

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 040206-E1

Dated: May 14, 2004

CALPINE ENERGY SERVICES, L.P.'S RESPONSE TO
FLORIDA POWER & LIGHT COMPANY'S MOTION TO COMPEL ANSWERS TO
FPL'S FIRST REQUEST FOR PRODUCTION
OF DOCUMENTS (NOS. 1 -20) AND FIRST SET OF INTERROGATORIES
(NOS. 1 -50)

Calpine Energy Services, L.P.'s ("Calpine") submits the following response to Florida Power & Light's ("FPL") Motion to Compel Answers to FPL's First Request for Production of Documents (Nos. 1-20) and First Set of Interrogatories (Nos. 1-50) ("Motion to Compel") and states:

I. FPL Has Mooted the Issues Raised in its Motion to Compel

On May 4, 2003, FPL re-served the discovery that is at issue in FPL's Motion to Compel. Notably, this re-served discovery corrects the errors identified by Calpine in its Objections to FPL's original discovery (service date of April 23, 2004). By re-serving this discovery, the time frames specified in the Commission's March 30, 2004, Order Establishing Procedure begin anew. Moreover, Calpine cannot be required to provide any further response to FPL's original, faulty discovery because that discovery has been superceded by FPL's corrected discovery. Accordingly, Calpine is required to serve its objections to FPL's re-served discovery on or before May 14, 2004, and its responses on or before May 24, 2004.

Notwithstanding the fact that FPL has re-served corrected discovery, it now seeks an order Compelling Calpine to, apparently, respond to FPL's original, faulty discover. FPL cannot have it both ways. FPL has chosen to correct its problems by re-serving its discovery - now FPL must live with its choice.

II. Even if the Commission Considers FPL's Motion to Compel, the Commission Will Find Calpine's Objections are Well Founded

Florida's Supreme Court has adopted specific rules that govern attorneys' actions regarding signing pleadings and making appearances. Rule 2.060(c), Florida Rules of Judicial Administration, provides in pertinent part

Pleadings to Be Signed: Every pleading and other paper of a party represented by an attorney shall be signed by at least 1 attorney of record in the attorney's individual name whose address, telephone number, including area code, and Florida Bar number shall be stated, and who shall be duly licensed to practice law in Florida . . .

Likewise, Rule 2.060(h), Fla. R. Jud. Admin., clearly specifies what is required for an attorney to make an appearance. This rule states:

Appearance of Attorney: An attorney may appear in a proceeding in any of the following ways:

- (1) By serving and filing, on behalf of a party, the party's first pleading or paper in the proceeding.
- (2) By substitution of counsel, but only by order of court and with written consent of the client filed with the court. The court may condition substitution upon payment of, or security for, the substituted attorney's fees and expenses, or upon such terms as may be just.
- (3) By filing with the court and serving upon all parties a notice of appearance as counsel for a party that has already appeared in a proceeding pro se or as co-counsel for a party that has already appeared in a proceeding by non-withdrawing counsel.

There can be no dispute that the attorney signing FPL's original, faulty discovery, Susan F. Clark, has neither made an appearance in this docket in conformance with Rule 2.060(h), nor provided the disclosure required by Rule 2.060(c) in conjunction with signing pleadings. Furthermore, there can be no dispute that Ms. Clark is not an FPL employee. Apparently, FPL's position is that any attorney

can act as the agent of FPL's in-house attorneys. Of course, this exception completely swallows the rule announced by Florida's Supreme Court in Rule 2.060, and also swallows the requirements for pro hac vice admission stated in Rule 2.061. Under FPL's theory, an attorney not licensed in Florida can avoid the pro hac vice admission requirements by simply signing pleadings "for" an attorney that is qualified to practice in Florida. There can be no dispute that this practice would completely obviate the purpose and effect of Florida's pro hac vice admission rule - and that foreign attorneys could practice law in Florida without complying with the requirements of Rule 2.061.

Finally, it is clear that at least some of FPL's attorneys understand and comply with the requirements of Rule 2.060. For example, on May 6, 2004, Kenneth Hoffman entered a Notice of Appearance on behalf of FPL for this docket.

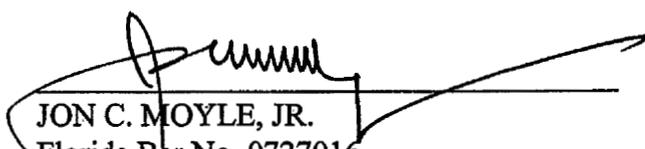
III. Conclusion

FPL has chosen to "re-serve" discovery due to the deficiencies in this discovery identified by Calpine in its Objections to FPL's discovery. There is no basis for the Commission to abandon its March 30, 2004, Order Establishing Procedure, and preemptively compel Calpine to respond to FPL's corrected discovery prior to the dates established therein. FPL's original, faulty discovery has been superceded by its re-served, corrected discovery, and there is no basis for the Commission to compel Calpine to respond to superceded discovery.

WHEREFORE, Calpine Energy Services, L.P., respectfully requests that the Commission deny FPL's Motion to Compel.

¹ Evidently, it would not matter if such an attorney is licensed in Florida or otherwise a qualified representative for administrative proceedings.

Respectfully submitted this 14th day of May, 2004.



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CERTIFICATE OF SERVICE

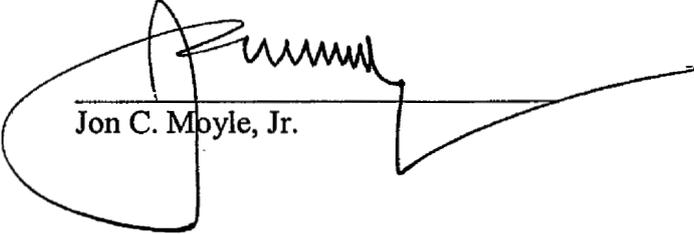
I HEREBY CERTIFY that a true and correct copy was served by hand-delivery this 14th day of May, 2004, on Jennifer Brubaker, Esq., Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-9850; Charles A. Guyton, Esq., Steel Hector & Davis, LLP, 215 South Monroe Street, Suite 601, Tallahassee, FL 32301, and Mr. Bill Walker and Ms. Lynne Adams, Florida Power & Light Company, 215 South Monroe Street, Suite 810, Tallahassee, Florida 32301-1859; and by U.S. Mail to the following persons:

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