

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Florida Power & Light Company's ) Docket No. 040206-EU  
Petition for Determination of Need for Turkey )  
Point Unit 5 Electrical Power Plant Power ) Filed May 11, 2004.  
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**PRE-HEARING STATEMENT OF CALPINE ENERGY SERVICES, INC.**

Pursuant to Order No. PSC-04-0325-PCO-EI, Calpine Energy Services, Inc.

("Calpine") files its Prehearing Statement.

**A. APPEARANCES:**

Jon C. Moyle, Jr.  
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William H. Hollimon  
Florida Bar No. 104868  
Moyle, Flanigan, Katz, Raymond and Sheehan, P.A.  
The Perkins House  
118 North Gadsden Street  
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**On behalf of Calpine Energy Services, Inc., Intervenor**

**B. WITNESSES:**

All witnesses listed by FPL (testimony filed and issues in dispute).

The following witnesses, who Calpine reserves the right to call at hearing and are all employed by FPL, are considered adverse:

Steve Scroggs ( FPL's process of conducting RFP, selection of Turkey Point Unit 5, etc.).

Raleigh Nobles, Joe Stepanovich, Ed Tammy (FPL's efforts to meet summer 2007 need by extending, negotiating or otherwise securing energy and capacity through purchase

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power contracts; meetings attended at which FPL's RFP and Turkey Point Unit 5 project discussed).

Contact persons for the 6-10 purchase power projects FPL considered to meet its 2007 summer need. This issue was recently expanded upon in discovery, and discovery is continuing. Names and contact information are in FPL's possession and will be sought by Calpine through informal or formal discovery.

Armando Oliveria (factors underlying FPL's decision to self-build; how FPL's Turkey Point Unit 5 RFP was conducted, overseen, and related issues).

These are the witnesses identified at this time who may be called. To the extent that other witnesses become known or available as discovery continues, the right to call additional witnesses is reserved.

**C. EXHIBITS:**

Documents produced during discovery  
Documents listed by other parties  
Documents introduced in depositions  
Documents to be used during cross-examination

**D. STATEMENT OF BASIC POSITION:**

The FPL self-build option, Turkey Point Unit 5, does not present the most cost effective alternative for the following reasons: The RFP was not conducted in a fair manner and thus violated the Commission's Bid Rule, 25-22.082, Florida Administrative Code; FPL's self-build cost of \$580 million dollars is not premised on firm numbers but estimates in some situations; in situations in which FPL relies on contracts for its cost figures, it refuses to make available to Calpine or its counsel those contracts, effectively defeating the ability for Calpine to conduct effective discovery related to the \$580 cost that FPL argues makes Turkey Point Unit 5

the most cost effective alternative; this failure also undermines the Commission's ability to conclude that the Turkey Point Unit 5 is the most cost effective alternative available; Turkey Point Unit 5 is not needed in the summer of 2007, as more cost effective purchase power options, or combinations thereof, including the 6 to 10 purchase power options that FPL is said to have considered from existing resources prior to issuing its RFP, are available; Turkey Point Unit 5 is not needed in summer of 2007, as a 20% reserve margin is not necessarily the reserve margin planning figure that should be used; FPL cannot meet its burden of proving its self-build options are the most cost effective alternatives when it has failed to enter into contracts for the major cost components of its self-build proposals or will not produce those contracts; FPL's self-build proposal does not meet reliability standards in that approximately 15% of FPL's generating capacity will be located at a single site, the Turkey Point Energy Complex.

**E. STATEMENT OF ISSUES AND POSITIONS:**

**ISSUE 1:** Would the output of Florida Power & Light Company's Turkey Point Unit 5 be fully committed for use by Florida retail electric customers?

**Calpine:** No position at this time.

**NEED FOR ADDITIONAL GENERATING CAPACITY**

**ISSUE 2:** Does Florida Power & Light Company have a need for Turkey Point Unit 5, taking into account the need for electric system reliability and integrity?

