

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination of Need for
Citrus County Combined Cycle Power Plant

DOCKET NO.: 140110-EI

FILED: September 10, 2014

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**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
POST-HEARING STATEMENT OF ISSUES AND BRIEF**

The Florida Industrial Power Users Group (“FIPUG”), by and through its undersigned counsel, files this Post-Hearing Statement of Issues and Positions and Post-Hearing Brief.

BASIC POSITION AND SUMMARY

FIPUG supports the development of cost effective, reasonable, prudent energy sources to serve Florida consumers. FIPUG also urges that the development of such energy sources not be developed prematurely, and when new proposed energy sources can be deferred, they should be. The need for Duke’s proposed new Citrus County combined cycle plant (1640 MW) (“Citrus County Project”) can be deferred for many reasons. Importantly, Duke is able to continue to operate its existing Crystal River units 1 & 2 (1434 MW) through 2020 and does not need to retire these units in 2018. Like a family that can put off buying a new car because it can get a few more years and miles from the family car that has been fully paid off, Duke can defer until 2020 the construction and operation of its proposed, brand new, Citrus County Project. The new Citrus County plant will cost ratepayers more than \$1.5 billion dollars, and ratepayers will be better off if these additional costs can be delayed for a couple of years. Accordingly, the Commission should do one of the following:

- not grant Duke’s need determination petition as filed, but defer the need determination decision and seek additional, more accurate load forecast information from Duke at a later point in time; or

- grant Duke’s need determination as filed, but impose two conditions: 1) that the construction and operation of the plant be deferred from 2018 until 2020; and 2) that Duke subsequently provide the Commission with updated load forecast information that can be reviewed to better determine whether Duke’s projected need remains.

Deferring the Citrus County need determination decision will benefit ratepayers and ensure that the Commission has better information about Duke’s future needs for energy to serve its load. Deferring the Citrus County need determination decision also provides this Commission with flexibility and optionality, important considerations for a public regulatory body as pointed out by witnesses Pollock and Hibbard.

ISSUES

ISSUE 1: Is the proposed Citrus County combined cycle plant needed, taking into account the need for electric system reliability and integrity?

FIPUG: **The in-service date of the plant may be deferred based on the evidence presented.**

ISSUE 2: Is the proposed Citrus County combined cycle plant needed, taking into account the need for adequate electricity at a reasonable cost?

FIPUG: **The in-service date of the plant may be deferred based on the evidence presented.**

ISSUE 3: Is the proposed Citrus County combined cycle plant needed, taking into account the need for fuel diversity and supply reliability?

FIPUG: **The in-service date of the plant may be deferred based on the evidence presented.**

ISSUE 4: Are there any renewable energy sources and technologies or conservation measures taken by or reasonably available to Duke Energy Florida that might mitigate the need for the proposed Citrus County combined cycle plant?

FIPUG: **The in-service date of the plant may be deferred based on the evidence presented.**

ISSUE 5: Is the proposed Citrus County combined cycle plant the most cost-effective alternative available to meet the needs of Duke Energy Florida and its customers?

FIPUG: **The in-service date of the plant may be deferred based on the evidence presented.**

ISSUE 6: Did Duke Energy Florida reasonably evaluate all alternative scenarios for cost effectively meeting the needs of its customers over the relevant planning horizon?

FIPUG: **The in-service date of the plant may be deferred based on the evidence presented.**

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?

FIPUG: **The determination of need should not be granted as requested as the in service date of the plant may be deferred based on the evidence presented.**

ISSUE 8: Should this docket be closed?

FIPUG: **Yes.**

Discussion of Issues 1 through 8

INTRODUCTION

FIPUG, a signatory to the most recent Revised and Restated Settlement Agreement dated July 31, 2013 with Duke Energy Florida (“Duke”), supports that Agreement as negotiated, filed, and approved by this Commission. However, that Agreement expressly preserved the right for customer intervenors to challenge the prudence and need of Duke’s Citrus County Project. FIPUG contends that the evidence in this case suggests that best course of action for all parties, the consumer interests, the Commission, and Duke, is to defer the in-service date of the Citrus County Facility. A host of facts and policy reasons support deferral as set forth below.

1. Ratepayers Are Obligated to Pay Millions of Dollars for Upgrades to Crystal River Units 1 and 2, generating facilities that can operate through 2020, deferring the need for the Citrus County Facility.

This Commission recently ordered ratepayers to pay \$28 million for improvements to Crystal River units 1 and 2, existing generating assets which offer fuel diversity to Duke's ratepayers. These units are permitted by the Florida Department of Environmental Protection ("FDEP") to operate through 2020. Tr. at (Ex. 145). In fact, ratepayers are presently obligated to pay for these improvements through the year 2021. See Order No. PSC-14-0173-PAA-EI, Attachment A.

In rendering its decision just last spring, on April 16, 2014, the Commission found that "... proceeding with the proposed activities (\$28 million of environmental upgrades) is estimated to result in more than \$300 million in savings when compared to retiring CR 1 and 2 in 2016, with net savings as soon as 2017." See Order No. PSC-14-0173-PAA-EI, page 6. In making its decision, the Commission observed in footnote three (3) to Order No. PSC-14-0173-PAA-EI, that FDEP recently issued new air permits for Crystal River units 1 and 2, which allow the existing facilities in question to operate through 2020, and that Duke had told FDEP that it intended to shut down those units by December 31, 2020. Given the recent decision to invest ratepayer money to make environmental upgrades to Crystal River units 1 and 2, which the state agency charged with protecting the environment has permitted to operate through 2020, and this Commission's finding that ratepayers will save more than \$300 million with net savings beginning in 2017, the Commission should defer approving the Citrus County Facility so as to allow these savings to be realized as projected.

