

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Petition for Determination of )  
Cost Effective Generation Alternative ) DOCKET NO. 140111-EI  
To Meet Need Prior to 2018 by )  
Duke Energy Florida, Inc. ) FILED: MAY 30, 2014  
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**PETITION TO INTERVENE OF CALPINE CONSTRUCTION  
FINANCE COMPANY, L.P.**

Calpine Construction Finance Company, L.P. ("Calpine" or "CCFC"), pursuant to Chapters 120 and 366, Florida Statutes,<sup>1</sup> and Rules 25-22.039, 28-106.201, and 28-106.205, Florida Administrative Code ("F.A.C."), hereby respectfully petitions to intervene in the above-styled docket.

In summary, Calpine is the owner of the Osprey Energy Center, a natural gas fired combined cycle electrical power plant located in Auburndale, Florida ("Osprey" or the "Facility"), and Calpine was a qualified bidder in Progress Energy Florida's September 2012 Request for Proposals ("RFP") process in which Progress, the predecessor public utility that is now Duke Energy Florida, Inc. ("Duke"), sought up to 500 MW of base, intermediate, and peaking capacity.<sup>2</sup> In fact, Calpine's proposals to supply power from the Osprey Facility were selected

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<sup>1</sup>All references herein to the Florida Statutes are to the 2013 edition thereof.

<sup>2</sup> Because the RFP process at issue here was begun by Progress but concluded, in a manner of speaking, by Duke after the companies merged, in this petition to intervene, the utility company is referred to as "Progress/Duke" where applicable. Otherwise, references are to "Duke."

as the effective "winner" of the 2012 RFP process, and Progress and Calpine pursued negotiations for a power purchase agreement ("PPA") by which Duke would have purchased power from Osprey to meet its identified need. Consistent with applicable Commission precedent, with the policy purposes underlying Commission Rule 25-22.082(16), F.A.C., with the Commission's express jurisdiction to prevent the uneconomic duplication of generation facilities within the Florida grid, and with the public interest in having the electrical needs of Duke's customers served in the most cost-effective way possible, Calpine is entitled to intervene in this proceeding because the Florida Public Service Commission's (the "Commission") decision herein will determine Calpine's substantial interests in pursuing its business of supplying cost-effective power to Duke Energy Florida for the benefit of Duke and its customers.

In further support of its Petition to Intervene, Calpine states as follows.

**PROCEDURAL BACKGROUND**

1. The name, address, and telephone number of the Petitioner are as follows:

Calpine Construction Finance Company, L.P.  
717 Texas Avenue, Suite 1000  
Houston, Texas 77002  
Telephone (713) 830-8872.

2. All pleadings, orders and correspondence should be directed to Petitioner's representatives as follows:

Robert Scheffel Wright  
John T. LaVia, III  
Gardner, Bist, Wiener, Wadsworth, Bowden, Bush,  
Dee, LaVia & Wright, P.A.  
1300 Thomaswood Drive  
Tallahassee, Florida 32308  
Telephone (850) 385-0070  
Facsimile (850) 385-5416

with a courtesy copy to:

Shonnie L. Daniel  
Vice President and Deputy General Counsel  
Calpine Corporation  
717 Texas Avenue  
Suite 1000  
Houston, Texas 77002  
(713) 830-8872 Office  
(713) 830-8751 Fax.

3. The agency affected by this Petition to Intervene is:

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

4. This docket was initiated by Duke's filing of its "Petition for Determination of Cost Effective Generation Alternative to Meet Need Prior to 2018 for Duke Energy Florida, Inc." (the "Petition") on May 27, 2014. The final hearing in this case is scheduled for August 26-27 and September 3, 2014, and therefore, pursuant to Rule 25-22.039, F.A.C., this petition to intervene is timely filed.

