

1 P R O C E E D I N G S

2 THE CHAIRMAN: Now we're going to skip down to
3 the final item, which will be Item No. 9.

4 MR. MURPHY: Commissioners, Item 9 is DeSoto
5 County Generating Company's objection to FPL's 2015
6 request for proposals to meet generation-capacity
7 needs beginning in 2019.

8 Rule 25-22.082(12) provides that the
9 Commission shall determine whether the objection as
10 stated would demonstrate that a rule violation has
11 occurred based on the written submission and oral
12 argument by DeSoto and FPL without discovery or an
13 evidentiary hearing.

14 The rule provides that no RFP term is to be
15 unfair, unduly discriminatory, onerous, or
16 commercially infeasible. Given the expedited and
17 informal nature of this process, the Commission's
18 findings concerning the objections are necessarily
19 preliminary and advisory.

20 Staff recommends that DeSoto and FPL each be
21 given ten minutes for oral argument. OPC has
22 indicated that its comments will be brief.

23 THE CHAIRMAN: Okay. Let's start with -- FPL?
24 DeSoto? Mr. Wright, you seem to be --

25 MR. WRIGHT: Mr. Chairman, your pleasure.

1 Since it's our objections, I sort of view this
2 procedurally as being more like our motion and --
3 by analogy. But if my friend Mr. Cox wants to go
4 first, it's okay with me.

5 THE CHAIRMAN: You are correct, Mr. Wright. I
6 will let you first.

7 MR. COX: We're happy to respond to
8 Mr. Wright.

9 THE CHAIRMAN: Mr. Wright.

10 MR. WRIGHT: Thank you, Mr. Chairman.

11 Good morning. I'm Schef Wright. I'm a
12 partner in the Gardner Bist law firm. And I have
13 the privilege of representing DeSoto County
14 Generating Company, LLC, and also its affiliate, LS
15 Power Development, LLC. With me also today is
16 Mr. Scott Carver, senior vice president and
17 associate general counsel of LS Power Development.

18 Thank you very much for the opportunity to
19 address these important issues. I'm going to be
20 pretty brief for me. Good thing. And I'll start
21 by saying, in summary, DeSoto respectfully
22 disagrees with the staff's recommendation. And we
23 urge you to direct FPL to modify the terms of its
24 RFP to address what we believe are serious
25 concerns, serious defects that we have raised in

1 our objections to that RFP.

2 Our objections address provisions in FPL's RFP
3 that are contrary to the purposes of the bid rule
4 and contrary to the best interest of FPL's
5 customers. Here is why we believe this to be true.

6 The stated express purposes of the bid rule
7 are, quote, to provide the Commission information
8 to evaluate a public utility's decision regarding
9 the addition of generating capacity, unquote, with
10 the ultimate goal, naturally, being, quote, to
11 ensure that a public utility's selection of a
12 proposed generation addition is the most cost-
13 effective alternative available, unquote, to meet
14 the needs of the utility and its customers. The
15 quotes are from your Rule 25-22.082(1).

16 FPL's RFP, if not corrected, will frustrate
17 these purposes because FPL's RFP will constrain and
18 limit the generation supply alternatives that the
19 PSC ever gets to see. This is so because it will
20 limit the generation supply alternatives that FPL
21 will, by its own design, even consider. It will,
22 therefore, severely limit the options available to
23 cost-effectively meet the needs of FPL's customers.

24 For a crystal-clear example of the adverse
25 consequences of the restrictive provisions in FPL's

1 RFP, you need to look no further than known current
2 events. An FPL-type RFP would never -- because by
3 design it can't -- would never yield an outcome
4 like the cost-effective result achieved by Duke
5 Energy Florida when it determined that buying the
6 Osprey Energy Center is the most cost-effective
7 alternative to meet its customers' needs before
8 2018. FPL's RFP would never have considered Osprey
9 because it's an existing facility.

10 How will FPL's RFP constrain and limit
11 options? It forecloses any consideration at all of
12 brand-new turn-key proposals. It forecloses any
13 consideration at all of the purchase of an existing
14 facility. And it refuses to even consider any
15 proposal, creative or otherwise -- and your rule
16 does suggest the creative proposals are good --
17 won't even consider any proposal that would cost-
18 effectively enhance FPL's generation expansion
19 plan, even though such proposal would not
20 technically displace the identified self-build
21 option, the 2019 combined cycle unit.

