

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

**CITIZEN'S POST-HEARING STATEMENT OF POSITIONS
AND POST-HEARING BRIEF**

Pursuant to Order No. PSC-14-0440-PHO-EI, issued August 22, 2014, the Office of Public Counsel ("OPC" or "Public Counsel") hereby submits this Post-Hearing Statement of Positions and Post-Hearing Brief on the disputed issues pertaining to the Petition for determination of need for Citrus County combined cycle power plant by Duke Energy Florida, Inc. ("Duke") ("Petition").

PRELIMINARY STATEMENT

This case is one of burden of proof. Duke seeks the Florida Public Service Commission's approval to construct a 1640 MegaWatt ("MW") combined cycle unit in Citrus County ("Citrus County Unit"). The Company has projected a total cost of the unit at \$1.514 billion. Duke's request is based upon its claim that it will not have enough capacity to meet projected peak (summer) demand based on a 20% reserve margin. (Petition at 23; TR 408). Based on the record in this case, the Public Counsel cannot agree that Duke has met its burden of proof in justifying a need for the Citrus County Unit in 2018.

The Public Counsel will focus its argument on the ultimate issue in this docket (Issue 7) and therefore preserves, incorporates and adopts herein the positions taken on the remaining substantive Issues 1-6 as reflected in Order No. PSC-14-0440-PHO-EI.

POSITIONS AND ARGUMENT ON DISPUTED ISSUES

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?

OPC: *Duke has not met its burden of demonstrating that a need exists for the Citrus County Combined Cycle plant in 2018.*

As a signatory to a complex and comprehensive global settlement that delivered over \$2.3 billion in value to Duke customers, the OPC and the other signatories agreed to a process that gives Duke an opportunity to receive base rate recovery of the cost of needed generation if it demonstrates to the Commission that it has both a need for generation resources and has identified the lowest cost, reliable generation resource solution to the dilemma that Duke's actions have created. (Order No. PSC-13-0598-FOF-EI, at 33-37). The customer representatives did not agree in the settlement that Duke should build the Citrus County Unit or that a need for the unit exists. The 2013 settlement agreement only provided that Duke would be entitled to base rate recovery for the revenue requirements of a power plant IF the company met a burden it already has under the law. That burden is identified in Paragraph 16 of the Revised and Restated Stipulation and Settlement Agreement (Order No. PSC-13-0598-FOF-EI, at 35, 37) and is specifically found in the relevant portions of the applicable statutes and Commission's Need Determination Rules (Sections 403.519 (1)-(3), Fla. Stat. and Rule 25-22.082(15), F.A.C.), which provide in pertinent part:

Section 403.519(1) – (3) Exclusive forum for determination of need.—

(1) On request by an applicant or on its own motion, the commission shall begin a proceeding to determine the need for an electrical power plant subject to the Florida Electrical Power Plant Siting Act.

(3) The commission shall be the sole forum for the determination of this

matter, which accordingly shall not be raised in any other forum or in the review of proceedings in such other forum. **In making its determination, the commission shall take into account the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, the need for fuel diversity and supply reliability, whether the proposed plant is the most cost-effective alternative available, and whether renewable energy sources and technologies, as well as conservation measures, are utilized to the extent reasonably available. The commission shall also expressly consider the conservation measures taken by or reasonably available to the applicant or its members which might mitigate the need for the proposed plant and other matters within its jurisdiction which it deems relevant.** The commission's determination of need for an electrical power plant shall create a presumption of public need and necessity and shall serve as the commission's report required by s. 403.507(4). An order entered pursuant to this section constitutes final agency action.

Rule 25-22.082(15) Selection of Generating Capacity.

