

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Determination) DOCKET NO. 000442-EI
of Need for an Electrical Power)
Plant in Polk County by Calpine) FILED: NOVEMBER 13, 2000
Construction Finance)
Company, L.P.)

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RECORDS AND REPORTING

JOINT MOTION FOR ALTERNATE PROCEDURAL SCHEDULE OR
IN THE ALTERNATIVE, FOR ENLARGEMENT OF TIME
TO FILE SUPPLEMENTAL TESTIMONY

Calpine Construction Finance Company, L.P., ("Calpine"), and Seminole Electric Cooperative, Inc. ("Seminole"), pursuant to Rule 28-106.204, Florida Administrative Code ("F.A.C."), hereby respectfully move the Florida Public Service Commission (the "Commission") for an alternate procedural schedule for the filing of supplemental testimony and exhibits and for the need determination hearing for the Osprey Energy Center (the "Osprey Project" or the "Project") in this docket. Pursuant to Commission Order No. PSC-00-2133-PCO-EI (the "Revised Procedural Order"), the supplemental testimony is due to be filed on Monday, November 13, 2000, and the hearing is scheduled to be held on January 3-5, 2001. By this joint motion, Seminole and Calpine request an alternate schedule pursuant to which Seminole and Calpine would file their supplemental testimony and exhibits on November 22, 2000 and the hearings would be held on January 19 and 22, 2001, which dates appear to be available on the Commission's published calendar. The reason for the requested alternate schedule is that Seminole and Calpine have many ongoing

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tasks to accomplish in finalizing the definitive power purchase agreement embodying the fundamental commercial principles set forth in their Memorandum of Understanding, which was filed with the Commission on October 17, 2000, as well as in preparing the requisite supplemental filing materials, and the November 13 date does not provide sufficient time to accomplish these tasks. In the alternative, Seminole and Calpine request an enlargement of time to file their supplemental testimony and exhibits until Wednesday, November 22, 2000. In good faith, and in order to expedite the processing of this need determination case, Seminole and Calpine will commit to an expedited discovery schedule in order to offset any potential inconvenience caused by either the alternate procedural schedule or the requested enlargement of time.

BACKGROUND

1. The name and address of Co-Movant Seminole is as follows:

Seminole Electric Cooperative, Inc.
Attention: Timothy S. Woodbury
Vice President of Strategic Services
16313 North Dale Mabry Highway
Tampa, Florida 33618.

Seminole is a Florida corporation that provides full requirements wholesale electric service to its ten member cooperative utility systems, which in turn provide electric service to their retail member-customers in Florida. As the load-serving utility that will be purchasing capacity and energy from the Osprey Project to

meet its members' needs, Seminole will participate as a co-applicant and co-petitioner in this need determination proceeding. Seminole and Calpine intend to formally incorporate Seminole as a party in the case by filing a joint petition for determination of need for the Osprey Project, which will replace the petition for determination of need filed by Calpine on June 19, 2000, and which will include all relevant allegations regarding Seminole and Seminole's need, as part of their supplemental filing on November 22.

2. All pleadings, motions, orders, and other documents directed to Co-Movant Seminole are to be served on the following:

Joseph A. McGlothlin
McWhirter Reeves
117 South Gadsden Street
Tallahassee, Florida 32301

and

Timothy S. Woodbury
Vice President of Strategic Services
16313 North Dale Mabry Highway
Tampa, Florida 33618.

3. The name and address of Co-Movant Calpine is as follows:

Calpine Construction Finance Company, L.P.
ATTN: Robert K. Alff
Senior Vice President
Calpine Eastern Corporation
The Pilot House, 2nd Floor, Lewis Wharf
Boston, Massachusetts 02110 .

4. All pleadings, motions, orders, and other documents directed to Co-Movant Calpine are to be served on the following:

Robert Scheffel Wright
John T. LaVia, III
Diane K. Kiesling
Landers & Parsons, P.A.
310 West College Avenue (ZIP 32301)
Post Office Box 271
Tallahassee, Florida 32302

and

Joseph Regnery, Esquire
Timothy R. Eves, Director of Business Development
Calpine Eastern Corporation
Two Urban Centre
4890 West Kennedy Blvd., Suite 600
Tampa, Florida 33609.

5. This docket was initiated by the Commission Staff earlier this year following Calpine's filing of the Site Certification Application for the Osprey Project. Subsequently, on June 19, 2000, Calpine filed its petition for determination of need for the Project, including exhibits (the "June 19 Petition"), alleging, inter alia, that the Project is needed pursuant to Section 403.519, Florida Statutes, and that Calpine would enter into contracts with Florida utilities having responsibility for serving retail load before construction of the Project would begin. In support of its June 19 Petition, Calpine filed the testimony and exhibits of seven witnesses on August 19 and 22, 2000, as well as revised exhibits to the June 19 Petition. Following certain other events not relevant here, the Commission issued its Order Establishing Procedure, Order No. PSC-00-1615-PCO-EI, on September 11, 2000, which provided for the filing of supplemental testimony, if any, on November 1, 2000, and for the need determination hearing to be held on November 29-

30 and December 1, 2000. Calpine understood that the purpose of the supplemental filing was to provide information regarding the Florida load-serving utility or utilities whose need would be met by the Osprey Project.