22 In the terms of your rule, these provisions,
23 these restrictions are unduly discriminatory
24 against proposers of turn-key facilities, against
25 proposers who would offer to sell FPL an existing

1 facility like DeSoto, and against proposers who
2 would offer a creative proposal to cost-effectively
3 improve FPL's generation expansion plan.

4 In practical terms, these restrictions are
5 first to have -- covered by our first two
6 objections -- would kill competition before it was
7 ever born.

8 Now, although we disagree with the conclusions
9 of the staff's recommendation, we strongly agree
10 with the following comment that the staff set forth
11 on Page 5 of the recommendation. "A prudent
12 utility should explore all available options
13 including purchasing existing generation facilities
14 prior to constructing new generation," unquote.

15 Whether intentionally or not, FPL's RFP has
16 the direct, clear effect of preventing such prudent
17 consideration of all available options. And the
18 Commission should require FPL to modify its RFP
19 accordingly.

20 The other three provisions that we address in
21 separate items articulated in our objections;
22 overstated performance security requirements for
23 existing facilities; unnecessary financial-
24 viability qualification criteria for bidders,
25 particularly for those with existing proven

1 facilities like the DeSoto County Generating
2 facility; and the unnecessary requirement for OEM,
3 original equipment manufacturer equipment, on
4 projects that would sell power pursuant to a PPA.
5 By the way, we're okay with it if it's a purchase
6 of an asset. We understand bringing a unit into a
7 utility's generating fleet.

8 These provisions are unnecessarily onerous in
9 the terms of your rule. And all of them thus chill
10 competition from the limited types of the proposals
11 that FPL will even consider.

12 To be frank, and heading toward my
13 conclusions, DeSoto unequivocally wants to submit a
14 proposal or proposals to FPL based on power,
15 ideally, a sale of our facility, from the DeSoto
16 County Generating facility. FPL's proposal -- RFP,
17 I should say, will prevent us from doing so. And
18 we seek relief accordingly.

19 The issues here, however -- this isn't about a
20 little 310-megawatt peaking unit in DeSoto County.
21 The real issues here are the issues of whether this
22 is a good RFP for FPL's customers. The issues are
23 to promote the best interest of FPL's customers by
24 promoting the purposes of the bid rule to ensure
25 that you, the Commission, have the best information

1 regarding alternatives available and ultimately to
2 ensure that FPL's customers get the benefit of the
3 most cost-effective alternative available to meet
4 their needs.

5 The best that we, DeSoto County Generating
6 Company, can and do hope for is a fair chance for
7 our proposals to be considered on reasonable terms.
8 We know that we will always bear the burden of
9 proving to FPL and to you, the Commission, that any
10 offer we've made is the best offer, the best
11 opportunity for FPL's customers.

12 FPL's RFP, on the other hand, will prevent you
13 from even seeing our most economic proposals and
14 any similar -- any proposals from similarly
15 situated producers or suppliers. These results are
16 inconsistent with your bid rule and contrary to the
17 best interest of FPL's customers. And you should
18 require FPL to modify its RFP to address the
19 objections raised by DeSoto.

20 Two final thoughts. A lot of FPL's objections
21 to our -- responses to our objections go to the
22 theme that really only FPL can really do this, and
23 that independent power producers are second-class
24 suppliers. This is a false premise.

25 Independent power supply in most states is a

1 significant part of the reliable power-supply
2 system. It should be here. Many companies
3 throughout the country, including LS Power and
4 including NextEra Energy Resources, FPL's
5 affiliate, operate, have operated, own, manage,
6 whatever, thousands of megawatts of independent
7 power resources. FPL -- NextEra Energy Resources
8 operates about 20,000. Collectively over time, LS
9 Power has owned, operated, constructed, managed,
10 and developed over 30,000 megawatts.

11 The real point for customers is that
12 competitive forces that independent power producers
13 bring in to the markets where they have fair,
14 competitive opportunities only benefit customers.
15 Restricting competition can only harm customers.

