

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination) DOCKET NO. 140111-EI
of Cost Effective Generation Alternative)
to Meet Need Prior to 2018 for Duke) Submitted for filing: August 5, 2014
Energy Florida, Inc.)
_____)

DUKE ENERGY FLORIDA, INC.'S NOTICE OF FILING

Duke Energy Florida, Inc. ("DEF" or the "Company") hereby gives notice of filing the Rebuttal Testimony of Julie Solomon in support of DEF's Petition for Determination of Cost Effective Generation Alternative to Meet Need Prior to 2018 for Duke Energy Florida, Inc. filed May 27, 2014 (Document No. 02534-14).

Respectfully submitted this 5th day of August, 2014.

John T. Burnett
Deputy General Counsel
Dianne M. Triplett
Associate General Counsel
DUKE ENERGY FLORIDA, INC.
Post Office Box 14042
St. Petersburg, FL 33733-4042
Telephone: (727) 820-5587
Facsimile: (727) 820-5519

/s/ Blaise N. Gamba
James Michael Walls
Florida Bar No. 0706242
Blaise N. Gamba
Florida Bar No. 0027942
CARLTON FIELDS JORDEN BURT, P.A.
Post Office Box 3239
Tampa, FL 33601-3239
Telephone: (813) 223-7000
Facsimile: (813) 229-4133

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing has been furnished to counsel and parties of record as indicated below via electronic mail and overnight mail this 5th day of August, 2014.

/s/ Blaise N. Gamba
Attorney

Michael Lawson
Florida Public Service Commission Staff
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Phone: (850) 413-6199
Facsimile: (850) 413-6184
Email: mlawson@psc.state.fl.us

Charles Rehwinkel
Deputy Public Counsel
Erik Sayler
Associate Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400
Phone: (850) 488-9330
Email: rehwinkel.charles@leg.state.fl.us
Sayler.erik@leg.state.fl.us

Jon C. Moyle, Jr.
Karen A. Putnal
Moyle Law Firm
118 North Gadsden Street
Tallahassee, FL 32301
Phone: (850) 681-3828
Fax: (850) 681-8788
Email: jmoyle@moylelaw.com
kputnal@moylelaw.com

James W. Brew
F. Alvin Taylor
Brickfield Burchette Ritts & Stone, PC
1025 Thomas Jefferson St NW
8th FL West Tower
Washington, DC 20007-5201
Phone: (202) 342-0800
Fax: (202) 342-0807
Email: jbrew@bbrslaw.com
ataylor@bbrslaw.com

Robert Scheffel Wright
John T. LaVia, III
Gardner Law Firm
1300 Thomaswood Drive
Tallahassee, FL 32308
Phone: (850) 385-0070
Email: Schef@gbwlegal.com
Jlavia@gbwlegal.com

Marsha E. Rule
Rutledge Ecenia, P.A.
119 South Monroe, Ste. 202
Tallahassee, FL 32301
Phone: (850) 681-6788
Fax: (850) 681-6515
Email: marsha@rutledge-ecenia.com

Richard A. Zambo
Richard A. Zambo, P.A.
2336 S.E. Ocean Boulevard, #309
Stuart, FL 34966
Phone: (772) 225-5400
Email: richzambo@aol.com

Gordon D. Polozola
NRG Energy, Inc.
112 Telly Street
New Roads, LA 70760
Phone: (225) 618-4084
Email: Gordon.Polozola@nrgenergy.com

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 140111-EI
Submitted for filing:
August 5, 2014

**REBUTTAL TESTIMONY
OF JULIE SOLOMON**

**ON BEHALF OF
DUKE ENERGY FLORIDA, INC.**

JOHN BURNETT
Deputy General Counsel
DIANNE M. TRIPLETT
Associate General Counsel
DUKE ENERGY FLORIDA, INC.
299 1st Avenue North
St. Petersburg, Florida 33733
Telephone: (727) 820-5184
Facsimile: (727) 820-5519

JAMES MICHAEL WALLS
Florida Bar No. 706272
BLAISE GAMBA
Florida Bar No. 027942
CARLTON FIELDS JORDEN
BURT, P.A.
Corporate Center Three at
International Plaza
4221 W. Boy Scout Blvd., Ste.1000
Tampa, FL 33607
Telephone: (813) 223-7000
Facsimile: (813) 229-4133

**IN RE: PETITION FOR DETERMINATION OF COST EFFECTIVE GENERATION
ALTERNATIVE TO MEET NEED PRIOR TO 2018 FOR DUKE ENERGY FLORIDA,
INC.**

**BY DUKE ENERGY FLORIDA, INC.
FPSC DOCKET NO. 140111-EI**

REBUTTAL TESTIMONY OF JULIE SOLOMON

1 **I. INTRODUCTION.**

2 **Q. Are you the same Julie Solomon that filed Direct Testimony in this docket?**

3 **A.** Yes.

