

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Determination of Need)
for Citrus County Combined Cycle Power Plant)
_____)

Docket No. 140110-EI
Filed: July 15, 2014

PETITION TO INTERVENE OF EFS SHADY HILLS LLC

Pursuant to Sections 120.52(13), 120.569, 120.57, and 403.519, Florida Statutes, and Rules 25-22.039, 28-106.201, and 28-106.205, Florida Administrative Code, EFS Shady Hills LLC respectfully files this Petition to Intervene in the above-captioned proceeding (“Petition”), and in connection therewith states as follows:

1. EFS Shady Hills LLC (“Shady Hills” or “Petitioner”), through its wholly-owned, indirect subsidiary Shady Hills Power Company, LLC, owns and operates a simple cycle gas-fired generating facility located in Pasco County, Florida (“Plant”). The Shady Hills Power Company has supplied reliable, cost-effective power to Duke Energy Florida, Inc. (“DEF”) from the Plant since 2007.
2. Shady Hills was a qualified bidder in the 2013 “Request for Proposals for Long-term Power Supply Resources With an In-service Year of 2018” (“RFP”) process conducted by DEF. Shady Hills proposed to sell to DEF the entire output of a new, nominal 400 megawatt (“MW”) combined cycle gas turbine (“CCGT”) expansion of the Plant with May 1, 2018 delivery as requested in the RFP, for tolling agreement terms of 15-years, 8-months, or 20-years, 8-months.

3. The name, address, and telephone number of the Petitioner is as follows:

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c/o GE Energy Financial Services, Inc.
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4. All notices, pleadings, correspondence, discovery, staff recommendations and orders filed or served in this proceeding should be served on the Petitioner's counsel:

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With a courtesy copy to:

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5. The agency affected by this petition is the Florida Public Service Commission (“Commission”), 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850. The Petitioner received notice of this matter through the Commission’s website on or about May 27, 2014. The final hearing in this case is scheduled for August 26-27 and September 3, 2014 and, therefore, pursuant to Rule 25-22.039, F.A.C., this Petition is timely filed.

PETITIONER’S SUBSTANTIAL INTERESTS

6. Shady Hills is a limited liability company authorized to do business in Florida. Shady Hills was a qualified bidder in the 2013 RFP process conducted by DEF. As noted above, Shady Hills proposed to supply DEF with a nominal 400 MW of flexible, reliable, efficient and cost-effective power from an expansion at the Plant.

7. Consistent with Commission Rule 25-22.082(16), F.A.C., Shady Hills should be permitted to intervene in this proceeding because it has a substantial and material interest in the outcome of this proceeding. In particular, the Commission’s decision herein will determine Shady Hill’s substantial business and economic interests relating to the Plant expansion and whether the increased, available, and cost-effective electric output can be sold to DEF or will need to be marketed to other potential purchasers.

8. In this proceeding, DEF asserts that it requires additional generating capacity by the summer of 2018 to maintain system reliability and integrity, and to continue to maintain the 20% reserve margin approved in Order No. PSC-99-2507-S-EU (Docket No. 981890-EU, December 22, 1999). DEF proposes to meet its alleged need by building a natural gas-fired combined cycle power plant (the “Citrus County Plant”) at a new site near its existing Crystal River Energy Complex. DEF claims that the completed Citrus County Plant will have an expected summer rating of 1,640 MW and an expected winter rating of 1,820 MW, and will cost a total of \$1,514 million (nominal) to build, with estimated incremental annual fixed operation and maintenance (“O&M”) costs of

approximately \$11.3 million and estimated variable O&M costs of \$24.8 million.

9. Among other things, DEF seeks an affirmative determination from the Commission under Section 403.519, Florida Statutes, that its proposed Citrus County Plant is needed to maintain electric system reliability and integrity, and to enable DEF to continue to provide adequate electricity to its customers at a reasonable cost.

