

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination)
of Cost Effective Generation Alternative) DOCKET NO. 140111-EI
to Meet Need Prior to 2018 for Duke) Submitted for filing: September 10, 2014
Energy Florida, Inc.)
_____)

**DUKE ENERGY FLORIDA, INC.'S POST-HEARING STATEMENT OF ISSUES,
POSITIONS, AND INCORPORATED ARGUMENTS IN SUPPORT OF ITS PETITION**

Pursuant to Sections 366.04-.05, Florida Statutes, and in accordance with the 2013 Revised and Restated Stipulation and Settlement Agreement approved by the Commission on November 12, 2013 in Order No. PSC-13-0598-FOF-EI in Docket No. 130208-EI (the “2013 Settlement Agreement”), Duke Energy Florida, Inc. (“DEF” or the “Company”) requests that the Florida Public Service Commission (“FPSC” or the “Commission”) approve its petition for determination of the cost effective generation alternative to meet DEF’s need prior to 2018, and, accordingly, based on the undisputed evidence of record approve DEF’s Hines Chillers Power Uprate (“Hines Uprate”) Project as the most cost effective generation alternative to meet a portion of DEF’s need prior to 2018.

The Commission held a hearing to consider DEF’s request on August 26-27, 2014. DEF presented the testimony of Witnesses Benjamin M. H. Borsch, Kevin Delehanty, Mark Landseidel and Ed Scott in support of the Hines Uprate Project. As discussed below, no intervenor presented any testimony that disputed that DEF has a need for additional generation prior to 2018 and no intervenor disputed that the Hines Uprate Project is the most cost effective alternative to meet a portion of DEF’s need prior to 2018. The record in this case conclusively demonstrates that DEF has shown that the Hines Uprate Project is the most cost effective alternative to meet a portion of DEF’s need prior to 2018 and therefore the Commission should grant DEF’s request for approval of the Hines Uprate Project.

Pursuant to Order No. PSC-14-0440-PHO-EI, issued August 22, 2014, (the “Order”), DEF submits its Post-Hearing Statement of Issues, Positions, and Incorporated Arguments in support of its position that the Commission should grant its Petition for the Hines Uprate Project.

I. BACKGROUND.

On May 27, 2014 DEF petitioned the Commission for an affirmative determination that DEF has a need for additional generation capacity prior to 2018 and for approval of DEF’s self build projects --- the Hines Uprate Project and the Suwannee Simple Cycle (“Suwannee”) Project --- as the most cost effective generation capacity to meet that need. Several parties intervened in this Docket, including NRG Florida LP (“NRG”) and Calpine Construction Finance Company, LP (“Calpine”) who submitted alternative proposals to DEF for acquisition of their Osceola and Osprey facilities, respectively, to meet DEF’s need prior to 2018.¹ DEF examined several alternative generation expansion plans to meet its near-term reliability need, including the acquisition of the Calpine Osprey plant and the NRG Osceola plant, to determine if they were more cost effective than the Company’s self-build generation projects to meet the Company’s generation capacity needs commencing in 2016 before selecting the Suwannee Project and Hines Uprate Project. (T. 547-49).

After filing its Petition, DEF continued to engage with intervenors NRG and Calpine to discuss their proposals and explain what adjustments were needed in order to make their plant acquisition proposals more cost effective than the Suwannee Project. (T. 583-84). DEF was genuinely interested in purchasing one of their plants if the purchase made sense and offered superior customer value. (T. 584). DEF informed both NRG and Calpine of the continuing

¹ The Office of Public Counsel (“OPC”), Florida Industrial Power Users Group (“FIPUG”), and White Springs Agricultural Chemicals Inc. d/b/a PCS Phosphate (“PCS Phosphate”) also intervened.

discussions and DEF encouraged both NRG and Calpine to give DEF a final and best offer. (T. 583-84).

Both NRG and Calpine provided updated offers to DEF after DEF filed its Petition. DEF's evaluation of these different, alternative proposals demonstrated that, despite NRG's and, in particular, Calpine's efforts to close the gap between their initial proposals and DEF's Suwannee Project, their revised proposals, on a quantitative and qualitative basis, still were not the most cost effective generation alternative to meet DEF customer needs prior to 2018. (T. 589-601; Exhibits 132, 133). Calpine continued to negotiate with DEF to improve the value of the proposed structure of the revised proposals Calpine had continued to submit to DEF for the potential sale and purchase of the Calpine Osprey plant as an alternative to the Suwannee Project. (T. 21-23). On the morning that the hearing started on August 26, 2014, DEF and Calpine reached an agreement in principle, that, if consummated, would likely be more cost effective than the Suwannee Project for DEF's customers to meet DEF's need commencing in 2016, thus, eliminating DEF's need to build the Suwannee Project. (T. 21-23).

DEF and Calpine informed the parties and the Commission of their agreement in principle as soon as it was reached. (T. 21-23). DEF moved to sever and withdraw the Suwannee Project and continue with the determination of need for and cost effectiveness of the Hines Uprate Project in Docket No. 140111-EI and the Citrus County Combined Cycle Power Plant in the separate Docket No. 140110. (T. 21-23, 28).² The Commission granted DEF's motion. (T. 65).

² By severing and withdrawing the Suwannee Project from this Docket, DEF represented that the Commission and all parties would have the opportunity to review the need for and cost effectiveness of either the Calpine Osprey plant acquisition, if the agreement in principle is consummated, or the Suwannee Project in a later Docket. (T. 22). At the time of that later petition, all parties would have the opportunity to review DEF's evidence and present any

A. Severance and withdrawal of the Suwannee Project from Docket No. 140111-EI does not impact the Commission’s consideration of the cost effectiveness of the Hines Uprate project to meet a portion of DEF’s need prior to 2018.