**Calpine:** While FPL may have a need for the energy that could be provided by Turkey Point Unit 5, the process it used to fill that need, along with its failure to secure

firm contracts for the major cost components of the Turkey Point Unit 5 results in the Turkey Point Unit 5 not being the most cost effective alternative.

**ISSUE 3:** Does Florida Power & Light Company have a need for Turkey Point Unit 5, taking into account the need for electric system reliability and integrity?

**Calpine:** While FPL may have a need for the energy that could be provided by Turkey Point Unit 5 in 2007, the process it used to fill that need, along with its failure to secure firm contracts for the major cost components of the Turkey Point unit results in the Turkey Point Unit 5 not being the most cost effective alternative. Thus, ratepayers are not benefited and the petition should be denied.

**ISSUE 4:** Does Florida Power & Light Company have a need for Turkey Point Unit 5, taking into account the need for adequate electricity at a reasonable cost?

**Calpine:** While FPL may have a need for the energy that could be provided by Turkey Point Unit 5, the process it used to fill that need, along with its failure to secure firm contracts for the major cost components of the Turkey Point Unit 5 results in the Turkey Point Unit 5 not being the most cost effective alternative.

### **CONSERVATION**

**ISSUE 5:** Are there any conservation measures taken by or reasonably available to Florida Power & Light Company that might mitigate the need for Turkey Point Unit 5?

**Calpine:** No position at this time.

## **FUEL AVAILABILITY**

**ISSUE 6:** Has Florida Power & Light Company adequately ensured the availability of fuel commodity and transportation to serve Turkey Point Unit 5?

**Calpine:** No. It has failed to secure firm contracts for fuel supply or transportation.

## **COST-EFFECTIVENESS**

**ISSUE 7:** Did Florida Power & Light Company properly and accurately value the use of existing infrastructure at the Turkey Point plant site in determining the construction cost of Turkey Point Unit 5?

**Calpine:** No position at this time.

**ISSUE 8:** Did Florida Power & Light Company's Request for Proposals, issued on August 25, 2003, satisfy the requirements of Rule 25-22.082, Florida Administrative Code?

**Calpine:** No. Having failed to comply with Rule 25-22.082 in its initial RFP (failure to properly identify its next planned generating unit, failure to short list any bidders), FPL issued a supplemental RFP. The bid rule was not complied with during the supplemental RFP in that FPL listed a methodology to be used to evaluate alternative generating proposals which was not followed, as additional criteria, not listed in the supplemental RFP, were used in evaluating bids. This is a clear violation of section 4(d) of the rule.

**ISSUE 9:** Was Florida Power & Light Company's decision not to consider proposals to construct generating capacity on property owned by Florida Power & Light Company appropriate?

**Calpine:** FPL should impute as a cost of its self-build option the market value of the property that could be sold for ratepayers' benefit if FPL were to purchase power from a respondent to an RFP.

**ISSUE 10:** Was the process used by Florida Power & Light Company to evaluate Turkey Point Unit 5 and projects submitted in response to its Request for Proposals, issued on August 25, 2003, fair, reasonable, and appropriate?

(a) Did FPL administer the evaluation process so as to provide to non-FPL participants a fair opportunity to win the RFP?

**Calpine:** No. The process used to evaluate Turkey Point Unit 5 and the responses received by FPL in response to its initial RFP and supplemental RFP was not fair, reasonable and accurate. An 'apples to apples' comparison was not performed and not all the same criteria FPL used to evaluate outside proposals were used in evaluating FPL's self-build options. FPL designed an evaluation process to assure that it would be "the winner" of the RFP.

(b) Did FPL apply to its self-build options the standards and criteria that it applied to respondents?

**Calpine:** No. FPL did not impose on itself the requirement that payments received by bidders be limited to their bids.

(c) Were the evaluation criteria used by FPL in evaluating the bids disclosed to the bidders prior to the submission of bids?

**Calpine:** While some evaluation criteria was disclosed to bidders prior to submitting bids, a number of criteria were not disclosed, something that is fundamentally unfair.

**ISSUE 11:** In its evaluation of the projects filed in response to its Request for Proposals, issued on August 25, 2003, did Florida Power & Light Company employ fair and reasonable assumptions and methodologies?

