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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Reliant Energy)
Power Generation, Inc., against)
Florida Power & Light Company)
_____)

DOCKET NO. 020175-EI

FILED: May 3, 2002

PETITION TO INTERVENE OF CALPINE ENERGY SERVICES, L.P.

Calpine Energy Services, L.P. ("Calpine"), pursuant to Commission Rule 25-22.039, Florida Administrative Code ("F.A.C."), Rule 28-106.201, F.A.C., Rule 28-106.205, F.A.C., and Chapter 120, Florida Statutes,¹ hereby files its petition to intervene in the above-styled docket (the "Reliant Complaint Docket"), which was initiated on February 28, 2002, by the filing of the Complaint of Reliant Energy Power Generation, Inc. ("Reliant"), against Florida Power and Light Company ("FPL").

In summary, Calpine is entitled to intervene in this proceeding for the following reasons. First, Calpine was one of numerous wholesale power sellers who responded, as "participants" within the meaning of Rule 25-22.082(1)(c), F.A.C., ("the Bid Rule") to a request for proposals ("RFP") issued by FPL.² Second, FPL rejected all of the proposals, including several proposals and additional offers for negotiations submitted by

¹ All citations herein to the Florida Statutes are to the 2001 edition thereof.

² The Commission's substantive rule applicable to many of the issues identified herein is Rule 25-22.082, F.A.C., Selection of Generating Capacity, which is referred to for convenience herein as the "Bid Rule."

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Calpine. Third, FPL has instead selected two power plant projects to be self-built by FPL to meet FPL's need for power identified in its RFP, herein identified as Martin 8 and Manatee 3. Fourth, FPL has materially deviated from and violated the Bid Rule in numerous and substantial ways, preventing the RFP process' from fairly and accurately identifying the sources of power that best meet the criteria of Section 403.519, and impairing the fairness of the RFP process itself. Reliant's Complaint alleges that FPL has violated the Commission's Bid Rule in numerous ways and seeks relief for those violations, including a request that the Commission supervise a new RFP for part of FPL's identified need and that the Commission conduct a comprehensive need determination proceeding with respect to the remainder of FPL's identified need. Like Reliant, Calpine's substantial interests were adversely affected by FPL's violations of the Bid Rule. As a potential supplier of wholesale power to FPL and as a participant in FPL's RFP process, Calpine's substantial interests will also be determined by the Commission's actions in this proceeding. Calpine's substantial interests are thereby affected by this proceeding.

PROCEDURAL BACKGROUND

1. Calpine is a power marketer that operates in the Peninsular Florida wholesale power market and in other wholesale power markets in the United States. Calpine's name, address, and telephone number are:

Calpine Energy Services, L.P.
2701 North Rocky Point Drive, Suite 1200
Tampa, Florida 33607
(813) 637-7300

Calpine received notice of this proceeding when Reliant's Complaint was filed with the Florida Public Service Commission.

2. All pleadings, notices, orders, correspondence, and other communications filed or had in this docket should be served on the following:

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and

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with a courtesy copy to:

Timothy R. Eves
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Calpine Eastern Corporation
2701 North Rocky Point Drive, Suite 1200
Tampa, Florida 33607
Telephone (813) 637-7300
Telecopier (813) 637-7399.

3. FPL is a public utility as defined in Section 366.02(1), Florida Statutes, and thereby subject to the

Commission's plenary regulatory jurisdiction pursuant to various provisions of Chapter 366, Florida Statutes, including, without limitation, Sections 366.03, 366.04(1)-(2)&(4)-(6), 366.041, 366.05, 366.06, and 366.07, Florida Statutes, and Section 403.519, Florida Statutes. FPL is specifically subject to the Commission's Bid Rule. FPL's name and address is as follows:

Florida Power & Light Company
9250 West Flagler Street
Miami, Florida 33174.

4. The name and address of the agency affected by this petition and by Reliant's Complaint are:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850.

