

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination that) DOCKET NO. _____
the Osprey Plant Acquisition and,)
alternatively, the Suwannee Simple) Submitted for filing: January 30, 2015
Cycle Project is the most Cost Effective)
Generation Alternative to meet the)
Remaining Need Prior to 2018 for)
Duke Energy Florida, Inc.)
_____)

DUKE ENERGY FLORIDA, INC.'S NOTICE OF FILING

Duke Energy Florida, Inc. ("DEF" or the "Company") hereby gives notice of filing the Direct Testimony of Matthew E. Palasek with Exhibits MEP-1 through MEP-2 in support of DEF's Petition for Determination that the Osprey Plant Acquisition and, alternatively, the Suwannee Simple Cycle Project is the most Cost Effective Generation Alternative to Meet the Remaining Need Prior to 2018 for Duke Energy Florida, Inc.

Respectfully submitted this 30th day of January, 2015.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In re: Petition for Determination that
the Osprey Plant Acquisition and,
alternatively, the Suwannee Simple
Cycle Project is the most Cost Effective
Generation Alternative to meet the
Remaining Need Prior to 2018 for
Duke Energy Florida, Inc.**

DOCKET NO. _____
Submitted for filing: January 30, 2015

REDACTED

**DIRECT TESTIMONY
OF MATTHEW E. PALASEK**

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

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**IN RE: PETITION FOR DETERMINATION THAT THE OSPREY
PLANT ACQUISITION AND, ALTERNATIVELY, THE SUWANNEE
SIMPLE CYCLE PROJECT IS THE MOST COST EFFECTIVE GENERATION
ALTERNATIVE TO MEET THE REMAINING NEED PRIOR TO 2018
FOR DUKE ENERGY FLORIDA, INC.**

BY DUKE ENERGY FLORIDA, INC.

FPSC DOCKET NO. _____

DIRECT TESTIMONY OF MATTHEW E. PALASEK

1 **I. INTRODUCTION AND QUALIFICATIONS.**

2 **Q. Please state your name, employer, and business address.**

3 A. My name is Matthew E. Palasek and I am employed by Duke Energy Corporation (“Duke
4 Energy”). My business address is 550 South Tryon Street, DEC-39B, Charlotte, North
5 Carolina 28202.

6
7 **Q. Please tell us your position with Duke Energy and describe your duties and
8 responsibilities in that position.**

9 A. I am a Director in Corporate Development with Duke Energy. In this role, I am
10 responsible for supporting Duke Energy and its subsidiaries in a variety of transaction
11 activity: acquisitions, divestitures, joint ventures, and corporate-level combinations. I
12 was involved in discussions with Calpine Construction Finance Company, L.P.

1 (“Calpine”) regarding the potential acquisition of the Osprey Plant by Duke Energy
2 Florida, Inc. (“DEF” or the “Company”) up to the agreement to terms between DEF and
3 Calpine for the Osprey Plant acquisition. Subsequent to that agreement in principle
4 between DEF and Calpine, I was part of the Company’s due diligence for the Osprey
5 Plant acquisition on behalf of Corporate Development. In this role I was responsible for
6 coordinating the exchange of information between DEF and Calpine about the acquisition
7 and coordinating and participating in contract negotiations for and the transaction review
8 of the Osprey Plant acquisition. I was also responsible for coordinating and obtaining
9 internal approvals consistent with Duke Energy policy and project controls for plant and
10 major equipment or material acquisitions.

11
12 **Q. Please summarize your educational background and employment experience.**

13 A. I graduated from George Washington University in 1996 with a B.S. in Economics.
14 Upon graduation I worked for Charles River Associates (“CRA”), an economics
15 consulting firm, in Washington DC. I predominantly supported CRA’s energy practice in
16 analysis for antitrust filings related to utility mergers and Federal Energy Regulatory
17 Commission (“FERC”) filings for market based rate authority. Subsequently, I attended
18 Duke University’s Fuqua School of Business, from which I received my Master’s in
19 Business Administration in 2002. Shortly after graduation I worked in the strategy group
20 of Mirant, an Independent Power Producer based in Atlanta, Georgia. In the summer of
21 2003 I left to work at Capital One in Richmond, Virginia to work in an operations
22 consulting group. In 2005 I joined Duke Energy. Since that time I have worked
23 predominantly in the Corporate Development (or Mergers & Acquisitions) group. In my

1 role I have supported Duke Energy in its transactions, both regulated and unregulated,
2 both in support and leadership of transactions.
3

4 **II. PURPOSE AND SUMMARY OF TESTIMONY.**

5 **Q. What is the purpose of your testimony in this proceeding?**

6 A. I am testifying on behalf of the Company in support of its Petition. I will provide and
7 describe the term sheet and the Asset Purchase and Sale Agreement (“APA”) between
8 DEF and Osprey Energy Center, LLC as the assignee of Calpine for DEF’s acquisition of
9 the Calpine Osprey Plant. I will also generally explain the terms of the APA and the
10 beneficial terms and conditions that the Company obtained for the benefit of DEF’s
11 customers. Finally, I will explain that the APA is a reasonable agreement between DEF
12 and Calpine for DEF to obtain the benefits of the Osprey Plant for DEF’s customers.
13

14 **Q. Are you sponsoring any exhibits to your testimony?**

15 A. Yes. I am sponsoring the following exhibits to my testimony:

- 16 • Exhibit No. ___ (MEP-1), the confidential August 25, 2014 term sheet between DEF
17 and Calpine for DEF’s acquisition of the Osprey Plant; and
18 • Exhibit No. ___ (MEP-2), the confidential APA between DEF and Calpine for DEF’s
19 acquisition of the Osprey Plant.

20 Each of these exhibits was prepared under my direction and control, and each is true and
21 accurate.
22
23

1 **Q. Please summarize your testimony.**

2 A. DEF and Calpine executed a term sheet and, subsequent to DEF's due diligence, an APA
3 for DEF's acquisition of the Osprey Plant. DEF will acquire the Osprey Plant in just over
4 two years, subject both to receipt of the requisite governmental and regulatory approvals
5 of the acquisition and Calpine's continued operation of the Plant consistent with good
6 utility practice and all applicable laws, regulations, orders, and permits in that time
7 period, pursuant to the terms and conditions of the APA. As a result, the APA terms and
8 conditions reasonably preserve the benefits of the Osprey Plant acquisition for DEF's
9 customers if the requisite governmental and regulatory approvals are obtained and DEF
10 acquires the Osprey Plant.

11
12 **III. BACKGROUND NEGOTIATIONS FOR THE OSPREY PLANT ACQUISITION.**

13 **Q. Please briefly describe how DEF and Calpine began negotiations for the acquisition**
14 **of the Calpine Osprey Plant.**

15 A. As explained in Mr. Benjamin Borsch's testimony filed in Docket No. 140111-EI, DEF
16 first considered a bid from Calpine, to purchase the Osprey Plant, in fall 2013. The
17 parties continued discussing the proposal for some time, even after DEF made its filing in
18 May 2014 with the Florida Public Service Commission ("FPSC" or the "Commission") in
19 Docket No. 140111-EI for approval of its Suwannee Simple Cycle self-build project
20 ("Suwannee Project"). DEF and Calpine were able to resolve many issues, but some
21 remained open.

1 **Q. What were the main issues that remained unresolved as the August hearing in**
2 **Docket No. 140111-EI approached?**

3 A. First was the need to obtain Federal Energy Regulatory Commission (“FERC”) approval
4 and the [REDACTED]. Related to this concern was the
5 need to hold DEF’s customers whole for certain obligations DEF had made to support the
6 Suwannee Project. The Company had to move forward with the Suwannee Project to
7 maintain the expected 2016 in-service date, and there were sunk costs associated with
8 that Project by the time of the hearing in Docket No. 140111-EI. The Company was also
9 concerned with ensuring that customers were protected if FERC did not approve the
10 Osprey Plant acquisition, including ensuring that the Suwannee Project remained a viable
11 option for as long as possible until more certainty regarding required regulatory approvals
12 for the Osprey Plant acquisition could be obtained. The other major negotiation issue
13 was the purchase price for the Plant, as well as the pricing for the Power Purchase
14 Agreement (“PPA”) that is part of the overall Osprey transaction. DEF had to ensure that
15 the Osprey Plant acquisition (when considering the entire deal) was more favorable to its
16 customers than its Suwannee Project.

17
18 **Q. Did the parties resolve those last remaining open issues?**

19 A. Yes. As explained during the opening stages of the hearing in Docket No. 140111-EI,
20 DEF and Calpine agreed in principle to a deal, as evidenced in a term sheet, for DEF’s
21 acquisition of the Osprey Plant. A copy of the confidential term sheet between DEF and
22 Calpine is included as Exhibit No. ___ (MEP-1) to my direct testimony. The parties
23 requested that the Suwannee Project portion of DEF’s petition in Docket No. 140111-EI

1 be withdrawn from consideration during the hearing, to allow the parties additional time
2 to conduct due diligence and negotiate a more detailed APA.

3
4 **IV. THE OSPREY PLANT ASSET PURCHASE AGREEMENT.**

5 **Q. Did DEF execute an APA with Calpine for the acquisition of the Calpine Osprey**
6 **Plant?**

7 A. Yes. Calpine and DEF negotiated the terms and conditions of the final APA for the
8 Osprey Plant acquisition, using the term sheet terms as a guide. DEF and Calpine
9 executed the APA for the Osprey Plant on December 17, 2014. A copy of the
10 confidential APA between DEF and Calpine for the Osprey Plant is attached as Exhibit
11 No. ___ (MEP-2) to my direct testimony.

12
13 **Q. What are the major terms of the APA?**

14 A. I break the APA into five main areas, which I will explain in greater detail below. Those
15 areas are: (1) acquisition overview; (2) required regulatory approvals; (3) due diligence
16 rights; (4) protection and security for DEF's customers; and (5) continuity of operations.

17
18 **A. ACQUISITION OVERVIEW.**

19 **Q. Please describe the basic structure of the APA.**

20 A. DEF and Calpine agreed that DEF will purchase the Osprey Plant for \$166 million,
21 subject to certain adjustments, and that the closing is expected to occur on January 3,
22 2017, provided that several conditions precedent are met. At closing Calpine agrees to

1 transfer the gas transportation and transmission contracts and rights for the Osprey Plant
2 to DEF.

3
4 **Q. Will Calpine continue to own and operate the Osprey Plant prior to the closing?**

5 A. Yes. DEF and Calpine agreed to a two-year PPA between October 2014 and January 2,
6 2017 for DEF's purchase of firm capacity and energy that Calpine can deliver from the
7 Osprey Plant to DEF's system. During this PPA period, DEF will seek to obtain the
8 required regulatory approvals for DEF's acquisition of the Osprey Plant and Calpine will
9 continue to own, operate, and maintain the Osprey Plant.

10
11 **Q. What are the adjustments to the purchase price?**

12 A. The adjustments to the base purchase price of \$166 million are known and potential
13 offsets with the potential offsets depending on certain situations or circumstances that
14 might occur. For example, there is a [REDACTED]

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 These adjustments are described in Section
23 2.06 of the APA. See Exhibit No. ___ (MEP-2).

1 **Q. What are the conditions precedent to the closing for the Osprey Plant acquisition?**

2 A. The conditions precedent to the closing of the Osprey Plant acquisition include obtaining
 3 the requisite governmental or regulatory approvals for the acquisition. Other conditions
 4 precedent include the parties' performance of the covenants in the APA and compliance
 5 with the terms of the APA. Calpine's covenants include the continued operation and
 6 maintenance of the Osprey Plant in accordance with good utility practice and compliance
 7 with all laws, regulations, and permits in operating the Plant during the PPA period prior
 8 to closing. Another condition precedent to the closing is the lack of any Material
 9 Adverse Effect, which under the APA generally means [REDACTED]

10 [REDACTED]

11 [REDACTED] The conditions precedent to the
 12 closing for the Osprey Plant acquisition are set forth in detail in Articles VI and VII of
 13 the APA. See Exhibit No. ___ (MEP-2).

14
 15 **B. REQUIRED REGULATORY APPROVALS.**

16 **Q. What regulatory approvals are required to complete DEF's acquisition of the**
 17 **Osprey Plant?**

18 A. This acquisition requires approval from at least three agencies. First, FERC approval of
 19 DEF's acquisition of the Osprey Plant is required for DEF to complete its acquisition of
 20 the Osprey Plant. DEF and Calpine agreed that DEF would petition FERC to approve
 21 DEF's acquisition of the Osprey Plant in 2015. DEF and Calpine further agreed to

22 [REDACTED] for the Osprey Plant if FERC approval, [REDACTED]

23 [REDACTED], is not obtained prior

1 to [REDACTED]. If FERC approval is not obtained, [REDACTED]
2 [REDACTED]. See Exhibit No. ___ (MEP-2).

3
4 **Q. What is the significance of the [REDACTED] date for FERC approval of the**
5 **Osprey Plant acquisition?**

6 A. This deadline for FERC approval was established because DEF must recommence the
7 Suwannee Project by [REDACTED] to place that Project in commercial service to meet
8 DEF's remaining summer peak load requirements in 2017. This requirement to
9 recommence the Suwannee Project is further explained in the direct testimony of Mr.
10 Mark Landseidel and Mr. Benjamin Borsch. As a result, [REDACTED] represents the
11 date by which DEF can meet its remaining need for additional generation capacity prior
12 to 2018 by generation resources other than the acquisition of the Osprey Plant, if the
13 regulatory approvals for DEF's acquisition of that Plant are not obtained. DEF,
14 accordingly, preserved for its customers the benefits of this alternative generation
15 resource to meet its remaining need for additional generation capacity prior to 2018 in the
16 event that DEF did not obtain the required regulatory approvals for the Osprey Plant
17 acquisition.

18
19 **Q. What is the next regulatory approval that must be obtained before DEF can acquire**
20 **the Osprey Plant?**

21 A. DEF's acquisition of the Osprey Plant is also conditioned upon approval [REDACTED]
22 [REDACTED] by the Department of Justice ("DOJ") under the Hart
23 Scott Rodino ("HSR") Act. The APA obligates the parties to make two filings with the

1 DOJ to obtain HSR approval. The initial filing must be made in 2015 and the subsequent
2 filing must be made no later than March 31, 2016.

3
4 **Q. Why must the parties make two HSR filings?**

5 A. If the DOJ approves the acquisition, that approval is only valid if the acquisition is closed
6 within one year of obtaining the approval. However, making the initial filing even
7 though the closing is not planned until January 2017 provides the parties both additional
8 certainty as to whether the acquisition will ultimately be approved, and the ability to
9 continue with the Suwannee Project by [REDACTED], if ultimate approval of the
10 acquisition is doubtful. The second filing, if warranted by the response to the initial
11 filing, will be made closer in time to the January 3, 2017 closing.

12
13 **Q. Regarding the [REDACTED] for both the FERC and HSR filings, how did
14 the parties address what is [REDACTED] in the APA?**

15 A. The term [REDACTED] is a defined term in Section 1.01 of
16 the APA. See Exhibit No. ___ (MEP-2). Basically, it means [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

1 Q. What is the significance of [REDACTED]

2 A. DEF negotiated [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED], the overall acquisition of the

8 Osprey Plant remains the most cost effective alternative. The overall cost effectiveness of

9 the Osprey Plant acquisition is further explained in Mr. Borsch's testimony.

10

11 Q. What is the other regulatory approval that must be obtained before DEF can
12 acquire the Osprey plant?

13 A. DEF must obtain approval from the FPSC to move forward with this acquisition.

14

15 Q. What happens under the APA if DEF does not obtain the required regulatory
16 approvals to acquire the Osprey Plant?

17 A. DEF has [REDACTED] if any of the regulatory approvals are not

18 obtained. If FERC does not approve the acquisition by [REDACTED]

19 [REDACTED]

20 [REDACTED]. The PPA with Calpine would

21 continue through January 2, 2017, and DEF would resume the Suwannee Project. The

22 Suwannee Project is described by Mr. Landseidel in his direct testimony in this

23 proceeding.

1 Q. Why must Calpine only [REDACTED]

2 [REDACTED]

3 A. When Calpine and DEF began negotiations for this acquisition, the parties recognized
4 that obtaining [REDACTED]

5 This is described in more detail in the exhibits to Mr. Borsch's direct testimony in this
6 proceeding. [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11
12 C. DUE DILIGENCE RIGHTS.

13 Q. Did DEF complete any due diligence between the execution of the term sheet and the
14 APA?

15 A. Yes. DEF and Calpine provided for a due diligence period for DEF to assess and
16 evaluate the condition of the Plant, the operation and maintenance conditions and
17 requirements, environmental, water, and other site related permits and permit
18 requirements for continued operation of the Plant, and complete regulatory and financial
19 assessments associated with the Plant acquisition by DEF. Due diligence is a reasonable,
20 utility standard practice prior to any power plant acquisition and it is a necessary step in
21 the acquisition process to develop the terms and conditions of the final purchase
22 agreement. DEF and Calpine cooperated in the due diligence process for the Osprey
23 Plant acquisition between September and December 2014. This due diligence process

1 and the results of DEF's due diligence for the Osprey Plant acquisition are described in
2 more detail in the direct testimony of Mr. Kris Edmondson in this proceeding.

3
4 **Q. What due diligence rights did DEF negotiate in the APA?**

5 A. Because the closing will not occur until early 2017, DEF and Calpine negotiated for
6 continued due diligence to ensure that the Osprey Plant remains in a condition that is
7 similar to its current condition, normal wear and tear excepted. DEF and Calpine agreed

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 [REDACTED] Those terms and conditions are contained in Section 5.06 of my Exhibit
16 No. __ (MEP-2).

17
18 **Q. Why are these due diligence rights necessary?**

19 A. DEF has determined that the Osprey Plant acquisition is beneficial to DEF's customers if,
20 of course, DEF receives the materially same Plant in two years that DEF evaluated in its
21 initial due diligence review and cost effectiveness analysis leading to the APA for the
22 Plant. [REDACTED]

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[REDACTED]

D. PROTECTION AND SECURITY FOR DEF'S CUSTOMERS.

Q. Does the APA contain any terms to ensure that DEF's customers retain the value of the Osprey acquisition?

A. Yes, there are several such provisions. First, as described above, DEF negotiated reasonable terms to protect the condition of the asset between the APA execution and the closing. In addition, because DEF has agreed to acquire the Osprey Plant in the future, subject to obtaining the required governmental or regulatory approvals, DEF and Calpine agreed that DEF [REDACTED]

[REDACTED]

Q. How does the APA ensure that Calpine will meet its financial obligations under the APA?

A. [REDACTED]

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[REDACTED]

Q. What protections does the APA contain to ensure that DEF, and its customers, are held harmless with respect to [REDACTED]

A. [REDACTED]

E. CONTINUITY OF OPERATIONS.

Q. Are there any terms in the APA to ensure that the Osprey Plant will continue to be run in a prudent manner between now and the closing?

1 A. Yes. First, Calpine is obligated to operate the Plant consistent with good utility practice
 2 and in material compliance with all applicable laws, regulations, orders, and permits. In
 3 addition to the due diligence process explained above, [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED] Those
 7 provisions are contained in Section 5.02(a) and Section 5.06(c) of the Purchaser
 8 Disclosure Schedule. See Exhibit No. __ (MEP-2).

9
 10 **Q. What will happen to the employees currently working at the Osprey Plant?**

11 A. DEF and Calpine recognized that it is essential to ensure that Calpine’s employees
 12 remain engaged to prudently and safely operate the Osprey Plant between now and the
 13 closing. Accordingly, the parties negotiated terms [REDACTED]
 14 [REDACTED]
 15 [REDACTED] Those provisions are contained in Section 5.07 of Exhibit
 16 No. __ (MEP-2).

17
 18 **V. NEXT STEPS.**

19 **Q. What are the next steps to implement the APA?**

20 A. One step is occurring now, with DEF’s Petition for FPSC approval of the Osprey Plant
 21 acquisition as a cost effective generation resource to meet DEF’s remaining need for
 22 generation prior to 2018. Likewise, the parties have or soon will file an application for
 23 FERC approval of the acquisition and notification of the Plant acquisition with the DOJ

1 pursuant to the HSR Act. Thus, the parties have or soon will complete the petitions or
2 applications for the requisite governmental or regulatory approvals of the Osprey Plant
3 acquisition pursuant to the terms of the APA. With respect to this filing, DEF has
4 provided the Commission with the information it needs to approve DEF's Petition to
5 determine that the Osprey Plant acquisition is a cost effective generation resource, with
6 the Suwannee Project as a reasonable alternative if buying the Osprey Plant is not
7 approved, to meet DEF's remaining need for additional generation capacity prior to 2018.
8

9 **VI. CONCLUSION.**

10 **Q. Is the APA between DEF and Calpine a reasonable agreement for DEF's acquisition**
11 **of the Osprey Plant for the benefit of DEF's customers?**

12 A. Yes. DEF determined based on the term sheet between Calpine and DEF that the
13 potential acquisition of the Osprey Plant was cost effective for DEF's customers. DEF
14 confirmed this assessment in its due diligence review leading up to the APA. The APA
15 terms and conditions reasonably preserve the benefits of the potential acquisition of the
16 Osprey Plant for DEF's customers if the requisite governmental and regulatory approvals
17 are obtained and the Plant is ultimately acquired.
18

19 **Q. Does this conclude your testimony?**

20 A. Yes, it does.



CALPINE CORPORATION

Docket No. _____
Duke Energy Florida
Exhibit No. ____ (MEP-1)
Page 1 of 5

Confidential

August 25, 2014

REDACTED

Att: John Burnett, Deputy General Counsel
Duke Energy Florida
299 First Avenue North
St. Petersburg, FL 33701
(727) 820-5184

Via e mail: John.Burnett@Duke.energy.com

Re: Calpine Revised PPA and Acquisition Term Sheet

Dear Mr. Burnett,

In this Term Sheet, Calpine Corporation ("Calpine") is pleased to present a revised proposal for a Power Purchase Agreement ("PPA") and asset acquisition by Duke Energy Florida ("Duke") of the Osprey Energy Center ("Osprey" or "Osprey Facility"), a 599 MW natural gas-fired, combined-cycle generating facility located in Auburndale, Florida. We believe the proposed deal structure set forth below addresses both Duke's and Calpine's concerns that we have articulated and discussed, allows Duke to acquire Osprey at an attractive price, and protects Duke's customers from additional costs if the necessary regulatory approvals are not obtained in a timely fashion.

Deal Structure:

- 2 year PPA beginning January 1, 2015 followed by Duke acquisition of the facility in December 2016 (after FERC approval), or a 27-month PPA beginning October 1, 2014, with capacity payments adjusted to produce the same net present value of capacity payments under the 27-month PPA as under the 2-year PPA described in the attached Schedule A. The PPA will also include a one-time extension option, exercisable by Duke in its sole discretion, to extend the PPA term from January 1, 2017 through December 31, 2019,
- Duke will file for approval of the acquisition at FERC on a date that is mutually agreeable to Duke and Calpine, but no later than January 31, 2015. Duke will use its best efforts to aggressively and diligently pursue FERC approval, and Calpine and Duke will cooperate and coordinate fully with respect to Duke's efforts to obtain FERC approval.
- If approved by FERC, Duke agrees to acquire Osprey for \$166 million (nominal dollars) at closing. At closing, Calpine will reimburse Duke for [REDACTED] in sunk costs associated with Duke's development efforts on the Suwannee Peak Project. (Schedule B summarizes the key terms of the Osprey acquisition transaction.)
- If FERC rejects the acquisition, or [REDACTED], or fails to issue an order by [REDACTED], Calpine will pay Duke a one-time breakage fee of [REDACTED].
- [REDACTED]

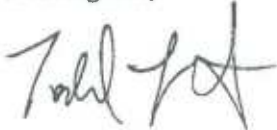
**** Confidentiality.** *The consummation of any transaction is expressly conditioned upon the negotiation and execution of definitive agreements and the receipt of necessary corporate and regulatory approvals. This Term Sheet is being delivered to you on the understanding and on the condition that its existence and its content will be treated in a strictly confidential manner and will not be disclosed to any person or entity other than Duke and its advisors, unless such disclosure is otherwise mutually agreed to by Duke and Calpine. Specifically, neither this Term Sheet nor its contents may be referenced or introduced in any proceeding before the Florida Public Service Commission unless expressly agreed to in writing by Duke and Calpine. ***

REDACTED

- Calpine and Duke will share the actual costs of the FERC Section 203 filing equally.
- The definitive agreements will include terms and conditions that are standard for transactions of this type, including (without limitation) appropriate opportunities for Duke to perform a "walk-down" or "due diligence" inspection of the Osprey Facility before the definitive agreements are executed, and appropriate and satisfactory assurances to Duke that Calpine will properly maintain the Osprey Facility in accordance with good utility practice, and that Calpine will deliver the Osprey Facility to Duke in as good condition at closing as it is at the time of Duke's walk-down inspection. If the "walk-down" or "due diligence" inspection reveals a material adverse condition, i.e., a condition that would require material expenditures to remedy, then Calpine will either fix such condition, or Calpine may terminate negotiations without executing the definitive agreements contemplated hereby.
- Calpine's financial commitments (including, without limitation, Calpine's obligations to pay the breakage fee and to perform its obligations [REDACTED] will be backed by a parent guaranty of Calpine Corporation.
- Abeyance of Proceedings Regarding Suwannee Peak Project: Upon acceptance of this Term Sheet by Duke and Calpine, Duke will file, and Calpine will support, a motion for abeyance or abatement of the proceedings in Florida PSC Docket No. 140111-EI as those proceedings relate to Duke's proposed Suwannee Peak Project. The motion will include Duke's and Calpine's stipulation that their witnesses' testimony and exhibits may be entered into the record of PSC Docket No. 140111-EI and PSC Docket No. 140110-EI, but will request that any substantive hearings regarding the Suwannee Peak Project in Docket No. 140111-EI be deferred to future dates, in order to provide Duke and Calpine the opportunity to complete the negotiation and execution of the definitive agreements contemplated in this Term Sheet.
- Exclusivity. For the period commencing on the date hereof and ending on the earlier of [REDACTED] the date of an adverse decision from FERC regarding the acquisition (i.e., either FERC rejection of the proposed acquisition, or FERC [REDACTED] (i) Calpine will not, and will cause its subsidiaries and its and their respective directors, officers, employees, agents and advisors (collectively, "Representatives") not to, take any action to, directly or indirectly, encourage, initiate, solicit, substantively respond to or engage in any discussions or negotiations with, or provide any information to, any entity or person other than Duke and its Representatives concerning any transaction similar to the transaction contemplated by this Term Sheet; and (ii) Duke agrees to work exclusively with Calpine to negotiate definitive documentation on the basis of this Term Sheet, and will not, and will cause its Representatives not to, during such period, engage in discussions or negotiations with any other entity or person in respect of the transaction contemplated by this Term Sheet, or any transaction similar to, or that would displace, the acquisition of the Osprey Facility contemplated by this Term Sheet.

The foregoing terms relating to confidentiality and exclusivity are binding as of the execution of this Term Sheet. The definitive transaction documents, if any, will include the specific numeric values regarding price for the Osprey Facility, reimbursement of certain costs to Duke, term and pricing under the PPA, and the breakage fee. Calpine is prepared to fully cooperate with Duke toward the expeditious completion of Duke's due diligence inspection of the Osprey Facility and the prompt negotiation of the definitive transaction agreements.

Best regards,



Todd Thornton
Senior Vice President, Calpine Corporation

Accepted for Duke Energy Florida by:



R. Alexander Glenn, President
Duke Energy Florida, Inc.

REDACTED

Schedule A

PPA Terms

Buyer: Duke Energy Florida ("Duke")

Seller: [TBD] ("Calpine")

Facility: Osprey Energy Center ("Osprey" or the "Osprey Facility")

Product: Capacity and Energy Tolling Agreement

Duke would provide all fuel, including start and test fuel, to the Facility and Calpine will toll the fuel into energy at the rate requested by Duke.

Term: January 1, 2015 – December 31, 2016 (or October 1, 2014 – December 31, 2016)*, plus a one-time extension option, exercisable by Duke in its sole discretion, to extend the PPA term through December 31, 2019, with Capacity Payments for the 2017-2019 Option Period as shown below.

Contract Capacity: 515 MW at Summer Reference Conditions

Energy Delivery Point: 249 MW delivered at Duke under Seller's firm transmission agreement described below. Remainder delivered at the Facility Bus-bar

Heat Rate: [REDACTED] Btu/kWh at the Contract Capacity with a +/-2% dead-band Conditions

Capacity Payment: \$ [REDACTED] /kW-month* 2015
\$ [REDACTED] /kW-month* 2016

Option Period: \$ [REDACTED] /kW-month 2017
\$ [REDACTED] /kW-month 2018
\$ [REDACTED] /kW-month 2019

Variable O&M: \$ [REDACTED] MWh for every MWh delivered in 2015\$, escalating each contract year at GDP-IPD

Start Charges: \$ [REDACTED] per combustion-turbine per start in 2015\$, escalating each contract year at GDP-IPD

Gas Capacity Release: Seller shall assign its firm gas transportation contract on Gulfstream to Buyer in the quantity of [REDACTED] MMBtu per day at a cost of \$ [REDACTED] /MMBtu per day.

* If Duke and Calpine agree to the initial PPA term being October 1, 2014 – December 31, 2016, the Capacity Payments for that term (i.e., through December 31, 2016) will be adjusted so that the Net Present Value of the Capacity Payments under the 27-month PPA is equal to the NPV of the Capacity Payments under the 24-month PPA set forth above, with discounting at Duke's current approved discount rate of 6.46%.

REDACTED

Availability
Guarantee:

█% Summer (June – August)
█% Winter (September – May) excluding planned maintenance outages
and excused events.

Failure to maintain this availability during any month will result in a
Capacity Payment reduction of one percent (1%) for each percentage point
the actual availability is below the Availability Guarantee.

Scheduling:

Duke will provide good-faith day-ahead forecast by 10:00 a.m. Eastern Prevailing Time
on the business day prior to delivery. Schedule revisions will be accommodated on an
intra-day basis provided the initial schedule revision is made four (4) hours prior to the
start of any daily schedule. Schedule revisions made with less than a four (4) hour
notice will be accommodated according to operating or permit constraints.

Schedules will be limited to █ per turbine per day for a minimum of
█ consecutive hours per turbine start with a minimum downtime of
█ hours.

Dispatch:

Duke will have the right to dispatch the Facility over its full range from
minimum load to full output, within permit and technical limitations. The
Facility will have Automatic Generator Control (“AGC”) capability to
allow Duke to dynamically control the output level.

Minimum Load:

█ MW (in 1x1 operation), based on the physical limitations of the
equipment, environmental permits, and ambient conditions.

Transmission:

Seller currently holds 249 MW of Firm point-to-point transmission from
the Facility across TECO to Duke, with rollover rights. Per our
discussions, at this time no additional transmission will be requested.

Environmental
Change in Law:

Full pass through of all change in law costs

REDACTED
Schedule B

Asset Acquisition and Turbine Sale/Cancellation Provisions:

Buyer: Duke Energy Florida ("Duke")

Seller: [TBD] ("Calpine")

Facility: Osprey Energy Center ("Osprey" or the "Osprey Facility")

Purchase Price: \$166,000,000 (sale of Osprey Facility either through the sale of assets comprising the facility or sale of 100% of the membership interest in Osprey Energy Center, LLC for a cash purchase on a debt-free, working capital-free, cash-free and capital spare parts-free basis)

Gas Capacity Release: Seller shall assign its firm gas transportation contract on Gulfstream to Buyer in the quantity of [REDACTED] MMBtu per day (present rate is \$ [REDACTED]/MMBtu per day).

