

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of : DOCKET NO. 000442-EI
:
PETITION FOR DETERMINATION OF :
NEED FOR AN ELECTRICAL POWER :
PLANT IN POLK COUNTY BY :
CALPINE CONSTRUCTION FINANCE :
COMPANY, L.P. :

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PROCEEDINGS: ORAL ARGUMENT

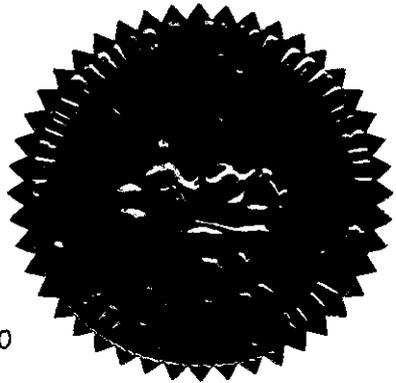
BEFORE: COMMISSIONER LILA A. JABER
Hearing Officer

DATE: Tuesday, September 19, 2000

TIME: Commenced at 8:00 a.m.
Concluded at 8:30 a.m.

PLACE: Betty Easley Conference Center
Room 152
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: KORETTA E. STANFORD, RPR
Official Commission Reporter
Division of Records & Reporting



1 APPEARANCES:

2 DIANE KIESLING, Landers & Parsons, 310
3 West College Avenue, Tallahassee, Florida 32302,
4 appearing on behalf of Calpine Construction Finance
5 Company, L.P.

6 CHARLES GUYTON, Steel, Hector & Davis, 215
7 South Monroe Street, Suite 601, Tallahassee, Florida
8 32301, appearing on behalf of Florida Power &
9 Light Company.

10 GARY L. SASSO, Carlton, Fields, Ward,
11 Emmanuel, Smith & Cutler, P.A., Post Office Drawer
12 190, Tallahassee, Florida, appearing on behalf of
13 Florida Power Corporation.

14 ROBERT ELIAS and RACHAEL ISAAC, FPSC
15 Division of Legal Services, 2540 Shumard Oak
16 Boulevard, Tallahassee, Florida 32399-0850,
17 appearing on behalf of the Commission Staff.

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P R O C E E D I N G S

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2 COMMISSIONER JABER: Read the notice.

3 MR. ELIAS: The notice issued by the clerk of
4 the Public Service Commission on September 11th announces
5 that this time and place has been set aside for oral
6 argument on the pending motions to intervene in this
7 docket, which is 000442-EI, the petition of Calpine for a
8 need determination for a plant to be located in Florida.

9 COMMISSIONER JABER: Appearances.

10 MS. KIESLING: Diane Kiesling, Landers & Parsons
11 for Calpine.

12 MR. GUYTON: Charles Guyton with the law firm of
13 Steel, Hector & Davis LLP, appearing on behalf of Florida
14 Power & Light Company.

15 MR. SASSO: Gary Sasso with Carlton, Fields,
16 appearing for Florida Power Corporation.

17 MR. ELIAS: Bob Elias and Rachael Isaac
18 appearing on behalf of the Commission Staff.

19 COMMISSIONER JABER: Let me tell ya'll what I
20 had in mind for conducting today's oral argument, and
21 we'll talk about whether the time is sufficient or not.
22 We need to be done by 9:00, because there's a hearing that
23 will start at 9:30 in a telephone matter.

24 My thought was that Florida Power & Light and
25 Florida Power Corporation go first and that we do 10

1 minutes per party; Calpine to respond, and I was thinking
2 15 minutes for a response. That gives us, I think, enough
3 flexibility for questions and for responsive comments.
4 Let me know if that's not sufficient now so that we can
5 plan accordingly.

6 MS. KIESLING: Actually, Commissioner Jaber, we
7 have a preliminary matter that may take care of the need
8 to discuss further argument, if you would like to take
9 that up now.

10 COMMISSIONER JABER: Sure.

11 MS. KIESLING: Commissioner Jaber, Calpine has a
12 preliminary matter which relates to our opposition to
13 intervention in this case.

14 At this time, Calpine is withdrawing its current
15 opposition to the intervention of Florida Power & Light
16 and Florida Power Corporation in this proceeding.

