

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Environmental Cost Recovery )  
Clause ) DOCKET NO. 130007-EI  
\_\_\_\_\_ ) FILED: SEPTEMBER 13, 2013

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,<sup>1</sup> 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 a customer of Florida Power & Light Company ("FPL") and the owner and operator of the DeSoto Generating Facility, a natural gas fired electrical power plant located in Arcadia, Florida ("DeSoto Facility" or "Facility"). As a customer of FPL, DeSoto's substantial interests in having fair, just, and reasonable rates will be determined by the Commission's actions determining FPL's allowable Environmental Cost Recovery Clause ("ECRC") rates in this docket, and accordingly, DeSoto is entitled to intervene to protect those interests. DeSoto believes that FPL can obtain peaking capacity at significantly lower costs than requested in its Petition for Approval of Environmental Cost Recovery ("FPL Petition") filed in this docket on June 28, 2013, and accordingly, DeSoto believes

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<sup>1</sup> All references herein to the Florida Statutes are to the 2012 edition thereof.

that FPL's Petition should be denied as proposed.

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.  
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with a courtesy copy to:

Counsel  
c/o DeSoto County Generating Company, LLC  
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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 is an on-going docket of the Commission, in which the Commission annually determines the ECRC rates of

Florida public utilities that impose charges pursuant to Section 366.8255, Florida Statutes. 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 November 4-6, 2013, 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 has been a retail customer of FPL since 2002, receiving service under FPL's General Service Demand (GSD-1) and Standby and Supplemental Service-1 Time-of-Use (SST-1) rate schedules.

6. According to FPL's Petition for Approval of Environmental Cost Recovery filed in this docket on June 28, 2013, FPL plans to add 1,608 MW of combustion turbine ("CT") capacity, also commonly referred to as "peaking capacity," to its generating system at a cost of approximately \$822 million, including transmission and integration costs, in order to comply with certain environmental regulations. FPL refers to this construction project as its "Proposed NO<sub>2</sub> Compliance Project." FPL's projected cost of the generating units only, excluding

transmission and integration costs, is \$771 million. Expressed on a dollars per kilowatt ("kW") basis, FPL's total costs are approximately \$511 per kW and the costs for the power block (generating units) only are approximately \$479 per kW. Based on its knowledge of the Florida bulk power supply system and Florida wholesale power markets, DeSoto believes that FPL can acquire additional peaking capacity at costs significantly less than those proposed by FPL.

#### STATEMENT OF AFFECTED INTERESTS

7. In this docket, the Commission will determine the allowable level of FPL's ECRC charges and will decide whether to approve FPL's petition for approval of its "Proposed NO<sub>2</sub> Compliance Project" for cost recovery through the Environmental Cost Recovery Clause. Obviously, as a customer of FPL, DeSoto has a direct interest in ensuring that FPL's rates and charges applicable to the rate schedules under which DeSoto receives service are as low as possible, and accordingly, its interests will be determined by each of the Commission's decisions regarding FPL's ECRC proposals, including the Proposed NO<sub>2</sub> Compliance Project, in this docket.

8. 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 ensuring that its rates, specifically FPL's ECRC charges, are as low as possible. 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 FPL's ECRC charges are fair, just, and reasonable, and no greater than required for FPL to provide safe, adequate, and reliable service.

#### DISPUTED ISSUES OF MATERIAL FACT

9. Among other issues, DeSoto believes that the following are disputed issues of material fact to be decided in this proceeding.

Issue 1: Can FPL obtain needed Combustion Turbine capacity at a cost less than the costs proposed in its Petition for Approval of Environmental Cost Recovery for its Proposed NO<sub>2</sub> Compliance Project?

Issue 2: If FPL constructs the full 1,608 MW of CT capacity contemplated in its Proposed NO<sub>2</sub> Compliance Project, will the costs of pursuing that course of action have been prudently incurred?

- Issue 3: If FPL constructs the full 1,608 MW of CT capacity contemplated in its Proposed NO<sub>2</sub> Compliance Project, will FPL's resulting ECRC rates be fair, just, and reasonable?
- Issue 4: Has FPL adequately explored the availability of cost-effective alternatives to constructing all of the proposed 1,608 MW of new CT capacity itself?
- Issue 5: If FPL has not adequately explored and evaluated all reasonably available alternatives to constructing the 1,608 MW of CT capacity contemplated in its Proposed NO<sub>2</sub> Compliance Project, what action should the Commission take to protect FPL's customers?
- Issue 6: Should the Commission approve FPL's Petition for Approval of Environmental Cost Recovery for its Proposed NO<sub>2</sub> Compliance Project?
- Issue 7: Based on the resolution of the foregoing issues, should the Commission approve FPL's proposed ECRC charges in this proceeding?

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**

10. As described above, DeSoto is a customer of FPL, and as such, DeSoto must pay FPL's rates, including the ECRC charges, that are applicable to the GSD-1 and SST-1T rate classes under which DeSoto receives service. Based on its knowledge of the bulk power supply system in Florida and Florida's wholesale power markets, DeSoto believes that FPL can acquire peaking (CT) capacity at costs that are significantly less than those proposed in FPL's Petition. DeSoto further believes that FPL has not demonstrated that it has adequately evaluated the availability of

potentially cost-effective alternatives to constructing part or all of the 1,608 MW of CT capacity in its Proposed NO<sub>2</sub> Compliance Project, and accordingly, the Commission should not approve that Project, as proposed, for cost recovery through FPL's ECRC charges.

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

11. The applicable statutes and rules that entitle DeSoto to relief include, but are not limited to, Sections 120.569, 120.57(1), and 366.8255, 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 366.8255, Florida Statutes, provides that the Commission may approve a utility's proposed environmental compliance activities and environmental compliance costs, and that the Commission is to "allow recovery of the utility's **prudently incurred** environmental compliance costs . . ."

(emphasis supplied) through the utility's ECRC charges. It follows directly that the Commission is not to approve any programs that involve costs that are not prudently incurred, and costs that are greater than need be are, necessarily, imprudent. Here, DeSoto believes that FPL's Proposed NO<sub>2</sub> Compliance Project,

as proposed by FPL, involves some amount of excessive and imprudent costs, and as a customer of FPL, DeSoto is entitled to intervene to protect against being subjected to excessive rates.

12. 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. As an FPL customer, DeSoto must pay FPL's ECRC charges applicable to the tariffs under which DeSoto receives service, and the Commission's decisions in this docket will determine those charges. 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 13th day of September 2013.



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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 13th day of September 2013.

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