#### **FACTUAL BACKGROUND**

5. Calpine Construction Finance Company, L.P., is a Delaware limited partnership authorized to do business in the State of Florida and duly registered with the Florida Department

of State, Division of Corporations, as a foreign limited partnership. Calpine is the owner<sup>3</sup> of the Osprey Facility, a natural gas fired combined cycle generating plant located in Auburndale, Florida. Calpine was a joint petitioner, along with Seminole Electric Cooperative, for the Commission's determination of need for the Osprey Facility, which was granted by Commission Order No. PSC-01-0421-FOF-EC, issued on February 21, 2001. Calpine has filed ten year site plans with the Commission. Order No. PSC-01-0421-FOF-EC at 1, 6. Calpine, in the name of its parent, Calpine Corporation, is a member of the Florida Reliability Coordinating Council ("FRCC").

6. The Osprey Facility is capable of producing 515 MW under summer conditions and 587 MW under winter conditions without duct firing; with duct firing, Osprey can produce up to 675 MW of capacity in winter conditions. The Osprey Facility is interconnected to Tampa Electric Company's transmission system and to the interstate natural gas pipeline owned and operated by Gulfstream Natural Gas System, LLC ("Gulfstream"). The Osprey Facility is operated by Calpine Operating Services Company Inc. ("COSCI") under an operating and maintenance agreement between CCFC and COSCI. The Facility consists of two Siemens 501FD combustion turbine ("CT") generators, two Nooter Erikson heat

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<sup>3</sup>Within the next six months, CCFC plans to transfer ownership of the Osprey Facility to CCFC's wholly owned subsidiary, Osprey Energy Center, LLC. Of course, Osprey Energy Center, LLC, would honor any contracts entered into between Duke and CCFC.

recovery steam generators, and one Siemens steam turbine generator. The Osprey Facility achieved commercial operation in 2004 and has a proven track record of reliable operations. Since 2006, Osprey has supplied more than 14 million MWh of wholesale power to a number of Florida utilities, including Duke, Tampa Electric Company, Seminole Electric Cooperative, and other utilities, with an equivalent forced outage rate of 2.5 percent.

7. Calpine participated in Progress/Duke's RFP dated September 14, 2012, in which Progress/Duke sought proposals to meet its needs from 2016-2019. Calpine submitted its proposal on October 15, 2012 and Calpine was notified by Progress/Duke that it had been selected to a "short list" of bidders on November 14, 2012. Calpine was subsequently selected as a winning bidder for negotiations toward a PPA on January 21, 2013. Among other aspects of its proposals, Calpine offered to provide the full output of the Osprey Facility to Duke at a guaranteed heat rate of 7,050 Btu per kWh at full load. Between early February 2013 and the summer of 2013, Calpine and Duke continued their negotiations and exchanged drafts of PPAs based on a power purchase from Osprey. In August 2013, Duke notified Calpine that it wanted Calpine to refresh its pricing. On September 6, 2013, Calpine sent its refreshed pricing to Duke; the refreshed pricing reflected a capacity charge that was \$1.00 per kW lower than its previous bid. In November 2013, Calpine was advised that its

"refreshed" bid was ranked at the top of all proposals and proposers who had responded to the 2012 RFP. Subsequently, on April 29, 2014, Calpine was advised that Duke intended to use its self-build options - the Suwannee Peak and the Hines Chillers - to meet its need.

8. Calpine presently controls 249 MW of firm point-to-point transmission from Osprey to Duke, with rollover rights. Calpine has submitted a transmission request to Tampa Electric that would enable Calpine to deliver the full 515 MW of capacity (508 MW after accounting for Tampa Electric's loss factor) into Duke's system on a firm basis.

9. After Progress/Duke selected Calpine for further PPA negotiations, the parties exchanged several drafts of a PPA, but that effort never came to final fruition. Calpine and Duke also discussed the possibility of Duke purchasing the Osprey Facility, but those discussions likewise bore no fruit. Calpine continued and continues to desire to either sell the Osprey Facility's output to Duke pursuant to a PPA or to sell the Osprey Facility itself as an asset sale. Duke, however, now proposes to meet its needs with a combination of its proposed Suwannee Simple Cycle Project, 320 MW of new combustion turbine ("CT") peaking capacity to be constructed at its Suwannee Generating Station and its proposed Hines Chillers Power Uprate Project, 220 MW of summer capacity to be achieved by installing inlet chillers on the CTs

at its Hines Energy Center. Together, these projects are referred to herein as the "Suwannee/Hines Projects."