4
5 **Q. What is the purpose of your Rebuttal Testimony?**

6 **A.** The purpose of my Rebuttal Testimony is to respond to issues raised in the July 14, 2014
7 Direct Testimony of Dr. John R. Morris on behalf of NRG Florida L.P. (“NRG”), and
8 Direct Testimony of Dr. David Hunger on behalf of Calpine Construction Finance
9 Company, L.P. (“Calpine”). Each of these testimonies addresses essentially two issues:
10 (i) the potential horizontal market power effects of Duke Energy Florida, Inc. (“DEF” or
11 the “Company”) acquiring a generating plant in Florida; and (ii) how FERC might
12 evaluate an application seeking approval for such an acquisition. I address each of these
13 witnesses in turn below, although there is overlap in their testimony with respect to these
14 issues.

15
16 **Q. Are you sponsoring any exhibits to your Rebuttal Testimony?**

17 **A.** No.

1 **II. SUMMARY OF REBUTTAL TESTIMONY.**

2 **Q. Please briefly summarize your rebuttal of Drs. Morris and Hunger.**

3 **A.** My key points are summarized here, and then detailed below.

4 First, neither Dr. Morris nor Dr. Hunger raise any fundamental analytical
5 concerns about the FERC screens I conducted. Their focus is almost exclusively on
6 changing the paradigm of the before (pre-transaction) and after (post-transaction)
7 assumptions and the nature of the transaction itself. In effect, they each develop
8 scenarios for screens that will show absolutely zero effect – *i.e.*, pre- and post-transaction
9 scenarios that yield essentially the same results.

10 Second, and related to the prior point, both Dr. Morris and Dr. Hunger are
11 testifying about a form of transaction that was not among the acquisition options having
12 been proposed to, or still being considered by, the Company at the time of my Direct
13 Testimony. Specifically, a key element of both of their testimonies is that the evaluation
14 of market power effects and the risks of obtaining FERC approval are changed if the
15 generation alternative being considered consists of a long-term power purchase
16 agreement (“PPA”) followed by a generation acquisition, rather than simply an
17 acquisition. Such a proposal was made by Calpine to DEF on June 16, 2014 and revised
18 on July 3, 2014, some 3-5 weeks following the filing of my Direct Testimony on May 27,
19 2014. While Dr. Morris discusses such an approach, I understand that NRG has not made
20 any formal offer to DEF proposing this approach (although there has been
21 correspondence and discussions between the companies about such an approach).

22 Third, both witnesses conclude that the risks of obtaining FERC approval are not
23 significant if the form of the transaction changes in the manner described above. Dr.

1 Hunger concludes that once a long-term (5-year) PPA is entered into and in effect for at
2 least one year, “FERC will almost certainly conclude” that an acquisition would result in
3 no change in market power for DEF. Even if FERC approval were sought as soon as the
4 PPA is executed, Dr. Hunger indicates that FERC precedent suggests this would be
5 acceptable as well. Similarly, Dr. Morris concludes that entering into a long-term PPA
6 and finalizing an acquisition agreement at a later date would lead to a conclusion that
7 there is no change in market power. He concludes that “Duke would need several years
8 remaining on the purchase or tolling agreement” in order for FERC to accept the premise
9 that DEF “controls” the facility pre-transaction. If a transaction involving a long-term
10 PPA that transfers control to DEF combined with a subsequent acquisition is determined
11 to be economic by DEF, I believe that the risks of FERC approval are improved relative
12 to the proposals that are the subject of DEF’s original application that I evaluated in my
13 Direct Testimony. Important timing and risk issues potentially remain, however, as I
14 discuss below, particularly as one considers specific, actual structures as opposed to
15 hypothetical/theoretical structures.

