

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination
of Cost Effective Generation Alternative
to Meet Need Prior to 2018, by Duke
Energy Florida, Inc.

Docket No. 140111-EI

Filed: June 11, 2014

**NRG FLORIDA LP'S
PETITION FOR LEAVE TO INTERVENE**

Pursuant to Sections 120.52(13)(a), 120.569, and 120.57, Florida Statutes; and Rules 25-22.039, 28-106.201, and 28-106.205, Florida Administrative Code, NRG Florida LP requests leave to intervene in this proceeding, and states:

1. NRG Florida LP owns and operates a 465 MW Simple Cycle generating station located approximately 35 miles southeast of Orlando, Florida, in Osceola County (the "Osceola Station"). The Osceola Station is interconnected with Duke Energy Florida ("DEF") in accordance with the requirements of the Federal Energy Regulatory Commission ("FERC") through a 1.6 mile radial line. The Orlando Utilities Commission has recently completed transmission upgrades necessary to provide Network Resource Interconnection Service (NRIS) at a cost of \$10.6 million, the cost of which transmission upgrades has been paid for entirely by NRG Florida LP.

2. NRG Florida LP is also a retail customer of DEF.

3. Petitioner's contact information is:

NRG Florida LP
c/o NRG Energy, Inc.
112 Telly Street
New Roads, LA 70760

4. All notices, pleadings, correspondence, discovery, staff recommendations and orders filed or served in this proceeding should be served on Movant's counsel:

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5. The agency affected by this petition is the Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850. Petitioner received notice of this matter through the Commission's website on or about May 27, 2014.

PETITIONER'S SUBSTANTIAL INTERESTS

6. NRG Florida LP is a foreign limited partnership authorized to do business in Florida.² NRG Florida LP is a retail customer of DEF, receiving electric service under DEF's Firm Standby Service (SS-1) and General Service (GS-1) rate schedules.

7. In this docket, DEF seeks a determination that it has an affirmative need for additional generation capacity prior to 2018, and that its planned Suwannee Simple Cycle and Hines Chillers Power Uprate projects are the most cost effective generation alternatives to meet that need. DEF states that the Suwannee project will include purchase and installation of two combustion turbine generators and two generator step-up transformers to generate an estimated 320 MW. DEF estimates that it will cost \$197 million to build the project, which will increase

¹ NRG Florida LP has requested Qualified Representative status for Mr. Polozola.

² NRG Florida LP is the successor through merger, name changes, and conversion to Reliant Energy Osceola, LLC and RRI Energy, Inc.

DEF's annual fixed operation and maintenance ("O&M") expense by an estimated \$1.4 million, and increase its variable O&M costs by approximately \$700,000. DEF Petition, ¶¶ 9, 12. DEF further asserts that the Hines project will increase the summer capacity of the existing combined cycle power plants at DEF's Hines Energy Complex by approximately 220 MWs at an estimated cost of \$160 million, with an unquantified "minimal increase" in fixed and variable O&M cost. DEF recognizes and identifies a lower cost alternative to its proposal, but disregards that more economical proposal by alleging that a market power issue may arise if DEF were to pursue that lower cost option. DEF Petition, ¶¶ 31, 32, 34-36. DEF thus attempts to justify its self-build options by alleging market power issues. DEF Petition, ¶¶ 34-36.

8. It is clear that this proceeding will directly and immediately affect NRG Florida LP's substantial interests. First, NRG Florida LP is a retail electric customer of DEF. Based on DEF's assertion that it needs the additional generation described in its Petition in order to reliably serve its customers, granting or not granting the relief sought may have an impact on the availability of electric power to NRG Florida LP's operations, as well as on the rates NRG Florida LP will be required to pay for such electricity. The Commission has repeatedly held that a utility's customers are substantially affected by and entitled to intervene in proceedings, including proceedings in which a utility seeks a determination that it requires new generating capacity that could increase the rates they pay for electric services. Importantly, the Commission has consistently held that such customers meet the two-prong standing test in *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So.2d (Fla. 2d DCA 1982) (intervenor must show that he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57 hearing, which injury must be of a type or nature the proceeding is designed to protect). *See, e.g.*, Order Nos. PSC-12-0360 and PSC-12-0399-PCO-EI (Docket No. 120015-EI, July 12,

2012 and August 3, 2012); Order Nos. PSC-10-0136-PCO-EM and PSC-10-0137-PCO-EM (Docket No. 090451-EM, March 8, 2010); Order No. PSC-09-0308-PCO-EI (Docket No. 090172-EI, May 7, 2009).

9. Further, DEF asserts that it sought, evaluated, and rejected options to its self-build proposal, including nine proposals for power purchase agreements (“PPA”) or generation facility acquisition. DEF Petition, ¶¶ 29-36. In order to evaluate DEF’s Petition, the Commission must review the options rejected by DEF in favor of its preferred self-build projects. Upon information and belief, NRG Florida LP (itself or through its parent) is the vendor identified in DEF’s Petition and testimony as one of the proposed acquisition projects and was also included among the anonymous power purchase agreement options. DEF now seeks the Commission’s approval and ratification of its decision to reject NRG Florida LP’s cost effective proposals to meet DEF’s projected need for additional generation capacity prior to 2018. Accordingly, NRG Florida LP is entitled to intervention under Section 120.53(13)(a), Florida Statutes, as a specifically identified person whose substantial business interests in the sale of its facility or its power will be determined in this proceeding.

