

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for determination of need for
Citrus County combined cycle power plant, by
Duke Energy Florida, Inc.

DOCKET NO. 140110-EI

FILED: SEPTEMBER 10, 2014

In re: Petition for determination of cost
effective generation alternative to meet need
prior to 2018, by Duke Energy Florida, Inc.

DOCKET NO. 140111-EI

**CONSOLIDATED POST-HEARING STATEMENT OF ISSUES AND POSITIONS
AND BRIEF OF CALPINE CONSTRUCTION FINANCE COMPANY, L.P.**

Calpine Construction Finance Company, L.P. (“Calpine”), pursuant to Order No. PSC-14-0440-PHO-EI, the Prehearing Order in these consolidated dockets, and Rule 28-106.215, Florida Administrative Code (“F.A.C.”), hereby submits its Consolidated Post-hearing Statement of Issues and Positions and Brief. Citations to the transcript from the August 26-27, 2014 hearing are in the form TR abc (page number) and citations to hearing exhibits are in the form EXH jkl (exhibit number at pqr (page number) or the Bates-stamped page number (“BSP-pqr”), if applicable. The Florida Public Service Commission is referred to as the “Commission.” Duke Energy Florida, Inc. is referred to as “Duke.”

SUMMARY

Duke initiated these proceedings by filing two separate petitions on May 27, 2014, the first, in Docket No. 140110-EI, a petition for determination of need for Duke’s proposed Citrus County Combined Cycle Power Plant (“Citrus Project”) and the second, assigned Docket No. 140111-EI, for a determination that Duke’s proposed Suwannee Simple Cycle Project (“Suwannee Project” or “Suwannee Peak”) and its proposed Hines Chillers Power Upgrade Project (“Hines Chillers Project”) represent cost-effective generation alternatives to meet Duke’s needs prior to 2018. Calpine owns and operates the Osprey Energy Center (“Osprey Facility”), a natural gas fired combined cycle generating plant located in Auburndale, Florida. The Osprey

Facility is capable of producing 515 MW under summer conditions and 587 MW under winter conditions without duct firing; with duct firing, Osprey can produce up to 675 MW of capacity in winter conditions. Calpine has sold and continues to sell electric capacity and energy from the Osprey Facility to several Florida load-serving utilities, including Duke.

Calpine petitioned to intervene in both dockets, and the Commission granted Calpine intervenor status in both dockets by its Order No. PSC-14-0306-PCO-EI on June 12, 2014. Between that time and the beginning of the hearing, Calpine and Duke diligently prepared for the hearings, but they also continued negotiations, initially begun in 2012, toward the acquisition by Duke of the Osprey Facility through various combinations of power purchase agreements (“PPAs”) and the outright purchase of the Osprey Facility by Duke. On the first day of the hearing in these dockets, Duke and Calpine reached an agreement in principle to enter into a combination of transactions involving a PPA and subsequent acquisition of the Osprey Facility by Duke. This agreement in principle led to an oral motion by Duke to sever and withdraw those parts of its petition in Docket No. 140111-EI (the “Suwannee/Hines Docket”) that seek approval of the Suwannee Peak Project. [TR 21-22] Duke’s motion specifically contemplated that, if the agreement in principle between Duke and Calpine matures into a definitive transaction or set of agreements, such a deal would be brought back to the Commission at a later date, with all parties having full rights of discovery and the opportunity for an evidentiary hearing on the new Duke-Calpine Osprey transactions. After argument by the Parties and discussion by the Commission, the Commission granted Duke’s motion. [TR 23-65]

Additionally, Calpine withdrew all of its testimony and exhibits in the Suwannee/Hines Docket [TR 90-94, 104-105, 305], subject to its rights – like those of any other party to future proceedings addressing Duke’s proposals to meet its needs prior to 2018 (e.g., the Osprey Facility acquisition) – to refile and fully participate in such future proceedings. [TR 89-90]

Calpine also withdrew the testimony and exhibits of its witnesses Todd Thornton and John Simpson in Docket No. 140110-EI (the “Citrus Docket”). Calpine’s witness Paul J. Hibbard testified at the hearing on August 26, and his testimony and exhibits were received into evidence. [TR 304-373, EXH 73-80]

CALPINE’S POSTHEARING STATEMENT OF ISSUES AND POSITIONS

This section of Calpine’s Posthearing Statement addresses the specific issues set forth in the Prehearing Orders. In summary, the issues relating to the Suwannee Peak Project are moot; the corresponding issues relating to the contemplated acquisition of the Osprey Facility will be addressed in future proceedings. Thus, although for administrative convenience the wording is unchanged, the remaining substantive issues in the Suwannee/Hines Docket relate only to the Hines Chillers Project. The issues relating to the Citrus County Project in the Citrus Docket remain as framed in the Prehearing Order.

