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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition to Determine Need for)
 Polk 2-5 Combined Cycle Conversion,) DOCKET NO. 120234-EI
 By Tampa Electric Company)
 _____) FILED: NOVEMBER 14, 2012

PETITION TO INTERVENE OF DeSOTO COUNTY GENERATING COMPANY, LLC

DeSoto County Generating Company, LLC ("DeSoto" or "DeSoto Generating Company"), pursuant to Chapters 120 and 366, Florida Statutes,¹ and Rules 25-22.039, 28-106.201, and 28-106.205, Florida Administrative Code ("F.A.C."), hereby respectfully petitions to intervene in the above-styled docket.

In summary, DeSoto is the owner and operator of the DeSoto Generating Facility, a natural gas fired electrical power plant located in Arcadia, Florida ("DeSoto Facility" or "Facility"), and DeSoto was a qualified bidder in the 2017 Power Generation Request for Proposals ("RFP") process conducted by Tampa Electric Company ("Tampa Electric") before it filed its petition for determination of need for the Polk 2-5 Combined Cycle Conversion Project ("Polk Project" or "Polk Conversion Project"). DeSoto was, unfortunately, not selected to supply power to Tampa Electric, and consistent with Commission Rule 25-22-082(16), F.A.C., DeSoto is entitled to intervene in this proceeding

_____ because the Florida Public Service Commission's (the
 _____ "Commission") decision herein will determine DeSoto's substantial

¹ All references herein to the Florida Statutes are to the 2012 edition thereof.

COM _____
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DOCUMENT NUMBER - DATE
 Exhibit "A"
 07674 NOV 14 2012

interests in pursuing its business of supplying cost-effective power to Tampa Electric for the benefit of Tampa Electric and its customers.

In further support of its Petition to Intervene, DeSoto Generating Company states as follows.

PROCEDURAL BACKGROUND

1. The name, address, and telephone number of the Petitioner are as follows:

DeSoto County Generating Company, LLC
3800 North Roan Street
Arcadia, Florida 34266
Telephone (212) 547-3456.

2. All pleadings, orders and correspondence should be directed to Petitioner's representatives as follows:

Robert Scheffel Wright
John T. LaVia, III
Gardner, Bist, Wiener, Wadsworth, Bowden, Bush,
Dee, LaVia & Wright, P.A.
1300 Thomaswood Drive
Tallahassee, Florida 32308
Telephone (850) 385-0070
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with a courtesy copy to:

Counsel
c/o DeSoto County Generating Company, LLC
1700 Broadway, 35th Floor
New York, New York 10019
Telephone (212) 547-3456
Facsimile (212) 615-3440.

3. The agency affected by this Petition to Intervene is:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850.

4. This docket was initiated by Tampa Electric's filing of its petition for determination of need for the Polk 2-5 Combined Cycle Conversion Project on September 12, 2012. With respect to Rule 28-106.201(2)(c), F.A.C., the Commission has not yet issued a proposed decision. The final hearing in this case is scheduled for December 12, 2012, and therefore, pursuant to Rule 25-22.039, F.A.C., this petition to intervene is timely filed.

FACTUAL BACKGROUND

5. DeSoto County Generating Company, LLC is a Delaware limited liability company authorized to do business in the State of Florida and duly registered with the Florida Department of State, Division of Corporations, as a foreign limited liability company. DeSoto is the owner and operator of the DeSoto Facility, a 310 megawatt (summer net) simple-cycle combustion turbine plant capable of operating on both natural gas and No. 2 fuel oil. The DeSoto Facility is located in Arcadia, Florida and is interconnected to Florida Power & Light Company's transmission system and to the Florida Gas Transmission Company ("FGT") natural gas pipeline. The Facility consists of two GE 7241FA combustion turbine ("CT") units with a combined summer net generating capacity of 310 MW when firing natural gas. The Facility achieved commercial operation in June 2002 and has operated reliably since that time, supplying wholesale power to a

number of Florida utilities.

6. DeSoto participated in the RFP. DeSoto submitted its proposal on May 22, 2012 and DeSoto was notified by Tampa Electric that it had been selected to a "short list" of bidders on June 22, 2012. DeSoto submitted its best and final offer on July 13, 2012. DeSoto was notified that it was not selected as the preferred power supply option on July 27, 2012.

