

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 140111-EI

Submitted: September 10, 2014

NRG FLORIDA LP'S POSTHEARING BRIEF

NRG Florida LP (NRG) hereby files its Posthearing Brief pursuant to Order No. 14-0440-PHO-EI and Rule 28.106.215, Florida Administrative Code.

INTRODUCTION

Duke repeatedly pledged to the Commission that its three proposed self-build projects formed part of a “resource portfolio,” and were “optimized together to determine the most cost-effective plan” which was “tested under different relevant sensitivity scenarios” before becoming part of the company’s “final, integrated optimal plan, designed to deliver reliable, cost effective power to DEF’s customers.” Duke abandoned this position within moments after the start of the hearing. Duke now expects the Commission to simply ignore its much-touted Integrated Optimal Plan and conduct a stand-alone review of the Hines Chiller Uprate project and Citrus County Combined Cycle project following the hasty amendment of its “optimal” generating plan to replace construction of 192 MW net Suwannee Simple Cycle peaker project with acquisition of Calpine’s 599 MW combined cycle Osprey facility. There is absolutely no evidence in the record that Duke’s newly-announced generation plan is a cost-effective means of meeting its asserted need. More importantly, Duke’s agreement with Calpine will directly reduce the alleged need for both the Hines Chiller project and the Citrus County Combined Cycle plant.

Duke’s eleventh-hour withdrawal of its proposed Suwannee peaker project in favor of

the Osprey acquisition deprived intervenors of notice and a meaningful opportunity to respond to Duke's amended claims and revised generation plan, and leaves the Commission without an adequate record basis for approval of either the Citrus County Combined Cycle project or the Hines Chiller Uprate project. For the reasons set forth below, the Commission should (1) find that Duke has not met its burden of proof in this case; (2) hold that intervenors are entitled to an opportunity to conduct discovery and present evidence regarding Duke's newly-revised generation plans; (3) order Duke to revise and resubmit its needs assessment and supporting models based on its new slate of generation assets, including a new Integrated Resource Plan that is updated with current data and planning information, as well as load-forecast sensitivity analyses, and (4) require Duke to provide parties with an opportunity to present a "best and final offer," before filing any new petition for approval.

PROCEDURAL BACKGROUND

Shortly after Duke made its opening statement on the first day of hearing, and before any other party had an opportunity to speak, Duke announced that it had reached an agreement in principle to acquire the 599 MW Osprey facility. Duke then moved to amend its pleadings to "withdraw the section of [its Docket 140111-EI] petition that asks for approval of the Suwannee project", and seek approval of the Citrus County Combined Cycle plant and Hines Chiller project, which Duke for the first time characterized as "an independent project." Tr. Vol. 1, pg. 22, lines 17-18. NRG objected on due process grounds to severing the case after testimony had already been filed. Tr. Vol. 1, pg. 26, lines 3-6.

In response to NRG's objections, concerns stated by other parties, and questions from Commissioner Balbis, Duke asserted that its prefiled testimony modeled various scenarios,

including its newly-proposed acquisition of Calpine, and that parties should be able to determine through cross examination whether anything would change as a result of the utility's revised generation plans. Tr. Vol. 1, pg. 28, line 25 – pg. 29, line 17; pg. 32, line 21 – pg. 33, line 5. Staff counsel acknowledged that “the effects [of withdrawing Suwannee] on the other portion of the case are fairly substantial,” and intervenors sought additional time to explore the effect of Duke's revised generation plans on its asserted need. Tr. Vol. 1, pg. 34, lines 4-7; pg. 39, line 12 – pg. 40, line 7; pg. 40, line 23 – pg. 41, line 23; pg. 42, lines 19-25. Although Public Counsel specifically noted that fairness and due process required providing the parties with an opportunity to verify Duke's claims, and the Commission's General Counsel cautioned that due process “requires a reasonable amount of time to really understand what's being presented,” the Commission elected to proceed with the hearing. Tr. Vol. 1, pg. 43, lines 9-22; pg. 56, lines 23-25; pgs. 63-65.

Limited information regarding Duke's revised generation plan could be elicited by cross examination during the hearing. For example, due to the pending Osprey acquisition, Mr. Borsch admitted that Duke would not retire its existing Suwannee units two years early as proposed in its petition, and thus these units would continue to provide 129 MW of summer capacity. Tr. Vol. 5, pg. 747, line 24 – pg. 748, line 16.¹ Mr. Borsch was unable to confirm other effects of the acquisition on Duke's Integrated Optimal Plan, upon which Duke relied as justification for its three self-build projects. Tr. Vol. 4, pg. 404, line 19 – pg. 405, line 8. Mr.