(15) If the Commission approves a purchase power agreement as a result of the RFP, the public utility shall be authorized to recover the prudently incurred costs of the agreement through the public utility's capacity, and fuel and purchased power cost recovery clauses absent evidence of fraud, mistake, or similar grounds sufficient to disturb the finality of the approval under governing law. **If the public utility selects a self-build option, costs in addition to those identified in the need determination proceeding shall not be recoverable unless the utility can demonstrate that such costs were prudently incurred and due to extraordinary circumstance.**

(Emphasis added)

Rule 25-22.080(1) further provides that:

(1) Proceedings to determine the need for a proposed electrical power plant, as defined in Section 403.503(7), Florida Statutes, **shall begin with a petition by a utility** or on the Commission's own motion and shall be disposed of in accordance with the provisions of Chapter 25-2, F.A.C., except that the time deadlines set forth in this rule and in Sections 403.501 through 403.517, Florida Statutes, to the extent applicable, shall control. Proceedings may begin prior to the filing of an application for site certification of the proposed electrical power plant.

(Emphasis added)

As a basic proposition, the Public Counsel submits that the Commission should find that the lowest cost, prudent, reliable solution should be selected in the event that the Commission

determines that Duke has met its burden to demonstrate that a need exists, if indeed one does.

As the petitioner pursuant to these rules and statutes, Duke indisputably shoulders the burden to prove the elements of its petition. The OPC submits that the central element in dispute here is Duke's claimed need for the Citrus County Unit as it is based on the load forecast that Duke offers to the Commission for its consideration under Section 403.519(3), Fla. Stat. It is not clear that Duke has met the burden imposed by the statutes and rules.

The OPC reiterates its plea made in opening statements (TR 72-73) that the Commission remain mindful of the circumstances that have, in part, given rise to the need that Duke presents. The Commission is charged in every need determination with only allowing "reasonable" costs that are prudently incurred and necessary for the provision of reliable electric service when it finds that a company has met its burden to show a need exists. The Commission should be especially vigilant and hold Duke to its burden of proof in light of the fact that customers are paying (or will soon be paying) for the abandonment of three nuclear generation projects while also facing the prospect of paying for the generation that Duke claims is needed to replace the power that would in part have been produced by that abandoned nuclear generation.

For the Public Counsel, the fundamental question before the Commission is whether, as the petitioner, Duke has met its burden of demonstrating that a need exists for a 1640 MW combined cycle generating plant. Essential to its burden, is the load forecast that Duke submitted in this case. Duke sponsored the forecast through the testimony of Benjamin Borsch in an effort to show that, absent the construction of the \$1.5 billion Citrus County Unit, Duke would have a reserve margin of 11.7% versus a required 20% reserve margin. TR 408. OPC concedes that if everything in the forecast is as Duke has projected, then a need likely would exist for the Citrus County Unit in 2018. The difficulty presented by Duke's petition is that the

load forecast is fraught with uncertainty and demonstrates an optimistic level of growth that may not be warranted in the demand recently exhibited by either the retail or wholesale native load that Duke is required to serve.

The OPC has joined other parties in expressing concerns with the load forecast that Duke submitted. NRG witness Jeffrey Pollock noted that Duke has projected an increase in peak demand that is approximately 1000 MW greater than that which the recent historical trend of peak demands would otherwise indicate. TR 877-878. This is a concern. In his rebuttal testimony, Duke witness Borsch scoffs at the Pollock testimony but does little more than present a vague allusion to an unnamed wholesale customer contract that is partly responsible for that increase. TR 496-7, 639. Witness Pollock recommends that the Commission adjust the Duke forecast by 50% to account for the counterintuitive increase in demand given recent history. TR 878.

Corroboration for Mr. Pollock's observation and recommended adjustment was found in cross-examination of Mr. Borsch. He acknowledged that the historical trend of the relationship between Summer Net Firm Demand and Average System Demand had materially changed from the 2013 historical period to 2014 (and beyond) in the version of the future Duke asks the Commission to accept. TR 721-726; EXH 140. To the extent that the trend exposed during cross-examination by counsel for White Springs represents a departure from what is reasonably expected and to the extent that it corroborates the observation and proposed adjustment of Mr. Pollock, the Commission should have serious reservations about whether the Duke forecast supports a need for the Citrus County Unit in 2018. The evidence shows that if the historical trend identified in EXH 140 is substituted for the optimistic economic rebound that fuels the Duke forecast, the need for the Citrus County Unit all but disappears in 2018. TR 734-735; EXH

140, p. 5.