7. According to data presented in Tampa Electric Company's Determination of Need for Electrical Power: Polk 2-5 Combined Cycle Conversion Project, September 2012, the estimated cost of converting the existing combustion turbines ("CTs") at the Polk Project is approximately \$610 million (or approximately \$1,325 per kilowatt ("kW") of incremental capacity, not including AFUDC. It is unclear how the cost of the existing CTs, the last of which began commercial operation in 2007, is accounted for. Further, according to data provided in Tampa Electric's 2012 Ten Year Site Plan ("TYSP"), Tampa Electric would need to add a new CT in 2019 following the Polk Conversion Project, at a cost of approximately \$878 per kW of capacity, presumably to replace a portion of the CT capacity lost with the Polk Project Conversion. It is unclear whether this figure includes any costs for transmission upgrades that might be necessary to integrate the planned 2019 CT.

8. DeSoto's best and final offer to Tampa Electric provided Tampa Electric with the opportunity to purchase the

DeSoto Facility, with its 310 MW of capacity, at a cost that is approximately █ percent less than the estimated total capital cost of capacity for the Polk Conversion Project and approximately █ percent less than the cost of Tampa Electric's planned 2019 CT unit. Although DeSoto indicated a willingness to negotiate the terms and conditions of the offer, Tampa Electric did not engage in negotiations or discussions with DeSoto.

9. Tampa Electric's Determination of Need for Electrical Power: Polk 2-5 Combined Cycle Conversion initially defines the cost savings of the requested Polk Project as "a savings of \$132.4 million Cumulative Present Worth Revenue Requirements ("CPWRR") compared to the next best proposal in the RFP process" (which is only approximately one-half of one percent of total system production cost). However, on page 61 of the same filing, Tampa Electric indicates that a June 2012 updated analysis indicates a savings of \$97.4 million CPWRR, a reduction in the claimed savings of approximately 25 percent. It is unclear to Desoto how this number would further reduce if Tampa Electric, in addition to the updated base case forecast, also used a low fuel price and low purchase power cost forecast as an alternative scenario, or if further combined with one of the proposal alternatives from Desoto, where Desoto bought back the Desoto capacity from Tampa Electric for the capacity from the 2013-2016 timeframe.

STATEMENT OF AFFECTED INTERESTS

10. In this docket, the Commission will decide whether to approve Tampa Electric Company's petition for determination of need for the Polk Project. In making its decision, the Commission will necessarily determine the substantial interests of DeSoto, in that if the Commission grants Tampa Electric's requested determination of need, DeSoto will be foreclosed from providing power to Tampa Electric. DeSoto was a qualified bidder, evaluated by Tampa Electric in its RFP process, and its interests will be determined by the Commission in this proceeding.

11. DeSoto's substantial interests are of sufficient immediacy to entitle it to participate in the proceeding and are the type of interests that the proceeding is designed to protect. To participate as a party in this proceeding, an intervenor must demonstrate that its substantial interests will be affected by the proceeding. Specifically, the intervenor must demonstrate that it will suffer a sufficiently immediate injury in fact that is of the type the proceeding is designed to protect. Ameristeel Corp. v. Clark, 691 So. 2d 473 (Fla. 1997); Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981), rev. denied, 415 So. 2d 1359 (Fla. 1982). Here, the outcome of this proceeding will immediately impact and determine DeSoto's substantial interests in providing electric

capacity and energy to Tampa Electric, in that those interests will be determined, finally, by the Commission's decision on the requested petition for determination of need. DeSoto's interests and the potential adverse effect on its interests are specifically the type of injury against which this proceeding is designed to protect, namely, to ensure that a qualified bidder has a fair opportunity pursuant to Rule 25-22.082, F.A.C., to challenge a utility's selection of its self-build option instead of the qualified bidder's option.

DISPUTED ISSUES OF MATERIAL FACT

12. As reflected in its proposed statements of Issues 1 through 5 and 9 below, DeSoto recognizes the appropriateness of the "standard" issues in power plant need determination proceedings, i.e., the issues that derive from the specific provisions of Section 403.519, Florida Statutes. DeSoto also proposes additional issues for this proceeding, as set forth in proposed Issues 6, 7, and 8 below.

- Issue 1: Is the proposed Polk Conversion Project needed, taking into account the need for electric system reliability and integrity, as this criterion is used in Section 403.519, Florida Statutes?
- Issue 2: Is the proposed Polk Conversion Project needed, taking into account the need for adequate electricity at a reasonable cost, as this criterion is used in Section 403.519, Florida Statutes?
- Issue 3: Is the proposed Polk Conversion Project needed, taking into account the need for fuel diversity and supply reliability, as this criterion is used in Section 403.519, Florida Statutes?

