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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Determination )  
of Need for an Electrical Power )  
Plant in Martin County by Florida )  
Power & Light Company )  
\_\_\_\_\_ )

DOCKET NO. 020262-EI

In Re: Petition for Determination )  
of Need for an Electrical Power )  
Plant in Manatee County by Florida )  
Power & Light Company )  
\_\_\_\_\_ )

DOCKET NO. 020263-EI

FILED: MAY 1, 2002

CONSOLIDATED RESPONSE OF CALPINE ENERGY SERVICES, L.P.,  
TO MOTIONS FOR PROTECTIVE ORDERS

Pursuant to Rule 28-106.204, Florida Administrative Code ("F.A.C."), Calpine Energy Services, L.P. ("Calpine"), hereby files this consolidated response to the motions for protective orders filed in the above-styled proceedings by AES Coral ("AES"), Tampa Electric Company ("TECO"), and Progress Ventures, Inc. ("Progress"), collectively referred to herein as the "Movants." In summary, Calpine does not object to the issuance of protective orders that will protect the bid information submitted by the Movants in response to FPL's August 13, 2001 Request for Proposals ("RFP"). However, such protective orders should not be allowed to impair, impede, or prejudice Calpine's or any other intervenor's ability to obtain any needed confidential information that may be submitted in response to the new RFP contemplated in FPL's motion for abeyance filed herein on April 22, 2002.

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A. Calpine Does Not Object To Orders Protecting The Movants' Confidential Information From Disclosure At This Time.

By their motions, the Movants seek various relief. AES seeks

a protective order prohibiting FPL from producing any of AES' Bid Proposals until all the following conditions have been met: the Commission rules on the Joint Motion for Summary Final Order; the Commission has determined the Intervenors have shown good cause for obtaining access to such documents, including showing why such documents are necessary to prove their challenges in these docket proceedings, and if any documents continued [sic] in the proposal are to be produced, that FPL and the Intervenors be compelled to enter into a confidentiality agreement that protects the interests of the non-intervening bidders and is acceptable to AES; and, finally, if AES' Bid Proposals are ordered to be produced, any such order should also give AES access to proposals submitted by all other bidders as well.

AES' Motion at 6.<sup>1</sup>

TECO seeks "a protective order prohibiting FPL from producing any of Tampa Electric's highlighted Confidential Information to any of the Intervenors." TECO's Motion at 6. Progress seeks "a protective order prohibiting FPL from producing any of the highlighted confidential information contained in [Progress's] Bid Proposals to any of the Intervenors." Progress's Motion at 6.

To avoid spending too much time addressing tangential matters, Calpine simply states that it disagrees with many, if not most, of the assertions made by the Movants regarding the purpose of

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<sup>1</sup> The latter relief requested by AES -- being given access to confidential information in the Intervenors' bid proposals -- is already available to AES simply by signing the Confidentiality Agreement already signed by FPL and four intervenors in these dockets. See Note 2 below.

Calpine's intervention in these dockets and the purpose and effect of Calpine's and Reliant's Joint Motion for Summary Final Order.

The Movants' basic request is simply that the Commission issue orders that protect the highlighted confidential information in their responses to FPL's August 13, 2001 RFP from disclosure to other bidders. Calpine's interest in such information was as part of the input data to FPL's evaluation models by which FPL chose its self-build Martin 8 and Manatee 3 options, which data is, at least generically, necessary to Calpine's ability to replicate and evaluate FPL's analyses, which remain at issue in these cases even during the abeyance. However, Calpine has concluded that the availability of FPL's input data and the data of other bidders who have signed a confidentiality agreement<sup>2</sup> will enable it to accomplish this task without having all of the input data from all of the bidders. Accordingly, Calpine does not object to the entry of orders protecting the highlighted confidential information in the responses of Progress, TECO, and AES to FPL's August 13, 2001 RFP from disclosure to Calpine in these cases. Calpine's acquiescence to the issuance of such orders may not, however, be construed as agreement that any future bid information should also be treated as confidential.