Docket No. 140110-EI

ISSUE 1: Is the proposed Citrus County combined cycle plant needed, taking into account the need for electric system reliability and integrity?

CALPINE: *No position.*

ISSUE 2: Is the proposed Citrus County combined cycle plant needed, taking into account the need for adequate electricity at a reasonable cost?

CALPINE: *No position.*

ISSUE 3: Is the proposed Citrus County combined cycle plant needed, taking into account the need for fuel diversity and supply reliability?

CALPINE: *No position.*

ISSUE 4: Are there any renewable energy sources and technologies or conservation measures taken by or reasonably available to Duke Energy Florida that might mitigate the need for the proposed Citrus County combined cycle plant?

CALPINE: *No.*

ISSUE 5: Is the proposed Citrus County combined cycle plant the most cost-effective alternative available to meet the needs of Duke Energy Florida and its customers?

CALPINE: *No position.*

ISSUE 6: Did Duke Energy Florida reasonably evaluate all alternative scenarios for cost effectively meeting the needs of its customers over the relevant planning horizon?

CALPINE: *Yes. Duke's RFP process for the Citrus County Combined Cycle Project complied with the requirements of Rule 25-22.082, F.A.C., and even after the RFP process and the associated solicitations for Duke's capacity needs in the 2016-2018 time frame were complete, Duke continued negotiating with Calpine and other potential suppliers in its reasonable efforts to secure the best and most cost-effective resources to meet its needs in the 2016-2020 time frame.*

ISSUE 7: Based on the resolution of the foregoing issues, should the Commission grant the requested determination of need for the proposed Citrus County combined cycle plant?

CALPINE: *No position.*

ISSUE 8: Should this docket be closed?

CALPINE: *No position.*

For Docket 140111-EI

Below, Calpine presents its statement of issues and positions on the issues in the Suwannee/Hines Docket, as they exist at present. Before proceeding, Calpine believes it is relevant and helpful to address the question whether Duke's withdrawal of the portions of its Petition in the Suwannee/Hines Docket relating to the Suwannee Peak, and the anticipated

filing of a new petition for approval of the Osprey Facility acquisition, poses any due process issues. As discussed briefly here, these processes do not pose any due process violations.

Any assertion that procedures here, including Duke's withdrawal of the portions of its petition addressing the Suwannee Peak and the anticipated process for addressing Duke's anticipated petition for approval of the Osprey Facility acquisition does not afford all parties their due process rights under the Florida Administrative Procedure Act ("APA"), is misplaced. When Duke files its anticipated new petition for approval of the Osprey Facility acquisition, all parties – including consumer parties with standing and NRG Florida – will have exactly the same rights to intervene and participate in that proceeding that they have had in the current Suwannee/Hines Docket. That is, they will have full rights of discovery and full rights to an evidentiary hearing on the merits.

The APA requires no more and no less. Where a case involves disputed issues of material fact, as does the instant docket, and as will the anticipated similar docket addressing approval of the Osprey Facility acquisition, the key due process elements required by the APA are these:

1. Section 120.569(2)(b), Florida Statutes, requires that "All parties shall be afforded an opportunity for hearing after reasonable notice of not less than 12 days."
2. Section 120.57(1), Florida Statutes, requires that:

All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of facts and orders, to file exceptions to the presiding officer's recommended order, and to be represented by counsel or other qualified representative.

