

DUKE ENERGY FLORIDA, LLC

VS.

Appellee.

RECORD ON APPEAL IN THE MATTER OF:

Fuel and purchased power cost recovery clause with generating performance incentive factor.

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ATTORNEYS FOR APPELLEE

SC19-6022 INDEX (BY DATE) PSC

Docket No. 20200001-EI

Pursuant to Rule 9.200(d)(1)(B), Fla.R.App.P., the index shall indicate any confidential information in the record and if the information was determined to be confidential in an order, identify such order by date or docket number and record page number.

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[CLK Note: See DN 10935-2019 for Exh Nos. 1, 68-75, 80, 82, 100].
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10/16/2020	Duke Energy (Bernier) - Letter dated 10/16/20, with attached acknowledgment of receipt [dated 10/16/20] of confidential Final Order PSC-2020-0368-FOF-EI; includes memo dated 10/16/20 from CLK/Teitzman to GCL/Hetrick requesting permission to allow Duke Energy access to confidential DN 11211-2020, pursuant to APM 11.04 C.6.d.(3); with noted approval by GCL/Hetrick.....	932-934
10/29/2020	GCL/Stiller - Memo dated 10/28/20 to CLK/Teitzman, forwarding confidential Amendatory Final Order No. PSC-2020-0368A-FOF0EI; advises that Duke Energy will file a request for confidentiality for the final order.....	935
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10/29/2020	Duke Energy (Bernier) - Letter dated 10/29/20, forwarding confidential DN 11612-2020.....	936-937
10/29/2020	Duke Energy (Bernier) - (CONFIDENTIAL) Certain information provided in FPSC's Final Order PSC-2020-0368-FOF-EI [DN 11211-2020]; Composite Exh A [to request for confidential classification (DN 11617-2020)].	ATTACHMENT FF
10/29/2020	Duke Energy (Bernier) - Request for confidential classification [of DN 11612-2020, x-ref 11211-2020]; includes redacted version of confidential Final Order PSC-2020-0368-FOF-EI.....	938-1005
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10/30/2020	GCL/Brownless - Memo dated 10/30/20 to CLK/Teitzman, forwarding [a DVD] containing OPC's confidential Final Order PSC-2020-0368-FOF-EI, identified as Cross Examination Hearing Exh No. 1-C; advises this exhibit contains Attachment A and should be substituted for previously filed [confidential DN 11564-2020].....	1065
10/30/2020	GCL/Brownless - (CONFIDENTIAL) DVD containing Final Order PSC-2020-0368-FOF-EI, identified as OPC's Cross Examination Hearing Exh No. 1-C; this exhibit contains Attachment A and substitutes for previously filed [confidential DN 11564-2020]. [Cross reference 11564-2020 and 12399-2020].....	ATTACHMENT GG
11/02/2020	Duke Energy (Nordby) - Copy of notice of administrative appeal [of Final Order PSC-2020-0368-FOF-EI], as filed in Supreme Court of Florida.	1066-1068
11/02/2020	Duke Energy (Nordby) - Motion for stay [of Final Order PSC-2020-0368-FOF-EI] pending judicial review.....	1069-1073
11/03/2020	CLK/Teitzman - Copy of letter dated 11/2/20 to Supreme Court/Tomasino forwarding a certified copy of a notice of administrative appeal [DN 11688-2020] and attached confidential Final Order PSC-2020-0368-FOF-EI; advises appeal was filed on behalf of Duke Energy. [CLK note: confidential Final Order PSC-2020-0368-FOF-EI not available online.].....	1074-1077
11/04/2020	AFD/Higgins - Memo with noted, 11/4/20 response date, providing recommendation on confidentiality of DN 11612-2020; and attached copy of memo dated 11/4/20 to GCL/Brownless, providing recommendation on confidential DN 11612-2020.....	1078-1079
11/04/2020	AFD/Higgins - Memo with noted, 11/4/20 response date, providing recommendation on confidentiality of DN 11636-2020; and attached copy of memo dated 11/4/20 to GCL/Brownless, providing recommendation on confidential DN 11636-2020.....	1080-1083
11/04/2020	TRANSCRIPT - Volume 1, pages 1 to 248, of 11/3/20 hearing.	1084-1331
11/05/2020	TRANSCRIPT - Volume 2, pages 249 to 452, of 11/3/20 hearing.	1332-1535
11/05/2020	TRANSCRIPT - Volume 3, pages 453 to 547, of 11/3/20 hearing.	1536-1630

11/05/2020	Hearing exhibits 2 to 58 for 11/3/20 hearing.....	1631-2707
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11/17/2020	Duke Energy (Bernier) - Request for confidential classification [of DN 12399-2020]; includes redacted version.....	2790-2837
11/17/2020	Duke Energy (Bernier) - Letter dated 11/17/20, forwarding confidential DN 12399-2020.....	2838
11/17/2020	Duke Energy (Bernier) - (CONFIDENTIAL) Certain highlighted information provided in Amended Final Order PSC-2020-0368A-FOF-EI (DN 11601-2020). [Cross-reference 11564-2020 and 11656-2020].	ATTACHMENT HH
11/18/2020	Duke Energy (Bernier) - Notice of filing and serving verified affidavits [for confidential classification regarding staff's recommended and final orders]; with attached affidavits of Jeffrey Swartz.....	2839-2847
11/19/2020	Duke Energy (Nordby) - Copy of amended notice of administrative appeal [of Amended Final Order PSC-2020-0368A-FOF-EI], as filed in Supreme Court of Florida.....	2848-2854
11/19/2020	Duke Energy (Nordby) - Amended motion for stay [of Final Order PSC-2020-0368A-FOF-EI] pending judicial review.....	2855-2860
11/19/2020	CLK/Teitzman - Copy of letter dated 11/19/20 to Supreme Court/Tomasino forwarding a certified copy of an amended notice of administrative appeal [DN 12533-2020] and attached confidential Amended Final Order PSC-2020-0368A-FOF-EI; advises appeal was filed on behalf of Duke Energy. [CLK note: Confidential Amended Final Order PSC-2020-0368A-FOF-EI not available online.].....	2861

