

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION FOR DETERMINATION DOCKET NO. 140110-EI
OF NEED FOR CITRUS COUNTY
COMBINED CYCLE POWER PLANT,
BY DUKE ENERGY FLORIDA, INC.

PETITION FOR DETERMINATION DOCKET NO. 140111-EI
OF COST EFFECTIVE GENERATION
ALTERNATIVE TO MEET NEED
PRIOR TO 2018, BY DUKE ENERGY
FLORIDA, INC.

VOLUME 1

Pages 1 through 66

PROCEEDINGS: HEARING

COMMISSIONERS
PARTICIPATING: CHAIRMAN ART GRAHAM
 COMMISSIONER LISA POLAK EDGAR
 COMMISSIONER RONALD A. BRISÉ
 COMMISSIONER EDUARDO E. BALBIS
 COMMISSIONER JULIE I. BROWN

DATE: Tuesday, August 26, 2014

TIME: Commenced at 9:35 a.m.
 Concluded at 11:41 a.m.

PLACE: Betty Easley Conference Center
 Room 148
 4075 Esplanade Way
 Tallahassee, Florida

REPORTED BY: LINDA BOLES, CRR, RPR
 Official FPSC Reporter
 (850) 413-6734

1 APPEARANCES:

2 DIANNE M. TRIPLETT and JOHN T. BURNETT,
3 ESQUIRES, Duke Energy, Post Office Box 14042, St.
4 Petersburg, Florida 33601-3239, appearing on behalf of
5 Duke Energy Florida, Inc.

6 J. MICHAEL WALLS and BLAISE N. GAMBA,
7 ESQUIRES, Carlton Fields Jordan Burt, P.A., Post Office
8 Box 3239, Tampa, Florida 33733, appearing on behalf of
9 Duke Energy Florida, Inc.

10 GEORGE CAVROS, ESQUIRE, 120 E. Oakland Park
11 Boulevard, Suite 105, Fort Lauderdale, Florida 33334,
12 appearing on behalf of the Southern Alliance for Clean
13 Energy.

14 JON C. MOYLE, JR. and KAREN PUTNAL, ESQUIRES,
15 c/o Moyle Law Firm, 118 North Gadsden Street,
16 Tallahassee, Florida 32301, appearing on behalf of
17 Florida Industrial Power Users Group (FIPUG).

18 MARSHA E. RULE, ESQUIRE, Rutledge Ecenia &
19 Purnell, P.A., 119 South Monroe Street, Suite, 202,
20 Tallahassee, Florida, and GORDON D. POLOZOLA, ESQUIRE,
21 c/o NRG Energy, Inc., 112 Telly Street, New Roads, LA
22 70760, appearing on behalf of NRG Florida, (NRG).

1 APPEARANCES (Continued):

2 LINDA LOOMIS SHELLEY, ESQUIRE, Buchanan
3 Ingersoll & Rooney, PC, 101 N. Monroe Street, Suite
4 1090, Tallahassee, Florida 32301, appearing on behalf of
5 EFS Shady Hills, LLC.

6 ROBERT SCHEFFEL WRIGHT and JOHN T. LaVIA, III,
7 ESQUIRES, Gardner Law firm, 1300 Thomaswood Drive,
8 Tallahassee, Florida 32308, appearing on behalf of the
9 Florida Retail Federation.

10 JAMES W. BREW, ESQUIRE, c/o Brickfield Law
11 Firm, 1025 Thomas Jefferson Street, NW, Eighth Floor,
12 West Tower, Washington, DC 20007-5201, appearing on
13 behalf of PCS Phosphate - White Springs.

14 J. R. KELLY, PUBLIC COUNSEL, and CHARLES
15 REHWINKEL, ESQUIRE, Office of Public Counsel, c/o The
16 Florida Legislature, 111 W. Madison Street, Room 812,
17 Tallahassee, Florida 32393-1400, appearing on behalf of
18 the Citizens of the State of Florida.

19 MICHAEL LAWSON, ESQUIRE, FPSC General
20 Counsel's Office, 2540 Shumard Oak Boulevard,
21 Tallahassee, Florida 32399-0850, appearing on behalf of
22 the Florida Public Service Commission Staff.

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APPEARANCES (Continued):

CURT KISER, GENERAL COUNSEL, and MARY ANNE
HELTON, DEPUTY GENERAL COUNSEL, Florida Public Service
Commission, 2540 Shumard Oak Boulevard, Tallahassee,
Florida 32399-0850, Advisors to the Florida Public
Service Commission.

I N D E X

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OPENING STATEMENTS:

PAGE NO.

MS. TRIPLETT

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EXHIBITS

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NUMBER:	ID.	ADMTD.
1 Comprehensive Exhibit List	9	9
2 through 135 (As identified on the Comprehensive Exhibit List)	11	
93 through 122		10

P R O C E E D I N G S

1
2 **CHAIRMAN GRAHAM:** Good morning, everyone. I'm
3 glad you're all here safe and sound. And I guess it's
4 not hot yet, but when we take that lunch break, it will
5 be hot.

6 Let the record show it is Tuesday, August the
7 26th, it is about 9:35 a.m., and this is Docket Number
8 140110-EI and 140111-EI.

9 We will call this hearing to order. If I can
10 get staff to read the notice.

11 **MR. LAWSON:** Thank you, Chairman. By notice
12 issued August 2nd, 2014, the time and place was set for
13 this hearing in Docket Numbers 140110-EI and 140111-EI.
14 The purpose of these hearings -- this hearing is set
15 forth in that notice.

16 **CHAIRMAN GRAHAM:** All right. Let's take
17 appearances. Start with Duke.

18 **MS. TRIPLETT:** Good morning, Chairman and
19 Commissioners. Dianne Triplett on behalf of Duke Energy
20 Florida. And I would also like to enter an appearance
21 for John Burnett.

22 **MR. WALLS:** Good morning, Commissioners. Mike
23 Walls with Carlton Fields Jordan Burt on behalf of Duke
24 Energy Florida.

25 **MR. GAMBA:** Good morning. Blaise Gamba with

1 Carlton Fields Jordan Burt, also for Duke Energy
2 Florida.

3 **MR. CAVROS:** Good morning, Commissioners.
4 George Cavros on behalf of Southern Alliance for Clean
5 Energy.

6 **MR. MOYLE:** Good morning. Jon Moyle with the
7 Moyle Law Firm on behalf of the Florida Industrial Power
8 Users Group, FIPUG. Karen Putnal with our firm also
9 should be reflected as entering an appearance.

10 **MS. RULE:** Good morning. Marsha Rule with
11 Rutledge & Ecenia here for NRG, and also with me and
12 entering an appearance is Gordon Polozola.

13 **MR. REHWINKEL:** Good morning, Commissioners.
14 Charles Rehwinkel with the Office of Public Counsel.
15 Also J.R. Kelly, Public Counsel.

16 **MR. BREW:** Good morning, Commissioners. I'm
17 James Brew with the firm of Brickfield, Burchette, Ritts
18 & Stone for White Springs Agricultural Chemicals/PCS
19 Phosphate.

20 **MS. SHELLEY:** Good morning. I'm Linda Shelley
21 with Fowler White Boggs Buchanan Ingersoll & Rooney, and
22 I'm entering an appearance for EFS Shady Hills, LLC.

23 **MR. LAVIA:** Good morning. My name is Jay
24 LaVia, and I'm entering an appearance on behalf of
25 Calpine Construction, and also entering an appearance

1 for Schef Wright. Thank you.

2 **CHAIRMAN GRAHAM:** Staff.

3 **MR. LAWSON:** Yes. For Commission staff, Mike
4 Lawson.

5 **MS. HELTON:** And Mary Anne Helton, advisor to
6 the Commission. And I'd also like to enter an
7 appearance for your General Counsel, Curt Kiser.

8 **CHAIRMAN GRAHAM:** Okay. Well, I'm glad
9 everybody's here. Let's go to preliminary matters.

10 **MR. LAWSON:** Yes. At this time staff has
11 compiled a stipulated Comprehensive Exhibit List, which
12 includes the prefiled exhibits attached to the
13 witnesses' testimony in this case. The list has been
14 provided to the parties, Commissioners, and the court
15 reporter, and this list is marked as the first hearing
16 exhibit. And the other exhibits should be marked as set
17 forth in the chart. Parties have stipulated to the form
18 of this list, and staff asks at this time that this
19 Exhibit 1 be moved into the record at this time.

20 **CHAIRMAN GRAHAM:** We will move Exhibit 1 into
21 the record.

22 (Exhibit 1 marked for identification and
23 admitted into evidence.)

24 **MR. LAWSON:** With that, staff would like to
25 take the time -- would like at this time to move the

1 items marked as Exhibits 93 through 122 on the
2 Comprehensive Exhibit List into the record as set forth
3 on that list.

4 **CHAIRMAN GRAHAM:** Staff, hold on for just a
5 second. I'm trying to find my exhibit list. There we
6 go. And this is why I have former Chairmen flanking me
7 on my left and right.

8 Okay. Staff, please continue.

9 **MR. LAWSON:** Yes. We were asking about
10 Exhibits 93 through 122 and moving them into the record.

11 **CHAIRMAN GRAHAM:** You said 92 to 122 into the
12 record?

