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Attachments: 120234.DeSoto.Resp2TECOMotion.11-21-12.pdf

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b. 120234-EI

In Re: Petition to Determine Need for Polk 2-5 Combined Cycle Conversion, By Tampa Electric Company.

c. Document being filed on behalf of the DeSoto County Generating Company, LLC.

d. There are a total of 13 pages.

e. The document attached for electronic filing is DeSoto County Generating Company, LLC's Response in Opposition to Tampa Electric Company's Motion to Conform to Issues as Stated in the Order Establishing Procedure.
 (see attached file: 120234.DeSoto.Resp2TECOMotion.11-21-12.pdf)

Thank you for your attention and assistance in this matter.

Rhonda Dulgar

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DOCUMENT NUMBER-DATE

07787 NOV 21 09

FPSC-COMMISSION CLERK

11/21/2012

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 21, 2012

**DeSOTO COUNTY GENERATING COMPANY, LLC'S
RESPONSE IN OPPOSITION TO TAMPA ELECTRIC COMPANY'S
MOTION TO CONFORM TO ISSUES AS STATED IN THE
ORDER ESTABLISHING PROCEDURE**

DeSoto County Generating Company, LLC ("DeSoto"), pursuant to Rule 28-106.204(1), Florida Administrative Code ("F.A.C."), hereby responds to Tampa Electric Company's ("TECO") Motion to Require DeSoto to Conform to Issues as Stated in the Order Establishing Procedure (the "Motion"). In the Motion, TECO objects to the order of issues set forth in DeSoto's Prehearing Statement; objects to the wording of several of DeSoto's proposed issues; and objects to the inclusion of several of DeSoto's proposed issues. As set forth in more detail below, DeSoto will agree to reordering the issues and to the wording of certain issues but strongly believes its proposed wording of some issues more accurately reflects the applicable statutes and rules and should not be changed. Finally, DeSoto strongly believes that its proposed additional issues are substantively appropriate and essential to the resolution of this case.

DOCUMENT NUMBER DATE

07787 NOV 21 12

FPSC-COMMISSION CLERK

I. Procedural Background

1. On September 12, 2012, TECO initiated this docket by filing its "Petition" to determine need for the Polk 2-5 combined cycle conversion project.

2. On September 26, 2012, the Florida Public Service Commission ("Commission") issued its Order Establishing Procedure, Order No. PSC-12-0494-PCO-EI. Section IV of the Order Establishing Procedure provides:

IV. Tentative List of Issues

A list of the issues identified thus far in this proceeding is attached hereto as Appendix A. The scope of this proceeding will be based upon these issues as well as other issues raised by the parties up to and during the Prehearing Conference, unless modified by the Commission.

(Emphasis supplied.) Appendix A to the Order Establishing Procedure lists the seven tentative issues (collectively referred to herein as the "Tentative Issues List").

3. The final hearing in this docket is scheduled to occur on December 12, 2012.

4. On November 14, 2012, Desoto timely¹ filed its Petition to Intervene.

¹ Rule 25-22.039, F.A.C., provides that a petition to intervene in a Commission proceeding may be filed up to five days before the final hearing. Accordingly, DeSoto could have petitioned to intervene in this docket as late as December 7, 2012.

5. Also on November 14, 2012, DeSoto timely filed its Prehearing Statement in which it identified nine issues (collectively referred to herein as "DeSoto's Proposed Issues").

6. No formal or informal issue identification conference has been held in this docket. DeSoto has requested that an issue identification meeting be convened, and DeSoto is continuing to work with the Commission Staff toward that end.

7. On Friday, November 16, 2012, TECO filed the Motion. DeSoto was served electronically with a copy of the Motion by an e-mail showing that it was sent to DeSoto's attorneys at 5:15 p.m. on Friday, November 16, 2012.

II. Response to TECO's Motion

A. Numerical Order of Issues

8. Typically, the numerical order of issues is addressed at an issue identification conference. However, since no issue identification conference has been convened in this docket, DeSoto has not had an opportunity to discuss the numerical order of issues with Commission Staff and TECO. The order of issues proposed by DeSoto is not of substantive import, thus DeSoto will agree to conform the numerical order of issues with the order suggested in the Tentative Issues List.

B. Wording of Issues

9. TECO asserts that DeSoto must "adhere to the issues as stated in the Order Establishing Procedure." Motion at 2. In

making this argument, TECO ignores the fact that the Order Establishing Procedure specifically identifies the issues as "tentative" and specifically provides that parties may raise new issues up to and during the Prehearing Conference in this docket. Accordingly, DeSoto is well within its legal rights in offering proposed issues and the Prehearing Officer should reject TECO's Motion to limit DeSoto's right to identify issues beyond those identified in the Tentative Issues List.