11/20/2020	RECOM for 12/1/20 Commission conference, Item 4, from GCL and AFD staff.....	2862-2869
11/25/2020	Duke Energy (Bernier) - Third request for extension of confidential classification [of DN 06298-2015] (Audit Control No. 15-051-2-1). [CLK note: Revised Exh D, affidavit of James McClay does not include a signature.	2870-2882
11/25/2020	Duke Energy (Bernier) - Request for extension of confidential classification [of DN 01320-2019].....	2883-2899
11/25/2020	Duke Energy (Bernier) - Request for extension of confidential classification [of DN 03493-2019].....	2900-2912
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12/03/2020	RECOM for 12/15/20 Commission conference, Item 1, from AFD, ECO, ENG, and GCL staff.....	2926-2969
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1	01336-2019	03/01/2019	Duke Energy (Bernier) - Petition for approval of fuel cost recovery and capacity cost recovery with generating performance incentive factor actual true-ups for period ending 12/18; direct testimony of Christopher A. Menendez and Exhs CAM-1T through CAM-4T; direct testimony of Arnold Garcia and redacted Exh AG-1; direct testimony of Jeffrey Swartz; incorporates Exh JS-1 previously filed in Docket 20180001.	20190001-EI
2	10606-2019	10/31/2019	TRANSCRIPT - 10/22/19 prehearing	20190001-EI
3	10625-2019	10/31/2019	Duke Energy (Bernier) - Request for confidential classification [of 00571-2020]; includes redacted version.	20190001-EI
4	00928-2020	02/17/2020	Duke Energy (Bernier) - Request for confidential classification [of 00571-2020]; includes redacted version.	20200001-EI
5	00961-2020	02/18/2020	Duke Energy (Bernier) - Notice of intent to request confidential classification [of DNs 00962-2020, 00963-2020, and 00964-2020].	20200001-EI
6	00962-2020	02/18/2020	TRANSCRIPT (CONFIDENTIAL) - Volume 1, pages 1 to 156, of 2/4/20 final hearing held at DOAH before The Honorable Lawrence P. Stevenson [Case No. 19-006022]. [xref DNs 00963-2020, 00964-2020, 00967-2020, 00968-2020, 00969-2020, 00970-2020, 00971-2020, 00972-2020, 00973-2020, 00974-2020, 00975-2020, 00976-2020, 00977-2020, 00978-2020, 00979-2020, 00981-2020, 00982-2020, 00983-2020]	20200001-EI
7	00963-2020	02/18/2020	TRANSCRIPT (CONFIDENTIAL) - Volume 2, pages 157 to 290, of 2/4/20 final hearing held at DOAH before The Honorable Lawrence P. Stevenson [Case No. 19-006022]. [xref DNs 00962-2020, 00964-2020, 00967-2020, 00968-2020, 00969-2020, 00970-2020, 00971-2020, 00972-2020, 00973-2020, 00974-2020, 00975-2020, 00976-2020, 00977-2020, 00978-2020, 00979-2020, 00981-2020, 00982-2020, 00983-2020]	20200001-EI
8	00964-2020	02/18/2020	TRANSCRIPT (CONFIDENTIAL) - Volume 3, pages 291 to 427, of 2/5/20 final hearing held at DOAH before The Honorable Lawrence P. Stevenson [Case No. 19-006022]. [xref DNs 00962-2020, 00963-2020, 00967-2020, 00968-2020, 00969-2020, 00970-2020, 00971-2020, 00972-2020, 00973-2020, 00974-2020, 00975-2020, 00976-2020, 00977-2020, 00978-2020, 00979-2020, 00981-2020, 00982-2020, 00983-2020]	20200001-EI
9	00967-2020	02/18/2020	(CONFIDENTIAL) Hearing Exhibit No. 101 from 2/5/20 DOAH Hearing. [CLK Note: See DN 10935-2019 for Exh Nos. 1, 68-75, 80, 82, 100]. [x-ref DNs 00962-2020, 00963-2020, 00964-2020, 00968-2020, 00969-2020, 00970-2020, 00971-2020, 00972-2020, 00973-2020, 00974-2020, 00975-2020, 00976-2020, 00977-2020, 00978-2020, 00979-2020, 00981-2020, 00982-2020, 00983-2020]	20200001-EI
10	00968-2020	02/18/2020	(CONFIDENTIAL) Hearing Exhibit No. 102 from 2/5/20 DOAH Hearing. [CLK Note: See DN 10935-2019 for Exh Nos. 1, 68-75, 80, 82, 100]. [x-ref DNs 00962-2020, 00963-2020, 00964-2020, 00967-2020, 00969-2020, 00970-2020, 00971-2020, 00972-2020, 00973-2020, 00974-2020, 00975-2020, 00976-2020, 00977-2020, 00978-2020, 00979-2020, 00981-2020, 00982-2020, 00983-2020]	20200001-EI
11	00969-2020	02/18/2020	(CONFIDENTIAL) Hearing Exhibit No. 103 from 2/5/20 DOAH Hearing. [CLK Note: See DN 10935-2019 for Exh Nos. 1, 68-75, 80, 82, 100]. [x-ref DNs 00962-2020, 00963-2020, 00964-2020, 00967-2020, 00968-2020, 00969-2020, 00970-2020, 00971-2020, 00972-2020, 00973-2020, 00974-2020, 00975-2020, 00976-2020, 00977-2020, 00978-2020, 00979-2020, 00981-2020, 00982-2020, 00983-2020]	20200001-EI
12	00970-2020	02/18/2020	(CONFIDENTIAL) Hearing Exhibit No. 104 from 2/5/20 DOAH Hearing. [CLK Note: See DN 10935-2019 for Exh Nos. 1, 68-75, 80, 82, 100]. [x-ref DNs 00962-2020, 00963-2020, 00964-2020, 00967-2020, 00968-2020, 00969-2020, 00970-2020, 00971-2020, 00972-2020, 00973-2020, 00974-2020, 00975-2020, 00976-2020, 00977-2020, 00978-2020, 00979-2020, 00981-2020, 00982-2020, 00983-2020]	20200001-EI
13	00971-2020	02/18/2020	(CONFIDENTIAL) Hearing Exhibit No. 105 from 2/5/20 DOAH Hearing. [CLK Note: See DN 10935-2019 for Exh Nos. 1, 68-75, 80, 82, 100]. [x-ref DNs 00962-2020, 00963-2020, 00964-2020, 00967-2020, 00968-2020, 00969-2020, 00970-2020, 00971-2020, 00972-2020, 00973-2020, 00974-2020, 00975-2020, 00976-2020, 00977-2020, 00978-2020, 00979-2020, 00981-2020, 00982-2020, 00983-2020]	20200001-EI
14	00972-2020	02/18/2020	(CONFIDENTIAL) Hearing Exhibit No. 106 from 2/5/20 DOAH Hearing. [CLK Note: See DN 10935-2019 for Exh Nos. 1, 68-75, 80, 82, 100]. [x-ref DNs 00962-2020, 00963-2020, 00964-2020, 00967-2020, 00968-2020, 00969-2020, 00970-2020, 00971-2020, 00972-2020, 00973-2020, 00974-2020, 00975-2020, 00976-2020, 00977-2020, 00978-2020, 00979-2020, 00981-2020, 00982-2020, 00983-2020]	20200001-EI
15	00973-2020	02/18/2020	(CONFIDENTIAL) Hearing Exhibit No. 107 from 2/5/20 DOAH Hearing. [CLK Note: See DN 10935-2019 for Exh Nos. 1, 68-75, 80, 82, 100]. [x-ref DNs 00962-2020, 00963-2020, 00964-2020, 00967-2020, 00968-2020, 00969-2020, 00970-2020, 00971-2020, 00972-2020, 00973-2020, 00974-2020, 00975-2020, 00976-2020, 00977-2020, 00978-2020, 00979-2020, 00981-2020, 00982-2020, 00983-2020]	20200001-EI

			00964-2020, 00967-2020, 00968-2020, 00969-2020, 00970-2020, 00971-2020, 00972-2020, 00974-2020, 00975-2020, 00976-2020, 00977-2020, 00978-2020, 00979-2020, 00981-2020, 00982-2020, 00983-2020]	
16	00974-2020	02/18/2020	(CONFIDENTIAL) Hearing Exhibit No. 108 from 2/5/20 DOAH Hearing. [CLK Note: See DN 10935-2019 for Exh Nos. 1, 68-75, 80, 82, 100]. [x-ref DNs 00962-2020, 009632020, 00964-2020, 00967-2020, 00968-2020, 00969-2020, 00970-2020, 00971-2020, 00972-2020, 00973-2020, 00975-2020, 00976-2020, 00977-2020, 00978-2020, 00979-2020, 00981-2020, 00982-2020, 00983-2020]	20200001-EI
17	00975-2020	02/18/2020	(CONFIDENTIAL) Hearing Exhibit No. 109 from 2/5/20 DOAH Hearing. [CLK Note: See DN 10935-2019 for Exh Nos. 1, 68-75, 80, 82, 100]. [x-ref DNs 00962-2020, 009632020, 00964-2020, 00967-2020, 00968-2020, 00969-2020, 00970-2020, 00971-2020, 00972-2020, 00973-2020, 00974-2020, 00976-2020, 00977-2020, 00978-2020, 00979-2020, 00981-2020, 00982-2020, 00983-2020]	20200001-EI
18	00976-2020	02/18/2020	(CONFIDENTIAL) Hearing Exhibit No. 110 from 2/5/20 DOAH Hearing. [CLK Note: See DN 10935-2019 for Exh Nos. 1, 68-75, 80, 82, 100]. [x-ref DNs 00962-2020, 009632020, 00964-2020, 00967-2020, 00968-2020, 00969-2020, 00970-2020, 00971-2020, 00972-2020, 00973-2020, 00974-2020, 00975-2020, 00977-2020, 00978-2020, 00979-2020, 00981-2020, 00982-2020, 00983-2020]	20200001-EI
19	00977-2020	02/18/2020	(CONFIDENTIAL) Hearing Exhibit No. 111 from 2/5/20 DOAH Hearing. [CLK Note: See DN 10935-2019 for Exh Nos. 1, 68-75, 80, 82, 100]. [x-ref DNs 00962-2020, 009632020, 00964-2020, 00967-2020, 00968-2020, 00969-2020, 00970-2020, 00971-2020, 00972-2020, 00973-2020, 00974-2020, 00975-2020, 00976-2020, 00978-2020, 00979-2020, 00981-2020, 00982-2020, 00983-2020]	20200001-EI
20	00978-2020	02/18/2020	(CONFIDENTIAL) Hearing Exhibit No. 112 from 2/5/20 DOAH Hearing. [CLK Note: See DN 10935-2019 for Exh Nos. 1, 68-75, 80, 82, 100]. [x-ref DNs 00962-2020, 009632020, 00964-2020, 00967-2020, 00968-2020, 00969-2020, 00970-2020, 00971-2020, 00972-2020, 00973-2020, 00974-2020, 00975-2020, 00976-2020, 00977-2020, 00979-2020, 00981-2020, 00982-2020, 00983-2020]	20200001-EI
21	00979-2020	02/18/2020	(CONFIDENTIAL) Hearing Exhibit No. 113 from 2/5/20 DOAH Hearing. [CLK Note: See DN 10935-2019 for Exh Nos. 1, 68-75, 80, 82, 100]. [x-ref DNs 00962-2020, 009632020, 00964-2020, 00967-2020, 00968-2020, 00969-2020, 00970-2020, 00971-2020, 00972-2020, 00973-2020, 00974-2020, 00975-2020, 00976-2020, 00977-2020, 00978-2020, 00981-2020, 00982-2020, 00983-2020]	20200001-EI
22	00980-2020	02/18/2020	Hearing Exhibit No. 114 from 2/4/20 DOAH Hearing. [CLK Note: See DN 10935-2019 for Exh Nos. 1, 68-75, 80, 82, 100]	20200001-EI
23	00981-2020	02/18/2020	(CONFIDENTIAL) Hearing Exhibit No. 115 from 2/4/20 DOAH Hearing. [CLK Note: See DN 10935-2019 for Exh Nos. 1, 68-75, 80, 82, 100]. [x-ref DNs 00962-2020, 009632020, 00964-2020, 00967-2020, 00968-2020, 00969-2020, 00970-2020, 00971-2020, 00972-2020, 00973-2020, 00974-2020, 00975-2020, 00976-2020, 00977-2020, 00978-2020, 00979-2020, 00982-2020, 00983-2020]	20200001-EI
24	00982-2020	02/18/2020	(CONFIDENTIAL) Hearing Exhibit No. 116 from 2/4/20 DOAH Hearing. [CLK Note: See DN 10935-2019 for Exh Nos. 1, 68-75, 80, 82, 100]. [x-ref DNs 00962-2020, 009632020, 00964-2020, 00967-2020, 00968-2020, 00969-2020, 00970-2020, 00971-2020, 00972-2020, 00973-2020, 00974-2020, 00975-2020, 00976-2020, 00977-2020, 00978-2020, 00979-2020, 00981-2020, 00983-2020]	20200001-EI
25	00983-2020	02/18/2020	(CONFIDENTIAL) Hearing Exhibit No. 117 from 2/5/20 DOAH Hearing. [CLK Note: See DN 10935-2019 for Exh Nos. 1, 68-75, 80, 82, 100]. [x-ref DNs 00962-2020, 009632020, 00964-2020, 00967-2020, 00968-2020, 00969-2020, 00970-2020, 00971-2020, 00972-2020, 00973-2020, 00974-2020, 00975-2020, 00976-2020, 00977-2020, 00978-2020, 00979-2020, 00981-2020, 00982-2020]	20200001-EI
26	00984-2020	02/18/2020	Hearing Exhibit No. 118 from 2/5/20 DOAH Hearing. [CLK Note: See DN 10935-2019 for Exh Nos. 1, 68-75, 80, 82, 100]	20200001-EI
27	01056-2020	02/24/2020	GCL/Brownless - Copy of letter dated 2/24/20 to DOAH/Stevenson, forwarding confidential three volume transcript of the 2/4-5/20 hearing, DOAH Case No. [19006022].	20200001-EI
28	01338-2020	03/10/2020	Duke Energy (Bernier) - Request for confidential classification [of (DN 00962-2020) certain information provided in exhibits and hearing transcript for DOAH hearing held on 2/4 and 2/5/20]. [x-ref DNs 00963-2020, 00964-2020, 00967-2020, 00968-2020, 00969-2020, 00970-2020, 00971-2020, 00972-2020, 00973-2020, 00974-2020, 00975-2020, 00976-2020, 00977-2020, 00978-2020, 00979-2020, 00981-2020, 00982-2020, and 00983-2020]	20200001-EI
29	01341-2020	03/11/2020	AFD/Higgins - Copy of memo dated 3/11/20 to GCL/Brownless, providing recommendation on confidential DN 00962-2020; and attached memo with noted 3/11/20 response date providing recommendation on confidentiality of DN 00962-2020. [x-ref DNs 00963-2020, 00964-2020, 00967-2020, 00968-2020, 00969-2020, 009702020, 00971-2020, 00972-2020, 00973-2020, 00974-2020, 00975-2020, 00976-2020, 00977-2020, 00978-2020, 00979-2020, 00981-2020, 00982-2020, 00983-2020]	20200001-EI