¹ The transcript contains a typographical error indicating that the existing Suwannee units provide 120 MW of summer capacity. As stated in Duke's 2014 Ten Year Site Plan, these units provide 129 MW of summer capacity. Exhibit No. 63 (BMHB-2).

Borsch admitted, however, that his testimony did not – as his counsel misleadingly suggested² – address the impacts of the “new” plan. Tr. Vol. 5, pg. 708, lines 4 – 7.

Duke’s last-minute decision to substitute Osprey’s combined cycle facility for the proposed Suwannee peakers and keep the existing Suwannee units in operation for two more years substantially amends its Integrated Optimal Plan, and the effect of these amendments has not been modeled. Tr. Vol. 6, pg. 894, lines 1-5; pg. 894 line 21 – pg. 895, line 6. No party was given an opportunity for discovery or to present evidence regarding Duke’s newly-revised generation plan, which now (i) includes a substantial increase of some 500 MW of combined cycle generation resources; (ii) increases generation resources available to Duke in the 2016-2019 time frame by 535 MW; (iii) includes a new transmission system topography occasioned by the transmission build-out to accommodate the Osprey plant; and (iv) drastically changed the ratio of peaking capacity to base load capacity in Duke’s generating portfolio ratio. NRG’s witness attempted to testify regarding the far-reaching impacts Duke’s last-minute change in generation plans would have on its asserted need for Hines and Citrus, but was not permitted to do so. Tr. Vol. 6, pg. 885, line 12 – pg. 889, line 16.

The record evidence provided by Duke in these dockets addresses the cost-effectiveness of Duke’s Base Generation Expansion Plan, consisting of the proposed Citrus County, Suwannee and Hines projects. Contrary to Duke’s representations to the Commission,³ the record does not address the cost-effectiveness or need for any of the following resource options that Duke may now opt to deploy:

- Building the Citrus County and Hines Chiller projects and keeping the existing Suwannee units in operation through at least 2018, with concomitant transmission construction;

² Tr. Vol. 1, pg. 44, line 11.

- Building the Hines Chillers, retiring the existing Suwannee units in 2016, and purchasing power from Calpine or acquiring the Osprey facility;
- Building the Citrus County combined cycle plant and Hines Chillers, and purchasing power from Calpine or acquiring the Osprey facility; or
- Other purchase options that may now be available because of the proposed transmission build-out.

Duke’s last-minute decision to withdraw Suwannee from review in favor of the Calpine agreement and continued operation of the existing Suwannee units significantly increases the amount and type of generating resources available to Duke, is inconsistent with the Integrated Resource Plan and planning assumptions upon which Duke relied in its petition in this case and in Docket No. 140110-EI, and will drastically and directly reduce or eliminate the need for both the Hines Chiller project and Citrus County Combined Cycle plant.

DUE PROCESS REQUIRES THE COMMISSION TO PROVIDE INTERVENORS AN OPPORTUNITY TO CONDUCT DISCOVERY AND PRESENT EVIDENCE TO DEMONSTRATE THAT DUKE’S LAST-MINUTE PLAN TO ACQUIRE THE OSPREY FACILITY RATHER THAN BUILD THE SUWANNEE PROJECT DIRECTLY REDUCES OR ELIMINATES THE NEED FOR BOTH THE HINES CHILLER PROJECT AND CITRUS COUNTY COMBINED CYCLE PLANT

As the Florida Supreme Court recently explained, “[t]he fundamental requirements of due process are satisfied by reasonable notice and a reasonable opportunity to be heard.” *Citizens v. Florida Public Service Commission*, ___ So.3d ___ (Fla. 2014), 2014 WL 4257733, Slip Copy pg. 10, quoting *Fla. Pub. Serv. Comm’n v. Triple “A” Enter., Inc.*, 387 So.2d 940, 943 (Fla. 1980), additional citations omitted. The Court further explained that due process requirements for administrative proceedings involving a disputed issue of fact are found in section

³ Tr. Vol. 1, Pg. 28, line 25 – pg. 29, line 7; pg. 32, line 15 –pg. 33, line 1; pg. 44, lines 5-25; pg.