If one layers onto this fragility in the Duke forecast, the potential softness in the wholesale demand represented largely by sales to Seminole Electric Cooperative (“Seminole”), a real doubt persists with regard to the need for the combined cycle unit in 2018. Mr. Borsch acknowledged that the contracts with Seminole were the reference to which he was making in his rebuttal to Mr. Pollock. EXH 122, pp 116-117. What was less than clear in testimony was how dependable the reliance on the Seminole contracts was in determining the forecasted 2018 need. Mr. Borsch seemed to suggest that the contracts rigidly dictated the amount of wholesale power included in the peak demand analysis; however, he also acknowledged that there was a recalibration of sorts that occurred annually. TR. 668. Notably, between the 2013 and 2014 load forecasts the wholesale demand of Seminole was reduced from 937 MW to 581 MW for the year 2017. TR 667; EXH 62, p. 164; EXH 63, p. 18 Part of the reason may have been the loss of the Lee County Electric Cooperative load. TR 673. In any event, Duke controls all the information about its contracted for and expected actual sales to Seminole and offered very little in the way of tangible justification for the projected Seminole demand. The trend in the recent years indicates significant fluctuation in demand for sales to Seminole. The Commission should ask whether the Seminole demand can be relied on to support Duke’s forecasted 2018 demand.

These factors (abrupt change in the optimism of the forecast and the questions about the wholesale sales) when taken as a whole, hardly present a compelling case that the Commission ought to rely on the Duke forecast to authorize the construction of the Citrus County Unit. OPC cannot affirmatively support the need for the plant due to doubts that were not adequately addressed. The Commission has to decide for itself if the customers should pay an average of \$80 annually for what appears to be a speculative forecasted need. The doubts about the Duke

forecast provide the basis for the Commission to ask if it has all of the information required by Section 403.519(3), Fla. Stat. in order to support a decision to authorize a \$1.5 billion addition to ratebase.

Of equal and compounding concern is that the OPC, other parties and the Commission learned at the very start of the hearing that Duke had reached an agreement to pursue the purchase of the 599 MW Osprey combined cycle unit. TR 20. Duke admitted that it had not performed a production cost model analysis of a scenario where the entire output of the Osprey unit was assumed to be available to Duke by the middle of 2018. TR 707-708; EXH 138.¹ Duke admitted that it did not fully explore the cost implications of the possibility – demonstrated by Exhibit 138 – that the construction of the Citrus County Unit could be delayed one year while meeting the reserve margin. TR 707. Duke had earlier suggested that any delay in the in-service date of Citrus County would cost customers \$90 million. TR 508; EXH 126, p.1. Certainly the OPC is not advocating that the Commission should take action that would cause a net increase in the customers' bills. However, the OPC also asserts that Section 403.519(3), Fla. Stat. obligates the Commission to satisfy itself that it has all of the facts needed to support an order granting the Duke Petition.

With respect to the possible availability of the Osprey unit, Mr. Borsch testified that Dukes' "planning" assumption is that the full output of Osprey will not be available until the beginning of 2020 and thus the unit would not be considered in meeting the need that Duke says exists in 2018 or in deferring the Citrus County Unit. TR 691-692. Unfortunately, under the

¹ Duke sought to undermine the exhibit by suggesting that the scenario portrayed in the exhibit would require transmission work to have impossibly begun in 2013 in order to meet the 2016 in-service date of the Osprey unit on the Duke system. This attack is a red herring inasmuch as the portrayal of Osprey on the system before mid-2018 is irrelevant to meeting the 20% reserve margin. The only year that matters for purposes of this petition is 2018 and a postulated mid-2015 transmission construction start date or other method of providing transmission for the full output of Osprey would meet the three-year lead-time. Duke witness Borsch did not unequivocally rule out meeting this date, but indicated that for "planning purposes" the company would not expect the full output of the Osprey unit to be available at the beginning of 2020. TR 691.

accelerated timeframes of the need determination process and the last minute revelation of an apparent Osprey acquisition deal, the Commission is faced with either accepting Duke' forecast, "planning" assumptions, and lack of information about the full details of the timing of FERC approval and transmission options, or rejecting the Petition because of Duke's failure to carry its burden of proof.