(a) Were the assumptions regarding operating parameters that FPL assigned to its own proposed units reasonable and appropriate?

**Calpine:** No.

(b) When modeling and quantifying the costs of all options, did FPL appropriately and consistently quantify and take into account the impact of variable O&M costs associated with bidders' proposals and variable O&M costs associated with its own self-build options, so as to result in a fair comparison of purchased and self-built alternatives?

**Calpine:** No position at this time.

(c) When modeling and quantifying the costs of all options, did FPL fairly and appropriately compare the costs of projects having different durations?

**Calpine:** No position at this time.

(d) When modeling and quantifying the costs of all options, did FPL employ assumptions regarding the gas transportation costs for the proposals that were fair, reasonable, and appropriate?

**Calpine:** No position at this time.

(e) When modeling and quantifying the costs of all options, including its own, did FPL appropriately and adequately take cycling and start-up costs into account?

**Calpine:** No. The EGEAS model is incapable of modeling cycling and start-up costs. FPL had to manually provide rough estimates of such costs. The effect was to introduce imprecision into the modeling.

(f) When modeling and quantifying the costs of all options, did FPL appropriately and adequately take into account the impact of seasonal variations on heat rate and unit output?

**Calpine:** No position at this time.



(g) Did FPL act in a fair, reasonable and appropriate manner in not considering further a proposal from TECO on the basis that TECO's reserve margin requirements might be impaired?

**Calpine:** No. FPL decided not to further consider a competing proposal from TECO based on a concern that TECO's reserve margin might be negatively impacted. FPL did not discuss this issue with TECO, but unilaterally made the decision not to move forward with negotiations with TECO without raising the concern with TECO. It is TECO's responsibility to maintain its reserve margins, not FPL's responsibility to maintain TECO's reserve margins.

**ISSUE 12:** Was Florida Power & Light Company's decision to apply an equity penalty cost to projects filed in response to its Request for Proposals appropriate? If so, was the amount properly calculated?

**Calpine:** No. FPL's equity penalty is just that, a penalty against outside proposals. The equity penalty is particularly burdensome to proposals that offer large amounts of capacity over long periods of time. Constructing and operating a power plant imposes many risks that can be shifted to an Independent Power Producer and away from the utility's ratepayers through a power purchase contract. Even if one assumes, for purposes of argument, that a power purchase contract increases the utility's financial risk, to single out that factor while failing to consider the universe of risks associated with construction and purchasing unfairly skews the comparison in favor of the self-build options.

**ISSUE 13:** Did FPL negotiate with the short-listed bidders in good faith?

**Calpine:** No. In its initial RFP FPL never conducted negotiations, so it could not have negotiated in good faith. In its supplemental RFP, FPL provided short-listed bidders with an extensive purchased power agreement with little time to review and comment on the proposed agreement.

**ISSUE 14:** If the Commission grants FPL's petition for a determination of need authorizing it to construct its proposed Turkey Point Unit 5, should FPL be required to limit any requested rate base increase to the amount bid?

**Calpine:** Yes, FPL should be required to limit any requested rate base increase to amount bid. Imposing this condition is the only manner in which the statutory requirement that the most cost effective alternative be selected can be attained. If FPL does not commit to limit its recovery to the amounts specified in its proposals, the Commission should take that factor into account when reviewing the aggressive nature of the assumptions underlying its proposals.

**ISSUE 15:** If the answer to the above issue is no, is each of FPL's proposals based on sound and reasonable estimates, such that the Commission may conclude that the Commission and FPL's ratepayers may realistically expect FPL to implement the non-binding proposal at the stated cost?

**Calpine:** No. FPL "won" the FPL RFP on the basis of aggressive and unrealistic assumptions that place doubt on its ability to implement its proposals without significant overruns which, in the absence of a commitment on its part, will be

presented to ratepayers for payment. The Commission should not rely on estimates when competitive firm bids with firm pricing was offered by outside proposals, but rejected.