Severance and withdrawal of the Suwannee Project from this Docket does not impact the Commission’s determination that the separate Hines Uprate Project is the most cost effective alternative to meet a portion of DEF’s need prior to 2018. The Suwannee Project and Hines Uprate Project are two technically, operationally, and financially independent projects, located at different sites and planned to enter commercial service at different times to meet DEF’s need for additional generation capacity prior to 2018. (T. 126-35, 751-52). The various related arguments by some intervenor parties or the intervenor witness that these projects were “intertwined,” or a “package deal,” such that severance and withdrawal of the Suwannee Project from this Docket resulted in a “clean slate,” are wholly unsupported by actual evidence that the failure to determine at this time the need for and cost effectiveness of one Project precludes the Commission from making that determination for the other Project at this time. (see, e.g., T. 78-9, 898 for these arguments). The uncontroverted evidence demonstrates that the Suwannee Project and Hines Uprate Project are separate, independent projects planned to enter commercial operation at separate locations and times on DEF’s system to meet DEF’s need for generation capacity commencing in 2016 and running through the end of 2017, such that the need for and cost effectiveness of one project is not in fact dependent on the determination of the need for and cost effectiveness of the other project. (T. 126-35, 554-55, 617-19, 758). Judicial efficiency drove the filing of both the Suwannee Project and the Hines Uprate Project in the same Petition

testimony or exhibit evidence in response to DEF’s evidence. (T. 22). As a result, no party is prejudiced by the severance and withdrawal of the issues related to the need for and cost effectiveness of the Suwannee Project in Docket No. 140111-EI. Those issues are preserved for a later date, when DEF either presents the Suwannee Project or the Calpine Osprey plant acquisition as the most cost effective generation alternative to meet part of DEF’s need prior to 2018 in a new Docket.

in this Docket, but DEF easily could have filed a separate Petition and initiated a separate Docket for each Project. In sum, despite some intervenor party's arguments, there is no evidence before this Commission that the Commission is precluded in any way from determining the need for and cost effectiveness of the Hines Uprate Project because the Commission granted DEF's motion to sever and withdraw the Suwannee Project from this Docket.

The Hines Uprate Project meets the Company's need for reliable generation capacity prior to 2018 through an increase in the efficient power output of the existing natural gas-fired, combined cycle power plants located at the Hines Energy Complex ("HEC"). (T. 526, 543). The Hines Uprate Project provides customers the savings associated with achieving reliable summer peaking capacity at combined cycle generation efficiency without having to build additional peaking capacity at another site on DEF's system. (T. 126, 132-33, 543-46). DEF's testimony shows that there is in fact no better option to generate 220 MegaWatts ("MWs") of additional power than the Hines Uprate Project. (T. 554-55, 757-58). No party has presented any testimony disputing DEF's evidence that there is a need for additional generation capacity on DEF's system prior to 2018 and that the Hines Uprate Project is the most cost effective alternative to meet part of that need. PCS Phosphate, for example, conceded that the Hines Uprate Project is economic for DEF's customers. (T. 77).

B. There are no due process concerns in this Docket.³

³ 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. 2nd DCA 2000). Due process in an administrative proceeding, however, is less stringent than in a judicial proceeding, although it nonetheless applies. Hadley v. Department of Administration, 411 So. 2d 184, 187 (Fla. 1982). As stated in Hadley, "the extent of procedural due process protections varies with the character of the interest and nature of the proceeding involved." Thus, "due process is flexible and calls for such procedural protections as the particular situation demands." Id. at 187, citing Mathew v. Eldridge, 424 U.S. 319, 334 (U.S. 1976). Due process envisions a law that proceeds upon inquiry, and renders judgment only after proper consideration of the issues

NRG was the only intervening party that opposed DEF's motion to sever and withdraw the Suwannee Project from Docket No. 140111. (T. 25-26). NRG opposed DEF's motion based on an erroneous argument that NRG would be denied due process if the Suwannee Project was severed from the Docket and the hearing continued in this Docket with the consideration of the need for and cost effectiveness of the Hines Uprate Project. (T. 25-26).⁴ NRG's due process argument was based on the same unsupported argument noted above that the Suwannee Project and Hines Uprate Project were in some unexplained way interdependent or, in NRG's words, "intertwined" and a "package," and therefore could not be considered independent of each other. (T. 26, 49).⁵ This simply is not true. The undisputed testimony establishes that these are two separate projects with different technologies and operational characteristics, with two separate project schedules and project estimates, that will be built at two separate physical locations in Florida, and placed in service on DEF's system at separate times to meet DEF's total combined need prior to 2018. (T. 126-35; Exhibits 7-14; see also Mr. Borsch's testimony at T. 751-52).

advanced by adversarial parties. Scull v. State, 569 So. 2d 1251, 1252 (Fla. 1990). Due process is satisfied if the parties are provided notice of the hearing and an opportunity to be heard. Jennings v. Dade County, 589 So. 2d 1337, 1340 (Fla. 3rd DCA 1991).

⁴ No other party opposed DEF's motion to sever and withdraw the Suwannee Project in Docket No. 140111-EI. Other parties did, however, raise due process arguments that the withdrawal of the Suwannee Project in Docket No. 140111-EI somehow impacted the need for the separate Citrus County Combined Cycle Power Plant in Docket No. 140110-EI. This argument is addressed in DEF's Post-Hearing Statement of Issues, Positions, and Incorporated Arguments in Docket No. 140110-EI.

⁵ The fact that NRG argues that the Suwannee Project and the Hines Uprate Project (and even the Citrus County Combined Cycle Power Plant) are "intertwined" or a "package" because NRG chose on its own to consider them that way does not make these projects "intertwined" or a "package." As NRG made clear, "[s]o from our perspective it's so intertwined we're having a difficult time seeing how we can address it, because our witness, our witnesses, certainly address it in a combined fashion." (T. 49). (emphasis added). Simply put, NRG made an erroneous tactical or strategic choice in how it presented its case in this Docket that is not supported by the record evidence.