120.57(1)(b), Florida Statutes, which specifically grants all parties, including intervenors, the right to present evidence and argument on all issues involved in a proceeding:

All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of facts and orders, to file exceptions to the presiding officer's recommended order, and to be represented by counsel of other qualified representative. (emphasis added)

Duke's last-minute amendment to its pleadings raised a new disputed issue of material fact: whether and to what extent removing the planned addition of 192 NW net peaking power from Duke's Integrated Optimal Plan, substituting the Calpine baseload power purchase/acquisition and keeping the existing Suwannee units in service for two more years affected the utility's need for the energy and capacity to be provided by the Hines Chiller project and Citrus County Combined Cycle plant. NRG and other intervenors are not required to simply accept Duke's assurance that the change is without any effect; they have a due process right to meaningful notice of Duke's changed plans, and are entitled to a "meaningful, full, and fair" opportunity to respond and present evidence in opposition. *Rucker v. City of Ocala*, 684 So.2d 836, 841 (1996), citing *Metropolitan Dade County v. Sokolowski*, 439 So.2d 932, 924 (Fla. 3d DCA 1982).

There is no doubt that Duke's amended petition presents new issues of material fact in both dockets. Duke's petitions and testimony assert that the company's Integrated Resource Planning process had produced a "final, integrated, optimal plan . . . to deliver reliable, cost-effective power" to its customers, and that the resulting Base Generation Expansion Plan, including its proposed generation slate of the Suwannee project, Hines Chiller project, and Citrus County Combined Cycle Plant, was developed to meet Duke's asserted need for additional

45, lines 17-20; pg. 48, lines 10-14.

generation capacity. *See, e.g.*, Petition, Docket 140110-EI, ¶¶ 18, 23, 26; Petition, Docket 140111-EI, ¶¶ 27, 31. Duke provided over 1200 pages of testimony from eight direct and rebuttal witnesses in these two dockets, responded to over 400 interrogatories and provided thousands of pages of documents to justify its assertion that its three self-build projects constitute the optimal mix of generating resources to meet its alleged need. *See, e.g.*, Duke’s 2014 Ten Year Site Plan (Exhibits 49 and 63), which asserts that Duke’s Integrated Optimal generation Plan is built from the ground up, with resource alternatives modeled and tested as a whole before being “optimized together” to become the “robust” Base Expansion Plan upon which Duke relies in these dockets:

The [Integrated Resource Planning] process begins with the development of various forecasts, including demand and energy, fuel prices, and economic assumptions. Future supply- and demand-side resource alternatives are identified and extensive cost and operating data are collected to enable these to be modeled in detail. These alternatives are optimized together to determine the most cost-effective plan for DEF to pursue over the next ten years to meet the Company’s reliability criteria. The resulting ten-year plan, the Integrated Optimal Plan, is then tested under different relevant sensitivity scenarios to identify variances, if any, which would warrant reconsideration of any of the base plan assumptions. If the plan is judged robust and works within the corporate framework, it evolves as the Base Expansion Plan. (emphasis added)

Exhibit 49, pg. 60; Exhibit 63, pg. 60. This exhibit also describes how Duke “optimizes” its “overall resource mix,” and notes the “detailed assessment” conducted “when a decision supporting a significant resource commitment is being developed”:

The IRP provides DEF with substantial guidance in assessing and optimizing the Company's overall resource mix on both the supply side and the demand side. When a decision supporting a significant resource commitment is being developed (e.g. plant construction, power purchase, DSM program implementation), the Company will move forward with directional guidance from the IRP and delve much further into the specific levels of examination required. This more detailed assessment will typically address very specific

technical requirements and cost estimates, detailed corporate financial considerations, and the most current dynamics of the business and regulatory environments. (emphasis added)

Exhibit 49, pg. 60; Exhibit 63, pg. 60.

Duke's Need Determination Study further confirmed that its Integrated Optimal Plan included all three of the self-build projects for which it sought approval:

The top ranked plan includes the addition of two combustion turbines at the Suwannee River Plant in 2016, addition of inlet chilling to supply additional summer capacity from the combined cycle units at the Hines Energy Center by 2017, the Citrus CC in 2018 and the addition of an undesignated future combined cycle unit in 2021. This plan was chosen by DEF as the Integrated Optimal Plan and was also published as the Base Expansion Plan in the Company's 2014 TYSP filed with the FPSC on April 1, 2014 (emphasis added)

Exhibit 48, pg. 54.

Mr. Borsch's testimony confirms that Duke analyzed various acquisition and power purchase options in comparison to Duke's "Base Generation Plan" for near-term need – which consists of both the Hines and Suwannee projects. Tr. Vol. 4, pg. 550, lines 6-14 and 19-23; pg. 562, lines 12-14; pg. 564, lines 1-7. *See, also*, Duke's response to Staff Interrogatory No. 10, (Exhibit 101) (confirming that Mr. Borsch's cost-effectiveness analyses in Docket 140111-EI address both Hines and Suwannee together).