13 **MR. LAWSON:** I'm sorry. 93 through 122.

14 **CHAIRMAN GRAHAM:** We'll move those into the
15 record as well.

16 (Exhibits 93 through 122 admitted into
17 evidence.)

18 **MR. LAWSON:** And finally, staff would request
19 that the comprehensive exhibits be marked as numbered in
20 the Comprehensive Exhibit List, and that any other
21 exhibits proffered during the hearing be numbered
22 sequentially following those listed in staff's
23 Comprehensive Exhibit List. And I would note that the
24 last exhibit that we have on the list is 135, so that
25 would be commencing with 136.

1 **CHAIRMAN GRAHAM:** Okay. So the first one is
2 going to be 136. Duly noted.

3 (Exhibits 2 through 135 marked for
4 identification.)

5 **MR. LAWSON:** We'd also note at this time that
6 two witnesses, two Duke Energy Florida witnesses, Amy
7 Dierolf and Kevin Delehanty, have been stipulated and
8 excused. At the appropriate time the sponsoring
9 attorneys will request that the testimony of the
10 stipulated witnesses be inserted into the record as
11 though read.

12 **CHAIRMAN GRAHAM:** Okay.

13 **MR. LAWSON:** And I believe that's all the
14 preliminary matters we have, unless anyone else has
15 anything at this time.

16 **CHAIRMAN GRAHAM:** Any other preliminary
17 matters? Well, we're going pretty well. I like that
18 already.

19 All right. Seeing no other preliminary
20 matters, we have some time for public testimony. Is
21 there anybody here from the public that wishes to speak
22 to this issue? Seeing none, let's move on.

23 Opening statements. This has already been
24 predetermined by the Prehearing Officer that Duke would
25 have ten minutes to speak and each one of the other

1 parties will have up to five minutes to speak. Please
2 don't ever feel like you have to use your entire
3 allotment of time.

4 **MS. TRIPLETT:** I'm sorry. I think I might
5 need most of mine. I'm going to try to do it quick.
6 Can I go?

7 **CHAIRMAN GRAHAM:** Yes, please.

8 **MS. TRIPLETT:** Ready, set, go. Okay.

9 Regarding the Citrus CC case, no witness
10 disputes that DEF's selection of the Citrus CC is the
11 most cost-effective option to meet its need. The only
12 argument you will hear from those witnesses is that DEF
13 could or should defer or delay the Citrus CC past 2018.
14 Not only is this argument unsupported by any relevant
15 facts or analysis, it is wrong for several reasons, as
16 explained by DEF's witness Mr. Borsch.

17 First, contrary to NRG's and Calpine's
18 arguments, buying the NRG or Calpine units to meet DEF's
19 earlier need does not eliminate, delay, or reduce the
20 2018 need. DEF needs the Citrus CC in 2018,
21 irrespective of the generation option selected to meet
22 the additional and separate 2016 and '17 need.

23 Second, continuing to operate Crystal River
24 Units 1 and 2 beyond 2018 may not be technically or
25 legally possible. And even if it is, it will actually

1 increase costs to customers by at least \$90 million and
2 is not as cost-effective as the proposed Citrus CC.

3 Finally, despite what Intervenor witnesses say
4 about what may happen to DEF's load forecast, no one
5 identifies any error in DEF's resource planning or load
6 forecasting processes. Rather, these witnesses simply
7 make guesses about how the load forecast could be wrong
8 and thus urge that the Citrus CC be delayed. This is
9 not competent and substantial evidence upon which this
10 Commission can rely. Similarly, resource planning
11 decisions cannot be based on these unfounded assertions.
12 Therefore, DEF requests that the Commission grant its
13 need petition for the new Citrus CC unit.

14 Regarding the Suwannee and Hines uprate case,
15 let's again start with the undisputed facts. The bulk
16 of the arguments you will hear come from two parties,
17 NRG and Calpine, both who claim that DEF should purchase
18 their units. Other than making vague assertions that
19 purchasing their units would reduce the number of
20 megawatts DEF needs, both NRG and Calpine do not dispute
21 that the Hines uprate is a cost-effective project and
22 that DEF should complete that project no matter what.
23 In fact, both NRG and Calpine's proposed acquisitions
24 look more favorable if the model includes the Hines
25 uprate.

1 So this hearing is really about whether DEF
2 should build the Suwannee peakers or should it buy NRG
3 or Calpine's plant.

4 So let's start with NRG. If you take NRG's
5 acquisition bid for its Osceola plant and you do not
6 consider natural gas costs and you do not consider the
7 qualitative risks associated with FERC approval, then
8 the NRG acquisition does initially look favorable as
9 compared to the Suwannee peakers. NRG, of course, would
10 like you to just stop the analysis there and order that
11 DEF proceed with buying that unit.

12 But DEF must consider the need to purchase
13 firm natural gas transportation to run the unit. And
14 when it does that, the NRG option is no longer more
15 cost-effective solely on economics than the Suwannee
16 peakers. And when you consider the practical
17 implications, costs, and risks associated with obtaining
18 FERC approval, the NRG option is further infeasible from
19 a quantitative and qualitative standpoint.

20 Now let's consider the Calpine acquisition.
21 Even though Calpine's offer changed from its initial
22 offer in the fall of 2013 to the July 3rd offer that it
23 set forth in its testimony, it is still more costly than
24 the proposed Suwannee peakers. The plant also is a
25 virtual transmission island, and Calpine can only get

1 half the energy out of the plant to DEF customers
2 without the construction of at least \$150 million of new
3 transmission lines. In addition, Calpine suffers from
4 the same qualitative risk regarding FERC approval as
5 does NRG.

6 So there are three obstacles that the NRG and
7 Calpine offers have not overcome: One, natural gas;
8 two, transmission; and three, FERC market screen. So
9 let me briefly touch on each issue and describe the
10 evidence you will hear on these.

11 Natural gas. As the Commission knows, DEF
12 must have sufficient natural gas to fuel any natural
13 gas-fired plant in its system. NRG does not have
14 sufficient firm transportation to supply natural gas to
15 its Osceola plant. So if DEF were to purchase the unit,
16 it would have to secure additional firm gas
17 transportation, and that comes at a cost.

18 Contrary to NRG's argument, all gas is not
19 created equal. DEF has an obligation to serve its
20 customers and to ensure that gas is available when it is
21 needed, where it is needed, and in the amount that is
22 needed. NRG's witnesses will ask you to require DEF to
23 run its plant as NRG has been running it, as a
24 speculative merchant plant. DEF cannot and will not
25 operate its fleet like a merchant plant that runs on the

1 knife edge of gas supply. It would be imprudent for us
2 to evaluate our system that way, because -- operate our
3 system that way because, unlike a merchant plant that
4 can just turn off the plant if they can't get natural
5 gas, DEF has an absolute obligation to serve its
6 customers.

7 The second issue is transmission. Again, this
8 Commission understands that DEF must be able to move
9 power from the generating unit to the end use customer.
10 This takes transmission, and there are only two ways to
11 do it. You either build your own transmission lines or
12 you pay another utility to wheel across their lines.
13 Calpine only has transmission rights to half the power
14 from its Osprey facility. A plant is only useful if DEF
15 can actually get the power out of the unit. Despite
16 claims that Calpine has offered its unit at below market
17 prices, that price must be adjusted to include the
18 additional costs to get the power out of the unit.

19 In fact, Calpine's transmission witness does
20 not dispute this fact or the time required to build new
21 transmission lines to get that power out of the plant,
22 but instead argues that the costs of building the new
23 transmission lines would be slightly less than our
24 estimate.

25 The last issue is the FERC market screen. And

1 this one is probably the least familiar to the
2 Commission, so I'm going to spend a little more time on
3 this one.

4 First, all the FERC experts in this case,
5 DEF's, Calpine's, and NRG's, all agree that FERC must
6 approve an acquisition like the ones proposed by NRG and
7 Calpine. All three experts also agree that as part of
8 that approval FERC generally requires that parties
9 perform a FERC market screen, which is basically a
10 mathematical calculation to show the change in market
11 concentration that results from the proposed
12 acquisition.

13 DEF's and Calpine's experts further agree that
14 if a party goes to FERC with just a straight
15 acquisition, meaning with no PPA in place prior to the
16 acquisition, then the FERC market screen will fail, and
17 FERC will not approve without requiring substantial
18 mitigation.

19 After learning about the FERC market screen,
20 Calpine and NRG both reacted to the issue. NRG's expert
21 first indicates that there would be no issue with FERC
22 if the parties enter into a long-term PPA and then DEF
23 buys the unit. The problem with this scenario is that
24 NRG's expert never tells us how long the PPA has to be
25 to be long-term to avoid FERC issues. And more

1 troubling is that NRG did not put an offer in its
2 testimony that includes pricing for this unknown
3 long-term PPA.

4 NRG's expert in the alternative argues that
5 the FERC market screen would not be an issue even
6 without a long-term PPA, an argument that is contrary to
7 both DEF and Calpine's FERC experts. Calpine at least
8 recognized that there is an issue and submitted an
9 offer, which it discusses in its testimony, to attempt
10 to address the issue. Their plan is to work around the
11 FERC market screen by entering into a five-year PPA with
12 an option for DEF to purchase the Osprey unit in year
13 six.

