

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination
of Need for Citrus County Combined Cycle
Power Plant, by Duke Energy Florida, Inc.

Docket No. 140110-EI

Filed: June 11, 2014

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

Pursuant to Sections 120.52(13), 120.569, 120.57, and 403.519, Florida Statutes; and Rules 25-22.039, 28-106.201, and 28-106.205, Florida Administrative Code, NRG Florida LP requests leave to intervene in this proceeding, and states:

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

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

3. Petitioner's contact information is:

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

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

Marsha E. Rule, Esq.
Fla. Bar No. 0302066
Rutledge Ecenia, P.A.
119 South Monroe Street, Suite 202
Tallahassee, Florida 32301
Email: marsha@rutledge-ecenia.com
Phone: 850.681.6788
Fax: 850.681-6515

Gordon D. Polozola, Esq.¹
General Counsel – South Central Region
NRG Energy, Inc.
112 Telly Street
New Roads, LA 70760
Email: Gordon.Polozola@nrgenergy.com
Phone: 225-618-4084

Richard A. Zambo, Esq.
Fla. Bar No. 312525
Richard A. Zambo, P.A.
2336 S.E. Ocean Boulevard, #309
Stuart, Florida 34966
Email: richzambo@aol.com
Phone: 772.225.5400

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

PETITIONER’S SUBSTANTIAL INTERESTS

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

7. DEF asserts that it requires additional generating capacity by the summer of 2018 to maintain system reliability and integrity, and to continue to maintain the 20% reserve margin approved in Order No. PSC-99-2507-S-EU (Docket No. 981890-EU, December 22, 1999). DEF proposes to meet its alleged need by building a natural gas-fired combined cycle power plant (the “Citrus County plant”) at a new site near its existing Crystal River Energy Complex. DEF states that the completed Citrus County plant will have an expected summer rating of 1,640 MW and

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

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

an expected winter rating of 1,820 MW, and will cost a total of \$1,514 million (nominal) to build, with estimated incremental annual fixed operation and maintenance (“O&M”) cost of approximately \$11.3 million and estimated variable O&M costs of \$24.8 million.

8. Among other determinations, DEF seeks an affirmative determination under Section 403.519, Florida Statutes, that its proposed Citrus County plant is needed to meet the company’s need for electric system reliability and integrity, and to enable the company to continue to provide adequate electricity to its customers at a reasonable cost. The Commission’s determination of need is a condition precedent to certification and licensing of the plant. § 403.507(4)(b), Fla. Stat.

9. NRG Florida LP is a retail electric customer of DEF. Based on DEF’s assertion that it needs the additional generation described in its Petition in order to reliably serve its customers, granting or not granting the relief sought will have an impact on the availability of electric power to NRG Florida LP’s operations, as well as on the rates and charges NRG Florida LP will be required to pay for such electricity. The Commission has repeatedly held that a utility’s customers are substantially affected by and entitled to intervene in proceedings, including need determination proceedings that could increase the rates they pay for electric services. Importantly, the Commission has consistently held that such customers meet the two-prong standing test in *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So.2d (Fla. 2d DCA 1982) (intervenor must show that he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57 hearing, which injury must be of a type or nature the proceeding is designed to protect). *See, e.g.*, Order Nos. PSC-12-0360 and PSC-12-0399-PCO-EI (Docket No. 120015-EI, July 12, 2012 and August 3, 2012); Order Nos. PSC-10-

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

10. NRG Florida LP is entitled to participate in this docket on the same basis as any other retail customer of DEF.

DISPUTED ISSUES OF MATERIAL FACT

11. Subject to discovery, NRG Florida LP believes that the issues of material fact that will be disputed in this proceeding will include the matters set forth in Section 403.510(3), Florida Statutes, including, but not limited to, the following:

- a. Whether DEF needs the proposed Citrus County plant to meet demonstrated needs for electric system reliability and integrity;
- b. Whether DEF needs the proposed Citrus County plant to provide its customers with adequate electricity at a reasonable cost;
- c. Whether DEF needs the proposed Citrus County plant for fuel diversity and supply reliability;
- d. Whether the proposed Citrus County plant is the most cost-effective alternative available to DEF;
- e. Whether DEF has appropriately sought and utilized renewable energy sources and technologies to the extent reasonably available;
- f. Whether DEF has appropriately utilized conservation measures that might mitigate or defer need for the Citrus County plant; and
- g. Whether, based on the resolution of the above issues, the Commission should grant DEF's petition for determination of need for its proposed Citrus County plant.