10. Duke estimates that the Suwannee Project will cost approximately \$197 million, and that it would come into service in June 2016. According to Duke's 2014 Ten Year Site Plan (at page 3-9), replicated as page 56 of Exhibit No. BMHB-2 in Duke's filing, Duke estimates that the annual net operating heat rate of the Suwannee CTs would be 10,197 Btu per kWh. Duke estimates that the Hines Chillers Uprate Project will cost approximately \$160 million, and that it will come into service by June 2017.

11. In the Petition, Duke states that it considered various risks in its analyses of alternatives, including construction cost risk, gas transportation contract risks, plant condition risk, and transmission cost risks. Calpine asserts that these risk factors all cut favorably for the Osprey Energy Center: the plant is built, and pricing - whether under a PPA or via an asset purchase - for Osprey will be 100 percent certain, so the construction cost risk is zero. Calpine will transfer its gas transportation contract rights to Duke, so the gas transportation contract risks will also be zero. Transmission costs are known, or will shortly be known; under its PPA proposals, Calpine offered Osprey's output delivered into Duke's system, and Calpine is willing to negotiate cost certainty into an asset purchase arrangement. Finally, as demonstrated by its excellent record of

reliable operations, the plant condition risk associated with the Osprey Energy Center is minimal.

**STATEMENT OF AFFECTED INTERESTS**

12. In this docket, the Commission will decide whether to approve Duke's petition for determination that the Suwannee/Hines Projects represent the most cost-effective alternative to meet the needs of Duke and its customers. If the Commission grants Duke's Petition, that decision will directly determine Calpine's substantial interests in that it will foreclose Calpine from meeting Duke's identified need with power supplied from the existing Osprey Energy Center. In short, such a decision would directly and adversely affect Calpine's interests in operating the Osprey Energy Center by foreclosing a business opportunity and by duplicating the capacity of the existing Osprey Energy Center, an established, productive, useful, and reliable asset within the Florida bulk power supply grid.

13. Calpine's substantial interests are of sufficient immediacy to entitle it to participate in the proceeding and are the type of interests that the proceeding is designed to protect. To participate as a party in this proceeding, an intervenor must demonstrate that its substantial interests will be affected by the proceeding. Specifically, the intervenor must demonstrate that it will suffer a sufficiently immediate injury in fact that is of the type the proceeding is designed to protect. Ameristeel



Corp. v. Clark, 691 So. 2d 473 (Fla. 1997); Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981), rev. denied, 415 So. 2d 1359 (Fla. 1982). Here, the outcome of this proceeding will immediately determine Calpine's substantial interests in providing electric capacity and energy to Duke, in that those interests will be determined, with finality, by the Commission's decision on the requested petition for determination that Duke's proposed self-build options to meet its pre-2018 power needs are the most cost-effective alternative for meeting those needs. Calpine contends that it can and will meet the needs of Duke's customers more cost-effectively than Duke's self-build options; if the Commission were to approve Duke's proposals, Calpine would be foreclosed from supplying power to meet the needs of Duke's customers. Moreover, as an established power supplier within the Florida grid and as a member of the FRCC, Calpine's substantial interests (as well as the public interest) in avoiding the "uneconomic duplication of generation . . . facilities" that is strongly discouraged, if not proscribed, by Section 366.04(5), Florida Statutes, would also be adversely affected.

14. Although this proceeding is not technically a determination of need case pursuant to Section 403.519, Florida Statutes, because the mandatory jurisdiction of Power Plant Siting Act, and thus of the need determination statute, is not

triggered by the CTs and chillers proposed by Duke, this case is, for all intents and purposes, a need determination proceeding. That this docket is substantively identical to a need determination case is obvious from Duke's petition. First, the structure and major sections of its petition in this docket, Docket No. 140111-EI, are identical to those in its companion need determination petition for the proposed Citrus County Combined Cycle power plant: "Primarily Affected Utility," "Proposed Electrical Power Plant"/"Proposed Combustion Turbine and Power Upgrade Projects," DEF's Need for the respective projects, "Major Generating Alternatives Examined and Evaluated," "Viable Non-Generating Alternatives," "Adverse Consequences of Delay," and "Proposed Issues for Commission Consideration." That this is substantively a need determination proceeding is also demonstrated by the issues identified by Duke for the Commission's consideration: the issues in its petition in Docket No. 140111-EI are, but for the different names of the projects involved, identical to the issues in the formal need determination petition for the Citrus County CC power plant.