14 So what do the experts say about these
15 attempts to evade the FERC market screen by entering
16 into an PPA followed by an acquisition?

17 **CHAIRMAN GRAHAM:** Two more minutes.

18 **MS. TRIPLETT:** Thank you. I'm almost done.

19 Generally there is no guarantee that FERC will
20 approve. While there are some indications that a
21 long-term PPA followed by an acquisition may be
22 approved, no one will or can say that FERC will approve
23 it with certainty.

24 Given this uncertainty, DEF has very
25 reasonably requested that the counter parties indemnify

1 and keep customers whole if FERC does not approve or if
2 they approve with expensive mitigation.

3 If NRG's and Calpine's experts are right that
4 their proposed workarounds for the FERC market screen
5 will work, they should have no trouble putting their
6 money where their mouth is and protecting customers from
7 a negative FERC ruling. It is telling that neither NRG
8 nor Calpine have put forth an offer that eliminates this
9 risk. Said another way, both of their offers say, trust
10 us, FERC is not a problem, but they are not willing to
11 back that assertion up with money to protect our
12 customers.

13 In sum, DEF solicited and reviewed bids for
14 alternatives to meet its 2016/17 need. And then even
15 after it determined that Suwannee was the most
16 cost-effective option, we continued to have lengthy and
17 meaningful discussions with NRG and Calpine to attempt
18 to extract more value on behalf of our customers.
19 However, despite the multiple opportunities we provided
20 to NRG and Calpine, they simply were unable to provide
21 an offer that was economic and that fully protects
22 customers from the risk that going to FERC presents, as
23 well as resolves their respective natural gas and
24 transmission issues.

25 Accordingly, DEF respectfully requests that

1 the Commission approve its Hines uprate and Suwannee
2 projects. Thank you.

3 **CHAIRMAN GRAHAM:** That's actually quite
4 impressive. You came within two seconds of dead on ten.

5 **MR. BURNETT:** Mr. Chairman, I'm very sorry to
6 interrupt. There's a recent development with respect to
7 DEF's request for approval of the Suwannee project. If
8 we could take a 15-minute break perhaps to confer with
9 staff and the parties and then, and come back to the
10 Commission, it may be beneficial.

11 **CHAIRMAN GRAHAM:** You know, I like the idea of
12 something that's going to be beneficial. Let's break
13 until about ten after.

14 **MR. BURNETT:** Thank you very much, and sorry
15 again for the interruption.

16 **CHAIRMAN GRAHAM:** That's okay.

17 (Recess taken.)

18 All right. Now, you know, I've been on this
19 board now for about four minutes and -- I'm sorry --
20 about four years. (Laughter.) Actually, it's funny.
21 That was just a slip but it's pretty much close to what
22 I was thinking. I thought we steered away from PSC 15
23 minutes and reality 45 minutes. But the reality is I
24 don't mind taking a break if we can get to a solution or
25 a clear-cut answer, so I guess I'll look over to staff

1 to see what was being discussed and where we go from
2 here.

3 **MR. LAWSON:** Certainly, Chairman. Calpine and
4 Duke Energy Florida have a proposal regarding the
5 potential sale of the Calpine facility to Duke, and I'll
6 let them explain that in a moment. We briefly discussed
7 the matter amongst all parties, and we agree that the
8 measure should be put before the Commissioners. The
9 parties, however, have differing viewpoints, would like
10 a few moments to also speak to the proposal to,
11 concerning the sale. So with that, I would suggest that
12 we turn it over to Mr. Burnett and Mr. Wright.

13 **CHAIRMAN GRAHAM:** Mr. Burnett.

14 **MR. MOYLE:** And just so we're clear, I think,
15 my understanding is it's going to be a motion that we
16 will speak to, and then you'll be asked to act on it as
17 compared to just like a piece of evidence or something
18 like that. Is that right?

19 **MR. LAWSON:** Yes, that's essentially correct.

20 **CHAIRMAN GRAHAM:** Mr. Burnett.

21 **MR. BURNETT:** Thank you, Mr. Chairman. Let me
22 first apologize for the 15 minutes. I should have known
23 better.

24 I will make a motion. The motion that we
25 would like the Commission to entertain is a motion to

1 withdraw, sever and withdraw the section of our
2 111 petition that asks for approval of the Suwannee
3 project. The motion contemplates that that project
4 would be brought back to the Commission at a future date
5 for the Commission and all Intervenors and interested
6 parties to be able to look at it with a new petition
7 filed. If we're able to reach a deal, which we have a
8 deal in principle now, we would bring that deal forward.
9 If we're not, we would bring that for the facts and
10 circumstances of where we are at that date.

11 But all parties would have a chance to be
12 heard. The Commission would be making no approvals or
13 anything on that. That would just be an issue for
14 another day.

15 The motion then would also say, with respect
16 to the remaining Hines chiller project that are also
17 part of docket 111, that that being an independent
18 project outside of Suwannee would go forward today and
19 be heard by the Commission and the Commission would rule
20 on it. The Citrus 110, also an independent project,
21 would go forward today and the Commission can hear
22 evidence on that.

23 My understanding is correct with Mr. Lawson's
24 that parties take different positions on the last two
25 elements certainly of that as to whether Hines should go

1 forward and Citrus should go forward.

2 If appropriate now, I can make argument on
3 DEF's position on those or I could wait, but I don't
4 know if it's the appropriate time to make an argument.

5 **CHAIRMAN GRAHAM:** Mr. Wright.

6 **MR. WRIGHT:** Thank you, Mr. Chairman,
7 Commissioners. As Mr. Burnett stated, we have an
8 agreement in principle to sell the capacity and
9 ultimately the asset of the Osprey Energy Center to
10 Duke. We strongly believe that this, the deal, when
11 finalized in the definitive agreements, will be
12 significantly beneficial to Duke and its customers, and
13 we support Duke's motion to abate the proceeding with
14 respect to, or to withdraw, withdraw the portion of
15 their 111 petition related to the Suwannee peakers.

16 **CHAIRMAN GRAHAM:** Okay. OPC.

17 **MR. REHWINKEL:** Commissioner, I will right now
18 just speak to the pending matter, which is the
19 withdrawal of the Suwannee portion, and Public Counsel
20 does not have a position in objection to that. We would
21 prefer not to endorse it, but we also don't object to
22 it.

23 **CHAIRMAN GRAHAM:** Mr. Cavros.

24 **MR. CAVROS:** SACE was not an Intervenor in
25 that docket, Chairman, so therefore we take no position

1 on it.

2 **CHAIRMAN GRAHAM:** Mr. Moyle.

3 **MR. MOYLE:** FIPUG would support the motion
4 with some explanation and make sure everyone is viewing
5 this in the same way and everyone is going into this
6 with their, with their eyes wide open. And, you know,
7 we appreciate the time. I think the time was helpful to
8 have conversations.

9 We kind of go back to our polestar point,
10 which is, you know, what's the best, most efficient, and
11 effective deal for the ratepayers. And this is just a
12 deal that we heard about within the hour, so we don't
13 really know. But we're open to making sure that that
14 can be presented and vetted. It presents some issues
15 because, as you have seen from reviewing the prefiled
16 testimony, a lot of this is tied together. That if you
17 do this, then how does that affect things down the road?

18 And FIPUG's position with respect to the
19 Citrus plant is it ought to be deferred for a number of
20 reasons, and I'll talk about that in the opening. But,
21 but, you know, deferral, this, this potentially impacts
22 deferral, to say, oh, we have a deal and here's what the
23 deal is and, you know.

24 So at least in discussions with staff there
25 was a willingness and an openness to allowing that to be

1 explored broadly and widely on, you know, on some
2 cross-examination questions, which, you know, is okay.
3 But it's not the same as running a production cost model
4 or doing a lot of the stuff that utilities do when
5 they're doing the ten-year site plan.

6 So a lot is happening quickly. We want the
7 best deal for the ratepayers. We think that the
8 severance of the Suwannee, you know, it's Duke's call on
9 that, they're comfortable doing it, we don't want to
10 stand in the way and would support the motion, but we
11 also want to make sure everyone understands that this
12 may be changing a little bit the nature of the
13 proceeding, that we'll be still asking questions about,
14 okay, well, if this deal is consummated, doesn't that
15 make deferral more attractive and things like that.

16 So thanks for letting me kind of explain a
17 little bit the nature of the support. We support it and
18 some of the background on it.

19 **CHAIRMAN GRAHAM:** Ms. Rule.

20 **MS. RULE:** Thank you. First of all, thank you
21 for the extra time to discuss amongst ourselves. It was
22 very helpful.

23 NRG objects to the proposal to pull part of a
24 petition. Obviously, if they want to pull the entire
25 petition, that's their prerogative. But they've put on

1 testimony as these two peakers, or the Hines chillers
2 and the Suwannee peakers as a package. That's how we
3 evaluate it, that's how we addressed it. And as a
4 matter of procedural due process, I think it is the
5 wrong decision to allow them to sever part of the case
6 at this late date when testimony has already been filed.

7 So, yes, we would object to that proposal
8 unless you send Duke back to the negotiating table with
9 everybody, including NRG.