10. For convenience, the wording of each issue will be addressed separately:

a) Tentative Issue 1/DeSoto's Proposed Issue 1

Tentative Issue 1:

Is there a need for the proposed Polk 2-5 Combined Cycle Conversion, taking into account the need for electric system reliability and integrity, as this criterion is used in Section 403.519(3), Florida Statutes?

DeSoto's Proposed 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?

Although the wording of Tentative Issue 1 is not substantively different from the wording proposed in DeSoto's Proposed Issue 1, DeSoto agrees to the wording of Tentative Issue 1 in the Tentative Issues List.

b) Tentative Issue 2/DeSoto's Proposed Issue 4

Tentative Issue 2:

Are there any renewable energy sources and technologies or conservation measures taken by or reasonably available to Tampa Electric Company, which might mitigate the need for the proposed Polk 2-5 Combined Cycle Conversion?

DeSoto's Proposed 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?

Although the wording of Tentative Issue 2 is not substantively different from the wording proposed in DeSoto's Proposed Issue 4, DeSoto agrees to the wording of Tentative Issue 2 in the Tentative Issues List.

c) Tentative Issue 3/DeSoto's Proposed Issue 2

Tentative Issue 3:

Is there a need for the proposed Polk 2-5 Combined Cycle Conversion, taking into account the need for adequate electricity at a reasonable cost, as this criterion is used in Section 403.519(3), Florida Statutes?

DeSoto's Proposed 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?

Although the wording of Tentative Issue 3 is not substantively different from the wording proposed in DeSoto's Proposed Issue 2,

DeSoto agrees to the wording of Tentative Issue 3 in the Tentative Issues List.

d) Tentative Issue 4/DeSoto's Proposed Issue 3

Tentative Issue 4:

Is there a need for the proposed Polk 2-5 Combined Cycle Conversion, taking into account the need for fuel diversity, as this criterion is used in Section 403.519(3), Florida Statutes?

DeSoto's Proposed 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?

The wording of Tentative Issue 4 is substantially similar to the wording proposed in DeSoto's Proposed Issue 3, but DeSoto's Proposed Issue 3 in fact follows the statutory language exactly: Section 403.519(3), Florida Statutes, articulates this criterion as "the need for fuel diversity and supply reliability." Accordingly, DeSoto believes that its proposed wording is more appropriate than that advocated by TECO.

e) Tentative Issue 5/DeSoto's Proposed Issue 5

Tentative Issue 5:

Will the proposed Polk 2-5 Combined Cycle Conversion provide the most cost-effective source of power, as this criterion is used in Section 403.519(3), Florida Statutes?

DeSoto's Proposed 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?

While most of the wording of Tentative Issue 5 is substantially similar to the wording proposed in DeSoto's Proposed Issue 5, DeSoto's Proposed Issue 5 also focuses on the timing of the project. However, since DeSoto's Proposed Issue 8 will focus on the timing of the project, DeSoto agrees to the wording of Tentative Issue 5 in the Tentative Issues List.

f) Tentative Issue 6/DeSoto's Proposed Issue 9

Tentative Issue 6:

Based on the resolution of the foregoing issues, should the Commission grant Tampa Electric Company's petition to determine the need for the proposed Polk 2-5 Combined Cycle Conversion?

DeSoto's Proposed 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?

Although the wording of Tentative Issue 6 is not substantively different from the wording proposed in DeSoto's Proposed Issue 9, DeSoto agrees to the wording of Tentative Issue 6 in the Tentative Issues List.

DeSoto's Additional Issues

11. DeSoto proposed the following three additional issues:

a. DeSoto's Proposed Issue 6:

Did Tampa Electric accurately and appropriately evaluate all reasonable alternative scenarios, including purchasing the DeSoto Facility and deferring the Polk Conversion Project until a later date, for cost-effectively meeting the needs of its customers over the relevant planning horizon?

b. DeSoto's Proposed 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?

c. DeSoto's Proposed 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 Facility and in light of Tampa Electric's plan to construct additional CT capacity in 2018?

12. As noted above, TECO's argument that Desoto is required to "adhere to" the Tentative Issues List ignores the clear language of the Order Establishing Procedure allowing parties to raise new issues up to and during the Prehearing Conference in this docket.

