

**ORIGINAL**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

<b>In re: Petition for Determination</b>	)	<b>Docket No. 000442-EI</b>
<b>of Need for Electric Power Plant in</b>	)	
<b>Polk County by Calpine Construction</b>	)	<b>Filed: July 10, 2000</b>
<b>Finance Company, L.P.</b>	)	

**FLORIDA POWER & LIGHT COMPANY'S  
PETITION FOR LEAVE TO INTERVENE**

Florida Power & Light Company ("FPL"), pursuant to Florida Administrative Code Rules 25-22.039 and 28-106.205, petitions the Florida Public Service Commission (the "Commission") for leave to intervene in Docket No. 000442-EI, and states:

**Introduction**

1. The name and address of the affected agency are:

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

2. The name and address of the petitioner are:

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

3. All pleadings, motions, orders and other documents directed to the petitioner are to

be served on:

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*Done 7/12/00*

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## **Basis for Intervention**

### **A. Factual Background**

4. FPL is a public utility subject to the jurisdiction and regulation of the Commission under Chapter 366, Florida Statutes. Among FPL's duties is to plan for and meet the demands of its customers for sufficient, adequate and reliable electric service at a fair and reasonable cost. § 366.03, Fla. Stat. Consistent with this obligation, FPL must continually find the most cost-effective resource alternatives to meet its customers' power needs. FPL must also insure that system reliability and integrity are maintained. These duties require detailed and comprehensive long range planning in a dynamic and complex environment for FPL to meet its service obligations. For such planning to be effective, FPL requires a high degree of certainty and reliability in its power supply and transmission resources.

5. On June 19, 2000, Calpine Construction Finance Company ("Calpine") filed its Petition for Determination of Need for an Electrical Power Plant (the "Petition"). Like the previous application filed by Duke Energy New Smyrna Beach Power Co., Ltd., LLP ("Duke New Smyrna"), Calpine will operate the proposed project as a merchant plant.<sup>1</sup> *Petition* at 14-15.

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<sup>1</sup> Unlike Duke New Smyrna, Calpine has none of its capacity contractually committed to a Florida utility (Duke New Smyrna actually had a modest 5-6% of its capacity contractually committed to an individual utility). As Calpine points out in its Petition, the Commission has previously defined a "merchant" power plant as a plant with no rate base and no captive retail customers. Of course, that is precisely what Calpine's plant would be. It would not be in a utility's rate base, and it would have no captive retail customers. As the Commission and Calpine are well aware, the Florida Supreme Court recently reversed the Commission's decision to grant need certification to Duke New Smyrna on the basis that the present statutory scheme does not allow independent power producers, such as Calpine and Duke New Smyrna, to petition for need determination unless they contractually commit all of the proposed project's power to particular load-serving electric utilit(ies). *Tampa Electric Co. v. Garcia*, 25 Fla. L. Weekly S294 (Fla. April 20, 2000). Calpine, which contractually commits none of its power to a particular

Calpine identifies a "need" for its project by alleging that there is presently a general, undifferentiated need for additional generation among the 59 peninsular Florida utilities; it fails to allege any specific Florida utility with a need for its Plant's output or any legally enforceable commitment by Calpine to meet the need of that specific utility. *Petition* at 4-5, 22-33.

6. In its Petition, Calpine engages in a curious and ineffectual attempt to suggest that its plant is not a merchant power plant, and, therefore, the Supreme Court's recent opinion in *Tampa Electric Co. v. Garcia*, is inapplicable to Calpine. *Petition* at 4,5. As Calpine itself acknowledges, a merchant power plant has been defined as a plant with no rate base and no captive retail customers. *Duke New Smyrna*, 99 FPSC 3:407. That is precisely what the Calpine plant is: a plant not in rate base and without captive retail customers. Calpine suggests that it can miraculously change its merchant plant status by making the statement that "it will commit to sell the output of the project to Florida utilities that serve retail customers in Florida." This assertion in no way changes Calpine's merchant plant status, or more importantly, Calpine's inability to petition for a determination of need.

