

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

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 cost effective generation alternative to meet need prior to 2018, by Duke Energy Florida, Inc. ("Duke") ("Petition").

PRELIMINARY STATEMENT

The Public Counsel submits that the Commission is obligated to make an independent determination about the need and cost-effectiveness of the generation facilities that Duke proposes to meet the peaking need that it projects before 2018. Because of the announcement of a potential purchase of the Osprey combined cycle unit, Duke withdrew its request for approval of the Suwannee Peak and indicated it probably would return after 2014 with a proposal to meet that claimed need. The OPC will express no opinion in this brief about that aspect of this docket and reserves all rights to litigate all issues related to that aspect of the Petition when and if Duke brings the matter back before the Commission.

The remaining aspect of the docket relates to the cost-effectiveness of the Hines Chillers Power Uprate Project ("Hines Chillers"). The OPC has not taken a position on the cost-effectiveness of the units in this docket nor does the OPC express an opinion on them in this

brief. The only issue that the OPC will brief is Issue 15.

Since the Public Counsel will focus its argument of the ultimate issue in this docket on Issue 15, it preserves, incorporates and adopts herein the positions taken on the remaining substantive Issues A and 9-14 as reflected in Order No. PSC-14-0440-PHO-EI.

POSITIONS AND ARGUMENT ON DISPUTED ISSUES

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?

OPC: * The Commission should hold Duke to the final cost standard for the Hines Chillers Uprate Project as that standard is reflected in Rule 25-22.082(15), F.A.C.*

The Public Counsel submits that the Commission should hold Duke to the same standard that will apply to the Citrus County Unit which is the subject of a petition for need determination in Docket No. 140110-EI under the provision of Paragraph 16, the 2013 Settlement Agreement (Order No. PSC-13-0598-FOF-EI, at 35) and Rule 25-22.082(15), F.A.C. ("Bid Rule").¹ Pursuant to that same paragraph 16, with regard to the units that Duke proposes to meet the pre-2018 need, there is no express "hard cap" such as the one that would be imposed on any construction estimate submitted by the company and accepted by the Commission for a purported 2018 need in Docket No. 140110-EI. At the hearing, Duke Witness Borsch essentially

¹ The relevant part of the Bid Rule provides:

(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)

acknowledged that the Hines Chillers would be “treated similarly to the standard of proof with cost overruns as in the 110 docket.” TR 710.

The OPC asks the Commission to accept Duke’s representation and indicate that the agency expects Duke to, first, not exceed the construction estimate of \$160 million (TR 133) and, second, if they do experience a cost overrun, that the Commission will expect the company not to seek recovery unless they can meet the same standard as in subsection 15 of the Bid Rule to which Mr. Borsch essentially committed in the hearing.

CONCLUSION

The Public Counsel limits its position in this docket to urging the Commission to acknowledge in its Order and subsequently to enforce Duke’s commitment to be held to the “hard cap” of \$160 million that the company has estimated for the construction of the Hines Chillers.

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