30	01393-2020	03/13/2020	Duke Energy (Triplett) - Letter dated 3/13/20 to CLK/Teitzman, with enclosed joint comments from Duke Energy, TECO, FPL, GPC and FPUC on 2/6/20 staff workshop held to address modifications to Order PSC-2012-0425-PAA-EU.	20200001-EI
31	01427-2020	03/17/2020	Return receipt card indicating delivery of confidential DNs 05217-2014, 07985-2015, 11143-2019, 04684-2019, and 06111-2019 to Duke Energy/Triplett by U.S. Post Office. [CLK note: no delivery date on card.]	20200001-EI
32	01525-2020	03/20/2020	Duke Energy (Bernier) - Notice of intent to request confidential classification of [DN 01546-2020] the proposed Recommended Orders.	20200001-EI
33	01543-2020	03/20/2020	GCL/Brownless - Memo dated 3/20/20 to CLK/Teitzman with attached confidential proposed Recommended Order [DN 01544-2020] regarding DOAH Case No. 19-6022 for docket file.	20200001-EI
34	01544-2020	03/20/2020	GCL/Brownless - (CONFIDENTIAL) Proposed Recommended Order regarding DOAH Case 19-6022. [x-ref DN 01546-2020, 02089-2020]	20200001-EI
35	01545-2020	03/20/2020	Duke Energy (Bernier) - Letter dated 3/20/20 forwarding confidential DN 01546-2020.	20200001-EI
36	01546-2020	03/20/2020	Duke Energy (Bernier) - (CONFIDENTIAL) Proposed Recommended Order regarding DOAH Case No. 19-6022. [x-ref DNs 01544-2020 and 02089-2020]	20200001-EI
37	01877-2020	04/09/2020	Duke Energy (Bernier) - Request for confidential classification [of (DN 01546-2020) certain information provided in proposed Recommended Orders submitted to DOAH]. [x-ref DN 01544-2020]	20200001-EI
38	01970-2020	04/15/2020	AFD/Higgins - Memo with noted 4/14/20 response date, providing recommendation on confidentiality of DNs 01546-2020 and 01544-2020; and attached copy of memo dated 4/14/20 to GCL/Brownless, providing recommendation on confidential DNs 01544-2020 and 01546-2020. [x-ref DN 01544-2020]	20200001-EI
39	02088-2020	04/20/2020	GCL/Brownless - Memo dated 4/20/20 to CLK/Teitzman, forwarding confidential [DN 02089-2020]; advises the confidential information is the subject of Duke Energy's notice of intent to request confidential classification and request for confidential classification (DNs 01525-2020; 01877-2020).	20200001-EI
40	02089-2020	04/20/2020	GCL/Brownless - (CONFIDENTIAL) Proposed Recommended Order of OPC, White Springs, and FIPUG (contains information which is the subject of Duke Energy's notice of intent to request confidential classification and request for request confidential classification (DNs 01525-2020; 01877-2020). [x-ref DNs 01544-2020, 01546-2020]	20200001-EI
41	02138-2020	04/21/2020	AFD/Higgins - Memo with noted 4/21/20 response date, providing recommendation on confidentiality of DNs 01546-2020, 01544-2020, and 02089-2020; and attached copy of memo dated 4/21/20 to GCL/Brownless, providing recommendation on confidential DNs 01546-2020, 01544-2020, and 02089-2020. [x-ref DNs 01544-2020 and 02089-2020]	20200001-EI
42	02250-2020	04/28/2020	GCL/Brownless - Memo dated 4/28/20 to CLK/Teitzman, forwarding [confidential DN 02251-2020] the Recommended Order by Administrative Law Judge Stevenson on 4/27/20, for docket file; advises this document contains confidential material.	20200001-EI
43	02251-2020	04/28/2020	GCL/Brownless - (CONFIDENTIAL) Recommended Order by Administrative Law Judge Stevenson on 4/27/20.	20200001-EI
44	02314-2020	04/30/2020	AFD/Reecy - Memo dated 4/29/20 to CLK/Holmes, with attached listing of confidential documents in dockets as of 4/13/20, identifying whether each document should be retained or returned to source.	20200001-EI
45	02455-2020	05/07/2020	DOAH (Stevenson) - Letter dated 4/27/20 to CLK/Teitzman, advising that Recommended Order and hearing record has been transmitted in electronic format to registered eALJ users in Case No. 19-6022; [returning] three-volume transcript, together with Duke Energy's Exh Nos. 80-82; OPC's Exh Nos. 68-75, 101-109, and 115-117; Commission's Exh Nos. 110 and 111; FIPUG's Exh No. 118; White Springs' Exh Nos. 112 and 113; and parties' Joint Exh No. 114; requesting final order be furnished to DOAH within 15 days, as required by Section 120.57(1)(m), FS; any exceptions to Recommended Order to be forwarded to DOAH with the final order.	20200001-EI
46	02528-2020	05/12/2020	Duke Energy (Bernier) - Notice of intent to request confidential classification [of DN 02530-2020].	20200001-EI
47	02529-2020	05/12/2020	Duke Energy (Bernier) - Letter dated 5/12/20, forwarding confidential DN 02530-2020.	20200001-EI
48	02530-2020	05/14/2020	Duke Energy (Bernier) - (CONFIDENTIAL) Information contained in Duke Energy's exceptions to Administrative Law Judge's Recommended Order regarding final hearing held on 2/4/20 and 2/5/20 at DOAH.	20200001-EI
49	02631-2020	05/18/2020	Duke Energy (Bernier) - Request for confidential classification [of DN 02633-2020]; includes redacted version.	20200001-EI
50	02632-2020	05/18/2020	Duke Energy (Bernier) - Letter dated 5/18/20, forwarding confidential DN 02633-2020.	20200001-EI