7. Calpine has not and cannot factually distinguish itself from Duke New Smyrna and the host of other merchant plant applicants. Duke New Smyrna was not an appropriate applicant because it had no need of its own for power and because it had not contractually committed to meet the need of a specific Florida utility (other than the modest commitment of less than 6% of its output to the Utilities Commission of New Smyrna Beach). Duke, like every other merchant plant developer, represented that all or virtually all of its output would be provided to Florida

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utility, is clearly not a proper applicant under the Supreme Court's decision.

retail utilities. Duke New Smyrna's and the other merchants' sales were to be made in the future based upon contracts yet to be negotiated, and those contracts could vary as to length and whether or not they were for firm capacity and energy. Duke's witness even acknowledged at hearing that Duke would likely enter into longer term firm contracts. That is precisely Calpine's situation. It has no contract or any other legally enforceable obligation to sell its output to a specific Florida utility. It hopes to enter into such contracts in the future. By its own admission, Calpine is not even in active negotiations with any Florida utility for such a contract; instead, it is "diligently pursuing discussions (which Calpine believes will lead to active negotiations) toward contractual arrangements committing the output of the Osprey Project to serve the needs of Florida retail electric customers." *Petition* at 4.

8. Moreover, Calpine makes other inconsistent statements in its Petition that suggest that its plant's output is not necessarily "committed" to Florida utilities. Calpine states that it expects to sell its output "to other utilities and power marketers in peninsular Florida at each summer peak." *Petition* at 11. Of course, "power marketers" are not Florida utilities that serve retail customers in Florida. Calpine's allegation that it intends to sell to such entities directly conflicts with its statement that its output will be committed to retail serving Florida utilities. Moreover, when alleging cost-effectiveness, Calpine alleges that the economics of relatively lower prices outside Florida compared to Florida (as well as limited transmission export capacity) suggest that the output of the plant will be sold in Florida instead of outside Florida. *Petition* at 36-37. If, as Calpine represents, all the output of its plant will be committed to peninsular Florida utilities by contract, such an observation about relative economics would be irrelevant. Calpine's observation suggests that it is the market, not its negotiated contracts, that will set the price, and

its reference to market prices outside Florida suggest that Calpine is actually considering such sales.

9. Rather than providing projections on what the project's power will cost specific Florida utilities and their customers, Calpine merely claims that (a) purchases from the plant will necessarily be cost effective to the purchasing utility (whoever that utility is and whenever that purchase is made), (b) that the project can operate more efficiently than most other existing facilities and should therefore be able to displace generation from such facilities and suppress wholesale prices, (c) that the project has a construction cost and heat rate that compares favorably to other proposed generating projects, and (d) the unit is the most cost-effective option for Calpine. *Petition* at 33-39. Of course, the Commission cannot presume cost-effectiveness. Calpine's actual prices would depend on what Calpine ultimately negotiated (that is, if it ever gets to active negotiations), not on the cost Calpine incurs in generating the power. Of course, claiming that the project is more efficient than plants which were built in the past does not answer the critical question of whether the proposed plant would be the most cost-effective power supply alternative in the future, when Florida utilities will buy its power. A comparison of construction costs and heat rates is not a complete analysis of cost-effectiveness. Whether the plant is cost-effective to Calpine is irrelevant. Calpine does not compare the cost-effectiveness of its project to specific Florida utilities' other options for acquiring power, and that is the only means of demonstrating the Calpine unit is the most cost-effective alternative.

10. Although Calpine's proposed project will be built within Tampa Electric Company's service territory, Calpine states that its output will be sold "to Florida utilities that serve retail customers in Florida." *Petition* at 4. FPL serves almost half of Florida's retail load.

Therefore, it is clear that Calpine intends FPL to be an outlet for the project's power. Additionally, the Calpine project will "be electrically interconnected to the peninsular Florida bulk transmission grid," (*Petition*, at 7), and, therefore, the project's power likely will be transmitted over FPL's infrastructure. Despite this stated intent to utilize Florida's bulk transmission system, Calpine has given no assurances that the project can be accommodated within existing transmission constraints. Indeed, the *Petition* indicates quite the contrary: Calpine states that "certain transmission upgrades" will be necessary to the existing peninsular Florida transmission grid to "accommodate the delivery of the project's net output for use in peninsular Florida" and that "under normal operating conditions, i.e., with all facilities in service, the proposed project will not materially burden the transmission system or violate any transmission constraints or contingencies in peninsular Florida." *Petition* at 17-18. The obvious implication of these qualified assertions is that Calpine anticipates that peninsular Florida's transmission system may not be able to accommodate the project's power under certain, undefined circumstances.