15. Because this case is, substantively, a need determination case, the same public policy reasons for granting standing to competitors in RFPs conducted pursuant to the Commission's Bid Rule, Rule 25-22.082, F.A.C., exist here. Those purposes are to protect customers by ensuring that viable

competitors can formally challenge and test a utility's selection of a self-build option in the subsequent need determination proceeding. Calpine was and is a viable competitor to supply Duke's needs; indeed, Calpine was selected as the "winner" of the initial RFP conducted by Progress/Duke to meet the needs that Duke now proposes to meet with the Suwannee/Hines Projects. Calpine's interests here are no different than its interests in challenging Duke's proposed Citrus County CC need determination, where Calpine participated in the RFP process that preceded Duke's selection of its self-build option, nor any different than those of any other competitor in any other RFP process and subsequent need determination case.

16. The Commission should note well its precedent that it granted standing to competitors in at least one need determination case before it promulgated the Bid Rule. In 1992, the Commission was presented with a need petition for a power plant by Florida Power & Light Company ("FPL"). Two competitors, the ARK/CSW Development Partnership and Nassau Power Corporation, offered competing alternatives to FPL in the need case, but FPL challenged their standing to intervene. In re: Joint Petition to Determine Need for Electric Power Plant to be Located in Okeechobee County by Florida Power & Light Company and Cypress Energy Partners, Limited Partnership, Docket No. 920520-EQ, Order No. PSC-92-1355-FOF-EQ at 3-4 (November 23, 1992). The

Commission granted both ARK/CSW and Nassau Power standing over FPL's objections, stating as follows:

We have recognized that it is incumbent upon competing alternatives to come forward at a need determination to demonstrate that the applicant's project is not the most cost-effective alternative. (citation omitted) There is a limited need for additional capacity and energy in the state of Florida. If a need for the Cypress project was determined by this Commission, Nassau and Ark/CSW would not be able to construct their proposed projects to fill FPL's capacity and energy needs in 1998-1999. We believe that Nassau and Ark/CSW have established that their substantial interests are adversely affected by this proceeding.

As noted above, the Commission's order granting standing to ARK/CSW and Nassau Power was issued on November 23, 1992. The Bid Rule was not promulgated until January 10, 1994.

17. The substance and policy considerations are no different in this case than those in the 1992 case. Calpine is a viable competitor whose substantial interests will be determined by the Commission's decision here in exactly the same way that ARK/CSW's and Nassau Power's interests would have been determined in 1992.

18. Moreover, Calpine's substantial interests will be affected in an additional way. Because the Osprey Energy Center is an existing, reliable, and productive generating asset that has well served Florida electric utilities and their customers for ten years, Calpine has a substantial interest in having the Commission enforce its jurisdiction under Section 366.04(5),

Florida Statutes, to avoid "the further uneconomic duplication of generation . . . facilities" in Florida. Calpine has offered to provide Duke with 515 MW of capacity from the Osprey Facility, capacity that will be available for Duke's customers year-round; instead of accepting one of Calpine's offers, Duke proposes to build approximately 540 MW of summer capacity (about 375 MW winter capacity) to meet its needs. Such construction is clearly duplicative, and Calpine contends that its proposals to Duke are cost-effective as compared to the Suwannee/Hines Projects, which would mean that Duke's proposals are uneconomic, assuming Calpine's contentions to be true. As an owner and operator of an existing facility, and as a member of the FRCC, Calpine is entitled to standing to vindicate its interests in this proceeding.

#### **DISPUTED ISSUES OF MATERIAL FACT**

19. As reflected in its proposed statements of Issues 1 through 5 and 8 below, Calpine recognizes - as has Duke in its Petition - the appropriateness of the "standard" issues in power plant need determination proceedings, i.e., the issues that derive from the specific provisions of Section 403.519, Florida Statutes. Calpine also proposes additional issues for this proceeding, as set forth in proposed Issues 6 and 7 below. The Commission will readily note that Calpine's Issues 1 through 5 below are identical in substance to the five issues proposed by

Duke in Paragraph 41, subsections (a), (b), (c), (d), and (f) of its Petition.