Transmission: Seller currently holds 249 MW of Firm point-to-point transmission from the Facility across TECO to Duke, with rollover rights; Seller will assign its transmission contract and rights to Buyer. [REDACTED]

Breakage Fee: If FERC rejects the acquisition, or [REDACTED] Calpine will pay Duke a one-time breakage fee of \$ [REDACTED]

FERC Filing: Duke will file for approval of the acquisition at FERC on or before January 31, 2015.

Transaction Close: December 31, 2016

[REDACTED]: [REDACTED]

FIRST AMENDMENT TO ASSET PURCHASE AND SALE AGREEMENT

THIS FIRST AMENDMENT TO ASSET PURCHASE AND SALE AGREEMENT (this "**Amendment**") is entered into this 29th day of January, 2015, by and between **DUKE ENERGY FLORIDA, INC.**, a Florida corporation ("**Purchaser**"), and **OSPREY ENERGY CENTER, LLC**, a Delaware limited liability company ("**Seller**").

WHEREAS, Purchaser and Seller entered into that certain Asset Purchase and Sale Agreement dated December 17, 2014 (the "**Asset Purchase and Sale Agreement**"), pursuant to which Seller has agreed to convey to Purchaser the Purchased Assets and Purchaser has agreed to assume from Seller, and covenant to pay, perform and discharge, the Assumed Liabilities (all capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed to such terms in the Asset Purchase and Sale Agreement);

WHEREAS, the parties wish to amend the Asset Purchase and Sale Agreement and the schedules thereto.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and in the Asset Purchase and Sale Agreement, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. **Amendment to Article I of the Asset Purchase and Sale Agreement.** The parties wish to amend Article I of the Asset Purchase and Sale Agreement so that the reference to "**Section 3.21(b)**" in the definition of "APEC" is hereby deleted and replaced with a reference to "**Section 3.20(b)**".

2. **Amendments to the Asset Purchase and Sale Agreement.** The Asset Purchase and Sale Agreement is hereby amended as follows: (a) the reference to "January 30, 2015" in **Section 5.04(b)(i)** is hereby deleted and replaced with a reference to "March 9, 2015", (b) the reference to "**Section 9.01(b)(v)**" in **Section 5.04(b)(i)** is hereby deleted and replaced with a reference to "**Section 9.01(b)(iv)**", and (c) in the event that the Tolling Agreement has been extended beyond the Closing Date, the Tolling Agreement shall be deleted from **Section 2.02(d) of the Seller Disclosure Schedules** and, for purposes of clarity, shall be deemed a Purchased Contract.

3. **Counterparts; Facsimile Signatures.** This Amendment may be executed in more than one counterpart and may be executed by facsimile or other electronic signature and shall be binding upon the parties hereto and their respective successors, assigns, heirs, personal representatives and executors.

4. **Asset Purchase and Sale Agreement Confirmed.** Except as provided in this Amendment, the Asset Purchase and Sale Agreement is hereby confirmed and shall continue in full force and effect.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the date first written above.

DUKE ENERGY FLORIDA, INC.

By: BDS
Name: BRIAN D SAVOY
Title: SVP, CHIEF ACCT OFFICER + CONTROLLER

OSPREY ENERGY CENTER, LLC

By: W Thaddeus Miller 500
Name: W. Thaddeus Miller
Title: Chief Legal Officer

REDACTED

EXECUTION COPY
Docket No. _____
Duke Energy Florida
Exhibit No. ____ (MEP-2)
Page 3 of 167

ASSET PURCHASE AND SALE AGREEMENT

by and between

DUKE ENERGY FLORIDA, INC.,

as Purchaser

and

OSPREY ENERGY CENTER, LLC,

as Seller

**Dated as of
December 17, 2014**

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EXHIBITS

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EXHIBIT A-2 Assignment and Assumption Agreement (CES)
EXHIBIT B Bill of Sale
EXHIBIT C Deed
EXHIBIT D Escrow Agreement
EXHIBIT E Indemnification Letter of Credit

ASSET PURCHASE AND SALE AGREEMENT

This ASSET PURCHASE AND SALE AGREEMENT is made as of December 17, 2014 (together with all annexes, schedules and exhibits attached hereto or delivered in connection herewith, this "Agreement") by and between Duke Energy Florida, Inc., a Florida corporation ("Purchaser"), and Osprey Energy Center, LLC, a Delaware limited liability company ("Seller" or "Company").

WITNESSETH:

WHEREAS, Seller owns and operates a natural gas-fired combined-cycle generating facility in Auburndale, Florida (the "Project");

WHEREAS, Seller desires to sell, and Purchaser desires to purchase, all of Seller's right, title and interest in and to the Project and certain properties and assets associated therewith or ancillary thereto, on the terms and subject to the conditions set forth in this Agreement;

WHEREAS, concurrently herewith, Duke Energy Corporation, a Delaware corporation ("DEC"), has executed and delivered to Seller a guaranty, dated as of the date hereof, pursuant to which DEC has guaranteed the payment obligations of Purchaser hereunder (the "Parent Guaranty"); and

WHEREAS, concurrently herewith, Calpine Corporation, a Delaware corporation ("Calpine"), has executed and delivered to Purchaser a guaranty, dated as of the date hereof, pursuant to which Calpine Corporation has guaranteed the payment obligations of Seller hereunder (the "Calpine Guaranty").

WHEREAS, on December 5, 2014, 

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Purchaser and Seller agree as follows:

ARTICLE I**DEFINITIONS**

Section 1.01 Definitions. As used in this Agreement, the following defined terms have the meanings indicated below:

“Actions or Proceedings” means any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, commercial, labor, criminal, administrative, investigative or informal) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental or Regulatory Authority or arbitrator.

“Affiliate” means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Person specified. For purposes of this definition, “control” of a Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person whether through ownership of voting securities or ownership interests, by Contract or otherwise, and specifically with respect to a corporation, partnership or limited liability company, means direct or indirect ownership of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person.

“Agreement” has the meaning ascribed thereto in the preamble to this Agreement.

“Ancillary Agreements” means (i) the Bill of Sale, (ii) the Deed, (iii) the Assignment and Assumption Agreement, (iv) the Assignment and Assumption Agreement (CES), (v) the Parent Guaranty, (vi) the Calpine Guaranty, (vii) the Escrow Agreement, and (viii) any additional agreements, instruments of sale, transfer, conveyance, assignment and assumption or other documents that may be executed and delivered by any party hereto or any Affiliate thereof at or in connection with the Closing, if any.

“APEC” has the meaning ascribed thereto in Section 3.21(b).

“Apportioned Obligations” has the meaning ascribed thereto in Section 5.05(a).

[REDACTED]

“Assignment and Assumption Agreement” means the Assignment and Assumption Agreement, substantially in the form of Exhibit A-1, to be executed and delivered by Seller and Purchaser at the Closing.

“Assignment and Assumption Agreement (CES)” means the Assignment and Assumption Agreement, substantially in the form of Exhibit A-2, to be executed and delivered by Calpine Energy Services, L.P., a Delaware limited liability partnership, and Purchaser at the Closing.

“Assumed Liabilities” has the meaning ascribed thereto in Section 2.03.

“Base Purchase Price” has the meaning ascribed thereto in Section 2.06(a).

“Benefit Plan” means each employee benefit plan, within the meaning of Section 3(3) of ERISA, and each other plan, program, policy, agreement or arrangement relating to compensation, employee benefits (including fringe benefits), severance, employment, vacation, incentive compensation or bonus compensation, in each case that is sponsored, maintained or contributed to or required to be sponsored, maintained or contributed to by, or otherwise covering Seller or any of its Affiliates or the Operator or any of its Affiliates, or to which Seller or any of its Affiliates or the Operator or any of its Affiliates is a party, in each case for the benefit of any Facility Employee.

“Bill of Sale” means a Bill of Sale, substantially in the form of Exhibit B, to be executed and delivered by Seller at the Closing.

“Books and Records” means all files, documents, instruments, papers, books, reports, records, drawings, tapes, microfilms, photographs, letters, budgets, ledgers, journals, title policies, supplier lists, change order logs, regulatory filings, startup and commissioning documentation, vendor and OEM reports, operating data and plans, design and technical documentation (design specifications, functional requirements, operating instructions, logic manuals, flow charts, etc.), plant construction records (including asset and component purchase agreements), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), critical infrastructure protocol (CIP) records and controls, internal and external correspondence, accounting records (excluding any general ledgers, accounts payable records or financial statements) and other documents primarily relating to the operation of the Project, and other similar materials that, in all such cases, are primarily related to the Project, the Project Site, the Purchased Assets or the Business in whatever form (including material electronic files), but excluding materials relating primarily to this transaction, market and similar forecast information and the Excluded Books and Records.

“Business” means the business, as currently conducted, of owning, operating and maintaining the Project, procuring fuel and generating, selling, transmitting and delivering electric energy from the Project.

“Business Day” means a day other than Saturday, Sunday or any day on which banks located in New York, New York are authorized or obligated to close.

“Calpine” has the meaning ascribed thereto in the recitals.

“Calpine Guaranty” has the meaning ascribed thereto in the recitals.

“Claim Amount” has the meaning ascribed thereto in Section 8.08(b).

“Claiming Party” has the meaning ascribed thereto in Section 8.05(b).

“Closing” has the meaning ascribed thereto in Section 2.05.

“Closing Date” means (a) January 3, 2017, or (b) such other date as Purchaser and Seller may mutually agree.

“Closing Payment” has the meaning ascribed thereto in Section 2.06(a).

“Code” means the Internal Revenue Code of 1986, as may be amended, modified, supplemented or replaced from time to time, and the rules and regulations promulgated thereunder.

“Company” has the meaning ascribed thereto in the preamble to this Agreement.

“Company Contracts” has the meaning ascribed thereto in Section 3.13(a).

“Confidentiality Agreement” means that certain Confidentiality Agreement, dated October 11, 2013, by and between Calpine and DEC.

“Contract” means any contract, agreement, lease, license, evidence of Indebtedness, mortgage, indenture, security agreement or other legally binding arrangement (whether oral or written and whether express or implied).

“Controlled Group Liability” means any and all liabilities (i) under Title IV of ERISA, (ii) under Section 302, 303 or 4068(a) of ERISA, (iii) under Section 412, 430 or 4971 of the Code or (iv) for violation of the continuation coverage requirements of Sections 601 et seq. of ERISA and Section 4980B of the Code or the group health requirements of Sections 701 et seq. of ERISA and Sections 9801 et seq. of the Code, in the case of each of the foregoing clauses (i) through (iv), with respect to any ERISA Affiliate.

“Credit Support Obligations” has the meaning ascribed thereto in Section 5.10(a).

“DEC” has the meaning ascribed thereto in the recitals.

“Deductible Amount” has the meaning ascribed thereto in Section 8.02(b).

“Deed” means the Special Warranty Deed, substantially in the form of Exhibit C, to be executed and delivered by Seller at the Closing.

“DOJ” has the meaning ascribed thereto in Section 5.04(b).

“Effective Date” means the date set forth in the first paragraph of this Agreement.

“Emission Allowances” means all environmental credits, offsets and allowances issued under the federal Clean Air Act (42 U.S.C. § 7401 et seq.), any applicable emission budget programs, or any other state, regional or federal emission trading program.

“Environmental Auditor” has the meaning ascribed thereto in Section 5.01.

“Environmental Claim” means any actual or threatened in writing Action or Proceeding, Order, directive, citation, demand, request for information, Lien which is not a Permitted Lien, notice of Liability or notice of regulatory requirement made, presented, sought or alleged by any Person and that (a) relates to or arises out of events, acts, omissions or conditions on or prior to the Closing, (b) relates to the Real Property, the Business, the Project Site or the Purchased Assets or the use, ownership or operation thereof, and (c) arises under or relates to any Environmental Law.

“Environmental Laws” means all applicable foreign, federal, state and local Laws, including rules of common law, and Orders with respect to pollution, preservation, or protection of the environment, natural resources or health and safety and shall include, without limitation, the Solid Waste Disposal Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq. (“CERCLA”), as amended by the Superfund Amendments and Reauthorization Act of 1986; The Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Clean Water Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.; The Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.; and foreign, state and local analogs.

“Environmental Permits” has the meaning ascribed thereto in Section 3.17(b).

“ERISA” means the Employee Retirement Income Security Act of 1974, as may be amended, modified, supplemented or replaced from time to time.

“ERISA Affiliate” means any Person with whom the Company or the Operator is or was treated as a single employer under Section 414(b), (c), (m) or (o) of the Code.

“Escrow Agent” has the meaning ascribed thereto in Section 2.06(b).

“Escrow Agreement” means the Escrow Agreement, substantially in the form of Exhibit D, to be executed and delivered by Seller, Purchaser and Escrow Agent at Closing.

“Excluded Assets” has the meaning ascribed thereto in Section 2.02.

“Excluded Books and Records” has the meaning ascribed thereto in Section 2.02(e).

“Excluded Contracts” has the meaning ascribed thereto in Section 2.02(d).

“Excluded Governmental and Regulatory Approvals” has the meaning ascribed thereto in Section 2.02(i).

“Excluded Intellectual Property” has the meaning ascribed thereto in Section 2.02(j).

“Excluded Liabilities” has the meaning ascribed thereto in Section 2.04.

“Existing FPSC Docket” means FPSC Docket No. 140111-EI.

“Facility Employees” means the employees of the Operator or its Affiliates (including employees on vacation or leave of absence) who exclusively or primarily provide services to or for the Project, each of whom, as of the date hereof, is listed on Section 1.01(c) of the Seller Disclosure Schedule and which Schedule shall be updated on the last day of each calendar month by Seller prior to the Closing, and as of the Closing Date.

“FERC” means the Federal Energy Regulatory Commission.

“FERC Approval Order” means an Order issued by FERC under Section 203 of the Federal Power Act that approves the transactions contemplated hereby [REDACTED]

“FERC Mitigation Order” means an Order issued by FERC under Section 203 of the FPA that subjects approval of the transactions contemplated hereby [REDACTED]

“FPA” means the Federal Power Act.

“FPSC” means the Florida Public Service Commission.

“FRCC” means Florida Reliability Coordinating Council, Inc.

“Financial Statements” has the meaning ascribed thereto in Section 3.05.

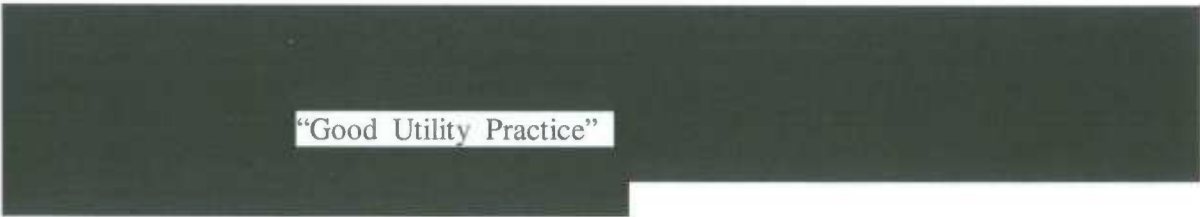
“FTC” has the meaning ascribed thereto in Section 5.04(b).

“Fundamental Representations” has the meaning ascribed thereto in Section 8.01.

“GAAP” means generally accepted accounting principles in the United States, consistently applied throughout the specified period.

[REDACTED]

“Good Utility Practices” [REDACTED]



“Good Utility Practice”

“Governmental or Regulatory Approval” means any authorization, consent, approval, ruling, tariff, rate, certification, waiver, exemption, filing, variance, Permit or Order of, or any notice to or registration by or with, any Governmental or Regulatory Authority.

“Governmental or Regulatory Authority” means any federal, state, local or foreign government or subdivision thereof or any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any governmental authority, agency, department, board, commission or instrumentality of the United States, including FERC, the Federal Communications Commission, the North American Electric Reliability Corporation and any of its regional entities, FRCC, FPSC, NERC, any state of the United States or any political subdivision thereof, and any tribunal, court or arbitrator(s) of competent jurisdiction.

“Hazardous Substance” means any: (a) petrochemical or petroleum products, oil, coal ash, fly ash or bottom ash, coal combustion byproducts, pesticides, insecticides, fungicides, rodenticides, radioactive materials, radon gas, asbestos or asbestos-containing material, polychlorinated biphenyls, lead-based paint, urea formaldehyde foam insulation flammable or explosive materials, mold, biohazardous materials or waste, natural or synthetic gas, or silica; (b) chemicals, materials, substances, wastes, compounds, mixtures or by-products, whether solid, liquid or gaseous, that are identified, listed, defined, designated, restricted, prohibited or otherwise regulated as or included in the definition of “hazardous substances,” “hazardous materials,” “hazardous constituents,” “hazardous wastes,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “regulated substances,” “solid waste,” “sludge,” “toxic pollutants,” “toxic air pollutants,” “restricted hazardous materials,” “extremely hazardous substances,” “hazardous air pollutants,” “dangerous or toxic substances,” “chemical wastes,” “special wastes,” “pollutants,” “contaminants” or words of similar meaning and regulatory effect under any Environmental Law; and (c) other chemicals, materials, substances, wastes, compounds, mixtures or by-products (in each case, whether solid, liquid or gaseous), the exposure to, or treatment, storage, transportation, disposal or release, of which is prohibited, limited or regulated by any Environmental Law.

“Hired Employee” has the meaning ascribed thereto in Section 5.07(b).

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as may be amended, modified, supplemented or replaced from time to time, and the rules and regulations promulgated thereunder.



“Indebtedness” of any Person means, without duplication, any and all liabilities and obligations of such Person (a) for borrowed money or indebtedness issued or incurred in

substitution or exchange for indebtedness for borrowed money, (b) evidenced by notes, bonds, debentures, mortgages or other debt instruments, debt securities or other similar instruments, (c) under capital leases or similar arrangements, and (d) in the nature of guarantees of the obligations described in clauses (a) through (c) above of any other Person or that is recourse to such Person or any of its assets.

“Indemnification Letter of Credit” has the meaning ascribed thereto in Section 8.09.

“Indemnification LOC Issuing Bank” has the meaning ascribed thereto in Section 8.09.

“Indemnity Escrow Account” has the meaning ascribed thereto in Section 2.06(b).

“Indemnity Escrow Amount” has the meaning ascribed thereto in Section 2.06(a).

“Indemnity Escrow Fund” has the meaning ascribed thereto in Section 2.06(a).

“Indemnity Escrow Period” has the meaning ascribed thereto in Section 2.06(b).

██

“Initial HSR” has the meaning ascribed thereto in Section 5.04(b).

“Intellectual Property” has the meaning ascribed thereto in Section 3.12.

“Inventory” means any and all of the inventory items used for the Business including: capital spare parts, consumables; lubricants, chemicals, fluids, lubricating oils, filters, fittings, connectors, seals, gaskets, hardware, wire and other similar materials; maintenance, shop and office supplies; and tools (excluding any specialty tooling) or similar equipment; and similar items of moveable property located or held for use at the Project Site.

“Knowledge of Purchaser” means the knowledge of those Persons listed in Section 1.01(a) of the Purchaser Disclosure Schedule, in each case after reasonable inquiry.

“Knowledge of Seller” means the knowledge of those Persons listed in Section 1.01(b) of the Seller Disclosure Schedule, in each case after reasonable inquiry.

“Laws” means all laws, statutes, rules, regulations, ordinances, constitutions, codes, and other pronouncements having the effect of law of the United States or any state, county, city or other political subdivision thereof or of any Governmental or Regulatory Authority.

“Liabilities” means all Indebtedness, obligations, claims, costs, charges and other liabilities of a Person (whether absolute, accrued, contingent, determined, determinable, direct, fixed, indirect, matured or unmatured, or whether due or to become due), including those arising under any Law, Action or Proceeding or Order and those arising under any Contract or otherwise.

“Liens” means any mortgage, deed of trust, deed to secure debt, pledge, assessment, security interest, lease, lien, adverse claim, levy, charge, easement, restrictive covenant, option, right of way, encroachment, right of first refusal or other encumbrance, or any conditional sale contract, title retention contract or other contract to give any of the foregoing.

“LOC Fees” has the meaning ascribed thereto in Section 9.03(b).

“Loss” means any and all damages, fines, Taxes, penalties, deficiencies, losses and expenses (including without limitation interest, court costs, reasonable fees of attorneys, accountants and other experts), whether involving claims solely between the parties or by a third party against a party, and excluding any punitive, special, exemplary or remote damages (except for any such damages that are recovered by third-parties in connection with a Loss otherwise indemnified hereunder).

“Material Adverse Effect”

[REDACTED]

Effect”

“Material Adverse

[REDACTED]

“NERC” means the North American Electric Reliability Corporation.

“Operator” means Calpine Operating Services Company, Inc.

“Order” means any writ, judgment, order, decree, stipulation, determination, ruling, injunction or award issued, or otherwise put into effect by or under the authority of any court, administrative agency, or other Governmental or Regulatory Authority (in each such case whether preliminary or final) or any arbitrator.

“Other Losses” has the meaning ascribed thereto in Section 5.06(b).

“Overlap Period” means with respect to the Business, any taxable year or other period beginning on or before and ending after the Closing Date.

“Parent Guaranty” has the meaning ascribed thereto in the recitals.

“Permits” means all licenses, permits, certificates of authority, authorizations, approvals, registrations, franchises and similar authorizations granted by any Governmental or Regulatory Authority, including Permits required under Environmental Law.

“Permitted Liens” means (a) with respect to the Real Property: (i) any Lien for Taxes (x) which are not yet due and payable or (y) for the current year that are not yet delinquent or which are being contested in good faith, (ii) any statutory Lien or builders’, mechanics’, carriers’, workers’, warehousemens’, repairers’ and other similar liens and rights arising or incurred in the ordinary course of business for amounts not yet due or delinquent, (iii) all covenants, restrictions, conditions, easements, reservations, rights of way and other matters of record shown on the Title Commitment and all encumbrances and other matters disclosed on the Survey, (iv) zoning restrictions and other land use and environmental regulations by any Governmental or Regulatory Authorities as in effect on the date hereof, and any such restrictions and regulations not in effect on the date hereof which would not reasonably be expected to materially impair the value of the Property or the ability of Purchaser to use the Real Property in a manner consistent with Purchaser’s intended use of the Project for the generation, sale, transmission, and delivery of electric power following the Closing, as the Project exists as of the Effective Date and (v) any imperfection of title or other similar Lien not in effect on the date hereof which individually or in the aggregate with other such Liens would not reasonably be expected to materially impair the value of the Property or the ability of Purchaser to use the Real Property in a manner consistent with Purchaser’s intended use of the Project for the generation, sale, transmission, and delivery of electric power following the Closing, as the Project exists as of the Effective Date, and (vi) the Liens listed in Section 1.01(d)-1 of the Seller Disclosure Schedule, and (b) with respect to all Purchased Assets other than the Real Property: (i) any Lien for Taxes which are not yet due and payable or which are being contested in good faith, (ii) any statutory Lien or builders’, mechanics’, carriers’, workers’, warehousemens’, repairers’, and other similar liens and rights arising or incurred in the ordinary course of business for amounts not yet due or delinquent, (iii) any imperfection of title or similar Lien not in effect on the date hereof which individually or in the aggregate with other such Liens would not reasonably be expected to materially impair the

value of such asset or the ability of Purchaser to use such asset in a manner consistent with Purchaser's intended use of the Project for the generation, sale, transmission, and delivery of electric power following the Closing, as the Project exists as of the Effective Date, and (iv) the Liens listed in Section 1.01(d)-2 of the Seller Disclosure Schedule.

"Person" means any individual, corporation, company, voluntary association, partnership, joint venture, trust, limited liability company, other business or similar entity or Governmental or Regulatory Authority.

"Phase I Assessment" has the meaning ascribed thereto in Section 5.01.

"Post-Closing Tax Period" has the meaning ascribed thereto in Section 5.05(a).

"Pre-Closing Period" means all taxable years or other taxable periods that end on or before the Closing Date and, with respect to any Overlap Period, the portion of such Overlap Period ending on and including the Closing Date; provided that for purposes of this Agreement, anything occurring outside of the ordinary course of business on the Closing Date but after the Closing shall not be treated as occurring in a Pre-Closing Period.

"Project" has the meaning ascribed thereto in the recitals of this Agreement.

"Project Insurance Policies" has the meaning ascribed thereto in Section 3.16.

"Project Site" means the approximately 19.48 acre site upon which the Project is located in Polk County, Florida, as described in Section 3.10(a) of the Seller Disclosure Schedule.

"Project Software" means all Software that is used in the operation of the Business as presently conducted, or used in the operation, testing or maintenance of the Project.

[REDACTED]

"Property Reps" has the meaning ascribed thereto in Section 8.01.

"Purchase Price" means (i) the Base Purchase Price [REDACTED]

[REDACTED]

"Purchased Assets" has the meaning ascribed thereto in Section 2.01. "Purchased Contracts" has the meaning ascribed thereto in Section 2.01(d). "Purchaser" has the meaning ascribed thereto in the preamble to this Agreement.

“Purchaser Disclosure Schedule” has the meaning ascribed thereto in the introduction to Article IV.

[REDACTED]

“Purchaser Indemnified Parties” has the meaning ascribed thereto in Section 8.02(a)(i).

“Real Property” has the meaning ascribed thereto in Section 3.10.

“Representatives” means, as to any Person, its officers, directors, employees, agents, partners, members, stockholders, counsel, accountants, financial advisors, financing sources, engineers, consultants and other advisors.

“Responding Party” has the meaning ascribed thereto in Section 8.05(b).

“Retiree Benefits” has the meaning ascribed thereto in Section 3.15(e).

“Seller” has the meaning ascribed thereto in the preamble to this Agreement.

“Seller Disclosure Schedule” has the meaning ascribed thereto in the introduction to Article III of this Agreement.

“Seller Indemnified Parties” has the meaning ascribed thereto in Section 8.02(a)(ii).

“Seller’s Marks” has the meaning ascribed thereto in Section 5.14.

[REDACTED]

“Separation Plan” has the meaning ascribed thereto in Section 5.02(c).

“Software” means any and all computer programs, whether in source code or object code, databases, username and passwords and change logs and access privilege logs, and all related documentation.

“Survey” means that certain survey prepared by Chastain Skillman Incorporated, dated May 4, 2009, under Drawing No. ESS-7287.19A.

“Tangible Personal Property” means all machinery, mobile or otherwise, equipment, vehicles, pumps, fittings, tools, plant monitoring, relaying, detection and control systems and annunciators, operator and other programming devices, subsystem control systems, programmable logic controllers, wired and wireless network systems, fixed and mobile plant interfaces and diagnostic systems, computer hardware, laptop computers, tablets, smart pads, mobile computing devices, furniture or furnishings, meter equipment and other tangible personal property (other than Inventory) owned or leased or purchased by the Company for use or consumption primarily at the Project.

“Tax” means any and all federal, state, provincial, local, foreign and other taxes, levies, fees, imposts, duties, and similar governmental charges (including any interest, fines, assessments, penalties or additions to tax imposed in connection therewith or with respect thereto, and whether payable directly or by withholding and whether or not requiring the filing of a Tax Return) including (a) taxes imposed on, or measured by, income, franchise, profits or gross

receipts, and (b) ad valorem, value added, capital gains, sales, goods and services, use, real or personal property, capital stock, license, branch, payroll, estimated withholding, employment, social security (or similar), unemployment, compensation, utility, severance, production, excise, stamp, occupation, premium, windfall profits, payment or fee in lieu of taxes (or any similar obligation), transfer and gains taxes, and customs duties.

“Tax Purchase Price” has the meaning ascribed thereto in Section 2.08.

“Tax Return” means any return, report, information return, declaration, claim for refund, election, disclosure, estimate, or other document, together with all schedules, attachments, amendments and supplements thereto (including all related or supporting information), supplied to or required to be supplied to any Governmental or Regulatory Authority responsible for the administration of Taxes.

“Termination Date” has the meaning ascribed thereto in Section 9.01(b)(i).

[REDACTED]

“Third-Party Claim” has the meaning ascribed thereto in Section 8.05(b).

“Title Commitment” means that certain Title Commitment issued by Stewart Title Guaranty Company as File Number 2013021 with respect to the Project Site.

“Tolling Agreement” means that certain Tolling Agreement between Seller (as assignee of Calpine Construction Finance Company, L.P.) and Purchaser, dated September 30, 2014.

“Transfer Taxes” has the meaning ascribed thereto in Section 5.09.

“U.S. Dollars” means the lawful currency of the United States.

Section 1.02 Certain Principles of Interpretation. In this Agreement, unless otherwise indicated, all words defined in the singular have the corresponding meaning in the plural and vice versa; words importing any gender include the other gender; references to statutes or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; references to “writing” include printing, typing, lithography and other means of reproducing words in a tangible visible form; the words “including”, “includes” and “include” shall be deemed to be followed in each instance by the words “without limitation”; the words “shall” and “will” have the same meaning; references to articles, sections (or subdivisions of sections), exhibits, annexes or schedules are to articles, sections (or subdivisions of sections), exhibits, annexes or schedules of or to this Agreement; references to agreements and other contractual instruments shall be deemed to include all amendments, extensions and other modifications to such instruments (without, however, limiting any prohibition on any subsequent amendments, extensions and other modifications by the terms of this Agreement); references to Persons include their respective successors and permitted assigns and, in the case of Governmental or Regulatory Authorities, Persons succeeding to their respective functions and capacities; the phrase ordinary course of

business refers to the Business and the Project as currently conducted; and all accounting terms used herein and not expressly defined herein shall have the meanings given to them under GAAP.

ARTICLE II

PURCHASE AND SALE OF PURCHASED ASSETS; CLOSING

Section 2.01 Purchased Assets. Upon the terms and subject to the conditions contained in this Agreement, at the Closing, Seller shall sell, convey, grant, assign, transfer and deliver to Purchaser, and Purchaser shall purchase, acquire and accept title to and ownership from Seller, all of Seller's right, title and interest in and to the Project, the Project Site and assets, properties and rights, used in the Business as presently conducted, but in each case excluding all Excluded Assets (collectively, the "Purchased Assets"), with good title, free and clear of all Liens, other than Permitted Liens, including, without limitation:

- (a) All Real Property;
- (b) All Tangible Personal Property, except the Tangible Personal Property listed in Section 2.02(j) of the Seller Disclosure Schedule;
- (c) All specialty tooling associated with the Business;
- (d) All Company Contracts other than the Excluded Contracts, including any Contract entered into following the Effective Date that if in existence on the Effective Date would have been required to be disclosed on Section 3.13 of the Seller Disclosure Schedule, provided that such Contract was entered into in accordance with Section 5.03 and which Purchaser has expressly agreed to assume in writing (the "Purchased Contracts");
- (e) All Governmental and Regulatory Approvals primarily related or otherwise material to the Property, the Project, the Project Site, the Purchased Assets or the Business other than the Excluded Governmental and Regulatory Approvals;
- (f) All Books and Records;
- (g) All Emission Allowances and all rights to any future Emission Allowances, if any, that will be granted or allocated to be held in accounts maintained with respect to the Project or in the name of Seller (other than those Emission Allowances used in the ordinary course of operation of the Project consistent with past practice prior to the Closing);
- (h) All right, title, and interest of Seller, if any, in and to the name "Osprey Energy Center" except that Seller shall have the right after the Closing to retain the name "Osprey Energy Center" in the Excluded Books and Records;
- (i) All Intellectual Property, other than the Excluded Intellectual Property;
- (j) All unexpired warranties, indemnities, and guarantees made or given by manufacturers, overhaulers, assemblers, refurbishers, vendors, service providers and other comparable third parties to the extent relating to the Project, the Project Site or the Purchased Assets (but excluding those warranties, indemnities, and guarantees related to any Excluded

Assets), including the warranties and guarantees listed in Section 2.01(j) of the Seller Disclosure Schedule;

(k) All right, title, and interest of Seller in all Project Software and in all license, maintenance, support and escrow agreements pursuant to which Project Software is licensed for use by the Seller or for the Project or Business, excluding any such agreements as are Excluded Contracts; and

(l) All rights to any Actions or Proceedings of any nature available to or being pursued by Seller to the extent related to the Business, the Purchased Assets or the Assumed Liabilities, whether arising by way of counterclaim or otherwise, and whether known or unknown as of the date hereof or the Closing Date, but specifically excluding any such rights to Actions or Proceedings which are primarily related to Excluded Assets or Excluded Liabilities.