There is no evidence that these two projects are “intertwined” or a “package” --- in fact Mr. Borsch explicitly testified that the Hines Uprate Project is a cost effective generation capacity resource regardless of the generation capacity resource selected by the Company to meet DEF’s other generation capacity needs prior to 2018. (T. 617-19).

NRG’s real problem is that NRG chose to concentrate its efforts in this Docket on the Suwannee Project; indeed, NRG presented no evidence challenging the need for or the cost effectiveness of the Hines Uprate Project. Even NRG’s witness Mr. Pollock proposed the NRG plant acquisition and the Hines Uprate Project as an alternative to just the NRG plant acquisition in lieu of the selection of the Suwannee Project. (T. 618, 879). NRG’s case management strategy to focus its case on the Suwannee Project does not raise any due process issue. NRG’s decision not to put forth any evidence regarding the need for or cost effectiveness of the Hines Uprate Project does not equate to a lack of notice of and opportunity to challenge that Project.

NRG --- as well as all parties in this Docket --- were well aware that DEF was evaluating the NRG plant acquisition, the Calpine plant acquisition, the Suwannee Project, and the Hines Uprate Project to meet DEF’s need prior to 2018. (T. 554-56, 583-84). The parties, including NRG, in fact, took extensive discovery, including depositions, regarding all of these projects, including the Hines Uprate Project. (see generally Exhibits 101-121). As a result, there is no valid reason why NRG, or any intervenor for that matter, should assume that both Projects that DEF presented to the Commission in its Petition would be approved or disapproved as an all or nothing deal – simply because DEF requested approval of both Projects in its original Petition. The Commission has great latitude in its review of petitions and historically has not wholesale approved everything a utility has requested, but instead the Commission approves that part or all of the request that is deemed appropriate by the Commission based on the record. See generally

In re Petition for Rate Increase by Tampa Electric Company, Docket 080317, Order No. -09-0571-FOF-EI, 2009 WL 2589104 (“Our ability to choose a reasonable alternative is well documented” when based on the record evidence) (citing Gulf Power Company v. Florida Public Service Commission, 453 So. 2d 799, (Fla. 1984)). There is no factual or legal basis, then, for NRG’s apparent due process argument that NRG did not have adequate notice of and the opportunity to challenge need for and cost effectiveness of the Hines Uprate Project.⁶

C. The record evidence demonstrates that the Hines Chillers Power Uprate Project is the most cost effective alternative to meet a portion of DEF’s need prior to 2018.

The remaining issues in Docket 140111-EI require the Commission to determine if there is a need for the Hines Uprate Project and if that Project is the most cost effective alternative to meet that need. All parties concede there is a need for additional generation capacity on DEF’s system prior to 2018; no party or witness disputed that need. Further, the undisputed evidence shows that it does not matter if the Suwannee Project is built or if a deal with Calpine or NRG for their respective plants is consummated --- DEF will always build the Hines Uprate Project because it is the most cost effective alternative to meet part of DEF’s need prior to 2018, regardless of the generation capacity resource alternatives selected to meet the remainder of DEF’s need prior to 2018. (T. 554-55, 617-19, 758). Accordingly, DEF requests Commission

⁶ It bears emphasis that NRG and all parties had the opportunity for extensive legal argument on this issue, and they were further provided additional time by the Commission to present their case with wide latitude granted to cross examine DEF’s witnesses. (T. 38-58; T. 892). At the end of the hearing, the Chairman acknowledged that he gave intervenors wide latitude during the hearing. (T. 906). At no point after NRG’s opening statement when NRG was provided this additional time and wide latitude during cross examination did NRG renew its due process argument or request any additional time to prepare its case, including extending the hearing to the third day (September 3rd) so NRG could continue cross examination or conduct any intervening discovery. Even when the Chairman suggested that the record be closed and the hearing concluded on August 27, 2014, NRG did not object or renew its due process argument. (See Hearing Trans. Vol. 6). NRG, therefore, waived any due process argument it had.

approval of the Hines Uprate Project as the most cost effective generation capacity resource to meet a portion of DEF's need for generation capacity prior to 2018.

II. DEF'S STATEMENT OF ISSUES, POSITIONS, AND INCORPORATED ARGUMENTS SUPPORTING DEF'S PETITION FOR A DETERMINATION THAT THE HINES CHILLERS POWER UPRATE PROJECT IS A COST EFFECTIVE GENERATION ALTERNATIVE TO MEET PART OF DEF'S NEED PRIOR TO 2018.

HINES CHILLERS POWER UPRATE PROJECT

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

DEF Position:

*** Yes. The Commission can determine its jurisdiction at any time and the Commission has the jurisdiction to grant DEF's Petition. This jurisdiction is consistent with the Commission's jurisdiction under the Florida Electric Power Plant Siting Act. Additionally, the Commission determined that it had jurisdiction to grant DEF's Petition in the Revised and Restated Stipulation and Settlement Agreement pursuant to Chapter 366, including among others Section 366.04 and 366.05, Florida Statutes, in Commission Order No. PSC-13-0598-FOF-EI approving that Settlement Agreement. That Settlement Agreement provides for a potential Generation Base Rate Adjustment ("GBRA") for DEF generation resources prior to 2018 based on the Commission's determination of the need for and cost effectiveness of the generation resources. ***

The Commission Has Jurisdiction To Determine Whether The Proposed Hines Chillers Power Uprate Project Is The Most Cost-Effective Generation Alternative To Meet Duke's Need Prior To 2018

The Florida Legislature granted the Commission broad jurisdiction over the development by public utilities of new generation resources. Under Section 366.04(1) the Commission has the "jurisdiction to regulate and supervise each public utility with respect to rates and service." § 366.04(1), Fla. Stat. Under Section 366.04(2) the Commission in "the exercise of its jurisdiction" has the "power over electric utilities" to "require electric power ... reliability within a coordinated grid for operational as well as emergency purposes." § 366.04(2), Fla. Stat. Under Section 366.04(5) the Commission "shall further have jurisdiction over the planning,

development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities.” § 366.04(5), Fla. Stat. The Commission clearly has jurisdiction under Chapter 366 to determine the need for and cost effectiveness of the Hines Uprate Project to meet DEF’s need for additional generation prior to 2018. See § 366.01, Fla. Stat. (recognizing the regulation of public utilities is in the public interest and that Chapter 366 shall be “liberally construed for the accomplishment of that purpose.”); Storey v. Mayo, 217 So. 2d 304, 307 (Fla. 1968) (holding that “the power of the Commission over privately-owned utilities is omnipotent within the confines of the statutes and the limits of organic law.”).