6. On October 16, 2000, Seminole and Calpine executed a Memorandum of Understanding (the "MOU") pursuant to which Calpine will commit to Seminole, for the benefit of Seminole, its member cooperative utility systems, and those systems' member-customers, most or all (depending on Seminole's exercise of certain options granted to Seminole in the MOU) of the output of the Osprey Project. The MOU obligates Calpine and Seminole to negotiate in good faith a definitive power purchase agreement (the "PPA") embodying the fundamental commercial principles set forth in the MOU. In accordance with the MOU, Seminole and Calpine have continued their good-faith negotiations toward the PPA and anticipate final approval thereof by Seminole's Board of Directors on December 14, 2000. The MOU was filed with the Commission, under cover of a Request for Specified Confidential Treatment, on October 17, 2000, the day after the MOU was executed.

7. At its agenda conference on October 17, 2000, the Commission denied motions to dismiss Calpine's June 19 Petition but directed the Commission Staff to develop an alternate procedural schedule that would provide more time between the filing of the supplemental testimony and the hearings.

8. Since early October, when it appeared likely that Seminole and Calpine would reach agreement on the terms of the MOU and PPA, both parties have been working diligently toward the goals of (a) negotiating and memorializing the commercial terms to which they have agreed (i.e., in the MOU), (b) embodying those terms in a definitive PPA, and (c) developing the requisite supplemental filing materials (e.g., an amended joint petition for determination of need including Seminole as a co-applicant plus relevant testimony and exhibits) for the need determination hearing. These efforts are ongoing, and Seminole and Calpine represent to the Commission that they will be able to file these materials on November 22, 2000, and that they will endeavor to file the materials earlier if possible.

MOTION FOR ALTERNATE PROCEDURAL SCHEDULE

9. As explained above, in consideration of all the necessary tasks facing them, Calpine and Seminole are unable to file their supplemental testimony before the week of November 20-22, 2000 and are thus unable to comply with the Revised Procedural Order's requirement that they file on November 13, 2000. Accordingly, in good faith and in order to have this case proceed as expeditiously as possible, Seminole and Calpine suggest the following alternate procedural schedule (presented side-by-side with the dates set forth in the Revised Procedural Order).

| <u>Event</u> | <u>Revised Procedural Order</u> | <u>Seminole/Calpine Request</u> |
|--|---------------------------------|---------------------------------|
| Supp. Testimony and Exhibits | 11/13 | 11/22 |
| Intervenors' Direct Testimony and Exhibits | 12/11 | 12/20 |
| Staff's Direct Testimony and Exhibits | 12/13 | 12/22 |
| Prehearing Statements | 12/13 | 12/22 |
| Prehearing Conference | 12/21 | 1/4 |
| Petitioners' Rebuttal Testimony & Exhibits | 12/21 | 12/29 |
| Hearing | 1/3-5/2001 | 1/19&22/2001 |
| Briefs, if any* | 2/2/2001 | 2/15/2001 |

* Seminole and Calpine would respectfully ask the Commission to consider the possibility of deciding the issues in this proceeding by a bench vote at the conclusion of the hearing, if circumstances will permit such action.

10. Seminole and Calpine respectfully suggest that this schedule is reasonable, appropriate, fair to all concerned, and in the public interest. It provides as much time for the Intervenors and the Staff to prepare their testimony as provided in the Revised Procedural Order. Additionally, if circumstances allow the Commission to rule on this case via a bench vote on January 19 or 22, this schedule will allow the Osprey Project to continue on its present schedule in the site certification process.

11. Moreover, in considering this motion, the Commission

should recognize that the materials that Calpine has already filed constitute a significant majority of all of the requisite information for the Commission's consideration of a need determination case. Specifically, in the materials that were filed in August, Calpine furnished all the required information regarding Calpine as the co-applicant/co-petitioner that is building the Project, regarding how the Osprey Project will contribute to meeting Peninsular Florida's needs, regarding the cost-effectiveness of the Osprey Project to Peninsular Florida, regarding the engineering specifications of the power plant itself, regarding the Project's interconnection to the Peninsular Florida bulk transmission grid and related transmission issues, regarding fuel supply, and regarding environmental permitting issues. The Staff have propounded one set of interrogatories and one set of document production requests, to both of which Calpine is responding today (November 13, 2000).