16 I do have one final thought and question,
17 which may or may not get answered. But here it
18 is: If the Commission decides today not to require
19 to -- FPL to allow DeSoto and potentially others to
20 offer into this RFP process potentially cost-
21 effective options that would replace other
22 generating units in FPL's plan with the goal being
23 to provide a more cost-effective overall generation
24 expansion plan -- and to be frank, we think we can
25 cost-effectively replace FPL's desire to build,

1 self-build new CTs at its Fort Myers plants.

2 If you don't allow us to submit a proposal to
3 address that issue here, we would really appreciate
4 any guidance that you or the staff can give us as
5 to where we would get the chance to receive the
6 benefit of the sound -- of staff's sound policy
7 statement that a prudent utility should explore all
8 available options including purchase as existing
9 generation facilities prior to constructing new
10 generation.

11 Thank you very much. Mr. Carver and I are
12 available to answer any questions.

13 THE CHAIRMAN: Thank you, Mr. Wright.

14 Ms. Christensen.

15 MS. CHRISTENSEN: Good morning, Commissioners.
16 I'm Patty Christensen with the Office of Public
17 Counsel. We take no position on staff's
18 recommendation other than to say that we endorse
19 the use of the most economic option for the next-
20 generation needs that are necessary to provide safe
21 and reliable service.

22 With that said, we have concerns regarding
23 FPL's margin reserve. FPL's margin reserve was set
24 at 20 percent. While we would expect fluctuations
25 above that percentage, we would also expect

1 fluctuations below the 20 percent.

2 Reviewing the last five years of ten-year site
3 plans shows that the actual margin reserve has been
4 consistently higher than 20 percent and has never
5 gone below that 20-percent margin. The range has
6 been from 22.7 percent -- that's the low in 2011 --
7 to a high of 28 percent in 2014.

8 2019's margin reserve is projected to be
9 22.8 percent based on this year's 2015 ten-year
10 site plan. Our concerns are that a show -- that
11 this shows a consistent pattern of having an excess
12 capacity that is significantly and persistently
13 above the 20 percent, which was set as the margin
14 reserve for what was necessary for safe and
15 reliable service.

16 We think that the Commission needs to take a
17 hard look at this issue and that this should be
18 carefully considered during the next need-
19 determination process for FPL's next large-megawatt
20 plant as well as taking into consideration any
21 smaller-megawatt plants or PPAs under the 25
22 megawatts that are not subject to need
23 determinations.

24 And we want to make sure that FPL's ratepayers
25 are only paying for the needed capacity within a

1 reasonable margin reserve and are not subsidizing
2 additional capacity that is either unnecessary or
3 that can be sold on the wholesale market.

4 And that's our brief comments. Thank you.

5 THE CHAIRMAN: Thank you.

6 Florida Power & Light.

7 MR. COX: Chairman Graham and Commissioners,
8 I'm Will Cox appearing today on behalf of Florida
9 Power & Light. With me is Charles Guyton from the
10 Gunster law firm.

11 Just to level set, Commissioners, the only
12 issue really before you today is whether any of
13 DeSoto's five objections that have been raised
14 violate the Commission's bid rule, and specifically
15 whether any of those RFP terms are considered
16 unfair, unduly discriminatory, onerous, or
17 commercially infeasible. That is all that's before
18 you today.

19 As we demonstrated in our response, and the
20 Commission staff agrees, there has been no
21 violation of the bid rule. The bid rule's purpose
22 is ultimately to protect customers. The bid rule
23 was not adapted -- adopted to promote the economic
24 interests of bidders to the RFP.

25 Each of DeSoto's proposed changes promotes its

1 own economic interests while undercutting what we
2 believe to be important and, in fact, are important
3 customer protections.

4 Now, as you heard from Mr. Wright, DeSoto has
5 a power plant in Arcadia, Florida. We're familiar
6 with it. We've purchased power from it in the
7 past. Natural gas-fired, combustion turbine plant.