51	02633-2020	05/18/2020	Duke Energy (Bernier) - (CONFIDENTIAL) Certain information provided in the 2020 Recommended Order from DOAH, where the final hearing was conducted on 2/4/20 through 2/5/20, Exh A [to request for confidential classification (DN 02631-2020)].	20200001-EI
52	02673-2020	05/20/2020	AFD/Higgins - Memo with noted 5/20/20 response date, providing recommendation on confidentiality of DN 02633-2020; and attached copy of memo dated 5/20/20 to GCL/Brownless, providing recommendation on confidential DN 02633-2020.	20200001-EI
53	02691-2020	05/21/2020	Duke Energy (Bernier) - Notice of intent to request confidential classification [of DN 02707-2020].	20200001-EI
54	02706-2020	05/21/2020	OPC (Rehwinkel) - Letter dated 5/21/20, forwarding confidential DN 02707-2020.	20200001-EI
55	02707-2020	05/21/2020	OPC (Rehwinkel) - (CONFIDENTIAL) Joint response to Recommended Order by OPC, White Springs, and FIPUG.	20200001-EI
56	02887-2020	06/02/2020	Duke Energy (Bernier) - Request for confidential classification [of DN 02889-2020]; includes redacted version.	20200001-EI
57	02888-2020	06/02/2020	Duke Energy (Bernier) - Letter dated 6/2/20, forwarding confidential DN 02889-2020.	20200001-EI
58	02889-2020	06/02/2020	Duke Energy (Bernier) - (CONFIDENTIAL) Certain information provided in exceptions to Administrative Law Judge's Recommended Order dated 4/27/20, Exh A [to request for confidential classification (DN 02887-2020)].	20200001-EI
59	02895-2020	06/02/2020	Duke Energy (Bernier) - Letter dated 6/2/20, providing notice of serving verified declaration of Jeffrey Swartz in support of request for confidential classification [of DN 02889-2020]; with attached affidavit of Jeffrey Swartz.	20200001-EI
60	02938-2020	06/05/2020	AFD/Higgins - Memo with noted 6/5/20 response date, providing recommendation on confidentiality of DN 02889-2020; and attached copy of memo dated 6/5/20 to GCL/Brownless, providing recommendation on confidential DN 02889-2020.	20200001-EI
61	03050-2020	06/11/2020	Duke Energy (Bernier) - Letter dated 6/11/20, forwarding confidential DN 03051-2020.	20200001-EI
62	03051-2020	06/11/2020	Duke Energy (Bernier) - (CONFIDENTIAL) Certain information provided in OPC, White Springs, and FIPUG's response (DN 02707-2020) to exceptions to Administrative Law Judge's Recommended Order dated 4/27/20, Exh A [to request for confidential classification (DN 03055-2020)].	20200001-EI
63	03055-2020	06/11/2020	Duke Energy (Bernier) - Request for confidential classification [of DN 03051-2020, x-ref DN 02707-2020]; includes redacted version.	20200001-EI
64	03147-2020	06/17/2020	APA/Mailhot - Memo date 6/12/20 to CLK/Roehner, with attached list of confidential documents to be destroyed after 6/30/20.	20200001-EI
65	03148-2020	06/17/2020	APA/Mailhot - Memo date 6/12/20 to CLK/Roehner, with attached list of confidential documents to be returned to companies.	20200001-EI
66	03342-2020	06/26/2020	AFD/Higgins - Memo with noted 6/26/20 response date, providing recommendation on confidentiality of DN 03051-2020; and attached copy of memo dated 6/26/20 to GCL/Brownless, providing recommendation on confidential DN 03051-2020.	20200001-EI
67	04425-2020	08/14/2020	RECOM (redacted) for 8/18/20 Commission conference, Item 3, from GCL, AFD and ENG staff.	20200001-EI
68	04445-2020	08/14/2020	Duke Energy (Bernier) - Letter dated 8/14/20, forwarding confidential DN 04446-2020.	20200001-EI
69	04446-2020	08/14/2020	Duke Energy (Bernier) - (CONFIDENTIAL) Information provided in staff's recommended order regarding the hearing held on 2/4 and 2/5/20 at DOAH.	20200001-EI
70	04447-2020	08/14/2020	Duke Energy (Bernier) - Request for confidential classification [of DN 04446-2020]; includes redacted version.	20200001-EI
71	04503-2020	08/18/2020	AFD/Higgins - Memo with noted 8/18/20 response date, providing recommendation on confidentiality of DN 04446-2020; and attached copy of memo dated 8/18/20 to GCL/Brownless, providing recommendation on confidential DN 04446-2020	20200001-EI
72	04708-2020	08/18/2020	Vote sheet from 8/18/20 Commission conference, Item 3.	20200001-EI
73	04787-2020	08/21/2020	RECOM for 9/1/20 Commission conference, Item 4A, from GCL, AFD, and ENG staff.	20200001-EI
74	04818-2020	08/21/2020	FedEx shipment receipt for return of confidential DNs 07019-2012, 02553-2013, and 02697-2013 to Duke Energy/Triplett on 8/3/20.	20200001-EI
75	05069-2020	08/26/2020	TRANSCRIPT - 8/18/20 Commission conference, Item 3.	20200001-EI
76	05875-2020	09/03/2020	Vote sheet from 9/1/20 Commission conference, Item 4A.	20200001-EI
77	06569-2020	09/11/2020	TRANSCRIPT - 9/1/20 Commission conference, Item 4A.	20200001-EI
78	10835-2020	10/06/2020	Duke Energy (Bernier) - Prehearing statement.	20200001-EI
79	10844-2020	10/06/2020	Duke Energy (Bernier) - Corrected prehearing statement.	20200001-EI
80	10852-2020	10/06/2020	GCL/Brownless - Staff's prehearing statement.	20200001-EI

81	10855-2020	10/06/2020	White Springs (Brew, Baker) - Prehearing statement.	20200001-EI
82	10856-2020	10/06/2020	FPUC (Keating) - Prehearing statement.	20200001-EI
83	10857-2020	10/06/2020	FIPUG (Moyle) - Prehearing statement.	20200001-EI
84	10858-2020	10/06/2020	TECO (Means) - Prehearing statement.	20200001-EI
85	10860-2020	10/06/2020	GPC (Badders) - Prehearing statement.	20200001-EI
86	10872-2020	10/06/2020	OPC (Christensen) - Prehearing statement. [CLK note: This filing does not include an official electronic signature.]	20200001-EI
87	10898-2020	10/07/2020	Notice of hearing and prehearing - Hearing to be held 11/3/20, immediately following the Commission's Agenda Conference., Rm 148, Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, with 11/4-11/5 reserved for continuation if necessary; prehearing to be held 10/26/20, 1:30 p.m., Rm 148, Tallahassee.	20200001-EI
88	11210-2020	10/15/2020	GCL/Stiller - Memo dated 10/15/20 to CLK/Teitzman, forwarding confidential Order No. PSC-2020-0368-FOF-EI; advises that Duke Energy will file a request for confidentiality for the final order.	20200001-EI
89	11211-2020	10/15/2020	(CONFIDENTIAL) Final Order PSC-2020-0368-FOF-EI establishing fuel cost recovery for Duke Energy.	20200001-EI
90	11230-2020	10/15/2020	Order PSC-2020-0372-CFO-EI granting Duke Energy's request for confidential classification (of DN 0223-2020) for a period of 18 months from the date of this order.	20200001-EI
91	11245-2020	10/16/2020	Order PSC-2020-0375-CFO-EI granting Duke Energy's request for confidential classification (of DN 00571-2020) for a period of 18 months from the date of this order.	20200001-EI
92	11247-2020	10/16/2020	Order PSC-2020-0376-CFO-EI granting Duke Energy's request for confidential classification (of DN 01544-2020, 01546-2020 and 02089-2020) for a period of 18 months from the date of this order.	20200001-EI
93	11248-2020	10/16/2020	Order PSC-2020-0377-CFO-EI granting Duke Energy's request for confidential classification (of DN 02633-2020, x-ref 02251-2020) for a period of 18 months from the date of this order.	20200001-EI
94	11249-2020	10/16/2020	Order PSC-2020-0378-CFO-EI granting Duke Energy's request for confidential classification (of DN 02889-2020) for a period of 18 months from the date of this order.	20200001-EI
95	11266-2020	10/16/2020	Order PSC-2020-0379-CFO-EI granting Duke Energy's request for confidential classification (of DN 04446-2020) for a period of 18 months from the date of this order.	20200001-EI
95	11270-2020	10/16/2020	Order PSC-2020-0374-CFO-EI granting Duke Energy's request for confidential classification (DNs 00962-2020, 00963-2020, 00964-2020, 00967-2020 to 00979-2020 and 00981-2020 to 00983-2020) for a period of 18 months from the date of this order.	20200001-EI
97	11281-2020	10/16/2020	Order PSC-2020-0380-CFO-EI granting Duke Energy's request for confidential classification (of DN 03051-2020, x-ref 02707-2020) for a period of 18 months from the date of this order.	20200001-EI
98	11285-2020	10/16/2020	Duke Energy (Bernier) - Letter dated 10/16/20, with attached acknowledgement of receipt [dated 10/16/20] of confidential Final Order PSC-2020-0368-FOF-EI; includes memo dated 10/16/20 from CLK/Teitzman to GCL/Hetrick requesting permission to allow Duke Energy access to confidential DN 11211-2020, pursuant to APM 11.04 C.6.d.(3); with noted approval by GCL/Hetrick.	20200001-EI
99	11600-2020	10/29/2020	GCL/Stiller - Memo dated 10/28/20 to CLK/Teitzman, forwarding confidential Amendatory Final Order No. PSC-2020-0368A-FOF-EI; advises that Duke Energy will file a request for confidentiality for the final order.	20200001-EI
100	11601-2020	10/29/2020	(CONFIDENTIAL) Amended Final Order PSC-2020-0368A-FOF-EI establishing fuel cost recovery for Duke Energy.	20200001-EI
101	11611-2020	10/29/2020	Duke Energy (Bernier) - Letter dated 10/29/20, forwarding confidential DN 11612-2020	20200001-EI
102	11612-2020	10/29/2020	Duke Energy (Bernier) - (CONFIDENTIAL) Certain information provided in FPSC's Final Order PSC-2020-0368-FOF-EI [DN 11211-2020]; Composite Exh A [to request for confidential classification (DN 11617-2020)]	20200001-EI
103	11617-2020	10/29/2020	Duke Energy (Bernier) - Request for confidential classification [of DN 11612-2020, x-ref 11211-2020]; includes redacted version of confidential Final Order PSC-2020-0368-FOF-EI.	20200001-EI
104	11638-2020	10/30/2020	Prehearing Order PSC-2020-0415-PHO-EI.	20200001-EI
105	11655-2020	10/30/2020	GCL/Brownless - Memo dated 10/30/20 to CLK/Teitzman, forwarding [a DVD] containing OPC's confidential Final Order PSC-2020-0368-FOF-EI, identified as Cross Examination Hearing Exh No. 1-C; advises this exhibit contains Attachment A and should be substituted for previously filed [confidential DN 11564-2020].	20200001-EI
106	11656-2020	10/30/2020	GCL/Brownless - (CONFIDENTIAL) DVD containing Final Order PSC-2020-0368-FOF-EI, identified as OPC's Cross Examination Hearing Exh No. 1-C; this exhibit	20200001-EI