16 Fourth, Dr. Morris raises two issues, distinct from the basic scenario of a long-
17 term PPA followed by an acquisition. One, he seems to argue that the base case (pre-
18 transaction) should assume that DEF has some other additional generation under its
19 control before it acquires additional generation, because this is “the most likely state of
20 competition” without DEF acquiring the Osceola facility. Generally this implies that I
21 understated the amount of Available Economic Capacity that DEF would have pre-
22 transaction before making the decision about what new capacity to add. As a result,
23 when DEF adds new capacity – whether Osceola or something else – the post-transaction

1 market concentration will be identical, or near-identical, to the pre-transaction market
2 concentration such that the HHI change is zero and FERC will approve the transaction.
3 As a general proposition, this argument appears to simply turn the FERC approach on its
4 head – it would suggest for any utility seeking new generation, its status quo already has
5 some form of additional generation in the mix – and I am not aware of such a premise in
6 this form being accepted by FERC. More specifically, Dr. Morris further posits that, in
7 the absence of a deal with DEF, NRG would either contract or sell its plant to another
8 Florida utility or, alternatively, dismantle it and move it outside of Florida, and my
9 analysis should take that into consideration. This approach leads to an analysis that has
10 DEF building new generation and NRG exiting the market in the pre-transaction scenario
11 as compared to a post-transaction scenario in which DEF acquires Osceola. This
12 hypothetical appears, at best, purely theoretical and, at worst, speculative, as Dr. Morris
13 has not presented any evidence in support of these outcomes (nor am I aware of any NRG
14 witness providing such evidence). Two, Dr. Morris argues that there are additional
15 mitigation measures that FERC might accept, citing cost-based offers or temporary
16 transfer of control if the market power concerns were short-lived. Dr. Morris
17 appropriately describes these as hypothetical, and, as noted, there is no firm proposal by
18 NRG underpinning this hypothesis.

19
20 **Q. How is the remainder of your testimony organized?**

21 **A.** I address Dr. Hunger's and Dr. Morris' testimony in turn, followed by a summary of my
22 conclusions.

23

1 **II. RESPONSE TO DR. HUNGER.**

2 **Q. What specific issues does Dr. Hunger address in his Direct Testimony?**

3 A. Dr. Hunger focuses on two related transactions under which DEF would acquire
4 Calpine's Osprey Energy Center facility ("Osprey"). In the first transaction, DEF would
5 enter into a 5-year PPA with Calpine to acquire the output of Osprey, with the PPA
6 effectively transferring control from Calpine to DEF. In the subsequent transaction, DEF
7 would acquire Osprey. Dr. Hunger concludes that if FERC authorization is sought a year
8 of more after the PPA takes effect, "FERC will almost certainly conclude that the
9 acquisition will do nothing to change that assignment [of Osprey's output to DEF] and
10 thus will not affect competition..." and, "[c]onsequently FERC should not require a
11 market power analysis." (Hunger at 21:8-15) He further concludes that even if FERC
12 authorization were sought "as soon as the PPA is executed, there is FERC precedent
13 approving this type of structure as well." (Hunger at 21:16-18)

14
15 **Q. Why did you not analyze this deal structure in your Direct Testimony?**

16 A. Quite simply because that was not one of the scenarios that DEF asked me to analyze. At
17 the time of my Direct Testimony, the only specific proposals being considered by DEF
18 involved the acquisition of generating plants or new builds. Because building new
19 generation does not require FERC approval, I focused on the market power effects of the
20 acquisition of existing generating plants in the DEF balancing authority area ("BAA").
21
22
23

1 **Q. Do you agree with Dr. Hunger's conclusion about the certainty of FERC approval of**
2 **a PPA plus acquisition proposal?**

3 A. Not entirely. I certainly agree that there is ample FERC precedent that a long-term PPA
4 that is considered to transfer operational control to the buyer is treated in a manner
5 similar to owned capacity. Further, it follows from this that an acquisition of the same
6 type and quantity of generation as is subject to the PPA would indicate no market power
7 concerns (in effect, zero change in market structure or market concentration). On these
8 two points, I agree with Dr. Hunger (as well as Dr. Morris, as discussed below).

9 That said, it does not necessarily follow that a FERC filing under the specific
10 facts presented here is completely assured of obtaining unconditional FERC approval.

11
12 **Q. Please explain what is it about the specific fact circumstances proposed here that**
13 **lead to uncertainty in obtaining FERC approval?**

14 A. A "plain vanilla" filing where an acquisition follows a long-term PPA transferring control
15 should, as Drs. Hunger and Morris assert, have a very high certainty of approval. Setting
16 aside the issue of how long one would need to wait after entering into the PPA to seek
17 such approval, there are two other factors present here that, I believe are untested as to
18 FERC precedent or opinion.