11. FPL is entitled to intervene in this proceeding because any affirmative determination of need would cause injury to FPL and its customers, and the nature of such injury is of the type which the need determination process is intended to protect. *See Agrico Chem. Co. v. Department of Env'tl. Reg.*, 406 So.2d 478 (Fla. 2d DCA 1981), *rev. denied*, 415 So.2d 1359 (Fla. 1982). Simply stated, as a public utility FPL has a service obligation and a concurrent and continuing planning responsibility which have resulted in and will continue to result in a significant investment devoted to serving its customers. How FPL plans and operates its system to meet its service obligation and its customers' needs will be dramatically affected by the uncertainty which the Commission would create if it were to grant the determination of need

sought in this proceeding. Moreover, an affirmative determination of need would likely result in an increase to FPL's fuel and purchased power cost recovery charges.

**B. FPL's Substantial Interests Are Implicated by this Proceeding.**

12. The scope of, and interests protected by, this administrative proceeding are governed by section 403.519, Florida Statutes, which provides, with emphasis added:

On request by an applicant or on its own motion, the commission shall begin a proceeding to determine the need for an electrical power plant subject to the Florida Electrical Power Plant Siting Act . . . The commission shall be the sole forum for the determination of this matter, which accordingly shall not be raised in any other forum or in the review of proceedings in such other forum. In making its determination, the commission shall take into account the need for electric 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 the conservation measures taken by or reasonably available to the applicant or its members which might mitigate the need for the proposed plant and other matters within its jurisdiction which it deems relevant. The commission's determination of need for an electrical power plant shall create a presumption of public need and necessity and shall serve as the commission's report required by s. 403.507(2)(a)2. An order entered pursuant to this section constitutes final agency action.

As a Florida retail electric utility that would be an outlet for the Calpine project's power and a utility over whose transmission infrastructure Calpine's power may be transmitted, FPL has unique interests that fall precisely within the scope of the interests which section 403.519 is intended to protect: (i) the need for electric system reliability and integrity; (ii) the need for adequate electricity at a reasonable cost; (iii) and FPL's duty to insure that any project is the most cost effective alternative available for FPL to acquire power.

(i) *Electric System Reliability and Integrity*

13. Section 366.03, Florida Statutes imposes on FPL the duty to "furnish to each person applying therefor reasonably sufficient, adequate, and efficient service. . . ." To meet this obligation FPL must secure sufficient generation capacity to meet the projected needs of its customers under both ordinary and extraordinary conditions. FPL must also assure that it will have adequate transmission capacity to meet its customers' needs in all conditions. The proposed Calpine project will adversely impact FPL's planning for both transmission and generation and thereby make it far more difficult for FPL to meet its obligations.

14. First, the Calpine project may utilize FPL's scarce transmission resources to transmit its power, causing greater use of FPL's transmission system than FPL has planned, at times and in ways that FPL cannot predict. Indeed, because the Petition indicates that there may be insufficient transmission capacity under certain circumstances, it may be necessary for FPL to undertake improvements in its transmission system that would not be necessary but for the presence of the Calpine project. FPL has not seen Calpine's transmission studies, and the Petition provides very little detail on projected transmission impacts. Because of the Petition's vagueness with respect to transmission issues, FPL cannot at this time know the precise extent of the impacts to FPL's transmission system.

15. Second, the Calpine project will adversely impact FPL's ability to plan for generation capacity. Calpine suggests that its plant should be counted toward peninsular Florida's reserve margin despite that fact that its power is not contractually committed to serving the load of any utility. *Petition* at 26. FPL and other Florida utilities are, in essence, being asked to rely on contractually uncommitted resources to meet their needs. Absent a contract committing



Calpine's capacity to a specific utility or utilities, there can be no guarantee that the Calpine project's power will be available when needed by the utility or utilities that need it. Calpine does not commit to do anything but pursue a contract after it secures a generic, peninsular Florida, determination of need. The clear implication is that, were the petition granted, FPL would need to find some means to guarantee that its reserve margin requirements will be met with or without the generation of the Calpine project (and other merchant projects). Thus, FPL will be left with the nearly impossible task of guaranteeing power availability while simultaneously accommodating uncommitted resources and avoiding the uneconomic duplication of facilities that section 403.519 and the Electrical Power Plant Siting Act, section 403.501 - .518, Florida Statutes ("Siting Act"), seek to prevent.