12. The information that will be furnished in the supplemental testimony and exhibits will describe Seminole, Seminole's need for the Project, and the Project's cost-effectiveness to Seminole. Calpine and Seminole respectfully suggest that the time between November 22 and the proposed testimony filing dates and proposed hearing dates is more than sufficient for the parties to review this Seminole-specific information, prepare any testimony they may elect to file, and otherwise prepare for the hearing. In good faith, and to allow

this proceeding to go forth expeditiously, Calpine renews its offer to expedite its responses to any discovery propounded by the Intervenors and Staff regarding the supplemental testimony and exhibits. Seminole and Calpine will commit to do their best to file and serve any objections to discovery within five calendar days of service (assuming service is made by hand) and to respond to discovery requests, to the extent physically practicable, within ten days of service.

ALTERNATIVE MOTION FOR ENLARGEMENT OF TIME

13. As explained above, in light of the tasks facing Calpine and Seminole to prepare their supplemental filing materials and finalize the definitive PPA, they are unable to file their supplemental testimony and exhibits before the week of November 20, 2000. Recognizing that the requested January 19 and 22, 2001 hearing dates may not be available, and desiring for the Osprey Project to proceed as expeditiously as possible, Seminole and Calpine would request as an alternative that they be allowed to file their supplemental testimony and exhibits on November 22, with corresponding enlargements for the Intervenors and Staff to file their testimony to December 13 and 16, respectively, and that the case otherwise proceed as set forth in the Revised Procedural Order. This schedule will still afford the Intervenors three weeks (instead of four weeks) to prepare any direct testimony that they may elect to file, and will still allow the Commission Staff 24 days (instead of 30 days) to

prepare any direct testimony that they may elect to file.

14. As noted above, the Commission should recognize that the materials that Calpine has already filed constitute a significant majority of all of the requisite information for the Commission's consideration of a need determination case. The Commission should also note that Calpine has responded to the Staff's interrogatories and production requests today (November 13, 2000). Calpine and Seminole respectfully suggest that the requested alternative relief, i.e., a nine-day enlargement of time to file their supplemental testimony, is reasonable, appropriate, fair to all concerned, and in the public interest. It still provides the Intervenors with three weeks to prepare their direct testimony, if any, which is at least ample for cases of this type. Moreover, it is backstopped by Seminole's and Calpine's commitment to expedite discovery responses. It also provides the Staff with 24 days to file their direct testimony. Most significantly, it will allow the Osprey Project to stay on its current permitting schedule by which it is expected to become commercially operational in the summer of 2003. The economic and reliability benefits, as well as the additional flexibility provided to Seminole by this relatively early in-service date, more than justify the slight potential inconvenience (of having three weeks instead of four weeks to prepare their direct testimony) to the other parties.

STATEMENT OF OTHER PARTIES' POSITIONS

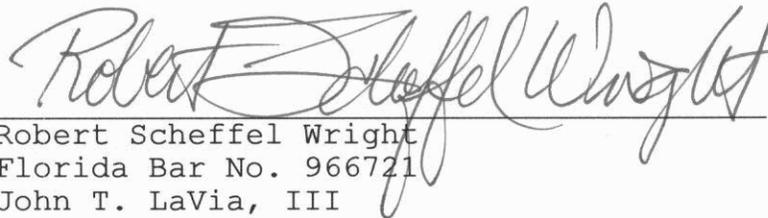
15. Counsel for Calpine have conferred with counsel for Intervenor Florida Power & Light Company and Florida Power Corporation, and with counsel for the Commission Staff, and are authorized to represent the following: Florida Power Corporation objects to the relief requested by this motion, Florida Power & Light Company takes no position with respect to the requested alternate procedural schedule but objects to the alternative requested enlargement of time, and the Commission Staff take no position with respect to this motion.

CONCLUSION

The Osprey Project is a beneficial electrical power plant that will provide significant economic and reliability benefits to Seminole and those whom Seminole serves, as well as significant and substantial economic and environmental benefits to Peninsular Florida generally. Establishing a procedural schedule that will allow for the timely, expeditious permitting, construction, and operation of the Project is therefore in the public interest. Granting either of Seminole's and Calpine's requested procedural motions -- i.e., either their motion for an alternate procedural schedule setting the hearings for January 19 and 22 or their alternative motion for an enlargement of time to file their supplemental testimony and exhibits -- will serve this goal. Accordingly, the Commission should grant the relief requested.

WHEREFORE, based on the foregoing, Calpine and Seminole respectfully move the Commission to enter an order modifying the procedural schedule for this case so that Calpine and Seminole will file their joint petition and supplemental testimony and exhibits by November 22, 2000, and the hearings will be held on January 19 and 22, 2001. In the alternative, the Commission should grant Calpine and Seminole an enlargement of time until the close of business on Wednesday, November 22, 2000, to file the supplemental testimony and exhibits contemplated by the Revised Procedural Order.

Respectfully submitted this 13th day of November, 2000.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery (*), or U.S. Mail, on this 13th day of November, 2000, to the following:

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