10 You heard Ms. Triplett tell you that Duke has
11 been trying to extract the best value for its customers.
12 Then why is it stopping now? We've had a problem with
13 the way Duke has handled this entire procurement. There
14 was a negotiation with a very vague RFP. It didn't
15 really say what they wanted. That's in your staff's
16 interrogatories. It was cut off prematurely when Duke
17 essentially rushed to sign a contract for turbines that
18 it then started using as a roadblock for further
19 negotiations. And now at the 11th hour they say, well,
20 we've reached a deal. And I say, is that the best deal?
21 Can you be certain of it, and why wouldn't Duke want to
22 talk to NRG as well?

23 So, yes, we do object to the decision to sever
24 part of it, unless you send Duke a strong message that
25 they should be back at the negotiating table with NRG,

1 as Ms. Triplett said, to extract the best value for
2 their customer.

3 **CHAIRMAN GRAHAM:** Thank you.

4 Mr. Brew.

5 **MR. BREW:** Thank you, Mr. Chairman. The, the
6 deal and concept may be a great idea. I don't know. I
7 haven't seen the details. My concern is these
8 proceedings are typically complicated, and what we try
9 to do is avoid surprise so the parties can actually know
10 what they're shooting at.

11 I don't necessarily object to severing the
12 Suwannee part and considering the Hines chillers, but I
13 do have a problem, which was in the, in the Citrus
14 docket you've got a need study based on a Ten-Year Site
15 Plan that builds off of the assets assumed to occur in
16 the 111 docket. You have testimony going to need and
17 load forecasts in the 111 docket that's tied to -- or in
18 the 110 docket that's tied to the 111 docket. You have
19 testimony and rebuttal in the 111 docket relating to the
20 load forecast that relates back to that very question.

21 So I have a very practical question of if we
22 sever the Suwannee part, what stays and what goes so
23 that I know which witness to talk to and I know that I'm
24 asking them about current information and not a stale
25 forecast.

1 So my problem is not that Duke and Calpine may
2 have come up with a good idea. It's that I don't want
3 to be operating either focusing on out-of-date
4 information or I don't really know what the deal is. So
5 to the extent we can come up with a procedure that
6 covers that, then I'm fine.

7 **CHAIRMAN GRAHAM:** Ms. Shelley.

8 **MS. SHELLEY:** Chairman, Shady Hills is not a
9 party to the 111 docket and takes no position on the
10 motion.

11 **CHAIRMAN GRAHAM:** Okay. Mr. Burnett, if I can
12 get you to state your motion once again, and then I'll
13 go to Commissioners to see if they have any questions.

14 **MR. BURNETT:** Thank you, sir. The motion
15 again is that the Suwannee portion of Docket 111 be
16 withdrawn and moved to a later date to be determined by
17 the facts as they develop, that the Hines chiller
18 portion of 111 remain and go forward today, and that the
19 Citrus independent docket in Docket 110 go forward
20 today.

21 And if appropriate, sir, since I deferred my
22 argument, may I make my argument now to support the
23 motion?

24 **CHAIRMAN GRAHAM:** Sure.

25 **MR. BURNETT:** With respect to a few things we

1 heard, the production cost model, the staleness of data,
2 one thing that the parties need to be aware of is that
3 we have, since Intervenor testimony was filed,
4 anticipated that there are options where we buy NRG, we
5 buy Calpine, or we build Suwannee. And, in fact, that's
6 why we did include this modeling in our rebuttal
7 testimony. So that information is there.

8 Mr. Moyle's point is well taken, that latitude
9 should be given on cross-examination to test whether any
10 of that data has changed or if those assumptions were
11 valid, and that's perfectly appropriate. Certainly we
12 have and can continue to give parties information on the
13 relevant portions of the contemplated deal, such as when
14 would we own the plant, how much energy would be flowing
15 and the like. All of those -- none of those assumptions
16 have really changed from rebuttal testimony, but they
17 are there.

18 With respect to the Hines chillers, I would
19 note that all parties certainly have not filed any
20 testimony to dispute Duke's position that the Hines
21 chillers make everything more cost-effective. In fact,
22 Calpine certainly agreed before this deal that that's
23 the case. And our testimony is unrebutted that if we
24 choose to buy NRG, that the Hines chillers make it more
25 attractive. So I find it odd that NRG would argue

1 against something that helps it, but that is what it is.

2 Then finally the argument that we should be
3 put back in the negotiations, well, the fact of the
4 matter is that we would have been happy to negotiate had
5 NRG not left the table and had they the facts and the
6 ability to provide a deal and cure problems that, quite
7 frankly, could not be cured. So we find ourselves here
8 today with this deal because Calpine had the facts and
9 had the ability to do so. NRG simply does not. So it's
10 a bit disingenuous to assert that there's a deal to be
11 had when, in fact, NRG backed off the second offer that
12 they made us and didn't even acknowledge it in their
13 Intervenor testimony and we had to remind them of it.
14 So I find that argument to be simply disingenuous.
15 Thank you.

16 **CHAIRMAN GRAHAM:** I see you coming out of your
17 seat. Go ahead.

18 **MS. RULE:** Thank you.

19 Commissioners, our witnesses address those
20 concerns, and we still believe they are not -- that they
21 are false concerns. But we would like to go back to the
22 table. If negotiations are open, we want to be there.
23 We think you should send a strong message to Duke that
24 it is not okay to stop and sign a contract and then
25 maybe start the process again and then stop negotiation

1 and then start again.

2 In order to get the best deal for the
3 ratepayers, they have to negotiate. We're here, we're
4 ready. We're ready to make the best deal. Our
5 witnesses are here -- or not here right now -- but we
6 have prefiled testimony that we would like to put in the
7 record that says the FERC concern should not be a
8 concern for you or for Duke. The gas concern should not
9 be a concern for you or for Duke. And that just as
10 Ms. Triplett said, this is a good deal and we would like
11 a chance to make it better.

12 **CHAIRMAN GRAHAM:** Okay. Commissioners.

13 **MR. REHWINKEL:** Mr. Chairman, could I be heard
14 one more --

15 **CHAIRMAN GRAHAM:** Yes.

16 **MR. REHWINKEL:** I just wanted to make clear
17 the motion that I understood was to take the Suwannee
18 piece of the 111 docket out, and I've got no objection
19 to that. After you dispose of that matter, whichever
20 way you dispose of it, I would like to be heard on what
21 we do next and what the process would be and I would
22 like to make argument about that. But I don't think I
23 need to cross-contaminate that decision with what
24 happens after that because I think they're severable.

25 Thank you.

1 **CHAIRMAN GRAHAM:** Okay. Commissioners?

2 Commissioner Balbis.

3 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.

4 I have a question for Mr. Burnett. And first
5 of all, you know, I applaud, you know, continued
6 negotiations, and if there's a way that we can have a
7 cost-effective solution without duplicating
8 infrastructure, I think that makes sense.

9 However, how are we going to deal with this
10 moving forward? Because the Suwannee project is
11 320 megawatts. Are we to assume that that's in place
12 when we look at the need proceedings for the two
13 remaining projects, or how do you anticipate that we
14 address that?

15 **MR. BURNETT:** Yes, sir. The Commission would
16 be able to hear, ask questions and certainly
17 cross-examination and our witnesses can testify as to
18 any option. I mean, truthfully, as we sit here today,
19 we have a deal in principle. We can't tell you with
20 certainty if that deal will be solid or not.

21 So addressing our rebuttal testimony again,
22 and Mr. Borsch can speak to all scenarios, what if you
23 do buy NRG? What if you do buy Osprey and what if all
24 of that falls apart and you're back asking for Suwannee
25 again? All of those can be addressed. The evidence is

1 in the record and we can speak to that. So the
2 Commission can see a view of how any of those work out.
3 Our evidence, we assert, shows that it doesn't matter.
4 You always build Citrus and you always do Hines no
5 matter what. The only open question is in between. And
6 certainly anyone who disputes that can argue it, as they
7 had the ability to do and still do.

8 **COMMISSIONER BALBIS:** Okay.

9 **CHAIRMAN GRAHAM:** Commissioner Brown.

10 **COMMISSIONER BROWN:** Thank you. I have a
11 question for Mr. Lawson or Mary Anne for, with regard to
12 the witness testimony for the 111 Suwannee portion.
13 Then would we, if we agree with the motion to withdraw
14 that section, sever and withdraw that section, what do
15 we do with the witnesses that, the prefiled testimony of
16 those witnesses that address that portion?

17 **MR. LAWSON:** For the moment the parties have
18 tentatively agreed that any prefiled testimony will
19 simply remain in the record for the simple purpose that
20 a lot of it is tied together and it might be more
21 confusing to simply withdraw it. And also on the basis
22 that even though Suwannee has been pulled out, having a
23 little more information than we need is far better than
24 perhaps accidentally taking out too much and leaving us
25 with too little information to make a decision.

1 **COMMISSIONER BROWN:** So as Mr. Burnett just
2 indicated, there would be latitude for cross-examination
3 of all options per se?

4 **MR. LAWSON:** Yes, ma'am. The parties
5 understand that this is a very new endeavor and it will
6 affect -- the effects on the other portion of the case
7 are fairly substantial, so, yes, everyone agrees that
8 more latitude on cross would be very useful in this
9 case.