10. Based on DEF's assertion that it needs the additional generation from the Citrus County Plant to reliably serve its customers, granting or not granting the relief sought will have a substantial impact on the ability of Shady Hills to provide electric capacity and power to DEF. Shady Hills' interest and the potential adverse effect on its interest are specifically the type of injury required to be protected in this proceeding, including assuring that options presented by bidders like Shady Hills are carefully reviewed and fairly compared with the public utility's next planned generating unit and that a qualified bidder has a fair opportunity pursuant to Rule 25-22.082, F.A.C., to challenge the conclusion by the public utility that its selection of its self-build option instead of the qualified bidder's option to meet the utility's need for additional generating capacity is the most cost effective outcome.

11. Although Shady Hills understands that another party that responded to the RFP with an offer to acquire power from an existing generating unit has already intervened in this Docket, Shady Hills will be the only intervener that has proposed new independently-built and operated generating additions. Shady Hills believes that its response to the RFP would be more cost-effective "in a fair comparison" than DEF's self-build option identified in the RFP.

DISPUTED ISSUES OF MATERIAL FACT

12. The issues of material fact that will be disputed in this proceeding will include the matters set forth in Section 403.510(3), Florida Statutes, including, but not limited to, the following:

a. Whether DEF needs the proposed Citrus County Plant to meet demonstrated

- needs for electric system reliability and integrity;
- b. Whether DEF needs the proposed Citrus County Plant to provide its customers with safe and adequate electricity at a reasonable cost;
 - c. Whether DEF needs the proposed Citrus County Plant for fuel diversity and supply reliability;
 - d. Whether the proposed Citrus County Plant is the most cost-effective alternative available to DEF;
 - e. Whether DEF has appropriately sought and utilized renewable energy sources and technologies to the extent reasonably available;
 - f. Whether DEF has appropriately utilized conservation measures that might mitigate or defer need for the Citrus County Plant;
 - g. Whether DEF accurately and appropriately evaluated all reasonable alternative scenarios for cost-effectively meeting the needs of its customers over the relevant planning horizon;
 - h. Whether, considering the uncertainties in future energy usage and needs, especially in light of additional conservation, energy efficiency and demand side management options which could be implemented, selection of a 1,640 MW (Summer) combined cycle generating facility by DEF as the preferred option was the most prudent course in lieu of selection of a smaller, state-of-the-art combined-cycle unit that would provide more flexibility for meeting its future needs which also provides the risk allocation benefits of a PPA;
 - i. Whether DEF evaluated the proposals received in response to the RFP in a fair comparison with DEF's next planned generating unit identified in

the RFP, meeting the rigorous standard set forth in 25-22.082, F.A.C. to ensure that a public utility's selection of a proposed generation addition is the most cost-effective alternative available; and

- j. Whether, based on the resolution of the above issues, the Commission should grant DEF's petition for determination of need for its proposed Citrus County Plant.
- k. Petitioner reserves the right to raise additional issues or provide supplemental comments as permitted by Commission practice and Order No. PSC-14-0274-PCO-EI.

ULTIMATE FACTS ALLEGED

13. DEF bears the burden of proving that it needs the Citrus County Plant to meet a demonstrated need for electric system reliability and integrity and to enable DEF to provide adequate electricity to its customers at a reasonable cost. DEF bears the additional burden of proving that the Citrus County Plant is the most cost-effective alternative available to meet its alleged need.

14. Shady Hills disagrees that, as stated in its RFP document, "DEF has a need for 1,640 MW (summer) in the year 2018, a minimum of which 820 MW must be in service no later than May 1, 2018 with the balance of the capacity available no later than December 1, 2018" in order to meet its reliability criteria based on its forecast of load growth and unit retirements. Further, we believe that DEF's contention that no individual bid or combination of the bidder proposals could meet its need for 820 MW to be in service by May 1, 2018 is incorrect.