			contains Attachment A and substitutes for previously filed [confidential DN 11564-2020]. [Crossreference 11564-2020 and 12399-2020].	
107	11688-2020	11/02/2020	Duke Energy (Nordby) - Copy of notice of administrative appeal [of Final Order PSC2020-0368-FOF-EI], as filed in Supreme Court of Florida.	20200001-EI
108	11692-2020	11/02/2020	Duke Energy (Nordby) - Motion for stay [of Final Order PSC-2020-0368-FOF-EI] pending judicial review.	20200001-EI
109	11725-2020	11/03/2020	CLK/Teitzman - Copy of letter dated 11/2/20 to Supreme Court/Tomasino forwarding a certified copy of a notice of administrative appeal [DN 11688-2020] and attached confidential Final Order PSC-2020-0368-FOF-EI; advises appeal was filed on behalf of Duke Energy. [CLK note: confidential Final Order PSC-2020-0368-FOF-EI not available online.]	20200001-EI
110	11728-2020	11/04/2020	AFD/Higgins - Memo with noted 11/4/20 response date, providing recommendation on confidentiality of DN 11612-2020; and attached copy of memo dated 11/4/20 to GCL/Brownless, providing recommendation on confidential DN 11612-2020.	20200001-EI
111	11729-2020	11/04/2020	AFD/Higgins - Memo with noted 11/4/20 response date, providing recommendation on confidentiality of DN 11636-2020; and attached copy of memo dated 11/4/20 to GCL/Brownless, providing recommendation on confidential DN 11636-2020.	20200001-EI
112	11750-2020	11/04/2020	TRANSCRIPT - Volume 1, pages 1 to 248, of 11/3/20 hearing.	20200001-EI
113	11757-2020	11/05/2020	TRANSCRIPT - Volume 2, pages 249 to 452, of 11/3/20 hearing.	20200001-EI
114	11760-2020	11/05/2020	TRANSCRIPT - Volume 3, pages 453 to 547, of 11/3/20 hearing.	20200001-EI
115	11785-2020	11/05/2020	Hearing exhibits 2 to 58 for 11/3/20 hearing.	20200001-EI
116	11799-2020	11/06/2020	TRANSCRIPT - 10/26/20 prehearing conference.	20200001-EI
117	11869-2020	11/09/2020	OPC; FIPUG; White Springs (Rehwinkel, Moyle, Brew) - Joint response to motion for stay.	20200001-EI
118	11877-2020	11/10/2020	Order PSC-2020-0431-CFO-EI granting Duke Energy's request for confidential classification (of DN 11612-2020, x-ref 11211-2020) for a period of 18 months from the date of this order.	20200001-EI
119	11887-2020	11/10/2020	White Springs (Brew) - Post-hearing brief and statement.	20200001-EI
120	11893-2020	11/10/2020	OPC; FIPUG (Rehwinkel, Moyle) - Joint post-hearing brief.	20200001-EI
121	11894-2020	11/10/2020	Duke Energy (Bernier) - Post-hearing brief.	20200001-EI
122	12393-2020	11/17/2020	Duke Energy (Bernier) - Request for confidential classification [of DN 12399-2020]; includes redacted version.	20200001-EI
123	12398-2020	11/17/2020	Duke Energy (Bernier) - Letter dated 11/17/20, forwarding confidential DN 12399-2020.	20200001-EI
124	12399-2020	11/17/2020	Duke Energy (Bernier) - (CONFIDENTIAL) Certain highlighted information provided in Amended Final Order PSC-2020-0368a-FOF-EI (DN 11601-2020). [Cross-reference 11564-2020 and 11656-2020].	20200001-EI
125	12421-2020	11/18/2020	Duke Energy (Bernier) - Notice of filing and serving verified affidavits [for request for confidential classification regarding staff's recommended and final orders]; with attached affidavits of Jeffrey Swartz.	20200001-EI
126	12533-2020	11/19/2020	Duke Energy (Nordby) - Copy of amended notice of administrative appeal [of Amended Final Order PSC-2020-0368A-FOF-EI], as filed in Supreme Court of Florida.	20200001-EI
127	12534-2020	11/19/2020	Duke Energy (Nordby) - Amended motion for stay [of Final Order PSC-2020-0368AFOF-EI] pending judicial review.	20200001-EI
128	12543-2020	11/19/2020	CLK/Teitzman - Copy of letter dated 11/19/20 to Supreme Court/Tomasino forwarding a certified copy of an amended notice of administrative appeal [DN 12533-2020] and attached confidential Amended Final Order PSC-2020-0368A-FOF-EI; advises appeal was filed on behalf of Duke Energy. [CLK note: Confidential Amended Final Order PSC-2020-0368A-FOF-EI not available online.]	20200001-EI
129	12392-2020	11/20/2020	RECOM for 12/1/20 Commission conference, Item 4, from GCL and AFD staff.	20200001-EI
130	12866-2020	11/25/2020	Duke Energy (Bernier) - Third request for extension of confidential classification [of DN 06298-2015] (Audit Control No. 15-051-2-1). [CLK note: Revised Exh D, affidavit of James McClay does not include a signature.]	20200001-EI
131	12876-2020	11/25/2020	Duke Energy (Bernier) - Request for extension of confidential classification [of DN 01320-2019].	20200001-EI
132	12879-2020	11/25/2020	Duke Energy (Bernier) - Request for extension of confidential classification [of DN 03493-2019].	20200001-EI
133	12880-2020	11/25/2020	Duke Energy (Bernier) - Request for extension of confidential classification [of DN 03322-2019].	20200001-EI

134	13071-2020	12/03/2020	RECOM for 12/15/20 Commission conference, Item 1, from AFD, ECO, ENG, and GCL staff.	20200001-EI
135	13101-2020	12/04/2020	Vote sheet from 12/1/20 Commission conference, Item 4.	20200001-EI



Matthew R. Bernier
Associate General Counsel

March 1, 2019

VIA ELECTRONIC FILING

Adam Teitzman, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: *Fuel and Purchased Power Cost recovery clause with Generating Performance
Incentive Factor; Docket No. 20190001-EI*

Dear Mr. Teitzman:

On behalf of Duke Energy Florida, LLC ("DEF"), please find enclosed for electronic filing in the above-referenced docket:

- DEF's Petition for Approval of Fuel Cost Recovery and Capacity Cost Recovery Actual True-Ups for the Period ending December 2018;
- Direct Testimony of Christopher Menendez with Exhibit No. ____ (CAM-1T), Redacted Exhibit No. ____ (CAM-2T), and Exhibit No. ____ (CAM-3T) and Exhibit No. ____ (CAM-4T);
- Direct Testimony of Arnold Garcia with Redacted Exhibit No. ____ (AG-1); and
- Direct Testimony of Jeffrey Swartz incorporating Exhibit No. ____ (JS-1)¹.

Thank you for your assistance in this matter. Please feel free to call me at (850) 521-

¹ DEF hereby incorporates Exhibit No. ____-(JS-1), filed on March 2, 2018 in Docket No. 20180001-EI as if fully set forth herein.

1428 should you have any questions concerning this filing.