Petitioner reserves the right to raise additional issues as permitted by Commission practice and Order No. PSC-14-0274-PCO-EI.

ULTIMATE FACTS ALLEGED

12. DEF bears the burden to prove that it needs the Citrus County plant to meet a demonstrated need for electric system reliability and integrity and to enable the company to provide adequate electricity to its customers at a reasonable cost. DEF bears the additional burden of proving that the Citrus County plant is the most cost-effective alternative available to meet its alleged need.

SPECIFIC RULES OR STATUTES THAT ENTITLES NRG FLORIDA LP TO RELIEF

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

14. Section 366.04(5) Florida Statutes, grants the Commission "jurisdiction over the planning, development and maintenance of a coordinated electric power grid throughout Florida and to assure a reliable source of energy for operational and emergency purposes. . ." As DEF's customer, NRG Florida LP has a substantial interest in its continued ability to receive reliable energy from DEF, and will suffer an injury in fact if DEF fails to meet a demonstrated need for generation assets that are reliable, cost-effective, and otherwise consistent with established Florida energy policy. NRG Florida LP is entitled to intervene to protect these substantial interests in this proceeding.

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

16. NRG Florida LP has contacted counsel for DEF who advised that DEF takes no position to NRG Florida LP's intervention in this docket.

RELIEF REQUESTED

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

RESPECTFULLY SUBMITTED this 11th day of June, 2014.

/s/ Marsha E. Rule

Marsha E. Rule, Esq.
Fla. Bar No. 0302066
Rutledge Ecenia, P.A.
119 South Monroe Street, Suite 202
Tallahassee, Florida 32301
Email: marsha@rutledge-ecenia.com
Phone: 850.681.6788
Fax: 850.681-6515

Richard A. Zambo, Esq.
Fla. Bar No. 312525
Richard A. Zambo, P.A.
2336 S.E. Ocean Boulevard, #309
Stuart, Florida 34966
Email: richzambo@aol.com
Phone: 772.225.5400

Gordon D. Polozola, Esq.
General Counsel – South Central Region
NRG Energy, Inc.
112 Telly Street
New Roads, LA 70760
Email: Gordon.Polozola@nrgenergy.com
Phone: 225-618-4084

ATTORNEYS FOR NRG FLORIDA LP

CERTIFICATE OF SERVICE

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

J. Michael Walls
Blaise N. Gamba
Carlton Law Firm
4221 W. Boy Scout Blvd.
Suite 1000
Tampa, FL 33607-5780
mwalls@CFJBLaw.com
bgamba@CFJBLaw.com

John T. Burnett
Dianne M. Triplett
Duke Energy
P. O. Box 14042
St. Petersburg, FL 33733
John.burnett@duke-energy.com
Dianne.triplett@duke-energy.com

Matthew R. Bernier
Paul Lewis, Jr.
106 East College Avenue, Suite 800
Tallahassee, FL 32301
Matthew.bernier@duke-energy.com
Paul.Lewisjr@duke-energy.com

J.R. Kelly
Charles J. Rehwinkel
Office of Public Counsel
C/o The Florida Legislature
111 W. Madison Street
Room 812
Tallahassee, FL 32399-1400
Kelly.jr@leg.state.fl.us

Robert Scheffel Wright
John T. LaVia, III
Gardner, Bist, Wiener, Wadsworth, Bowden,
Bush, Dee, LaVia & Wright, P.A.
1300 Thomaswood Drive
Tallahassee, Florida 32308
schef@gbwlegal.com
jlavia@gbwlegal.com

Michael Lawson
Florida Public Service Commission
Office of the General Counsel
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399
mlawson@psc.state.fl.us

Jon C. Moyle, Jr.
Karen A. Putnal
Moyle Law Firm, P.A.
1 18 North Gadsden Street
Tallahassee, Florida 32301
jmoyle@moylelaw.com
kputnal@moylelaw.com

James W. Brew
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson Street, NW
Eighth Floor, West Tower
Washington, DC 20007-5201
jbrew@bbrslaw.com

/s/ Marsha E. Rule

Attorney