Section 2.02 Excluded Assets. Nothing in this Agreement shall constitute or be construed as conferring on Purchaser, and Purchaser shall not be entitled or required to purchase or acquire, and Seller shall not be required to sell, any right, title or interest in, to or under the following assets, interests, properties, rights, licenses, Permits or Contracts, whether real, personal, or mixed, whether accrued, contingent, or otherwise, and whether owned, leased, licensed or contracted for (collectively, the "Excluded Assets");

(a) All of Seller's cash, cash equivalents, bank deposits and, to the extent relating to the period prior to Closing, accounts receivable, trade or otherwise;

(b) Inventory;

(c) All rights and interests of Seller arising under this Agreement, the Ancillary Agreements or any other instrument or document executed and delivered pursuant to the terms of this Agreement or relating in all material respects to the Excluded Assets;

(d) The Company Contracts listed in Section 2.02(d) of the Seller Disclosure Schedule, including any Contract entered into following the Effective Date that if in existence on the Effective Date would have been required to be disclosed on Schedule 3.13 of the Seller Disclosure Schedule and which Purchaser has not expressly agreed to assume in writing (the "Excluded Contracts");

(e) (i) Seller's certificate of formation and other organizational, corporate, administrative and regulatory documents and materials, qualifications to conduct business as a foreign entity, arrangements with registered agents relating to foreign qualifications and taxpayer and other identification numbers, (ii) the minute books, equity transfer books and company seal, membership certificates and other documents relating to the organization, maintenance and existence of Seller and any other books, records or documents relating primarily to the Excluded Assets or the Excluded Liabilities and (iii) the general ledger, all original tax returns of Seller and all tax returns not related to the Purchased Assets and all related items of Seller, including, but not limited to, all invoices and supporting documentation for all revenues and expenses (except for any expenses relating to the Purchased Contracts), for all Pre-Closing Periods (the "Excluded Books and Records");

(f) All refunds or credits, if any, of Taxes due to Seller or otherwise with respect to the Purchased Assets for any Pre-Closing Period;

(g) All rights of Seller in the name "Osprey Energy Center" as used in the Excluded Books and Records solely with respect to Seller's business as it exists immediately after the Closing;

(h) All Benefit Plans and all assets owned or held in trust or otherwise attributable thereto;

(i) The Governmental and Regulatory Approvals listed in Section 2.2(i) of the Seller Disclosure Schedule (the "Excluded Governmental and Regulatory Approvals"); and

(j) The Intellectual Property listed in Section 2.02(j) of the Seller Disclosure Schedule (the "Excluded Intellectual Property").

All references herein to the Purchased Assets shall be deemed not to include the Excluded Assets.

Section 2.03 Assumption of Liabilities. At the Closing, Purchaser shall assume and agree to pay, perform and discharge when due, and shall be liable with respect to, the following Liabilities of Seller and its Affiliates, but only to the extent that such Liabilities arise out of or are related to the ownership or operation of the Project, the Project Site, the Purchased Assets or the Business after the Closing (collectively, the "Assumed Liabilities"):

(a) All Liabilities of Seller or its Affiliates arising under the Purchased Contracts;

(b) All Liabilities of Seller under Governmental or Regulatory Approvals arising out of or relating to the ownership or operation of the Project, including those set forth in Section 3.18(a) of the Seller Disclosure Schedule;

(c) All Liabilities of Seller with respect to the Purchased Assets under applicable Law (including Environmental Laws) or Orders arising out of or relating to the ownership or operation of the Project after the Closing; and

(d) All Transfer Taxes for which Purchaser is liable under Section 5.09.

Section 2.04 Excluded Liabilities. Except for the Assumed Liabilities, Purchaser will not assume, be deemed to have assumed, or be responsible for any Liability with respect to or concerning (i) Seller (or any Affiliate of Seller) or (ii) the Project, the Project Site, the Purchased Assets or the Business, including, without limitation, the following (collectively, the "Excluded Liabilities"):

(a) All Liabilities of Seller or its Affiliates arising out of or related to the ownership or operation of the Project, the Project Site, the Purchased Assets or the Business prior to the Closing;

(b) All Liabilities of Seller or its Affiliates to the extent relating to any Excluded Assets;

(c) All Taxes of Seller, including those relating to, imposed on, asserted against or attributable to (i) the income, assets or operations of the Business, (ii) the ownership of the Purchased Assets or (iii) any Taxes for which the Company or its Affiliates is otherwise liable and all Transfer Taxes for which Seller is liable under Section 5.09;

(d) All Liabilities of Seller or its Affiliates for fees and expenses payable to lenders, brokers, financial advisors, legal counsel, accountants and other professionals engaged by Seller or its Affiliates in connection with this Agreement;

(e) All trade and other accounts payable of Seller and other Liabilities of Seller to pay suppliers and third parties to the extent arising from the conduct of the Business or related to the Purchased Assets, in each case relating to events which occur prior to the Closing, to the extent not settled prior to the Closing;

(f) All Liabilities arising out of, in respect of or in connection with the failure by Seller or any of its Affiliates to comply with any Contract, Law, Governmental and Regulatory Approval or Order;

(g) All Liabilities of Seller or any Affiliate thereof representing Indebtedness;

(h) All Liabilities of Seller, the Operator or any of either of their Affiliates and all Controlled Group Liability with respect to any of the foregoing arising under or in connection with any Benefit Plan or other arrangement providing benefits to any present or former employee or other service provider of Seller, Operator or any Affiliate or ERISA Affiliate of Seller or Operator (or any relatives of any such present or former employee or service provider);

(i) All Liabilities of Seller, the Operator or any of either of their Affiliates with respect to any present or former employees, officers, directors, retirees, independent contractors or consultants of Seller or the Operator or any of either of their Affiliates including, without limitation, any Liabilities associated with any claims for salary, wages or other benefits, bonuses, accrued vacation, workers' compensation, severance, retention, termination or other similar payments; and

(j) All Environmental Claims, or Liabilities under Environmental Laws, to the extent arising out of or relating to facts, circumstances or conditions existing on or prior to the Closing Date.

Section 2.05 Closing. The closing of the transactions described in this Agreement (the "Closing") shall take place at the offices of White & Case LLP, counsel to Seller, at 1155 Avenue of the Americas, New York, New York 10036, or at such other place as Purchaser and Seller shall mutually agree, at 10:00 A.M. Eastern time, on the Closing Date, subject to the satisfaction or waiver of the conditions to Closing set forth in Article VI and Article VII hereto. At the Closing, (i) Purchaser shall pay the Closing Payment to Seller by wire transfer of immediately available funds in U.S. Dollars to such account(s) as Seller may direct by written notice delivered to Purchaser at least three (3) Business Days before the Closing Date, and (ii) each of Purchaser and Seller shall cause to be delivered to the other the documents and instruments required to be delivered under Articles VI and VII. The Closing shall be effective for

financial and accounting purposes as of 11:59 p.m. on the day immediately preceding the Closing Date.

Section 2.06 Purchase Price.

(a) The cash purchase price payable at the Closing for the Purchased Assets shall be an amount equal to the sum of, (i) one hundred sixty six million dollars (\$166,000,000.00) (the "Base Purchase Price"),

[REDACTED]

(such aggregate amount, the "Closing Payment").

(b) Subject to the terms of Section 8.09, at the Closing, Purchaser will deposit the Indemnity Escrow Amount with [REDACTED] (the "Escrow Agent"), by wire transfer of immediately available funds, to be held by the Escrow Agent in a separate account (the "Indemnity Escrow Account") pursuant to the terms of the Escrow Agreement. The Indemnity Escrow Amount will be available to satisfy any indemnification obligations of Seller pursuant to Section 8.02(a)(i), subject to the terms and conditions of this Agreement and the Escrow Agreement. Subject to the terms and conditions of this Agreement and the Escrow Agreement, the term of the Indemnity Escrow Account will be for a period of eighteen (18) months following the Closing Date (the "Indemnity Escrow Period"), subject to the provisions of the Escrow Agreement. The Indemnity Escrow Amount, plus any interest accrued thereon (collectively, the "Indemnity Escrow Fund") will be held by the Escrow Agent and disbursed in accordance with Section 8.08 of this Agreement and the Escrow Agreement.

Section 2.07 Further Assurances; Post-Closing Cooperation.

(a) Subject to the terms and conditions of this Agreement, at any time or from time to time after the Closing, each of the parties hereto shall execute and deliver such other documents and instruments, provide such materials and information, and take such other actions as may reasonably be necessary, proper or advisable, to the extent permitted by Law, to fulfill its obligations under this Agreement.

(b) For a period extending four (4) years after the Closing Date, each party will afford the other party, its counsel and its accountants, during normal business hours, reasonable access to the books, records and other data, documents or reports relating to the business or financial or operating condition of the Business in its possession with respect to periods prior to the Closing Date and the right to make copies and extracts therefrom, to the extent that such access may reasonably be required by the requesting party in connection with (i)

the preparation of Tax Returns or financial statements, (ii) compliance with the requirements of any Governmental or Regulatory Authority, or (iii) in connection with any actual or threatened Action or Proceeding.

(c) Notwithstanding anything to the contrary contained in this Section 2.07, if the parties are in an adversarial relationship in any Action or Proceeding, the furnishing of information, documents or records in accordance with any provision of this Section 2.07 shall be subject to applicable rules relating to discovery.

Section 2.08 Purchase Price Allocation. Within one hundred and eighty (180) days following the Closing, Purchaser shall deliver to Seller a proposed allocation of the Purchase Price, as determined in accordance with U.S. federal income tax principles (the "Tax Purchase Price") among the Purchased Assets in accordance with Section 1060 of the Code and Treasury Regulations thereunder (and any similar provision of state, local or foreign law, as applicable). Seller shall have thirty (30) days following receipt of Purchaser's proposed allocation to provide any changes or objections; in the absence of any such changes or objections, Purchaser's proposed allocation shall be deemed to have been agreed. If Seller objects in writing to Purchaser's proposed allocation within such thirty (30) day period, then the parties shall cooperate in good faith to reach a mutually agreeable allocation. If the parties cannot agree on an appropriate allocation of the Tax Purchase Price (as adjusted) within thirty (30) days of the receipt of Seller's written objection, either party may submit any disputes to the Independent Accountant. The Independent Accountant shall be instructed to resolve such disagreement within thirty (30) days after it is engaged to resolve the matter. The fees, costs and expenses of the Independent Accountant incurred shall be paid fifty percent (50%) by Seller and fifty percent (50%) by Purchaser. Seller and Purchaser hereby undertake and agree to file timely any information that may be required to be filed pursuant to Treasury Regulations promulgated under Section 1060(b) of the Code, and shall use the allocation determined pursuant to this Section 2.08 in connection with the preparation of Internal Revenue Service Form 8594 as such form relates to the transactions contemplated by this Agreement. Neither Purchaser nor Seller shall take any position (including in any Tax Returns, reports, audits or otherwise) that is inconsistent with such allocation, unless otherwise required pursuant to a final determination by a court of competent jurisdiction or pursuant to a closing agreement with the Internal Revenue Service entered into pursuant to Section 7121 of the Code. In the event that the final allocation is disputed by any Tax authority, the relevant party who receives notice of such dispute will promptly notify the other party, and the parties will consult in good faith as to how to resolve such dispute in a manner consistent with such allocation. Any amount treated as an adjustment to the Purchase Price after the date a final allocation is determined pursuant to this Section 2.08 shall result in an adjusted allocation determined consistent with the allocation methodology previously agreed to by the parties and each party shall file any returns or forms required under Treasury Regulation 1.1060-1(e)(1)(ii)(B) for such adjustment .

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Purchaser as follows, except as set forth in the disclosure schedule delivered by Seller to Purchaser concurrently with the execution and delivery of this Agreement (the "Seller Disclosure Schedule"):

Section 3.01 Legal Existence. Seller is a limited liability company duly formed, validly existing and in good standing under the Laws of the State of Delaware. Seller is qualified to do business and is in good standing in the states in which the conduct of the Business or locations of its assets and properties makes such qualification necessary, except where failure to be so qualified or to be in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or a material adverse effect on Seller's ability to perform its obligations hereunder. Seller has all requisite limited liability company power and authority to execute, deliver and perform its obligations under this Agreement, including to sell the Purchased Assets pursuant hereto, and the Ancillary Agreements to which it is a party.

Section 3.02 Authority. The execution and delivery by Seller of, and the performance by Seller of its obligations under, this Agreement and the Ancillary Agreements to which it is a party and the consummation by Seller of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary limited liability company action on the part of Seller, with no other actions or proceedings on the part of Seller being necessary. This Agreement has been, and each of the Ancillary Agreements to which it is party have been or will be, duly and validly executed and delivered by Seller and, assuming the due authorization, execution and delivery thereof by the other parties thereto, constitutes the legal, valid and binding obligation of Seller enforceable against Seller in accordance with their respective terms, except as the same may be limited by (a) applicable bankruptcy, insolvency, reorganization, moratorium and other similar Laws of general application affecting the rights and remedies of creditors and (b) general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law).

Section 3.03 No Conflicts. The execution and delivery by Seller of, and the performance by Seller of its obligations under, this Agreement and each of the Ancillary Agreements to which it is a party and the consummation of the transactions contemplated hereby and thereby will not:

(a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the certificate of formation of Seller or its other organizational documents;

(b) subject to obtaining the approvals, consents and actions, making the filings and giving the notices set forth in Section 3.04 of the Seller Disclosure Schedule, conflict with or result in a violation or breach of any term or provision of any material Law or Order applicable to the Company or the Purchased Assets;

(c) except as set forth in Section 3.03(c) of the Seller Disclosure Schedule, (i) conflict with or result in a violation or breach of, (ii) constitute (with or without notice, lapse of

time or both) a material default (or give rise to any right of termination, cancellation or acceleration) under, or (iii) conflict with or result in a violation or breach of, or give to any Person any right of termination, consent, cancellation, acceleration or modification in or with respect to, any Company Contract that is a Purchased Contract, material Permit or material Governmental or Regulatory Approval to which the Company is a party or by which any of its assets and properties, including the Purchased Assets is bound; or

(d) result in the creation or imposition of any Lien on the Purchased Assets, other than Permitted Liens.

Section 3.04 Governmental or Regulatory Approvals; Filings. Except as set forth in Section 3.04 of the Seller Disclosure Schedule, no Governmental or Regulatory Approval on the part of Seller is required in connection with the execution and delivery by Seller of this Agreement or the consummation of the transactions contemplated hereby, except where the failure to obtain any such Governmental or Regulatory Approval would not reasonably be expected to have a material adverse effect on the Purchased Assets or the ability of Seller to perform its obligations hereunder.

Section 3.05 Financial Statements and Condition. Prior to the execution of this Agreement, Seller has delivered to Purchaser true, correct and complete copies of the following financial statements of the Company (the "Financial Statements"):

(a) the unaudited pro forma balance sheet of the Company as of December 31, 2013; and

(b) the unaudited pro forma balance sheet of the Company as of October 31, 2014.

(c) All Financial Statements (and the financial statements required to be furnished to Purchaser pursuant to Section 5.12) (i) were prepared from the books and records of the Company, which books and records are correct and complete in all material respects, and in accordance with GAAP (excluding any required provision for income taxes and footnotes) using the same accounting principles, policies and methods as have historically been used in connection with the calculation of the items reflected thereon, and (ii) fairly present in all material respects the financial condition and results of operations of the Company as of the respective dates thereof, subject to year-end audit adjustments in the ordinary course of business and the absence of footnotes thereto.

Section 3.06 No Undisclosed Liabilities. There are no Liabilities with respect to the Business, the Purchased Assets or the Assumed Liabilities required to be disclosed on a balance sheet prepared in accordance with GAAP, except (i) Liabilities that are reflected on or reserved against in the Financial Statements, to the extent so reflected or reserved thereon, (ii) Liabilities set forth in Section 3.06 of the Seller Disclosure Schedule, (iii) Liabilities incurred since October 31, 2014, in the ordinary course of business, and (iv) other Liabilities which do not exceed \$500,000 individually or \$1,000,000 in the aggregate.

Section 3.07 Absence of Changes. Except as set forth in Section 3.07 of the Seller Disclosure Schedule, (a) since December 31, 2013, the Business has been operated, in all

material respects, in the ordinary course of business consistent with past practice, (b) since December 31, 2013, there has not been any change, event, effect or occurrence that has had or is reasonably expected to have a Material Adverse Effect and (c) since October 31, 2014, Seller has not taken any of the actions set forth in Section 5.03(a)-(n).

Section 3.08 Compliance with Laws. Except as set forth in Section 3.08 of the Seller Disclosure Schedule, the Business, the Project, the Project Site and the Purchased Assets are, and since January 1, 2013, have been, in material compliance with all applicable Orders and Laws.

Section 3.09 Legal Proceedings. Except as set forth in Section 3.09 of the Seller Disclosure Schedule, there are no material Actions or Proceedings pending or, to the Knowledge of Seller, threatened against Seller or its Affiliates and arising out of or related to the ownership or operation of the Project, the Project Site, the Business or the Purchased Assets.

Section 3.10 Real Property. Section 3.10(a) of the Seller Disclosure Schedule sets forth a list of all real property (including easements and rights-of-way) owned in fee by the Company or, as to any easements and rights of way, in which the Company has an interest (the "Real Property"). The Company has good and indefeasible title to all Real Property, free and clear of all Liens other than Permitted Liens. The Company does not lease any real property. Except as set forth in Section 3.10(b) of the Seller Disclosure Schedule, the Company has not received any written notice from any Governmental or Regulatory Authority regarding the condemnation of any material portion of the Real Property, and there is no pending or, to the Knowledge of Seller, threatened actions of a similar nature in connection with any Real Property. To the knowledge of Seller, no portion of the Real Property (i) is subject to any designation or preliminary determination of any Governmental or Regulatory Authority as an archeological site, as an historical site, or under the Endangered Species Act, and there are no cemeteries or burial sites on the Real Property, or (ii) is in violation in any material respect of any applicable zoning, flood, building or other Law, or any other similar legal requirement relating to real property. To the knowledge of Seller, (i) the Real Property has legal and physical access to Derby Avenue, and (ii) no Person has any right to enter or cross the Real Property for access, parking or otherwise. The "gates" or access points between the Real Property and the contiguous property leased or owned by Seller's Affiliate Auburndale Peaker Energy Center, LLC, and, to the knowledge of Seller, any other "gates" or access points shown on the Survey, may be immediately and permanently closed by the owner of the Real Property. There are no parties, other than Seller, in possession of, nor any lease or other agreements for the use, occupancy or possession of all or any portion of the Real Property. Notwithstanding anything herein to the contrary, "knowledge of Seller" as such term is used in this Section 3.10 shall mean the actual knowledge of those Persons listed in Section 1.01(b) of the Seller Disclosure Schedule, without due inquiry.

Section 3.11 Personal Property. Except as set forth in Section 3.11 of the Seller Disclosure Schedule, the Seller has good title to all of the material Purchased Assets (other than the Real Property and the Intellectual Property) free and clear of all Liens other than Permitted Liens. Except as set forth in Section 3.11 of the Seller Disclosure Schedule, the Company has good title to, or valid leasehold interests in, all material Tangible Personal Property necessary for or used in connection with the Business and the Project, free and clear of all Liens other than Permitted Liens. Except as set forth in Section 3.11 of the Seller Disclosure Schedule, no

Tangible Personal Property used by the Company in the Business or for the Project is owned by any Affiliate of the Company or any third party.

Section 3.12 Intellectual Property. Seller possesses or has the right to use all material patents, trademarks, service marks, domain names, trade secrets, know-how, data and copyrights and all goodwill associated therewith (collectively, the "Intellectual Property") that are necessary for the conduct of the Business or used in the operation, maintenance or testing of the Project. Seller has not received from any third party any claim in writing that Seller is infringing upon Intellectual Property of a third party, and, to the Knowledge of Seller, it is not otherwise, infringing upon any material Intellectual Property of a third party. To the Knowledge of Seller, no Person is infringing, violating, misappropriating or otherwise misusing any of Seller's material Intellectual Property, and Seller has not made any such claims against any Person. Seller does not own any registered Intellectual Property and Seller is not the registrant of any Internet domain names.

Section 3.13 Company Contracts. (a) Section 3.13 of the Seller Disclosure Schedule sets forth a true, correct and complete list of the following Contracts as of the date hereof to which the Company (or an Affiliate of the Company) is a party or by which any of its assets or properties is bound which relate primarily to the Project, the Project Site, the Purchased Assets or the Business (collectively, the "Company Contracts"), with the exception of the Excluded Contracts:

- (i) all Contracts for the purchase, exchange or sale of water, natural gas, electric power or ancillary services;
- (ii) all Contracts for the transportation or transmission of natural gas and electric power;
- (iii) all interconnection Contracts;
- (iv) all Contracts with respect to storage, parking, loaning, distribution, wheeling, facility or meter construction, unloading, delivery or balancing of natural gas;
- (v) all Contracts with any Governmental or Regulatory Authority but excluding Permits;
- (vi) all Contracts involving the disposal of Hazardous Substances;
- (vii) all Contracts that limit or purport to limit the ability of Seller to compete in any line of business or with any Person or in any geographic area or during any period of time;
- (viii) all long-term service or maintenance Contracts;
- (ix) all Contracts relating to Indebtedness or imposing Liens for borrowed money on the Purchased Assets;
- (x) all Contracts representing guaranty or surety obligations or similar agreements;

(xi) all Contracts which provide for an interest rate, currency, equity, credit or commodity swap, cap, floor or collar, spot or foreign exchange transaction, cross-currency rate swap, currency option, any combination thereof, or option with respect to, any of the foregoing or any similar transactions, for the purpose of hedging the Company's exposure to fluctuations in the price of commodities, including electric power, in any form, including energy, capacity or any ancillary services, gas, coal, oil or other commodities, currencies, interest rates and indices, and any financial transmission rights and auction revenue rights;

(xii) except as described above, each other Contract (A) for the future sale or acquisition of any asset or property or (B) that grants a right or option to purchase any asset or property or receive any services, other than any Contract relating to any asset or property with a value of less than \$100,000;

(xiii) all Contracts between or among the Company, on the one hand, and any Affiliate of the Company, on the other hand;

(xiv) All material Contracts pursuant to which Intellectual Property is licensed;

(xv) all Contracts pursuant to which material Software which is a Purchased Asset is licensed or that relate to the maintenance, support, escrow, subscription, access or services associated with such Software; and

(xvi) each other Contract requiring payments by or to the Company in excess of \$100,000 per annum.

(b) Each Company Contract that is a Purchased Contract constitutes a legal, valid and binding obligation of the Company, and, to the Knowledge of Seller, the other parties thereto, enforceable in accordance with its terms. Neither the Company nor, to the Knowledge of Seller, any other party to any Company Contract that is a Purchased Contract is, in material violation or breach of or in material default under any such Company Contract that is a Purchased Contract.

(c) Seller (i) has provided or made available to Purchaser true, correct and complete copies of all Company Contracts which are not Excluded Contracts in existence on the Effective Date and (ii) will provide or make available to Purchaser true, correct and complete copies of all Company Contracts which are not Excluded Contracts entered into after the Effective Date promptly following their execution.

Section 3.14 Taxes. Except as set forth in Section 3.14 of the Seller Disclosure Schedule, (i) with respect to the income or operations of the Business or ownership of the Purchased Assets all material Tax Returns required to be filed on or prior to date hereof have been timely filed or will be timely filed (in each case, taking into account any available extensions) in accordance with applicable Law, and all such Tax Returns are true, correct and complete in all material respects, and accurately reflect all material liability for Taxes of, or with respect to the income or operations of the Business or ownership of the Purchased Assets for the periods covered thereby, (ii) all material Taxes of, or with respect to the income or operations of the Business, or ownership of the Purchased Assets that are due and owing have been paid in full

within the time required by Law to the appropriate Tax authority, (iii) there are no material audits, contests, disputes, claims, assessments, levies, administrative or judicial proceedings pending, or proposed in writing with respect to the income or operations of the Business or ownership of the Purchased Assets by any Tax authority, (iv) the Company has timely withheld and paid to the appropriate Tax authority all material Taxes required to have been withheld and paid on or prior to the date hereof, including those Taxes in connection with amounts paid or owing to any employee, independent contractor, creditor, member or other third party, (v) no waiver or extension of any statute of limitations with respect to any material Tax filing or payment obligation pertaining to the Company or the income or operations of the Business or ownership of the Purchased Assets, is currently in effect, (vi) there are no Liens for Taxes upon any of the Purchased Assets other than Permitted Liens, (vii) the Company is not presently contesting material Tax liability with respect to the income or operations of the Business or ownership of the Purchased Assets before any court, Tax authority, tribunal or agency, and (viii) there are no Tax sharing, allocation, indemnification or similar agreements in effect as between any of the Company or any predecessor or Affiliate thereof and any other party under which Purchaser could be liable for any material Taxes or other claims of any party. It is agreed and understood that this Section 3.14, Section 3.05 and Section 3.15 contain the sole and exclusive representations and warranties provided with respect to all matters relating to Taxes of or with respect to the Business and the Purchased Assets.

Section 3.15 Employee Matters.

(a) Section 3.15(a) of the Seller Disclosure Schedule contains a list of each Benefit Plan. With respect to each Benefit Plan, Seller has made available to Purchaser copies of all plan documents and any other material related documents, including all amendments thereto.

(b) Each Benefit Plan (and any related trust or other funding vehicle) has been maintained, operated and administered in compliance with applicable Laws and with the terms of such Benefit Plan (including the making of any required contributions), except where the failure to so comply would not reasonably be expected to result in a material liability to the Company. Each Benefit Plan that is intended to be qualified within the meaning of Section 401(a) of the Code either (i) has received a current favorable determination letter from the Internal Revenue Service with respect to all plan document qualification requirements for which the applicable remedial amendment period under Section 401(b) of the Code has closed with any amendments required by such determination letter made as and when required by such determination letter or an application for such a favorable determination letter has been timely filed and remains pending, or (ii) has been duly adopted using a prototype or volume submitter document with respect to which the Company is properly relying on an opinion or advisory letter issued by the Internal Revenue Service, and in either case of (i) or (ii) nothing has occurred, whether by action or failure to act, that would reasonably be expected to cause the loss of such qualification.

(c) Except as set forth on Section 3.15(c) of the Seller Disclosure Schedule, none of the execution, delivery or performance of this Agreement or the consummation of the transactions contemplated hereby (alone or in combination with any other event, including any termination of employment on or following the Closing) will (i) entitle any Facility Employee to any compensation or benefit, (ii) accelerate the time of payment or vesting, or trigger any

payment or funding, of any compensation or benefits or (iii) result in any breach or violation of, or default under, or limit any rights to amend, modify or terminate, any Benefit Plan.

(d) Neither the Company nor the Operator has sponsored, maintained or contributed to, or been required to maintain or contribute to, any benefit plan that is subject to Section 302 or 303 or Title IV of ERISA or Section 412 or 430 of the Code. There does not exist, nor do any circumstances exist that could result in, any Controlled Group Liability for which the Purchaser or any of its Affiliates could be responsible after the Closing.

(e) No Benefit Plan provides or has any obligation to provide, or makes any payment or has any obligation to make any payment with respect to, health, medical or other welfare benefits, after retirement or other termination of employment (other than for continuation coverage required under Section 4980B(f) of the Code) ("Retiree Benefits") to or for any Facility Employee or any relative thereof, and none of the Company, the Operator or any of their ERISA Affiliates provides or has any obligation to provide, or makes any payment or has any obligation to make any payment with respect to, Retiree Benefits to or for any Facility Employee or relative thereof.

(f) None of the Company, the Operator nor any of their Affiliates is a party to any collective bargaining agreement with any labor union representing the Facility Employees. No union certification or decertification proceeding has been filed and, to the Knowledge of Seller, no union authorization card campaign or other union organizing activity has been conducted relating to the Facility Employees within the past three (3) years. Except as set forth on Section 3.15(f) of the Seller Disclosure Schedule, within the past three (3) years, there have been no strikes, lockouts or other labor stoppages involving the Facility Employees, nor, to the Knowledge of Seller, are any strikes, lockouts or other labor stoppages pending or threatened. The Company, the Operator and their Affiliates are in compliance in all material respects with all Laws respecting labor, employment, immigration, fair employment practices, terms and conditions of employment, workers' compensation, occupational safety, plant closings and mass layoffs, wages and hours, equal employment opportunity, nondiscrimination, employment and reemployment rights of members of the uniformed services and classification of workers as employees or independent contractors, in each case with respect to the Facility Employees.

Section 3.16 Insurance. Section 3.16(a) of the Seller Disclosure Schedule contains a list of all material insurance policies currently in effect, that insure the Business as currently conducted and the Purchased Assets, including the Project, or affect or relate to the ownership, use or operation of any of the Purchased Assets, including the Project, and that have been issued to or for the benefit of the Company (such policies, the "Project Insurance Policies"). As of the date hereof, each such Project Insurance Policy is valid and binding and in full force and effect, and since June 1, 2013, the Company has not received any written notice of cancellation or termination in respect of any such policy or is in material default under any such policy. The Company has not failed to give, in a timely manner, any notice required under any of such Project Insurance Policies to preserve, in all material respects, its rights thereunder. Section 3.16(b) of the Seller Disclosure Schedule further sets forth, as of the date hereof, an accurate and complete list of all material claims asserted by Seller pursuant to any Project Insurance Policy since January 1, 2013, and describes the nature and status of such claims.

Section 3.17 Environmental Matters. Except as set forth in Section 3.17(a) of the Seller Disclosure Schedule:

(a) The Company and the Project are, and have been since January 1, 2008, in material compliance with all Environmental Laws in connection with their ownership, use, maintenance and operation of the Project and the Project Site and the Real Property;

(b) The Company and the Project have obtained all material permits and approvals required under Environmental Laws for the operation of the Project ("Environmental Permits"), and all such Environmental Permits are listed in Section 3.17(b) of the Seller Disclosure Schedule. All such Environmental Permits are in good standing, and the Company and Project are, and have been since January 1, 2008, in compliance in all material respects with the terms and conditions of all such Environmental Permits;

(c) The Company has not received any written notice, complaint, request for information, claim, demand or similar communication from any Governmental or Regulatory Authority or other Person, whether based in contract, tort, implied or express warranty, strict liability, or any other common law theory, or any criminal or civil statute (including any Environmental Law, Permit, Order, or agreement with any Governmental or Regulatory Authority or other Person), which is or could reasonably be expected to be material, arising from or with respect to (i) the presence of any Hazardous Substance or any other environmental conditions or a release or threatened release on, in or under the Project Site or the Real Property, (ii) any other circumstances forming the basis of any actual or alleged violation by the Company of any Environmental Law or liability of the Company under any Environmental Laws, (iii) any remedial or removal action required to be taken by the Company under any Environmental Law, or (iv) any harm, injury or damage to real or personal property, natural resources, the environment or any person alleged to have resulted from the foregoing;

(d) No material lawsuits, claims, proceedings, investigations or enforcement actions are pending or, to Seller's Knowledge, threatened in writing under any Environmental Law with respect to the Company, the Project, the Project Site or the Real Property;

(e) No Hazardous Substances are or have been released, buried, discharged, spilled or disposed of on, or migrated from or onto, the Project Site or the Real Property resulting in existing contamination, and to the Seller's Knowledge, no environmental condition exists or event has occurred (including, without limitation, the presence, release or threatened release or disposal of Hazardous Substances) related to the Project Site or the Real Property or to the Company's past or present operations which with the passing of time or the giving of notice or both would constitute a material violation of any Environmental Law or otherwise give rise to material costs, liabilities or obligations under any Environmental Law;

(f) Neither the Company nor its predecessors in interest have transported or disposed of, or arranged for or permitted the transportation or disposal of, any Hazardous Substances to any location (i) which is listed on the National Priorities List or the CERCLIS list under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, (ii) which, to Seller's Knowledge, is the subject of any federal, state or local enforcement action or other investigation to which Seller is a party, or (iii) about which the

Company has received or has reason to expect to receive a potentially responsible party notice or similar notice under any Environmental Law; and

(g) No environmental Lien (which is not a Permitted Lien) has attached or is threatened in writing to be attached to the Project Site or the Real Property.

