

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 120234-EI

PETITION TO DETERMINE NEED FOR
POLK 2-5 COMBINED CYCLE CONVERSION,
BY TAMPA ELECTRIC COMPANY.

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PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONER

PARTICIPATING: COMMISSIONER ART GRAHAM
PREHEARING OFFICER

DATE: Tuesday, November 27, 2012

TIME: Commenced at 1:30 p.m.
Concluded at 1:49 p.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, CRR, RPR
Official FPSC Reporter
(850) 413-6734

1 APPEARANCES:

2 JAMES D. BEASLEY and J. JEFFRY WAHLEN,
3 ESQUIRES, Ausley Law Firm, Post Office Box 391,
4 Tallahassee, Florida 32302, appearing on behalf of Tampa
5 Electric Company.

6 ROBERT SCHEFFEL WRIGHT and JOHN T. LAVIA, III,
7 ESQUIRES, Gardner Law Firm, 1300 Thomaswood Drive,
8 Tallahassee, Florida 32308, appearing on behalf of
9 DeSoto County Generating Company, LLC.

10 PATRICIA CHRISTENSEN, ESQUIRE, Office of
11 Public Counsel, c/o The Florida Legislature, 111 West
12 Madison Street, Room 812, Tallahassee, Florida
13 32399-1400, appearing on behalf of the Citizens of the
14 State of Florida.

15 PAULINE ROBINSON and LARRY HARRIS, ESQUIRES,
16 FPSC General Counsel's Office, 2540 Shumard Oak
17 Boulevard, Tallahassee, Florida 32399-0850, appearing on
18 behalf of the Florida Public Service Commission Staff.

19 MARY ANNE HELTON, DEPUTY GENERAL COUNSEL, FPSC
20 General Counsel's Office, 2540 Shumard Oak Boulevard,
21 Tallahassee, Florida 32399-0850, appearing as advisor to
22 the Commission.

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P R O C E E D I N G S

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2 **COMMISSIONER GRAHAM:** Good afternoon,
3 everyone. I show 1:30, so I guess we will call this
4 meeting to order.

5 This is a prehearing for Docket Number
6 120234-EI. And if I can get the staff to read the
7 notice, please.

8 **MS. ROBINSON:** By notice issued on
9 November 7th, 2012, this time and place has been set for
10 a Prehearing Conference in Docket Number 120234-EI,
11 petition to determine need for Polk 2-5 combined cycle
12 conversion, by Tampa Electric Company.

13 **COMMISSIONER GRAHAM:** All right. I think it's
14 time to take appearances. We'll start over on the left
15 with TECO and go from there.

16 **MR. BEASLEY:** Good afternoon, Commissioner.
17 James D. Beasley and J. Jeffry Wahlen for the applicant,
18 Tampa Electric Company.

19 **MR. WRIGHT:** Good afternoon, Commissioner.
20 Robert Scheffel Wright of the Gardner, Bist, Wiener law
21 firm, appearing on behalf of DeSoto Generating Company.
22 I'd also like to enter an appearance for my partner,
23 John T. LaVia, III. And for your information, this is
24 Mr. Mark Strength, who's a business development officer
25 with the client company. Thank you.

1 **MS. CHRISTENSEN:** And Patty Christensen with
2 the Office of Public Counsel, and we filed our notice of
3 intervention today.

4 **COMMISSIONER GRAHAM:** Thank you.
5 Staff.

6 **MS. ROBINSON:** Pauline Robinson and Larry
7 Harris for Commission staff.

8 **MS. HELTON:** And Mary Anne Helton, advisor to
9 the Commission.

10 **COMMISSIONER GRAHAM:** Okay. Preliminary
11 matters. Staff, do we have any preliminary matters that
12 need to be addressed?

13 **MS. ROBINSON:** Not at this time, sir. But we
14 just wanted to mention that OPC had intervened, but
15 Patty did that for us.

16 **COMMISSIONER GRAHAM:** Okay. At this time we
17 need to proceed through the draft Prehearing Order. We
18 may go pretty quickly through this. So if anybody has
19 any concerns or any problems, you need to speak up as we
20 go through because I don't want to run right by you.

21 That all being said, we'll go section by
22 section, and we'll start with Section I. Any concerns,
23 questions, Section I? No?