16. The impact to FPL's reliability planning is obvious from the face of the Petition. Calpine claims that the "need" for its project results from an alleged need throughout peninsular Florida for additional generation capacity to maintain reliability.<sup>2</sup> *Petition* at 25-28. FPL serves almost half of peninsular Florida's load, so any assertion that there is an undifferentiated need for additional generation among Florida utilities necessarily indicates that Calpine intends to fulfill some portion of FPL's system reliability needs. That being the case, FPL has a clear interest in this proceeding, which will determine in part how its power needs are to be met. As evidenced by the recent Ten Year Site Plan filings by Florida public utilities, FPL and the other utilities

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<sup>2</sup> These allegations fall far short of the requisite showing of need. *Tampa Electric*, 25 Fla. L. Weekly at S297 ("The projected need of unspecified utilities throughout peninsular Florida is not among the authorized statutory criteria for determining whether to grant a determination of need pursuant to section 403.519, Florida Statutes.") Had Calpine committed its generation capacity to a specific utility, as *Tampa Electric* requires, the adverse impacts to FPL's generation capacity planning would have been avoided.

already have plans in place to meet their reserve margin needs without the proposed Calpine unit. The licensing of that unit (and the need to avoid uneconomic duplication) will cast that planning into an abyss of uncertainty, leaving FPL unsure of whether to proceed with all of its planned generation projects.

(ii) *Adequate Electricity at a Reasonable Cost*

17. Because of FPL's retail market share, FPL will be natural outlet for power sales from the Calpine project.<sup>3</sup> However, FPL is unsure of what power from the project will cost, how often that power will be available, or whether the project will provide adequate electricity at a reasonable cost. The Petition is extremely vague<sup>4</sup> and lacking in detail as to what the true costs will be to electric utilities such as FPL who purchase the power. The specifics about the costs, adequacy and availability of power from the project can only be answered, if at all, by FPL's participating in this proceeding.

18. Moreover, Calpine will compete directly against FPL for off-system opportunity sales. To the extent that off-system opportunity sales are displaced by Calpine, the profits from

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<sup>3</sup> The Commission has recognized in past decisions that a utility which will purchase output of a proposed project is an indispensable party to a need determination proceeding. *See, e.g., In re: Petition of Florida Power and Light Company to Determine Need for Electrical Power Plant - Martin Expansion Project*, Order No. 23080, 90 FPSC 6:208, 284-85 ("In order for the specific mandates of [the Siting Act] to be meaningful, they must be answered from the utility's perspective. ... Unless the utility which awards the bid is an indispensable party it is virtually impossible to develop the record in these areas."). It is clear from the Need Petition that Calpine intends FPL to be a principal market for the output of the proposed project. Accordingly, FPL is an indispensable party to this proceeding.

<sup>4</sup> Because of this vagueness, FPL cannot at this point quantify many of the impacts from the project. However, the uncertainty created by Calpine's vagueness is itself an impact on FPL that justifies its participation in this proceeding, so that through the discovery process FPL can discern information that Calpine should have provided in its Petition.

such sales will no longer flow through FPL's adjustment clauses to benefit retail customers. This loss of off-system sales profits will result in increases in the fuel and purchased power cost recovery charges to FPL's retail customers. The prospect of the Calpine project's thus diminishing FPL's ability to provide electricity at a reasonable cost is a direct injury to both FPL and its customers within the scope of section 403.519.

(iii) *Selecting the Most Cost Effective Supply Alternative for FPL*

19. Calpine bases its entire case on need on the allegation that its project will be more cost effective than other existing generating units because it has a highly efficient heat rate and low construction costs. While such an argument might make sense for a utility-built unit, the fact that Calpine will operate as a merchant plant begs the question of what will be the actual cost of power to the utilities that will purchase Calpine's output.<sup>5</sup> FPL has a right to participate in this proceeding to determine whether such costs will be the most effective alternative for FPL to provide power to its customers.