17 We are not conceding that FPL and FPC have
18 standing in this proceeding, because we continue to
19 steadfastly believe that they do not have standing.
20 However, Calpine is making a strategic decision to proceed
21 in a manner that will protect our hearing dates.

22 To that end, we are not only withdrawing our
23 current opposition to their intervention, we are also
24 offering to expedite discovery on terms that are mutually
25 agreeable. Calpine wishes to move expeditiously through

1 this process to a final approval by the siting board and
2 will take all actions necessary to ensure a timely
3 consideration of this matter, both at the Florida Public
4 Service Commission and at the siting board.

5 We reserve the right to raise the issue of FPL's
6 and FPC's standing, both at the hearing and prior,
7 thereto, as circumstances may warrant. We fully intend to
8 raise this matter again as soon as we have a co-applicant
9 and contracts in place for the output of the plant.

10 It's our hope that investor-owned utilities will
11 make good on their public statements to the effect that
12 they will no longer oppose this or any project when the
13 project is committed via contract with a retail-serving
14 co-applicant.

15 FPL has publicly stated this on several
16 occasions. And we hope that they will act accordingly as
17 soon as the contracts are in place and have been made a
18 part of this proceeding. If withdrawal is not immediate
19 after that occurs, Calpine will renew our objections to
20 the standing of Florida Power & Light and Florida Power
21 Corporation by every means available to us.

22 Calpine also reserves the right to raise this
23 standing issue prior to the hearing, if there is a ruling
24 from the Florida Supreme Court that recedes from the *TECO*
25 *v Garcia* in a manner that effects this case.

1 Additionally, Calpine reserves the right to
2 oppose standing on the hearing and on appeal, if
3 necessary. Clearly, the intervenors have the burden of
4 proving their standing as part of the hearing. We ask
5 that the Commission make standing an issue that is
6 considered and ruled on in the Commission's order in this
7 proceeding.

8 By withdrawing our current opposition to
9 intervention, were we are not expressly or impliedly
10 waiving our right to question standing at each and every
11 turn in this proceeding. We reiterate that Calpine is
12 taking this action solely to move this process along in
13 order that the extensive benefits of this project will be
14 made available to the citizens of Florida in a timely
15 manner.

16 We are fully prepared to adhere to all the time
17 frames in the order establishing procedure that was
18 entered on September 12th, 2000. We would ask you, as the
19 prehearing officer, to take all actions necessary to
20 ensure that the dates established in that order are
21 maintained and to prevent any delay in the scheduled
22 hearing.

23 COMMISSIONER JABER: Let me understand what
24 you've just said you're going to do. You want to withdraw
25 your responses to the petitions to intervene. So, if the

1 Commission prehearing officer finds it appropriate to
2 grant the petitions to intervene, there will be an order
3 issued granting intervention. You want to preserve your
4 right to raise standing at a later time.

5 My question for you is once that order is issued
6 granting intervention, isn't intervention granted for the
7 entire case? I mean, intervention doesn't have conditions
8 upon it, does it?

9 MS. KIESLING: We view intervention to be not
10 exactly the same thing as standing. There are numerous
11 cases that set precedent that intervention is granted,
12 that the burden is on the intervenors to prove their
13 standing in the hearing and that if it turns out after the
14 hearing that they did not have standing, then, it is
15 harmless error they have participated. And we are trying
16 to just preserve our ability to challenge their standing.

17 COMMISSIONER JABER: Isn't intervention granted
18 upon a showing of standing?

19 MS. KIESLING: Intervention can be granted on
20 any number of conditions. Intervention can be granted,
21 because we are not currently opening it.

22 COMMISSIONER JABER: So, you contemplate an
23 order that says, because the petitioner does not oppose
24 parties petition to intervene, the petition to intervene
25 is granted.

1 MS. KIESLING: That's correct.

2 COMMISSIONER JABER: I'd love to hear some
3 response. Mr. Sasso, Mr. Guyton.

4 MR. GUYTON: We have a number of responses, I
5 would suppose. I'd start with the last question that you
6 posed to counsel for Calpine.