Mr. Borsch further confirmed in his deposition that changes to the company's Integrated Optimal Plan require much analysis and planning, noting that although Duke first identified a 2016 need two years ago, "a considerable amount of analysis would have to go on before we nailed down the right mix of resources to fill the need." Exhibit 122, Pg. 33, line 24 – pg. 34, line 6. *See also*, Exhibit 122, pg. 142 (Suwannee project was part of "the mix of a larger bucket of things where we thought we were going to have to potentially pick this and that and that to

make up the full need.”) In addition, Mr. Borsch admitted on cross examination that Duke’s withdrawal of the Suwannee project will create additional costs, including the continued operation of the existing Suwannee units until at least 2018, and construction of additional transmission to provide voltage support upon their retirement, which otherwise would have been provided by the new Suwannee peakers. Tr. Vol. 5, pg. 747, line 24 – pg. 748, line 23. Duke did not, however, provide an evaluation of the cost-effectiveness of keeping the existing Suwannee units in service. Exhibit 101, Duke response to Staff Interrogatory No. 3.

Importantly, Mr. Borsch also admitted that Duke’s evaluation of the cost of a generation alternative is not absolute; rather it changes with various “puts and takes” included in the particular scenario. *See also*, Exhibit 122, pgs. 23, 26, 27, 28 (Duke’s differential cost analysis does not demonstrate an absolute cost, rather, it involves puts and takes and specified assumptions, including timing; and costs are modeled “holistically” relative to other alternatives). NRG witness Mr. Pollock confirmed that none of the modeling provided by Duke in these two dockets reflects the combination of options currently before the Commission. Tr. Vol. 6, pg. 899, lines 6-12. Finally, Mr. Borsch admitted that Duke had already executed an agreement to purchase combustion turbines for the now-withdrawn Suwannee peaker project in March, well before it initiated this docket, but could not confirm who would bear the cost of the very significant termination penalties associated with the contract, which continue to mount.⁴ Tr. Vol. 5, pg. 754, line 17 – pg. 756, line 9.

In summary, Duke’s testimony and exhibits clearly demonstrate that the Suwannee, Hines and Citrus projects are inextricably interwoven parts of the Optimal Generation Plan and the Suwannee project cannot be surgically excised from this proceeding. Mr. Pollock’s

⁴ The confidential amount already expended by Duke as of August 11, 2014, is shown on pg. 33, line 2, of Mr. Borsch’s deposition.

testimony that the effect of the Calpine deal on the Integrated Optimal Plan “changes this case completely” and requires a “clean slate so that everything can be thoroughly vetted,” is uncontradicted. Tr. Vol. 6, pg. 897, line 25 – pg. 898, line 6. Duke’s last-minute withdrawal of the project and de-facto amendment of its Integrated Optimal Plan causes costs that have not been accounted for and raises critical issues of material fact regarding the need for and cost-effectiveness of the remainder of the originally-proposed generation portfolio: the Citrus County Combined Cycle plant and Hines Chiller project. On the second day of the hearing, Mr. Pollock, an expert in his field with over 30 years of experience, testified that even he had not had sufficient time to absorb information regarding Duke’s changed generation plans, or to determine how the Calpine deal impacted the need for the Citrus facility. Tr. Vol. 6, pg. 893, lines 4-15. He was certain, however, that it “significantly changes the calculus of the case since we’re really essentially starting with a clean slate. Tr. Vol. 6, pg. 894, line 21 – pg. 895, line 6. There is no evidence in the record to the contrary.

In sharp contrast to the methodical procedure approved by the Supreme Court in *Citizens*, which provided the parties with an opportunity for discovery to determine whether a prehearing settlement presented disputed issues of material fact, followed by an evidentiary hearing on the identified issues, the extended lunch break provided by the Commission on the first day of the hearing did not provide intervenors a reasonable or meaningful opportunity to review and respond to Duke’s impromptu revision of its generation plans, and the Commission’s refusal to permit responsive testimony deprived NRG of its statutory right to present evidence on all issues involved in the proceeding. Accordingly, the Commission should not address the now-obsolete issues set forth in the Prehearing Order, but should instead find that Duke has not met its burden of proof in this case; hold that that intervenors are entitled to an opportunity to conduct discovery

and present evidence regarding Duke’s newly-revised generation plans; order Duke to revise and resubmit its needs assessment and supporting models based on its new slate of generation assets, including a new Integrated Resource Plan that is updated with current data and planning information, as well as load-forecast sensitivity analyses; and require Duke to provide parties with an opportunity to present a “best and final offer” before filing any new petition for approval.