- DEF states in its application that it seeks to maintain a 20% reserve margin in accordance with Order No. PSC-99-2507-S-EU (Docket No. 981890-EU, December 22, 1999), but even assuming that no additional demand side resources are available, no additional renewable resources are obtained, and that Crystal River Units #1 and #2 and the Suwannee steam units are retired before Summer 2018, DEF would only require additional generation of approximately 800 MWs (summer-rating) in order to preserve a 20% reserve margin for Summer and Winter 2018. It is Shady Hills' understanding that, contrary to DEF's assertion, a

combination of resources meeting this Summer 2018 need was presented in the RFP bidding process. In fact, the projects offered into the RFP could together also meet DEF's projected 2019 demand and reserve margin requirements even with the aforementioned unit retirements.

- The requirement to meet a 1,640 MW "need" in 2018 results in an "overbuild" scenario.

15. Shady Hills believes DEF's evaluation methodology for the RFP was flawed for

several reasons, including, without limitation, the following:

- DEF improperly imposed the "overbuild" scenario offered by its Citrus County Plant on all alternative proposals, burdening them with the evaluated cost of additional capacity which was not needed to meet its reliability requirements, blurring the clear advantage of prudent procurement based on actual need. Instead of adding all new capacity in 2018 to match total installed capacity of the proposed Citrus County Plant, DEF should have added generic units, or combined bidder proposals, to meet the stated reliability criteria in terms of reserve margin and loss of load probability in each year as required, ahead of the subsequent capacity additions assumed in 2021 and beyond, which were the same in all plans evaluated.
- DEF erred by not evaluating available options to satisfy its need for new capacity, including scenarios where the next planned generation unit was deferred in full, or built in stages, in combination with, or after one or more of the bidder proposals; for instance, just as it had elected to extend operation of Crystal River Units #1 and #2 from 2016 until just prior to Summer 2018 to reduce its pre-2018 procurement needs, DEF could have evaluated scenarios which further extended the operation of these units through the Summer of 2018 (as contemplated in DEF's Need Determination Study) and beyond, to defer in part the need for the Citrus County Plant. We note that the 2013 Settlement Agreement appears to provide DEF full cost recovery for the remaining book value of Crystal River Units #1 and #2, regardless of their actual retirement date.
- DEF erred by not considering seasonal and short-term purchases to bridge incremental supply requirements between years as needed until generics could be added (e.g., in the near-term, there appears to be significant excess wholesale supply available in the Florida power market).
- DEF erred by not releasing the RFP to allow sufficient time to seriously consider development of generic unit additions to complement bidder proposals in meeting DEF's need without being evaluated as presenting excessive development risk, which negatively impacted the evaluation of technical requirement and criteria of bidders' proposals that DEF determined did not meet their full need.
- DEF erred by failing to consider non-price factors in the overall evaluation. In particular, given the uncertainty in long-term load growth and technological

change over the DEF planning horizon, DEF should have carefully considered whether near-term rate impacts from massive rate-based generation additions that would result in excess reserve margins for several years were truly warranted, or whether such impacts could be avoided with smaller, timely capacity additions (self-build or via PPAs) such as Shady Hills' proposal. Shady Hills believes that DEF's conclusion that its proposal was less advantageous than the self-build option gave limited or no consideration to this factor.

16. Shady Hills believes DEF may not have prudently and consistently applied key assumptions in its evaluation of bidders proposals, such as:

- Whether DEF's assumptions for firm gas transportation charges applied to bidders' proposals and generic units were reasonable and consistent with its current portfolio approach to fueling the gas-fired and dual-fueled units in its fleet, and whether they properly took into account the current availability of capacity on other interstate pipelines in Florida.
- Whether DEF properly calculated its annual revenue requirements to include income taxes payable by DEF, and if such income taxes were properly included, whether the use of an after-tax discount rate is appropriate in calculating cumulative present value of revenue requirements ("CPVRR").
- Whether application of debt equivalence costs is appropriate in this particular RFP given the specific rate recovery authorization under the 2013 Settlement Agreement.
- Whether DEF's generic unit additions sited in Citrus County availed of all the existing infrastructure benefits that the Citrus County Plant did, and whether or not the generic units were evaluated using operating cost and performance parameters similar to the Citrus County Plant (in the case of combined cycle) or the Suwannee project (in the case of simple cycle).
- Whether the generic combined-cycle unit added in 2021 as a consistent assumption in all plans by DEF was sited at the Citrus County site for bidders' alternative plans, and could take advantage of the existing infrastructure at Crystal River, since it would be available given that the Citrus County Plant would not have been built there. This would have resulted in significantly lower costs for the 2021 combined cycle compared to the costs for the 2021 "Undesignated CC" unit identified in DEF's 2014 Ten-Year Site Plan.
- Whether DEF adequately performed detailed economic analysis on both of Shady Hills' proposed contract terms (i.e., 15-years, 8 months, and 20-years, 8-months).