This Section 3.17, and to the extent applicable, Section 3.18(a) contains the sole and exclusive representations and warranties of Seller with respect to environmental matters including all matters arising under any Environmental Laws or related to Hazardous Substances

Section 3.18 Permits and Regulatory Matters. Section 3.18(a) of the Seller Disclosure Schedule sets forth all material Governmental or Regulatory Approvals owned or held by the Company as of the date hereof and which are necessary or required for the ownership, occupancy, management and operation of the Project, the Project Site, the Purchased Assets or the Business, as currently conducted.

(a) Seller has not received any written notice from any Governmental or Regulatory Authority that any of its properties, facilities, equipment, operations or business procedures or practices fails to comply in any material respect with any Permit or Governmental or Regulatory Approvals.

(b) Except as set forth in Section 3.18(b) of the Seller Disclosure Schedule, all Permits and Governmental or Regulatory Approvals required to be set forth in Section 3.18(a) of the Seller Disclosure Schedule are in full force and effect, and the Company is, and since January 1, 2013, has been, in compliance in all material respects with all such Permits and Governmental or Regulatory Approvals.

Section 3.19 Brokers. None of the Company nor any of its Affiliates has or will have any liability or obligation to pay fees or commissions to any broker, finder or agent with respect to the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

Section 3.20 Condition of Assets; Interdependencies.

(a) Except as set forth in Section 3.20 of the Seller Disclosure Schedule, as of the date hereof, the buildings, plants, structures and fixtures and the machinery, furniture, equipment, vehicles and other items of Tangible Personal Property included in the Purchased Assets are structurally sound, are in good operating condition and repair (including the scheduling and timely execution of all routine maintenance, preventative maintenance and major maintenance consistent with the past practice of Seller), ordinary wear and tear excepted, and are adequate for the uses to which they are being put, and as of the date hereof, none of such buildings, plants, structures and fixtures and the machinery, furniture, equipment, vehicles and other items of Tangible Personal Property is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that will be completed on a timely basis and are not material in nature or cost, except as set forth in the major maintenance projects listed in Section 5.02(a), Item (b) of the Purchaser Disclosure Schedule. Except as set forth in Section 3.20(a) of the Seller Disclosure Schedule, Seller has conducted the Business and operated and maintained

the Project and the Purchased Assets in accordance with Good Utility Practice and in accordance with past practice.

(b) Section 3.20(b) of the Seller Disclosure Schedule sets forth in reasonable detail a list of the interdependencies between the Project and the Auburndale Peaking Energy Center, a facility adjoining the Project which is also owned by Calpine Corporation (“APEC”), such list to include, without limitation, any physical interdependencies, staffing interdependencies as well as any interdependent contracts, permits or agreement between the Project and APEC.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Except as set forth in the disclosure schedule delivered by Purchaser to Seller concurrently with the execution and delivery of this Agreement (the “Purchaser Disclosure Schedule”), Purchaser hereby represents and warrants to Seller as follows:

Section 4.01 Legal Existence. Purchaser is a corporation duly formed, validly existing and in good standing under the Laws of the State of Florida. Purchaser has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement, including to purchase the Purchased Assets pursuant hereto and the Ancillary Agreements to which it is a party.

Section 4.02 Authority. The execution and delivery by Purchaser of, and the performance by Purchaser of its obligations under, this Agreement and the Ancillary Agreements to which it is a party and the consummation by Purchaser of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary action on the part of Purchaser, with no other actions or proceedings on the part of Purchaser being necessary. This Agreement has been, and each of the Ancillary Agreements to which it is a party has been or will be, duly and validly executed and delivered by Purchaser and, assuming the due authorization, execution and delivery thereof by the other parties hereto, constitutes the legal, valid and binding obligation of Purchaser enforceable against Purchaser in accordance with their respective terms, except as the same may be limited by (a) applicable bankruptcy, insolvency, reorganization, moratorium and other similar Laws of general application affecting the rights and remedies of creditors and (b) general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law).

Section 4.03 No Conflicts. The execution and delivery by Purchaser of, and the performance by it of its obligations under, this Agreement and each of the Ancillary Agreements to which it is a party and the consummation of the transactions contemplated hereby and thereby will not:

(a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the other organizational or constitutional documents of Purchaser;

(b) subject to obtaining the approvals, consents and actions, making the filings and giving the notices set forth in Section 4.04 of the Purchaser Disclosure Schedule, conflict with or result in a violation or breach of any term or provision of any material Law or Order applicable to Purchaser or any of its assets and properties; or

(c) except as set forth in Section 4.03 of the Purchaser Disclosure Schedule, (i) conflict with or result in a violation or breach of, (ii) constitute (with or without notice, lapse of time or both) a material default (or give rise to any right of termination, cancellation or acceleration) under, or (iii) require Purchaser to obtain any consent, approval or action of, make any filing with or give any notice to any Person as a result or under the terms of, any material Contract, Permit or Governmental or Regulatory Approval to which Purchaser is a party or by which any of its assets and properties is bound.

Section 4.04 Governmental or Regulatory Approvals. Except as set forth in Section 4.04 of the Purchaser Disclosure Schedule, no Governmental or Regulatory Approval on the part of Purchaser is required in connection with the execution and delivery by Purchaser of this Agreement or the consummation of the transactions contemplated hereby.

Section 4.05 Legal Proceedings. There are no Actions or Proceedings pending or, to the Knowledge of Purchaser, threatened against Purchaser or any of its assets or properties that would reasonably be expected to result in the issuance of an Order restraining, enjoining or otherwise prohibiting or making illegal the purchase by Purchaser of the Purchased Assets under this Agreement or the performance by Purchaser of its obligations under this Agreement or the Ancillary Agreements to which it is a party.

Section 4.06 Investment Representations. Purchaser is an investor experienced (or owned or managed by Persons experienced) in evaluating investments and, in particular (either on its own or with advisors), power generation facilities and has the knowledge, experience and resources to enable it to evaluate and to bear the risks of the investment contemplated hereunder.

Section 4.07 Brokers. Purchaser has no liability or obligation to pay fees or commissions to any broker, finder or agent with respect to the execution and delivery of this Agreement.

Section 4.08 Due Diligence Investigation. Purchaser or its Representatives have had the opportunity to conduct their own independent investigation, review and analysis of the Project, the Project Site, Real Property, the Purchased Assets, the Business and the Assumed Liabilities, the results of operations, financial condition and prospects of the Business and the Project as they have deemed necessary or advisable in connection with entering into this Agreement and the related documents and the transactions contemplated hereby and thereby. As of the date hereof, Purchaser and its Representatives have been provided with all requested access to the Project, the Project Site, the Purchased Assets, the Business and the Assumed Liabilities for such purpose.

Section 4.09 Funds. Purchaser has on the date hereof, and will have on the Closing Date, sufficient cash on hand (and has provided Seller with evidence thereof) to enable Purchaser to purchase the Purchased Assets at the Closing in accordance with the terms and conditions of

this Agreement and to make all other necessary payments of fees and expenses in connection with the transactions contemplated hereby.

Section 4.10 Exon-Florio. Purchaser is not deemed a “foreign person” for purposes of Section 721 of the Defense Production Act of 1950, as amended, or any executive orders, rules or regulations relating thereto.

Section 4.11 Reliance on Seller’s Representations and Warranties. In entering into this Agreement, Purchaser has relied solely upon its own independent review and analysis and the representations, warranties and covenants contained in Article III, or in any certificate delivered hereunder by Seller, and has not been induced by and has not relied upon any representations, warranties or statements, whether oral or written, express or implied, made by Seller or any of its Representatives, Affiliates or agents that are not expressly set forth in Article III of this Agreement or in any certificate delivered hereunder by Seller, and except as specifically set forth in Article III of this Agreement or in any certificate delivered hereunder by Seller, Seller does not make and has not made any representations or warranties of any kind, express or implied, written or oral, as to projections, forecasts or estimates of cash flows, yields or returns. Neither Seller nor any of its Representatives, Affiliates or agents shall have any liability or responsibility whatsoever to Purchaser or its Representatives, shareholders, Affiliates or agents on any basis (including, without limitation, in contract or tort, under federal or state securities Laws or otherwise), resulting from the furnishing to Purchaser, or from Purchaser’s use of, any information or documents, provided, however, that the foregoing is not intended to limit Seller’s representations or warranties set forth in Article III of this Agreement or in any certificate delivered hereunder by Seller, or claims for fraud or intentional misrepresentation.

ARTICLE V

COVENANTS

Section 5.01 Investigation by Purchaser. From the date hereof until the Closing, Seller shall provide Purchaser and its Representatives with reasonable access, upon reasonable prior notice and during normal business hours, to the officers, employees, agents, engineers, and accountants of the Company and the Company’s assets, properties, books and records, but in each case only to the extent that such access does not unreasonably interfere with the business and operations of the Company; provided, that (i) Seller shall not be required to furnish any such information where the furnishing of such information would violate any Law, Order, Company Contract, Permit or Governmental or Regulatory Approval applicable to Seller or any of its assets and properties, including the Project, the Project Site, the Purchased Assets, the Business and the Assumed Liabilities, (ii) Purchaser and Purchaser’s Representatives shall comply with all applicable safety rules, regulations and procedures implemented by Seller as to which Purchaser has been notified in writing, (iii) (A) Purchaser shall cause an environmental consulting firm selected by Purchaser but reasonably acceptable to Seller (the “Environmental Auditor”) to conduct, within ninety (90) days following the Effective Date, a Phase I environmental site assessment of, and to prepare a written report with respect to, the Project and the Project Site (the “Phase I Assessment”), (B) Seller shall provide the Environmental Auditor with reasonable access to the Project and the Project Site for such purpose, and (C) Purchaser shall promptly deliver to Seller a copy of the final written report associated with the Phase I Assessment upon

completion thereof, and (iv) neither Purchaser nor its Representatives shall collect or analyze any environmental samples (including building materials, indoor and outdoor air, surface and ground water, and surface and subsurface soils), without the prior written authorization of Seller. Purchaser agrees to indemnify and hold harmless, release, and defend Seller and its Affiliates and Representatives from and against any and all Losses arising out of, resulting from or relating to, in whole or in part, the acts or omissions of Purchaser or its Representatives arising under this Section 5.01 in connection with Purchaser's inspection of the Project, the Project Site, the Purchased Assets and the Books and Records, including claims for personal injuries, property damage, and reasonable attorneys' fees and expenses.

Section 5.02 Conduct of Business; Integration. (a) From the date hereof until the Closing, Seller shall conduct the Business and operate and maintain the Project only in the ordinary course consistent with past practice, provided that, at all times between the Effective Date until Closing, Seller shall operate and maintain the Project in accordance with Good Utility Practices for operation, maintenance and compliance including, without limitation, by taking the actions set forth in Section 5.02(a) of the Purchaser Disclosure Schedule within the timeframes provided for therein. Without limiting the generality of the foregoing, Seller will use commercially reasonable efforts to (i) preserve intact the present business organization and reputation of the Business in all material respects; (ii) maintain the Purchased Assets in substantially similar condition as they were on the Effective Date, ordinary wear and tear excepted; and (iii) maintain the goodwill of key Persons with whom the Company otherwise has significant business relationships with respect to the Purchased Assets.

(b) Following FERC Approval, Seller and Purchaser shall reasonably cooperate to facilitate a successful transition of the Project from Seller to Purchaser and permit the timely completion of critical integration activities. Such activities shall include, without limitation, the actions set forth in Section 5.02(b) of the Purchaser Disclosure Schedule. Purchaser's indemnity set forth in the last sentence of Section 5.01 shall also be applicable to all such integration activities undertaken.

(c) To ensure that the Project and the APEC are completely independent of each other prior to the Closing, prior to June 1, 2015, Seller shall develop and provide Purchaser with a comprehensive plan (the "Separation Plan") to eliminate any interdependencies which are required to be set forth on Section 3.20(b) of the Seller Disclosure Schedule prior to Closing in a manner which is acceptable to Purchaser. Seller shall be responsible for all costs associated with the implementation of such Separation Plan.

Section 5.03 Certain Restrictions. From the date hereof until the Closing, Seller shall refrain, and shall cause its Affiliates to refrain, from taking any of the following actions, except (i) with respect to those matters set forth in Section 5.03 of the Seller Disclosure Schedule, (ii) as expressly permitted or required by this Agreement, including, but not limited to, the provisions for proper operations, maintenance, compliance and preservation of the Purchased Assets, (iii) with Purchaser's prior consent (which shall not be unreasonably withheld, conditioned or delayed) or (iv) as required by Law:

(a) amending Seller's certificate of formation or its limited liability company agreement, in any manner which could materially adversely impact Seller's ability to consummate the transactions contemplated by this Agreement;

(b) acquiring, disposing or removing from the Project Site any asset of the Company (other than Inventory) with a value in excess of [REDACTED] which would be included in the Purchased Assets or the Project Site, or incurring any Liens on the Purchased Assets, other than Permitted Liens;

(c) entering into or amending in any material respect, any Company Contract (or any Contract that if in existence on the date hereof would have been required to be disclosed on Section 3.13 of the Seller Disclosure Schedule) other than an Excluded Contract;

(d) incurring, assuming, guaranteeing or modifying any Indebtedness of the Company, except as would upon or after the Closing constitute an Excluded Liability;

(e) except as set forth in Section 5.03(e) of the Seller Disclosure Schedule, making capital expenditures or commitments with respect to the Business, the Purchased Assets, the Project and the Project Site for additions to property, plant or equipment constituting capital assets in an aggregate amount exceeding [REDACTED];

(f) failing to maintain insurance coverage with respect to the Business, the Purchased Assets, the Project and the Project Site substantially equivalent to (i) the insurance coverage currently maintained, or (ii) if such coverage is not available on commercially reasonable terms, the insurance coverage maintained with respect to other similarly-situated power generation facilities owned by Calpine or any of its Affiliates;

(g) failing to use commercially reasonable efforts to maintain the properties and assets included in the Purchased Assets in at least the same condition as they were on the Effective Date, subject to reasonable wear and tear;

(h) voluntarily taking any action constituting a failure to comply with any material Permit in any material respect required for the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets;

(i) hiring any employees to provide services at or for the Project other than to fill vacancies, [REDACTED]

(j) establishing, amending or terminating any compensation or benefit plan, program, policy, practice, arrangement or agreement on behalf of any Facility Employee or officer or director of the Company, or increase the compensation or benefits of any Facility Employee or officer or director of the Company except in the ordinary course of business consistent with past practice;

(k) except as required by GAAP, making any change in any method of accounting or auditing practice of Seller;

(l) acquiring, selling or transferring any specialty tooling except that Seller may consume and replenish specialty tooling in the ordinary course of business consistent with past practice;

(m) amending any property Tax Return for property Taxes relating to, imposed on, or attributable to the Purchased Assets;

(n) terminating any Contract relating to the maintenance, support or escrow of any Project Software that is a Purchased Asset, unless such Contract is replaced, or refusing to install any update, new release, new version, upgrade, patch, error correction or other modification of any Project Software that is a Purchased Asset to which Seller is entitled (of which Seller is aware) to receive pursuant to any such Contract, except if Seller (or its parent entities) does not adopt such update, release, version, upgrade, patch, error correction or other modification for the applicable Calpine facilities generally; or

(o) agreeing, authorizing or committing to do or engage in any of the foregoing.

Notwithstanding Section 5.03, or any other provision herein, (x) Seller may take commercially reasonable actions with respect to emergency situations; provided, that Seller shall act in accordance with Good Utility Practice and promptly notify Purchaser of the taking of such actions, and (y) Seller may remove any and all Inventory from the Project and the Project Site at any time prior to the Closing, and during the ten Business Days immediately after the Closing.

Furthermore, if any Liens (other than Permitted Liens) are incurred on the Purchased Assets by actions of Seller during the period from the date hereof until Closing, the Seller shall cure any such Liens which are monetary title and survey defects, and shall use commercially reasonable efforts to cure any other Liens (other than Permitted Liens), in each case prior to the Closing.

Section 5.04 Governmental Approvals.

(a) Subject to the terms and conditions of this Agreement and applicable Law, each party shall use its reasonable commercial efforts to take, or cause to be taken, all actions and do, or cause to be done, all things necessary, proper or advisable to obtain as promptly as reasonably practicable all necessary or appropriate waivers, consents, approvals or authorizations of Governmental or Regulatory Authorities, including without limitation with respect to the FERC, FPSC and HSR Act, and to satisfy all other conditions required in order to consummate the transactions contemplated by this Agreement.

(b) In addition to the foregoing, (i) Purchaser, on the one hand, and Seller, on the other hand, shall, in accordance with Section 5.04(c) hereof, file no later than January 30, 2015, any application, form or report required for FERC approval of the transaction contemplated by this Agreement (the initial draft of which shall be prepared by Seller and made available for review by Purchaser by no later than January 15, 2015), and Purchaser shall use its reasonable best efforts to diligently pursue all necessary and appropriate waivers, consents, approvals or authorizations of FERC; provided, however, that nothing in this Agreement shall require the Purchaser to [REDACTED]

_____ (ii) Purchaser shall file no later than January 30, 2015, any application or petition before the FPSC seeking all necessary approvals from the FPSC to consummate the transactions contemplated herein, which application shall (A) be drafted by Purchaser, and Seller shall have at least seven (7) Business Days to review and comment on such draft prior to its filing and (B) either continue to proceed under the Existing FPSC Docket or seek to proceed under a new FPSC filing docket, (iii) Purchaser, on the one hand, and Seller, on the other hand, shall file notification and report forms required pursuant to the HSR Act with the Antitrust Division of the Department of Justice (the “DOJ”) and the Federal Trade Commission (“FTC”) no later than January 30, 2015 (the “Initial HSR”), requesting early termination of the waiting period thereunder, and Purchaser, on the one hand, and Seller, on the other hand, shall use its commercially reasonable efforts to diligently pursue all necessary clearances, consents, approvals or authorizations of the DOJ and FTC, as applicable; provided, however, that nothing in this Agreement shall require the Purchaser to _____

_____, and (iv) Purchaser, on the one hand, and Seller, on the other hand, shall file no later than March 31, 2016, any other form or report required by any Governmental or Regulatory Authority relating to antitrust, competition, trade or energy regulation matters. Purchaser and Seller shall make any additional filings under the HSR Act, and observe waiting periods accordingly, as are necessary to consummate the transaction. Each of the parties shall request expedited treatment of any such filings. Purchaser and Seller shall (i) respond as promptly as practicable to any inquiries or requests received from any Governmental or Regulatory Authority for additional information or documentation and (ii) not enter into any agreement with any Governmental or Regulatory Authority not to consummate the transactions contemplated by this Agreement, except with the prior consent of the other party (which shall not be unreasonably withheld, delayed or conditioned). Each party shall (i) promptly notify the other party of any material written communication to that party from any Governmental or Regulatory Authority and, subject to applicable Law and execution of an appropriate joint defense arrangement, permit the other party or its counsel to review in advance any proposed written communication to any of the foregoing, (ii) not agree to participate in any substantive meeting or discussion with any Governmental or Regulatory Authority in respect of any filings, investigation or inquiry concerning this Agreement or the transactions contemplated hereby unless it consults with the other party in advance and, to the extent permitted by such Governmental or Regulatory Authority, gives the other party the opportunity to attend and participate thereat, and (iii) subject to applicable Law and execution of an appropriate joint defense arrangement, furnish the other party with copies of all material correspondence, filings, and communications (and memoranda setting forth the substance thereof) between them and their Affiliates and their respective Representatives on the one hand, and any Governmental or Regulatory Authority or members of their respective staffs on the other hand, with respect to this Agreement and the transactions contemplated hereby.

(c) The parties shall cooperate in the preparation of, and each have the right to approve, not to be unreasonably withheld, any application, form or report required for FERC approval of the transaction contemplated by this Agreement that must be submitted jointly by Seller and Purchaser.

(d) Seller shall reasonably cooperate in the obtaining of the necessary approvals from the FPSC to consummate the transactions contemplated herein, including preparation for and attendance at any hearings before the FPSC.

Section 5.05 Tax Matters.

(a) All real property Taxes, personal property Taxes and similar ad valorem obligations levied with respect to the Purchased Assets for an Overlap Period (collectively, the "Apportioned Obligations") shall be apportioned between Seller and Purchaser based on the number of days of such taxable period included in the Pre-Closing Period and the number of days of such taxable period after the Closing Date (such portion of such taxable period, the "Post-Closing Tax Period"). Seller shall be liable for the proportionate amount of such Taxes that is attributable to the Pre-Closing Period, and Purchaser shall be liable for the proportionate amount of such Taxes that is attributable to the Post-Closing Tax Period. The Apportioned Obligations will be apportioned at Closing pursuant to this Section 5.05(a) based on the actual amounts of the Apportioned Obligations for the Overlap Period if known at Closing. If the actual amounts of the Apportioned Obligations are not known at the Closing, then the Apportioned Obligations shall be apportioned at Closing based on an estimated amount equal to the actual amount of Apportioned Obligations for the immediately preceding period.

(b) If the Apportioned Obligations are apportioned at Closing based on an estimate of the Apportioned Obligations pursuant to Section 5.05(a), then promptly following the filing of the Tax Return relating to such Apportioned Obligations (or, if no Tax Return relates to such Apportioned Obligation, the payment by Purchaser of the actual amount of Apportioned Obligations for the applicable Overlap Period), Purchaser shall provide Seller with notice of the actual amount of such Apportioned Obligations and, if applicable, Seller's actual share of such Apportioned Obligations pursuant to Section 5.05(a). Purchaser shall reimburse Seller if and to the extent that the amount of Apportioned Obligations apportioned to Seller at Closing exceeds the actual amount of Seller's share of the Apportioned Obligations. Seller shall reimburse Purchaser if and to the extent that the amount of Apportioned Obligations apportioned to Purchaser at Closing exceeds the actual amount of Purchaser's share of the Apportioned Obligations. Any payment required under this Section 5.05(b) shall be paid within ten (10) days of Seller's receipt of Purchaser's notice of the actual amount of the Apportioned Obligations for the Overlap Period.

(c) Any Tax Return filed after the Closing with respect to Taxes of, or with respect to an Overlap Period shall be prepared by Purchaser in accordance with past practices relating to the Purchased Assets unless otherwise required by Law, and submitted (with copies of any relevant schedules, work papers, and other documentation then available) to Seller for its review and comment not less than twenty (20) days prior to the due date for the filing of such Tax Return (taking into account any valid extensions). Seller shall have the option of providing to Purchaser, at any valid time at least seven (7) days prior to the date such Tax Return is due to be filed (taking into account any valid extensions), written comments to the Overlap Period Tax Return, Purchaser shall consider such comments and the Parties shall use their reasonable efforts to resolve any disputed items. If the Parties cannot come to mutual agreement on any such Tax Return, the matter shall be resolved in accordance with substantially identical procedures as set forth for the resolution of disputes in Section 2.08; provided that if any disputes have not been

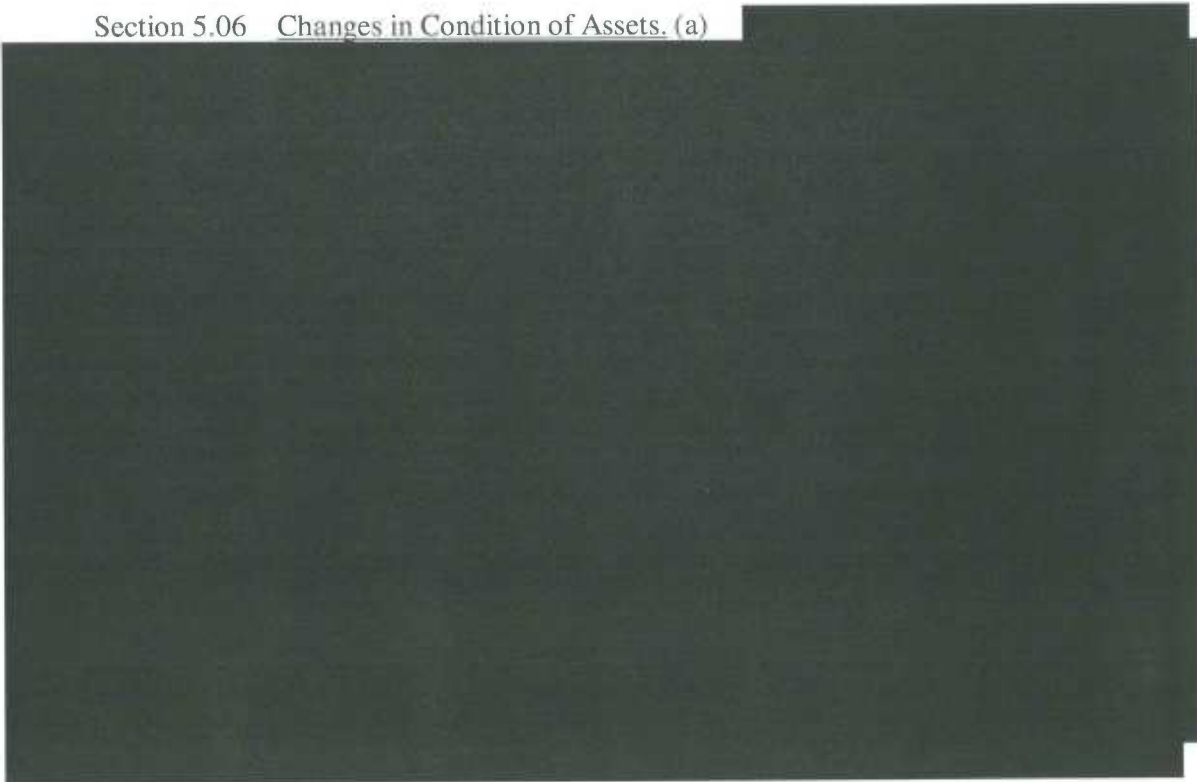
resolved by the due date for filing a Tax Return for the Overlap Period giving effect to all available valid extensions, Purchaser shall have the right to file any such Tax Return in a manner determined by the Purchaser, and the Tax Return will be amended if and to the extent necessary to reflect the resolution of any disputed item.

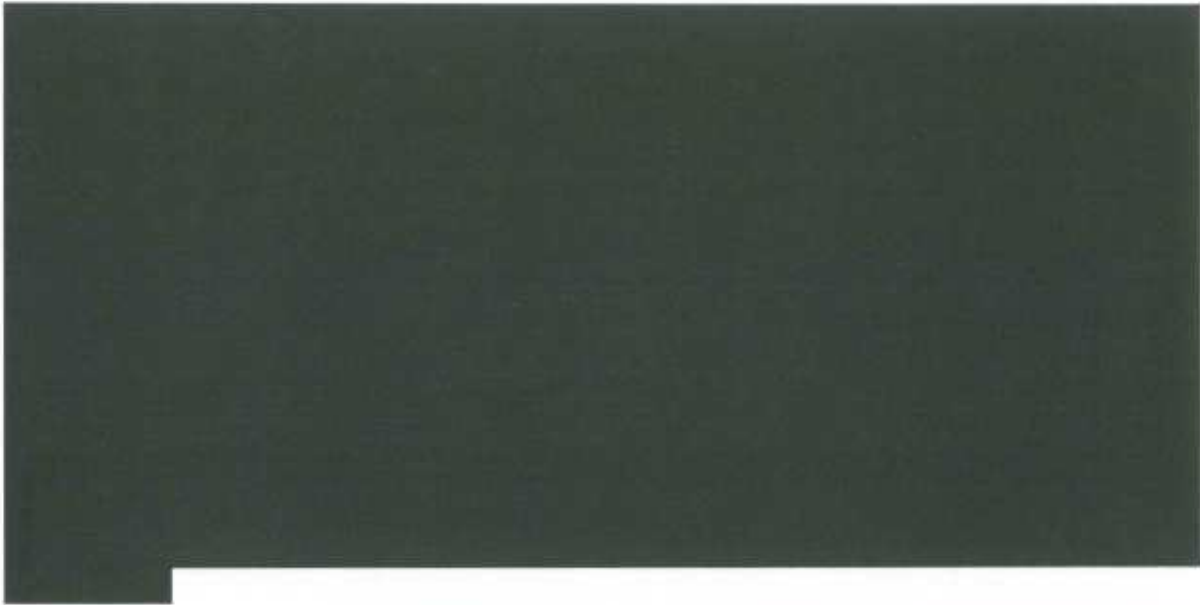
(d) Following the Closing, Seller shall not make any Tax election, amend any Tax Return, or respond to any audit or inquiry by a taxing authority that could reasonably be expected to materially adversely affect the Tax liability of Purchaser or any of its Affiliates without the prior written consent of Purchaser, which consent shall not be unreasonably withheld or delayed.

(e) If Seller does not deliver to Purchaser the certification required by Section 6.03(b), Purchaser shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement (including the Purchase Price) such amount as it is required pursuant to Section 1445 of the Code to deduct and withhold with respect to the making of such payment.

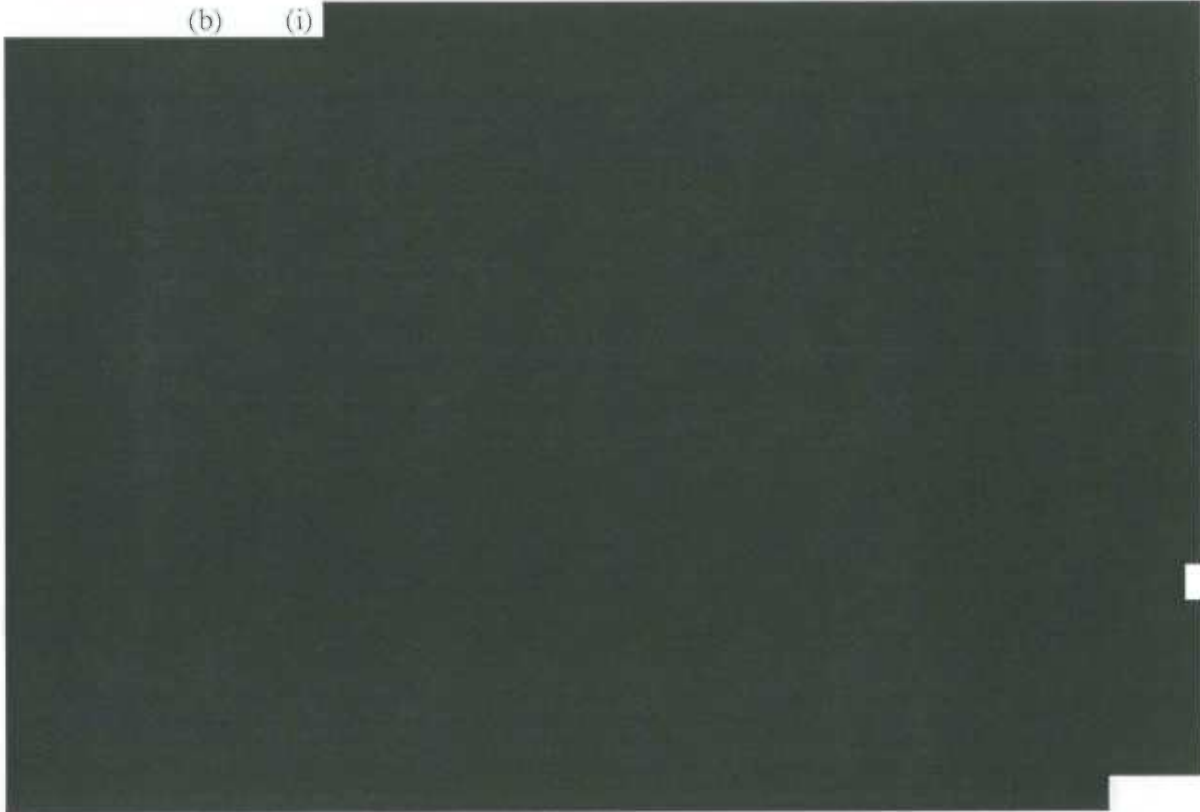
(f) Notwithstanding anything in this Agreement to the contrary, any proceeding with a Governmental or Regulatory Authority relating to any Taxes attributable to the Purchased Assets which are described in Section 5.05(a) shall be controlled at all stages by Purchaser; provided, however, that Purchaser shall permit Seller to participate in such proceedings, negotiations or defense at any time at its own expense and Purchaser shall not settle or otherwise compromise any such proceeding without the prior written consent of Seller, which shall not be unreasonably withheld, conditioned or delayed.