All parties, including Calpine, NRG, the Public Counsel, FIPUG, PCS Phosphates, and any other party with standing, will have exactly these due process rights – to a hearing and to present their evidence and arguments – in any future proceeding. The APA requires no more and no less, and these opportunities fully satisfy the parties' rights to due process. Due process requires that

parties to a proceeding be given adequate notice and an opportunity to be heard on the issue. Bresch v. Henderson, 761 So. 2d 449, 451 (Fla. 2d DCA 2000); Jennings v. Dade County, 589 So. 2d 1337, 1340 (Fla. 3d DCA 1991). Moreover, all parties to the Suwannee/Hines Docket have had exactly these same opportunities with respect to the Hines Chillers Project.

Legal Issue A: Does the Commission have jurisdiction in this docket to grant Duke's request for a determination that the proposed Suwannee Simple Cycle Project and Hines Chillers Power Uprate Project are the most cost-effective generation alternatives to meet Duke's needs prior to 2018?

Calpine: *Yes. The Commission has the authority and jurisdiction to approve retail rates for Duke Energy Florida based on reasonable and prudent costs. The 2013 Revised and Restated Stipulation and Settlement Agreement (RRSSA) allows Duke to petition the Commission for a base rate adjustment associated with adding generating capacity, subject to the limitations stated in the RRSSA. The Commission has jurisdiction to consider and act on Duke's petition in this case pursuant to its general jurisdiction over retail rates and also pursuant to its order approving the RRSSA.*

Duke's ability to seek rate recovery in these proceedings arises from the RRSSA.¹ Duke and the Consumer Parties to that Agreement agreed on a number of key terms, including a rate freeze through the last billing cycle of December 2018, subject to certain exceptions, including the opportunity for Duke to seek base rate increases for a numerically limited amount of additional generating capacity between 2016 and 2018. The obvious *quid pro quo* in the RRSSA was a general rate freeze, favoring consumers, with an exception allowing Duke to obtain rate relief associated with bringing needed additional generating resources on line before the rate freeze expires. With respect to the Citrus County Project, which is expressly subject to the Power Plant Siting Act and the Commission's need determination statute, Section 403.519, Florida Statutes, Duke must show that the Citrus County Project is needed, and that it is the most

¹ In Re: Petition for Limited Proceeding to Approval Revised and Restated Stipulation and Settlement Agreement by Duke Energy Florida, FPSC Docket No. 130208-EI, Order No. PSC-13-0598-FOF-EI (Fla. Pub. Serv. Comm'n, November 12, 2013).

cost-effective alternative for meeting Duke's needs, pursuant to the need determination statute. Upon obtaining the Commission's determination that it has satisfied that burden, the RRSSA gives Duke the right to seek rate recovery in a limited proceeding, without having to file a full general rate case. Of course, as in any need determination case, the Commission can approve or reject Duke's petition, but if it grants Duke's petition for determination of need, the RRSSA – and the Commission's Order approving the RRSSA – then applies to allow Duke to seek rate recovery for the costs of the Citrus County Project when it achieves commercial service.

Similarly, with respect to the Hines Chillers (and the Osprey Facility acquisition, assuming that Duke and Calpine are successful in concluding their negotiations for definitive agreements), Duke must show that the proposed asset – the Hines Chillers, the Osprey Facility acquisition, or the Suwannee Peakers – is needed in accordance with the criteria set forth in the RRSSA, i.e., that any such proposed project is needed and that the costs associated with the construction, purchase, or acquisition of any such assets are prudent. Upon making such a showing and having it confirmed by the Commission, Duke is then authorized to seek and obtain rate recovery for the asset pursuant to the RRSSA.

The Commission has the same authority to process and grant (or deny) Duke's request for the rate increases sought here as it did when it approved the RRSSA. In its order approving the RRSSA, the Commission noted that it has jurisdiction to grant the various relief requested by Duke, including the Generation Base Rate Adjustment ("GBRA") increases that Duke now seeks for the Citrus County Project and the Hines Chillers Project, pursuant to several provisions of Chapter 366, including Sections 366.04, 366.041, 366.05, 366.06, 366.07, and 366.076, Florida Statutes, Order No. PSC-13-0598-FOF-EI at 2, all of which are among the statutes granting and prescribing the Commission's ratemaking authority. By the same analysis, the Commission has the jurisdiction and authority to determine that the acquisition of the Osprey Energy Center from

Calpine, pursuant to Calpine's offer to DEF, is the most cost-effective alternative for meeting the needs of DEF's customers prior to 2018 and to approve a base rate adjustment to reflect the purchase of the Osprey Energy Center at the time that the proposed sale and purchase become final. Assuming Commission approval, any such rates would be fair, just, and reasonable and would be based on the reasonable and prudent costs incurred by Duke.