20. If FPL were to build a unit similar to the Calpine unit, FPL and its customers would realize the full benefit of the fuel and other efficiencies of the unit. With the unit being operated by Calpine and the power sold at contract prices, a different scenario would emerge. Calpine has an incentive to negotiate to sell power at the highest price the market will bear. This means that power from the unit will be sold not at a price that reflects its generation cost, but at a

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<sup>5</sup> The Petition (at 38-39) improperly alleges that because the project is the most cost effective alternative to Calpine it will be the most cost-effective alternative to peninsular Florida. However, the cost-effectiveness to Calpine is irrelevant given that Calpine has no need of its own and its power will not be sold at cost-based rates. The correct question is whether the project is the most cost effective alternative available to the utilities that will purchase the power. That issue must be answered with analysis, not assumptions or presumptions.

price that is just slightly lower than the cost of the unit or units that are displaced. This raises serious questions as to whether the unit would be the most cost effective alternative for FPL to meet its customers' needs.

21. As the Legislature recognized in enacting the Siting Act and the companion section 403.519, power plants consume scarce natural resources, and there is a limit to how many plants the state's resources and infrastructure can support. FPL and Calpine therefore compete for scarce resources,<sup>6</sup> such that licensing of the Calpine plant will necessarily constrain construction of future FPL plants. FPL and its customers thus have a keen interest in ensuring that the Calpine facility is as cost-effective a source of power to them as would be an FPL-built plant. Because Calpine will have an incentive to price the power sold to FPL as far above generation cost as the market will allow, while an FPL plant would provide power at FPL's cost, it is unlikely that the Calpine facility will be as cost-effective for FPL and its retail customers as an alternative FPL plant. FPL's interest in exploring and testing the true extent of Calpine's claimed cost effectiveness falls squarely within the protections of section 403.519.

**C. This Commission and the Florida Supreme Court Have Recognized FPL's Right to Participate in Proceedings Such as this One.**

22. FPL has sought and been granted the right to intervene in two recent need-determination proceedings involving proposed merchant plants: Docket No. 981042-EU (Duke

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<sup>6</sup> The Commission has previously recognized that entities with which a proposed project will compete to supply additional capacity and energy can and should intervene in need determination proceedings. *See, e.g., 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 LP*, Order No. PSC-92-1355-FOF-EQ, 92 FPSC 11:363 ("[I]t is incumbent upon competing alternatives to come forward at a need determination.").

New Smyrna) and Docket No. 991462-EU (Okeechobee Generating Company). The same circumstances that entitled FPL to intervene in those proceedings exist here.

23. FPL's right to participate is also recognized in the Florida Supreme Court's recent decision in *Tampa Electric Co. v. Garcia, supra*. In that case the Court reversed this Commission's decision granting the need certification petition of Duke New Smyrna, in response to arguments raised by FPL and other utilities. In so holding, the Court found that "a determination of need is presently available only to an applicant that has demonstrated that a utility or utilities serving retail customers has specific committed need for all of the electrical power to be generated at a proposed plant." *Tampa Electric*, 25 Fla. L. Weekly at S296. This holding recognizes that power plant developers cannot seek, as Calpine does, need certification simply so they can make opportunistic sales to utilities such as FPL. Moreover, because "the projected need of unspecified utilities throughout peninsular Florida is not among the authorized statutory criteria for determining whether to grant a determination of need," entities such as Calpine cannot allege that there is a general need for power, but must rather seek to fill the needs of a particular utility. *Id.* at 17. The Court thus recognized that the duty to meet customers' needs is that of utilities such as FPL, and the only role for independent generators such as Calpine is to contractually commit to meet utilities' needs on predetermined terms. *Id.* at 16-17.

24. By filing its Petition, Calpine blatantly ignores the *Tampa Electric* holding. FPL and other regulated electric utilities, must be allowed to intervene in this proceeding, as they were in the Duke New Smyrna docket which led to *Tampa Electric*, to prevent Calpine from engaging

in the type of uncommitted power plant development that the Florida Supreme Court found improper under the state's utility regulatory system.<sup>7</sup>