This jurisdiction is consistent with and not in conflict with the Commission’s jurisdiction under the Florida Electric Power Plant Siting Act (“PPSA”). The Florida Legislature carved out certain types and sizes of generation resources for advance need determination proceedings pursuant to the PPSA. § 403.503(14); 403.506(1); 403.519(1), Fla. Stats. This “carve out” did not otherwise diminish or restrict the Commission’s existing jurisdiction over DEF’s Petition. Nowhere in the PPSA does the Florida Legislature express the intent to restrict or limit the Commission’s existing jurisdiction over the need for and cost effectiveness of any generation resource not covered by the PPSA. (Id.).⁷

⁷ Any argument that the specific provisions of the PPSA control over the general provisions of Chapter 366 is misplaced because that general principle applies only when both the specific and general statute cover the same subject area. See School Board of Palm Beach County v. Survivors Charter Schools, Inc., 3 So. 3d 1220, 1233 (Fla. 2009). Here, the PPSA does not “cover” the need for and cost effectiveness of the Hines Uprate Project and, therefore, the PPSA and the jurisdictional provisions of Chapter 366 do not cover the same subject; only the provisions of Chapter 366 address the Commission’s jurisdiction over the need for and cost effectiveness of this Project.

Indeed, under Section 366.05(8), the Florida Legislature expressly stated that the Commission's jurisdiction under that provision to require the installation or repair of necessary facilities, including generating plants, under certain conditions did not supersede or control the PPSA provisions. § 366.05(8), Fla. Stat. The Florida Legislature recognized here that the Commission had jurisdiction over determinations of need for and cost effectiveness of utility generation resources not covered by the PPSA.

The Commission, therefore, has the jurisdiction to determine that any plant DEF builds is needed and cost effective. If the plant qualifies for the PPSA that determination must be made up front; if the plant does not qualify for the PPSA that determination is usually made after the fact in a rate case, but it does not have to be made after the fact, instead, the Commission has the broad jurisdiction to make that determination at any time. See § 366.04, .05, Fla. Stats.

NRG argues that the Commission does not have jurisdiction to determine the need for and cost effectiveness of the Hines Uprate Project because that plant is not covered by the PPSA and because DEF's Petition failed to specifically list the statutory basis for Commission jurisdiction. Both arguments are meritless.

The PPSA does provide Commission jurisdiction to determine the need for and cost effectiveness of the plants covered by the PPSA. It does not address the Commission's jurisdiction to determine the need for and cost effectiveness of plants not covered by the PPSA at all. NRG can point this Commission to no provision in the PPSA where the Florida Legislature restricted or limited the Commission's existing jurisdiction under Chapter 366 to determine the need for and cost effectiveness of plants not covered by the PPSA. Indeed, when NRG first raised this legal issue, NRG conceded that the Commission had jurisdiction to consider the need for and cost effectiveness of a plant not covered by the PPSA in a rate case. See Doc. #04559-

14, Transcript, 8/13/2014 Prehearing Conference, p. 23. That must mean the Commission has the jurisdiction to decide the substantive issues of the need for and cost effectiveness of the plant and NRG's only real argument is the timing of that decision. Again, NRG can point to no Florida legislative restriction on the Commission making that determination before the plant not covered by the PPSA is built rather than after it is built and placed in commercial service and considered in the utility's base rate proceeding.

NRG's argument that the Commission does not have jurisdiction because DEF simply did not include a citation to Chapter 366 in its Petition misses the point. The inclusion or failure to include a statutory citation in a petition does not confer jurisdiction on the Commission; instead it is the statutory authority granted by the Florida Legislature that confers jurisdiction on the Commission. See generally In Re Bellsouth Telecomm., Docket 020611-TP, Order No PSC-02-1191-FOF-TP, 2002 WL 31059780 ("Subject matter jurisdiction arises by virtue of law only"). If that jurisdiction exists, which it does as demonstrated above, then the Commission has jurisdiction regardless of whether the petition includes a citation or not to that jurisdictional authority.

In any event, DEF's Petition expressly states that the relief requested is presented "in accordance with" the Order approving the 2013 Settlement Agreement. In that Order, the Commission affirmed, with no challenge on appeal, that it had jurisdiction pursuant to Chapter 366, including Sections 366.04 and 366.05, to approve the 2013 Settlement Agreement. The 2013 Settlement Agreement provided for a potential generation base rate adjustment for generation capacity additions prior to 2018 if DEF demonstrated that generation capacity was needed and cost effective for customers. Order No. PSC-13-0598-FOF-EI, p. 2 ("We have jurisdiction pursuant to Chapter 366, F.S., including Sections 366.04, 366.041, 366.05, 366.06,

366.07, 366.076, 366.8255, 366.93, and 120.57(2) and (4), F.S., and Rules 28-106.301 and 28-106.302, F.A.C.”).⁸ DEF further included numerous factual allegations in its Petition requesting the Commission’s determination of the need for and cost effectiveness of the Project that implicate the Commission’s jurisdiction over DEF’s rates, service, and generation system additions and reliability under Chapter 366, and as such, DEF has appropriately alleged the jurisdictional issue. Id.; see also Tampa School Dev.v Hills. Cty. School Board, Case No. 11-2183, 2011 WL 6328412, *1 (Fla.Div.Admin.Hrgs. Oct. 25, 2011) (“Subject matter jurisdiction is tested by the good faith allegations in the initial pleading.”).