10 **COMMISSIONER BROWN:** Thank you.

11 **MR. MOYLE:** Mr. Chairman, just to be clear
12 though that Suwannee, as I understand it, even if
13 there's testimony in, this motion makes it not a live
14 issue for your decision, for your determination in
15 Suwannee.

16 **COMMISSIONER BROWN:** That's correct.

17 **MR. LAWSON:** Yes. That's correct. It's just
18 the understanding that it's just easier to leave
19 information in and simply not address it as opposed to
20 trying to take it out.

21 **COMMISSIONER BROWN:** But now I have a
22 question. So if it's not technically a live issue, then
23 the testimony on cross-examination would be irrelevant.

24 **MR. LAWSON:** Well, on a case-by-case basis,
25 when someone proposes cross there may be reasons why the

1 latitude has been exceeded. So, yes, there could be a
2 situation where someone proposes a cross-examination
3 that would not be relevant. But I think the
4 understanding is just that we understand that in the
5 interest of making sure that everyone gets the
6 information they need, better to err on the side of
7 caution and give people more latitude. But as I said,
8 it is potential. We could have a situation where
9 something is so far beyond latitude that it should not
10 be allowed.

11 **MR. BURNETT:** Commissioner Brown, if I may
12 help with that, the parties would be free, certainly. I
13 think what is withdrawn is our request that the
14 Commission approve the Suwannee project. We've
15 withdrawn that. Nothing would preclude any party to
16 take evidence that we've filed or any new questions they
17 want and say should this deal fall apart and should you
18 have to go back to Suwannee, isn't it true that X would
19 happen or Y would happen? Or they could say, should
20 this fall apart and you bought NRG's unit. So I think
21 what you're getting at is would they be precluded, would
22 I be objecting to that? Not at all. Yes, ma'am.

23 **CHAIRMAN GRAHAM:** Commissioner Edgar.

24 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.
25 And my comments and questions are along very, very

1 similar lines to -- I think it was Mr. Rehwinkel who
2 said that the two issues before us here may be
3 severable, and I agree with that, but yet I also think
4 that they are kind of interwoven, because my thoughts
5 regarding the motion are very much related to what the
6 process will be if indeed we approve that motion so that
7 we go forward, and I'll come back to that in a moment.

8 First I do want to state for the record what
9 may be obvious but I'm going to say it anyway. I
10 believe strongly and I believe strongly that this
11 Commission has been very supportive always of
12 discussions between the parties and ongoing
13 negotiations, and it is a part of any negotiation
14 process that sometimes there's a breakdown and a push
15 away from the table and then at times the ability to go
16 back. And, of course, that goes on on that side of the
17 table. We don't know nor do we want to know or should
18 we know.

19 But absolutely from my perspective this
20 Commission has always been very supportive of ongoing
21 negotiations and that includes during every stage of
22 litigation. And I recognize that at times that may be a
23 little awkward to advocate vociferously on behalf of a
24 strong position at the same time in another room that
25 the attorneys and the parties are negotiating, but I

1 think that's an important part of the process. And I
2 believe that every attorney in this docket is very
3 skilled and able to do all of that simultaneously.

4 So however we move forward, I would say I
5 certainly would hope that if negotiations ongoing are
6 possible, that they would continue, but that's y'all's
7 decision.

8 As to the motion to withdraw the Suwannee
9 portion of the 111 docket, I think pending further
10 question and answer that I can be supportive of that
11 under the circumstances, recognizing that a formal
12 petition would be filed at some point in the future that
13 would be public record for our staff to review, for us
14 to go through then the normal process to then weigh what
15 this Commission's decision would be on that.

16 So with that said, then my question comes back
17 to that process and procedure and next steps,
18 recognizing that these two dockets and the different
19 pieces in the 111 docket are very interwoven, and it is
20 my understanding, through the testimony and the
21 exhibits, it is my understanding that that was an
22 agreement by all parties and was included as part of the
23 OEP process that we go through.

24 So recognizing that, I would want to make sure
25 that our process from this point forward does have as

1 much consideration of due process and also the realities
2 for all of the parties of having an interwoven process
3 in two interwoven dockets. In other words, I recognize
4 that there may be some issues arising from the parties
5 preparing for this case, the way the evidence and
6 discovery and all of those processes came in and was put
7 together up to this point, and I would just want to make
8 sure that everyone is very clear and has the time, if
9 needed, or again the process is very clear as to how to
10 pull out that piece.

11 So -- and I'm, even though we've discussed it,
12 I'm still not sure what is the best way to do that, but
13 I will look to our staff and the parties to help us out
14 if we can get there.

15 **CHAIRMAN GRAHAM:** Thank you, Commissioner
16 Edgar.

17 I -- before we take a vote on the motion,
18 because I don't want to take, don't want to go down the
19 path of approving a motion and then trying to figure out
20 how we're going to steer the ship moving forward and
21 trying to unring the bell because it's too convoluted,
22 so let's talk about what we're going to do if the motion
23 passes. And that tees it right up to Mr. Rehwinkel and
24 his questions.

25 **MR. REHWINKEL:** Thank you, Mr. Chairman. And

1 I guess the place for me to start is where Commissioner
2 Edgar left off. I really appreciate her remarks because
3 I concur.

4 My point that I was trying to make is I think
5 there are some procedural snafus or entanglements that
6 you get into if you allow the withdrawal. But I don't
7 think those procedural matters are reason to stop or
8 interfere with a substantive deal that we're going to
9 hear more about. I just don't want the tail to wag the
10 dog. But by the same token, what you're left with with
11 that tail is a problem for us at least in theory.

12 And where I'm going with that is that we
13 believe and our expert believes that there is an impact
14 that would, that is theoretical, and it may be
15 practical, about taking a 515, 599-megawatt, whatever
16 the total megawatts of a combined cycle unit that you're
17 going to acquire and putting it on the system as far as
18 its impact on the need for the Citrus unit in 2018.

19 Duke may be entirely right that their evidence
20 shows, at least the way they look at it, that there is
21 no impact or it's immaterial or whatever. But I think
22 from a procedural fairness standpoint the parties ought
23 to have at least some period of time to understand the
24 deal -- that we still don't know enough about -- to
25 understand the deal and to understand how it impacts the

1 need.

2 And I think if there is a small amount of time
3 that can be afforded the parties to understand that and
4 to not have to hear information and develop it on the
5 fly, I think that would be appropriate. And I think the
6 minimum of due process would require that you give the
7 parties that opportunity.

8 We fully commend Duke and Calpine for sticking
9 to the negotiation process long enough to at least get
10 us to this point where it's going to be seriously
11 entertained, but that does create a procedural problem.
12 And, again, I do not, I want to emphasize, the
13 procedural concerns that I have should not be a reason
14 not to facilitate this deal, because the customers, we
15 think, would be the beneficiary, if everything proves
16 out the way these parties say, to have a lower cost
17 option presented for you guys to consider.

18 So that's my two cents' worth. I think there
19 ought to be some delay between hearing what the deal is
20 and cross-examining Mr. Borsch on its impacts.

21 **CHAIRMAN GRAHAM:** Mr. Brew.

22 **MR. BREW:** Thank you, Mr. Chairman.

23 Along those same lines, I mean, from our
24 perspective, logically speaking, you would want to see
25 this proposed deal and you'd like to see Duke update its

1 needs study for the Citrus unit and see where the
2 impacts are, as well as the rate impacts associated with
3 the proposal itself.

4 So that would suggest moving in a logical
5 order that would involve some delay in order to get what
6 we, you know, an updated picture of what's actually
7 going on.

8 **CHAIRMAN GRAHAM:** What's your definition of
9 some delay? A PSC 15 minutes?

10 **MR. BREW:** We were talking about perception of
11 time earlier. But, no, as opposed to long minutes or
12 short minutes, no, my assumption is once the concept of
13 this deal is reduced to paper, which I would assume
14 would be relatively shortly, that Mr. Borsch could then
15 do, take that information and do an updated analysis.
16 So we'd be talking a couple of weeks or whatever would
17 be convenient, but not more than that. So that, just as
18 the need study now reflects the Suwannee units and the
19 Hines chillers on the dates that the company has
20 proposed, you would update that information. And I
21 assume that that should be available very shortly after
22 the actual proposal that they're contemplating is
23 reduced to paper.

24 **CHAIRMAN GRAHAM:** So what you're suggesting,
25 and let me just try to see if I can understand, severing

1 off the -- not necessarily your suggestion. You're
2 saying if Suwannee gets severed off, then we would need,
3 let's just say, a week or so to kind of reset our plans,
4 reset our strategy, and at that point we can move
5 forward with 110 and then have to schedule Suwannee
6 later?

7 **MR. BREW:** Yes.

8 **CHAIRMAN GRAHAM:** Go ahead.

9 **MR. REHWINKEL:** We would concur with that.

10 **MR. MOYLE:** Yeah. I just, I think Mr. Brew is
11 on a good point. But, you know, these models, you hear
12 experts go, oh, it takes a long time to run these
13 models, and, you know, it sounds like Mr. Brew is saying
14 I want some information from the models, and I think
15 it's incumbent to get it right, not fast. And at this
16 point, you know, the deal is not even consummated. Mr.
17 Burnett said it's a tentative agreement; maybe it'll get
18 done, maybe it won't.