25. Finally, Commission Rules 25-22.080 and 25-22.081, F.A.C., recognize FPL's standing to participate in this proceeding. Rule 25-22.081 requires the Petition to include "[a] general description of the utility or utilities primarily affected." Similarly, Rule 25 22.080 requires notice of the commencement of the proceeding to the "affected utility or utilities, if appropriate." These rules clearly envision that the primarily affected utility will be a party to the need determination proceedings. The Petition correctly acknowledges that "utilities that enter into contractual arrangements to purchase the project's output will ... be primarily affected utilities within the meaning of the Commission's rules and orders." *Petition* at 11, fn 5. Because the proposed Calpine project will necessarily seek to sell FPL its power, FPL is a primarily affected utility. Despite Calpine's acknowledgment that purchasing utilities are primarily affected utilities, Calpine maintains it is a primarily affected utility, cynically ignoring the fact that the Florida Supreme Court held in *Tampa Electric* that merchant power producers such as Calpine, which serve no retail load, are not Florida-regulated utilities. 25 Fla. L. Weekly S294, S296, S297. Obviously, since Calpine is not such a utility, it cannot be the primarily affected utility. That designation clearly falls upon FPL and other potential purchasing utilities.

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<sup>7</sup> Duke New Smyrna and other appellees have filed motions for rehearing in *Tampa Electric*. The Court has yet to rule on those motions. FPL is confident that, whether or not rehearing is granted, the substance of the Court's decision will stand.

### **Notice of Agency Decision**

26. There has been no agency decision in this proceeding; therefore, FPL cannot provide a statement of when and how it received notice of the agency decision.

### **Disputed Issues of Material Fact**

27. The Petition and Exhibit raise numerous issues of material fact that FPL disputes. Those which are apparent from the filing are shown on Attachment A, which is incorporated herein by reference. However, there may well be other disputed issues of material fact not readily apparent on the face of the filing, and FPL reserves the right to raise additional disputed issues of material fact.

### **Ultimate Facts Alleged**

28. Calpine has no obligation to provide service and cannot justify the need for its proposed Project based upon its own need. As a non-utility generator without a service obligation or need of its own, Calpine must rely on the need of a purchasing utility. Instead of identifying such a utility, however, Calpine is relying upon the collective and undifferentiated "need" of the 59 Florida utilities comprising the planning convention designated "peninsular Florida" to attempt to demonstrate the need for its proposed project. As one of the 59 utilities upon which Calpine relies and as the utility comprising roughly half of peninsular Florida, FPL has substantial interests which will be determined in this proceeding. The relief sought in this case would injure FPL by (i) adversely affecting FPL's ability to plan, certify, build and/or operate generation facilities necessary to meet its service obligation and the needs of its customers, (ii) creating uneconomic duplication of facilities, (iii) making it unnecessarily burdensome to plan and provide capacity necessary to meet FPL's service obligations, (iv) increasing FPL's adjustment clause

charges higher than they otherwise would be, and (v) introducing tremendous uncertainty in the planning processes for FPL and other Florida utilities. Because FPL is an indispensable party and because it has substantial interests which will be determined in, and adversely affected by, this proceeding, FPL's intervention in this proceeding is warranted pursuant to Florida Administrative Code Rule 25-22.039 and section 120.52(12), Florida Statutes.

29. Calpine has not demonstrated an individual-utility need for its proposed Project. Calpine's proposed Project has not been shown to be needed for electric system reliability and integrity by any specific utility or by peninsular Florida. The proposed Project has not been shown to be needed by any specific utility or by peninsular Florida for adequate electricity at a reasonable cost. The proposed Project has not been shown to be the most cost-effective alternative available for any specific utility or by peninsular Florida. It has not also been shown that there are no conservation measures reasonably available to any specific utility or peninsular Florida to mitigate the alleged need for the proposed Project. Absent such showings, the Petition must not be granted.

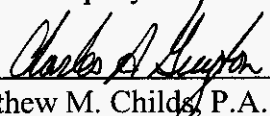


WHEREFORE, FPL respectfully petitions for leave to intervene and participate as a party to this proceeding.

DATED this 10th day of July 2000.