Respectfully,

s/ Matthew R. Bernier

Matthew R. Bernier

MRB/mw
Enclosures

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchase Power
Cost Recovery Clause and Generating
Performance Incentive Factor

Docket No. 20190001-EI
Filed: March 1, 2019

**PETITION FOR APPROVAL OF FUEL COST RECOVERY AND CAPACITY
COST RECOVERY WITH GENERATING PERFORMANCE INCENTIVE
FACTOR ACTUAL TRUE-UPS FOR THE PERIOD ENDING DECEMBER 2018**

Duke Energy Florida, LLC (“DEF”), hereby petitions the Commission for approval of DEF’s actual Fuel and Purchased Power Cost Recovery (“FCR”) true-up amount of \$202,879,590 under-recovery and actual Capacity Cost Recovery (“CCR”) true-up amount of \$15,765,080 over-recovery for the period ending December 2018. In support of this Petition, DEF states as follows:

1. The actual \$202,879,590 FCR under-recovery for the period January 2018 through December 2018 was calculated in accordance with the methodology set forth in Schedule 1, page 2 of 2, attached to Order No. 10093, dated June 19, 1981. This calculation and the supporting documentation are contained in the prepared testimony and exhibits of DEF witness Christopher A. Menendez, which is being filed together with the Petition and is incorporated herein by reference.
2. Pursuant to the 2017 Second Revised and Restated Stipulation and Settlement Agreement approved by the Commission in Order No. PSC-2017-0451-AS-EU, DEF will recover total 2017 actual/estimated true-up under-recovery of fuel and purchased power costs of \$195,503,774 over 2018 and 2019. Accordingly, DEF has included \$97,751,887 of the total 2017 actual/estimated under-recovery in 2019

rates. By Order No. PSC-2018-0610-FOF-EI, the Commission approved a levelized FCR Factor of 3.969 cents/kWh for the 12-month period commencing January 2019. This FCR Factor reflects an actual/estimated under-recovery including interest for the period January 2018 through December 2018 of \$148,450,915. The actual FAC under-recovery including interest for the period January 2018 through December 2018 is \$202,879,590. The \$202,879,590 actual under-recovery, less the actual/estimated under-recovery of \$148,450,915 results in a total under-recovery of \$54,428,676.

3. The actual \$15,765,080 CCR over-recovery for the period January 2018 through December 2018 was calculated in accordance with the methodology set forth in Order No. 25773, dated February 24, 1992. This calculation and the supporting documentation are contained in the prepared testimony and exhibits of DEF witness Christopher A. Menendez.
4. By Order No. PSC-2018-0610-FOF-EI, the Commission approved CCR Factors for the 12-month period commencing January 2019. These factors reflected an actual/estimated over-recovery, including interest, for the period January 2018 through December 2018 of \$16,610,473. The actual over-recovery, including interest, for the period January 2018 through December 2018 is \$15,765,080. The \$15,765,080 actual over-recovery, less the actual/estimated over-recovery of \$16,610,473 which is currently reflected in charges for the period beginning January 2019 results in a total under-recovery of \$845,393.

WHEREFORE, DEF respectfully requests the Commission to approve the net \$54,428,676 FCR under-recovery as the actual true-up amount for the period ending December 2018; and to approve the net \$845,393 CCR under-recovery as the actual true-up amount for the period ending December 2018.

Respectfully submitted,

s/Matthew R. Bernier

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Duke Energy Florida, LLC
CERTIFICATE OF SERVICE
Docket No. 20190001-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been
furnished via email this 1st day of March, 2019 to all parties of record as indicated below.

s/Matthew R. Bernier
Attorney

<p>Suzanne Brownless / Johana Nieves Office of General Counsel FL Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 sbrownle@psc.state.fl.us jnieves@psc.state.fl.us</p> <p>Russell A. Badders Gulf Power Company One Energy Place Pensacola, FL 32520 russell.badders@nexteraenergy.com</p> <p>Holly Henderson Gulf Power Company 215 S. Monroe St., Ste. 618 Tallahassee, FL 32301 holly.henderson@nexteraenergy.com</p> <p>Kenneth A. Hoffman Florida Power & Light Company 134 W. Jefferson Street Tallahassee, FL 32301-1713 ken.hoffman@fpl.com</p> <p>Mike Cassel Florida Public Utilities Company 1750 S. 14th Street, Suite 200 Fernandina Beach, FL 32034 mcassel@fpuc.com</p>	<p>J.R. Kelly / P. Christensen / T. David / S. Morse Office of Public Counsel 111 W. Madison St., Room 812 Tallahassee, FL 32399-1400 kelly_jr@leg.state.fl.us christensen.patty@leg.state.fl.us david.tad@leg.state.fl.us morse.stephanie@leg.state.fl.us</p> <p>Ms. Paula K. Brown Regulatory Affairs Tampa Electric Company P.O. Box 111 Tampa, FL 33601-0111 regdept@tecoenergy.com</p> <p>Maria Moncada / Joel Baker Florida Power & Light Company 700 Universe Blvd. (LAW/JB) Juno Beach, FL 33408-0420 maria.moncada@fpl.com joel.baker@fpl.com</p> <p>James Brew / Laura Wynn Stone Law Firm 1025 Thomas Jefferson St., N.W. Suite 800 West Washington, DC 20007 jbrew@smxblaw.com law@smxblaw.com</p> <p>Robert Scheffel Wright / John T. LaVia, III c/o Gardner Law Firm 1300 Thomaswood Drive Tallahassee, FL 32308 schef@gbwlegal.com jlavia@gbwlegal.com</p>	<p>James Beasley / J. Jeffry Wahlen Ausley McMullen P.O. Box 391 Tallahassee, FL 32302 jbeasley@ausley.com jwahlen@ausley.com</p> <p>Steven Griffin Beggs & Lane P.O. Box 12950 Pensacola, FL 32591 srg@beggslane.com</p> <p>Jon C. Moyle, Jr. Moyle Law Firm, P.A. 118 North Gadsden Street Tallahassee, FL 32301 jmoyle@moylelaw.com mqualls@moylelaw.com</p> <p>Beth Keating Gunster, Yoakley & Stewart, P.A. 215 South Monroe Street, Suite 601 Tallahassee, FL 32301 bkeating@gunster.com</p>
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DUKE ENERGY FLORIDA, LLC

DOCKET No. 20190001-EI

**Fuel and Capacity Cost Recovery
Actual True-Up for the Period
January 2018 - December 2018**

**DIRECT TESTIMONY OF
Christopher A. Menendez**

March 1, 2019

1 **Q. Please state your name and business address.**

2 A. My name is Christopher A. Menendez. My business address is 299 First
3 Avenue North, St. Petersburg, Florida 33701.

4

5 **Q. By whom are you employed and in what capacity?**

6 A. I am employed by Duke Energy Florida, LLC, as Rates and Regulatory
7 Strategy Manager.

8

9 **Q. What are your responsibilities in that position?**

10 A. I am responsible for regulatory planning and cost recovery for Duke Energy
11 Florida, LLC ("DEF" or the "Company"). These responsibilities include
12 completion of regulatory financial reports and analysis of state, federal and
13 local regulations and their impacts on DEF. In this capacity, I am
14 responsible for DEF's Final True-Up, Actual/Estimated Projection and
15 Projection Filings in the Fuel Adjustment Clause, Capacity Cost Recovery
16 Clause and Environmental Cost Recovery Clause.

17

1 **Q. Please describe your educational background and professional**
2 **experience.**

3 A. I joined the Company on April 7, 2008 as a Senior Financial Specialist in
4 the Florida Planning & Strategy group. In that capacity, I supported the
5 development of long-term financial forecasts and the development of
6 current-year monthly earnings and cash flow projections. In 2011, I
7 accepted a position as a Senior Business Financial Analyst in the Power
8 Generation Florida Finance organization. In that capacity, I provided
9 accounting and financial analysis support to various generation facilities
10 in DEF's Fossil fleet. In 2013, I accepted a position as a Senior
11 Regulatory Specialist. In that capacity, I supported the preparation of
12 testimony and exhibits for the Fuel Docket as well as other Commission
13 Dockets. In October 2014, I was promoted to my current position. Prior
14 to working at DEF, I was the Manager of Inventory Accounting and
15 Control for North American Operations at Cott Beverages. In this role, I
16 was responsible for inventory-related accounting and inventory control
17 functions for Cott-owned manufacturing plants in the United States and
18 Canada. I received a Bachelor of Science degree in Accounting from the
19 University of South Florida, and I am a Certified Public Accountant in the
20 State of Florida.

1 **Q. What is the purpose of your testimony?**

2 A. The purpose of my testimony is to provide DEF's Fuel Adjustment Clause
3 final true-up amount for the period of January 2018 through December 2018,
4 and DEF's Capacity Cost Recovery Clause final true-up amount for the same
5 period.

6

7 **Q. Have you prepared exhibits to your testimony?**

8 A. Yes, I have prepared and attached to my true-up testimony as Exhibit No.
9 ____(CAM-1T), a Fuel Adjustment Clause true-up calculation and related
10 schedules; Exhibit No. ____(CAM-2T), a Capacity Cost Recovery Clause true-
11 up calculation and related schedules; Exhibit No. ____(CAM-3T), Schedules A1
12 through A3, A6, and A12 for December 2018, year-to-date; and Exhibit No.
13 ____(CAM-4T), with DEF's capital structure and cost rates. Schedules A1
14 through A9, and A12 for the year ended December 31, 2018, were filed with
15 the Commission on January 29, 2019.