7 If you grant intervention, intervention has been
8 granted based upon a finding that we have standing. We're
9 required to prove up standing, but the proof of the
10 standing is at the time that it is contested. It has been
11 contested now.

12 If they choose to withdraw their opposition at
13 this time, I think, the issue of standing's been resolved,
14 we're allowed to intervene, and we clearly have standing
15 in the case.

16 Calpine has asked you to allow them to withdraw
17 so that they can expedite discovery and assure their
18 hearing dates in this case. We find ourselves in a rather
19 unique situation. If they had followed the law and
20 secured a contract before they came to the Commission, we
21 might well not be here today, but that's not the situation
22 that we find ourselves in.

23 They have not secured a contract and may very
24 well not secure a contract before the scheduled hearing
25 date in this case. In fact, they ask you to make an

1 affirmative determination need, regardless of whether they
2 have.

3 This entire process is going to be a very time
4 consuming and, we think, under the circumstances, we're at
5 a wasteful process, as is probably evidenced by all the
6 parties having prepared for argument this morning to find
7 out that now there's nothing to argue about.

8 If they want to withdraw the opposition to our
9 intervention, that's fine with us. We will proceed apace,
10 but one of the first things that we'll ask the Commission
11 to do is either hold this matter in abeyance or rule
12 promptly on a motion to dismiss, which should resolve this
13 matter before anybody wastes significant time and effort.

14 MR. SASSO: Commissioner Jaber, Ms. Kiesling's
15 presentation provides perhaps the most eloquent testimony
16 to what's wrong with this proceeding. We don't know
17 whether it's fish or fowl. We don't know whether it's
18 legal or illegal. Actually, I should say that we do know
19 that it is currently illegal on the face of the petition.

20 We have attempted to intervene precisely because
21 this is an illegal petition or proceeding or they're
22 seeking a determination that is not permitted under
23 current law. And we seek to intervene for the purpose of
24 protesting that and seeking the dismissal of this case.

25 What Ms. Kiesling has said, in so many words or

1 between the lines, is there may come a time when a
2 petition which, on its face, does not meet current legal
3 requirements, may be overtaken by events.

4 There may come a time when Calpine is able to
5 adduce contracts and present to this Commission a case
6 that fits within its rules. And at that time, they may
7 contest our standing. Well, of course, we seek to
8 intervene precisely because they have not presented such a
9 case, and we will seek to move to dismiss this proceeding
10 precisely because they have not presented such a case.
11 So, yes, this is sort of bizarre, procedurally.

12 We have petitioned to intervene, given the
13 petition as it has been framed and presented to the
14 Commission. And we believe that as a matter of law, we
15 are entitled to intervene in the case framed by the
16 petitioners. And we have moved to dismiss the case framed
17 by the petitioners.

18 Like Mr. Guyton, we're pleased that Calpine is
19 interested in withdrawing its opposition to our
20 intervention at this time, but our first obligation will
21 be to ask this Commission to dismiss the petition framed
22 by the petitioner. As Ms. Kiesling suggests, there may
23 come a time where Calpine is in a position to comply with
24 the Commission's rules and bring the appropriate case
25 before the Commission.

1 And at that time, the geography of the situation
2 may well change. We may have a different interest in
3 participating in the case, depending upon the nature of
4 the contracts, depending upon whether they satisfy current
5 law.

6 If they do not, we would insist that we still
7 are an indispensable party to this proceeding and have a
8 right and a need to participate. If they do comply with
9 current law, then, we'd probably agree with Ms. Kiesling,
10 that we have no interest in participating. But currently,
11 we believe we both have a right and a need to participate
12 in this proceeding.

13 Having said that, we should graciously accept
14 Ms. Kiesling's withdrawal of her opposition. But like
15 Mr. Guyton, I don't believe that our intervention should
16 be conditional. But there may come a time if the
17 petitioner complies with the law where we may have no
18 interest in proceeding with our participation in the case.

19 COMMISSIONER JABER: Ms. Kiesling, there is a
20 good point brought up with respect to a motion to dismiss
21 that's pending. If intervention is granted to both
22 parties, there's nothing to prevent the Commission from
23 moving forward on a motion to dismiss. And by your own
24 concession, you're withdrawing your response to their
25 petitions to intervene. Are you going to object when we

1 move forward on the motion to dismiss?