19 But I think from a timing perspective you're
20 going to have to give them probably until the end of the
21 week to get the deal done, and then, and then people
22 will probably want to depose Mr. Borsch and be prepared
23 on those issues. So I don't think you can do it in a
24 week. I think, as suggested, two or three weeks is, you
25 know, is more appropriate.

1 **CHAIRMAN GRAHAM:** Yeah, but this is a PSC
2 week.

3 **MR. MOYLE:** Okay. I'm sorry. I'm working off
4 the calendar on my iPhone, so.

5 **CHAIRMAN GRAHAM:** Well, now what Mr. Burnett
6 said earlier, that there's enough information in the
7 testimony to move forward with what we have currently, I
8 take it you guys are not agreeing with that.

9 **MR. REHWINKEL:** There may be, but I think just
10 the rudiments of fairness and due process ought to be
11 that we ought to see the deal and we ought to be able to
12 verify that for ourselves. I just would like -- I mean,
13 I think that's their position, but I don't think their
14 position is what the Commission should base its
15 procedural rulings on.

16 I think the parties ought to have at least an
17 opportunity to vet the new deal with the evidence that's
18 there. It's just hard to do that sitting up here. You
19 know, I mean, I, we were ready to make opening
20 statements and this thing comes down and we've got to
21 understand there's some actual mechanics that have to be
22 evaluated.

23 **MR. BURNETT:** Mr. Chairman, may I? One thing
24 that I'm finding perplexing is the fact that the parties
25 speaking to you making these arguments are suggesting

1 that it is new information that NRG could have been an
2 option for our need in 2016, Calpine could have been an
3 option. Energy efficiency or demand-side management,
4 probably if you talk to SACE, could have been an option,
5 or Suwannee. All of that is addressed. And, in fact,
6 on Mr. Borsch's rebuttal testimony on page 35 he says,
7 arguments accepting that the proposal of one of the
8 parties would allow DEF to defer the in-service date of
9 Citrus are not supported by DEF's need resulting from
10 the retirement of Crystal River and so on. Please see
11 Exhibit BMHB-16.

12 I mean, we talked about this. It's almost
13 alarming that there's some sort of surprise that this is
14 in the evidence. And I would note that it would be
15 presumptuous for someone to come in and say, oh, well, I
16 based my whole case assuming that the Commission would
17 grant Suwannee. They should have done as we did and
18 said, they may say NRG, they may say Calpine, they may
19 say none of the above.

20 Our testimony fully supports that no matter
21 what happens here, Citrus is needed. Mr. Borsch was
22 deposed after this testimony was filed, discovery was
23 opened after this testimony was filed, and, in fact,
24 discovery was taken after the date closed with our
25 consent. So I find it hard to believe now that anyone

1 could argue we didn't see this coming when, from the day
2 Intervenor testimony is filed, there were clearly three
3 practical options that everyone knew.

4 **CHAIRMAN GRAHAM:** Are you saying -- and maybe,
5 I'm not trying to put words in your mouth -- but if the
6 collective wants to push everything back a week or two
7 or several weeks, that you want to withdraw your motion?

8 **MR. BURNETT:** Certainly I have to talk to my
9 client, but the concept of the Citrus combined cycle
10 unit being postponed and delayed is material, and I
11 think it, to Mr. Rehwinkel's point, it starts to become
12 a dog that I need to go back and talk on. It is a
13 material impact. And it always sounds good -- no
14 offense to my colleagues -- to say, oh, this is
15 something new, we need more time. But, yeah, if that
16 factually is true, that could be the case. But it's
17 simply not. We have contemplated and not presumed you
18 would just grant our Suwannee unit out of hand and have
19 done the analysis for any option. Our petition is
20 supported that way, and you should, frankly, rule on it.

21 **CHAIRMAN GRAHAM:** Mr. Wright and then
22 Mr. Balbis -- Commissioner Balbis.

23 **COMMISSIONER BALBIS:** Thank you. And I'm glad
24 we're -- oh, I'm sorry. You went to Mr. Wright first.

25 **CHAIRMAN GRAHAM:** Yes.

1 **COMMISSIONER BALBIS:** It surprised me.

2 **MR. WRIGHT:** I'll cheerfully defer to
3 Commissioner Balbis.

4 **CHAIRMAN GRAHAM:** Commissioner Balbis.

5 **COMMISSIONER BALBIS:** Okay. So now I'm ready.
6 No, I'm glad we're discussing what are the mechanics if
7 we do approve the motion. And I guess one of the things
8 that I'm struggling with is that Duke forecasted a
9 certain need in the future. In order to meet that need,
10 they proposed three projects: You know, a 1640-megawatt
11 combined cycle, this 320-megawatt Suwannee project, and
12 then the 220-megawatt Hines chiller project. So now if
13 we're removing that project and potentially replacing it
14 with a 500-plus-megawatt facility, how does that play
15 into the overall need? And that's kind of where I'm
16 struggling with where it kind of makes sense to pull it
17 out. But then if we're addressing the Citrus need, you
18 know, is there additional capacity that's now being
19 provided by Calpine or not? How do we deal with the
20 mechanics of that?

21 **MR. BURNETT:** Yes, Commissioner. And how you
22 look at that is you would say, well, let me go back,
23 first of all, to the Hines chillers and look at the
24 evidence there. What does the evidence tell you? It
25 says build those no matter what. No matter if you do

1 NRG, Calpine, or whatever, always build that. That
2 evidence is in to say do that no matter what.

3 Then you get to the analysis that I just
4 mentioned and said, okay, with respect to Citrus, we're
5 building Hines. That makes sense from a production
6 model to build it. Let's go to Citrus and see what
7 happens. I think you turn to our evidence and say,
8 here's what it looks like if we select Calpine, here's
9 what it looks like if we select NRG, here's what it
10 looks like if we build Suwannee. End result is always
11 go build Citrus. I think you listen to the people down
12 the row here who have an issue with that ask questions
13 now. Certainly they, as best I can tell, haven't asked
14 that yet or they did in the deposition and that was
15 their time, but they asked questions. Okay. Is that
16 right or wrong? They challenge those assumptions and
17 you make a decision based on the evidence.

18 **COMMISSIONER BALBIS:** And I agree with you.
19 What my concern is that if you look at Mr. Taylor's
20 testimony, he assessed each different option with
21 backfill and side fill options that didn't really
22 assume, okay, now we have the Calpine project in place.
23 And correct me if I'm wrong, and we would get into this
24 in his testimony, but I don't think he assessed anything
25 but an individual RFP response option. And maybe he did

1 but I couldn't see it. It seemed to be backfill and
2 side fill for each individual one. And I'm just
3 struggling with how do we proceed from this point?

4 **MR. BURNETT:** Yes, sir. And I think though
5 when you go to the Intervenor testimony being filed and
6 then we hear for the first time officially in the
7 record, if you select us, you do not need Suwannee --
8 Citrus or you do not need Citrus as soon, that kind of
9 changed things. So that's after Taylor files. And then
10 Borsch responds to that and said, okay, that's an
11 argument I could respond to, and he does the calculation
12 for that. So that's why I continue to be surprised
13 that -- to hear that we need that calculation when,
14 frankly, we have it.

15 **COMMISSIONER BALBIS:** Okay.

16 **MR. POLOZOLA:** Commissioner, Gordon Polozola
17 on behalf of NRG. May I address your issue as well?

18 When it came to NRG's testimony, we did
19 address the question of DEF's, you know, proposed full
20 need all together. So they were -- they had a forecast
21 that we thought that if it didn't materialize, then
22 going forward with Hines and Suwannee would present
23 significant risk of rate inflation. And so we addressed
24 that all together in our testimony.

25 So one of the, one of the issues that I think

1 was mentioned earlier was the natural gas need creating
2 a barrier to the Acquisition 1, which did turn out to be
3 the best option. You know, if we can address that
4 natural gas need and have the Commission understand that
5 it's not the barrier that Duke understands or is saying
6 it is, and that our acquisition presents less risk, then
7 I think it all fits together in Duke's, you know,
8 overall suggestion that it has an enormous need.

9 Again, if that, if their forecasts don't pan
10 out, the acquisition of NRG's facility presents less
11 risk for ratepayers. You have, you have less capacity
12 at risk, you have less capital that you're investing.
13 Calpine's option provides even, even more capacity than
14 they would need, when we're saying they might not need
15 it in the first place.

16 So from our perspective it's so intertwined
17 we're having a difficult time seeing how we can address
18 it, because our witness, our witnesses certainly address
19 it in a combined fashion. So at a minimum, if we go
20 forward, we would like the ability to address the
21 Commission's -- to address the Commission on our natural
22 gas issue, which, which Duke says is a barrier. And
23 we're saying, hey, if you eliminate that barrier, even
24 Duke admits our project is best. So we would like for
25 y'all to hear evidence on that.

1 **CHAIRMAN GRAHAM:** Commissioner Edgar.

