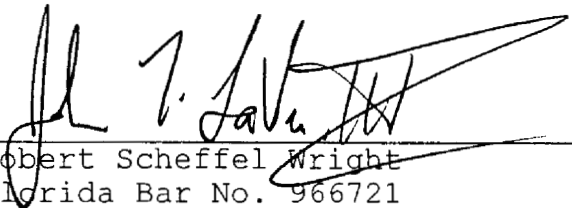
CERTIFICATE OF COUNSEL

The undersigned has conferred with counsel for Seminole and is authorized to represent that Seminole agrees with the relief requested by Calpine herein. The undersigned has also conferred with counsel for the Commission Staff and is authorized to represent that the Staff take no position with respect to this motion.

CONCLUSION

The information with respect to which Calpine here seeks reconsideration of the Commission's Confidentiality Order is proprietary, confidential business information, and is so maintained and treated by Calpine. The disclosure of the subject information would harm Calpine's competitive interests. Accordingly, the Commission should grant reconsideration of the Confidentiality Order only to the extent requested in this Motion and should modify the Confidentiality Order to protect the subject information.

Respectfully submitted this 22nd day of February, 2001.


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Attorneys for Calpine Construction
Finance Company, L.P.

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 22nd day of February, 2001, to the following:

Robert V. Elias, Esq.*
Rachel N. Isaac, Esq.
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Attorney

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Joint Petition for)
Determination of Need for the) DOCKET NO. 001748-EC
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Electric Cooperative, Inc.,)
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_____)

AFFIDAVIT OF JOSEPH REGNERY

I, Joseph Regnery, first being sworn, hereby depose and state:

1. I am over the age of 18 years and have personal knowledge of the facts set forth in this declaration.

2. I make this declaration in support of Calpine Construction Finance Company's Motion For Reconsideration of Florida Public Service Commission Order No. PSC-01-0366-PCO-EC.

3. I have been employed in the electric industry for more than eight years, and I am currently employed as Senior Counsel by Calpine Eastern Corporation. In my present position, I have responsibility for negotiating power purchase agreements ("PPAs") on behalf of Calpine Construction Finance Company, L.P. ("Calpine") and Calpine's affiliates with utilities to whom Calpine's affiliates sell wholesale power. In this capacity, I participated directly in negotiating the definitive power purchase agreement between Calpine Energy Services, L.P., and Seminole Electric Cooperative, Inc. (the "Seminole-Calpine PPA"), which has been entered into evidence in the record of FPSC Docket No. 001748-EC, In Re: Petition for Determination of Need for the Osprey Energy Center in Polk County by Seminole Electric Cooperative, Inc. and Calpine Construction Finance Company, L.P.

4. I have reviewed Commission Order No. PSC-01-0366-PCO-EC, which

grants in part and denies in part Seminole's motion (with which Calpine agreed) for protection of specified confidential, proprietary business information contained in the Seminole-Calpine PPA.

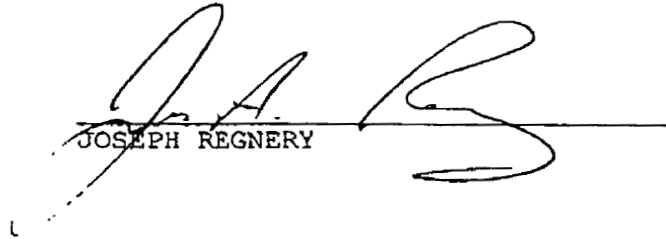
5. With respect to the material for which the Confidentiality Order would not grant confidential protection, I affirm the following:

- a. that the subject information on page 9, lines 18-22, page 23, lines 28-35, and page 24-lines 1-2, of the PPA relates to the structure of the performance criteria set forth in the Seminole-Calpine PPA;
- b. that this information was specifically negotiated between Calpine and Seminole;
- c. that Calpine treats this information as confidential, proprietary business information, and that Calpine has not disclosed this information except pursuant to lawful process or pursuant to appropriate lawful requests for confidential protection;
- d. that Calpine negotiates PPAs in Florida and in other states that have different performance criteria than that identified in the redacted information identified by the page and line numbers above;
- e. that this information, i.e., the specific performance criterion employed in the Seminole-Calpine PPA, is not standard in PPAs negotiated by Calpine with other utilities; and
- f. that it is my opinion that the disclosure of the subject information would be injurious to Calpine's competitive interests by disclosing to others, including Calpine's competitors and those to whom Calpine would potentially sell wholesale electricity, terms that Calpine has found acceptable in one

specific contract negotiation that might not be acceptable in
other specific contract negotiations.

FURTHER AFFIANT SAYETH NAUGHT.

Dated February 21, 2001.


JOSEPH REGNERY

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

Before me, the undersigned authority, personally appeared Joseph Regnery, who was sworn, and who states that he has prepared the foregoing affidavit and that the contents of the foregoing affidavit are true and correct to the best of his knowledge and belief.

Donna K. Hardwick
Signature of Notary Public



Personally known or produced as identification the following:

FL Drivers license