24 Section II? Section III? Section IV?

25 **MS. ROBINSON:** As will be discussed on Section

1 IX, staff hopes to have a stipulated Composite Exhibit
2 List containing discovery responses. And some of the
3 discovery responses staff hopes to include have been
4 granted confidential classification, and staff will
5 ensure all procedures are followed with respect to this
6 hearing -- to this exhibit.

7 **COMMISSIONER GRAHAM:** Any other comments about
8 Section IV?

9 Section V? Oh, about witnesses. Are we --
10 are all parties willing to shorten or dispense with
11 summaries of testimony? Right now everybody is allotted
12 five. I don't know if everybody feels the necessity for
13 the five minutes or --

14 **MR. BEASLEY:** We would like to summarize,
15 summarize the testimony of our witnesses. It might not
16 take five minutes in every instance, but we would like
17 to reserve that opportunity.

18 **COMMISSIONER GRAHAM:** Okay. Anybody else?

19 **MR. WRIGHT:** We don't have witnesses,
20 Commissioner. Thank you.

21 **COMMISSIONER GRAHAM:** Okay. Order of
22 witnesses. Is anybody willing to stipulate any of the
23 witnesses?

24 **MR. WRIGHT:** Commissioner, I apologize for
25 this, but as you know from your own schedule, mine is

1 pretty busy. And I'm working on clarifying with my
2 clients whether we can stipulate to any of the
3 witnesses, but I'm not prepared to do that today. We
4 will do it as soon as possible.

5 **COMMISSIONER GRAHAM:** Okay.

6 **MS. CHRISTENSEN:** And for purposes of
7 clarification, Office of Public Counsel, as soon as the
8 other parties make a determination as to which witnesses
9 they can stipulate to, if they'll just let us know which
10 ones that they are agreeing to, then we'll take a look
11 at those and are likely able to agree to those witnesses
12 as well.

13 **COMMISSIONER GRAHAM:** Mr. Wright, when do you
14 think that we'd hear back from you or you'll hear back
15 from your client?

16 **MR. WRIGHT:** Certainly no later than Friday,
17 Commissioner. I'm working on it.

18 **COMMISSIONER GRAHAM:** Okay. All right. That
19 was number VI.

20 Number VII. Oh, no, number -- I'm sorry.
21 That was number V.

22 Number VI is order of witnesses. I take it
23 there's not going to be any change to the order that we
24 currently have in the Prehearing Order, page 4?

25 **MR. BEASLEY:** That's correct for Tampa

1 Electric, sir.

2 **COMMISSIONER GRAHAM:** Okay. All right.
3 Number VII, basic positions.

4 Number VIII.

5 **MS. CHRISTENSEN:** For purposes of clarity,
6 this is Patty Christensen with the Office of Public
7 Counsel, I went ahead and furnished the Commission staff
8 and the parties and the Clerk a copy of Office of Public
9 Counsel's position statement on each of the issues and
10 would ask to have those inserted as our positions here
11 today. And if there are any issues that I missed, if I
12 would be granted leave to address those as they --
13 before some time certain. I think I have all the
14 issues, but if I'm missing one, then I would just ask
15 leave to provide a position or a statement on that
16 within the next day or so.

17 **COMMISSIONER GRAHAM:** Staff?

18 **MS. ROBINSON:** That would be okay, sir. We
19 just wanted to know also if she will be providing a
20 basic position, if OPC would be providing a basic
21 position.

22 **MS. CHRISTENSEN:** I would just put in for a
23 basic position "none."

24 **COMMISSIONER GRAHAM:** Okay. Thank you. Okay.
25 That was number VII.

1 Number VIII, issues and positions. Since
2 DeSoto Intervenor has suggested additional issues, let's
3 proceed issue by issue. I understand DeSoto has
4 accepted staff's Issues 1 through 7.

5 **MR. WRIGHT:** Commissioner, to help things
6 along, we met, with the staff observing, with Tampa
7 Electric before the meeting, before this conference, I
8 should say, and I've also conferred with Ms.
9 Christensen, and we've agreed on the following that will
10 help things out.