- Issue 1: Are the proposed Suwannee Simple Cycle Project and Hines Chillers Power Uprate Project needed, taking into account the need for electric system reliability and integrity?
- Issue 2: Are the proposed Suwannee Simple Cycle Project and Hines Chillers Power Uprate Project needed, taking into account the need for adequate electricity at a reasonable cost?
- Issue 3: Are the proposed Suwannee Simple Cycle Project and Hines Chillers Power Uprate Project needed, taking into account the need for fuel diversity and supply reliability?
- Issue 4: Are there any conservation measures taken by or reasonably available to Duke Energy Florida that might mitigate the need for the proposed Suwannee Simple Cycle Project and Hines Chillers Power Uprate Project?
- Issue 5: Are the proposed Suwannee Simple Cycle Project in 2016 and Hines Chillers Power Uprate Project in 2017 the most cost-effective alternatives available to meet the needs of Duke Energy Florida and its customers?
- Issue 6: Did Duke Energy Florida accurately and appropriately evaluate all reasonable alternative scenarios for cost-effectively meeting the needs of its customers over the relevant planning horizon?
- Issue 7: Did Duke Energy Florida administer a transparent, robust, and constructive RFP evaluation process that was designed to evaluate a range of scenarios and sensitivities to procure the most cost-effective alternative generation supply addition for cost-effectively meeting the needs of its customers?
- Issue 8: Based on the resolution of the foregoing issues, should the Commission grant the requested determination that the proposed Suwannee Simple Cycle Project and Hines Chillers Power Uprate Project are the most cost-effective generation alternatives to meet Duke's needs prior to 2018?

Calpine reserves all rights to raise additional issues in accordance with the Commission's rules and the Order Establishing Procedure in this case.

**STATEMENT OF ULTIMATE FACTS ALLEGED**

20. As described above, Calpine has offered to sell the output of the Osprey Facility to Duke pursuant to a PPA at rates that are cost-effective as compared to Duke's Suwannee/Hines Projects, and Calpine has also offered to sell the Osprey Facility to Duke at a price that is cost-effective as compared to Duke's spending some \$360 million on its Suwannee/Hines Projects. The Osprey Facility is a proven, reliable combined cycle plant with a heat rate that is vastly superior to the heat rate of the proposed Suwannee CTs, and that is, in fact, comparable to the heat rates of Duke's existing Hines combined cycle units. The risk profiles of Duke's either purchasing the output of the Osprey Facility, or purchasing the Osprey Facility outright, are favorable when compared to the cost of new construction. If Duke were to construct its proposed Suwannee Simple Cycle Project and Hines Chillers Power Uprate Project, those projects would uneconomically duplicate the capacity of the Osprey Energy Center, which is already operating reliably within the Florida bulk power supply grid. Accordingly, Calpine believes that Duke and its customers will be better served by Duke purchasing the Osprey Facility, or purchasing its output, and that the public

interest of all Floridians in avoiding the uneconomic duplication of generation facilities will best be served by Duke purchasing the Osprey Facility as offered by Calpine.

**STATUTES AND RULES THAT ENTITLE CALPINE CONSTRUCTION  
FINANCE COMPANY, L.P. TO RELIEF**

21. The applicable statutes and rules that entitle Calpine to relief include, but are not limited to, Sections 120.569, 120.57(1), and 366.04(5), Florida Statutes, and Rules 25-22.039, Chapter 28-106, Florida Administrative Code. The cited rules provide that persons whose substantial interests will be affected by agency action are entitled to intervene, and the cited sections of Chapter 120 provide that persons whose substantial interests will be affected are entitled to a hearing before the agency. Section 366.04(5), Florida Statutes, provides that the Commission is to prevent the "further uneconomic duplication of generation . . . facilities." To fulfill this mandate, at least where there is other capacity available within the Florida grid, the Commission must necessarily consider whether any proposed power plant is the most cost-effective alternative available for meeting the utility's projected needs for electric capacity and energy; if more cost-effective capacity exists in the Florida grid, then the proposed plant would be uneconomic. This mandate necessarily includes consideration of other power supply alternatives that may be more cost-effective than the utility's proposed unit.