**ISSUE 16:** If the Commission grants FPL's proposal to construct Turkey Point Unit 5, are consumers estopped from challenging the prudence of the investment in any subsequent rate case?

**Calpine:** No position at this time.

**ISSUE 17:** Has FPL met its burden of proof to demonstrate that it has fairly chosen the most cost-effective alternatives available?

**Calpine:** No. FPL has not met its burden of proof given self-build cost estimates are not based on firm numbers but aggressive estimates. FPL cannot meet its burden of proving its self-build options are the most cost effective alternatives when it has failed to enter into contracts for the major cost components of its self-build proposals, rejected bids that the RFP required to be firm, and refuses to be bound by the terms of its self-build cost estimates. Further, FPL cannot meet its burden of proof when it conducted its RFP in an unfair manner that was inequitably skewed to favor FPL's self-build options.

**ISSUE 18:** What would be the impact on ratepayers if the Commission were to deny FPL's petition?

**Calpine:** No position at this time.

**ISSUE 19:** Is Florida Power & Light Company's Turkey Point Unit 5 the most cost-effective alternative available?

**Calpine:** No.

**ISSUE 20:** Based on the resolution of the foregoing issues, should the Commission grant Florida Power & Light Company's petition for determination of need for Turkey Point Unit 5?

**Calpine:** No.

**STATEMENTS OF FACT, LAW AND POLICY AT ISSUE**

**ISSUE 21:** Has Florida Power & Light Company met the requirements of Rule 25-22.082, Florida Administrative Code, "Selection of Generating Capacity"?

**Calpine:** No.

**ISSUE 22:** Is there a need for the proposed Turkey Point Unit 5, taking into account the need for electric system reliability and integrity, as this criterion is used in Section 403.519, Florida Statutes?

**Calpine:** No.

**ISSUE 23:** Is there a need for the proposed Turkey Point Unit 5, taking into account the need for adequate electricity at a reasonable cost, as this criterion is used in Section 403.519, Florida Statutes?

**Calpine:** No.

**ISSUE 24:** Are there any conservation measures taken by or reasonably available to Florida Power & Light Company which might mitigate the need for the proposed Turkey Point Unit 5?

**Calpine:** No position at this time.

**ISSUE 25:** Is the proposed Turkey Point Unit 5 the most cost-effective alternative available, as this criterion is used in Section 403.519, Florida Statutes?

**Calpine:** No.

**ISSUE 26:** Based on the resolution of the foregoing issues, should the Commission grant Florida Power & Light Company's petition to determine the need for the proposed Turkey Point Unit 5?

**Calpine:** No.

**ISSUE 27:** Should Florida Power & Light Company be required to annually report budgeted and actual expenses associated with the proposed Turkey Point Unit 5? If so, what categories of expenses should be identified?

**Calpine:** Yes.

**ISSUE 28:** Should this docket be closed?

**Calpine:** No.

**ISSUE 29:** Did FPL's RFP specify inappropriate criteria to be applied in the comparison of generating alternatives?

**Calpine:** Yes.

**ISSUE 30:** Did FPL's RFP contain terms that are unfair, onerous, commercially infeasible or unduly burdensome in violation of Rule 25-22.082(5) of the Bid Rule?

**Calpine:** Yes.

**ISSUE 31:** Did FPL properly evaluate security risks of locating an additional 1,144 MW (summer rating) and 1,181 MW (winter rating) of electric generating capacity power supply at Turkey Point?

**Calpine:** No.

**ISSUE 32:** Did FPL apply the criteria in its RFP fairly and correctly to its own self-build proposal as compared to proposals submitted, including the proposal submitted by Calpine?

**Calpine:** No.

**ISSUE 33:** Did FPL prejudice the comparison of alternatives, including Calpine's proposal, in favor of FPL's self-build option by imposing risks and costs on the respondents that were not similarly imposed on FPL's self-build option?