2 MS. KIESLING: No, we are not. We're prepared
3 -- we've already filed our responses to those motions to
4 dismiss. We're prepared to make our oral argument on
5 those motions at whatever time the Commission sets it for
6 oral argument.

7 COMMISSIONER JABER: All right. And what cases
8 or law can you cite me with respect to standing and
9 intervention being separate and the notion that
10 intervention can be granted without a finding of standing?

11 MS. KIESLING: In support of the concept that
12 standing is a factual determination which must be proven
13 up in a hearing and that there has been no hearing
14 establishing the facts that support standing, yet that
15 that's part of what would have to happen during the
16 hearing on the merits.

17 I would cite you to Ameristeel Corporation vs.
18 Clark, 691 Southern 2nd 473, wherein it is stated that it
19 is subject to proof and that the burden is on the
20 potential intervenors to document their standing at a
21 hearing.

22 I would also cite you to Kruer, K-R-U-E-R, vs.
23 Board of Trustees of the Internal Improvement Trust Fund,
24 647 Southern 2nd 129, it's the First District Court of
25 Appeal case for the same proposition; also, Friends of

1 Matanzas, Inc. vs. Department of Environmental Protection.

2 COMMISSIONER JABER: In each of those cases that
3 you cite, determination of intervention was made without a
4 finding of standing?

5 MS. KIESLING: Intervention was granted and it
6 was stated or required that the intervenor prove their
7 standing as factual basis for their standing at the
8 hearing.

9 There are numerous cases where intervenors have
10 been allowed in and, then, have not proven their standing
11 at the hearing that they wanted to get into. And then,
12 there's been a final determination that they lack the
13 standing. That's simply what we're trying to do here is
14 to hold their feet to the fire and make them prove their
15 standing at the hearing, at the factual hearing.

16 COMMISSIONER JABER: Staff?

17 MR. ELIAS: Two points. Without the benefit of
18 the pleadings in front of me, I can't say with 100%
19 certainty, but I recall FPL making similar arguments that
20 Calpine is now making with respect to standing as applied
21 to leave in the conservation goals docket, that even
22 though there was a Commission order that granted
23 intervention, that that was a matter that was appropriate
24 for proof at the hearing.

25 The second thing is that our decision on

1 intervention, even without opposition, is predicated on a
2 determination that the movant has demonstrated standing.

3 Now, those --

4 COMMISSIONER JABER: Say that again; that the
5 Commission's finding of intervention is predicated on
6 standing, just as a matter of policy or --

7 MR. ELIAS: Of -- well, more than policy, I
8 think. We make a determination that based on the
9 information that's presented to us, whether that's simply
10 allegations in a pleading, responsive pleading and
11 supporting affidavits, meet the appropriate test for
12 standing, whether it's as a matter of right or through a
13 demonstration of substantial interest in accord with a
14 two-pronged test of Agrico. So, that's tough to sort
15 through this outlet without having an opportunity to
16 review these cases.

17 COMMISSIONER JABER: When are you prehearing
18 statements due, Ms. Kiesling?

19 MS. KIESLING: Let me look at the schedule.

20 MR. ELIAS: November 13th.

21 MS. KIESLING: The prehearing conference is
22 November 20th. Prehearing statements are November 13th.
23 May I respond to something that Mr. Elias just said?

24 COMMISSIONER JABER: Yes.

25 MS. KIESLING: We do not dispute that

1 intervention can be granted, based on the allegations in
2 the petition to intervene. However, allegations are not
3 facts. And it is still incumbent on the intervenor to
4 prove the allegations that support standing in a
5 proceeding of some sort.

6 It may be that, by policy or historically, this
7 Commission has accepted allegations supporting standing,
8 and then has not required more. But I would simply point
9 out that the case law is very specific, that the
10 allegations of standing must be sufficient to demonstrate
11 it to allow intervention, but the burden still is on the
12 intervenor to prove those allegations in a hearing.