11 We will drop what the staff have now numbered
12 as Issues 8 and 10 in the draft Prehearing Order. They
13 were formerly ours, our Issues 6 and 8 in our prehearing
14 statement. And we've agreed to reword Issue 5 to read
15 as stated in our prehearing statement, which utilizes
16 the phrase "most cost-effective alternative" and also
17 inserts "in 2017" into the, into the issue statement
18 which addresses the timing issue that was otherwise
19 addressed by our Issues 6 and 8.

20 **COMMISSIONER GRAHAM:** Can I get you to read
21 what Issue 5 currently reads as, or what you're
22 proposing, rather?

23 **MR. WRIGHT:** Issue 5 would read, Is Tampa
24 Electric's proposal to bring the Polk conversion
25 project, or however they want to call it, the Polk

1 2-5 combined cycle conversion project, into commercial
2 service in 2017 the most cost-effective alternative
3 available to meet the needs of Tampa Electric and its
4 customers?

5 **COMMISSIONER GRAHAM:** Okay. TECO?

6 **MR. BEASLEY:** We're agreeable with that.

7 **COMMISSIONER GRAHAM:** OPC?

8 **MS. CHRISTENSEN:** The wording is fine, and
9 I'll check to see if I need to revise my position. I
10 don't think I will, but -- and I think I'll have to also
11 provide a response for Issue 9 on the prehearing
12 statement. I think that one is still remaining in the
13 Prehearing Order; is that correct?

14 **COMMISSIONER GRAHAM:** Well, we skipped over
15 that one.

16 **MR. WRIGHT:** We need to talk about that one.

17 **MS. CHRISTENSEN:** Okay. And I will go ahead
18 and, and look at the Issue Number 5. I'm okay with the
19 wording of it, I don't think it'll change my position,
20 but I just want an opportunity to look that over.

21 **MR. WRIGHT:** Okay. And then, Commissioner,
22 then issues -- oh, sorry.

23 **COMMISSIONER GRAHAM:** Staff, Issue 5.

24 **MS. ROBINSON:** Staff doesn't have a concern
25 about changing it.

1 **COMMISSIONER GRAHAM:** Okay. I'm sorry, Mr.
2 Wright.

3 **MR. WRIGHT:** It is I who owe you an apology,
4 Commissioner.

5 With respect to Issues 6 and 7 as numbered on
6 the prehearing order, we're fine with those. That does
7 leave us with discussing what is numbered as Issue 9 on
8 the prehearing order. And if I could just articulate
9 the concern that we have.

10 **COMMISSIONER GRAHAM:** Sure.

11 **MR. WRIGHT:** The Commission's Rule
12 25-22.082(14) requires the utility to evaluate all
13 proposals in a fair comparison. We believe that our
14 Issue 7 perhaps has some flowery wording in it, although
15 I think the adjectives we used, transparency,
16 robustness, and constructiveness, are completely
17 appropriate for this. We, we raised the substantive
18 issue, did Tampa Electric conduct a fair bid process?
19 This is an issue that's specifically contemplated by
20 your rules. It is an issue that has specifically been
21 utilized in at least one previous need determination
22 case that we were able to find.

23 We, as we indicated in our response to Tampa
24 Electric's motion to conform issues, are willing to
25 agree to alternate wording. And if I might, I would

1 read to you the, the wording in your prior case,
2 petition for determination of need of Hines 2, Hines
3 Unit 2 power plant, in which this issue was framed as,
4 Has Florida Power Corporation met the requirements of
5 Rule 25-22.082(6), now 082(14), *Florida Administrative*
6 *Code*, selection of generating capacity, by conducting a
7 fair bid process? And we would agree to change Florida
8 Power Corporation to Tampa Electric Company and cite the
9 rule correct as it presently exists, 25-22.082(14), but
10 we would ask respectfully that that issue be included.
11 We do not believe that it's subsumed under a
12 determination of cost-effectiveness. It's specifically
13 an issue addressing the RFP process. Thank you.

14 **COMMISSIONER GRAHAM:** TECO.

15 **MR. BEASLEY:** Commissioner Graham, we would
16 oppose the inclusion of that issue. We think it is
17 subsumed under Issue 5 having to do with whether we have
18 carried our burden of demonstrating that we have
19 selected the most cost-effective alternative available.