**Calpine:** Yes.

**ISSUE 34:** Did FPL fail to include all the costs of its Turkey Point Unit 5 in its RFP?

**Calpine:** Yes.

**ISSUE 35:** Did FPL prejudice the comparison of alternatives, including Calpine's proposal, in favor of FPL's self-build option by failing to include all the costs attributable to its self-build option?

**Calpine:** Yes.

**ISSUE 36:** Did FPL's proposal to construct, own, and operate 1,144 MW (summer rating) and 1,181 MW (winter rating) of additional capacity serve to cost-effectively manage the risks borne by ratepayers, relative to alternative resources that include more purchased power, including power purchased from Calpine?

**Calpine:** No.

**ISSUE 37:** Did FPL fail to comply with the terms of its RFP, and, if so, what action should the Commission take?

**Calpine:** No position at this time; discovery is continuing.

**ISSUE 38:** Will the costs FPL represents in its Petition and associated filings, except for additional costs prudently incurred due to extraordinary circumstance, be used for all subsequent regulatory purposes?

**Calpine:** Yes.

**ISSUE 39:** Is FPL's method of grouping respondent proposals inappropriate?

**Calpine:** Yes.

**ISSUE 40:** Is FPL's use of an equity penalty or adjustment appropriate?

**Calpine:** No.

**ISSUE 41:** Has FPL established that the proposed Turkey Point Unit 5 is the most cost-effective alternative for meeting FPL's capacity needs?

**Calpine:** No.

**ISSUE 42:** Has FPL established its entitlement to an affirmative determination of the need for Turkey Point Unit 5?

**Calpine:** No.

**ISSUE 43:** What actions should the Commission take, if FPL's Petition for Need is ultimately granted, to ensure that the costs set forth by FPL in its petition are realized?

**Calpine:** Clearly set forth the amount that FPL will be allowed to place into its rate base for regulatory purposes.

**ISSUE 44:** Can FPL's need in the summer of 2007 be more cost-effectively met by means of short or long term purchased power contracts?

**Calpine:** Yes. Discovery is continuing.



**ISSUE 45:** What reserve margin should be used by FPL for its planning purposes?

**Calpine:** Evidence suggests that FPL effectively ran its system with a reserve margin lower than 20%.

**F. STIPULATED ISSUES:**

None at this time.

**G. PENDING MOTIONS:**

Motions have been filed by vendors, FPL, and other bidders seeking to protect certain information. Calpine anticipates opposing those motions and will be filing responses as provided by PSC rule. Calpine anticipates filing a motion to compel to seek FPL to produce information that it has refused to produce.

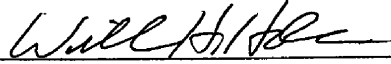
**H. RESERVATION OF RIGHT TO OBJECT TO EXPERT WITNESSES**

Calpine has served expert witness interrogatories on FPL and has not yet received responses to those interrogatories. FPL has failed to specifically and expressly identify its expert witnesses in pre-filed testimony. Thus, Calpine is unsure which witnesses, if any, FPL plans to tender as experts at trial. Thus, Calpine reserves its right to conduct *voir dire* and object to witnesses FPL may attempt to qualify as experts.

**I. OTHER MATTERS:**

Calpine has listed witnesses who are not under its control and, as employees of FPL, Calpine considers adverse. Thus, pre-filed testimony for these witnesses was not able to be

filed. Calpine may call these witnesses at hearing and present direct examination as is authorized by section 120.57(1)(b).



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**CERTIFICATE OF SERVICE**

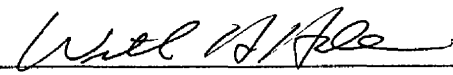
I HEREBY CERTIFY that a true and correct copy was served by hand-delivery this 11<sup>th</sup> day of May, 2004, on Jennifer Brubaker, Esq., Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-9850; Charles A. Guyton, Esq., Steel Hector & Davis, LLP, 215 South Monroe Street, Suite 601, Tallahassee, FL 32301, and Mr. Bill Walker and Ms. Lynne Adams, Florida Power & Light Company, 215 South Monroe Street, Suite 810, Tallahassee, Florida 32301-1859; and by U.S. Mail to the following persons:

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