The OPC readily admits that it cannot state that Duke will be able to provide a reliable transmission pathway that will deliver the full output of Osprey to the Duke system. By the same token, Duke provided little or no evidence that it cannot cost-effectively link the full output of Osprey to the Duke system before the middle of 2018 when the purported need for Citrus County exists. In fact, Mr. Borsch testified that no "firm decision on [transmission] of any sort has been made." TR 692. The record is lacking on this point and Duke did not adequately address that issue in the wake of the eleventh hour revelation about the Osprey deal.

The OPC is not expressly asking the Commission herein to delay the Citrus County Unit. The Public Counsel is merely asking the Commission to hold Duke to its burden of proof and determine whether the issues with the forecast changing abruptly, the questions about wholesale sales assumptions and the lack of a complete analysis of the cost-effectiveness of the Citrus County Unit with Osprey becoming available, independently, and collectively, erode Duke's showing to the point that it has not met its burden. At this point, given the uncertainties in the demand forecast and the potential addition of the full output of the Osprey unit prior to the middle of 2018, the OPC cannot affirmatively conclude that the Citrus County Unit is needed to meet Duke's 20% reserve margin in 2018 and beyond.

CONCLUSION

For the reasons stated above, the Public Counsel respectfully urges the Commission to ensure that its decision on Duke's petition is based on an independent determination consistent with Section 403.519(3), Fla. Stat. regarding whether Duke has met its burden of demonstrating a need for the proposed Citrus County Unit.

Respectfully submitted,

J.R. KELLY
PUBLIC COUNSEL



Charles J. Rehwinkel
Deputy Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Rm. 812
Tallahassee, FL 32399-1400

Attorney for the Citizens
of the State of Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished

by electronic mail on this 10th day of September, 2014, to the following:

Mr. Paul Lewis, Jr./Matthew R. Bernier
Duke Energy Florida, Inc.
106 East College Ave, Suite 800
Tallahassee, FL 32301-7740

John T. Burnett/ Dianne M. Triplett
Duke Energy Florida, Inc.
299 First Avenue North
St. Petersburg, FL 33701

Keino Young
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

J. Michael Walls/Blaise N. Gamba
Carlton Fields Law Firm
P.O. Box 3239
Tampa, FL 33601-3239

Jon C. Moyle, Jr.
Florida Industrial Power Users Group
118 North Gadsden Street
Tallahassee, FL 32301

R. Scheffel Wright/ John LaVia
Florida Retail Federation
Gardner Law Firm
1300 Thomaswood Drive
Tallahassee, FL 32308

James W. Brew/F. Alvin Taylor
1025 Thomas Jefferson St. NW, 8th Flo,
West Tower
Washington, DC 20007

Justin Green, Program Administrator
Department of Environmental
Protection
2600 Blair Stone Road, MS 5500
Tallahassee, FL 32399-2400

Marsha E. Rule
Rutledge Law Firm
P.O. Box 551
Tallahassee, FL 32301-0551

Richard A. Zambo, P.A.
2336 S.E. Ocean Boulevard, #309
Stuart, FL 34966

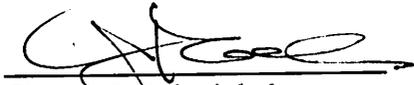
Gordon D. Polozola
NRG Florida LP
c/o NRG Energy, Inc.
112 Telly Street
New Roads, LA 70760

Linda Loomis Shelley
Buchanan Ingersoll & Rooney/
Fowler White Boggs PA
101 North Monroe St.,
Suite 1090
Tallahassee, FL 32301

Alan Seltzer
John Povilaitis
Buchanan Ingersoll & Rooney/
Fowler White Boggs PA
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357

George Cavros
Southern Alliance for Clean Energy
120 E. Oakland Park Blvd, Suite 105
Fort Lauderdale, FL 33334

Calpine Construction Finance
Company, L.P.
717 Texas Avenue, Suite 1000
Houston, TX 77002


Charles J. Rehwinkel
Deputy Public Counsel