FIPUG argued by analogy that Crystal River units 1 and 2 are the aged family car that has been paid off, but still has more miles and years of use to offer the family. The analogy is appropriate and instructive. Continuing to operate Crystal River units 1 and 2 not only adds to the savings for ratepayers recognized by this Commission in Order No. PSC-14-0173-PAA-EI, but avoids the need to spend \$1.5 billion dollars in capital in 2018. Witness Hillard testified that

deferring the Crystal River Facility by one year results in ratepayers saving \$59 million based on the time value of money (Tr. 346).

Plainly put, the Citrus County Facility should be deferred.

2. Deferring the Citrus County Facility is Favored by Consumer Advocates

Duke witness Borsch agreed that Duke wants what is best for its customers (Tr. 815). The overwhelming majority of the customer groups who participated in the evidentiary hearing in this case, and who undoubtedly represented the best interests of their respective clients, urged that the Commission defer the Citrus County Facility. See, Statement of Positions, Prehearing Order; (Tr. 816-820).

Paternalism is defined by the Oxford Dictionaries website as, “The policy or practice on the part of people in positions of authority of restricting the freedom and responsibilities of those subordinate to them in the subordinates’ supposed best interests.” See http://www.oxforddictionaries.com/us/definition/american_english/paternalism. Unless a policy of paternalism is going to be applied and adopted in this case, which should not be done given the scope, breadth, knowledge and experience of the representation of the collective customer groups, the Commission should defer the need for the Citrus County facility as suggested by FIPUG and other parties to this proceeding.

3. Flexibility and Optionality are Preserved by Deferring the Citrus County Facility, Particularly Given the Announcement of a Tentative Agreement between Duke and Calpine

Expert witnesses Pollock and Hibbard both suggested that deferring the Citrus County Facility provided Duke and this Commission with flexibility and optionality to consider changed circumstances. Witness Hibbard, who served on the Massachusetts equivalent of this Commission, made the following observations:

- However, based on my experience over decades as a utility regulator and consultant, I recognize that the type of resource and forecast assumptions that go into the Company’s determination of resource needs are just that – assumptions – and are almost certain to deviate from what actually transpires in the coming years; (Tr. 348).
- In consideration of this, any resource deviation that has the potential to delay major investments can save ratepayers money in the long run, and thus provide an option value that should be considered in resource decision making; (Tr. 348).
- In the context of post-2018 resource need, Osprey provides some flexibility around the timing of the Citrus County CC units. (Tr. 348).

Duke’s ratepayers have recently seen first-hand the results and financial burdens of what can happen when commitments are made to resource plans that do not come to fruition. Without delving into details, suffice it to say that customers are paying dearly for resource planning commitments Duke made and the Commission approved at the shuttered Crystal River 3 plant, for an uprate project at the Crystal River 3 plant that did not materialize, and a proposed new nuclear project in Levy County that did not work out as planned. It is an understatement to observe that had Duke and this Commission retained optionality and flexibility in those matters, the ratepayers would have benefited. Lessons learned are important and should not be disregarded. The facts of this case do not compel immediate action, but suggest that a deferral of the Citrus County Facility is appropriate.

4. The Tentative Agreement between Calpine and Duke for the Acquisition of the Osprey 600 MW Combined Cycle Facility is a New Fact which Supports Deferring the Citrus County Combined Cycle Unit

Just after Duke made its opening statement in this case, Duke announced that it had reached a tentative agreement in principal to enter into a purchased power and acquisition agreement with Calpine Construction Finance Company, L.P. (“Calpine”). Details of the agreement, including

whether it had even been reduced to writing, were not provided. Obviously, there was no opportunity to conduct discovery related to these new facts and how such facts might impact Duke's need for the Citrus County Facility. In contrast to Duke's testimony about the laborious and detailed process undertaken when planning how to serve its load, the surprise announcement raised more questions than it answered.

For example, Duke assumed that the entire output of the Osprey facility would not be available for Duke's use and benefit until well after 2018 due to the need to construct transmission line upgrades. However, when questioned, Duke's transmission witness admitted that the transmission lines could be constructed within 3 years if need be (Tr. 822). Duke witness Borsch testified that Duke would likely defer the construction of new transmission lines until after it acquired the Osprey unit, which he thought would be 2017. What if the Duke-Calpine agreement contained a six month purchased power agreement, Duke acquires the Osprey plant on July 1, 2015, and builds the transmission infrastructure in three years so that the full output of the Osprey unit is available in the summer of 2018? Has this been considered and discussed? How would such a development affect Duke's 2018 need? Could Duke continue to operate its Crystal River units 1 and 2 while the transmission line project was under construction?

While Duke witness Borsch gamely attempted to respond to questions about the Duke-Calpine deal, the difficulties in doing so are obvious: the agreement was announced as tentative, and subject to further negotiations. Who knows what the ultimate agreement, if one is ultimately reached, will reveal? The Commission and the parties, other than Duke and Calpine, were and are essentially in the dark about the Duke-Calpine deal and its impact upon Duke's future need. Approving the Citrus County Facility without having a better picture or understanding of the Duke-Calpine deal for an approximately 600 MW combined cycle facility, and the impact of 600 new

megawatts upon Duke's planning assumptions, is putting the cart before the horse. A decision which obligates Duke's ratepayers to a more than \$1.5 billion dollar project should not be made in haste with incomplete information and unanswered questions. Deferring a decision on the Citrus County Facility until the facts attendant to the Duke-Calpine deal are revealed, understood and tested by discovery is the prudent decision in this case.

CONCLUSION

For the foregoing reasons, the Commission should defer its decision on the Citrus County Project.

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing The Florida Industrial Power Users Group's Consolidated Brief has been furnished by electronic mail on this 10th day of September, 2014 to the following:

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