CALPINE'S SUBSTANTIAL INTERESTS

5. As stated above, Calpine is a power marketer that sells electric capacity and energy, and other electric service products, at wholesale in Peninsular Florida and in other wholesale power markets in the United States. Calpine works closely with its affiliate, Calpine Construction Finance Company, L.P. ("CCFC"), to market power from CCFC's power plants. CCFC's primary business is the construction and operation of electrical power plants to supply power at wholesale to load-serving utilities such as FPL. Affiliates of CCFC presently operate one power plant in Florida, the Auburndale Power Plant, a cogeneration power plant having 150 megawatts ("MW") of net nominal generating capacity located in Polk County, Florida.

6. CCFC is also in the process of constructing two other

power plants: (1) the Auburndale Peaker Project, a 120 MW (nominal) simple cycle combustion turbine power plant located within the site of the existing Auburndale Power Plant, with a projected in-service date of June 2002; and (2) the Osprey Energy Center ("Osprey Project"), a 529 MW (nominal) gas-fired combined cycle power plant located in Auburndale, Florida, on a site adjacent to the Auburndale Power Plant, with a projected in-service date of October 2003. Calpine has or will have the rights to market firm capacity and energy from the Auburndale Peaker Project and any uncommitted capacity and energy that is available from the Osprey Project after Calpine satisfies its contractual obligations to supply wholesale power from the Osprey Project to Seminole Electric Cooperative, Inc.

7. CCFC is also actively developing two other power plants in Florida: (1) the Blue Heron Energy Center, a 1,080 MW (ultimate net nominal capacity) gas-fired combined cycle plant located in Indian River County, the first phase of which is the subject of a pending site certification application (In Re: Calpine Construction Finance Company, L.P., Blue Heron Energy Center, Site Certification Application No. PA00-42, DOAH Case No. 00-4564EPP); and (2) the Sandpiper Energy Center, a 540 MW (net nominal) gas-fired combined cycle power plant to be located in Lee County, Florida, with a planned in-service date of the fourth quarter of 2005. Calpine will have the rights to market firm electric capacity and energy, and potentially other wholesale electric service products, from both the Blue Heron Energy Center and the Sandpiper Energy Center.

8. Calpine's ability to carry out its fundamental business purposes, i.e., generally, to market wholesale electric service products based on the electric generating plants owned and operated by its affiliates, and specifically, to deliver firm capacity and energy to serve FPL's identified needs, will be determined by the Commission in this proceeding, and in the companion need determination proceedings,³ regardless which, if any, relief the Commission grants in response to Reliant's Complaint.

STATUTES AND RULES THAT ENTITLE CALPINE TO RELIEF

9. Calpine is entitled to intervene in this proceeding by Rules 25-22.039, 28-106.201, and 28-106.205, F.A.C., and by Chapter 120, Florida Statutes, because Calpine was a valid participant in FPL's RFP process and because the Commission's decision(s) herein will determine Calpine's substantial interests. The statutes and rules that provide the Commission with the authority to grant the substantive relief identified herein and in Reliant's Complaint include the following: Sections 403.519, 366.04(5), and 366.07, Florida Statutes; and Rule 25-22.082, F.A.C.

10. Section 403.519, Florida Statutes, establishes the Commission as the exclusive forum for determining need for electrical power plants that are subject to the Florida

³See In Re: Petition for Determination of Need for an Electrical Power Plant in Martin County by Florida Power & Light Company, FPSC Docket No. 020262-EI, and In Re: Petition for Determination of Need for an Electrical Power Plant in Manatee County by Florida Power & Light Company, FPSC Docket No. 020263-EI.

Electrical Power Plant Siting Act, Sections 403.501-.518, Florida Statutes (the "Siting Act"). In making its determination of need, the Commission is required to take into account the need for system reliability and integrity, the need for adequate electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available. The Commission "shall also expressly consider" energy conservation measures taken by or available to the applicant that "might mitigate the need for the proposed plant and other matters within its jurisdiction which it deems relevant." Section 403.519, Florida Statutes. The relief requested by Reliant herein, and supported by Calpine in this Petition to Intervene, goes directly to ensuring that only the power plants that will meet the needs of FPL's customers most cost-effectively, most reliably, and most advantageously with respect to other factors (such as financial, economic, and operating risks), and that will best serve the public interest in Florida, are in fact the plants that are permitted, built, and operated.