13 COMMISSIONER JABER: Mr. Sasso.

14 MR. SASSO: Yes, thank you. I think, it's
15 important to understand, Commissioner Jaber, that while
16 there may be some cases that have been cited to the
17 Commissioner that make standing conditional on proof at a
18 hearing, there are numerous cases where that's not the
19 situation.

20 In fact, in the Duke case, in the Okeechobee
21 case, we were granted leave to intervene without any
22 conditions placed on our intervention. And, in fact, here
23 as there, our standing is demonstrated not by allegations
24 that we have made of a factual nature in our petitions to
25 intervene, our standing arises as a result of allegations

1 made by the petitioner for a determination of need by
2 Calpine and its petition on the face of its petition. And
3 in its proof submitted to this Commission, Calpine has
4 sought approval for its plant on a basis that legally
5 gives rise to our standing.

6 They said in their petition, "Calpine will
7 demonstrate that the project is needed to meet the
8 specific needs of Florida utilities that have
9 responsibility for providing electricity to retail
10 customers. Data from the current 10-year site plans that
11 show that seven utilities have identified combined needs
12 over the 2002 2009 period for approximately 9,000
13 megawatts of capacity for which no permits have been
14 issued and for which no commitments are in hand, Calpine
15 believes that it will be able to enter into appropriate
16 agreements for the Osprey project's output to serve part
17 of that identified but uncommitted capacity need."

18 Now, they refer to Table 13 in their exhibits,
19 which they filed with the Commission support of their
20 petition. Table 13 documents the utilities that have
21 indicated they need 9,000 megawatts of utility.

22 Well, FP&L and FPC are two of those utilities,
23 in fact, make up the lion share of the need that Calpine
24 says they're going to satisfy through the construction of
25 this project. On the face of their petition, on the basis

1 of the proof they have submitted, they have created
2 conditions which give rise illegally to our standing.

3 Now, I can explain more fully why, under the
4 law, we're entitled to intervene as of right in these
5 circumstances; in fact, under the law we are considered an
6 indispensable party in a proceeding such as this and
7 Calpine may participate, if at all, only as a
8 co-applicant, with the retail utilities whose need they
9 seek to satisfy.

10 If anybody is a proper applicant in this
11 proceeding, it's FP&L and FPC, and Calpine should be
12 begging to establish standing to come in as a
13 co-applicant. That's the law. And our right of
14 intervention is legally established by the case that
15 Calpine has framed and by Commission decisions and the
16 Florida Supreme Court decisions.

17 That need not be proved any further at the final
18 hearing in this case. And consider what Calpine is
19 suggesting. They're suggesting that in their need
20 proceeding, which they're anxious to have and conclude
21 expeditiously, they want to turn it into mini trials over
22 FPL standing and FPC standing. That's not the way need
23 proceedings take place. They're handled expeditiously,
24 it's supposed to be a case that addresses the need
25 established by the petitioner on the merits. That's what

1 the Commission is all about.

2 These are not 10-day trials that go off into
3 collateral issues about the standing of various
4 intervenors. That's not the way they proceed. In fact,
5 the need proceedings in which intervention have been
6 granted are not conditional, the intervention is not
7 conditional.

8 So, we would submit that our entitlement to
9 intervene exists as a matter of law. The hearing
10 Commissioner in this case can grant intervention that need
11 not be conditional, you needn't burden the Commission or
12 the parties with an obligation that we conduct mini trials
13 on our standing, if this case ever does go to hearing.
14 And the precedent on which Ms. Kiesling relies simply is
15 inapposite to the facts and circumstances of this case.

16 COMMISSIONER JABER: Mr. Sasso, you made
17 reference to the Duke order with respect to the prehearing
18 officer granting intervention there.

19 MR. SASSO: Yes.

20 COMMISSIONER JABER: What was the rationale in
21 the order for granting intervention?

22 MR. SASSO: We petitioned to intervene in Duke
23 on much the same basis that we petitioned to intervene in
24 this case; that in a need proceeding the point of the
25 proceeding is to consider the need for retail utilities

1 for additional capacity to serve their customers. We were
2 retail utilities, Duke was seeking to have its plant
3 approved on the basis of its intent to satisfy the need of
4 peninsular Florida utilities. That was us. We also --

5 COMMISSIONER JABER: Was all of that
6 memorialized in the order?

7 MR. SASSO: I don't recall off-hand,
8 Commissioner, whether all of that was said in the order.
9 I think, the order was fairly cursory. I don't think
10 there was a rationale given.