16

17 **Q. What is the source of the data that you will present by way of testimony**
18 **or exhibits in this proceeding?**

19 A. Unless otherwise indicated, the actual data is taken from the books and
20 records of the Company. The books and records are kept in the regular
21 course of business in accordance with generally accepted accounting
22 principles and practices, and provisions of the Uniform System of Accounts

1 as prescribed by this Commission. The Company relies on the information
2 included in this testimony in the conduct of its affairs.

3

4 **Q. Would you please summarize your testimony?**

5 A. Per Order No. PSC-2018-0610-FOF-EI, the estimated 2018 fuel adjustment
6 true-up amount was an under-recovery of \$148.5 million. The actual under-
7 recovery for 2018 was \$202.9 million resulting in a final fuel adjustment true-
8 up under-recovery amount of \$54.4 million. Exhibit No. ____(CAM-1T).

9

10 The estimated 2018 capacity cost recovery true-up amount was an over-
11 recovery of \$16.6 million. The actual amount for 2018 was an over-recovery
12 of \$15.8 million resulting in a final capacity true-up under-recovery amount of
13 \$0.8 million. Exhibit No. ____(CAM-2T).

14

15 **FUEL COST RECOVERY**

16 **Q. What is DEF's jurisdictional ending balance as of December 31, 2018**
17 **for fuel cost recovery?**

18 A. The actual ending balance as of December 31, 2018 for true-up purposes is
19 an under-recovery of \$202,879,590.

1 **Q. How does this amount compare to DEF's estimated 2018 ending**
2 **balance included in the Company's Actual/Estimated Filing?**

3 A. The actual true-up amount attributable to the January 2018 - December 2018
4 period is an under-recovery of \$202,879,590 which is \$54,428,676 higher
5 than the re-projected year end under-recovery balance of \$148,450,915.
6

7 **Q. How was the final true-up ending balance determined?**

8 A. The amount was determined in the manner set forth on Schedule A2 of the
9 Commission's standard forms previously submitted by the Company on a
10 monthly basis.
11

12 **Q. What factors contributed to the period-ending jurisdictional net under-**
13 **recovery of \$54,428,676 shown on your Exhibit No. __ (CAM-1T)?**

14 A. The \$54.4 million is driven in part by a shift from coal to gas generation
15 resulting in increased gas generation and purchased power costs of
16 approximately \$97.6 million partially offset by reduced coal generation
17 expense of \$44.7 million.

1 **Q. Please explain the components shown on Exhibit No. __ (CAM-1T),**
2 **sheet 6 of 6, which helps to explain the \$52.6 million unfavorable**
3 **system variance from the projected cost of fuel and net purchased**
4 **power transactions.**

5 A. Exhibit No. __ (CAM-1T), sheet 6 of 6 is an analysis of the system dollar
6 variance for each energy source in terms of three interrelated components;
7 (1) changes in the amount (MWH's) of energy required; (2) changes in the
8 heat rate of generated energy (BTU's per kWh); and (3) changes in the
9 unit price of either fuel consumed for generation (\$ per million BTU) or energy
10 purchases and sales (cents per kWh). The \$52.6 million unfavorable system
11 variance is mainly attributable to increased natural gas generation and
12 purchased power, in part from a shift from coal to gas, partially offset by
13 reduced coal generation.

14
15 **Q. Does this period ending true-up balance include any noteworthy**
16 **adjustments to fuel expense?**

17 A. Yes. Noteworthy adjustments are shown on Exhibit No. __ (CAM-3T) in the
18 footnote to line 6b on page 1 of 2, Schedule A2.

19
20 Consistent with Order No. PSC-2018-0240-PAA-EQ dated June 8, 2018,
21 DEF included an adjustment of \$7,276,033 (grossed up to \$7,326,228 from
22 retail to system) for amortization of the Florida Power Development, LLC
23 ("FPD") qualifying facility regulatory asset. This adjustment is shown on

1 Exhibit No. ____ (CAM-3T), in the footnotes to Line 6b on page 1 of 2,
2 Schedule A2, and on line 3, page 1 of 2, Schedule A1. An estimated
3 adjustment of \$6,232,811 (grossed up to \$6,266,531 from retail to system)
4 for FPD regulatory asset amortization was included on Schedule E1-B (sheet
5 2), line A5, columns Aug Estimated through Dec Estimated in the 2018
6 Actual/Estimated Filing on July 27, 2018.

7

8 **Q. Did DEF make an adjustment for changes in coal inventory based on an**
9 **Aerial Survey?**

10 A. Yes. DEF included an adjustment of approximately \$5.4 million to coal
11 inventory attributable to the semi-annual aerial surveys conducted on June
12 5, 2018 and November 16, 2018 in accordance with Docket No. 19970001-
13 EI, Order No. PSC-1997-0359-FOF-EI. This adjustment represents 1.96%
14 of the total coal consumed at the Crystal River facility in 2018.

15

16 **Q. Did DEF exceed the economy sales threshold in 2018?**

17 A. Yes. DEF did exceed the gain on economy sales threshold of \$1.8 million in
18 2018. As reported on Schedule A1-2, Line 11a, the gain for the year-to-date
19 period through December 2018 was approximately \$2.3 million. Consistent
20 with Order No. PSC-01-2371-FOF-EI, shareholders retain 20% of the gain in
21 excess of the three-year rolling average. For 2018, that amount is
22 approximately \$0.09 million.

1 **Q. Has the three-year rolling average gain on economy sales included in**
2 **the Company's filing for the November 2018 hearings been updated to**
3 **incorporate actual data for all of year 2018?**

4 A. Yes. DEF has calculated its three-year rolling average gain on economy
5 sales, based entirely on actual data for calendar years 2016 through 2018,
6 as follows:

<u>Year</u>	<u>Actual Gain</u>
2016	\$ 843,842
2017	\$ 887,370
2018	<u>\$2,269,916</u>
Three-Year Average	<u>\$1,333,709</u>

13
14 **Q. Can you explain DEF's methodology for calculating the Time-of-Use**
15 **("TOU") fuel factors?**

16 A. Yes. Commission Order 9661, issued on November 26, 1980, established
17 the current Winter and Summer seasons and applicable on- and off-peak
18 times for each. Within the on- and off-peak periods defined in Order 9661,
19 DEF's uses marginal cost to develop TOU on- and off-peak fuel multipliers
20 ("TOU fuel multipliers"); these are presented each year in Schedule E1-E in
21 DEF's Fuel Projection Filing. The TOU fuel multipliers are then applied to the
22 levelized fuel rate, at secondary metering, to calculate the on- and off-peak
23 fuel factors ("TOU fuel factors"). In Order No. PSC-2011-0216-PAA-EI, the

1 Commission directed Florida Power & Light (“FPL”) to investigate the use of
2 marginal cost in the calculation of the TOU fuel factors; at that time, FPL
3 calculated the TOU fuel factors using projected on- and off-peak average
4 cost. The Commission stated in Order No. PSC-2011-0216-PAA-EI that
5 “[u]sing marginal fuel costs to set TOU fuel factors...increases the on- and
6 off-peak differential, sending a stronger price signal.” In Order No. PSC-
7 2011-0579-FOF-EI, the Commission approved FPL’s switch from average to
8 marginal cost for the 2012 projected TOU Fuel Factors. DEF follows the
9 Commission’s guidance by utilizing marginal cost in to develop the TOU fuel
10 multipliers. Additionally, the Commission has approved DEF’s TOU fuel
11 factors each year in the Fuel docket.

12
13 **Q. Did DEF evaluate the need for adjustments to the on- and off-peak TOU**
14 **fuel cost factors, as described in the Stipulation to Issue 22 in Order**
15 **No. PSC-2018-0610-FOF-EI?**

16 A. Yes. DEF evaluated alternative methods of calculating the TOU fuel factors.
17 The first method is the approved marginal cost calculation, as described
18 above. The second was the use of average cost, rather than marginal cost,
19 in the development of the TOU Multipliers. The third method was the
20 implementation of an artificial c/kWh spread between the TOU fuel factors.

1 **Q. Can you please explain the results of the evaluations?**

2 A. Yes. The evaluation of these three methods utilized the same fuel forecast
3 used to develop DEF's 2019 Fuel Projection Filing and 2019 fuel factors.
4 This allows for an apples-to-apples comparison between the various
5 methods.

6
7 The first method used marginal cost to develop the TOU multipliers. This is
8 the current method used by DEF.

9
10 The Average Cost method utilizes the average on- and off-peak costs to
11 develop the TOU multipliers. This method almost eliminates entirely the
12 spread between the TOU multipliers, resulting in TOU fuel factors that are
13 essentially the same as the levelized rate.