For all these reasons, the Commission has jurisdiction over DEF’s Petition in this Docket.

Issue 9: Is the proposed Hines Chillers Power Uprate Project needed, taking into account the need for electric system reliability and integrity?

DEF Position:

***Yes, the proposed Hines Uprate Project is needed for electric system reliability and integrity. The project is necessary to help to meet the Company’s summer Reserve Margin requirement to deliver reliable electric service to the Company’s customers. DEF projects growth in firm summer peak demand in the summers of 2016 and in 2017. DEF’s existing and planned generation capacity retirements and reductions also contribute to the Company’s need for generation capacity and specifically summer peaking capacity. The Hines Uprate Project allows DEF to help satisfy its commitment to maintain a minimum 20 percent Reserve Margin and is needed for the Company to maintain electric system reliability and integrity to serve DEF’s customers. ***

The Undisputed Evidence Demonstrates That The Hines Chillers Power Uprate Project Is Needed For Electric System Reliability And Integrity

The undisputed evidence demonstrates that the Hines Uprate Project assists DEF in meeting its commitment to maintain a minimum 20 percent Reserve Margin to maintain electric system reliability and integrity. (T. 251-52, 530-33, 543-44; Exhibit 65). The Company’s need

⁸ The Commission clearly has the authority to determine its jurisdiction. See Florida Public Service Commission v. Bryson, 569 So. 2d 1253, 1255 (Fla. 1990) (“The PSC has the authority to interpret the statutes that empower it, including jurisdictional statutes, and to make rules and issue orders accordingly.”).

for the Hines Uprate Project is driven by generation facility retirements and power reductions, and projected increases in summer firm demand and energy growth in 2016 and 2017. (T. 520-33; 543-44; Exhibits 62-66). The Company's demand and energy forecasts are discussed in detail in Mr. Borsch's testimony and in the Company's 2014 TYSP. (T. 530-33; Exhibit 63). Together the projected load growth and existing and planned retirements demonstrate a need for additional capacity of approximately 280 MW in the summer of 2016 increasing to a need for 470 MW by the summer of 2017. (T. 531-32; Exhibit 65). The Hines Uprate Project is necessary to help to meet the Company's summer Reserve Margin requirement to deliver reliable electric service to the Company's customers.

No intervenors presented any evidence disputing DEF's evidence that DEF has a reliability need for additional generation capacity on DEF's system prior to 2018. (T. 616).⁹ NRG and Calpine actually proposed alternative generation capacity resources to meet the Company's reliability need for additional generation capacity prior to 2018. (T. 492). The uncontroverted evidence, then, demonstrates that the Hines Uprate Project is needed on DEF's generation system prior to 2018, taking into account the need for electric system reliability and integrity.

⁹ Several intervenors challenged DEF's load forecast based on the unreasonable comparison of actual peak demand and energy consumption to DEF's projected peak demand and energy consumption based on the erroneous implicit assumption that DEF's actual peak demand and energy consumption will be replicated in the future. (See, e.g., T. 848, 849-850). These intervenors, however, point to no actual error in DEF's load forecast methodology, procedures, or assumptions to support these arguments. These arguments are addressed in detail in DEF's Post-Hearing Statement of Issues, Positions, and Incorporated Arguments in Docket No. 140110-EI because the intervenors made them in connection with DEF's Petition for determination of need for the Citrus County Combined Cycle Power Plant. To the extent that any intervenor changes course and asserts those same arguments in this Docket, DEF incorporates by reference its response to these arguments in its Post-Hearing Statement of Issues, Positions, and Incorporated Arguments in Docket No. 140110-EI.

Issue 10: Is the proposed Hines Chillers Power Uprate Project needed, taking into account the need for adequate electricity at a reasonable cost?

DEF Position:

*** Yes, the proposed Hines Uprate Project is needed and will provide adequate electricity at a reasonable cost. The Hines Uprate Project meets the Company's need for reliable capacity by the summer of 2017 through an increase in the summer capacity of the existing natural-gas fired, combined cycle power plants located at the HEC. DEF will achieve an increase of approximately 220MW in its HEC summer capacity by utilizing an existing site and power block, saving customers the increased costs and time of building new generation at another existing site or a Greenfield site to achieve the same reliable summer capacity. ***

The Undisputed Evidence Demonstrates That The Hines Chillers Power Uprate Project Will Provide Adequate Electricity At A Reasonable Cost

The undisputed evidence demonstrates that the Hines Uprate Project will provide DEF's customers needed summer peaking capacity at a reasonable cost. (T. 126, 131-35, 246-47, 519-20, 543-46). The Hines Uprate Project involves the installation of a chiller system on all four existing natural-gas fired, combined cycle power blocks, Hines Unit 1-4, located at the HEC in Polk County, Florida. (T. 131). When complete the Hines Uprate project will increase the summer capacity of those units by approximately 220 MW. (T. 131). As Mr. Landseidel explained, the Hines Uprate also has the potential to increase winter capacity during warmer winter days when the temperature is above 50 degrees. (T. 138-39). The estimated project cost is \$160 million. (T. 133-34; Exhibit 13).

Existing generation, site infrastructure, and transmission infrastructure support the Hines Uprate Project. (T. 132, 244-45). Because the HEC combined cycle power block units are already connected to the DEF transmission system, there are no generation transmission interconnection costs associated with the Hines Uprate project. (T. 246; Exhibit 33). There will be a minimal increase in the fixed and variable operations and maintenance ("O&M") costs at HEC and a much lower fixed and variable O&M cost for the same amount of capacity for a new

power plant at another existing or Greenfield site. (T. 132-35). Accordingly, the location of the Hines Uprate project at the existing HEC site allows DEF to obtain substantial additional summer generation capacity with no additional generation and transmission infrastructure and minimal additional fixed and variable O&M costs associated with the Hines Uprate Project. (T. 134, 246, 252, 545). The Hines Uprate Project, therefore, provides DEF's customers adequate electricity at a reasonable cost.