ISSUES AND POSITIONS

Issue 9: ~~Is Are~~ the proposed ~~Suwannee Simple Cycle Project and Hines Chillers Power Uprate Project~~ needed, taking into account the need for electric system reliability and integrity?

Issue 10: ~~Is Are~~ the proposed ~~Suwannee Simple Cycle Project and Hines Chillers Power Uprate Project~~ needed, taking into account the need for adequate electricity at a reasonable cost?

Issue 11: ~~Is Are~~ the proposed ~~Suwannee Simple Cycle Project and Hines Chillers Power Uprate Project~~ needed, taking into account the need for fuel diversity and supply reliability?

Issue 13. ~~Is Are~~ the proposed ~~Suwannee Simple Cycle Project in 2016 and Hines Chillers Power Uprate Project in 2017~~ the most cost-effective alternatives available to meet the needs of Duke Energy Florida, Inc. and its customers?

*** No. Duke has not demonstrated need for additional pre-2019 capacity, and given the pending Osprey acquisition, the parties must be given an opportunity to submit evidence regarding Duke’s revised generation plan. For the sake of argument, an agreement with Calpine or NRG would provide more than enough capacity to serve Duke’s load growth into 2019. ***

ARGUMENT:

As explained above, the Commission should not address these issues because the parties were denied any opportunity to engage in discovery and present evidence on the impact of Duke’s last-minute change of generation plans. Given the absence of record evidence addressing such impact, the Commission should find that Duke has not met its burden of proving that it

needs the Hines Chiller project as currently proposed; hold that that intervenors are entitled to an opportunity to conduct discovery and present evidence regarding Duke's newly-revised generation plans; order Duke to revise and resubmit its needs assessment and supporting models based on its new slate of generation assets, including a new Integrated Resource Plan that is updated with current data and planning information, as well as load-forecast sensitivity analyses; and require Duke to provide parties with an opportunity to present a "best and final offer" before filing any new petition for approval.

Subject to and without waiving its objections, NRG states:

Duke has not met its burden of proving that it needs any additional generation prior to 2018 to meet its reserve margin. Its asserted need for capacity is largely driven by its forecast that wholesale and peak demand will increase by more than 1,000 MW in 2014-2015. It is undisputed that this would represent far more load growth than Duke has experienced in any two consecutive years since 2005. Tr. Vol. 6, pg. 877, lines 12 – 16. Duke has not demonstrated that its forecast is reasonable or that this high level of load growth is likely to materialize. To the contrary, the record reflects that Duke has consistently overestimated its actual need. In response to Staff inquiry, Duke admitted that its peak demand forecasts for the years 2010-2013 had been inaccurate, resulting in an overstatement of summer peak demand by up to 11.9%, and an overstatement of winter peak demand by up to 25.2%. *See*, Duke response to Staff Interrogatories 54 (Exhibit 95) and 83 (Exhibit 103). Further, Duke's 2013 Ten Year Site Plan overestimated its actual 2013 need by 881 MW, and Duke now admits that its 2013 forecasts were excessive for other years as well, by 200-300 MW. *See, e.g.* Tr. Vol. 6, pg. 779, line 19 – pg. 782, line 2. Mr. Borsch admitted that the load projections in Duke's 2014 Ten Year Site Plan

– which Duke claims demonstrates need for its proposed self-build projects – were developed using the same flawed process Duke has used in the past. Tr. Vol. 6, pg. 778, lines 9-11.

Duke modeled sensitivities to changes in gas price and carbon costs that could affect need and cost-effectiveness of its proposed generation slate, but incredibly, failed to model the effect of an inaccurate load forecast. Vol. 4, pg. 401, lines 13-15; pg. 470, line 14 - pg. 472, line 9; pg. 472, lines 11-13; pg. 555, lines 5-11; pg. 563, lines 7-13; Exhibits 49 and 63, pgs. 18 and 19. When Staff asked Duke to provide a sensitivity analysis of its high case and low case forecasts in these dockets, Duke replied that it did not have any high and low case forecasts. *See*, Duke response to Staff Interrogatories 52, 53 (Exhibit 95) and 81, 82 (Exhibit 103). Mr. Pollock, an industry expert with 30 years of experience in similar cases, identified Duke’s failure to provide a sensitivity analysis of the effect of load forecast error or different load-forecasting scenarios as “one of the most serious shortcomings that I can see,” that goes “directly to the need for this additional capacity.” Tr. Vol. 6, pg. 898, lines 7 – 16, pg. 899, lines 6 – 7. Further, because the load forecast is an integral assumption of Duke’s cost-effectiveness analysis, its failure to model high and low case forecasts means that the Commission has no basis to conclude that any generation portfolio presented in this case is the most cost-effective alternative for ratepayers. Mr. Pollock demonstrated that if Duke’s load grew at 50% of its unreasonably-high projected rate, its planned capacity additions would result in Duke being “significantly overbuilt.” This scenario would lead to substantial and increasing excess capacity as shown in Mr. Pollock’s Exhibit 86 (JP-3):