19 First, it will be clear to FERC in the application (and, in any event, would be
20 otherwise clear to FERC upon review of this docket) that the sole reason for entering into
21 the PPA followed by an acquisition is to facilitate approval under section 203. There is
22 no hiding that fact, and DEF does not intend to do so. To the extent that the transaction

1 was designed specifically to avoid an appearance of market power under section 203,
2 FERC could decide to take that factor into consideration in evaluating the application.

3 Second, with respect to the Calpine proposal specifically, there are two factors
4 that further complicate the analysis and consideration by FERC. Related to the previous
5 point regarding how FERC would consider a PPA, I note that Calpine's July 3 proposal
6 contemplates a five-year PPA with DEF; however, if FERC does not approve the related
7 acquisition of Osprey, or approves it only with mitigation, the PPA will terminate by the
8 end of 2016. This could cause FERC to conclude it is really a two-year PPA, and further
9 highlight that the PPA is only a vehicle for the ultimate acquisition. This proposal also
10 weakens Dr. Hunger's conclusion that a five-year PPA would not face a significant risk
11 of being disallowed or heavily mitigated by FERC.

12 Additionally, as I understand from Mr. Borsch, and from Mr. John L. Simpson's
13 testimony on behalf of Calpine, while DEF would enter into a PPA with Calpine for 515
14 MW of capacity and energy from Osprey (and ultimately would acquire the full 515
15 MW), only 249 MW of that supply would be deliverable to the DEF BAA under existing
16 firm transmission reservations. The remainder would not be deliverable into the DEF
17 BAA except on a non-firm or short-term, as-available basis (or if, according to Mr.
18 Simpson, additional transmission is available to be purchased from TECO). In the near
19 term, this set of facts would be no different than a "plain vanilla" type filing, as shown in
20 columns (1)-(3) of the table below, namely zero change in MWs controlled in the DEF
21 BAA. However, to the extent DEF would need to make changes to the transmission
22 system (upgrades, operating procedures, redispatch) in order to deliver the full 515 MW

1 of capacity and energy into the DEF BAA, there still could be a change in generation
2 MWs controlled in DEF, as shown in columns (4)-(5) of the table below.

	(1)	(2)	(3)	(4)	(5)
	Pre-Transaction (after PPA)	Post-Transaction (after acquisition)	Change	Post-Transaction (after transmission upgrades)	Change
In DEF BAA	249 MW	249 MW	0	515 MW	+266
In TECO BAA	266 MW	266 MW	0	0 MW	-266
Total	515 MW	515 MW	0	515 MW	0

3
4 The associated market power implications under this set of facts have not been
5 considered by Dr. Hunger. He concludes that “the determinative factor in a market
6 power study is what entity has operational control of the generating asset”, whether it is
7 zero, 249 MW or 515 MW. (Hunger 18:12-15) He further notes that “FERC strongly
8 favors reliability and enhancements to the power delivery capability of transmission
9 systems” (Hunger 19:12-13). I agree on this point. However, he does not seem to
10 consider the fact that even while FERC looks favorably on transmission investment, in
11 the past it still has required a demonstration through a screen analysis that such
12 transmission expansion would resolve any screen failures such as might occur. This was
13 a prominent element in the FERC order requiring mitigation in the Duke Energy-Progress
14 Energy merger.

15 While I have not conducted such an analysis, I note that there are many variables
16 affecting the analysis – for example, how much is transmission increased from TECO to
17 DEF, what is the effect on overall import capability into DEF, timing of the changes, etc.
18 If such changes are anticipated, FERC likely would require an analysis that demonstrates

1 a lack of horizontal market power concerns, potentially as part of the original application
2 or a later compliance filing.

3 These two complicating factors lead me to be more reticent than Dr. Hunger about
4 the certainty of FERC approving the PPA-acquisition combination as proposed by
5 Calpine. Likewise, the first of these factors also affects the risk of obtaining approval for
6 a transaction involving Osceola.

7
8 **III. RESPONSE TO DR. MORRIS.**

9 **Q. What specific issues does Dr. Morris raise in his Direct Testimony?**

10 A. Dr. Morris' testimony raises some similar issues raised by Dr. Hunger with respect to a
11 PPA followed by an acquisition, as already discussed above. He notes that I have not
12 considered a case in which DEF first signs a long-term contract for the NRG Osceola
13 facility and then acquires the facility. (Morris 11:3-6) As I noted earlier, such a
14 transaction was not part of my Direct Testimony because no such proposal had been
15 made at the time (nor am I aware that NRG has now made a formal proposal in that
16 regard), and I was therefore not asked to evaluate such an option. That said, I do not
17 dispute Dr. Morris's analysis on pages 13-14 and Exhibit No. __ (JRM-2) that indicates
18 the HHI change is zero when the base, pre-transaction, case assumes that DEF already
19 controls Osceola under a LT contract and then acquires the plant.