Respectfully submitted,

STEEL HECTOR & DAVIS LLP  
215 S. Monroe St., Suite 601  
Tallahassee, FL 32301  
Attorneys for Florida Power &  
Light Company

By:   
Matthew M. Childs, P.A.  
Charles A. Gutyon

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of this FPL's Petition for Leave to Intervene in Docket No. 000442-EI was served by Hand Delivery (\*) or mailed this 10th day of July 2000 to the following:

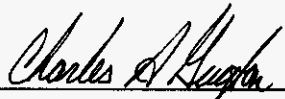
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By:   
\_\_\_\_\_  
Charles A. Guyton

**ATTACHMENT A**  
**FPL's Disputed Issues of Material Fact**

1. Whether the vast majority of Calpine's wholesale sales will be made to utilities in peninsular Florida?
2. Whether the proposed Calpine project can be constructed at a cost of \$195 million?
3. Whether the proposed Calpine project's estimated costs reflect all costs of construction, including the costs of associated facilities and interconnection and transmission equipment costs?
4. Whether there will be contracts in place for Gulfstream and/or other gas pipelines to deliver sufficient firm gas to operate the proposed Calpine project at full capacity for an initial term of 20 years?
5. Whether the proposed Calpine project is economically viable?
6. Whether the peninsular Florida transmission grid will accommodate the net output of the proposed Calpine project?
7. Whether the models and model inputs relied upon by Calpine to demonstrate its proposed project's projected generation, environmental benefits, economic viability and impact on wholesale prices are reasonable and reliable?
8. Whether the proposed Calpine project will tie up transmission capacity which would otherwise be available to FPL to meet its service obligations to retail customers?
9. Whether the proposed Calpine project could decrease fuel diversity in peninsular Florida?
10. Whether the proposed Calpine project will burden FPL's or other utilities' transmission systems or violate transmission constraints or contingencies in peninsular Florida or elsewhere?
11. Whether the projected heat rate values for the proposed Calpine project are reasonable?
12. Whether the projected Equivalent Forced Outage Factor is reasonable?
13. Whether the proposed Calpine project will produce low emissions of sulfur dioxide, nitrogen oxide, carbon monoxide, carbon dioxide and particulate matter and no emission of heavy metals?

14. Whether the operation of the proposed Calpine project is reasonably likely to result in measurable reductions in emissions of SO<sub>2</sub>, NO<sub>x</sub>, CO, CO<sub>2</sub>, particulate matter, and heavy metals in Florida?
15. Whether the proposed Calpine project, without any contracts for its output, is needed for system reliability and integrity by a specific utility?
16. Whether peninsular Florida, with a projected coincident peak reserve margin in excess of 20% (not including the Calpine project) when the proposed Calpine project is scheduled to come into service, needs the project's capacity for system reliability and integrity?
17. Whether the proposed Calpine project, without any contracts for its output, is needed for adequate electricity at a reasonable cost by a specific utility?
18. Whether the proposed Calpine project will provide additional reliability protection to a specific utility?
19. Whether utility ratepayers will bear the capital and operating costs of the proposed Calpine project?
20. If Calpine signs contracts with utilities for its output, will utility customers face operating risks associated with the plant?
21. Whether the proposed Calpine project will provide power with no risk to Florida electric customers?
22. Whether the proposed Calpine project is demonstrably cost-effective relative to virtually all other gas-fired combined cycle power plants for Florida over the next ten years?
23. Whether the proposed Calpine project, without a firm contract to sell its capacity and with Florida utilities already having plans in place which show that their capacity needs are met through the winter of 2008-2009, is the most cost-effective alternative?
24. Whether projections showing that the proposed Calpine project will operate at a capacity factor of 87-94 percent are reasonable given that Calpine has no contract to sell capacity or firm energy?
25. Whether there are conservation measures reasonably available to the peninsular Florida utilities to whom Calpine may sell which would mitigate the alleged need for the proposed Calpine project?

26. Whether the proposed Calpine project, without a contract to sell power and with Florida utilities already having plans in place to meet their need for capacity, would displace less efficient gas-fired and oil-fired generation in peninsular Florida?

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STEEL  
HECTOR  
DAVIS

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850.222.2300  
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www.steelhector.com

July 10, 2000

Charles A. Guyton  
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Florida Public Service Commission  
4075 Esplanade Way, Room 110  
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**JUL 10 PM 3:38**

**Re: Docket No. 000442-EI**

Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light Company in Docket No. 000442-EI are the original and fifteen copies of the following:

1. Florida Power & Light Company's Petition for Leave to Intervene;
2. Florida Power & Light Company's Motion To Dismiss The Need Petition; and
3. Florida Power & Light Company's Memorandum of Law Supporting its Motion to Dismiss the Need Petition.

If you or your staff have any questions regarding this transmittal, please contact me at 222-2300.

Respectfully,

*Charles A. Guyton*  
Charles A. Guyton

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