2 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

3 And thank you for the opportunity for all of us to have
4 this discussion as we think it through.

5 I did in my earlier comments say that I
6 recognize that much of the testimony in the dockets are
7 interwoven, but I do not think that's insurmountable. I
8 just want everybody, before we break at whatever is the
9 next time for whatever length, to be as clear as
10 possible as to what the next steps are and the way to
11 make that severance or separation.

12 In my thinking, and of the five of us up here
13 I'm probably the one that takes the most advantage of
14 PSC time, but, again, while everybody is gathered
15 together, I really think that that could be done in a
16 matter of a few hours versus a few weeks. The
17 scheduling possibility of trying to get -- we will make
18 it work, we will find dates for the five of us, I have
19 no doubt. But I expect that almost every party and
20 their representative has other dockets and other issues
21 and other courts and others, and the thought of trying
22 to put all that together and all the witnesses, and all
23 the -- I have a concern would create enough other
24 problems that I would hope that we don't need to go
25 there.

1 And while we have all day today and maybe a
2 couple of hours this evening and all day tomorrow with
3 everybody here and their schedules cleared, I would
4 certainly hope that we could find a way to move forward,
5 and I think that's possible.

6 **CHAIRMAN GRAHAM:** Mr. Wright.

7 **MR. WRIGHT:** Thank you, Mr. Chairman. I agree
8 with what Commissioner Edgar just said. I think this is
9 doable. I think, I think this is, you know, fairly
10 enough, something that caught some of the parties by
11 surprise. Not all, but some.

12 But I've looked at Mr. Borsch's rebuttal
13 exhibits a lot, and I believe that all of the analysis
14 he did -- Suwannee, NRG, Calpine, Osprey -- ended up
15 with a system CPVRR impact, customer revenue
16 requirements impact value. And thus I think -- and then
17 he concludes that Citrus is still needed under any of
18 those scenarios.

19 You know, our deal will change the fixed costs
20 and some of the production costs, but there was an
21 analysis done that includes the production costs with
22 Osprey in the mix for the full life of our combination
23 PPA and acquisition process. I think it's there. I
24 think that my colleagues just, you know, were taken
25 somewhat by surprise and haven't had a chance to think

1 about it.

2 So I agree with what Commissioner Edgar said,
3 and I think this is something that probably can be
4 addressed in a few hours' time. And honestly I've got
5 some questions about exactly how this is all going to
6 work out in terms of witnesses. But, again, I'd
7 encourage you and support granting the motion to abate,
8 and then maybe we should take another break and see if
9 we can figure out exactly what all, what all that means
10 logistically.

11 Like, what, if anything, does it mean for my
12 opening statement? What does it mean for my witnesses
13 in the 110 docket? I don't know the answers to those
14 questions.

15 Thank you.

16 **CHAIRMAN GRAHAM:** Staff, any comments?

17 **MR. LAWSON:** Not at this time.

18 **CHAIRMAN GRAHAM:** All right. Well, what I'm
19 thinking --

20 **COMMISSIONER BRISÉ:** I was going to say I
21 agree with the idea that if we move this out several
22 weeks, I think it's going to be nearly impossible to put
23 it back together. And so we have two days this week, we
24 have a day next week, I believe. And obviously all the
25 evidence that is within the docket should be sufficient

1 for us at least to make a procedural, to come to some
2 procedural agreement as to how we should move forward.

3 And from my perspective, I think it would make
4 sense that if we moved forward with the decision to
5 sever or not, deal with that, and then decide how much
6 time should be allocated to move forward. So that's
7 just my thoughts.

8 **MR. BREW:** Mr. Chairman, one last shot?

9 **CHAIRMAN GRAHAM:** Mr. Brew.

10 **MR. BREW:** There -- this is sort of, I guess,
11 to my opening statement, but there are really two issues
12 to address here. One is what Commissioner Balbis was
13 asking about, which was what's the need, which gets to
14 their load forecast and how it would change with these
15 assets. The second is which is the best resource, which
16 is most cost-effective?

17 Mr. Borsch's rebuttal calculates revenue
18 requirements and which is cost-effective. It doesn't
19 get to how does that affect the need. And that's -- in
20 terms of -- and the Commission actually needs both of
21 those pieces to decide in, certainly in the Citrus
22 docket.

23 So that's part of my concern is with -- if
24 you're sliding in different resources from what was
25 projected, the equation has changed. So just tell us

1 how it's changed and we can work with that. But that's
2 information that we don't have. It's not in the
3 rebuttal. And -- but we need to effectively address the
4 proposals in this case.

5 **CHAIRMAN GRAHAM:** Mr. Moyle.

6 **MR. MOYLE:** I appreciate the time y'all are
7 paying to this. I mean, it's a big decision and, you
8 know, we come back to we want the best deal for the
9 ratepayers. But given sort of the position, just sort
10 of for the good of the order of thought, you know,
11 sometimes I think they've done this. I was talking to
12 Linda Shelley, who's done a lot of cases over at the
13 Division of Administrative Hearings, but sometimes they,
14 there's an ability maybe to leave the record open.

15 And to the extent that there is a need to talk
16 to Mr. Borsch and have him do some further stuff, you
17 might consider, if you decide to move forward, to
18 possibly, you know, leave the record open to allow the
19 parties due process and depose Mr. Borsch and put his
20 deposition in after the hearing, and you could cite it
21 in your brief if you discovered anything in there.

22 I'm kind of just throwing that out to try to
23 see if that's a solution that might work so we could
24 proceed with the hearing today, but still give parties a
25 chance to ask him questions that may have changed given

1 the deal that was announced or whether the deal goes
2 forward.

3 **MR. REHWINKEL:** Mr. Chairman, I promise -- if
4 I could have one minute. I said, I said a little bit of
5 time and I would be happy to stay within the existing
6 schedule if Mr. Borsch would be on the stand for the
7 110 docket, or the -- whatever the big GBRA on Wednesday
8 and the parties at least have an opportunity to have, if
9 not a formal, an informal discussion with him about the
10 deal and his testimony.

11 Because my concern is what Mr. Brew's concern
12 is, which is not so much the revenue requirements but
13 the need determination as it, as it inter-- as this new
14 facility interrelates with the load forecast. Thank
15 you.

16 **MR. KISER:** Mr. Chairman?

17 **CHAIRMAN GRAHAM:** Yes.

18 **MR. KISER:** I wanted to make a couple of
19 comments that -- of caution. You know, when we go
20 through our regular process and we have a
21 straightforward process going on, we know what the rules
22 are and they go pretty smooth. But it seems like
23 whenever we get to a settlement or a change in direction
24 or a different mixture, then we suddenly have to start
25 being careful about some of these processes, and the

1 issue has been raised a couple times about due process.
2 And, remember, there's two elements: One is notice and
3 two is the opportunity to be heard.

4 So as we go through, when some of these
5 factors change and we're taking a different course, as
6 is being suggested here, we just need to make sure that
7 as we go through those processes that at the appropriate
8 time the parties that have questions, make sure that
9 they do have the opportunity to question. If there's
10 information they still need or whatever, then we need to
11 take extra care to make sure that is provided. Because,
12 sure enough, that will be the basis of an appeal, is
13 that there was a change in facts or a different
14 combination of facts and they didn't have time to
15 analyze that.

16 So I would suggest that as you go through and
17 you sort through these different changes than what we
18 were normally going to be doing, that everyone make
19 sure -- and you might even want to ask them, have you
20 had time to look at this? Are you satisfied that you've
21 had plenty of time to analyze this, et cetera? Because
22 we just don't need to create grounds for an appeal.

23 And when it comes to due process, the
24 opportunity to be heard means with a reasonable amount
25 of time to really understand what's being presented.

1 That's the caution. And I just wanted to provide those
2 comments.

3 Thank you.

4 **CHAIRMAN GRAHAM:** All right. I'll throw this
5 idea out there, and I guess my Commissioners, fellow
6 Commissioners will decide if we're going to do it or if
7 we're not going to do it.

8 But assuming that we move forward with the
9 motion to pull Suwannee out and continue forward, we'll
10 break probably until about 2:00, and that will allow
11 people to, well, number one, rewrite their opening
12 comments. I will give Duke five more minutes to restate
13 an opening comment if they choose. If not, that's fine.

14 **MR. BURNETT:** We won't need it. Thank you.

15 **CHAIRMAN GRAHAM:** We had -- I had planned on,
16 I hadn't mentioned this earlier, but planned on going
17 late tonight. I'm talking until about 10:00 or so. So
18 we'll be taking a break probably sometime around 6:00 or
19 6:30 and then continuing on. And it looks like we're
20 going to have a full day going on Wednesday.

21 I don't have a problem, and I guess Duke has
22 got to answer this, if we don't put Mr. Borsch on the,
23 on the stand until tomorrow if people individually want
24 to reach out and ask him questions. I don't know how
25 you guys feel about that.

1 **MR. BURNETT:** These three days belong to the
2 process. You can have Mr. Borsch as long as you want
3 him, sir.

4 **CHAIRMAN GRAHAM:** So now the question is if we
5 get past Borsch, do we have a problem with moving
6 forward with the Calpine witnesses and then going back
7 to Borsch tomorrow morning?

8 **MR. BUTLER:** To make this work, I certainly
9 have no objection to moving anyone around as it makes
10 sense.

11 **CHAIRMAN GRAHAM:** Mr. Wright?