No intervenor presented any evidence or even any argument disputing DEF's evidence that the Hines Uprate Project will provide adequate electricity to DEF's customers at a reasonable cost. (T. 616). Based on the undisputed record evidence, the Hines Uprate Project is needed, taking into account the need for adequate electricity at a reasonable cost.

Issue 11: Is the proposed Hines Chillers Power Uprate Project needed, taking into account the need for fuel diversity and supply reliability?

DEF Position:

Yes, the proposed Hines Uprate Project is needed taking into account the need for fuel diversity and supply reliability. The Hines Uprate Project is a natural gas-fired generation project. Natural-gas fired generation is the most economic and qualitatively attractive generation technology for DEF and the State of Florida at this time and for the foreseeable future. There are abundant conventional and unconventional natural gas resources available in the United States and North America. These natural gas resources ensure a long term natural gas supply at economically beneficial prices for electric power generation at the Hines Uprate Project. The Hines Uprate Project will use the existing fuel pipeline infrastructure and firm gas transportation and supply arrangements for the HEC.

The Undisputed Evidence Demonstrates That The Hines Chillers Power Uprate Project Is Needed Taking Into Account The Need For Fuel Diversity And Supply Reliability

The undisputed evidence demonstrates that the Hines Uprate Project is needed taking into account the need for fuel diversity and supply reliability. (T. 131-33, 544-46). The Hines Uprate Project meets the Company's need for reliable generation capacity prior to 2018 through an increase in the summer generation capacity of the existing natural-gas fired, combined cycle

power plants located at the HEC. (T. 132-33, 544-45). Natural-gas fired generation is the most economic and qualitatively attractive generation technology for DEF and the State of Florida at this time and for the foreseeable future. (T. 207, 215-16).¹⁰ There are abundant conventional and unconventional natural gas supply resources available in the United States and North America. (T. 206, 216-17; Exhibits 27- 28). These natural gas supply resources ensure a long term natural gas supply at economically beneficial prices for electric power generation at the HEC for the Hines Uprate Project. (T. 215). This evidence was undisputed. No intervenor even argued that the Hines Uprate Project did not enhance the need for fuel diversity and supply reliability on DEF's generation system. (T. 616). Accordingly, the Hines Uprate Project is needed taking into account 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 that might mitigate the need for the proposed Hines Chillers Power Uprate Project?

DEF Position:

No. DEF analyzed viable non-generating, demand-side alternatives before determining that the Hines Uprate Project was the most cost effective resource option to meet part of DEF's needs. Energy conservation and direct load control programs are always a part of the Company's IRP process and the Company's current, approved DSM programs were considered in connection with the Company's near term generation capacity need commencing in 2016. The Company's DSM programs, however, cannot replace or defer the Company's need for additional generation on its system to meet the Company's capacity needs commencing in 2016. There are no renewable energy sources and technologies or conservation measures taken by or reasonably available to DEF to mitigate the Company's need for the Hines Uprate Project.

¹⁰ NRG and Calpine both proposed natural-gas fired generation capacity resources to meet DEF's need prior to 2018. (T. 616).

The Undisputed Evidence Demonstrates That There Are No Viable Renewable Energy Resources Or Conservation Measures Available To Mitigate The Need For The Proposed Hines Chillers Power Uprate Project

The undisputed evidence conclusively demonstrates that there are no renewable energy sources and technologies or conservation measures taken by or reasonably available to DEF to mitigate the need for the Hines Uprate Project. (T. 533-38, 540-41, 617). Energy conservation and direct load control programs are always a part of the Company's IRP process and they were considered in connection with the Company's near-term generation capacity need commencing in 2016. (T. 533-38, 540-41). The Company's current demand-side management ("DSM") programs were included in the Company's Base Generation Expansion Plan that contains the Hines Uprate Project. (Id.). The Company's current DSM programs cannot replace or defer the Company's need for additional generation on its system to meet the Company's generation capacity needs commencing in 2016. (T. 533). DEF analyzed viable non-generating, demand-side alternatives before determining that the Hines Uprate Project was the most cost effective resource option to meet part of DEF's needs prior to 2018. (T. 533-38, 540-41).

No commercially available, economically feasible renewable generation resource currently exists to displace or defer DEF's generation capacity needs commencing in the summer of 2016. No proposals for renewable energy projects have been received in response to the Company's Request For Renewables ("RFR") that will displace or defer the Company's generation capacity needs in 2016 and 2017. (T. 540-41).

Accordingly, based on the undisputed evidence, there are no renewable energy sources and technologies or conservation measures taken by or reasonably available to DEF to mitigate the Company's need for the Hines Uprate Project.

Issue 13: Is the proposed Hines Chillers Power Uprate Project the most cost-effective alternative available to meet the needs of Duke Energy Florida, Inc. and its customers?

DEF Position:

Yes, the proposed Hines Chillers Power Uprate Project is the most cost-effective alternative available to meet DEF customer needs prior to 2018. The Company conducted a careful screening of various other supply side alternatives in its IRP process. DEF evaluated new generation, existing plant uprate projects, and existing generation life extension projects to meet this need. The Hines Uprate Project is the most cost-effective generation option in every generation alternative scenario. This project adds summer generation capacity with additional combined cycle power generation so DEF obtains additional summer peaking generation at combined cycle generation efficiency and cost. No NRG or Calpine witness contests the cost-effectiveness of the Hines Uprate Project to meet DEF's generation capacity need.