Section 5.06 Changes in Condition of Assets. (a)





(b) (i)



(ii)

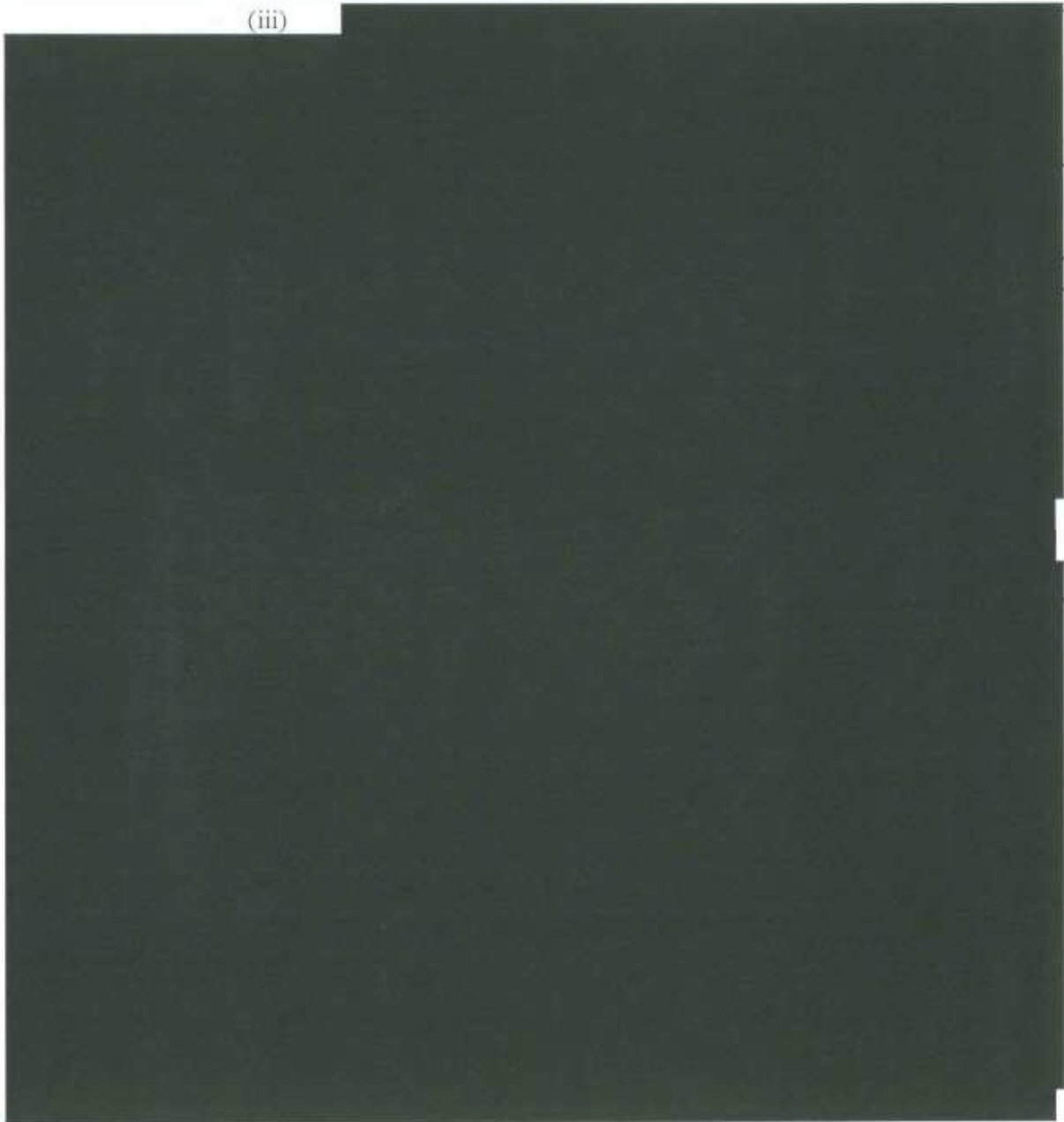


REDACTED

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Duke Energy Florida
Exhibit No. _____ (MEP-2)
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(iii)



[REDACTED]

(iv)

[REDACTED]

(c)

[REDACTED]

Section 5.07 Employees.

(a) Subject to this Section 5.07, Purchaser shall extend a written offer of employment, effective as of the Closing Date and contingent on the Closing actually occurring,

[REDACTED]



(b) Each Facility Employee who accepts such offer of employment and commences employment with Purchaser or an Affiliate on the Closing Date is referred to herein as a “Hired Employee” and all such Facility Employees collectively as the “Hired Employees”.



(c) Purchaser shall be solely responsible for any and all severance or termination pay expenses which arise in connection with the termination of employment of any Hired Employee by Purchaser after the Closing Date.

(d) Purchaser shall recognize for all purposes, other than benefit accrual under any defined benefit pension plan and other than for all purposes under any post-retirement healthcare plan, under Purchaser’s and its Affiliates’ policies and employee benefit plans (including paid time off and severance) the service of any Hired Employee with the Operator and/or any of its Affiliates (and each predecessor respectively thereof) prior to the Closing Date, except to the extent that recognition of such service would result in duplication of benefits.

(e) The Operator or its Affiliates shall retain responsibility for the payment of any employee benefits or entitlement accrued through the Closing Date, including severance or termination pay, bonuses, accrued vacation, sick or holiday pay, to any Facility Employee or pursuant to any Benefit Plan as a result of or in connection with the consummation of the transactions contemplated hereby.


(f) Notwithstanding the foregoing, nothing contained in this Agreement shall be deemed or construed to (i) give rise to any rights, claims, benefits or causes of action to a Facility Employee or representative thereof or make any Facility Employee or representative thereof a third party beneficiary hereof, (ii) be treated as an amendment or other modification of any employee benefit plan, or (iii) prevent, restrict or limit each of Seller, the Operator, any Affiliate of Seller or the Operator, Purchaser or any Affiliate of Purchaser, following the Closing Date, from modifying or terminating any of its benefit plans, programs or policies from time to time as it may deem appropriate, subject only to compliance with the express provisions of this Section 5.07.

Section 5.08 Insurance. Purchaser acknowledges that, effective upon the Closing, Seller shall terminate or modify the Project Insurance Policies to exclude coverage of the Business, the Purchased Assets, the Project and the Project Site from the Project Insurance Policies or any other policies of insurance maintained by Seller.

Section 5.09 Transfer Taxes. All transfer Taxes, including documentary, sales, use, stamp, registration, filing, recording, permit, license, authorization, controlling interest transfer and other similar Taxes and fees (including any penalties and interest) ("Transfer Taxes") incurred in connection with this Agreement and the transactions contemplated hereby, if any, shall be shared equally by Purchaser and Seller when due, and Purchaser and Seller shall file all necessary Tax Returns and other documentation with respect to any such Transfer Taxes, and, if required by applicable Law, Purchaser and Seller shall, as applicable, and shall cause their respective Affiliates to, join in the execution of any such Tax Returns and other documentation and shall cooperate with each other to take such commercially reasonable actions as will minimize or reduce the amount of such Taxes.

Section 5.10 Release of Credit Support.

(a) Prior to the Closing, Purchaser shall use commercially reasonable efforts to effect the full and unconditional release of Seller and its Affiliates from all guarantees, letters of credit and other credit support posted on behalf of Seller or an Affiliate of Seller and relating to the Project or the Purchased Assets set forth in Section 5.10 of the Seller Disclosure Schedule (the "Credit Support Obligations"),



(b) Within ninety (90) days following the Closing, Purchaser shall effect the full and unconditional release of Seller and its Affiliate from the Credit Support Obligations.

Section 5.11 [REDACTED]

(a)

[REDACTED]

(b)

[REDACTED]

(c)

[REDACTED]

Section 5.12 Reports; Financial Statements. Seller will furnish to Purchaser (a) promptly after available, copies of all Governmental or Regulatory Approvals or Permits filed with any Governmental or Regulatory Authority after the date hereof, (b) promptly after available (but in no event later than forty-five (45) days following the relevant period), quarterly unaudited balance sheets of the Seller, and (c) promptly after asserted, a summary of any material claims asserted by Seller pursuant to any Project Insurance Policy after the Effective Date. Each of the financial statements delivered pursuant to this Section 5.12 shall be prepared in conformance with the presentation and delivery requirements contained in Section 3.05. Each of the financial statements delivered pursuant to this Section 5.12 shall be accompanied by a certificate of an authorized financial officer of Seller to the effect that such financial statements are prepared in conformance with the presentation requirements set forth in Section 3.05.

Section 5.13 Notification of Certain Matters. Each party hereto shall give prompt notice to the other party hereto after becoming aware of (a) the occurrence, or failure to occur, of any event that causes, or would be likely to cause, any representation or warranty of the notifying party contained in this Agreement to be untrue or inaccurate in any material respect at any time

from the Effective Date to the Closing Date and (b) any failure of the notifying party to comply with or satisfy, in any material respect, any covenant, condition or agreement to be complied with or satisfied by it under this Agreement. No such notification shall affect the representations or warranties of the parties or the conditions to their respective obligations hereunder.

Section 5.14 Seller's Marks. Within thirty (30) days following the Closing, Purchaser shall, and shall cause each of its Affiliates to, cease using the word "Calpine" and any word or expression similar thereto or constituting an abbreviation or extension thereof (the "Seller's Marks"), including eliminating the Seller's Marks from all the Purchased Assets and the disposing of any unused stationery and literature of Calpine or Seller related to the Purchased Assets, and thereafter, Purchaser shall not, and shall cause its Affiliates and the Project not to, use the Seller's Marks or any logos, trademarks, trade names, patents or other Intellectual Property rights belonging to Seller or any of its Affiliates, or which Seller or any of its Affiliates have the right to use, and Purchaser acknowledges that it, its Affiliates, and the Project have no rights whatsoever to use such Intellectual Property.

ARTICLE VI

CONDITIONS TO OBLIGATIONS OF PURCHASER

The obligation of Purchaser to consummate the transactions described in Article II are subject to the fulfillment, at or before the Closing, of each of the following conditions (all or any of which may be waived in writing in whole or in part by Purchaser in its sole discretion):

Section 6.01 Representations and Warranties. The representations and warranties of Seller contained in Article III of this Agreement (other than the Fundamental Representations of Seller contained therein and the representation contained in Section 3.07(b)) shall be true and correct as of the Closing Date as though such representations and warranties were made on and as of the Closing Date (or, to the extent such representations and warranties expressly relate to an earlier date, on and as of such earlier date), except where the failure of such representations and warranties to be true and correct (in each case disregarding all qualifications and exceptions contained therein relating to materiality or Material Adverse Effect) would not reasonably be expected to have a Material Adverse Effect; and the Fundamental Representations made by Seller and the representation contained in Section 3.07(b) shall be true and correct in all respects as of the Closing Date (except to the extent such Fundamental Representations expressly relate to an earlier date, in which case such earlier date).

Section 6.02 Performance. Seller shall have performed and complied in all material respects with the agreements, covenants and obligations required by this Agreement to be so performed or complied with by Seller at or before the Closing.

Section 6.03 Officers' Certificates. Seller shall have delivered to Purchaser (a) an officer's certificate, dated the Closing Date and executed in the name and on behalf of Seller, certifying that all of the conditions set forth in Sections 6.01 and 6.02 have been satisfied and (b) a certificate, dated the Closing Date and executed in the name of and on behalf of Calpine Corporation, stating that Calpine Corporation is not a "foreign" person within the meaning of

Section 1445 of the Code, which certificate shall set forth all information required by, and shall otherwise be executed in accordance with, Treasury Regulation Section 1.1445-2(b)(2).

Section 6.04 Orders and Laws. There shall not be in effect on the Closing Date any Order or Law restraining, enjoining or otherwise prohibiting or making illegal the consummation of the transactions contemplated by this Agreement.

Section 6.05 Governmental or Regulatory Approvals. All Governmental or Regulatory Approvals set forth in Section 6.05 of the Purchaser Disclosure Schedule shall have been obtained, made or given, and shall be in full force and effect.

Section 6.06 Instruments of Transfer. At or prior to the Closing, Seller shall have executed and delivered to Purchaser (i) the Bill of Sale, (ii) the Assignment and Assumption Agreement, (iii) the Deed, with a legal description derived from the Survey, and (iv) and such other documentation and instruments of transfer as shall be reasonably required. At or prior to the Closing, Calpine Energy Services, L.P. shall have executed and delivered to Purchaser the Assignment and Assumption Agreement (CES).

Section 6.07 Third-Party Consents. The consents (or waivers in lieu thereof) set forth in Section 6.07 of the Purchaser Disclosure Schedule shall have been obtained, made or given, and shall be in full force and effect

Section 6.08 No Material Adverse Effect. Since the date hereof, there shall not have occurred and be continuing a Material Adverse Effect.

ARTICLE VII

CONDITIONS TO OBLIGATIONS OF SELLER

The obligation of Seller to consummate the transactions described in Article II are subject to the fulfillment, at or before the Closing, of each of the following conditions (all or any of which may be waived in writing in whole or in part by Seller in its sole discretion):

Section 7.01 Representations and Warranties. The representations and warranties of Purchaser contained in Article IV of this Agreement (other than the Fundamental Representations of Purchaser contained therein) shall be true and correct as of the Closing Date as though such representations and warranties were made on and as of the Closing Date (or, to the extent such representations and warranties expressly relate to an earlier date, on and as of such earlier date), except for failures of the representations and warranties to be true and correct which do not have material adverse effect on Purchaser's ability to perform its obligations hereunder; and the Fundamental Representations made by Purchaser shall be true and correct in all respects as of the Closing Date (except to the extent such Fundamental Representations expressly relate to an earlier date, in which case such earlier date).

Section 7.02 Performance. Purchaser shall have performed and complied in all material respects with the agreements, covenants and obligations required by this Agreement to be performed or complied with by Purchaser at or before the Closing.

Section 7.03 Officer's Certificates. Purchaser shall have delivered to Seller an officer's certificate, dated the Closing Date and executed in the name and on behalf of Purchaser, certifying that all of the conditions set forth in Sections 7.01 and 7.02 have been satisfied.

Section 7.04 Orders and Laws. There shall not be in effect on the Closing Date any Order or Law restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement.

Section 7.05 Governmental or Regulatory Approvals. All Governmental or Regulatory Approvals set forth in Section 7.05 of the Seller Disclosure Schedule shall have been obtained, made or given, and shall be in full force and effect.

Section 7.06 Third-Party Consents. The consents (or waivers in lieu thereof) set forth in Section 7.06 of the Seller Disclosure Schedule shall have been obtained, made or given, and shall be in full force and effect.

Section 7.07 Instruments of Transfer. At or prior to the Closing, Purchaser shall have executed and delivered to Seller the Assignment and Assumption Agreement, the Assignment and Assumption (CES) and such other documentation and instruments of transfer as shall be reasonably required.

Section 7.08 Release of Credit Support. Purchaser shall have complied with its obligations under Section 5.10(a).

ARTICLE VIII

INDEMNIFICATION; NO OTHER REPRESENTATIONS

Section 8.01 Survival. The representations, warranties, covenants and agreements of Purchaser and Seller contained in this Agreement [REDACTED] and no claims shall be made thereafter with respect to any breach thereof or indemnification for any breach thereof, except for (i) the representations and warranties set forth in Section 3.14 (Taxes), [REDACTED] (ii) the representations and warranties of Seller set forth in Section 3.15 (Employee Matters) and Section 3.17 (Environmental Matters), which [REDACTED]; (iii) the representations and warranties of Seller set forth in Section 3.01 (Legal Existence) and Section 3.02 (Authority) and Section 3.19 (Brokers), which [REDACTED] (iv) the representations and warranties of Seller set forth in Section 3.03 (No Conflicts) and Section 3.06 (No Undisclosed Liabilities) which [REDACTED] (v) the representations and warranties of Seller set forth in the second sentence of Section 3.10 (Real Property), the first sentence of Section 3.11 (Personal Property) and the first sentence of Section 3.12 (Intellectual Property), which [REDACTED] (the "Property Reps"), (vi) the representations and warranties of Purchaser set forth in Section 4.01 (Legal Existence), Section 4.02 (Authority), and Section 4.07 (Brokers) which [REDACTED], (vii) the representations and warranties of Purchaser set forth in Section 4.03 (No Conflicts), which [REDACTED] (the items in clauses (iii) and (vi) collectively, the "Fundamental

Representations"); (viii) claims which are asserted in good faith prior to the end of the applicable periods set forth in clauses (i) through (vii) immediately above, which [REDACTED]; and (ix) covenants and agreements (including obligations to indemnify) that are to be performed in whole or in part following the Closing, which [REDACTED]

Section 8.02 Indemnification.

(a) Subject to Sections 8.01 and 8.02(b), and the other limitations to indemnification set forth in this Article VIII, from and after the Closing:

(i) Seller shall indemnify, defend and hold harmless Purchaser and its respective Affiliates and Representatives (collectively, the "Purchaser Indemnified Parties") from and against all Losses actually incurred or suffered by the Purchaser Indemnified Parties arising out of, resulting from or relating to: (A) any breach of any representation or warranty of Seller contained in this Agreement or any Ancillary Agreement to which Seller is a party as of the Closing as if made on the Closing Date (except to the extent expressly made as of an earlier date); (B) any breach of any covenant or agreement of Seller contained in this Agreement or any Ancillary Agreement to which Seller is a party; and (C) the Excluded Liabilities (without duplication of amount paid by Seller to Purchaser in accordance with Section 5.05(a) or Section 5.05(b)).

(ii) Purchaser shall indemnify, defend and hold harmless Seller and its Affiliates and Representatives (collectively, the "Seller Indemnified Parties") from and against all Losses actually incurred or suffered by the Seller Indemnified Parties arising out of, resulting from or relating to: (A) any breach of any representation or warranty of Purchaser contained in this Agreement or any Ancillary Agreement to which Purchaser is a party as of the Closing as if made on the Closing Date (except to the extent expressly made as of an earlier date); (B) any breach of any covenant or agreement of Purchaser contained in this Agreement or any Ancillary Agreement to which Purchaser is a party; and (C) the Assumed Liabilities.

(b) Notwithstanding anything in this Agreement to the contrary, except in the case of any claim based upon (i) fraud, intentional misrepresentation or criminal activity or (ii) the breach of any Property Rep, Section 3.14 (Taxes) or any Fundamental Representation, in each case, which shall not be subject to limitations set forth in this Section 8.02(b) (with the exception of the last sentence in Section 8.02(b)), neither party shall have any liability under Section 8.02(a)(i)(A) and Section 8.02(a)(ii)(A) (x) if the Persons listed in Section 1.01(a) of the Purchaser Disclosure Schedule (in the case of liability under Section 8.02(a)(i)(A)) or the Persons listed in Section 1.01(b) of the Seller Disclosure Schedule (in the case of liability under Section 8.02(a)(ii)(A)) had actual and direct knowledge of such breach or of all facts material to such breach, except in the case of liability under Section 8.02(a)(i)(A), for those matters set forth on Section 8.02(b) of the Purchaser Disclosure Schedule; and (y) until the aggregate amount of all such Losses exceeding such amount incurred by the Purchaser Indemnified Parties or the Seller Indemnified Parties, as applicable [REDACTED] (the "Deductible Amount"), in which event the indemnifying party shall be liable for Losses only to the extent they are in excess of the Deductible Amount, and in no event shall the aggregate liability of the

indemnifying party for claims made pursuant to Section 8.02(a)(i)(A) or Section 8.02(a)(ii)(A), as the case may be (other than the Fundamental Representations), exceed [REDACTED]. Notwithstanding anything herein to the contrary, neither Purchaser nor Seller shall be liable under this Agreement to the other party for aggregate Losses in excess of the Purchase Price.

(c) Notwithstanding anything in this Agreement to the contrary, there shall be no indemnification pursuant to this Agreement by any indemnifying party hereunder for any punitive, special, indirect, exemplary, incidental, consequential or similar damages (including any damages on account of lost profits, loss of revenue, loss of production or diminution in value (based on multiple of earnings or otherwise) or other damages attributable to business interruption), whether by statute, in tort or under contract, under any indemnity provision or otherwise, except in connection with a Third-Party Claim.

(d) The parties have negotiated the limitations set forth in Section 8.02(b) in part to avoid disputes concerning the meaning of materiality qualifiers such as “Material Adverse Effect”, “material”, “materially”, “in all material respects” and other similar qualifiers. Accordingly, for purposes of this Article VIII, any such materiality qualifier contained in any representation or warranty or in the definition of any defined term used therein (except for the representation in Section 3.07(b)) shall be ignored in determining whether there has been a breach of or inaccuracy in a representation or warranty and in measuring the corresponding damages.

Section 8.03 Duty to Mitigate. A party that becomes aware of a Loss for which it may seek indemnification under this Article VIII shall use commercially reasonable efforts to mitigate such Loss, including taking any actions reasonably requested by the other party, and such other party shall not be liable for any Loss to the extent that it is attributable to the failure of the party seeking indemnification to comply with this Section 8.03.

Section 8.04 Exclusive Remedy; Reduction of Benefit.

(a) Purchaser and Seller acknowledge and agree that from and after the Closing, except in the case of fraud or intentional misrepresentation, (i) the indemnification provisions in this Article VIII shall be the sole and exclusive remedy of the Purchaser Indemnified Parties and the Seller Indemnified Parties with respect to any breach of, or cause of action arising under this Agreement and the Ancillary Agreements (other than the Parent Guaranty and the Calpine Guaranty) or any claims relating to or arising under Environmental Law, including common law and statutory remedies (including, remedies under CERCLA and any other Environmental Law); and (ii) Purchaser expressly and knowingly releases and waives any right to seek any form of recourse other than the indemnification provisions in this Article VIII against Seller or its Affiliates with respect to claims relating to or arising under Environmental Laws, including common law and statutory remedies.

(b) Any obligation of Purchaser to indemnify a Seller Indemnified Party or of Seller to indemnify a Purchaser Indemnified Party shall be reduced to the extent of the cash paid to the applicable indemnified party (net of any costs incurred to recover such amount) pursuant to (y) a warranty or indemnification from a third party or (z) insurance.

(c) No Losses may be claimed under Section 8.02 by any Purchaser Indemnified Party or Seller Indemnified Party, as the case may be, to the extent such Losses are included in the calculation of any adjustment to the Purchase Price as [REDACTED].

(d) It is the express intention of the parties that the indemnification provided for in this Article VIII shall apply to direct claims between the parties for a breach of this Agreement and the Ancillary Agreements (whether or not involving a third party).

Section 8.05 Procedure With Respect to Third-Party Claims.

(a) No claim may be asserted pursuant to this Article VIII for breach of any representation, warranty, covenant or agreement contained herein unless written notice of such claim is delivered by the party seeking indemnification on or prior to the date on which the representation, warranty, covenant or agreement on which such claim is based ceases to survive as set forth in this Article VIII.

(b) If any Purchaser Indemnified Party or Seller Indemnified Party becomes subject to a pending or threatened claim of a third party (a "Third-Party Claim") and such Person (the "Claiming Party") believes it has a claim for indemnification against Purchaser or Seller, as applicable (the "Responding Party"), then the Claiming Party shall deliver to the Responding Party with reasonable promptness written notice of such Third-Party Claim. The Responding Party shall notify the Claiming Party as soon as practicable whether the Responding Party desires to defend the Claiming Party against such Third-Party Claim. The failure of the Claiming Party to so notify the Responding Party shall not relieve the Responding Party of liability hereunder; provided, however, that if the defense of such Third-Party Claim is prejudiced by the failure to give such notice, any Third Party Claim shall be reduced by the damages resulting from such Claiming Party's delay or failure to provide notice. Within thirty (30) days after receipt of any notice pursuant to this Section 8.05(b), the Responding Party shall notify the Claiming Party in writing that it desires to defend the Third-Party Claim pursuant to this Section 8.05(b) and acknowledge its obligations to indemnify hereunder. Upon giving such notice, the Responding Party shall have control of such defense and proceedings, including any settlement thereof.

(c) If the Responding Party notifies the Claiming Party that it desires to defend the Third-Party Claim pursuant to Section 8.05(b), then the Responding Party shall work diligently to defend the Third-Party Claim with counsel reasonably acceptable to the Claiming Party and shall not enter into any settlement or consent to the entry of any Order (i) that does not include as a term thereof the giving by each claimant or plaintiff to the Claiming Party a release from all liability in respect of such Third-Party Claim, (ii) that provides for any relief other than the payment of monetary damages as to which the Claiming Party shall be paid in full or (iii) in the reasonable judgment of the Claiming Party, is likely to establish a precedential custom or practice or result in an outcome that is materially adverse to the continuing business interests of the Claiming Party; provided, however, that if requested by the Responding Party, the Claiming Party shall, at the sole cost and expense of the Responding Party, reasonably cooperate with the Responding Party and its counsel in contesting any Third-Party Claim that the Responding Party elects to contest. The Claiming Party may elect to participate in such proceedings, negotiations or defense at any time at its own expense; provided, however, that the Responding Party shall pay the reasonable attorneys' fees of the Claiming Party if (i) the employment of separate counsel

shall have been authorized in writing by the Responding Party in connection with the defense of such Third-Party Claim, (iii) there are legal defenses available to the Claiming Party that are different from or additional to those available to the Responding Party or (iii) the Claiming Party's counsel shall have advised the Claiming Party in writing, with a copy delivered to the Responding Party, that there is a conflict of interest that could make it inappropriate under applicable standards of professional conduct for the Responding Party and the Claiming Party to have common counsel.

(d) Until the Responding Party notifies the Claiming Party that the Responding Party desires to defend the Third-Party Claim pursuant to Section 8.05(b), the Claiming Party shall (upon reasonable prior notice to the Responding Party) have the right to undertake the defense of such Third-Party Claim, with counsel chosen by the Claiming Party; provided, however, that the Responding Party shall reimburse the Claiming Party for the costs of defending against such Third-Party Claim (including reasonable attorneys' fees and expenses) and shall remain otherwise responsible for any liability with respect to amounts arising from or related to such Third-Party Claim, in both cases to the extent it is ultimately determined that such Responding Party is liable with respect to such Third-Party Claim for a breach under this Agreement; and provided, further, that the Claiming Party shall not enter into settlement of any such Third-Party Claim without the prior written consent of the Responding Party which shall not be unreasonably withheld. The Responding Party may elect to participate in such proceedings, negotiations or defense at any time at its own expense.

(e) Sections 8.05(a) through (d) apply only to indemnification relating to Third Party Claims. A party to this Agreement may assert an indemnity claim not related to a Third Party Claim by providing notice to the other party within the applicable time periods set forth in Section 8.01.

Section 8.06 Effect of Investigation. Subject to Section 8.02(b)(x), the representations, warranties and covenants of the indemnifying party, and the indemnified party's right to indemnification with respect thereto, shall not be affected or deemed waived by reason of any investigation made by or on behalf of the indemnified party (including by any of its Representatives) or by reason of the fact that the indemnified party or any of its Representatives should have known that any such representation or warranty is, was or might be inaccurate or by reason of the indemnified party's waiver of any condition set forth in Article VI or Article VII, as the case may be.

Section 8.07 Adjustment to Purchase Price. [REDACTED]

Section 8.08 Release of Indemnity Escrow Funds. The Indemnity Escrow Fund will be released pursuant to the terms of the Escrow Agreement as follows:

(a) In the event that, prior to the date of the expiration of the Indemnity Escrow Period, a Purchaser Indemnified Party is entitled to receive payments under (i) any mutual agreement between the parties or (ii) any final Order, in any case, regarding claims for Losses made by such Purchaser Indemnified Party pursuant to Section 8.02(a)(i), then Purchaser and Seller will promptly execute a joint written instruction to the Escrow Agent directing the

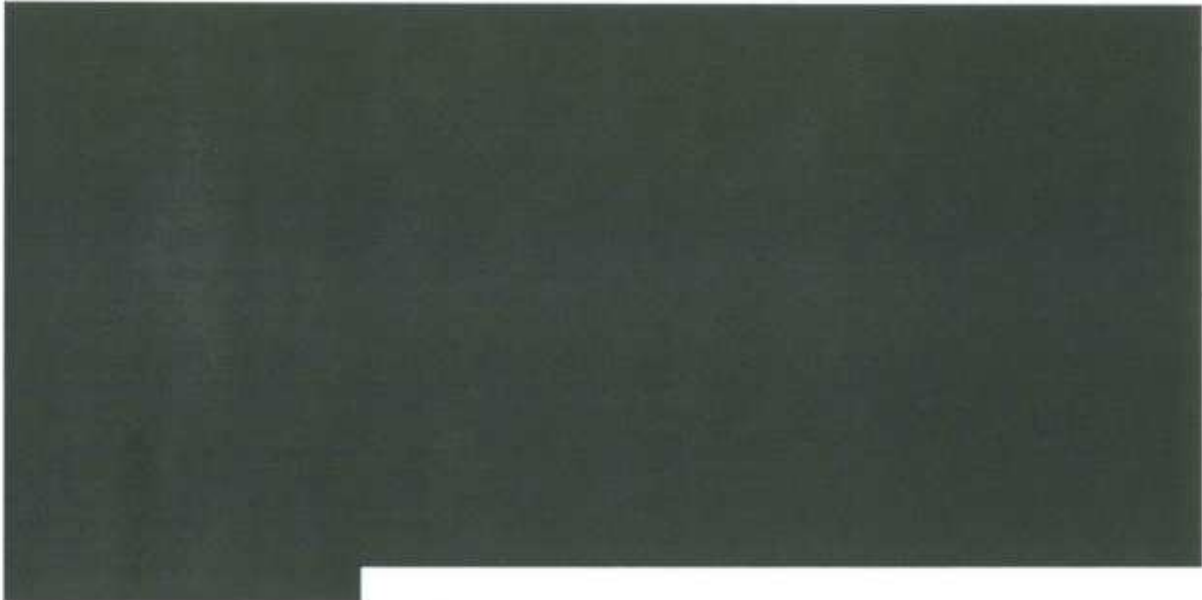
Escrow Agent to deliver such amounts to the Purchaser Indemnified Party and the remaining balance of the Indemnity Escrow Fund will be retained in accordance with the terms of this Section 8.08 and the Escrow Agreement.