Thus, no procedural bar exists to DeSoto proposing new issues in its Prehearing Statement. TECO's assertion is misplaced.

13. TECO also asserts that the three additional issues proposed by DeSoto are "unnecessary" because they "appear to be designed to tee up argument that DeSoto could easily present" in response to other issues identified on the Tentative Issues List. Motion at 2.

14. DeSoto's Proposed Issue 6 is an appropriate stand-alone issue as it addresses whether TECO properly focused on the variations and scenarios offered to TECO during the RFP process. TECO evaluated its Polk Conversion Project as part of its generating system operations in estimating cumulative present worth revenue requirements, and, to provide the "fair comparison" required by Rule 25-22.082(14), F.A.C., TECO should have evaluated all relevant scenarios with respect to DeSoto's offer to sell TECO the DeSoto Generating Facility. DeSoto's Proposed Issue 6 addresses exactly this issue.

15. DeSoto's Proposed Issue 7 is an appropriate stand-alone issue that is substantively cognizable under the Commission's need determination rules. DeSoto's Proposed Issue 7 addresses whether TECO complied with Rule 25-22.082, F.A.C., and clearly, compliance with Section 25-22.082, F.A.C., is an appropriate issue for this docket. Specifically, Rule 25-22.082(14), F.A.C., provides in pertinent part as follows:

(14) The public utility shall evaluate the proposals received in response to the RFP in a fair comparison with the public utility's next planned generating unit identified in the RFP.

(Emphasis supplied.) Thus, this Rule articulates the standard for RFPs as requiring "a fair comparison" of each bidder's proposal to that utility's next planned generating unit. DeSoto believes that its proposed language - i.e., whether TECO's RFP process was "transparent, robust, and constructive" - is consistent with the Rule language.

16. In fact, similar issues have been included in previous Commission dockets addressing determinations of need under Section 403.519, Florida Statutes. For example, in In re: Petition for Determination of Need of Hines Unit 2 Power Plant (Docket No. 001064-EI) (Order No. PSC-00-1960-PHO-EI), the Prehearing Order specifically identified the following issue:

Issue 5: Has Florida Power Corporation met the requirements of Rule 25-22.0826, Florida Administrative Code, "Selection of Generating Capacity", by conducting a fair bid process?

Accordingly, DeSoto's Proposed Issue 7 is a substantively appropriate stand-alone issue to be considered in this docket. (If TECO wishes to argue that a "fair" RFP process does not include such process being "transparent, robust, and constructive," DeSoto is willing to consider alternate language that still respects the Rule.)

17. DeSoto's Proposed Issue 8 is an appropriate stand-alone issue that is substantively cognizable under the Commission's need determination rules. The significance of the timing of a unit is expressly recognized by the Commission's rules applicable to power plant need determinations. For example, Rule 25-22.081(1)(c), F.A.C., provides that, "To allow the Commission to take into account the" statutory need criteria, the petition must include:

(c) A statement of the specific conditions, contingencies or other factors which indicate a need for the proposed electrical power plant including the general time within which the generating units will be needed.

(Emphasis supplied.) Rule 25-22.081(1)(f), F.A.C., goes on to require that a need petition must also include

(f) An evaluation of the adverse consequences which will result if the proposed electrical power plant is not added in the approximate size sought or in the approximate time sought.

(Emphasis supplied.)

18. Thus, the Commission's need determination rules themselves expressly contemplate that the timing of a proposed unit is an appropriate issue for a need determination case, and DeSoto's Proposed Issue 8 brings exactly this issue into proper focus for the Commission.

19. In summary, the Prehearing Officer should reject TECO's Motion to limit the issues in this case, but DeSoto is willing to

agree to both reordering the issues and to the wording of Tentative Issues 1 through 3, 5 and 6 as set forth above.

CONCLUSION

The Prehearing Officer should deny TECO's Motion because DeSoto was fully within its rights to raise new issues, as provided by the Order Establishing Procedure. Moreover, DeSoto's wording of Tentative Issue 4 is superior to that preferred by TECO because DeSoto's proposed wording tracks the statutory language. DeSoto is willing to agree to the wording of Tentative Issues 1 through 3, 5 and 6 and to the order of the issues. DeSoto's Proposed Issues 6, 7 and 8 are substantively appropriate and essential to the resolution of this case, and TECO's Motion should be denied with respect to that issue as well.

Respectfully submitted this 21st day of November, 2012.



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CERTIFICATE OF SERVICE


I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following by electronic mail on this 21st day of November, 2012.

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