20 We could probably sit here and fashion a
21 number of additional issues having to do with
22 cost-effectiveness. But when you get to the end of the
23 hearing, it's whether we've carried our burden of proof
24 on cost-effectiveness. We think any, any argument that
25 DeSoto would want to make under its proposed issue,

1 what's called Issue 9 in the draft Prehearing Order, can
2 easily be made and articulated in response to Issue
3 5 having to do with cost-effectiveness. I think
4 everybody gets a full measure of due process under Issue
5 5, including DeSoto's right to argue the points that
6 Mr. Wright just articulated.

7 **COMMISSIONER GRAHAM:** OPC.

8 **MS. CHRISTENSEN:** I have no position on the
9 inclusion or exclusion of this issue.

10 **COMMISSIONER GRAHAM:** Staff.

11 **MS. ROBINSON:** Staff also believes that
12 DeSoto's concerns can be argued under Issue 5 as
13 originally drafted.

14 **COMMISSIONER GRAHAM:** All right. Mr. Wright,
15 it looks like we're going to strike Issue Number 9.

16 **MR. WRIGHT:** Thank you, Commissioner. We'll
17 address it appropriately.

18 **COMMISSIONER GRAHAM:** Okay. I think we're
19 down to exhibit list.

20 **MR. BEASLEY:** Commissioner, we would at some
21 point like to have an exhibit number assigned to the
22 notice of hearing which was published in the *Lakeland*
23 *Ledger*, we will provide that with a proof of
24 publication, as well as the Need Study that was
25 performed by Tampa Electric for this docket. Perhaps

1 they could be assigned in the composite list of
2 exhibits. We just want to reserve our opportunity to
3 have those two made exhibits to the proceeding.

4 **COMMISSIONER GRAHAM:** Staff, how is the best
5 way of handling that?

6 **MS. ROBINSON:** The best way might be to add
7 them to the Comprehensive Exhibit List and have them
8 stipulated, if possible.

9 **COMMISSIONER GRAHAM:** Any -- Intervenors, any
10 concerns of handling it that way?

11 **MS. CHRISTENSEN:** No.

12 **COMMISSIONER GRAHAM:** Mr. Wright?

13 **MR. WRIGHT:** No problem with that,
14 Commissioner. Thank you.

15 **COMMISSIONER GRAHAM:** Okay. All right. We're
16 at Section IX, exhibit list.

17 **MS. ROBINSON:** And staff will prepare a
18 Comprehensive Exhibit List consisting of all identified
19 exhibits and for the purpose of numbering, identifying
20 exhibits at hearing, and the list will be provided to
21 the parties as soon as possible.

22 Staff will also prepare and proffer a
23 Composite Exhibit List consisting of discovery
24 responses, and this would be consistent with the
25 Commission practice. And we will include in this

1 list -- this list will be included for purposes of the
2 hearing record and to conserve time at the hearing, and
3 we're hoping that the list will be stipulated to by the
4 parties.

5 And we will also have, staff will also have a
6 confidential hearing exhibit, and we hope that these
7 also will be stipulated by the parties.

8 **COMMISSIONER GRAHAM:** Okay. That brings us to
9 Section X, proposed stipulations.

10 **MS. ROBINSON:** There are none at this time,
11 but we hope that there will be stipulation regarding the
12 exhibit list.

13 **COMMISSIONER GRAHAM:** Okay. Number XI,
14 pending motions.

15 **MS. ROBINSON:** There was one pending motion
16 from TECO which the Commission addressed in Section VII,
17 the issues and positions, and the Commission's ruling
18 will be reflected in the Prehearing Order.

19 **COMMISSIONER GRAHAM:** Okay.

20 **MR. WRIGHT:** I think you handled that when you
21 struck Issue 9, Commissioner.

22 **COMMISSIONER GRAHAM:** I just heard somebody
23 push the button, so I figured someone wanted to talk.
24 That's why I started looking to see who was looking at
25 me. It's amazing how the sound travels in this room.

1 Pending confidential -- pending
2 confidentiality requests. Are there any?

3 **MS. ROBINSON:** There are two pending
4 confidential requests, which will be addressed by
5 separate orders.

6 **COMMISSIONER GRAHAM:** Okay. Post-hearing
7 procedure. Please know that there's a draft Prehearing
8 Order that currently includes words and page limits for
9 post-hearing filings. These include a concise position
10 summary for each of the issues not to exceed 50 words
11 and a requirement that each party's post-hearing filings
12 cannot exceed 40 pages. Is this agreeable for
13 everybody?