8 And apparently DeSoto believes that the only
9 way they can compete in this RFP is to change the
10 terms of the RFP, to change important customer
11 protection terms like performance security; making
12 sure that the bidders that bid into our RFP are not
13 junk-bond-rating status; that a bidder that bids in
14 actually stands behind its plant and doesn't just
15 walk away and turn over the keys, but there is
16 actually a purchase power agreement with
17 protections for the customers.

18 There is no evidence to suggest at this point
19 that there are any shortage of bidders to this RFP.
20 Commissioners, there are 45 registrants to this
21 current RFP at this point in time. And only one
22 has objected.

23 Let me briefly discuss DeSoto's objections.
24 The first objection, which DeSoto didn't even
25 mention today, was that they be allowed to bid

1 their mothballed peaking unit, which has now been
2 inactive reserve, now, for 18 months, into
3 our planned 2016 combustion turbine project, which
4 is not even part of this RFP. This RFP is for
5 FPL's 2019 need for power. It does not address the
6 2016 combustion turbine project.

7 In fact, the bid rule doesn't even apply to
8 combustion turbine replacements; yet, they are
9 trying to interject that issue into this. So, we
10 think that that issue, Commissioners, is a non-
11 issue. And the Commission will obviously have the
12 opportunity to review the CT project in the
13 ordinary course.

14 Turning to two requirements that the
15 Commission has looked at in the past -- and the
16 only other time that an FPL RFP was challenged, and
17 that was in 2003 -- those were requirements related
18 to performance security and minimum financial
19 viability. Again, we feel that these are two
20 important requirements to protect our customers'
21 interests.

22 Performance security, the level we set, is
23 necessary because DeSoto or another bidder selected
24 may not perform as contemplated. And when they
25 don't perform, there need to be funds available to

1 come in so that the next plant generating unit or
2 appropriate replacement power can be obtained and
3 it doesn't fall on the backs of our customers.
4 That's why we have a reasonable level of
5 performance security, one that's consistent with
6 what Duke had in its most recent RFP as well.

7 The minimum financial-viability requirement --
8 again, this is a necessary requirement. We're
9 talking about having a minimum debt rating, non-
10 junk-bond-status debt rating for a very large power
11 plant. It would be constructed. The default rate
12 of non-investment-grade companies based on 2015
13 data as we provided in our response is 13 times
14 greater than those that are investment-grade.

15 Since 2003 alone, there has been at least ten
16 major Bankruptcies of independent power producers.
17 This is a front-end gating requirement in our RFP
18 that will protect our customers' interests for
19 situations where a company might go bankrupt after
20 they have already been contracted with.

21 Turning to the history -- again, we have
22 included performance security and minimum
23 financial-viability requirements similar to the
24 ones that you find today in our 2007, 2005, and
25 2003 RFPs.

1 In fact, the minimum financial-viability
2 requirement, the debt-rating requirement is, in
3 fact, lower than what was included in our 2003 RFP,
4 which was reviewed by the Commission and, at that
5 time, found to be consistent with the bid rule.

6 So, what that means, Commissioners, is that
7 the current debt rating we're using would allow
8 even more entities to potentially bid into the RFP,
9 be less restrictive.

10 Finally, let me turn to the two remaining
11 objections, one that Mr. Wright spent the majority,
12 I think, of his time on, which was the sale of an
13 existing or new unit. But really at the end of the
14 day, what he's talking about is selling the
15 existing unit in Arcadia.

16 This requirement in terms of restricting bids
17 into our RFP would include a sale of an existing or
18 new unit is an important requirement that we
19 believe protects our customer interests. And let
20 me explain why. DeSoto is a case study as to why
21 such an option would impose an unacceptable level
22 of risk.

23 DeSoto's unit they would like to bid that's
24 been discussed today is 13 years old. It's had
25 three owners over its life. It's unlikely at this

1 point to have manufacturers' warranties. FPL does
2 not know how it's been maintained, operated or
3 whether any environmental liabilities exist.

4 To find out that type of information, which
5 would be important ultimately to protect our
6 customers' interest if we were to acquire the unit,
7 would take significant time. And it cannot be
8 accomplished in a 60-day RFP process.