The Undisputed Evidence Demonstrates That The Hines Chillers Power Uprate Project Is The Most Cost-Effective Alternative Available To Meet A Portion Of The Need Of DEF And Its Customers Prior To 2018

The uncontroverted evidence demonstrates that the Hines Uprate Project is the most cost-effective alternative available to meet a portion of the need of DEF and its customers prior to 2018. (T. 132-35, 246-47, 525-28). DEF conducted a careful screening of various other supply side alternatives as part of its IRP process. The Company evaluated new generation, existing plant uprate projects, and existing generation life extension projects to meet this need. This evaluation included the fixed project capital costs, fixed and variable O&M costs, fuel and consumable costs, transmission costs, and the technical feasibility of these generation options. Based on this evaluation, DEF identified the Hines Uprate Project as a part of its Base Generation Plan to meet a portion of its reliability needs prior to 2018. (T. 525-40).

The Hines Uprate Project meets DEF's need for reliable generation capacity through an increase in the efficient power output of the existing natural-gas fired, combined cycle power plants located at the HEC. The Hines Uprate Project provides customers the savings associated with achieving reliable summer peaking capacity at combined cycle generation efficiency

without having to build additional peaking capacity at another site on DEF's system. The increase in summer generation capacity at the HEC site as a result of the Hines Uprate Project will not require additional site, generation, or transmission network upgrades on DEF's system. (T. 248-50). Existing infrastructure at the HEC will be used for the Hines Uprate Project. (T. 246-47; Exhibits 11-12, 33). There is no better option to generate 220MWs of additional power than the Hines Uprate Project. (T. 554-55, 618-19, 757-58).

DEF evaluated nine proposals for PPAs or generation facility acquisitions in a competitive evaluation against DEF's self-build projects to meet DEF's generation capacity needs prior to 2018. DEF evaluated all of these proposals by systematically following a structured, orderly evaluation process that evaluated all proposals, including the Company's self-build generation projects, on price and non-price attributes, including all generation, environmental, and transmission cost impacts, in the analysis. (T. 547-54). This detailed evaluation analysis demonstrated that the Hines Uprate Project was cost effective in every generation alternative resource combination to meet DEF's need prior to 2018. (T. 554-55). As Mr. Borsch made clear, "the addition of the Hines Chillers Power Uprate Project to every generation capacity resource proposal made every proposal more economically favorable for DEF's customers" and DEF's "evaluation of the generation capacity resource proposals to meet DEF's need prior to 2018 included the Hines Chillers Power Uprate Project in every generation resource option." (T. 618-19). No contrary evidence was introduced by any party, and in fact, NRG's witness Mr. Pollock conceded that the Hines Uprate Project increased the value of the NRG plant acquisition as an alternative resource plan. (T. 879-80). The undisputed evidence demonstrates, then, that the Hines Uprate Project is the most cost effective alternative to meet a portion of the needs of DEF and its customers prior to 2018.

Issues 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?

DEF Position:

Yes. DEF examined several alternative generation expansion plans to determine the most cost-effective based on cost, fuel sources and availability, technological maturity, and overall resource feasibility. The Hines Uprate Project was chosen by the Company as part of its plan to meet the Company's reliability needs for summer capacity. DEF also evaluated nine proposals for PPAs or facility acquisitions. DEF evaluated all of these proposals by systematically following a structured process that evaluated all proposals on price and non-price attributes. DEF also continued to evaluate additional offers from NRG and Calpine. DEF concluded that there was no more cost effective generation resource to achieve an additional 220 MW of summer capacity than the Hines Uprate Project.

The Undisputed Evidence Demonstrates That DEF Reasonably Evaluated All Alternative Scenarios For Cost Effectively Meeting The Needs Of Its Customers Over The Relevant Planning Horizon

The evidence demonstrates that DEF reasonably evaluated all alternative scenarios to the Hines Uprate Project for cost effectively meeting a portion of DEF's need prior to 2018. (T. 547-54; Exhibits 67, 68). As explained above, and based on the uncontroverted record evidence, DEF conducted a careful screening of various other supply side alternatives as part of its IRP process. The Company evaluated new generation, existing plant uprate projects, and existing generation life extension projects to meet this need. This evaluation included the fixed project capital costs, fixed and variable O&M costs, fuel and consumable costs, transmission costs, and the technical feasibility of these generation options. Based on this evaluation, DEF identified the Hines Uprate Project as a part of its Base Generation Plan to meet a portion of its reliability needs prior to 2018. (T. 525-40).

The evidence conclusively demonstrates that the Hines Uprate Project meets DEF's need for reliable generation capacity through an increase in the efficient power output of the existing natural gas-fired, combined cycle power plants located at the HEC. The Hines Uprate Project

provides customers the savings associated with achieving reliable summer peaking capacity at combined cycle generation efficiency without having to build additional peaking capacity at another site on DEF's system. The increase in summer generation capacity at the HEC site as a result of the Hines Uprate Project will not require additional generation or transmission network upgrades on DEF's system. (T. 248-50). Existing infrastructure at the HEC will be used for the Hines Uprate Project. (T. 246-47; Exhibits 11-12, 33). There is no better option to generate 220MWs of additional power than the Hines Uprate Project. (T. 554-55, 618-19, 757-58).

As also explained above, and based on the uncontroverted record evidence, DEF evaluated nine proposals for PPAs or generation facility acquisitions in a competitive evaluation against DEF's self-build projects to meet DEF's generation capacity needs prior to 2018. DEF evaluated all of these proposals by systematically following a structured, orderly evaluation process that evaluated all proposals, including the Company's self-build generation projects, on all price and non-price attributes, in the analysis. (T. 547-48). This detailed evaluation analysis demonstrated that the Hines Uprate Project was cost effective in every generation alternative combination to meet DEF's need prior to 2018. (T. 554-55). As Mr. Borsch made clear, "the addition of the Hines Chillers Power Uprate Project to every generation capacity resource proposal made every proposal more economically favorable for DEF's customers" and DEF's "evaluation of the generation capacity resource proposals to meet DEF's need prior to 2018 included the Hines Chillers Power Uprate Project in every generation resource option." (T. 618-19). The Hines Uprate Project is economically favorable for DEF's customers in every scenario that DEF evaluated. (T. 554-55, 758). No intervenor party or witness disputes this fact, nor do they suggest any alternative generation resource scenario that does not include the Hines Uprate Project. Based on the undisputed record evidence, DEF reasonably evaluated all alternative

scenarios to the Hines Uprate Project to cost effectively meet the needs of customers over the relevant planning horizon. (T. 617-19).