(b) In the event that Purchaser will have made claim(s) for Losses pursuant to Section 8.02(a)(i) and such indemnification claim(s) remain outstanding as of the date of the expiration of the Indemnity Escrow Period, then the Indemnity Escrow Fund will only be delivered to Seller to the extent that the amount of such indemnification claim(s) (the "Claim Amount"), is less than the remaining balance of the Indemnity Escrow Fund, in which case, (i) within two (2) Business Days after the expiration of the Indemnity Escrow Period, Purchaser and Seller will execute a joint written instruction to the Escrow Agent directing the Escrow Agent to deliver to Seller an amount equal to the remaining balance of the Indemnity Escrow Fund less the Claim Amount, (ii) Purchaser and Seller will execute any required amendments to the Escrow Agreement in order to extend the Indemnity Escrow Period and (iii) the portion of the Indemnity Escrow Fund equal to the Claim Amount will remain held in escrow pending the resolution of such indemnification claim. Upon resolution of such outstanding indemnification claim(s), either by mutual agreement of the parties or pursuant to a final Order, Purchaser and Seller will promptly execute a joint written instruction to the Escrow Agent directing the Escrow Agent to deliver to (A) Purchaser any amounts which Purchaser is entitled to receive as a result of the resolution of such outstanding indemnification claims(s) and (B) Seller any remaining balance of the Indemnity Escrow Fund.

(c) Interest on the Indemnity Escrow Amount will be paid to Purchaser and Seller in the proportion of the Indemnity Escrow Amount paid to them.

(d) Purchaser will make demand for payment under the Escrow Agreement prior to instituting any proceedings or taking any other action against Seller, unless the failure to institute proceedings or take such other action will prejudice Purchaser's ability to make such indemnification claim.

Section 8.09 Indemnification Letter of Credit. At the Closing, Seller may deliver to Purchaser a letter of credit in the amount of [REDACTED] and substantially in the form of Exhibit E attached hereto (the "Indemnification Letter of Credit") to secure Seller's indemnification obligations under Section 8.02(a)(i), subject to the terms and conditions of this Agreement, in which event the Base Purchase Price will not be reduced by the Indemnity Escrow Amount and Purchaser and Seller will not enter into the Escrow Agreement at Closing, as to the Indemnity Escrow Fund. The Indemnification Letter of Credit must be issued by a U.S. commercial bank or the U.S. branch of a foreign bank with total assets of at least \$10 billion having a general long-term senior unsecured debt rating of A- or higher (as rated by Standard & Poor's Rating Group) or A3 or higher (as rated by Moody's Investor Services, Inc.) and shall permit presentation at a bank located in Charlotte, NC, Atlanta, GA, or New York, NY (the "Indemnification LOC Issuing Bank"). Seller would ensure that the Indemnification Letter of Credit remains in full force, outstanding and in the required amount until the later of (i) the date which is [REDACTED]



ARTICLE IX

TERMINATION

Section 9.01 Termination. This Agreement may be terminated, and the transactions contemplated hereby may be abandoned, at any time by written notice from either party to the other party (except for paragraph (a) below):

- (a) by mutual written consent of Purchaser and Seller;
- (b) by either Purchaser or Seller:

(i) if the Closing has not occurred on or before March 31, 2017 (the "Termination Date"); provided, that the terminating party is not in material breach under this Agreement, and subject to Seller's right to extend the Termination Date for up to ninety (90) days pursuant to Section 5.06(b)(ii);

(ii) at any time before the Closing, if any court of competent jurisdiction in the United States or other Governmental or Regulatory Authority other than FERC shall have issued a final Order or enacted any Law or taken any other final action restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement and such Order or Law or other action is or shall have become final and nonappealable; provided, however, that the party seeking to terminate this Agreement pursuant to this Section 9.01(b)(ii) shall have used commercially reasonable efforts to prevent the entry of and to remove such Order or final action;

(iii) if [REDACTED] occur prior to August 1, 2015 and the terminating party reasonably determines that the cost of repairing, replacing or restoring the damaged assets will exceed [REDACTED] of the Base Purchase Price, provided that the terminating party provides notice on or prior to August 1, 2015;

(iv)

[REDACTED]

(v)

[REDACTED]

(vi)

[REDACTED]

(vii) at any time before the Closing [REDACTED]

[REDACTED], instituted or pending any suit, action or proceeding by the DOJ, the FTC or the Florida attorney general's office seeking to restrain, enjoin or otherwise prohibit the consummation of the transactions contemplated by this Agreement provided notice of termination is given within 30 days of such threat in writing or the commencement of such proceeding, as applicable; or

(viii) if [REDACTED] and/or Other Losses occur [REDACTED]

[REDACTED]

(c) by:

(i)

[REDACTED]

(ii)

[REDACTED]

(iii) Purchaser or Seller, at any time before the Closing, if the FPSC affirmatively rejects the transactions contemplated hereby, provided notice of termination is given within 30 days after such FPSC rejection;

(iv)

[REDACTED]

[REDACTED]
; or

(v) [REDACTED]

(d) at any time before the Closing, by Purchaser (provided that Purchaser is not in material breach under this Agreement) if (A) there has been a breach by Seller of any representation, warranty, covenant or agreement contained in this Agreement or if any representation or warranty of Seller shall have become untrue, in either case such that the conditions set forth in Section 6.01 or 6.02 would not be satisfied, and (B) such breach is not curable by the Termination Date;

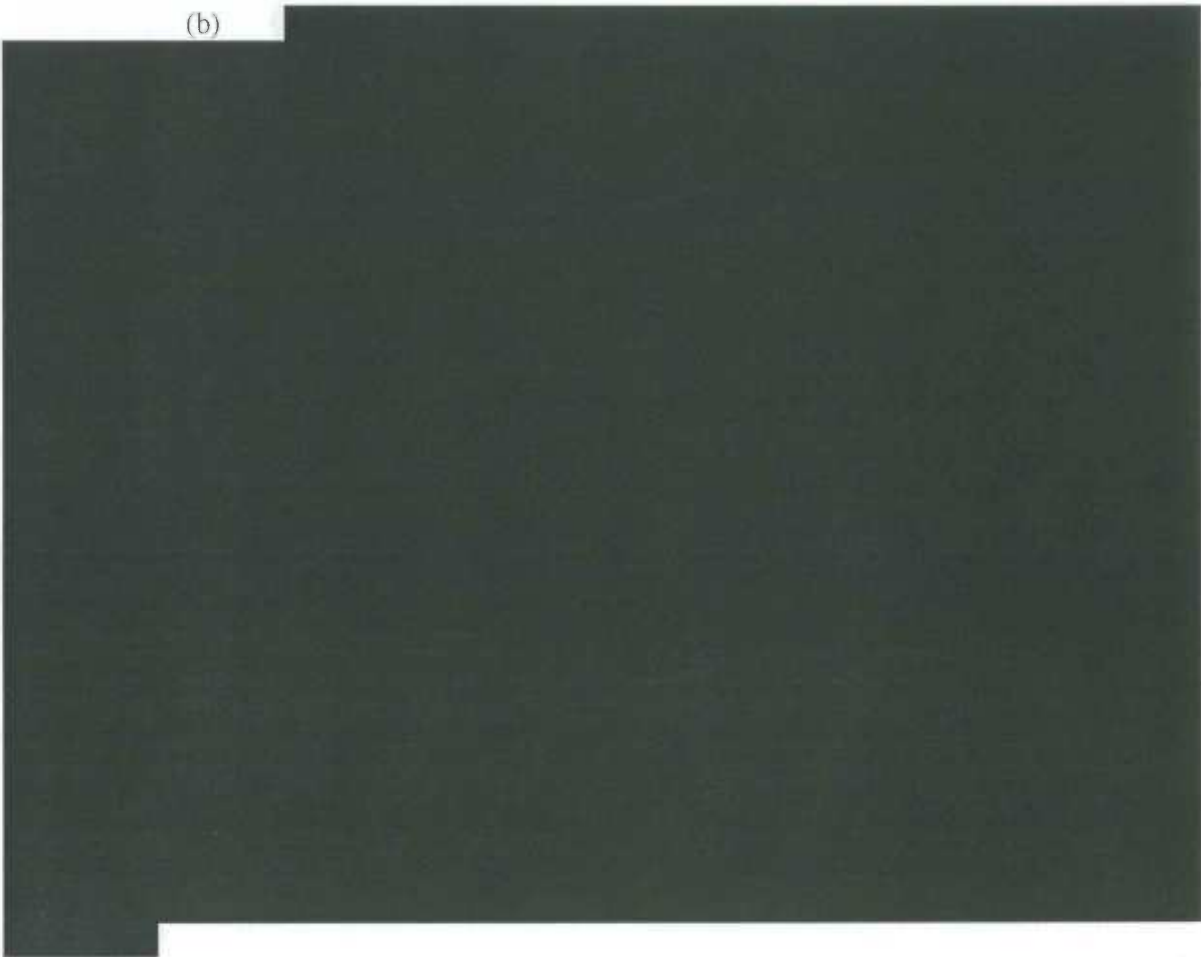
(e) at any time before the Closing, by Seller (provided that Seller is not in material breach under this Agreement) if (A) there has been a breach by Purchaser of any representation, warranty, covenant or agreement contained in this Agreement or if any representation or warranty of Purchaser shall have become untrue, in either case such that the conditions set forth in Section 7.01 or 7.02 would not be satisfied, and (B) such breach is not curable by the Termination Date; provided, however, that no cure period shall apply to Purchaser's obligation to pay the Closing Payment.

Section 9.02 Effect of Termination. Subject to Section 9.03, if this Agreement is validly terminated pursuant to Section 9.01, this Agreement will forthwith become null and void and there will be no liability or obligation on the part of either Purchaser or Seller (or any of their respective Affiliates or Representatives) in respect of this Agreement; provided, that the provisions set forth in Article X and Purchaser's indemnification obligations set forth in Section 5.01(a), Section 5.02(b), Section 5.06(c), and Section 5.11(d), will continue to apply following any termination hereof; and provided, further, that subject to Section 9.03, each party shall continue to be liable for any breach by such party prior to the termination of this Agreement of any representation, warranty, covenant or agreement of such party in this Agreement.

Section 9.03 [REDACTED] (a) [REDACTED]
[REDACTED]



(b)



Section 9.04 Specific Performance.

(a) Except as provided in the last sentence of Section 9.03, the parties to this Agreement agree that, upon a breach or threatened breach of their Agreement by any party, the remedies at law of the other party for a breach or threatened breach of this Agreement may not be a sufficient remedy and that the party shall be entitled to specific performance of the terms of

this Agreement and immediate injunctive relief, without the necessity of proving the inadequacy of money damages as a remedy, in addition to any other remedy at law or in equity.

(b) The parties further agree that (i) the seeking of the remedies provided for in Section 9.04(a) by another party to this Agreement shall not be required to provide any bond or other security in connection with such order or injunction or in any respect constitute a waiver by either party of its right to seek any other form of relief that may be available to either of them under this Agreement, from and after the Closing, and (ii) nothing set forth in this Agreement shall require any party hereto to institute any proceeding for (or limit such party's right to institute any proceeding for) specific performance under Section 9.04(a) prior to or as a condition to exercising any termination right under Article IX, nor shall the commencement of any legal proceeding pursuant to this Section 9.04 restrict or limit any party's right to terminate this Agreement in accordance with the terms of Article IX or pursue any other remedies under this Agreement that may be available then or thereafter.

ARTICLE X

MISCELLANEOUS

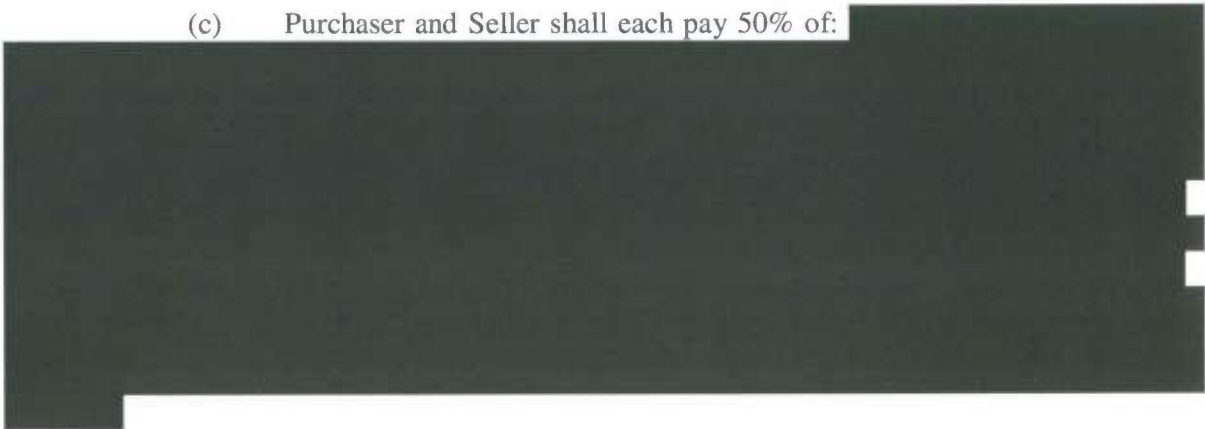
Section 10.01 Entire Agreement. This Agreement, together with the Ancillary Agreements and the Confidentiality Agreement, supersedes all prior discussions and agreements between the parties with respect to the subject matter hereof, and contains the sole and entire agreement between the parties hereto with respect to the subject matter hereof. For clarity, the term "Proprietary Information" in the Confidentiality Agreement shall be deemed to include this Agreement.

Section 10.02 Expenses.

(a) Except as otherwise specified in this Agreement, whether or not the transactions contemplated hereby are consummated, each party shall pay its own costs and expenses (including attorneys' fees) incurred in connection with the negotiation and execution of this Agreement and the transactions contemplated hereby.

(b) Purchaser shall pay 100% of any filing fees associated with a filing made in 2014 or 2015 under the HSR Act.

(c) Purchaser and Seller shall each pay 50% of:



Section 10.03 Announcements. Except as otherwise required by Law (including rules of any national securities exchange), each of Purchaser and Seller will, and will cause their Affiliates (as applicable) to, consult with the other regarding the timing and content of any press releases or public statements with respect to this Agreement or the transactions contemplated hereby.

Section 10.04 No Waiver. Any term or condition of this Agreement may be waived at any time by the party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the party waiving such term or condition. No waiver by any party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion.

Section 10.05 Amendments. Any provision of this Agreement may be modified, supplemented or waived only by an instrument in writing duly executed by the parties. Any such modification, supplement or waiver shall be for such period and subject to such conditions as shall be specified in the instrument effecting the same and shall be binding upon each of the parties, and any such waiver shall be effective only in the specific instance and for the purposes for which given.

Section 10.06 Addresses for Notices. All notices and other communications required or permitted to be given or made under this Agreement shall be given or made in writing, by physical (including by mail or courier) or facsimile or electronic mail delivery to the address specified below or such other address as shall be designated in a notice in writing. Notices will be effective upon receipt.

If to Seller:

Calpine Corporation
717 Texas Avenue, Suite 1000
Houston, TX 77002
Attention: Chief Legal Officer
Facsimile No.: (713) 830-8751 and (832) 325-1508

with a copy to:

White & Case LLP
1155 Avenue of the Americas
New York, NY 10036-2787
Attn: Michael S. Shenberg
Facsimile No.: (212) 354-8113
Email: mshenberg@whitecase.com

If to Purchaser:

Duke Energy Florida, Inc.
299 First Avenue North
St. Petersburg, FL 33701
Attn: John Burnett

Facsimile No.: (727) 820-5041
Email: john.burnett@duke-energy.com

with a copy to:

Duke Energy Corporation
550 S. Tryon Street, DEC
Charlotte, North Carolina 28202
Attn: Greer Mendelow, Esq.
Facsimile No.: (980) 373-8534
Email: greer.mendelow@duke-energy.com

and

Parker Poe Adams & Bernstein LLP
401 S. Tryon Street, Suite 3000
Charlotte, North Carolina 28202
Attention: Roy L. Smart, III
Facsimile No.: (704) 334-4706
Email: skipsmart@parkerpoe.com

Section 10.07 Captions. The captions and section headings appearing in this Agreement are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

Section 10.08 Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 10.09 Assignment. The obligations of the parties under this Agreement are not assignable without the prior written consent of the other party, which such party may withhold in its discretion; provided, that, either party may assign this Agreement to an Affiliate of such party; and provided, further that the Parent Guaranty shall remain in full force and effect and shall be amended to the reasonable satisfaction of Seller in connection with any assignment by Purchaser to an Affiliate.

Section 10.10 No Third-Party Beneficiary. The terms and provisions of this Agreement are intended solely for the benefit of each party hereto and their respective successors or permitted assigns, and it is not the intention of the parties to confer third-party beneficiary rights upon any other Person other than any Person entitled to indemnity under Article VIII.

Section 10.11 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties to this Agreement may execute this Agreement by signing any such counterpart.

Section 10.12 Governing Law. Except for matters relating to the Real Property, this Agreement shall be governed by, and construed in accordance with, the Laws of the State of New York applicable to a contract executed and performed in such State, which shall be without giving effect to any choice of law or conflict of law rules or principles thereof that would require the application of the rules of another jurisdiction. Matters relating to the Real Property shall be governed by, and construed in accordance with, the Laws of the State of Florida applicable to a contract executed and performed in such State, which shall be without giving effect to any choice of law or conflict of law rules or principles thereof that would require the application of the rules of another jurisdiction.

Section 10.13 Consent to Jurisdiction.

(a) Except as provided in Section 5.06(b)(iii), for all purposes of this Agreement, and for all purposes of any Action or Proceeding arising out of or relating to the transactions contemplated hereby or for recognition or enforcement of any judgment, each party hereto submits to the exclusive jurisdiction of the courts of the State of New York and the federal courts of the United States sitting in New York County, the Borough of Manhattan, and hereby irrevocably and unconditionally agrees that any such Action or Proceeding shall be heard and determined in such New York court or, to the extent permitted by law, in such federal court. Each party hereto agrees that a final judgment in any such Action or Proceeding may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

(b) Each party hereto irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so:

(i) any objection which it may now or hereafter have to the laying of venue of any Action or Proceeding arising out of or relating to this Agreement or any related matter in any New York state or federal court located in New York County, the Borough of Manhattan; and

(ii) the defense of an inconvenient forum to the maintenance of such Action or Proceeding in any such court.

(c) Each party hereto irrevocably consents to service of process by registered mail, return receipt requested, as provided in Section 10.06. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by law.

Section 10.14 WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH PARTY HEREBY WAIVES ALL RIGHTS TO A TRIAL BY JURY IN ANY LEGAL ACTION TO ENFORCE OR INTERPRET THE PROVISIONS OF THIS AGREEMENT OR THAT OTHERWISE RELATES TO THIS AGREEMENT.

Section 10.15 Disclosure. Seller may, at its option, include in the Seller Disclosure Schedule items that are not material in order to avoid any misunderstanding, and any such inclusion, or any references to dollar amounts, shall not be deemed to be an acknowledgment or representation that such items are material, to establish any standard of materiality, to define further the meaning of such terms for purposes of this Agreement or to be deemed an admission by Seller that such item represents a material exception or fact, event, or circumstance or that

such item would reasonably be expected to have a Material Adverse Effect. Information disclosed in any section of the Seller Disclosure Schedule, including the agreements and documents referred to in the Seller Disclosure Schedule, shall constitute a disclosure for purposes of all other sections of the Seller Disclosure Schedule to the extent reasonably apparent, notwithstanding the lack of specific cross-reference thereto. In no event shall the inclusion of any matter in the Seller Disclosure Schedule be deemed or interpreted to broaden Seller's representations, warranties, covenants or agreements contained in this Agreement.

Section 10.16 DISCLAIMER. EXCEPT FOR AND SUBJECT TO THOSE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN ARTICLE III THAT BY THE TERMS OF THIS AGREEMENT EXPRESSLY SURVIVE AFTER THE CLOSING DATE AND ANY REPRESENTATIONS AND WARRANTIES IN THE ANCILLARY AGREEMENTS, (I) NONE OF SELLER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES HAS MADE OR IS MAKING ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING ANY IMPLIED REPRESENTATION OR WARRANTY AS TO THE CONDITION, VALUE, QUALITY, MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, APPARENT OR LATENT DEFECTS OF ANY TYPE, PROSPECTS (FINANCIAL OR OTHERWISE) OR RISKS OR OTHER INCIDENTS OF THE BUSINESS, THE PROJECT, THE PROJECT SITE, THE PURCHASED ASSETS, ASSUMED LIABILITIES OR ANY PART THEREOF, AND (II) THE SALE OF THE PURCHASED ASSETS IS BEING MADE "AS IS, WHERE IS, WITH ALL FAULTS". NONE OF SELLER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES MAKES ANY REPRESENTATION OR WARRANTY REGARDING ANY FINANCIAL OR OTHER PROJECTIONS, FORECASTS, ESTIMATES, OR FORWARD LOOKING STATEMENTS OF ANY KIND OR NATURE WHATSOEVER RELATING TO THE BUSINESS, THE PROJECT, THE PROJECT SITE, THE PURCHASED ASSETS OR THE ASSUMED LIABILITIES. NOTHING IN THE FOREGOING SHALL LIMIT ANY CLAIM, ACTION OR PROCEEDING WITH RESPECT TO FRAUD OR INTENTIONAL MISREPRESENTATION.

Section 10.17 Florida Law Disclosure. The following disclosure is made pursuant to Florida Law:

"RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department."

Section 10.18 Time is of the Essence. The parties agree that time shall be of the essence in the performance of all of the terms and conditions of this Agreement. If the last day for the exercise of any privilege or the discharge of any duty under this Agreement shall fall upon a day which is not a Business Day hereunder, then the party having such privilege or duty shall have until 5:00 p.m. local time on the next succeeding regular Business Day to exercise such privilege or to discharge such duty.

REDACTED

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (MEP-2)
Page 68 of 167

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REDACTED

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (MEP-2)
Page 69 of 167

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officer of each party hereto as of the date first above written.

DUKE ENERGY FLORIDA, INC.

By 
Name: Alex Glenn
Title: State President - FL

DUKE ENERGY, INC.
LEGAL DEPARTMENT
APPROVED BY: 
DATE: 11/16/14

OSPREY ENERGY CENTER, LLC

By _____
Name:
Title:

REDACTED

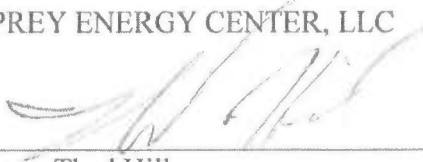
Docket No. _____
Duke Energy Florida
Exhibit No. _____ (MEP-2)
Page 70 of 167

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officer of each party hereto as of the date first above written.

DUKE ENERGY FLORIDA, INC.

By _____
Name: Alex Glenn
Title: State President - FL

OSPREY ENERGY CENTER, LLC

By  _____ JLD
Name: Thad Hill
Title: President

Seller Disclosure Schedule

This Seller Disclosure Schedule (this "Seller Disclosure Schedule") has been prepared and delivered in accordance with the Asset Purchase and Sale Agreement, dated as of December 17, 2014 (the "Agreement"), by and between Duke Energy Florida, Inc., a Florida corporation ("Purchaser"), and Osprey Energy Center, LLC, a Delaware limited liability company ("Seller" or "Company"). Unless the context otherwise requires, capitalized terms used but not defined in this Seller Disclosure Schedule shall have the respective meanings assigned to such terms in the Agreement.

Seller may, at its option, include in the Seller Disclosure Schedule items that are not material, and any such inclusion, or any references to dollar amounts, shall not be deemed to be an acknowledgement or representation that such items are material, to establish any standard of materiality, to define further the meaning of such terms for purposes of the Agreement or to be deemed an admission by Seller that such item represents a material exception or fact, event or circumstance or that such item would reasonably be expected to have a Material Adverse Effect. Nothing in any section of this Seller Disclosure Schedule (i) shall be deemed to modify in any respect the standard of materiality or any other standard for disclosure set forth in the Agreement or (ii) relating to any possible breach or violation of any agreement, contract, applicable Law or any order of a Governmental Authority shall be construed as an admission or indication that any such breach or violation exists or has actually occurred. In no event shall the inclusion of any matter in the Seller Disclosure Schedule be deemed or interpreted to broaden Seller's representations, warranties, covenants or agreements contained in this Agreement.

The section headings and subheadings in this Seller Disclosure Schedule are for convenience of reference only and shall not be deemed to alter or affect the express descriptions of this Seller Disclosure Schedule and its sections as set forth in the Agreement.

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Section 1.01(b)
Knowledge of Seller

1. [REDACTED], Vice President Corporate Development
2. [REDACTED] Senior Vice President Power Operations
3. [REDACTED] Vice President Development and Engineering
4. [REDACTED] Director Environmental Services
5. [REDACTED] Vice President Power Operations
6. [REDACTED] Plant Manager
7. [REDACTED] Vice President of Human Resources

Section 1.01(c)
Facility Employees

Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9054	Business Manager
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9076	Chemical Technician III
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9073	IC&E Technician III
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9073	IC&E Technician III
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9073	IC&E Technician III
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9082	Maint Technician III
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9082	Maint Technician III
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9082	Maint Technician III
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9109	Materials Technician III
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9027	Mgr Maintenance
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9026	Mgr Operations
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9087	Operator Technician II
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9087	Operator Technician II
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9075	Operator Technician III
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9075	Operator Technician III
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9075	Operator Technician III
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9075	Operator Technician III
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9075	Operator Technician III
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9075	Operator Technician III
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9075	Operator Technician III
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9042	Plant Engineer III
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9014	Plant Manager

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As disclosed in Section 5.03(i) of the Seller Disclosure, [REDACTED]

Section 1.01(d)-1
Permitted Liens with respect to Real Property

1. All matters disclosed in the Title Commitment and the Survey.
2. Seller has had 100% of its limited liability company interests pledged as collateral in connection with the Credit Agreement, dated as of May 3, 2013 (as amended by Amendment No. 1, dated as of February 20, 2014, and as may be further amended, restated, amended and restated, supplemented or otherwise modified up through the date hereof), among Calpine Construction Finance Company, L.P., a Delaware limited partnership, as borrower, each of the lenders from time to time party thereto and Goldman Sachs Lending Partners LLC, as administrative agent and as collateral agent, pursuant to the Pledge and Security Agreement, dated as of June 3, 2013, among Calpine Construction Finance Company, L.P., as borrower, each of the grantors from time to time party thereto and Goldman Sachs Lending Partners LLC, as collateral agent. Such Liens (if any, on the Purchased Assets) will be discharged at Closing with respect to the Purchased Assets.
3. Seller may be required to grant a Mortgage, Assignment of Rents, Security Agreement and Fixture Filing to Goldman Sachs Lending Partners LLC (the "Goldman Mortgage"), as collateral agent, pursuant to the Credit Agreement described in paragraph 2 above. The Liens under the Goldman Mortgage, if granted, will be discharged at Closing.

Section 1.01(d)-2
Permitted Liens with respect to Purchased Assets (other than Real Property)

1. Seller has had 100% of its limited liability company interests pledged as collateral in connection with the Credit Agreement, dated as of May 3, 2013 (as amended by Amendment No. 1, dated as of February 20, 2014, and as may be further amended, restated, amended and restated, supplemented or otherwise modified up through the date hereof), among, Calpine Construction Finance Company, L.P., a Delaware limited partnership, as borrower, each of the lenders from time to time party thereto and Goldman Sachs Lending Partners LLC, as administrative agent and as collateral agent, pursuant to the Pledge and Security Agreement, dated as of June 3, 2013, among, Calpine Construction Finance Company, L.P., as borrower, each of the grantors from time to time party thereto and Goldman Sachs Credit Partners LLC, as collateral agent. Such Liens (if any, on the Purchased Assets) will be discharged at Closing with respect to the Purchased Assets.
2. Seller may be required to grant the Goldman Mortgage, pursuant to the Credit Agreement described in paragraph 2 above. The Liens under the Goldman Mortgage, if granted, will be discharged at Closing.

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Section 2.01(j)
Warranties, Indemnities and Guarantees

None.

**Section 2.02(d)
Excluded Contracts**

1.

[REDACTED]

2.

[REDACTED]

3.

[REDACTED]

4.

[REDACTED]

5.

[REDACTED]

6.

[REDACTED]

- 7. [REDACTED]
- 8. [REDACTED]
- 9. [REDACTED]
- 10. [REDACTED]
- 11. [REDACTED]
- 12. [REDACTED]
- 13. [REDACTED]
- 14. [REDACTED]
- 15. [REDACTED]
- 16. [REDACTED]

Section 2.02(i)
Excluded Governmental and Regulatory Approvals

1. The MSGP identified in Section 3.17(b) of this Seller Disclosure Schedule is issued to Calpine Operating Services Company, Inc., an affiliate of the Company. Since an MSGP is not transferable to a new owner, Purchaser will be required to obtain an MSGP in its own name.
2. Notice of Self-Certification of Exempt Wholesale Generator Status, Docket No. EG13-39-000, filed June 10, 2013, as supplemented on July 26, 2013. FERC Notice of Effectiveness of Exempt Wholesale Generator Status, issued September 23, 2013.
3. Market Based Rate Authorization: Osprey Energy Center, LLC, Docket No. ER13-1406-000, filed May 2, 2013, approved by FERC by letter order dated June 19, 2013.

Section 2.02(j)
Excluded Intellectual Property; Excluded Tangible Personal Property; Excluded Software

System Description	Product/License Detail	Licensed by Corp or Plant?	Number of Licenses by Type	Costs associated with transfer?	Excluded Intellectual Property; Excluded Tangible Personal Property; Excluded Software
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

					[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

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					[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

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P [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

					[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

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					[REDACTED]
					[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

					[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

					[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

0	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

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					[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

For the avoidance of doubt, Seller's Marks, as such term is defined in Section 5.14 of the Agreement are Excluded Intellectual Property.

Section 3.03(c)
No Conflict, Violation or Breach

1. Section 3.04 of this Seller Disclosure Schedule is incorporated herein by reference.

[REDACTED]

- 2.

[REDACTED]

- 3.

[REDACTED]

- 4.

[REDACTED]

[REDACTED]

- 5.

[REDACTED]

- 6.

[REDACTED]

Section 3.04
Required Governmental or Regulatory Approvals

1. Section 7.05 of this Seller Disclosure Schedule is incorporated herein by reference.
2. The MSGP identified in Section 3.17(b) of this Seller Disclosure Schedule is issued to Calpine Operating Services Company, Inc., an affiliate of the Company. Since an MSGP is not transferable to a new owner, Purchaser will be required to obtain an MSGP in its own name. Post-closing notification and approval for coverage under the MSGP for Stormwater Associated with Industrial Activity.
3. Transfer of the certification under the Florida Power Plant Siting Act (PA0041) by filing of Notice of Intent to Transfer Certification with the Florida Department of Environmental Protection for certification and approval of the transfer.
4. Per the Power Plant Siting Act Conditions of Certification condition V.B.2, provide notification to SWFWMD within 30 days of closing of the transfer of the facility.
5. Approval of the City of Auburndale Public Utilities Department for the Wastewater Discharge Permit (*Permit No. IC8916*).
6. Modification, post-closing notification and permit transfer required for PSD/Title V Air Operation Permit, incorporating Clean Air Interstate Rule/Cross State Air Pollution Rule and Acid Rain permits, (*Permit Nos. 1050334, PSD-FL-287, and ORIS 55412*) issued by the FDEP.
7. Post-closing notification and assignment of a new EPA Identification Number required for Hazardous Waste Generator Identification Number (*ID: FLR000105544*) issued by the U.S. Environmental Protection Agency and FDEP.
8. Post-closing notification and transfer required for Storage Tank Registration (*Facility ID: 9806373 and STCM Account: 55776*) issued by the FDEP.
9. Post-closing notification for Greenhouse Gas Reporting Registration (*ID: 1000107*) issued by U.S. Environmental Protection Agency.
10. Post-closing notification for Emergency Planning and Community Right-to-Know Act for Tier II reporting to Florida Department of Emergency Management and Central Florida Regional Planning Council; Purchaser to obtain new ID for Tier II reporting.

REDACTED

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Section 3.06
Undisclosed Liabilities

None.