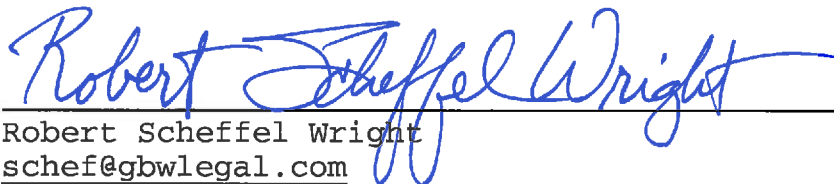
22. Statement Explaining How the Facts Alleged By DeSoto Entitle DeSoto to the Relief Requested. Rules 25-22.039 and 28-106.205, F.A.C., provide that persons whose substantial interests are subject to determination in, or may be affected through, an agency proceeding are entitled to intervene in such proceeding. In its proposals submitted in response to Progress/Duke's 2012 RFP by which Progress/Duke sought proposals to meet its 2016-2019 needs, Calpine offered to sell Duke both the output of the Osprey Energy Center, through a PPA, and the Osprey Energy Center asset itself in lieu of Duke building duplicative capacity. Calpine not only participated in Progress/Duke's RFP process, Calpine was evaluated and selected as a "winner" in that process to the point that Calpine and Progress/Duke engaged in several rounds of PPA negotiations. As noted above, Calpine has continued and continues to seek opportunities to provide more favorable pricing to Duke for the benefit of its customers. Since Calpine's proposals were ultimately rejected by Duke, Calpine's substantial interests will be determined by the Commission in this proceeding. Moreover, as the owner and operator of an existing, reliable, and productive generating asset in the Florida power supply grid, and as a member of the FRCC, Calpine's interests in avoiding the uneconomic duplication of the Osprey Energy Center will be determined by the Commission's decision in this docket; if Duke's petition were granted, Calpine's substantial interests

would be directly and adversely affected. Therefore, the interests that Calpine seeks to protect via its intervention and participation in this case are immediate and of the type to be protected by this docket, and accordingly, Calpine is entitled to intervene to protect its interests.

**CONCLUSION AND RELIEF REQUESTED**

**WHEREFORE**, Calpine respectfully requests the Commission to enter its order GRANTING this Petition to Intervene and requiring that all parties to this proceeding serve copies of all pleadings, notices, and other documents to Calpine's representatives indicated in paragraph 2 above.

Respectfully submitted this 30th day of May 2014.



Robert Scheffel Wright  
[schef@gbwlegal.com](mailto:schef@gbwlegal.com)

John T. LaVia, III  
[jlavia@gbwlegal.com](mailto:jlavia@gbwlegal.com)

Gardner, Bist, Wiener, Wadsworth, Bowden, Bush,  
Dee, LaVia & Wright, P.A.  
1300 Thomaswood Drive  
Tallahassee, Florida 32308  
Telephone (850) 385-0070  
Facsimile (850) 385-5416

Attorneys for Calpine Construction  
Finance Company, L.P.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following by electronic mail on this 30th day of May 2014.

Curt Kiser  
Michael Lawson  
Florida Public Service Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399

J.R. Kelly  
Charles Rehwinkel  
Erik L. Sayler  
Office of Public Counsel  
c/o the Florida Legislature  
111 West Madison Street, Room 812  
Tallahassee, Florida 32399-1400

John T. Burnett  
Dianne M. Triplett  
Duke Energy Florida, Inc.  
P.O. Box 14042  
St. Petersburg, Florida 33733

Matthew R. Bernier  
Paul Lewis, Jr.  
Duke Energy Florida, Inc.  
106 East College Avenue, Suite 800  
Tallahassee, Florida 32301

James Michael Walls  
Blaise N. Gamba  
Carlton Fields Jordan Burt, P.A.  
4221 West Boy Scout Boulevard, Suite 1000  
Tampa, Florida 33607-5780

  
\_\_\_\_\_  
Attorney