11 COMMISSIONER JABER: So, in that order there
12 wasn't a specific finding of standing, was there?

13 MR. SASSO: There was a finding that we were
14 entitled to intervene.

15 COMMISSIONER JABER: Right.

16 MR. SASSO: And in Okeechobee this was raised
17 again, and there was a finding that we were entitled to
18 intervene.

19 Now, much has been said by the petitioners in
20 this case that those cases did not involve a big fuss over
21 standing, but there was a reason for that. These cases
22 initiated with Duke's effort to get a declaratory
23 statement from the Commission saying that it was okay for
24 Duke to proceed with a need case. We petitioned to
25 intervenor in the declaratory statement proceeding and

1 Duke fought tooth and nail to keep us out of that
2 proceeding and lost.

3 COMMISSIONER JABER: Mr. Elias, do you have a
4 copy of the Duke intervention order? Does anyone have a
5 copy?

6 Ms. Kiesling, how do you anticipate that parties
7 prove up their standing at a hearing? Do you envision
8 that they do so by testimony or cross examination? How is
9 it that you envision this going forward, if I was to
10 accept your theory?

11 MS. KIESLING: Any way that they can. They can
12 prove it through their testimony of their own witnesses,
13 they can prove it through cross examination of ours, they
14 can prove it through documents.

15 The concern I have is that this idea that they
16 are somehow indispensable parties is misleading. And the
17 only basis on which either FPL or FPC would be an
18 indispensable party in this case would be if they were a
19 co-applicant, because they had signed a contract for the
20 output of this facility.

21 Simply because their need in the planning
22 horizon is part of what we based our petition on doesn't
23 make them an indispensable party, particularly when we
24 have made it very clear, both in our application and we'll
25 make it very clear here today, that we are in agreement.

1 We cannot proceed with construction until we have a
2 co-applicant and contracts, according to the application
3 we filed.

4 At the point that we have contracts, we will
5 know who the co-applicant is, we will know who the
6 indispensable party is, and that entity or entities will
7 come in and be co-applicants.

8 COMMISSIONER JABER: In your pleadings, you
9 acknowledge that intervention was granted in Duke and the
10 Okeechobee case, and you make a distinction between your
11 filing and those of Duke and Okeechobee.

12 MS. KIESLING: Yes.

13 COMMISSIONER JABER: Do you take it a step
14 further and acknowledge that if your case was like the
15 Duke case and the PG&E Okeechobee case that intervention
16 would be entitled to Florida Power & Light and Florida
17 Power Corp. as a matter of right?

18 MS. KIESLING: No.

19 COMMISSIONER JABER: Why?

20 MS. KIESLING: Because, I think, the Duke case
21 and the Okeechobee case are distinguishable in a number of
22 ways.

23 First of all, they both involve merchant plants
24 that had no commitment for the output of the plants. This
25 case is very different. We have made it very clear that

1 we understand that under the current state of the law, we
2 must have contracts before we can proceed to the
3 construction or any further with this project.

4 Also, it is second neither of those cases
5 involved a question of whether an incumbent investor-owned
6 utility that had no contract for the output had standing
7 to participate in a competitive wholesale plants need
8 determination. Those two questions are very different.

9 COMMISSIONER JABER: Does the fact that you
10 don't have the contract yet put parties in an awkward
11 position of intervening in cases or attempting to
12 intervene in cases, because they don't know what your
13 final application will look like?

14 MS. KIESLING: Yes. I can concede that to a
15 limited degree. And that's part of why we are, at this
16 point saying, okay, let them intervene, let them start
17 their discovery, let them do what they need to do, and
18 that's why we're reserving our position that as soon as we
19 have a co-applicant and a contract that there's no further
20 need for these parties.

21 COMMISSIONER JABER: Anything further before --

22 MR. SASSO: Yes, if I may be heard very briefly.

23 Ms. Kiesling has the law exactly backwards in
24 terms of who's the proper party and who's the
25 co-applicant. If you'll indulge me for a moment, I'll

1 read what the Commission has itself said on this subject.