REDACTED

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Section 3.07
Absence of Changes



REDACTED

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Section 3.08
Compliance with Laws

None.

REDACTED

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**Section 3.09
Legal Proceedings**

None.

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Section 3.10(a)
Real Property

The West ½ of the Northwest ¼ of the Northwest ¼ of Section 15, Township 28 South, Range 25 East, Polk County, Florida, less and except that certain property conveyed by Quit Claim deed recorded in deed book 972 page 357 and less and except that certain property conveyed by Quit Claim deed recorded in Official Records Book 666, page 640, and as modified by a Boundary Line Agreement recorded October 12, 2001 in Official Records Book 4822, Page 1799 and as amended by that certain First Amendment to Boundary Line Agreement recorded in Official Records Book 4837, Page 688 of the Public Records of Polk County, Florida.

Seller makes no representation or warranty with respect to any of the above-described land that is included within any road right of way.

Together with: (i) all structures and improvements constructed and/or located thereon and (ii) any and all rights, entitlements, privileges, easements, rights of way and/other appurtenances used or connected with the beneficial use or enjoyment of such land, if any.

REDACTED

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Section 3.10(b)
Real Property Subject to Condemnation

None.

REDACTED

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Section 3.11
Title to Personal Property

Certain of the Intellectual Property, Tangible Personal Property and Software as identified on Section 2.02(j) of this Seller Disclosure Schedule are Excluded Assets. Certain Tangible Personal Property as identified on Section 2.02(j) of this Seller Disclosure Schedule, used by the Company in the Business or for the Project is owned by an Affiliate of the Company.

**Section 3.13
Company Contracts**

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]
8. [REDACTED]
9. [REDACTED]

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10.



REDACTED

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Section 3.14
Taxes



Section 3.15(a)
Benefit Plans

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]
8. [REDACTED]
9. [REDACTED]
10. [REDACTED]
11. [REDACTED]
12. [REDACTED]
13. [REDACTED]
14. [REDACTED]
15. [REDACTED]
16. [REDACTED]
17. [REDACTED]
18. [REDACTED]
19. [REDACTED]
20. [REDACTED]

[REDACTED]

REDACTED

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- 21. [REDACTED]
- 22. [REDACTED]
- 23. [REDACTED]
- 24. [REDACTED]
- 25. [REDACTED]
- 26. [REDACTED]

REDACTED

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Section 3.15(c)
Acceleration of Vesting or Payment

None.

REDACTED

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Section 3.15(f)
Strikes, Lockouts or Other Labor Stoppages

None.

Section 3.16(a)
Project Insurance Policies

The policies listed below are part of a master corporate insurance program and all limits are shared among Calpine Corporation's fleet. For the avoidance of doubt, none of the policies set forth below will provide any coverage to Purchaser after Closing.

1. **Property and Business Interruption Insurance**

[REDACTED]

2. **General Liability Insurance**

[REDACTED]

3. **Auto Liability Insurance**

[REDACTED]

4. **Worker's Compensation / Employer's Liability**

[REDACTED]

5. **Umbrella Liability Coverage**

[REDACTED]

6. **First Excess Liability**

[REDACTED]

7. Second Excess Liability

[REDACTED]

8. Third Excess Liability

[REDACTED]

9. Fourth Excess Liability

[REDACTED]

10. Fifth Excess Liability

[REDACTED]

11. Environmental Liability

[REDACTED]

REDACTED

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Section 3.16(b)
Insurance Claims

None.

REDACTED

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Section 3.17(a)
Environmental Matters

1. All matters disclosed in the Phase I Environmental Site Assessment Update Report – Osprey Energy Center Site, Auburndale, Florida, prepared by Golder Associates, Inc. and ENVIRON International Corporation and dated May 20, 2003.

Section 3.17(b)
Environmental Permits

1. Conditions of Certification (*ID: PA-0041*) issued by the Florida Governor and Cabinet (issuance) and coordinated by the FDEP.
2. PSD/Title V Air Operation Permit incorporating Clean Air Interstate Rule/Cross State Air Pollution Rule and Acid Rain permits, (*Permit Nos. 1050334, PSD-FL-287, and ORIS 55412*) issued by the FDEP expiring December 31, 2015.
3. Multi Sector Generic Permit for Stormwater Associated with Industrial Activity (*Facility ID: FLR05G127*) issued to Calpine Operating Services Company, Inc. by the FDEP expiring January 6, 2016.
4. Wastewater Discharge Permit (*Permit No. IC8916*) issued by the City of Auburndale Public Utilities Department expiring July 31, 2015.
5. Hazardous Waste Generator Identification Number (*ID: FLR000105544*) issued by the U.S. Environmental Protection Agency and FDEP.
6. Storage Tank Registration (*Facility ID: 9806373 and STCM Account: 55776*) issued by the FDEP with no expiration.
7. Greenhouse Gas Reporting Registration (ID: 1000107) issued by U.S. Environmental Protection Agency.
8. Post-closing notification for Emergency Planning and Community Right-to-Know Act for Tier II reporting to Florida Department of Emergency Management and Central Florida Regional Planning Council; Purchaser to obtain new ID for Tier II reporting.

REDACTED

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Section 3.18(a)
Permits and Regulatory Matters

1. The Permits listed under Section 3.17(b) of this Seller Disclosure Schedule.
2. Notice of Self-Certification of Exempt Wholesale Generator Status, Docket No. EG13-39-000, filed June 10, 2013, as supplemented on July 26, 2013. FERC Notice of Effectiveness of Exempt Wholesale Generator Status, issued September 23, 2013.
3. Market Based Rate Authorization: Osprey Energy Center, LLC, Docket No. ER13-1406-000, filed May 2, 2013, approved by FERC by letter order dated June 19, 2013.

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Section 3.18(b)
Permits and Regulatory Approvals not in Full Force and Effect

None.

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Section 3.20(a)
Good Utility Practice Exceptions

None.

REDACTED

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Section 3.20(b)
Auburndale Plant Interdependencies; Separation Plan

[REDACTED]

REDACTED

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Section 5.03
Certain Restrictions (Exceptions)

1. Items listed under Section 5.03(e) and Section 5.03(i) of this Seller Disclosure Schedule.

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Section 5.03(e)
Certain Restrictions: Permitted Capital Expenditures

1. Items listed under Section 5.02(a) of the Purchaser Disclosure Schedule.
2. Items listed under Section 5.02(b) of the Purchaser Disclosure Schedule.

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Section 5.03(i)
Certain Restrictions: Excluded Employees



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**Section 5.10
Credit Support**

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]

[REDACTED]

Section 7.05
Governmental or Regulatory Approvals

1. FERC approval pursuant to Section 203 of the Federal Power Act.
2. Filings and approvals, including the expiration of applicable waiting periods, under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.
3. Consent of the Federal Communications Commission with respect to the change in beneficial ownership of Seller's radio license (*Call Sign: WPYT661*) used exclusively for the Facility.
4. Waiver of the FERC's capacity release requirements in Section 284.8 of FERC's regulations, and other related FERC policies and requirements, to facilitate the assignment and permanent release from Calpine Energy Services, L.P. to Duke Energy Florida, Inc. of a firm transportation capacity agreement on Gulfstream Natural Gas System, L.L.C., Contract Number 9006487.
5. FPSC approval pursuant to the Revised and Restated Settlement Agreement and other applicable statutes and FPSC rules.

**Section 7.06
Third-Party Consents**

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]

Purchaser Disclosure Schedule

This Purchaser Disclosure Schedule (this "Purchaser Disclosure Schedule") has been prepared and delivered in accordance with the Asset Purchase and Sale Agreement, dated as of December 17, 2014 (the "Agreement"), by and between Duke Energy Florida, Inc., a Florida corporation ("Purchaser"), and Osprey Energy Center, LLC, a Delaware limited liability company ("Seller" or "Company"). Unless the context otherwise requires, capitalized terms used but not defined in this Purchaser Disclosure Schedule shall have the respective meanings assigned to such terms in the Agreement.

Purchaser may, at its option, include in the Purchaser Disclosure Schedule items that are not material, and any such inclusion, or any references to dollar amounts, shall not be deemed to be an acknowledgement or representation that such items are material, to establish any standard of materiality, to define further the meaning of such terms for purposes of the Agreement or to be deemed an admission by Purchaser that such item represents a material exception or fact, event or circumstance or that such item would reasonably be expected to have a Material Adverse Effect. Nothing in any section of this Purchaser Disclosure Schedule (i) shall be deemed to modify in any respect the standard of materiality or any other standard for disclosure set forth in the Agreement or (ii) relating to any possible breach or violation of any agreement, contract, applicable Law or any order of a Governmental Authority shall be construed as an admission or indication that any such breach or violation exists or has actually occurred.

The section headings and subheadings in this Purchaser Disclosure Schedule are for convenience of reference only and shall not be deemed to alter or affect the express descriptions of this Purchaser Disclosure Schedule and its sections as set forth in the Agreement.

REDACTED

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Section 1.01(a)
Knowledge of Purchaser

1. John Burnett (Deputy General Counsel)
2. Matt Palasek (Director, Mergers & Acquisitions)
3. Kris Edmondson (GM Services – Florida)
4. Michael Rib (Generation and Regulatory Strategy Director)
5. Amy Dierolf (Manager EH&S)
6. Richard Jefferies (Director, Retirement)
7. Lawrence Valenti (Senior HR Analyst)

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Section 4.03(c)
No Conflict, Violation or Breach

1. FERC approval pursuant to Section 203 of the Federal Power Act.
2. Filings and approvals, including the expiration of applicable waiting periods, under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.
3. FPSC approval pursuant to the Revised and Restated Settlement Agreement and other applicable statutes and FPSC rules.
4. Consent of the Federal Communications Commission with respect to the change in beneficial ownership of Seller's radio license (*Call Sign: WPYT661*) used exclusively for the Project.
5. Waiver of the FERC's capacity release requirements in Section 284.8 of FERC's regulations, and other related FERC policies and requirements, to facilitate the assignment and permanent release from Calpine Energy Services, L.P. to Duke Energy Florida, Inc. of a firm transportation capacity agreement on Gulfstream Natural Gas System, L.L.C., Contract Number 9006487.

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Section 4.04
Required Governmental or Regulatory Approvals

1. Section 4.03(c) of this Purchaser Disclosure Schedule is incorporated herein by reference.

Section 5.02(a)
Conduct of Business

[REDACTED]

(a)

[REDACTED]

(b)

[REDACTED]

[REDACTED]

(c)

[REDACTED]

(i) [REDACTED]

i. [REDACTED]

ii. [REDACTED]

iii. [REDACTED]

iv. [REDACTED]

REDACTED

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Section 5.02(b)
Integration Activities

[Redacted]

[Redacted]

(a) [Redacted]

(b) [Redacted]

[Redacted]

REDACTED

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Section 6.05
Governmental or Regulatory Approvals

1. Section 4.03(c) of this Purchaser Disclosure Schedule is incorporated herein by reference.

**Section 6.07
Third-Party Consents**

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]

REDACTED

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Section 8.02(b)
Purchaser Excluded Knowledge Matters¹



¹ Purchaser has been advised by Seller that while Seller agrees with the factual nature of this statement, the inclusion of this statement in the Purchaser Disclosure Schedule is not deemed an admission by Seller of any breach of the Agreement.

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement") is made as of [•], 201_ by and between OSPREY ENERGY CENTER, LLC, a Delaware limited liability company ("Osprey"), and DUKE ENERGY FLORIDA, INC., a Florida corporation ("DEF").

WITNESSETH:

WHEREAS, Osprey and DEF have entered into that certain Asset Purchase and Sale Agreement, dated as of December [•], 2014 (the "Purchase and Sale Agreement"), pursuant to which DEF has agreed to assume from Osprey, and covenant to pay, perform and discharge, the Assumed Liabilities.

NOW, THEREFORE, intending to be legally bound, and in consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignment and Assumption. Pursuant to Section 2.03 of the Purchase and Sale Agreement, and subject to Section 2 hereof, Osprey hereby assigns to DEF all of DEF's right, title and interest in and to the Purchased Contracts (other than Purchased Contracts being assigned by CES), and DEF hereby assumes from Osprey and covenants to pay, perform and discharge, in a timely manner and in accordance with the terms thereof, all of the Assumed Liabilities, except the Assumed Liabilities arising out of Purchased Contracts which are in the name of Calpine Energy Services, L.P., a Delaware limited partnership ("CES") which are assigned by CES and assumed by DEF pursuant to a separate Assignment and Assumption Agreement, dated as of [•], 201_.

2. Terms of Purchase and Sale Agreement Control. Nothing contained in this Agreement shall in any way supersede, modify, replace, amend, rescind, waive, narrow or broaden any provision set forth in the Purchase and Sale Agreement or any of the rights, remedies or obligations arising therefrom. This Agreement shall in all ways be governed by, and subject to, the Purchase and Sale Agreement.

3. Miscellaneous. This Agreement (a) is executed pursuant to the Purchase and Sale Agreement and may be executed in multiple counterparts, each of which as so executed shall be deemed to be an original, but all of which together shall constitute one instrument, (b) shall be governed by and in accordance with the Laws of the State of New York applicable to a contract executed and performed in such State, without regard to the principles of conflicts of law thereof, and (c) shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Capitalized terms used herein without definition shall have the respective meanings assigned to them in the Purchase and Sale Agreement.

4. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties to this Agreement may execute this Agreement by signing any such counterpart.

[Signatures Follow]

REDACTED

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IN WITNESS WHEREOF, each party hereto has caused this Assignment and Assumption Agreement to be duly executed as of the date first written above.

OSPREY ENERGY CENTER, LLC

By: _____
Name: _____
Title: _____

DUKE ENERGY FLORIDA, INC.

By: _____
Name: _____
Title: _____

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**[CES]**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement") is made as of [•], 201__ by and between CALPINE ENERGY SERVICES, L.P., a Delaware limited partnership ("CES"), and DUKE ENERGY FLORIDA, INC., a Florida corporation ("DEF").

WITNESSETH:

WHEREAS, Osprey Energy Center, LLC, a Delaware limited liability company ("Osprey") and an affiliate of CES, has entered into that certain Asset Purchase and Sale Agreement, dated as of [•], 2014 (the "Purchase and Sale Agreement"), by and between Osprey and DEF, the terms of which are incorporated herein by reference and which provides, among other things, for the sale, assignment and transfer by Osprey to DEF of the Purchased Contracts and the assumption by DEF of the Purchased Contracts; and

WHEREAS, in accordance with the terms of the Purchase and Sale Agreement, CES and DEF are entering into this Agreement, providing for (a) CES's assignment, transfer and delivery to DEF, of all of CES's right, title and interest in, under and to the Contracts set forth in Annex A attached hereto (collectively, the "CES Transferred Contracts"), (b) DEF's acceptance of such assignment, transfer and delivery and (c) DEF's assumption of CES's obligations and liabilities under the CES Transferred Contracts, arising from and after the date hereof, subject to the terms of the Purchase and Sale Agreement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and subject to the terms and conditions of the Purchase and Sale Agreement, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Assignment. In accordance with and subject to the terms of the Purchase and Sale Agreement, CES hereby assigns, transfers and delivers to DEF, all of CES's right, title and interest under the CES Transferred Contracts and DEF hereby assumes the Assumed Liabilities arising out of the CES Transferred Contracts.

2. Acceptance and Assumption. In accordance with and subject to the terms of the Purchase and Sale Agreement, DEF hereby assumes and agrees to pay, perform and discharge when due all of the Assumed Liabilities arising out of the CES Transferred Contracts.

2. Terms of Purchase and Sale Agreement Control. Nothing contained in this Agreement shall in any way supersede, modify, replace, amend, rescind, waive, narrow or broaden any provision set forth in the Purchase and Sale Agreement or any of the rights, remedies or obligations arising therefrom. This Agreement shall in all ways be governed by, and subject to, the Purchase and Sale Agreement.

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3. Miscellaneous. This Agreement (a) is executed pursuant to the Purchase and Sale Agreement and may be executed in multiple counterparts, each of which as so executed shall be deemed to be an original, but all of which together shall constitute one instrument, (b) shall be governed by and in accordance with the Laws of the State of New York applicable to a contract executed and performed in such State, without regard to the principles of conflicts of law thereof, and (c) shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Capitalized terms used herein without definition shall have the respective meanings assigned to them in the Purchase and Sale Agreement.

4. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties to this Agreement may execute this Agreement by signing any such counterpart.

[Signature Page Follows]

REDACTED

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IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Assignment and Assumption Agreement as of the date first written above.

CALPINE ENERGY SERVICES, L.P.

By: _____
Name:
Title:

DUKE ENERGY FLORIDA, INC.

By: _____
Name:
Title:

REDACTED

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ANNEX A

1. Firm Transportation Service Agreement, dated July 18, 2003, by and between Gulfstream Natural Gas System, L.L.C., a Delaware limited liability company, and Calpine Energy Services, L.P., a Delaware limited partnership.
2. Amended and Restated Letter Agreement, dated January 6, 2005, effective November 1, 2003, by and between Gulfstream Natural Gas System, L.L.C., a Delaware limited liability company, and Calpine Energy Services, L.P., a Delaware limited partnership.
3. Letter Agreement regarding Agreed Creditworthiness Requirements, dated as of March 12, 2002, by and between Gulfstream Natural Gas System, L.L.C, a Delaware limited liability company and Calpine Energy Services, L.P., a Delaware limited partnership.

FORM OF BILL OF SALE AND ASSIGNMENT

This BILL OF SALE AND ASSIGNMENT (this "Bill of Sale"), dated as of [•], 201_, by OSPREY ENERGY CENTER, LLC, a Delaware limited liability company ("Osprey"), is made in favor of DUKE ENERGY FLORIDA, INC., a Florida corporation ("DEF").

WHEREAS, Osprey and DEF have entered into that certain Asset Purchase and Sale Agreement, dated as of December [•], 2014 (the "Purchase and Sale Agreement"), pursuant to which Osprey has agreed to convey to DEF the Purchased Assets.

1. Assignment. Pursuant to Section 2.01 of the Purchase and Sale Agreement, and subject to Section 2 hereof, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Osprey hereby sells, conveys, grants, assigns, transfers and delivers to DEF all of Osprey's right, title and interest in and to the Purchased Assets, free and clear of all Liens other than Permitted Liens, except (i) those Purchased Assets conveyed pursuant to the Special Warranty Deed by Osprey, as Grantor, and DEF, as Grantee, and dated as of [•], 201_, and (ii) those Purchased Contracts which are in the name of Calpine Energy Services, L.P., a Delaware limited partnership ("CES") which are assigned by CES and assumed by DEF pursuant to a separate Assignment and Assumption Agreement, dated as of [•], 201_.

2. Terms of Purchase and Sale Agreement Control. Nothing contained in this Bill of Sale shall in any way supersede, modify, replace, amend, rescind, waive, narrow or broaden any provision set forth in the Purchase and Sale Agreement or any of the rights, remedies or obligations arising therefrom. This Bill of Sale shall in all ways be governed by, and subject to, the Purchase and Sale Agreement.

3. Miscellaneous. This Bill of Sale (a) shall be governed by and in accordance with the Laws of the State of New York applicable to a contract executed and performed in such State, without regard to the principles of conflicts of law thereof, and (b) shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Capitalized terms used herein without definition shall have the respective meanings assigned to them in the Purchase and Sale Agreement.

4. Counterparts. This Bill of Sale may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties to this Bill of Sale may execute this Bill of Sale by signing any such counterpart.

[Signatures Follow]

REDACTED

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IN WITNESS WHEREOF, the undersigned have caused this Bill of Sale to be duly executed as of the date first written above.

OSPREY ENERGY CENTER, LLC

By: _____
Name: _____
Title: _____

Accepted:

DUKE ENERGY FLORIDA, INC.

By: _____
Name: _____
Title: _____

[Signature Page (Bill of Sale)]

This instrument prepared by:

Tax Folio Number: 152825-000000-033010

FORM OF SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED is made this __ day of _____, 20__, by OSPREY ENERGY CENTER, LLC, a Delaware limited liability company, whose address is c/o Calpine Corporation, 717 Texas Avenue, Suite 1000, Houston, Texas 77002, Attn: Chief Legal Office (the "Grantor") in favor of DUKE ENERGY FLORIDA, INC., a Florida corporation, whose address is c/o Duke Energy Florida, Inc., 299 First Avenue North, St. Petersburg, FL 33701, Attn: Chief Legal Office (the "Grantee").

WITNESSETH:

That the Grantor, for and in consideration of the sum of Ten Dollars (\$10) and other good and valuable consideration, to it in hand paid, the receipt whereof is hereby acknowledged, by these presents does grant, bargain, sell, alien, remise, release, convey and confirm unto the Grantee, its successors and assigns forever, all that certain parcel of land lying and being in the County of Polk, State of Florida, as more particularly described on Exhibit "A" hereto (the "Land").

SUBJECT, HOWEVER, TO THE FOLLOWING:

1. Real property taxes and assessments for the year 20__ and for subsequent years, which are not yet due and payable;
2. Zoning regulations and ordinances of applicable governmental and quasi-governmental agencies affecting the Land; and
3. The matters set forth on Exhibit "B" hereto, without any intention to reimpose same.

TOGETHER WITH all the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the above described Land, with the appurtenances, unto the said Grantee, its successors and assigns, in fee simple forever.

AND Grantor hereby covenants with said Grantee that it is lawfully seized of the Land hereby conveyed in fee simple; that it has good right and lawful authority to sell and convey said Land; that it hereby specially warrants the title to said Land and will defend the same against the lawful claims of any persons claiming by, through or under the said Grantor, but none others; provided that, Grantor makes no representation or warranty with respect to any portion of the Land that is included within any road right of way.

REDACTED

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EXHIBIT "A"

Legal Description

The West ½ of the Northwest ¼ of the Northwest ¼ of Section 15, Township 28 South, Range 25 East, Polk County, Florida, less and except that certain property conveyed by Quit Claim deed recorded in deed book 972 page 357 and less and except that certain property conveyed by Quit Claim deed recorded in Official Records Book 666, page 640, and as modified by a Boundary Line Agreement recorded October 12, 2001 in Official Records Book 4822, Page 1799 and as amended by that certain First Amendment to Boundary Line Agreement recorded in Official Records Book 4837, Page 688 of the Public Records of Polk County, Florida.

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EXHIBIT "B"

Permitted Exceptions

1. Easement in favor of City of Auburndale recorded in Official Records Book 3359 Page 1784, of the Public Records of Polk County, Florida.
2. Easement in favor of Gulfstream Natural Gas System, LLC recorded in Official Records Book 5054 Page 1057, of the Public Records of Polk County, Florida.
3. Easement in favor of Gulfstream Natural Gas System, LLC recorded in Official Records Book 5054 Page 1061, of the Public Records of Polk County, Florida.
4. Easement in favor of Auburndale Peaker Energy Center, L.L.C. recorded in Official Records Book 5421 Page 1177, of the Public Records of Polk County, Florida.
5. The terms, conditions and provisions of that certain Boundary Line Agreement recorded October 12, 2001 in Official Records Book 4822 Page 1799; as amended in Official Records Book 4837 Page 688, of the Public Records of Polk County, Florida.
6. The terms, provisions and conditions contained in that certain Ordinance No. 985, recorded in Official Records Book 4406, Page 1542, of the Public Records of Polk County, Florida.

FORM OF ESCROW AGREEMENT

THIS ESCROW AGREEMENT, dated as of [January 3, 2017]¹ (this "Escrow Agreement"), is by and among OSPREY ENERGY CENTER, LLC, a Delaware limited liability company ("Seller"); DUKE ENERGY FLORIDA, INC., a Florida corporation ("Purchaser"); and [REDACTED]

RECITALS

A. Purchaser and Seller have entered into an Asset Purchase and Sale Agreement (the "Underlying Agreement"), dated as of December 17, 2014, pursuant to which Purchaser is purchasing Osprey Energy Center, a natural gas-fired combined-cycle generating facility in Auburndale, Florida, and associated assets and liabilities described in the Underlying Agreement. The Underlying Agreement provides that, simultaneously with the execution of this Escrow Agreement and the closing of the transactions contemplated under the Underlying Agreement, (a) Purchaser may, in accordance with the terms and conditions of the Underlying Agreement, deposit [REDACTED] (the "Indemnity Escrow Funds") in a segregated escrow account (the "Escrow Account A") to be held by Escrow Agent to satisfy certain indemnification obligations of Seller, and (b) Purchaser may, in accordance with the terms and conditions of the Underlying Agreement, deposit the Asset Repair Escrow Amount (the "Asset Repair Escrow Funds") in a segregated escrow account (the "Escrow Account B") to be held by Escrow Agent until certain disputes with respect to the Asset Repair Reduction Amount (as defined in the Underlying Agreement) are resolved in accordance with the terms and conditions of the Underlying Agreement.

B. Escrow Agent has agreed to accept, hold, and disburse the Escrow Funds deposited with it and the earnings thereon in accordance with the terms of this Escrow Agreement.

C. Purchaser and Seller have appointed the Representatives (as defined below) to represent them for all purposes in connection with Escrow Funds to be deposited with Escrow Agent and this Escrow Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, for themselves, their successors and assigns, hereby agree as follows:

1. Definitions. The following terms shall have the following meanings when used herein:

"Asset Repair Escrow Amount" means [REDACTED]

"Asset Repair Escrow Period" shall mean the [REDACTED]

"Business Day" shall mean any day other than a Saturday, Sunday or any other day on which Escrow Agent located at the notice address set forth below is authorized or required by law or executive order to remain closed.

"Escrow Funds" shall mean the funds deposited with Escrow Agent pursuant to Section 3 of this Escrow Agreement, together with any interest and other income thereon.

¹ All dates in brackets to be adjusted if actual Closing is other than January 3, 2017.

“Indemnity Escrow Period” shall mean _____, unless extended by mutual agreement of Purchaser and Seller, in accordance with the terms and conditions of the Underlying Agreement.

“Joint Written Direction” shall mean a written direction executed by the Representatives and directing Escrow Agent to disburse all or a portion of the Escrow Funds or to take or refrain from taking any other action pursuant to this Escrow Agreement.

“Purchaser Representative” shall mean the person(s) so designated on Schedule D hereto or any other person designated in a writing signed by Purchaser and delivered to Escrow Agent and the Seller Representative in accordance with the notice provisions of this Escrow Agreement, to act as its representative under this Escrow Agreement.

“Representatives” shall mean the Purchaser Representative and the Seller Representative.

“Seller Representative” shall mean the person(s) so designated on Schedule D hereto or any other person designated in a writing signed by Seller and delivered to Escrow Agent and the Purchaser Representative in accordance with the notice provisions of this Escrow Agreement, to act as its representative under this Escrow Agreement.

2. Appointment of and Acceptance by Escrow Agent. Purchaser and Seller hereby appoint Escrow Agent to serve as escrow agent hereunder. Escrow Agent hereby accepts such appointment and, upon receipt by wire transfer of the Escrow Funds in accordance with Section 3 below, agrees to hold, invest and disburse the Escrow Funds in accordance with this Escrow Agreement.

3. Deposit of Escrow Funds. Simultaneously with the execution and delivery of this Escrow Agreement, and upon written notice to the Escrow Agent of Escrow Funds to be received Purchaser (a) will transfer the Indemnity Escrow Funds into Escrow Fund A, by wire transfer of immediately available funds, to an account designated by Escrow Agent as Escrow Fund A and/or (b) the Asset Repair Escrow Funds into Escrow Fund B, by wire transfer of immediately available funds, to an account designated by Escrow Agent as Escrow Fund B (collectively, the Indemnity Escrow Funds and the Asset Repair Escrow Funds, the “Escrow Funds”). In the event that only one Escrow Fund is funded, the provisions herein regarding the other Escrow Fund shall be disregarded. Escrow Agent shall be provided Joint Written Direction to terminate either of the unused Escrow Funds.

4. Disbursements of Escrow Funds. Escrow Agent shall disburse Escrow Funds at any time and from time to time, upon receipt of, and in accordance with, a Joint Written Direction. Escrow Agent shall disburse Indemnity Escrow Funds upon the expiration of the Indemnity Escrow Period as instructed in a Joint Written Direction, and the Asset Repair Escrow Funds upon the expiration of the Asset Repair Escrow Period as instructed in a Joint Written Direction, or earlier as instructed in a Joint Written Direction, from time to time, on the third Business Day after receipt of, and in accordance with, a Joint Written Direction. Each Joint Written Direction shall include directions to disburse funds identifying from which Escrow Fund to withdraw and in accordance with payment instructions set forth on Schedule A hereto, or if payment instructions are altered shall include complete payment instructions, including wiring instructions or an address to which a check shall be sent. Wire instructions shall include the receiving bank name and ABA number, beneficiary account name and number, and beneficiary street address (PO Box is not acceptable), and are subject to the optional security procedures set forth in Section 16 hereof. Prior to any disbursement, Escrow Agent shall have received reasonable identifying information regarding the recipient such that Escrow Agent may comply with its regulatory obligations and reasonable business practices, including without limitation a properly completed United States

Internal Revenue Service (“IRS”) Form W-9 or original IRS Form W-8, as applicable. All disbursements of funds from the Escrow Funds shall be subject to the fees and claims of Escrow Agent and the Indemnified Parties pursuant to Section 10 and Section 11 below. Each of Purchaser and Seller agrees to issue the Joint Written Direction as and when Escrow Funds are required to be released in accordance with the Underlying Agreement.

5. Suspension of Performance; Disbursement into Court. If, at any time, (i) there shall exist any dispute between Purchaser, Seller or the Representatives with respect to the holding or disposition of all or any portion of the Escrow Funds or any other obligations of Escrow Agent hereunder, (ii) Escrow Agent is unable to determine, to Escrow Agent’s sole satisfaction, the proper disposition of all or any portion of the Escrow Funds or Escrow Agent’s proper actions with respect to its obligations hereunder, or (iii) the Representatives have not, within 10 calendar days of the furnishing by Escrow Agent of a notice of resignation pursuant to Section 7 hereof, appointed a successor Escrow Agent to act hereunder, then Escrow Agent may, in its sole reasonable discretion, take either or both of the following actions: (x) suspend the performance of any of its obligations (including without limitation any disbursement obligations) under this Escrow Agreement until such dispute or uncertainty shall be resolved to the sole satisfaction of Escrow Agent or until a successor Escrow Agent shall have been appointed, and/or (y) petition (by means of an interpleader action or any other appropriate method) any court of competent jurisdiction, in any venue convenient to Escrow Agent, for instructions with respect to such dispute or uncertainty, and to the extent required or permitted by law, pay into such court, for holding and disposition in accordance with the instructions of such court, all Escrow Funds, after deduction and payment to Escrow Agent of all fees and expenses (including court costs and reasonable attorneys’ fees) payable to, incurred by, or expected to be incurred by Escrow Agent in connection with the performance of its duties and the exercise of its rights hereunder. Escrow Agent shall have no liability to Purchaser, Seller or the Representatives, their respective owners, shareholders or members or any other person with respect to any such suspension of performance or disbursement into court, specifically including any liability or claimed liability that may arise, or be alleged to have arisen, out of or as a result of any delay in the disbursement of the Escrow Funds or any delay in or with respect to any other action required or requested of Escrow Agent.