11. Section 366.04(5), Florida Statutes, vests the Commission with "jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities." Fla. Stat. § 366.04(5). The relief requested by Reliant's Complaint and by Calpine herein goes directly to ensuring that the planning and development of power

plants in Florida is conducted in the best, most responsible, and most fully informed way, and that the best, most reliable, most cost-effective, and most advantageous plants to meet an identified need -- here, the identified need of FPL's customers - - are in fact the plants that are permitted, built, and operated. Similarly, the relief requested by Reliant's Complaint and by Calpine herein also goes to ensuring that the power plants that best serve the public interest are the plants that are built and operated to meet Florida's needs for electricity.

12. Section 366.07, Florida Statutes, vests the Commission with the authority, either upon its own motion or upon complaint, after a finding that "the rules, regulations, . . . practices or contracts, or any of them, relating thereto, are unjust, unreasonable, insufficient, excessive, or unjustly discriminatory or preferential, or in anyway in violation of law," to determine that FPL's practices in this RFP process are unjust, unreasonable, and unjustly discriminatory or preferential in violation of the Bid Rule and to impose reasonable practices to be followed by FPL. The relief requested by Reliant's Complaint and by Calpine herein goes directly to the unreasonable, discriminatory, and preferential practices of FPL and the relief necessary to remedy such practices.

MATERIAL FACTS

13. Calpine agrees with the statements of material facts made by Reliant in its Complaint, and would simply add that, like Reliant, Calpine also obtained FPL's RFP and submitted timely and responsive proposals to FPL.

DISPUTED ISSUES OF MATERIAL FACT

14. With regard to the violations of the Commission's Bid Rule alleged in Reliant's Complaint, Calpine believes that there are no disputed or disputable issues of fact -- FPL's own pleadings and testimony clearly demonstrate that FPL has filed petitions for determination of need for two power plants that were not described in its August 13, 2001 RFP as required by the Bid Rule. (These violations are described in detail in the Joint Motion for Summary Final Order filed by Reliant and Calpine on April 11, 2002 in Docket No. 020262-EI and Docket No. 020263-EI.)

15. Depending on what further action or actions the Commission decides to take with respect to the needs of FPL's customers, and also depending on whether the Commission decides to undertake such actions within Reliant's Complaint Docket, disputed issues of material fact may include the following:

- a. Which of the available power supply options should be selected as the basis for good faith negotiations between FPL and the proposers thereof;
- b. Which of the available power supply options, including those offered by Calpine, Reliant, and other respondents to FPL's RFP, offer the best options for meeting the needs of FPL's customers, including those customers' needs for system reliability and integrity and adequate electricity at a reasonable cost;
- c. Which of the available power supply options are the most cost-effective alternatives for meeting the needs of FPL's customers;
- d. Which of the available power supply options best protect FPL's customers against the risks inherent in and associated with owning and operating electrical power plants;

- e. Did FPL properly and accurately account for the cost of required transmission system upgrades in determining the cost of the proposed Martin 8 and Manatee 3 units;
- f. In its evaluation of alternatives, did FPL properly, accurately, and appropriately account for transmission interconnection and integration costs? If not, what modifications to the comparisons should be made;
- g. Regardless of whether FPL violated the Bid Rule, what action or actions should the Commission take to ensure that FPL's customers are served by the power plants that best satisfy the criteria of Section 403.519, Florida Statutes, including all relevant matters within the Commission's jurisdiction, and that best serve the public interest of Florida generally;
- h. What are the relative risks of owned and purchased generation resources that ratepayers must bear; and
- i. Did FPL's evaluation of its proposed Martin 8 unit and Manatee 3 unit and of the proposals submitted by Calpine and the other respondents to FPL's RFP accurately identify and account for the various financial and economic risks that would, and that would not, be imposed on FPL's customers with respect to each alternative?