2 COMMISSIONER JABER: Well, let me ask you this,
3 Mr. Sasso. If they have come to the table today and
4 they've said we are withdrawing our opposition to your
5 petitions to intervene, do we really need to discuss the
6 law or any of the merits today?

7 MR. SASSO: No. My only concern is that we wind
8 up with an order that imposes some unnecessary
9 inapplicable burden upon us to prove up facts through
10 witnesses at a hearing on matters that are legally
11 established at the current time, and established by virtue
12 of the petitioner's own case.

13 COMMISSIONER JABER: Anything further? All
14 right. Here's my ruling: Based on the pleadings and
15 based on the fact that Calpine has come to oral argument
16 today prepared to withdraw their opposition to the
17 petitions to intervene, the petitions to intervene will be
18 granted, both of them.

19 The order will not go as far as to say -- and
20 Mr. Elias, I do want you to memorialize this decision in
21 an order. The order will take note that Calpine made note
22 of the fact that they reserve their right to bring up
23 standing at a later date, but the order will not reserve
24 your right nor does it agree.

25 I think that that's an issue we don't have to

1 address today. I think that you can address any issue
2 you want in your prehearing statement, and it's an
3 argument for a different day.

4 I think, the only thing that's really important
5 for this ruling is the fact that you've withdrawn your
6 opposition to the petitions to intervene, and it's on that
7 that I base my ruling to grant the petitions to intervene.

8 I do notice, Mr. Elias, that both the Duke
9 orders and the Okeechobee orders were very, very short,
10 that based on the pleadings intervention was granted. The
11 only thing I would add is that based on the fact that
12 Calpine withdraws its opposition, the petitions are
13 granted.

14 Anything else?

15 MR. GUYTON: Commissioner, if I might observe
16 briefly, I don't want you to be misled by the brevity of
17 the Duke order.

18 We convened on the 1st of October in 1998 and
19 had an extensive order on, essentially, the matters that
20 we were prepared to argue this morning. And many of the
21 arguments that Calpine has made, in response, were fully
22 made to the prehearing officer. And when the prehearing
23 officer ruled on intervention there, clearly was
24 addressing the arguments that had been presented to him.

25 In Okeechobee, there was not opposition to the

1 petition to intervene. Okeechobee chose not to challenge
2 intervention at all. I just want to make sure you had
3 that factual.

4 COMMISSIONER JABER: I do. I've actually read
5 the transcripts from the oral argument. Anything else,
6 Mr. Elias?

7 MR. ELIAS: Not that I'm aware of.

8 COMMISSIONER JABER: All right. I do notice now
9 that we can take up the motions to dismiss.

10 Mr. Elias, I will not rule on those alone,
11 because I don't want a recommended order from a prehearing
12 officer to go to agenda. I think, we might as well take
13 that to the panel of the case. So, I'll let Staff govern
14 itself accordingly on those motions.

15 Thank you.

16 (Hearing concluded at 8:35 a.m.)

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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

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5 I, KORETTA E. STANFORD, RPR, Official FPSC Commission
6 Reporter, do hereby certify that the Oral Argument in
7 Docket No. 000442-EI was heard by Hearing Officer Lila A.
8 Jaber at the time and place herein stated.

7

8 It is further certified that I stenographically
9 reported the said proceedings; that the same has been
10 transcribed under my direct supervision; and that this
11 transcript, consisting of 25 pages, constitutes a true
12 transcription of my notes of said proceedings.

10

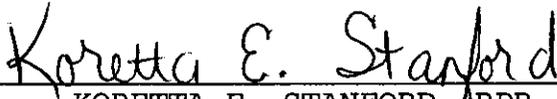
11 I FURTHER CERTIFY that I am not a relative, employee,
12 attorney or counsel of any of the parties, nor am I a
13 relative or employee of any of the parties' attorney or
14 counsel connected with the action, nor am I financially
15 interested in the action.

13

DATED this 25th DAY OF SEPTEMBER, 2000

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KORETTA E. STANFORD, RPR
FPSC Official Commission Reporter
(850) 413-6734

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