9 FPL does have limited familiarity with this
10 unit because DeSoto has approached FPL about
11 selling this unit to FPL within the past few years.
12 FPL did some very quick due diligence at that point
13 in time and found significant issues such as a
14 peaker unit that did not have quick-start
15 capability, a unit that was using non-OEM parts
16 that FPL believes inherently have reliability
17 issues.

18 The unit is not required to use OEM parts and
19 has now, as I mentioned, been mothballed status,
20 inactive reserve, now 18 months. These are
21 significant risks, Commissioners, that we don't
22 think should fall on the backs of our customers.

23 If this unit is good and competitive, as
24 DeSoto believes it is, and can run, why wouldn't
25 they simply run the unit and submit a bid into our

1 RFP, which they are not limited from. They can bid
2 a purchase power agreement that they would have to
3 stand by into our RFP. The RFP would not prohibit
4 that. They are not prohibited from bidding into
5 our RFP.

6 Finally, let me turn to the OEM parts
7 requirement, the original equipment manufacturer
8 parts requirement. Commissioners, this is an
9 important for FPL and its fleet. All of our fleet
10 uses OEM parts, original equipment manufacturer of
11 parts. It ultimately saves costs for our customers
12 because it ensures reliability. There is no reason
13 to jeopardize reliability in favor of non-OEM
14 parts.

15 He mentioned, I think, that, you know, we have
16 other operations in other parts of the country.
17 And we have had bad experiences with non-OEM parts.
18 There is a reason we don't do this. In fact, we
19 have some that we can't even sell right now and
20 that they have created problems for some of our
21 units. So, not only does FPL's fleet use it, but
22 we have experience in other places with non-OEM
23 parts. And we have serious concerns about their
24 use.

25 At the end of the day, this requirement is

1 about maintaining a fair and level playing field
2 for all bidders. If all bidders are required to
3 use OEM parts, everyone knows that's a minimum
4 criterion to bid RFP. Everyone can bid in with
5 their OEM parts as the basis for the bid.
6 Otherwise, if DeSoto were allowed to bid in with
7 non-OEM parts, they would be the one gaining
8 an unfair advantage in this RFP.

9 Commissioners, I would respectfully request
10 that you dismiss the objections that DeSoto has
11 filed. I thank you for your attention and your
12 time today. And I'm available if you have any
13 questions. Thank you.

14 THE CHAIRMAN: Thank you, Mr. Cox.

15 MR. WRIGHT: Mr. Chairman, do I have any time
16 left to respond?

17 THE CHAIRMAN: You have a minute and five
18 seconds.

19 MR. WRIGHT: Outstanding. Thank you, sir.

20 As quickly as I can, again, this is about the
21 structure of an RFP to ensure that you get to
22 consider all available alternatives.

23 Regarding the performance security point that
24 Mr. Cox articulated, even staff recognizes that for
25 existing facilities, lower performance security

1 requirements can be appropriate and, perhaps, are
2 appropriate and, in fact, recited that FPL has had
3 in its last three RFPs for existing facilities
4 average performance security requirements a third
5 less than what they've got here, an average of \$133
6 versus 200. The financial-viability restriction is
7 unnecessary for existing facilities.

8 Their criticisms of the DeSoto facility are
9 not fair and largely inaccurate. FPL claims -- he
10 started by saying they claim not to know how it's
11 been maintained. They conducted due diligence on
12 this facility less than two years ago. We
13 submitted proposals to FPL to replace
14 earlier proposed Fort Myers CTs in the Docket
15 No. 130007, the environmental cost recovery docket.

16 In fact, our purchase option, we offered to
17 upgrade the facility in our purchase price. We
18 offered to upgrade the facility to address every
19 one of FPL's concerns addressed in its due-
20 diligence review, including the OEM upgrades. The
21 one particular OEM upgrade that -- that was a part
22 that is known in the industry to be better made by
23 an after-market manufacturer.

24 We don't have a problem for OEM parts for the
25 fleet. We understand master service agreements,

1 master OEM agreements with manufacturers. That's
2 not a problem. There is no reason to impose this
3 restriction on proposers of PPAs.

4 Again, the issue here is the structure of this
5 RFP. It will foreclose options and it will chill
6 competition. It's not in the best interest of
7 customers.