12 **MR. WRIGHT:** We would not have any objection
13 to our witnesses going out of order. However, one of
14 the things that I alluded to a little while ago is I'm
15 not 100 percent sure what our witnesses are going to do
16 right now. That is something I need to talk about with
17 Duke and my witnesses and potentially other parties.

18 **CHAIRMAN GRAHAM:** NRG?

19 **MR. POLOZOLA:** Mr. Chairman, since we don't
20 have a deal, and I think Mr. Burnett had mentioned this
21 earlier, I mean, if we can address should this deal fall
22 apart, then, you know, what should happen? Should the
23 Suwannee deal go forward, should the NRG acquisition,
24 you know, happen? Will we be allowed to address, you
25 know, will our witnesses be allowed to address the

1 Commission with the testimony that they prefiled?

2 **CHAIRMAN GRAHAM:** Well, I think they should
3 address -- I think we should address as if Suwannee is
4 not part of this. But I'll give plenty of latitude as
5 far as, you know, if you're going to get into those
6 questions, and I'm not going to sit back and smack your
7 hand about it.

8 **MR. POLOZOLA:** Right. Because we don't
9 actually have a deal. I mean, we have maybe, maybe a
10 deal, and so we would certainly like the opportunity to
11 continue to address our issues in case the deal falls
12 apart, and then the Commission would know, you know, our
13 position.

14 **CHAIRMAN GRAHAM:** Sure.

15 All right. Well, we haven't made a -- oh, I'm
16 sorry. Commissioner Balbis.

17 **COMMISSIONER BALBIS:** Thank you. I just have
18 a quick question, and first -- and wanted to make a
19 comment. Because I think I heard that Mr. Moyle was
20 open to late-filed exhibits, and I just wanted the
21 record to reflect that.

22 (Laughter.)

23 **CHAIRMAN GRAHAM:** I left it alone.

24 **MR. MOYLE:** Technically it would be a
25 deposition coming in as a late-filed, but I'll concede,

1 yes.

2 **COMMISSIONER BALBIS:** I just wanted that in
3 the record.

4 But specifically, maybe for staff, since --
5 looking at the issues in the 111 docket, it seems that
6 Suwannee is interwoven between, in all of them. But
7 specifically if we approve the motion and remove
8 Suwannee, what issues would be removed and what
9 testimony? It sounds like the testimony would all be
10 entered into the record. And what witnesses, if any,
11 would be excused?

12 **MR. BALLINGER:** Commissioner, I'll try to
13 answer that. I think on the -- it's actually pretty
14 simple on the prehearing order. I think it's Issues 10
15 through 15 perhaps or 16 have the Hines and Suwannee
16 listed separately, and all we have to do is strike out
17 Suwannee and deal with the Hines. The first few issues
18 deal with the 110 docket.

19 So from the procedural aspect and a
20 recommendation going forward it's quite simple; we can
21 just change the issue to not address Suwannee.

22 As far as testimony going in, it's going to be
23 more difficult, I think, to try to pick pieces and parts
24 out of just Suwannee and pull that. So putting the
25 evidence in, as Mr. -- as Mike said earlier, it will be

1 easier just to put it in, and the testimony is in there.
2 We don't have to rely on it, that we won't be relying on
3 it for a decision.

4 So as far as the witnesses' prefiled testimony
5 can go in as it is and go from there. There might be a
6 few, perhaps, Calpine witnesses might be withdrawn since
7 they're no longer -- if that's their only thing with
8 Suwannee. I don't know, and that's for Mr. Wright to
9 figure out.

10 I will point out, and I can't help myself on
11 this one, this is Duke's petition and it's their burden
12 of proof for the need. So if some evidence is not in
13 there, that they run that risk. I just want y'all to be
14 aware of that, that, you know, people have alluded that
15 there is -- need more information and things of this
16 nature.

17 And the other factor being that the Suwannee
18 is on a statutory time frame -- not Suwannee. Citrus
19 County. I'm sorry. I'm getting these confused too,
20 even with my own cheat sheets. And that deadline right
21 now is October 2nd, I think, for having a decision to
22 meet the statutory deadlines. So I think pushing that
23 out, anything on Citrus County is not a doable project
24 unless Progress [sic] waives its statutory rights.

25 **MR. LAWSON:** Yes. Mr. Ballinger is absolutely

1 correct on the statutory time frame for the 110 docket.
2 And we currently have it timed so that we come in under
3 the statutory deadline by only about two days. That was
4 by design. So obviously any, with the 110 docket that
5 needs to be considered.

6 And Mr. Ballinger is also very much correct as
7 to the risks in this. If Duke, by its motion, ends up
8 harming its case, it bears the risk that the information
9 it needs to prove up, the Hines chiller and the
10 110 docket, it's on them.

11 I would also mention in followup, you had
12 asked about witnesses. At the moment, in polling the
13 different parties, they had agreed that, or stated that
14 someone would like to see all of the witnesses as they
15 are today. So we don't have any agreement to stipulate
16 or excuse any additional witnesses.

17 Now as the motion develops and as parties have
18 a little bit of time to consider the matter, that may
19 change. But for now what would happen is the witnesses
20 would appear, obviously with possibly Mr. Borsch coming
21 out of order. Some of the witnesses may have far fewer
22 questions than originally planned, but for the moment
23 they would all be appearing.

24 Now, that said, perhaps in a few hours we
25 might be able to readdress that, but for the moment the

1 parties have indicated a desire to at least keep the
2 witnesses appearing until they have a chance to sort it
3 out.

4 **CHAIRMAN GRAHAM:** Commissioner Edgar.

5 **COMMISSIONER EDGAR:** Mr. Chairman, are you
6 ready for a motion?

7 **CHAIRMAN GRAHAM:** I am.

8 **COMMISSIONER EDGAR:** For discussion?

9 **CHAIRMAN GRAHAM:** I am.

10 **COMMISSIONER EDGAR:** Then I would move that we
11 grant the petition or the motion to withdraw the
12 Suwannee CT portion of the 111 docket, that we meet back
13 together at a time certain early this afternoon to be
14 determined by the Chair to go forward with the Hines
15 chiller portion of 111 and the 110 docket combined, that
16 during the break we ask all parties to coordinate with
17 one another and also with our staff and bring back a
18 proposed witness list for the Chair's consideration, and
19 that after we discuss that motion if there's anything I
20 missed we have the opportunity to address it.

21 **COMMISSIONER BRISÉ:** Second.

22 **CHAIRMAN GRAHAM:** It's been moved and second.
23 Any further discussion on the motion?

24 Commissioner Balbis.

25 **COMMISSIONER BALBIS:** Thank you. I just want

1 to clarify from Commissioner Edgar, you indicated that a
2 proposed witness list will come back to us? And --

3 **COMMISSIONER EDGAR:** Order of witnesses is
4 what I meant by that.

5 **COMMISSIONER BALBIS:** Oh, just the order.

6 **COMMISSIONER EDGAR:** Just the order.

7 **COMMISSIONER BALBIS:** Okay.

8 **COMMISSIONER EDGAR:** I'm sorry if I misspoke.
9 What I meant is the proposed order of the witnesses
10 since there's been some discussion about moving people
11 around. And I know I would find it helpful when we
12 begin, if indeed we do later today, to at least have a
13 game plan, recognizing that we always build flexibility
14 into that.

15 **COMMISSIONER BALBIS:** Okay. Thank you. And
16 the fact that all the testimony is going to be entered
17 into the record and we're still going to have all the
18 witnesses available, I'm comfortable with this, and
19 again encourage the parties to work together to have
20 cost-effective solutions that don't duplicate
21 infrastructure.

22 **CHAIRMAN GRAHAM:** All right. I don't
23 anticipate a whole lot of jockeying around of the
24 witnesses. The only thing is just that Mr. Borsch won't
25 be taken up until tomorrow morning, and then basically

1 everybody else will go in order. If we end on somebody
2 tonight, I guess we'll finish with that same witness
3 tomorrow morning, and then Mr. Borsch will follow
4 immediately.

5 The time, as I mentioned earlier, might as
6 well be 2:00. That sounds like a decent time.

7 And -- all right. So we have a motion and a
8 second. Seeing no lights on, all in favor, say aye.

9 (Vote taken.)

10 Any opposed?

11 Okay. So we'll be on recess until 2:00. At
12 2:00 we'll come back and start back at opening
13 statements for everybody but Duke, and then we'll go
14 from the script as written. We're on recess.

15 (Recess taken.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON) : CERTIFICATE OF REPORTER

3
4 I, LINDA BOLES, CRR, RPR, Official Commission
5 Reporter, do hereby certify that the foregoing
6 proceeding was heard at the time and place herein
7 stated.

8 IT IS FURTHER CERTIFIED that I stenographically
9 reported the said proceedings; that the same has been
10 transcribed under my direct supervision; and that this
11 transcript constitutes a true transcription of my notes
12 of said proceedings.

13 I FURTHER CERTIFY that I am not a relative, employee,
14 attorney or counsel of any of the parties, nor am I a
15 relative or employee of any of the parties' attorney or
16 counsel connected with the action, nor am I financially
17 interested in the action.

18 DATED THIS 2nd day of September, 2014.

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