14 **MR. BEASLEY:** Yes, sir.

15 **MR. WRIGHT:** Commissioner, I was going to ask
16 for a slight expansion of the words. As I, as I line
17 this up, I think we've only got six substantive issues.
18 I was hoping we might have 100 words for each issue
19 statement. We won't take any more than we need.

20 **COMMISSIONER GRAHAM:** What if I split the baby
21 with you?

22 **MR. WRIGHT:** That would be great,
23 Commissioner. Thank you.

24 **COMMISSIONER GRAHAM:** All right. I'll go with
25 75 words, unless staff tells me I'm crazy and they hate

1 me.

2 **MS. ROBINSON:** That should be okay, sir.

3 **COMMISSIONER GRAHAM:** Okay. We'll go with
4 75 words.

5 Rulings. Opening statements, we're going to
6 limit those to five minutes, unless somebody tells me
7 I'm crazy again.

8 Okay. Other matters. Are there any other
9 matters to be addressed in this Prehearing Conference?

10 **MR. BEASLEY:** Commissioner Graham, we will be
11 filing, as we indicated earlier in a discovery response,
12 some corrections to previous pages of one witness, his
13 exhibit, the relevant portions of the Need Study, and I
14 think three interrogatories, to correct an input error
15 that traced through.

16 The revised pages correct that error. They do
17 not alter the company's determination that Polk 2-5 was
18 the most cost-effective alternative available to the
19 company in all of the base case and subsequent cases and
20 scenarios that were performed. But we will file those
21 and serve them with the parties.

22 **COMMISSIONER GRAHAM:** Okay. Is there a time
23 frame when we need to have those filed by?

24 **MR. BEASLEY:** I think we -- we got them in
25 today, and they might have already been filed or they

1 might be filed later. I'm not certain.

2 **COMMISSIONER GRAHAM:** Okay.

3 **MS. ROBINSON:** Staff would also like to know
4 that if the parties have any changes to their positions,
5 that they would get those changes to us by end of
6 business on November 30th, and any agreement regarding
7 stipulations at that time also.

8 **COMMISSIONER GRAHAM:** End of business is 5:00?

9 **MS. ROBINSON:** Yes, sir.

10 **COMMISSIONER GRAHAM:** And is that both
11 electronic and, and/or written?

12 **MS. ROBINSON:** Yes, sir.

13 **COMMISSIONER GRAHAM:** Okay.

14 **MS. CHRISTENSEN:** And, Commissioner, I've,
15 although I filed my notice of intervention, I guess we
16 could probably take care of it with a ruling
17 acknowledging our intervention today, or we could do it
18 by separate order, if staff would prefer.

19 **COMMISSIONER GRAHAM:** If I can do that, then
20 I'd grant it. No sense dragging it out.

21 **MS. ROBINSON:** Yes, sir, you can. We will
22 include it in the Prehearing Order.

23 **COMMISSIONER GRAHAM:** Okay. Anything else
24 under other matters? Is everybody -- no further things
25 you want to throw in here?

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All right. That being the case, I think we've addressed all the issues that need to be handled. And if there's nothing else, this meeting is adjourned. Thank you very much for your time.

(Proceeding adjourned at 1:49 p.m.)

1 STATE OF FLORIDA)
2 COUNTY OF LEON) : CERTIFICATE OF REPORTER

3
4 I, LINDA BOLES, RPR, CRR, Official Commission
5 Reporter, do hereby certify that the foregoing
6 proceeding was heard at the time and place herein
7 stated.

8 IT IS FURTHER CERTIFIED that I
9 stenographically reported the said proceedings; that the
10 same has been transcribed under my direct supervision;
11 and that this transcript constitutes a true
12 transcription of my notes of said proceedings.

13 I FURTHER CERTIFY that I am not a relative,
14 employee, attorney or counsel of any of the parties, nor
15 am I a relative or employee of any of the parties'
16 attorneys or counsel connected with the action, nor am I
17 financially interested in the action.

18 DATED THIS 29th day of November, 2012.

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LINDA BOLES, RPR, CRR
FPSC Official Commission Reporter
(850) 413-6734