8 Thank you.

9 THE CHAIRMAN: Thank you.

10 Commissioners, any questions of either party
11 or staff?

12 Commissioner Edgar.

13 COMMISSIONER EDGAR: Thank you, Mr. Chairman.

14 To our staff, can you walk us through what
15 would be the next steps in this process?

16 MR. LAUX: When you say this -- this process,
17 you mean this objection?

18 COMMISSIONER EDGAR: No. Actually, I mean the
19 larger -- thank you for asking -- the larger
20 process. An RFP will go forward and then -- and
21 then -- thank you.

22 MR. GRAVES: Commissioner, then the company
23 would bring its need determination before you. And
24 in that, we would see the competitive bids that
25 maybe met a threshold to be considered in the

1 company's need-determination process.

2 COMMISSIONER EDGAR: And if the Commission
3 found that at that point that there was something
4 lacking in the proposal that was before us for that
5 need determination, what would our options be?

6 MR. GRAVES: I believe at that time, you may
7 identify a more cost-effective alternative to what
8 the company is proposing. And I think you would
9 have multiple options at that time. You could
10 either request that the company go back and select
11 an alternative, or you could order them to go back
12 and reevaluate.

13 COMMISSIONER EDGAR: Thank you.

14 THE CHAIRMAN: Other Commissioners?
15 Commissioner Brown.

16 COMMISSIONER BROWN: Just to follow up on
17 Commissioner Edgar's question, I know Mr. Wright
18 said somewhere in his comments that FPL's RFP
19 prevents us as a Commission from seeing DeSoto's
20 bid as the most cost-effective.

21 You're saying that we are not precluded from
22 considering DeSoto's bid. And DeSoto is still
23 allowed to submit a proposal to the RFP as a
24 purchase power. And then at the later junction,
25 during a later proceeding, we will be able to

1 explore this cost-effective argument as well.

2 MR. MURPHY: Yes. There would be a prudent
3 review of FPL's decision in the need determination.
4 And presumably, DeSoto would have standing -- they
5 haven't discussed that today -- but as a customer
6 and as a purchase power agreement of -- if they
7 submit to the RFP as a PPA. And they would be able
8 to participate in that hearing on the --

9 COMMISSIONER BROWN: So, we do have an
10 opportunity to consider DeSoto's proposal.

11 MR. MURPHY: Yes. That would be the place
12 where you would do it. You would do it with an
13 evidentiary record and a 120-type proceeding. This
14 is merely a preliminarily advisory-type situation
15 to try to see if they could steer the RFP one
16 direction or another. But the need determination
17 would be where they would have a 120 hearing.

18 COMMISSIONER BROWN: Thank you. And I
19 understand that. And I do think that -- and I
20 appreciate the parties' comments. I think FPL's
21 comments were very, very, very specific, too. And
22 I appreciate the thoroughness of them.

23 I think this particular thing that we have
24 before us is very specific with regard to the rule.
25 I think we're going a little bit beyond that here.

1 And I think we should just tailor our discussion to
2 the rule.

3 THE CHAIRMAN: Was that a motion?

4 COMMISSIONER BROWN: Well, I do support staff
5 recommendation on this. And I appreciate
6 Mr. Wright's comments here, but I don't think they
7 are persuasive with regard to what we're
8 considering here today.

9 So, I would move staff recommendation on all
10 issues.

11 COMMISSIONER BRISÉ: Second.

12 THE CHAIRMAN: It's been moved and seconded,
13 staff recommendation on all issues on Item No. 9.

14 Any further discussion?

15 Seeing none, all in favor say aye.

16 (Chorus of ayes.)

17 CHAIRMAN GRAHAM: Any opposed?

18 (No response.)

19 CHAIRMAN GRAHAM: By your action, you have
20 approved staff recommendation on this item.

21 (Agenda item concluded.)

22 THE CHAIRMAN: Thank you everybody for coming
23 out. And we thank you for being part of today.
24 Staff, once again, thank you very much for the work
25 you've done today for this agenda.

1 I wish everybody to travel safe home or back
2 to your offices.

3 And if nothing else to come before us, we are
4 adjourned.

5 (Whereupon, proceedings concluded at 10:37
6 a.m.)

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