6. Investment of Funds. Based upon Purchaser’s and Seller’s prior review of investment alternatives, in the absence of further specific written direction to the contrary, Escrow Agent is directed to initially invest and reinvest the Escrow Funds in the investment indicated on Schedule B hereto. Purchaser and Seller may provide a Joint Written Direction to Escrow Agent changing the investment of the Escrow Funds; provided, however, that no investment or reinvestment may be made except in the following: (a) direct obligations of the United States of America or obligations the principal of and the interest on which are unconditionally guaranteed by the United State of America; (b) U.S. dollar denominated deposit accounts and certificates of deposits issued by a domestic bank (including Escrow Agent and its affiliates) which has a rating on its short-term deposits on the date of deposit or purchase of “A-1” or “A-1+” by S&P or “P-1” by Moody’s and maturing no more than 360 days after the date of purchase (ratings on holding companies are not considered as the rating of the bank); or (c) institutional money market funds, including funds managed by Escrow Agent or any of its affiliates, in which case Purchaser and Seller acknowledge that they have received from Escrow Agent, either directly or via access to a relevant website, a current copy of the prospectus for the money market fund investment they have authorized; provided that Escrow Agent will not be directed to invest in investments that Escrow Agent in its sole discretion determines are not consistent with Escrow Agent’s policy or practices. Purchaser and Seller acknowledge that Escrow Agent does not have a duty nor will it undertake any duty to provide investment advice.

All investments shall be made in the name of Escrow Agent. Notwithstanding anything to the contrary contained herein, Escrow Agent may, without notice to Purchaser and Seller, sell or liquidate any of the

foregoing investments at any time for any disbursement of Escrow Funds permitted or required hereunder. All investment earnings shall become part of the Escrow Funds and investment losses shall be charged against the Escrow Funds. Escrow Agent shall not be liable or responsible for loss in the value of any investment made pursuant to this Escrow Agreement, or for any loss, cost or penalty resulting from any sale or liquidation of the Escrow Funds. With respect to any Escrow Funds received by Escrow Agent after twelve o'clock, p.m., Central Standard Time, Escrow Agent shall not be required to invest such funds or to effect any investment instruction until the next day upon which banks in St. Paul, Minnesota and the New York Stock Exchange are open for business.

7. Resignation of Escrow Agent. Escrow Agent may resign and be discharged from the performance of its duties hereunder at any time by giving fifteen (15) calendar days prior written notice to the Purchaser and Seller specifying a date when such resignation shall take effect. Upon any such notice of resignation, Purchaser and Seller jointly shall appoint a successor Escrow Agent hereunder prior to the effective date of such resignation. If the Purchaser and Seller fail to appoint a successor Escrow Agent within such time, Escrow Agent shall have the right to petition a court of competent jurisdiction to appoint a successor Escrow Agent, and all costs and expenses (including without limitation reasonable attorneys' fees) related to such petition shall be paid jointly and severally by Purchaser and Seller. The resigning Escrow Agent shall transmit all records pertaining to the Escrow Funds and shall pay all Escrow Funds to the successor Escrow Agent, after making copies of such records as the resigning Escrow Agent deems advisable and after deduction and payment to the resigning Escrow Agent of all fees and expenses (including court costs and reasonable attorneys' fees) payable to, incurred by, or expected to be incurred by the resigning Escrow Agent in connection with the performance of its duties and the exercise of its rights hereunder. After any resigning Escrow Agent's resignation, the provisions of this Escrow Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Escrow Agent under this Escrow Agreement.

8. Binding Effect; Successors. This Escrow Agreement shall be binding upon the respective parties hereto and their heirs, executors, successors or assigns. If Escrow Agent consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business (including the escrow contemplated by this Escrow Agreement) to another corporation, the successor or transferee corporation without any further act shall be the successor Escrow Agent.

9. Liability of Escrow Agent. Escrow Agent undertakes to perform only such duties as are expressly set forth herein and no duties shall be implied. Escrow Agent has no fiduciary or discretionary duties of any kind. Escrow Agent shall have no liability under and no duty to inquire as to the provisions of any agreement other than this Escrow Agreement, including without limitation any other agreement between any or all of the parties hereto or any other persons even though reference thereto may be made herein. Escrow Agent shall not be liable for any action taken or omitted by it in good faith except to the extent that a court of competent jurisdiction determines that Escrow Agent's negligence or willful misconduct was the sole cause of any loss to the Purchaser or Seller. Escrow Agent's sole responsibility shall be for the safekeeping and disbursement of the Escrow Funds in accordance with the terms of this Escrow Agreement. Escrow Agent shall not be charged with knowledge or notice of any fact or circumstance not specifically set forth herein. Escrow Agent may rely upon any notice, instruction, request or other instrument, not only as to its due execution, validity and effectiveness, but also as to the truth and accuracy of any information contained therein, which Escrow Agent shall believe to be genuine and to have been signed or presented by the person or parties purporting to sign the same. In no event shall Escrow Agent be liable for incidental, indirect, special, consequential or punitive damages or penalties (including, but not limited to lost profits), even if Escrow Agent has been advised of the likelihood of such damages or penalty and regardless of the form of action. Escrow Agent shall not be responsible for delays or failures in performance resulting from acts beyond its control, including without limitation acts of God, strikes, lockouts, riots, acts of war or terror, epidemics, governmental regulations,

fire, communication line failures, computer viruses, power failures, earthquakes or other disasters. Escrow Agent shall not be obligated to take any legal action or commence any proceeding in connection with the Escrow Funds, any account in which Escrow Funds are deposited, this Escrow Agreement or the Underlying Agreement, or to appear in, prosecute or defend any such legal action or proceeding. Escrow Agent may consult legal counsel selected by it in the event of any dispute or question as to the construction of any of the provisions hereof or of any other agreement or of its duties hereunder, or relating to any dispute involving any party hereto, and shall incur no liability from any liability whatsoever in acting in accordance with the advice of such counsel. Purchaser and Seller, jointly and severally, shall promptly pay, upon demand, the reasonable fees and expenses of any such counsel. Purchaser and Seller agree to perform or procure the performance of all further acts and things, and execute and deliver such further documents, as may be required by law or as Escrow Agent may reasonably request in connection with its duties hereunder.

Escrow Agent is authorized, in its sole discretion, to comply with final orders issued or process entered by any court with respect to the Escrow Funds, without determination by Escrow Agent of such court's jurisdiction in the matter. If any portion of the Escrow Funds is at any time attached, garnished or levied upon under any court order, or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment or decree shall be made or entered by any court affecting such property or any part thereof, then and in any such event, Escrow Agent is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree which it is advised by legal counsel selected by it is binding upon it without the need for appeal or other action; and if Escrow Agent complies with any such order, writ, judgment or decree, it shall not be liable to any of the parties hereto or to any other person or entity by reason of such compliance even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

10. Indemnification of Escrow Agent. From and at all times after the date of this Escrow Agreement, Purchaser and Seller, jointly and severally, shall, to the fullest extent permitted by law, indemnify and hold harmless Escrow Agent and each director, officer, employee, attorney, agent and affiliate of Escrow Agent (collectively, the "Indemnified Parties") against any and all actions, claims (whether or not valid), losses, damages, liabilities, penalties, costs and expenses of any kind or nature (including without limitation reasonable attorneys' fees, costs and expenses) incurred by or asserted against any of the Indemnified Parties, whether direct, indirect or consequential, as a result of or arising from or in any way relating to any claim, demand, suit, action or proceeding (including any inquiry or investigation) by any person, including without limitation Purchaser, Seller and the Representatives, whether threatened or initiated, asserting a claim for any legal or equitable remedy arising from or in connection with the negotiation, preparation, execution, performance or failure of performance in connection with this Escrow Agreement or any transactions contemplated herein, whether or not any such Indemnified Party is a party to any such action, proceeding, suit or the target of any such inquiry or investigation; provided, however, that no Indemnified Party shall have the right to be indemnified hereunder for any liability finally determined by a court of competent jurisdiction, subject to no further appeal, to have resulted solely from the gross negligence or willful misconduct of such Indemnified Party. Purchaser and Seller further agree, jointly and severally, to indemnify each Indemnified Party for all costs, including without limitation reasonable attorney's fees, incurred by such Indemnified Party in connection with the enforcement of Purchaser's and Seller's indemnification obligations hereunder. Each Indemnified Party shall, with the consent of Purchaser and Seller (which shall not be unreasonably withheld, delayed or conditioned), have the right to select and employ separate counsel with respect to any action or claim brought or asserted against it, and the reasonable fees of such counsel shall be paid upon demand by the Purchaser and Seller jointly and severally. The obligations of Purchaser and Seller under this Section 11 shall survive any termination of this Escrow Agreement and the resignation or removal of Escrow Agent.

The parties agree that neither the payment by Purchaser or Seller of any claim by Escrow Agent for indemnification hereunder nor the disbursement of any amounts to Escrow Agent from the Escrow Funds in respect of a claim by Escrow Agent for indemnification shall impair, limit, modify, or affect, as between Purchaser and Seller, the respective rights and obligations of Purchaser and Seller under the Underlying Agreement.

11. Compensation of Escrow Agent. Purchaser and Seller agree to each pay one half of Escrow Agent's compensation for its services hereunder in accordance with Schedule C attached hereto, within 15 calendar days following receipt of an invoice for such compensation. The obligations of Purchaser and Seller under this Section 11 shall survive any termination of this Escrow Agreement and the resignation or removal of Escrow Agent. Escrow Agent is authorized to, and may disburse to itself from the Escrow Funds, from time to time, the amount of any compensation and reimbursement of out-of-pocket expenses due and payable hereunder if such amounts have not been timely paid (including any amount to which Escrow Agent or any Indemnified Party is entitled to seek indemnification hereunder). Escrow Agent shall notify Purchaser and Seller of any disbursement from the Escrow Funds to itself or any Indemnified Party in respect of any compensation or reimbursement hereunder and shall furnish Purchaser and Seller copies of related invoices and other statements. Seller, Purchaser and the Representatives hereby grant to Escrow Agent and the Indemnified Parties a security interest in, lien upon and right of offset against the Escrow Funds with respect to any compensation or reimbursement due any of them hereunder (including any claim for indemnification hereunder). If for any reason the Escrow Funds are insufficient to cover such compensation and reimbursement, Purchaser and Seller shall promptly pay such amounts to Escrow Agent or any Indemnified Party upon receipt of an itemized invoice. Notwithstanding anything in this Section 11, the obligations of Seller and Purchaser to each other or otherwise under the Underlying Agreement will not be reduced or modified by virtue of this Escrow Agreement, regardless of any rights of offset to Escrow Agent hereunder or otherwise.

12. Representations and Warranties. Purchaser and Seller each respectively make the following representations and warranties to Escrow Agent: (a) it has full power and authority to execute and deliver this Escrow Agreement and to perform its obligations hereunder; and this Escrow Agreement has been duly approved by all necessary action and constitutes its valid and binding agreement enforceable in accordance with its terms; and (b) each of the applicable persons designated on Schedule C attached hereto have been duly appointed to act as authorized representatives hereunder and individually have full power and authority to execute and deliver any Joint Written Direction, to amend, modify or waive any provision of this Escrow Agreement and to take any and all other actions as authorized representatives under this Escrow Agreement, all without further consent or direction from, or notice to, it or any other party, provided that any change in designation of such authorized representatives shall be provided by written notice delivered to each party to this Escrow Agreement.

13. Identifying Information. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust, or other legal entity, Escrow Agent requires documentation to verify its formation and existence as a legal entity. Escrow Agent may ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation. The parties acknowledge that a portion of the identifying information set forth herein is being requested by Escrow Agent in connection with the USA Patriot Act, Pub.L.107-56 (the "Act"), and each agrees to provide any additional information requested by Escrow Agent in connection with the Act or any other legislation or regulation to which Escrow Agent is subject, in a timely manner.

14. Consent to Jurisdiction and Venue; Governing Law. In the event that any party hereto commences a lawsuit or other proceeding relating to or arising from this Escrow Agreement, the parties hereto agree to exclusive personal jurisdiction by and venue in the state and federal courts in the Borough of Manhattan, County of New York in the State of New York and waive any objection to such jurisdiction or venue. The parties hereto consent to and agree to exclusively submit to the jurisdiction of such courts specified herein and agree to accept service of process to vest personal jurisdiction over them in any of these courts. This Escrow Agreement shall be construed and interpreted in accordance with the internal laws of the State of New York without giving effect to the conflict of laws principles thereof.

15. Notices. All notices, approvals, consents, requests, and other communications hereunder shall be in writing and shall be delivered (i) by personal delivery, or (ii) by national overnight courier service, or (iii) by certified or registered mail, return receipt requested, or (iv) via facsimile transmission, with confirmed receipt or (v) via email by way of a PDF attachment thereto of an executed document. Notice shall be effective upon receipt except for notice via email, which shall be effective only when the recipient, by return email or notice delivered by other method provided for in this Section 15, acknowledges having received that email (with an automatic “read receipt” or similar notice not constituting an acknowledgement of an email receipt for purposes of this Section 15). Such notices shall be sent to the applicable party or parties at the address specified below:

If to Purchaser or Purchaser Representative at:

Duke Energy Florida, Inc.
299 First Avenue North
St. Petersburg, FL 33701
Attn: John Burnett
Facsimile No.: (727) 820-5041
Email: john.burnett@duke-energy.com

with a copy to (which shall not constitute notice):

Duke Energy Corporation
550 S. Tryon Street, DEC
Charlotte, North Carolina 28202
Attn: Greer Mendelow, Esq.
Facsimile No.: (980) 373-8534
Email: greer.mendelow@duke-energy.com

and

Parker Poe Adams & Bernstein LLP
401 S. Tryon Street, Suite 3000
Charlotte, North Carolina 28202
Attention: Roy L. Smart, III
Facsimile No.: (704) 334-4706
Email: skipsmart@parkerpoe.com

If to Seller or Seller Representative at:

OSPREY ENERGY CENTER, LLC
c/o Calpine Corporation

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717 Texas Avenue, Suite 1000
Houston, TX 77002
Attention: Chief Legal Officer
Facsimile No.: (713) 830-8751 or (832) 325-1508
Telephone No:
Email:

with a copy to (which shall not constitute notice):

White & Case LLP
1155 Avenue of the Americas
New York, NY 10036-2787
Attention: Michael S. Shenberg
Facsimile No.: (212) 354-8113
Email: mshenberg@whitecase.com

If to Escrow Agent at:

[REDACTED]

or to such other address as each party may designate for itself by like notice and unless otherwise provided herein shall be deemed to have been given on the date received.

16. Optional Security Procedures. In the event funds transfer instructions, address changes or change in contact information are given (other than in writing at the time of execution of this Escrow Agreement), whether in writing, by facsimile or otherwise, Escrow Agent is authorized but shall be under no duty to seek confirmation of such instructions by telephone call-back to the Representative(s) designated on Schedule D hereto, and Escrow Agent may rely upon the confirmation of anyone purporting to be the Representative(s) so designated. The persons and telephone numbers for call-backs may be changed only in writing actually received and acknowledged by Escrow Agent and shall be effective only after Escrow Agent has a reasonable opportunity to act on such changes. If Escrow Agent is unable to contact any of the designated Representatives identified in Schedule D, Escrow Agent is hereby authorized but shall be under no duty to seek confirmation of such instructions by telephone call-back to any one or more of Purchaser or Seller's executive officers, as the case may be, which shall include the

titles of Chief Executive Officer, President and Vice President ("Executive Officers"), as Escrow Agent may select. Such Executive Officer shall deliver to Escrow Agent a fully executed incumbency certificate, and Escrow Agent may rely upon the confirmation of anyone purporting to be any such officer. Purchaser and Seller agree that Escrow Agent may at its option record any telephone calls made pursuant to this Section 16. Escrow Agent in any Escrow Funds transfer may rely solely upon any account numbers or similar identifying numbers provided by Purchaser or Seller to identify (a) the beneficiary, (b) the beneficiary's bank, or (c) an intermediary bank. Escrow Agent may apply any of the Escrow Funds for any payment order it executes using any such identifying number, even when its use may result in a person other than the beneficiary being paid, or the transfer of funds to a bank other than the beneficiary's bank or an intermediary bank designated. Purchaser and Seller acknowledge that these optional security procedures are commercially reasonable.

17. Amendment, Waiver and Assignment. None of the terms or conditions of this Escrow Agreement may be changed, waived, modified, discharged, terminated or varied unless in writing duly signed by each party to this Escrow Agreement. No course of conduct shall constitute a waiver of any of the terms and conditions of this Escrow Agreement, unless such waiver is specified in writing, and then only to the extent so specified. A waiver of any of the terms and conditions of this Escrow Agreement on one occasion shall not constitute a waiver of the other terms of this Escrow Agreement, or of such terms and conditions on any other occasion. Except as provided in Section 8 hereof, this Escrow Agreement may not be assigned by any party without the written consent of the other parties.

18. Severability. To the extent any provision of this Escrow Agreement is prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Escrow Agreement.

19. Entire Agreement; No Third Party Beneficiaries. This Escrow Agreement constitutes the entire agreement between the parties relating to holding, investment and disbursement of Escrow Funds and sets forth in their entirety the obligations and duties of Escrow Agent. Nothing in this Escrow Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Escrow Agreement.

20. Execution in Counterparts; Facsimiles. This Escrow Agreement and any Joint Written Direction may be executed in two or more counterparts, which when so executed shall constitute one and the same agreement or direction. The delivery of copies of this Escrow Agreement and any Joint Written Instruction and their respective signature pages by PDF or facsimile transmission shall constitute effective execution and delivery as to the parties and may be used in lieu of originals for all purposes.

21. Termination. This Escrow Agreement shall terminate upon the distribution of all Escrow Funds pursuant to any applicable provision hereof, and Escrow Agent shall thereafter have no further obligation or liability with respect to this Escrow Agreement or the Escrow Funds.

22. Dealings. Escrow Agent and any stockholder, director, officer or employee of Escrow Agent may buy, sell, and deal in any of the securities of the Purchaser or Seller and become pecuniarily interested in any transaction in which the Purchaser or Seller may be interested, and contract and lend money to the Purchaser or Seller and otherwise act as fully and freely as though it were not Escrow Agent under this Escrow Agreement. Nothing herein shall preclude Escrow Agent from acting in any other capacity for the Purchaser or Seller or for any other entity; provided that Escrow Agent shall provide Seller or Purchaser, as applicable, with reasonable advance notice of acting in such other capacity.

23. Brokerage Confirmation Waiver; Shareholder Communications. Purchaser and Seller

acknowledge that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant either the right to receive brokerage confirmations for certain security transactions as they occur, Purchaser and Seller specifically waive receipt of such confirmations to the extent permitted by law. Escrow Agent will furnish the Purchaser and Seller periodic cash transaction statements that include detail for all investment transactions made by Escrow Agent. The Shareholder Communications Act of 1985 and its regulations require that banks and trust companies make an effort to facilitate communication between registrants of U.S. securities and the parties who have the authority to vote or direct the voting of those securities regarding proxy dissemination and other corporate communications. Unless the parties hereto object in writing, Escrow Agent will provide the obligatory information to the registrant upon request. Such objection will apply to all securities held as Escrow Funds now and in the future unless Escrow Agent is notified in writing.

24. Tax Reporting. Escrow Agent shall have no responsibility for the tax consequences of this Escrow Agreement and Purchaser and Seller shall consult with independent counsel concerning any and all tax matters. Purchaser and Seller shall provide Escrow Agent Form W-9 and an original Form W-8, as applicable, for each payee, together with any other documentation and information requested by Escrow Agent in connection with Escrow Agent's reporting obligations under applicable IRS regulations. If such tax documentation is not so provided, Escrow Agent shall withhold taxes as required by the IRS. Seller and Purchaser have determined that any interest or income on Escrow Funds shall be reported on an accrual basis and deemed to be for the account of Seller. Purchaser and Seller shall prepare and file all required tax filings with the IRS and any other applicable taxing authority; provided that the parties further agree that:

(a) Escrow Agent IRS Reporting. Purchaser and Seller shall provide Escrow Agent with all information requested by Escrow Agent in connection with the preparation of all applicable Form 1099 and Form 1042-S documents with respect to all distributions as well as in the performance of Escrow Agent's reporting obligations under the Foreign Account Tax Compliance Act and Foreign Investment in Real Property Tax Act or other applicable law or regulation.

(b) Withholding Requests and Indemnification. Purchaser and Seller jointly and severally agree to (i) assume all obligations imposed now or hereafter by any applicable tax law or regulation with respect to payments or performance under this Escrow Agreement, (ii) request Escrow Agent in writing with respect to withholding and other taxes, assessments or other governmental charges, and advise Escrow Agent in writing with respect to any certifications and governmental reporting that may be required under any applicable laws or regulations, and (iii) indemnify and hold Escrow Agent harmless pursuant to Section 10 hereof from any liability or obligation on account of taxes, assessments, additions for late payment, interest, penalties, expenses and other governmental charges that may be assessed or asserted against Escrow Agent.

(c) Imputed Interest. To the extent that IRS imputed interest regulations apply, Purchaser and Seller shall so inform Escrow Agent, provide Escrow Agent with all imputed interest calculations and direct Escrow Agent to disburse imputed interest amounts as Purchaser and Seller deem appropriate. Escrow Agent shall rely solely on such provided calculations and information and shall have no responsibility for the accuracy or completeness of any such calculations or information.

25. WAIVER OF TRIAL BY JURY. EACH PARTY TO THIS ESCROW AGREEMENT HEREBY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (1) ARISING OUT OF OR IN ANY WAY RELATED TO THIS ESCROW AGREEMENT OR (2) IN ANY WAY IN CONNECTION WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF THE PARTIES TO THIS ESCROW AGREEMENT OR IN CONNECTION WITH THIS ESCROW

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AGREEMENT OR THE EXERCISE OF ANY SUCH PARTY'S RIGHTS AND REMEDIES UNDER THIS ESCROW AGREEMENT OR THE CONDUCT OR THE RELATIONSHIP OF THE PARTIES TO THIS ESCROW AGREEMENT, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER IN CONTRACT, TORT OR OTHERWISE. EACH OF THE PARTIES HERETO HEREBY FURTHER ACKNOWLEDGES AND AGREES THAT EACH HAS REVIEWED OR HAD THE OPPORTUNITY TO REVIEW THIS WAIVER WITH ITS RESPECTIVE LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH SUCH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, THIS ESCROW AGREEMENT MAY BE FILED AS A CONSENT BY ALL PARTIES TO A TRIAL BY THE COURT.

26. Publicity. No party will (a) use any other party's proprietary indicia, trademarks, service marks, trade names, logos, symbols, or brand names, or (b) otherwise refer to or identify any other party in advertising, publicity releases, or promotional or marketing publications, or correspondence to third parties without, in each case, securing the prior written consent of such other party.

[signature page follows]

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IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be executed under seal as of the date first above written.

OSPREY ENERGY CENTER, LLC

By: _____
Name: _____
Title: _____

DUKE ENERGY FLORIDA, INC.

By: _____
Name: _____
Title: _____

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SCHEDULE A

Payment Instructions

Payment Instructions for Disbursements to Purchaser:

Payment Instructions, including: <ul style="list-style-type: none">• Receiving bank name• Receiving bank ABA number• Beneficiary account number• Beneficiary account name• Beneficiary street address (PO Box is not acceptable)	Reference/Comment

Payment Instructions for Disbursements to Seller:

Payment Instructions, including: <ul style="list-style-type: none">• Receiving bank name• Receiving bank ABA number• Beneficiary account number• Beneficiary account name• Beneficiary street address (PO Box is not acceptable)	Reference/Comment

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SCHEDULE B

Investment Authorization

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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SCHEDULE C

Schedule of Fees for Services as Escrow Agent

The table content is completely redacted with a large black block. Only a few small white squares are visible within the redacted area, likely representing missing data points or artifacts from the scanning process.

SCHEDULE D

Purchaser:

Each of the following person(s) is a **Purchaser Representative** authorized to execute documents and direct Escrow Agent as to all matters, including fund transfers, address changes and contact information changes, on Purchaser's behalf (only one signature required):

_____	_____	_____
Name	Specimen signature	Telephone No.
_____	_____	_____
Name	Specimen signature	Telephone No.
_____	_____	_____
Name	Specimen signature	Telephone No.

(Note: if only one person is identified above, please add the following language:)
The following person not listed above is authorized for call-back confirmations:

[_____]	_____
Name	Telephone Number

Seller:

Each of the following person(s) is a **Seller Representative** authorized to execute documents and direct Escrow Agent as to all matters, including fund transfers, address changes and contact information changes, on Seller's behalf (only one signature required):

_____	_____	_____
Name	Specimen signature	Telephone No.
_____	_____	_____
Name	Specimen signature	Telephone No.
_____	_____	_____
Name	Specimen signature	Telephone No.

(Note: if only one person is identified above, please add the following language:)
The following person not listed above is authorized for call-back confirmations

[_____]	_____
Name	Telephone Number

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IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____

DATE: _____, 201_

BENEFICIARY:

APPLICANT:

LADIES AND GENTLEMEN:

AT THE REQUEST AND FOR THE ACCOUNT OF _____ (THE "APPLICANT"), (ADDRESS), AND ON BEHALF OF _____ (THE "ACCOUNT PARTY") WE, _____ (THE "ISSUER"), HEREBY ESTABLISH, EFFECTIVE IMMEDIATELY, IN FAVOR OF _____ (THE "BENEFICIARY") OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____ (THIS "LETTER OF CREDIT") IN THE AGGREGATE AMOUNT OF _____ (AS SUCH AMOUNT MAY BE REDUCED FROM TIME TO TIME BY PARTIAL DRAWS HEREUNDER, THE "STATED AMOUNT").

THIS LETTER OF CREDIT IS ISSUED, PRESENTABLE AND PAYABLE AT THE ISSUER'S OFFICE LOCATED AT _____ ATTENTION: STANDBY LETTER OF CREDIT SECTION, AND EXPIRES WITH ITS CLOSE OF BUSINESS ON _____ (THE "EXPIRATION DATE")

FUNDS UNDER THIS LETTER OF CREDIT ARE AVAILABLE TO THE BENEFICIARY BY PAYMENT AGAINST PRESENTATION AT THE ISSUER'S OFFICE AS STIPULATED HEREIN ABOVE, OF THE BENEFICIARY'S SIGNED AND APPROPRIATELY COMPLETED SIGHT DRAFT IN THE FORM OF EXHIBIT 1 HERETO, THE BENEFICIARY'S SIGNED AND APPROPRIATELY COMPLETED DRAWING CERTIFICATE IN THE FORM OF EXHIBIT 2 HERETO AND A COPY OF THIS ORIGINAL LETTER OF CREDIT AND AMENDMENTS (IF ANY).

IF A DRAWING IN COMPLIANCE WITH THE TERMS AND CONDITIONS HEREOF IS PRESENTED AT THE ADDRESS SPECIFIED ABOVE OR DELIVERED TO US BY OVERNIGHT COURIER AT OR PRIOR TO 11:00 A.M. **EASTERN TIME** ON A BUSINESS DAY, PAYMENT OF THE AMOUNT SPECIFIED IN SUCH DRAFT WILL BE MADE ON THE THIRD SUCCEEDING BUSINESS DAY. IF SUCH DRAWING IS SO PRESENTED AFTER 11:00 A.M. **EASTERN TIME** ON A BUSINESS DAY, PAYMENT OF THE AMOUNT SPECIFIED IN SUCH DRAFT WILL BE MADE ON THE FOURTH SUCCEEDING BUSINESS DAY.

PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED HEREUNDER. ANY DRAWING HONORED HEREUNDER BY THE ISSUER SHALL REDUCE THE STATED AMOUNT AVAILABLE FOR DRAWINGS BY THE AMOUNT OF SUCH DRAWING.

ALL BANKING CHARGES ASSOCIATED WITH THIS LETTER OF CREDIT ARE FOR THE ACCOUNT OF THE APPLICANT.

AS USED HEREIN, "BUSINESS DAY" MEANS ANY DAY OTHER THAN SATURDAY, SUNDAY OR A DAY ON WHICH COMMERCIAL BANKS IN NEW YORK, NEW YORK ARE AUTHORIZED OR REQUIRED TO CLOSE.

THIS LETTER OF CREDIT IS SUBJECT TO AND GOVERNED BY THE INTERNATIONAL STANDBY PRACTICES, INTERNATIONAL CHAMBER OF COMMERCE (ICC) PUBLICATION NO. 590 ("ISP98"). AS TO MATTERS NOT ADDRESSED BY THE ISP98, AND TO THE EXTENT NOT INCONSISTENT WITH THE ISP98, THIS LETTER OF CREDIT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE

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WITH THE LAW OF THE STATE OF NEW YORK (INCLUDING, WITHOUT LIMITATION, ARTICLE 5 OF THE UNIFORM COMMERCIAL CODE OF THE STATE OF NEW YORK).

THIS LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING AND SUCH UNDERTAKING SHALL NOT IN ANY WAY BE MODIFIED, AMENDED OR AMPLIFIED BY REASON OF OUR REFERENCE TO ANY AGREEMENTS OR INSTRUMENT REFERRED TO HEREIN OR IN WHICH THIS LETTER OF CREDIT IS REFERRED TO. ANY SUCH AGREEMENTS OR INSTRUMENT SHALL NOT BE DEEMED INCORPORATED HEREIN BY REFERENCE.

SINCERELY,

NAME: _____

TITLE: _____

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EXHIBIT 1

[BENEFICIARY LETTERHEAD]

SIGHT DRAFT

[DATE]

BANK
DEPARTMENT
ADDRESS STREET
CITY, STATE ZIP
ATTENTION: STANDBY LETTER OF CREDIT SECTION

RE: IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER _____

FOR VALUE RECEIVED, PAY TO THE ORDER OF _____ BY WIRE TRANSFER OF IMMEDIATELY
AVAILABLE FUNDS TO THE FOLLOWING ACCOUNT:

[NAME OF ACCOUNT]
[ACCOUNT NUMBER]
[NAME AND ADDRESS OF BANK AT WHICH ACCOUNT IS MAINTAINED]
[ABA NUMBER]
[REFERENCE]

THE FOLLOWING AMOUNT:

[INSERT NUMBER OF DOLLARS IN WRITING] UNITED STATES DOLLARS
(US\$ [INSERT NUMBER OF DOLLARS IN FIGURES])

DRAWN UPON YOUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____ DATED
_____, 20__

BY: _____

NAME: _____

TITLE: _____

REDACTED

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (MEP-2)
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EXHIBIT 2

DRAWING CERTIFICATE

[DATE]

BANK
DEPARTMENT
ADDRESS STREET
CITY, STATE ZIP
ATTENTION: STANDBY LETTER OF CREDIT SECTION

RE: IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER _____

LADIES AND GENTLEMEN:

THE UNDERSIGNED, A DULY AUTHORIZED OFFICER OF _____, THE BENEFICIARY (THE "BENEFICIARY") OF THE ABOVE CAPTIONED LETTER OF CREDIT (THE "LETTER OF CREDIT"), HEREBY CERTIFIES TO _____ (THE "ISSUER") WITH RESPECT TO THE LETTER OF CREDIT THAT:

(1) (A) _____ (THE "ACCOUNT PARTY") IS IN BREACH OF ITS INDEMNIFICATION OBLIGATIONS UNDER SECTION 8.02(a)(i) OF THAT CERTAIN ASSET PURCHASE AND SALE AGREEMENT DATED AS OF _____, 2014 BETWEEN THE ACCOUNT PARTY AND THE BENEFICIARY (THE "AGREEMENT"), ; AND

(B) THE AMOUNT BEING DRAWN PURSUANT TO THIS CERTIFICATE IS AN AMOUNT THAT IS DUE AND OWING TO BENEFICIARY UNDER THE AGREEMENT AND REMAINS UNPAID AT THE TIME OF THIS DRAWING.

OR

(2) THE LETTER OF CREDIT HAS NOT BEEN REPLACED AS REQUIRED BY THE AGREEMENT.

DEFINED TERMS USED IN THIS DRAWING CERTIFICATE AND NOT OTHERWISE DEFINED HEREIN SHALL HAVE THE MEANING ASCRIBED TO SUCH TERMS IN THE LETTER OF CREDIT.

IN WITNESS WHEREOF, THE UNDERSIGNED HAS EXECUTED THIS DRAWING CERTIFICATE ON THIS ____ DAY OF _____ 20__.

BY: _____

NAME: _____

TITLE: _____