20 Dr. Morris also notes that I have not considered a case in which DEF acquires the
21 Osceola facility relative to a scenario in which DEF builds its own generation and NRG
22 dismantles and moves the Osceola facility from the DEF BAA. (Morris 11:7-10) At the
23 time of my Direct Testimony, I had no information that there was a plan for NRG to

1 move its facility if it was not acquired by DEF, nor am I aware of any facts to support this
2 hypothetical at the present time, other than Dr. Morris' assertion that "it appears likely
3 that NRG would move the combustion turbines to another location" and that it "appears
4 to be an economic alternative for NRG." (Morris 16:15-21 and 17:1) If Dr. Morris'
5 hypothetical stands up to scrutiny by FERC – which would require far more factual
6 underpinning than presented here – Dr. Morris' analysis in Exhibit No. __ (JRM-3) still
7 suffers from the comparison of a hypothetical pre-transaction scenario to a post-
8 transaction acquisition of Osceola. Whereas, typically, a pre-transaction scenario reflects
9 the status quo, here Dr. Morris' pre-transaction scenario posits a hypothetical, arguably
10 speculative, scenario.

11
12 **Q. What is Dr. Morris' view about potential mitigation options?**

13 A. Dr. Morris suggests no mitigation would be needed if the "lead time on the acquisition
14 [without an initial PPA] was several years away." (Morris 17:11-12) Of course, the lead
15 time on the acquisition at issue in this proceeding is not several years away.

16 Dr. Morris, however, acknowledges that an acquisition closing by the end of 2014
17 – if NRG continues to operate Osceola and there is no PPA – could require mitigation.
18 (Morris 17:13-16) He suggests that mitigation could be limited to Osceola, and effective
19 mitigation options could be (i) "cost-based offers" or (ii) "transferring operational cost [I
20 believe he intended to say "control" rather than "cost"]. (Morris 18:18-20) While Dr.
21 Morris does not explore these options further, I note there are considerations that likely
22 make these mitigation options unworkable. DEF needs the capacity (Osceola or
23 something else) to meet its load-and-reserve margin resource requirements, as discussed

1 by Mr. Borsch. If DEF turns around and “sheds” control over that generation, it may not
2 be able to meet such requirements.

3
4 **IV. CONCLUSION.**

5 **Q. What conclusions do you reach after having reviewed the testimonies of Dr. Hunger**
6 **and Dr. Morris?**

7 A. First, there is at least one area in which there is little dispute. I agree that there is ample
8 FERC precedent suggesting that the presence of a long-term PPA transferring control to
9 the ultimate buyer can facilitate a subsequent generation acquisition in terms of
10 eliminating market power issues in a FERC application. Timing issues may remain (*e.g.*,
11 how long does the PPA need to be and how long before the parties can seek FERC
12 approval for an acquisition).

13 Second, there remains a concern under the current circumstances that FERC will
14 consider whether a PPA entered into in order to bypass potential market power problems
15 arising in an acquisition is acceptable. And, with respect to the Calpine Osprey facility,
16 the impact on the FERC screens (and FERC decision making) of new transmission and
17 additional supply deliverable to the DEF BAA in the future must be considered. Thus,
18 even a PPA followed by an acquisition does not fully eliminate the risk of obtaining
19 unconditional FERC approval (*i.e.*, without mitigation).

20 Third, I am not convinced that Dr. Morris’ alternative hypothetical wherein NRG
21 is assumed to be “moving” the Osceola plant out of DEF, will qualify as an acceptable
22 base case scenario in a FERC application. The basic premise of this hypothetical is to
23 assume in the pre-transaction, status quo scenario that (i) DEF will buy or build

1 something; and (ii) NRG will move Osceola out of the market. There would have to be
2 evidence to support the second assumption. And, the first assumption, fully separable
3 from what NRG might do with Osceola, implies that FERC could find that the screens are
4 passed in virtually every instance in which a utility is seeking to buy a new generating
5 plant rather than build new generation. I am unaware of any precedent supporting this
6 notion.

7
8 **Q. Does this conclude your Rebuttal Testimony?**

9 **A. Yes.**

10