- Issue 4: Are there any conservation measures taken by or reasonably available to Tampa Electric Company that might mitigate the need for the proposed Polk Conversion Project?
- Issue 5: Is Tampa Electric's proposal to bring the Polk Conversion Project into commercial service in 2017 the most cost-effective alternative available to meet the needs of Tampa Electric and its customers?
- Issue 6: Did Tampa Electric accurately and appropriately evaluate all reasonable alternative scenarios, including purchasing the DeSoto Generating Facility and deferring the Polk Conversion Project until a later date, for cost-effectively meet the needs of its customers over the relevant planning horizon?
- Issue 7: Did Tampa Electric administer a transparent, robust, and constructive RFP evaluation process that was designed to evaluate a range of scenarios and sensitivities to procure the most cost-effective alternative generating supply addition for cost-effectively meeting the needs of its customers?
- Issue 8: Is adding the Polk Conversion Project in 2017 in the best interests of Tampa Electric's customers or is it better for Tampa Electric to purchase low-cost capacity now and maintain flexibility to convert the Polk Project at a later date, particularly in light of the relatively low cost at which Tampa Electric could purchase the DeSoto Generating Facility and in light of Tampa Electric's plan to construct additional CT capacity in 2019?
- Issue 9: Based on the resolution of the foregoing issues, should the Commission grant the requested determination of need for the proposed Polk Conversion Project?

DeSoto reserves all rights to raise additional issues in accordance with the Commission's rules and the Order Establishing Procedure in this case.

STATEMENT OF ULTIMATE FACTS ALLEGED

13. As described above, DeSoto offered to sell Tampa

Electric Company 310 MW of proven, operating combustion turbine capacity at a cost that is approximately █ percent less than the cost of the Polk Conversion Project capacity and approximately █ percent less than the cost of Tampa Electric's planned 2019 CT unit. In other words, by purchasing the DeSoto Generating Facility, Tampa Electric would get twice the capacity of its planned 2019 CT unit, at a lower total cost than for the planned 2019 CT unit, which has approximately half the capacity of the DeSoto Facility. Adding the DeSoto Generating Facility to Tampa Electric's generating fleet in the 2013-2016 timeframe, as offered by DeSoto, would provide cost-effective CT capacity to Tampa Electric while preserving additional flexibility for Tampa Electric to add the Polk Conversion Project at such future time as would best and most cost-effectively meet the needs of Tampa Electric's customers. Accordingly, DeSoto believes that Tampa Electric and its customers will likely be better served by Tampa Electric purchasing the DeSoto Generating Facility and deferring construction of the Polk Conversion Project to a future date.

**STATUTES AND RULES THAT ENTITLE DeSOTO COUNTY
GENERATING COMPANY TO RELIEF**

14. The applicable statutes and rules that entitle DeSoto to relief include, but are not limited to, Sections 120.569, 120.57(1), and 403.519, Florida Statutes, and Rules 25-22.039, Chapter 28-106, Florida Administrative Code. The cited rules provide that persons whose substantial interests will be affected

by agency action are entitled to intervene, and the cited sections of Chapter 120 provide that persons whose substantial interests will be affected are entitled to a hearing before the agency. Section 403.519, Florida Statutes, provides that the Commission must consider whether any proposed power plant that is subject to that statute is the most cost-effective alternative available for meeting the utility's projected needs for electric capacity and energy. This mandate necessarily includes consideration of other power supply alternatives that may be more cost-effective than the utility's proposed unit.

15. Statement Explaining How the Facts Alleged By DeSoto Entitle DeSoto to the Relief Requested. Rules 25-22.039 and 28-106.205, F.A.C., provide that persons whose substantial interests are subject to determination in, or may be affected through, an agency proceeding are entitled to intervene in such proceeding. DeSoto offered to sell Tampa Electric the DeSoto Generating Facility, a proven, operating dual-fueled combustion turbine generating station consisting of two CT units, at a cost that is, on its face, favorable when compared to the capacity that would be provided by the Polk Conversion Project and also when compared to the capacity that would be provided by Tampa Electric's planned 2019 CT unit. DeSoto participated in Tampa Electric's RFP process and was selected to the short list of bidders who were invited to provide "Best and Final" offers. Since DeSoto's

best and final offer was rejected by Tampa Electric, DeSoto's substantial interests will be determined by the Commission in this proceeding. Therefore, the interests that DeSoto seeks to protect via its intervention and participation in this case are immediate and of the type to be protected by this docket, and accordingly, DeSoto is entitled to intervene to protect its interests.

CONCLUSION AND RELIEF REQUESTED

WHEREFORE, DeSoto respectfully requests the Commission to enter its order GRANTING this Petition to Intervene and requiring that all parties to this proceeding serve copies of all pleadings, notices, and other documents to DeSoto's representatives indicated in paragraph 2 above.

Respectfully submitted this 14th day of November 2012.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing (redacted version only) was furnished to the following by electronic mail on this 14th day of November 2012.

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