10. Finally, NRG Florida LP’s existing Osceola Station is located within DEF’s control area and is directly interconnected with DEF. Osceola Station provides 465 MW of F-Class gas turbine peaking generation interconnected to the Duke Holopaw 230 kV Substation. The Commission’s approval of DEF’s proposed projects will cause uneconomic duplication of NRG Florida LP’s existing NRG Florida LP’s facilities, contrary to Section 366.04(5), Florida Statutes, and in contravention of NRG Florida LP substantial interests.

11. While DEF bears the burden of proof in this proceeding, NRG Florida LP's participation is vital to the Commission's development of a complete record and reaching the correct decision.

DISPUTED ISSUES OF MATERIAL FACT

12. Much of the detailed information required to evaluate DEF's Petition has been redacted from DEF's testimony. Accordingly, it is impossible to identify all possible disputed issues of material fact at this time. Subject to discovery, and in addition to the issues identified in Paragraph 41 of DEF's Petition, the disputed issues of material fact identified by NRG Florida LP at this time include, but are not limited to, the following:

- a. Whether DEF has demonstrated a need for up to 540 MW of additional generation capacity prior to 2018;
- b. Whether DEF fairly and correctly evaluated third party proposals to meet some or all of its additional generation capacity;
- c. Whether NRG Florida LP's proposal of an acquisition or PPA provides the most cost effective alternative to DEF's proposed Suwannee Simple Cycle Project or Hines Chillers Power Uprate Project; and
- d. Whether DEF unreasonably rejected NRG Florida LP as a viable alternative to the Suwannee or Hines projects based on a questionable assertion of market screen failures.

Petitioner reserves the right to raise additional issues as permitted by Commission practice and Order No. PSC-14-0275-PCO-EI.

ULTIMATE FACTS ALLEGED

13. DEF's planned Suwannee and Hines projects may not be the most cost effective generation alternatives to meet any need that DEF may have for additional generation capacity prior to 2018. Additionally, DEF's evaluation process may not have properly evaluated the potential acquisition of NRG Florida LP's facility or the purchase of capacity and energy from the facility, or some combination thereof, as effective options to meet the need described in DEF's Petition for additional generation capacity both prior to 2018 as well as afterwards.

SPECIFIC RULES OR STATUTES THAT ENTITLE NRG FLORIDA LP TO RELIEF

14. As DEF's customer, NRG Florida LP is entitled to rates that are fair, just, and reasonable, pursuant to Section 366.06, Florida Statutes. If the Commission improperly grants DEF's Petition, DEF will be entitled to recover unnecessary and excessive costs in its rates. NRG Florida LP is entitled to intervene herein to protect this substantial statutory interest, which is a type this proceeding is designed to protect.

15. DEF seeks the Commission's approval of its decision to reject NRG Florida LP's proposal to meet DEF's projected need for additional generation capacity prior to 2018, which will in turn determine NRG Florida LP's substantial interest in the sale of its facility to DEF. As a specifically-identified person whose substantial interests are being determined in this proceeding, NRG Florida LP is entitled to intervention under Section 120.52(13)(a), Florida Statutes.

16. Section 366.04(5) Florida Statutes, grants the Commission jurisdiction over planning, development and maintenance of Florida's coordinated electric grid "to assure a reliable source of energy for operational and emergency purposes ...and avoidance of further uneconomic duplication of generation, transmission, and distribution facilities." If approved in

this docket, DEF's proposed Suwannee Hines projects will unnecessarily and uneconomically duplicate NRG Florida LP's existing Osceola Station, which is located within DEF's service territory and is directly interconnected with DEF. NRG Florida LP is entitled to intervene to protect its substantial interest against uneconomic duplication of its existing facilities.

17. Pursuant to Sections 120.52(13)(a), 120.569 and 120.57(1), Florida Statutes, and Rules 25-22.039 and 28-106.205, Florida Administrative Code, substantially affected persons are entitled to a formal administrative proceeding in any agency determination involving a disputed issue of fact. NRG Florida LP has alleged facts, primarily arising out of its status as a customer, which demonstrate that this proceeding will affect its substantial interests, all of which are well within the zone of interest this proceeding is designed to protect. Accordingly, NRG Florida LP is entitled to intervention herein.

18. NRG Florida LP has contacted counsel for DEF who advised that DEF does not object to NRG Florida LP's intervention in this docket.

RELIEF REQUESTED

Petitioners respectfully request the Commission to enter an order granting this Petition for Leave to Intervene and to permit NRG Florida LP to participate as a full party in this proceeding.

RESPECTFULLY SUBMITTED this 11th day of June, 2014.

/s/ Marsha E. Rule

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ATTORNEYS FOR NRG FLORIDA LP

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following by electronic mail this 11th day of June, 2014:

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