2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
930	760	844	915	837	1,383	1,204	1,563	1,493	1,429

Tr. Vol. 6, pg. 878, lines 1-21; Exhibits 85, 86. As noted above, Mr. Pollock was not permitted

to address Duke's newly-revised generation slate.

Assuming for the sake of argument that Duke needed its full forecasted capacity, Duke's withdrawal of the Suwannee peaker project and its newly-announced decision to keep the existing 129 MW Suwannee steam plants in service while purchasing power from and pursuing acquisition of Calpine's 599 MW Osprey facility would provide Duke with 316 MW more than the net 412 MW of generation it would have gained by building the Hines Chillers and Suwannee projects. Calpine witness Mr. Hibbard confirmed that Calpine's capacity will provide Duke with "flexibility around the timing of commercial operation of the Hines Chillers project." Tr. Vol. 3, pg. 348, lines 17-23. As a result, there is no currently demonstrated need for the Hines Chillers. Power from Calpine's Osprey facility (or NRG's Osceola facility) could immediately and reliably provide sufficient power to Duke, which together with the 129 MW of power that the existing Suwannee units will continue to generate, will provide Duke with reliable power to meet its near-term needs.

The Hines Chiller project is not only unneeded, but it is unreasonably expensive on a per-kW basis. Construction of the Hines Chillers would cost \$160 Million to provide only 220 MW of power, at a relatively high nominal cost of \$727 per kW. That nominal cost is misleadingly low, however, as the Hines Chillers will only contribute power to meet Duke's summer peak, and even then, can only contribute the full 220 MW during hours when the temperature exceeds 95 degrees. The Hines Chillers will contribute zero capacity when the temperature is 50 degrees or less. Tr. Vol. 2, pg. 139, lines 1-18.

The Hines per-kW price increases dramatically when adjusted to reflect its limited availability. Assuming – generously – that it will contribute 220 MW to Duke's system 50% of the time, the per-kW price increases dramatically to \$1,450. If one (again, generously) assumes

it will contribute the full 220 MW one-third of the time, the cost increases to a whopping \$2,200 per kW. Under these circumstances, construction of the Hines Chiller project plainly would be an unnecessary and uneconomic duplication of generation facilities. Of course, the complete cost of the Hines Chiller project – which includes the cost of keeping the existing Suwannee units in operation for two more years and construction of additional transmission to provide voltage support upon their retirement, which otherwise would have been provided by the new Suwannee peakers – is unknown.

In light of Duke’s changed circumstances, the only way the Commission can prudently assure that Duke has truly explored and identified the alternative that is best for its customers, is to require Duke to revise and resubmit its needs assessment and supporting models based on its new slate of generation assets, including a new Integrated Resource Plan that is updated with current data and planning information, as well as load-forecast sensitivity analyses; and require Duke to provide parties with an opportunity to present a “best and final offer” before filing any new petition for approval.

Issue 12: Are there any renewable energy sources and technologies or conservation measures taken by or reasonably available to Duke Energy Florida, Inc. that might mitigate the need for the proposed ~~Suwannee Simple Cycle Project and Hines Chillers Power Uprate Project~~?

*** The Commission should defer ruling in this proceeding until after its decision on Duke’s conservation goals Docket No. 130002-EI. ***

ARGUMENT:

Duke’s conservation goals were recently the subject of an extensive hearing in Docket 130200-EI, which is the first time the Commission has reviewed Duke’s conservation goals in five years. The Commission is not scheduled to issue an order in that proceeding until

December, and the evidence that was elicited in that docket is not in the record of this proceeding. There is no record basis in Dockets 140110-EI and 140111-EI for a factual determination on this issue. Duke's generation resource plans are in a state of flux as evidenced in these proceedings, and Duke does not require pre-approval of the Hines Chiller project, so no harm can result from deferring an order in this case until the Commission issues its order in Docket No. 130200-EI.

Issue 14: Did Duke Energy Florida, Inc. reasonably evaluate all alternative scenarios for cost effectively meeting the needs of its customers over the relevant planning horizon?

