

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to Determine Need for)
Turkey Point Unit 5 Power Plant)
by Florida Power & Light Company.)

Docket No. 040206-E1

Dated: May 3, 2004

**CALPINE ENERGY SERVICES, L.P.'S RESPONSE TO
TOSHIBA INTERNATIONAL CORPORATION, SOUTHERN POWER COMPANY,
AND PROGRESS VENTURE, INC.'S MOTIONS FOR PROTECTIVE ORDER**

Calpine Energy Services, L.P. ("Calpine"), pursuant to Rule 28-106.206, Florida Administrative Code ("FAC"), submits the following response to the Motions for Protective Order submitted by Toshiba International Corporation ("Toshiba"), Southern Power Company ("SPC"), and Progress Venture, Inc.'s ("PVI") (collectively, the "Third Parties") and states:

I. Calpine Seeks Legitimate Discovery

FPL has issued a Request for Proposals ("RFP") for electrical generating capacity under the Commission's Bid Rule, Rule 25-22.082, Florida Administrative Code. This rule specifically provides that the intent of this rule is "to ensure that a public utility's selection of a proposed generation addition is the most cost-effective alternative available." Rule 25-22.082(1), F.A.C.

Calpine, as an entity submitting a proposal in response to FPL's RFP, seeks to ensure that the requirements of the Bid Rule are complied with and that the "most cost-effective alternative" is selected as a result of this process. Accordingly, Calpine has sought discovery designed to determine if, in fact, FPL's self-build alternative is the most cost-effective alternative available. The Third Parties seek to prevent, or unnecessarily condition, Calpine's access to highly relevant information that Calpine, as a party to this proceeding, is entitled to through discovery.

II. Scope of Discovery

Florida has adopted a set of discovery rules designed to facilitate “broad and liberal” discovery. Allstate Insurance Co. v. Boecher, 773 So. 2d 993, 995 (Fla. 1999). Further, as recognized by Florida’s Supreme Court, “courts must remain vigilant in preserving our discovery rules’ basic framework, which envisions broad discovery in order to advance the state’s important interest in the fair and efficient resolution of disputes.” Alterra Healthcare Corporation, v. Estate of Shelley, 827 So. 2d 936, 948 (Fla. 2002).

III. The Third Parties Do Not Have Standing

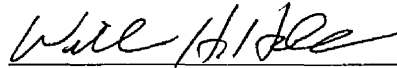
The Third Parties seek protective entry of protective orders to protect their interests, even though none of the Third Parties are parties to this proceeding. Each cites Rule 1.280, Florida Rules of Civil Procedure as a basis for the protective order sought. However, none of the Third Parties have standing to invoke this Rule which only applies to parties, or to the person from whom discovery is sought. Rule 1.280(c). These entities are neither parties to this litigation nor are they the “person (entity) from whom discovery is sought.”

Calpine, a party to this proceeding, seeks the discovery of information that is essential to its ability to participate as a party in this proceeding. The Third Parties have no standing to assert any right to limit Calpine’s ability to fully participate in this proceeding and their request for a protective order should be denied.

WHEREFORE, Calpine Energy Services, L.P., respectfully requests that the Commission deny the Motions for Protective Order filed by the Third Parties. Alternatively, Calpine requests that the Commission direct the Parties to this litigation to enter into an appropriate confidentiality agreement that will appropriately ensure both access to relevant information and protection of

confidential information.

Respectfully submitted this 13th day of May, 2004.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy was served by hand-delivery this 13th 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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