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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination of Need for an Electrical Power Plant in Polk County by Calpine Construction Finance Company, L.P.

DOCKET NO. 000422-ET Submitted for filing: July 10, 2000

FLORIDA POWER CORPORATION'S MOTION TO DISMISS CALPINE'S PETITION FOR A DETERMINATION THAT COMMISSION RULE 25-22.082(2) DOES NOT APPLY TO CALPINE OR ALTERNATIVE REQUEST FOR RULE WAIVER OF 25-22.082(2)

Florida Power Corporation ("FPC") respectfully requests that the Commission dismiss Calpine Construction Finance Company, L.P.'s, ("Calpine") Petition for Determination that Commission Rule 25-22.082 (2), F.A.C., Does Not Apply to Calpine, or in the Alternative, for Waiver of Commission Rule 25-22.082 (2), filed in connection with its decidedly illegal need petition, which this Commission has no statutory authority to entertain under the Florida Supreme Court's decision in Tampa Electric Co. v. Joe Garcia, et al., Supreme Court Case No. SC95444-95446 (April 20, 2000) ("Duke"). In further support of this motion, FPC states as follows:

1. Florida Administrative Code Rule 25-22.082 ("Bid Rule") requires every investor-owned electric utility, prior to filing a petition for a determination of need, to issue a

request for proposals ("RFP") indicating its next planned generating unit in order to permit developers of electric generation to compete to supply the utility's specifically identified need.

Here, Calpine while claiming to be an investor-owned utility under Florida law simultaneously asks to avoid having to comply with the Commission's Bid Rule — presumably because

Calpine realizes that it is incapable of complying with the Rule. Calpine's inability to comply

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with the Commission's Bid Rule, however, is simply symptomatic of the fact that Calpine — by itself — is not a proper applicant for a determination of need under current law in the first place.

2. As fully set forth in FPC's Motion to Dismiss Calpine's need petition, under Duke an independent power producer ("IPP"), like Calpine, cannot independently obtain a determination of need. Rather an IPP must first enter into a contract or contracts fully committing its plant to a retail utility or utilities who will then in turn join the IPP as a co-applicant(s) in a need proceeding. This is because need under the Siting Act and FEECA has been determined to mean the end-users need (i.e. the identified need of retail load serving utilities).

3. Calpine admittedly has not as yet entered into the necessary power purchase agreement(s) with a Florida retail utility or utilities, and thus as a threshold matter is not a proper applicant for a determination of need. This fact alone leads to the unavoidable conclusion then that Calpine does not need nor is it entitled to a determination that the Bid Rule is inapplicable or should be waived.

4. Calpine, however, in its need filing and in connection with this petition would have this Commission ignore its jurisdiction under the existing statutory framework, its own Rules, and controlling law established in the Nassau¹ cases and Duke. In sum, Calpine claims that the Commission can discharge its statutory responsibilities by conditioning construction of the plant on Calpine's ability to demonstrate that it has entered into appropriate power purchase

¹ Nassau Power Corp. v Beard, 601 So. 2d 1175 (Fla. 1992) and Nassau Power Corp. v. Deason, 641 So. 2d 396 (Fla. 1994) (collectively, the Nassau cases).

agreements with one or more of Florida's retail load serving utilities. In doing so, Calpine suggests that the Commission can either presume that Florida utilities will not enter into contracts with Calpine unless it is cost-effective to do so and control unexpected costs through engage in hind-sight review during fuel adjustment proceedings, or that the Commission may test the cost-effectiveness of a retail utilities contract prior to permitting construction as a "condition" of the initial affirmative need determination.

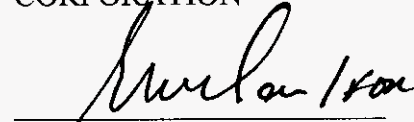
5. If the Commission may simply presume, however, that utilities will not enter into power purchase contracts that are not cost-effective, why have a need proceeding at all? Certainly, if Calpine were correct in this regard, there would be no need for the Commission's Bid Rule in the first instance. The very purpose of the Bid Rule is to ferret out competing power supply alternatives interested in meeting a load-serving utility's specified need. If then, as Calpine suggests, load-serving utilities can always be trusted only to contract with suppliers like Calpine when its cost-effective to do so, having considered all other alternatives, then there is no need for the Bid Rule at all. Or, if utilities may rely on the Commission's "conditional" approval of the Calpine plant as authority to enter into power purchase agreements with Calpine, why would those utilities issue requests for proposals in the future in any event?

6. In the end though, Calpine's desire to avoid the Bid Rule must be seen for what it is – a nonsensical request bound up and completely intertwined with an absurd, improper, and decidedly illegal need determination request – that plainly must be dismissed by the Commission along with the pending applications of Calpine's merchant brethren.

Wherefore, FPC requests that the Commission enter an Order denying Calpine's Petition for Determination that Commission Rule 25-22.082 (2), F.A.C., Does Not Apply to Calpine, or in the Alternative, for Waiver of Commission Rule 25-22.082 (2) and closing this docket.

Respectfully submitted,

FLORIDA POWER
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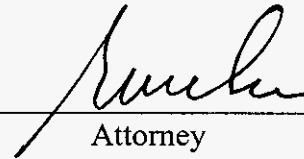
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing FLORIDA POWER CORPORATION'S MOTION TO DISMISS CALPINE'S PETITION FOR A DETERMINATION THAT COMMISSION RULE 25-22.082(2) DOES NOT APPLY TO CALPINE OR ALTERNATIVE REQUEST FOR RULE WAIVER OF 25-22.082(2) has been furnished by Fax to Robert Scheffel Wright as counsel of record for Calpine Construction Finance Company, L.P. and via U.S. Mail to all other parties of record this 10th day of July, 2000.



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