*** No. There is no record evidence that Duke's hasty, eleventh-hour decision to abandon its Integrated Optimal generation plan, acquire Calpine's Osprey facility, and withdraw the Suwannee project from consideration is based on a reasonable evaluation of all alternative scenarios to meet its customers' needs. ***

ARGUMENT:

The plan Duke is now hotly pursuing will result in a net increase of over 500 MW more than it originally sought – an increase that is sufficiently large to affect the need for, timing and size of the Hines and Citrus projects. In the absence of further evidentiary proceedings in which this issue may be fully evaluated and evidence presented by Duke to the Commission demonstrating that it has met its burden in this regard, the Commission has no choice but to conclude that Duke failed to reasonably evaluate all alternative scenarios. The Commission should deny Duke's request at this time and direct Duke to reopen negotiations with NRG to obtain the most cost-effective alternative available to meets Duke's reserve margin needs, based on a new IRP that is updated with current data and planning information, as well as load-forecast sensitivity analyses.

Issue 15: Based on the resolution of the foregoing issues, should the Commission grant the requested determination that the proposed ~~Suwannee Simple Cycle Project and Hines Chillers Power Uprate Project~~ is ~~are~~ the most cost-effective generation alternatives to meet Duke's needs prior to 2018?

*** No. As discussed in response to Issues 9, 10, 11, and 13, Duke has not demonstrated need for additional pre-2019 capacity, and the parties must be given an opportunity to submit evidence regarding its revised generation plan. For the sake of argument, an agreement with Calpine or NRG would provide more than enough capacity to serve Duke's load growth into 2019. ***

ARGUMENT:

Please see NRG's response to Issues 9, 10, 11, and 13.

Issue 16: Should this docket be closed?

*** No. Intervenors should conduct discovery and present evidence regarding Duke's newly-revised generation plans; suppliers should be allowed to present a "best and final offer" to meet customers' needs; and Duke should revise and resubmit its needs assessment and supporting models in a new petition for approval in a separate proceeding.***

ARGUMENT:

Duke repeatedly claimed in these proceedings that its Integrated Optimal generation plan resulted in the most cost-effective alternative for its customers, but it abandoned that plan 15 minutes into the hearing in this proceeding, moved to amend its petition to withdraw the Suwannee project from consideration, and announced that it had decided on new "best" alternative - i.e., the purchase of power from and eventual acquisition of Calpine's Osprey facility. Duke's actions demonstrate at least three things beyond refute:

- Duke does not believe that its "Optimal" plan yields the best alternative for its customers;
- There are other alternatives and opportunities available to Duke that it had not fully explored when it filed its petition; and perhaps most importantly,

- Duke’s filing was and is premature until it can demonstrate to the Commission that it has given a full and fair consideration to all parties who may be interested in supplying capacity to Duke.

The only way the Commission can prudently assure that Duke has truly explored and identified the alternative that is best for its customers, is to send Duke back to the negotiating table to reopen its negotiations with NRG, who actually offered peaking capacity consistent with Duke’s Integrated Optimal generation plan, after which Duke should be required to revise and resubmit its needs assessment and supporting models based on its new slate of generation assets, including a new Integrated Resource Plan that is updated with current data and planning information, as well as load-forecast sensitivity analyses; and require Duke to provide parties with an opportunity to present a “best and final offer” before filing a new petition for approval in a separate proceeding.

Legal Issue 1: Does the Commission have jurisdiction in this docket to grant Duke’s request for a determination that the proposed ~~Suwannee Simple Cycle Project and Hines Chillers Power Uprate Project~~ is are the most cost-effective generation alternatives to meet Duke’s needs prior to 2018?

*** No. The Commission’s jurisdiction to pre-determine need and pre-approve prudence of a proposed generating plant is limited to electrical power plants subject to the Florida Electrical Power Plant Siting Act, Sections 403.501 – 403.518, Florida Statutes. ***

ARGUMENT:

Section 403.519, Florida Statutes, is the only source of Legislative authority for the Commission to pre-determine whether a need exists for a proposed power plant and to pre-approve a proposed plant as the most cost-effective alternative to meet that need, and specifically

applies only to “an electrical power plant subject to the Florida Electrical Power Plant Siting Act. § 403.519(1), Fla. Stat. The Hines Chillers Power Uprate Project not an “electrical power plant” as defined in the Florida Electrical Power Plant Siting Act and therefore is not eligible for pre-approval:

403.503 Definitions relating to Florida Electrical Power Plant Siting Act.—As used in this act:

(14) “Electrical power plant” means, for the purpose of certification, any steam or solar electrical generating facility using any process or fuel, including nuclear materials, except that this term does not include any steam or solar electrical generating facility of less than 75 megawatts in capacity unless the applicant for such a facility elects to apply for certification under this act.