17. DEF did not follow certain rules and process steps set forth in its RFP, because, among other reasons:

- the RFP clearly stated that the “Final List will not necessarily be composed of the lowest cost proposals since the combination of price and non-price terms may provide greater value to customers than the lowest cost proposals.” Given DEF’s stated objective to “select resources that offer maximum value, based on price and non-price attributes, to the Company and its customers” it is reasonable for DEF to consider the impact on non-price factors such as customer rates, which are impacted by the nature of cost recovery and would be higher in the near-term under rate based cost recovery. Instead, DEF concluded the RFP based on its assessment that the Citrus County Plant was the most cost-effective alternative solely by virtue of being the lowest evaluated cost on a CPVRR basis, and thusly did not follow the RFP rules.
- given the potential for uncertainty around assumptions in realizing DEF’s proposed Citrus County Plant (including remaining development risks, project costs and performance), it is reasonable for DEF to favorably consider an alternative that mitigates such risks by allocating them to a developer with whom DEF entered into a PPA, that might also increase the value of a bidder’s proposal to the Company and its customers.
- with respect to transmission/interconnection analysis. Duke did not schedule the “scoping meeting” with Shady Hills after announcing the shortlist. The RFP document stated that if a bidder is selected for the shortlist, DEF would schedule such a meeting (under the interconnection process), which is intended to identify the best and most cost-effective interconnection option, including those not previously identified by DEF or even by the bidder, especially at the time of the detailed economic evaluations on which DEF based its RFP conclusions.

18. Based on the above, Shady Hills believes DEF improperly selected the Citrus County Plant as the most cost-effective alternative and prematurely concluded the RFP process.

SPECIFIC RULES OR STATUTES THAT ENTITLES SHADY HILLS TO

RELIEF

19. Pursuant to Sections 120.52(13), 120.569 and 120.57(1), and 403.519, Florida Statutes, and Rules 25-22.039, 25-22.082(16), and Chapter 28-106, F.A.C., substantially affected persons are entitled to a formal administrative proceeding in any agency determination involving a disputed issue of fact.

MISCELLANEOUS CONSIDERATIONS

20. Shady Hills understands that the procedural schedule has been established previously in this proceeding and that DEF and other parties have engaged in substantial discovery, submitted

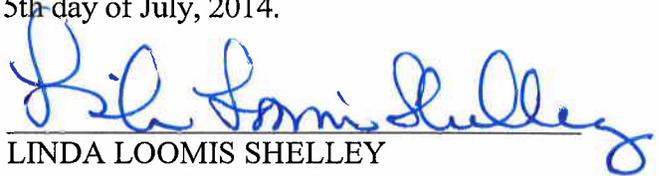
testimony, etc. in advance of the upcoming evidentiary hearings. If this Petition is granted and Shady Hills becomes a party, it accepts the existing procedural schedule without modification.

21. Counsel for Shady Hills contacted counsel for all parties and no party has taken a position on this Petition to Intervene. Counsel for NRG Florida, LP takes no position on the Petition to Intervene, but reserves the right to object to intervention if grounds for objection are revealed in the petition.

RELIEF REQUESTED

Petitioner respectfully requests the Commission enter an order granting this Petition to Intervene and to permit EFS Shady Hills LLC to participate as a full party in this proceeding.

RESPECTFULLY SUBMITTED, this 15th day of July, 2014.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following by electronic mail this 15th day of July, 2014:

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