Issue 15: Based on the resolution of the foregoing issues, should the Commission grant the requested determination that the proposed Hines Chillers Power Uprate Project is the most cost-effective generation alternative to meet Duke's needs prior to 2018?

DEF Position:

Yes, the Commission should grant the requested determination that the proposed Hines Uprate Project is the most cost-effective generation alternative to meet a portion of DEF's need prior to 2018. DEF needs the Hines Uprate Project prior to 2018 to help maintain its 20 percent Reserve Margin commitment and to serve its customers' future electrical power needs in a reliable and cost-effective manner. The Hines Uprate Project is the most cost-effective generation option in every generation alternative scenario. This Project adds summer generation capacity with additional combined cycle power generation. As a result, the Company obtains additional summer peaking generation at combined cycle generation efficiency and cost.

The Undisputed Evidence Demonstrates That The Commission Should Grant DEF's Requested Determination That The Proposed Hines Chillers Power Uprate Project Is The Most Cost Effective Generation Alternative To Meet A Portion Of DEF's Need Prior To 2018

The undisputed record evidence demonstrates that the Hines Uprate Project will meet a portion of DEF's need prior to 2018 in a cost effective manner. (T. 131-35, 206, 215-17, 246-47, 554-55, 618-19, 758). This Project adds summer generation capacity with additional combined cycle power generation. As a result, the Company obtains additional summer peaking generation at combined cycle generation efficiency and cost. The fuel efficiency and relatively low cost of the Hines Uprate Project make it a highly cost-effective generation option to meet DEF's customer reliability needs. (T. 131-35, 565). As explained by Mr. Borsch, the Hines Uprate Project is the most cost-effective generation option in every generation alternative scenario to meet DEF's reliability need prior to 2018. (T. 554-55, 618-19, 758). The addition of the Hines Uprate Project to every generation capacity resource proposal made every proposal more economically favorable for DEF's customers, and therefore, DEF's evaluation of the generation

capacity resource proposals to meet DEF's need prior to 2018 included the Hines Uprate Project in every generation resource option. (Id.). Accordingly, based on the undisputed evidence of record the Commission should grant DEF's Petition and approve the Hines Uprate Project as the most cost-effective generation alternative to meet a portion of DEF's customer needs prior to 2018.

Issue 16: Should this docket be closed?

DEF Position:

*** Following a final order by the Commission granting the requested determination that the proposed Hines Chillers Power Uprate Project is the most cost effective generation alternative to meet DEF's need prior to 2018, and pending the filing of reconsideration or for appellate review, if any, yes, this docket should be closed.***

III. CONCLUSION.

For the reasons provided, and based on the uncontroverted evidence in this Docket, DEF respectfully requests that the Commission grant DEF's Petition and determine that the Hines Chillers Power Uprate Project is the most cost-effective generation alternative to meet a portion of DEF's need prior to 2018.

Respectfully submitted on the 10th day of September 2014,

John T. Burnett
Deputy General Counsel
Dianne M. Triplett
Associate General Counsel
DUKE ENERGY FLORIDA, INC.
Post Office Box 14042
St. Petersburg, FL 33733-4042
Telephone: (727) 820-5587
Facsimile: (727) 820-5519

/s/ James Michael Walls
James Michael Walls
Florida Bar No. 0706242
Blaise N. Gamba
Florida Bar No. 0027942
CARLTON FIELDS JORDEN
BURT, P.A.
Post Office Box 3239
Tampa, FL 33601-3239
Telephone: (813) 223-7000
Facsimile: (813) 229-4133

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing has been furnished to counsel and parties of record as indicated below via electronic mail this 10th day of September, 2014.

/s/ James Michael Walls

Attorney

Michael Lawson
Florida Public Service Commission Staff
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Phone: (850) 413-6199
Facsimile: (850) 413-6184
Email: mlawson@psc.state.fl.us

Charles Rehwinkel
Deputy Public Counsel
Erik Saylor
Associate Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400
Phone: (850) 488-9330
Email: rehwinkel.charles@leg.state.fl.us
Saylor.erik@leg.state.fl.us

Jon C. Moyle, Jr.
Karen A. Putnal
Moyle Law Firm
118 North Gadsden Street
Tallahassee, FL 32301
Phone: (850) 681-3828
Fax: (850) 681-8788
Email: jmoyle@moylelaw.com
kputnal@moylelaw.com

James W. Brew
F. Alvin Taylor
Brickfield Burchette Ritts & Stone, PC
1025 Thomas Jefferson St NW
8th FL West Tower
Washington, DC 20007-5201
Phone: (202) 342-0800
Fax: (202) 342-0807
Email: jbrew@bbrslaw.com
ataylor@bbrslaw.com

Robert Scheffel Wright
John T. LaVia, III
Gardner Law Firm
1300 Thomaswood Drive
Tallahassee, FL 32308
Phone: (850) 385-0070
Email: Schef@gbwlegal.com
Jlavia@gbwlegal.com

Marsha E. Rule
Rutledge Ecenia, P.A.
119 South Monroe St., Ste. 202
Tallahassee, FL 32301
Phone: (850) 681-6788
Fax: (850) 681-6515
Email: marsha@rutledge-ecenia.com

Gordon D. Polozola
General Counsel – South Central Region
NRG Energy, Inc.
112 Telly Street
New Roads, LA 70760
Phone: (225) 618-4084
Email: Gordon.Polozola@nrgenergy.com

Richard A. Zambo
Richard A. Zambo, P.A.
2336 S.E. Ocean Blvd., #309
Stuart, FL 34966
Phone: (772) 225-5400
Email: richzambo@aol.com