Calpine reserves its right to raise additional issues as this proceeding goes forward.

ULTIMATE FACTS ALLEGED

16. Calpine alleges the following ultimate facts that entitle Calpine to relief as prayed herein:

- a. Calpine was a valid participant in FPL's RFP process;
- b. Calpine submitted a responsive proposal to FPL in conformance with the schedule and procedural requirements of FPL's RFP;
- c. FPL violated the Commission's Bid Rule by filing a petition for determination of need for its proposed Manatee 3 unit without having identified the Manatee 3

type or nature which the proceeding is designed to protect. Agrico, 406 So.2d at 482. The first prong deals with the degree of injury and the second deals with the nature of the injury. The injury must be in a manner beyond the injury the general public might sustain. St. Joe Paper v. DCA, 657 So.2d 27 (Fla. 1st DCA 1995). Here, Calpine has clearly alleged that it will suffer a substantial injury if FPL is permitted to violate the Bid Rule with impunity. This complaint proceeding is premised primarily on FPL's violation of the Bid Rule and the relief required to remedy that violation. FPL's multiple and material violations of the Bid Rule have injured each and every respondent to the RFP, and this proceeding, arising from Reliant's Complaint alleging those violations, is exactly the type of proceeding in which remedies must be available.

18. Accordingly, Calpine prays that the Commission will enter its order **GRANTING** Calpine's Petition to Intervene.

19. Calpine is in fundamental agreement with the substantive relief requested by Reliant in its Complaint. However, on information and belief, Calpine states that it believes that Reliant filed its Complaint before it fully understood that FPL had changed the plant that it now proposes to build at its Martin site from the two plants that FPL identified as being proposed for the Martin site in its RFP. Accordingly, Calpine believes that the relief suggested by Reliant should apply equally to both the proposed Manatee 3 unit and the proposed Martin 8 unit.

CONCLUSION

WHEREFORE, for the reasons set forth above, Calpine Energy Services, L.P., respectfully asks the Commission:

1. to issue its order GRANTING Calpine's Petition to Intervene in this proceeding;

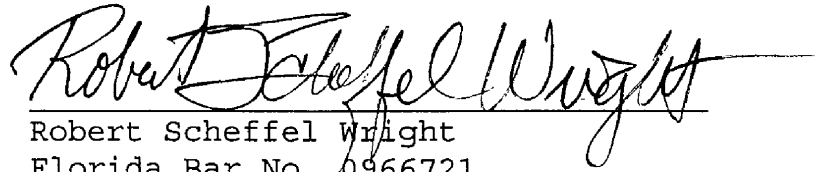
2. a. to commence appropriate proceedings in which the Commission will supervise a new RFP process, open to all willing participants, wherein all such participants will have the opportunity to submit new bids or proposals directed at the Martin 8 unit and the Manatee 3 unit that FPL has now identified as the units that it would otherwise build absent better options offered by Calpine or other wholesale power suppliers,

or

b. to commence, on its own motion pursuant to its specific authority under Section 403.519, Florida Statutes, a proceeding to determine which power plant or plants, from all available alternatives, including FPL's proposed self-build options and proposals from all interested IPPs, will best meet the needs of FPL's customers for additional capacity and energy that FPL has proposed to meet from its Martin 8 project (and its Manatee 3 project). Any such proceeding should include the opportunity for all participants to submit new bids or proposals directed at the Martin 8 unit and the Manatee 3 unit that FPL has now identified as the units that it would otherwise build absent better options offered by Calpine or other wholesale power suppliers; and

3. to order such other relief as the Commission deems appropriate.

Respectfully submitted this 3rd day of May, 2002.

A handwritten signature in cursive script, reading "Robert Scheffel Wright". The signature is written in black ink and is positioned above a horizontal line.

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CERTIFICATE OF SERVICE

Docket No. 020175

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery (*), or U.S. Priority Mail, on this 3rd day of May 2002, to the following:

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