ISSUE 9: Are the proposed Suwannee Simple Cycle Project and Hines Chillers Power Uprate Project needed, taking into account the need for electric system reliability and integrity?

CALPINE: *The Hines Chillers Power Uprate Project appears to be a cost-effective addition to Duke's power supply resources even with the addition of the Osprey Energy Center as contemplated by the agreement in principle reached by Duke and Calpine. Accordingly, and since the Hines Chillers Project will provide additional capacity during the summer months, the Hines Chillers Project will help meet Duke's need for electric system reliability and integrity.*

ISSUE 10: Are the proposed Suwannee Simple Cycle Project and Hines Chillers Power Uprate Project needed, taking into account the need for adequate electricity at a reasonable cost?

CALPINE: *The Hines Chillers Power Uprate Project appears to be a cost-effective addition to Duke's power supply resources even with the addition of the Osprey Energy Center as contemplated by the agreement in principle reached by Duke and Calpine. Accordingly, and since the Hines Chillers Project will provide additional capacity during the summer months, the Hines Chillers Project will help meet Duke's need for adequate electricity at a reasonable cost.*

ISSUE 11: Are the proposed Suwannee Simple Cycle Project and Hines Chillers Power Uprate Project needed, taking into account the need for fuel diversity and supply reliability?

CALPINE: *The Hines Chillers Power Uprate Project appears to be a cost-effective addition to Duke's power supply resources even with the addition of the Osprey Energy Center as contemplated by the agreement in principle reached by Duke and Calpine. Additionally, the Hines Chillers will operate at a heat rate close to that of the existing Hines combined cycle units. Accordingly, and since the Hines Chillers Project will provide additional capacity during the summer months, the

Hines Chillers Project will help meet Duke's need for fuel diversity and supply reliability.*

ISSUE 12: Are there any renewable energy sources and technologies or conservation measures taken by or reasonably available to Duke Energy Florida, Inc. that might mitigate the need for the proposed Suwannee Simple Cycle Project and Hines Chillers Power Uprate Project?

CALPINE: *No.*

ISSUE 13: Are the proposed Suwannee Simple Cycle Project in 2016 and Hines Chillers Power Uprate Project in 2017 the most cost-effective alternatives available to meet the needs of Duke Energy Florida, Inc. and its customers?

CALPINE: *The Hines Chillers Power Uprate Project appears to be a cost-effective addition to Duke's power supply resources even with the addition of the Osprey Energy Center as contemplated by the agreement in principle reached by Duke and Calpine. Accordingly, and since the Hines Chillers Project will provide additional capacity during the summer months, the Hines Chillers Project appears to be a cost-effective addition to Duke's generating fleet.*

ISSUE 14: Did Duke Energy Florida, Inc. reasonably evaluate all alternative scenarios for cost effectively meeting the needs of its customers over the relevant planning horizon?

CALPINE: *Yes. Duke's RFP process for the Citrus County Combined Cycle Project complied with the requirements of Rule 25-22.082, F.A.C., and even after the RFP process and the associated solicitations for Duke's capacity needs in the 2016-2018 time frame were complete, Duke continued negotiating with Calpine and other potential suppliers in its reasonable efforts to secure the best and most cost-effective resources to meet its needs in the 2016-2020 time frame.*

ISSUE 15: Based on the resolution of the foregoing issues, should the Commission grant the requested determination that the proposed Suwannee Simple Cycle Project and Hines Chillers Power Uprate Project are the most cost-effective generation alternatives to meet Duke's needs prior to 2018?

CALPINE: *Yes, in part. The Suwannee Peak Project has been withdrawn from consideration in this docket. Based on the evidence, the Commission should grant Duke's petition for determination that the Hines Chillers Power Uprate Project is a cost-effective addition to Duke's generating resources to meet the needs of its customers prior to 2018.*

ISSUE 16: Should this docket be closed?

CALPINE: *Yes.*

Respectfully submitted this 10th day of September, 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 delivery, on this 10th day of September, 2014.

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