* * *

§ 403.503(14), Florida Statutes.

Significantly, no other statute authorizes the Commission to pre-judge the prudence of any utility investment. This Legislative segregation of certain power plants for advance review illustrates the legal maxim “*expressio unius est exclusio alterius*” (the expression of one thing is the exclusion of another) which – as the Commission has recognized – governs the Legislature’s directives. *See, e.g.*, Order No. PSC-98-0917-FOF-TL (statutory language that required Commission to hold hearing in one instance but did not specifically require hearing in another instance indicated legislative intent that the Commission should hold hearing only as specified in statute); *see, also, PW Ventures, Inc. v. Nichols*, 533 So.2d 281 (Fla. 1988) (statutory language expressly granting an exemption from Commission jurisdiction impliedly excluded other exemptions).

Even today, Duke has not identified any statute or rule that authorizes the Commission review the Hines Chiller Uprate Project as if it were an “electrical power plant” subject to the

Siting Act. Duke’s petition in this docket cites Rules 25-22.080 and 24-22.081, Florida Administrative Code, which are inapplicable because they apply only to petitions for determination of need under the Power Plant Siting Act. Duke’s petition also mentions the 2013 Revised and Restated Stipulation and Settlement Agreement approved by the Commission on November 12, 2013 in Order No. PSC-13-0598-FOF-EI, but that settlement agreement does not require Duke to initiate this proceeding and cannot confer authority on the Commission to consider, much less grant, Duke’s request in this docket. The agreement merely permits Duke to pursue a “prudence review” for the Suwannee and Hines projects, which would properly be brought before the Commission in a full or limited rate case proceeding, based on a time-appropriate test-year, if and when those projects became operational and useful.

As Duke’s counsel admitted during oral argument at the Prehearing Conference in these dockets, the Legislature only “carved out” certain specified power plants for “upfront” need determinations – and the Suwannee and Hines projects are not included in this group:

The Commission always has the jurisdiction to determine whether a plant that DEF or any other public utility builds in this state is needed and cost-effective. If it qualifies under the Power Plant Siting Act, that determination is made upfront because the Legislature said it should be. If it does not qualify for the Power Plant Siting Act, the determination is usually made after the fact in a rate case when the Commission will review the company’s petition in a rate case, including the power plant, and determine whether it was needed and cost-effective at that time.

* * *

The Florida Legislature carved out certain plants primarily to determine new power plant sites, which is not implicated by these two projects because they’re on existing power plant sites, and said for those types of power plants we want you to do it upfront.

Transcript, Prehearing Conference, pg. 25, lines 5-17; pg. 27, lines 4-9. If, as Duke alleges, “Chapter 366, is replete with the Commission’s authority to review the matters that are raised in

[Duke's] petition," it is curious that Duke has not yet identified any such authority. *Id.*, pg. 25, lines 11-14.

CONCLUSION

Duke's last-minute decision to withdraw Suwannee from review in favor of the Calpine agreement and continued operation of the existing Suwannee units significantly increases the amount and type of generating resources available to Duke, is inconsistent with the Integrated Resource Plan and planning assumptions upon which Duke relied in its petition in this case and in Docket No. 140111-EI, and will drastically and directly reduce or eliminate the need for both the Hines Chiller project (the complete cost of which is now unknown) and the \$1.5 billion Citrus County Combined Cycle plant. The Commission's refusal to permit any meaningful opportunity to review, conduct discovery and present evidence regarding Duke's amended plans results in an incomplete record that cannot support a determination of need for the proposed \$1.5 billion Citrus County Combined Cycle plant or a finding that the Hines Chiller project is the most cost-effective generation alternative to meet need, if any, prior to 2018. Accordingly, and for the reasons set forth herein, the Commission should find that Duke has not met its burden of proof in this case; hold that that intervenors are entitled to an opportunity to conduct discovery and present evidence regarding Duke's newly-revised generation plans; order Duke to revise and resubmit its needs assessment and supporting models based on its new slate of generation assets, including a new Integrated Resource Plan that is updated with current data and planning information, as well as load-forecast sensitivity analyses, and require Duke to provide parties with an opportunity to present a "best and final offer," before filing any new petition for approval.

Respectfully submitted this 10th of September, 2014.

/s/ Marsha E. Rule

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following by electronic mail on September 10, 2014:

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