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<sup>2</sup> On April 24, 2002, FPL, Calpine, Reliant Energy Power Generation, Inc., Mirant Corporation, and South Pond Energy Park LLC, filed a Joint Motion for Entry of Order Governing Handling and Disclosure of Information Asserted to be Confidential. That Joint Motion seeks the Commission's approval of a confidentiality agreement, referred to herein as "the Confidentiality Agreement," pursuant to which the above-named signatories would receive and handle confidential information in these dockets.

**B. The Commission Should Act Now To Provide For The Orderly Handling Of Confidential Information If And When These Need Determination Proceedings Are Resumed.**

The currently pending motions regarding the disclosure of confidential information received in response to FPL's August 13, 2001 RFP, which became part of the foundation for FPL's selection of its self-build options that are the subject of the above-styled need determination proceedings, have already delayed FPL's responses to legitimate discovery requests in these dockets. However, in light of these cases being held in abeyance, and in light of sufficient information (the EGEAS model, input data for the EGEAS model regarding the proposals submitted by Calpine and other RFP respondents who have agreed to the Confidentiality Agreement, and the Sedway model and its inputs) being made available during the abeyance pursuant to the Confidentiality Agreement, this delay is not particularly troublesome or problematic at this time.

However, this raises important issues regarding the further processing of these need determination cases. In the event that FPL selects one or more self-build options at the conclusion of its new RFP process and then files or re-files need determination cases for those options on July 16, 2002, a new round of similar confidentiality disputes in the new (or resumed) proceedings could result in Calpine and other Intervenors being unable to obtain needed discovery materials and prepare their cases in the time available under the currently proposed procedural schedule. Realistically, if FPL were to re-file on July 16, with a motion for

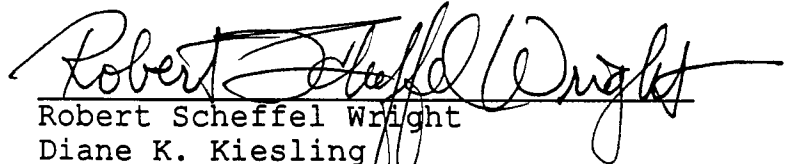
approval of a confidential protective order or confidentiality agreement filed a few days later, a flurry of motion practice like that already filed herein would likely postpone the resolution of confidentiality issues and the disclosure of needed information to the Intervenor until only a few days remained before their testimony was due.

Accordingly, Calpine respectfully suggests that the Commission, acting collegially or through the Prehearing Officer, as the Commission deems appropriate, should take appropriate and timely action to establish the procedures by which confidential information will be handled in these dockets if and when they resume. Calpine would suggest that the Prehearing Officer and the Commission consider the following:

1. Requiring FPL to notify all those to whom it has sent the new RFP materials that there is a reasonably high probability that the Commission will act to require disclosure of their confidential information, pursuant to a protective order of the Commission, to intervenors in these dockets or in any new dockets that may arise from FPL's new RFP.
2. Publishing notice in the Florida Administrative Weekly, the Southeast Power Reporter, and Megawatt Daily of the Commission's intention to receive, hear argument on, and rule on motions for protective orders, motions for approval of a confidentiality agreement, and any similar motions pursuant to a set schedule.
3. Provide actual notice of these activities to all entities who obtain the new RFP materials from FPL.
4. Set the schedule for these activities such that any initial order of the Prehearing Officer can be issued far enough in advance of July 16, 2002, to allow for the filing and disposition of any motions for reconsideration of such order before July 16, so as not to delay the orderly processing and preparation of the parties' cases if FPL should re-file need determinations for self-build options on that date.

WHEREFORE, Calpine Energy Services, L.P., respectfully states that it does not object to the entry of orders protecting the highlighted confidential information submitted by the Movants in response to FPL's August 2001 RFP from disclosure. However, Calpine's acquiescence to the issuance of such orders cannot be construed as consent to the entry of similar orders regarding future responses to FPL's new RFP, and Calpine expressly reserves its rights to seek such information through discovery in any new or re-instituted proceedings in these or other dockets. Calpine also respectfully suggests that the Commission or the Prehearing Officer assigned to these dockets should establish procedures by which confidentiality issues regarding responses to FPL's new RFP will be resolved in a timely way that will allow any future proceedings herein to go forward without delay.

Respectfully submitted this 1st day of May, 2002.



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CERTIFICATE OF SERVICE

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