14
15 The third method involved the development of an artificial c/kWh spread
16 between the TOU fuel factors. The calculation method is based on the
17 Residential 1st Tier calculation and was developed in a revenue-neutral
18 manner when compared to the current marginal cost TOU process. This
19 method first determines the projected on- and off-peak MWh sales for the
20 non-Residential classes with optional TOU factors (GS-1, GSD, CS, IS and
21 SS). This was done by separating the projected 2019 MWh sales for these
22 rate classes into on- and off-peak based on the most recent full year actual
23 performance. The projected 2019 TOU revenues were determined by

1 multiplying the projected on- and off-peak 2019 MWh sales by the 2019 TOU
2 fuel factors developed under the current marginal cost process. An artificial
3 c/kWh spread is then calculated by applying the Residential 1st Tier formula,
4 whereas the lower first tier becomes the off-peak fuel factor and the higher
5 second tier becomes the on-peak fuel factor. Under this method, the amount
6 of the c/kWh spread would need to be defined and approved by the
7 Commission. A change in the TOU fuel factor calculation, using the artificial
8 c/kWh spread method, will impact the fuel component of customer bills
9 differently. Some customers will experience an increase in the fuel
10 component of their bill, while others will see a reduction as compared to the
11 current marginal cost method. The number of increases versus reductions
12 to customer bills may be asymmetrical under an artificial spread scenario, for
13 example more total customers could experience an increase than those
14 experiencing a reduction.

15
16 **Q. Based on DEF's evaluation, is DEF recommending an adjustment to the**
17 **current calculation of the on- and off-peak fuel factors?**

18 A. DEF does not believe any adjustments to the current calculation are
19 necessary. DEF follows Commission guidance by utilizing marginal cost in
20 the TOU fuel factor process. Despite the spread between the on- and off-
21 peak TOU fuel multipliers narrowing in recent years, DEF believes that
22 marginal cost still sends an accurate price signal to customers and aligns the
23 TOU fuel cost incurred with the TOU MWhs causing that cost.

CAPACITY COST RECOVERY

Q. What is the Company's jurisdictional ending balance as of December 31, 2018 for capacity cost recovery?

A. The actual ending balance as of December 31, 2018 for true-up purposes is an over-recovery of \$15,765,080.

Q. How does this amount compare to the estimated 2018 ending balance included in the Company's Actual/estimated Filing?

A. When the estimated 2018 over-recovery of \$16,610,473 is compared to the \$15,765,080 actual over-recovery, the final capacity true-up for the twelve-month period ended December 2018 is an under-recovery of \$845,393.

Q. Is this true-up calculation consistent with the true-up methodology used for the other cost recovery clauses?

A. Yes. The calculation of the final net true-up amount follows the procedures established by the Commission in Order No. PSC-1996-1172-FOF-EI. The true-up amount was determined in the manner set forth on the Commission's standard forms previously submitted by the Company on a monthly basis.

1 **Q. What factors contributed to the actual period-end capacity under-**
2 **recovery of \$0.8 million?**

3 A. Exhibit No. __ (CAM-2T, sheet 1 of 3) compares actual results to the original
4 projection for the period. The \$0.8 million under-recovery is primarily due to
5 higher than estimated costs.

6

7 **Q. Does this conclude your direct true-up testimony?**

8 A. Yes.

Duke Energy Florida, LLC
 Fuel Adjustment Clause
 Summary of Actual True-Up Amount
 January 2018 - December 2018

Line No.	Description	Contribution to Over/(Under) Recovery Period to Date
	KWH Sales:	
1	Jurisdictional kWh Sales - Difference	13,609,933
2	Non-Jurisdictional kWh Sales - Difference	31,489,260
3	Total System kWh Sales - Difference Schedule A2, pg 1 of 2, line B3	45,099,193
	System:	
4	Fuel and Net Purchased Power Costs - Difference Schedule A2, page 2 of 2, line C4	\$ 55,413,956
	Jurisdictional:	
5	Fuel Revenues - Difference Schedule A2, page 2 of 2, line C3	(\$167,169)
6	Fuel and Net Purchased Power Costs - Difference Schedule A2, page 2 of 2, line C6 - C12 - C7	84,910,305
7	True-Up Amount for the Period	(85,077,474)
8	True-Up for the Prior Period Schedule A2, page 2 of 2, line C9	(211,599,978)
9	True-Up Collected/(Refunded) in Current Period	97,751,887
10	Interest Provision Schedule A2, page 2 of 2, line C8	(3,954,025)
11	Actual True-Up Ending Balance for the Period January 2018 through December 2018 Schedule A2, page 2 of 2, line C13	(202,879,590)
12	Estimated True-Up Ending Balance for the Period January 2018 through December 2018 as approved in Order No. PSC-2018-0610-FOF-EI	(148,450,915)
13	Total True-Up for the Period January 2018 through December 2018	\$ (54,428,676)

Duke Energy Florida, LLC
Fuel Adjustment Clause
Calculation of Actual True-up
January 2018 - December 2018

			JAN ACTUAL	FEB ACTUAL	MAR ACTUAL	APR ACTUAL	MAY ACTUAL	JUN ACTUAL	6 MONTH SUB- TOTAL
A	1	Fuel Cost of System Generation	\$ 112,913,665	\$ 83,401,172	\$ 84,812,907	\$ 89,220,818	\$ 111,294,344	\$ 125,529,591	\$ 607,172,497
	2	Fuel Cost of Power Sold	(9,605,716)	(3,497,655)	(2,583,535)	(2,055,117)	(2,910,542)	(5,643,807)	(26,296,373)
	3	Fuel Cost of Purchased Power	8,102,839	8,081,727	8,846,730	14,994,550	12,024,468	17,187,681	69,237,994
	3a	Demand and Non-Fuel Cost of Purchased Power	-	-	-	-	-	-	-
	3b	Energy Payments to Qualified Facilities	12,317,998	13,169,787	11,522,091	12,129,406	13,617,807	12,190,979	74,948,069
	4	Energy Cost of Economy Purchases	2,201,782	344,053	853,758	1,336,389	1,331,976	588,120	6,656,077
	5	Adjustments to Fuel Cost	104,607	380	470	560	(98,376)	730	8,370
	6	TOTAL FUEL & NET POWER TRANSACTIONS (Sum of Lines A1 Through A5)	<u>126,035,174</u>	<u>101,499,464</u>	<u>103,452,422</u>	<u>115,626,605</u>	<u>135,259,676</u>	<u>149,853,294</u>	<u>731,726,636</u>
B	1	Jurisdictional MWH Sales	2,806,833	2,986,052	2,939,587	2,788,016	2,885,900	3,475,353	17,881,740
	2	Non-Jurisdictional MWH Sales	18,727	11,367	14,028	15,678	20,520	25,623	105,944
	3	TOTAL SALES (Lines B1 + B2)	<u>2,825,560</u>	<u>2,997,418</u>	<u>2,953,615</u>	<u>2,803,694</u>	<u>2,906,421</u>	<u>3,500,976</u>	<u>17,987,684</u>
	4	Jurisdictional % of Total Sales (Line B1/B3)	99.34%	99.62%	99.53%	99.44%	99.29%	99.27%	99.41%
C	1	Jurisdictional Fuel Recovery Revenue (Net of Revenue Taxes)	114,339,903	121,300,462	118,437,965	112,665,165	117,461,745	143,106,586	727,311,827
	2	True-Up Provision	(8,145,991)	(8,145,991)	(8,145,991)	(8,145,991)	(8,145,991)	(8,145,991)	(48,875,946)
	2a	Incentive Provision	<u>(232,768)</u>	<u>(232,768)</u>	<u>(232,768)</u>	<u>(232,768)</u>	<u>(232,768)</u>	<u>(232,768)</u>	<u>(1,396,608)</u>
	3	FUEL REVENUE APPLICABLE TO PERIOD (Sum of Lines C1 Through C2a)	<u>105,961,144</u>	<u>112,921,703</u>	<u>110,059,206</u>	<u>104,286,406</u>	<u>109,082,986</u>	<u>134,727,827</u>	<u>677,039,273</u>
	4	Fuel & Net Power Transactions (Line A6)	126,035,174	101,499,464	103,452,422	115,626,605	135,259,676	149,853,294	731,726,636
	5	Jurisdictional Total Fuel Costs & Net Power Transactions (Line A6 * Line B4 * Line Loss Multiplier)	<u>125,343,570</u>	<u>101,145,111</u>	<u>102,998,115</u>	<u>115,014,740</u>	<u>134,340,965</u>	<u>148,805,481</u>	<u>727,647,982</u>
	6	Over/(Under) Recovery (Line 3 - Line 5)	(19,382,425)	11,776,592	7,061,090	(10,728,334)	(25,257,978)	(14,077,653)	(50,608,709)
	7	Interest Provision	<u>(275,867)</u>	<u>(272,833)</u>	<u>(283,996)</u>	<u>(294,237)</u>	<u>(309,957)</u>	<u>(338,886)</u>	<u>(1,775,776)</u>
	8	TOTAL ESTIMATED TRUE-UP FOR THE PERIOD	<u>(19,658,292)</u>	<u>11,503,759</u>	<u>6,777,095</u>	<u>(11,022,571)</u>	<u>(25,567,935)</u>	<u>(14,416,537)</u>	<u>(52,384,482)</u>
	9	Plus: Prior Period Balance	(211,599,981)	(211,599,981)	(211,599,981)	(211,599,981)	(211,599,981)	(211,599,981)	(211,599,981)
	10	Plus: Cumulative True-Up Provision	8,145,991	16,291,982	24,437,973	32,583,964	40,729,955	48,875,946	48,875,946
	11	Subtotal Prior Period True-up	<u>(203,453,990)</u>	<u>(195,307,999)</u>	<u>(187,162,008)</u>	<u>(179,016,017)</u>	<u>(170,870,026)</u>	<u>(162,724,035)</u>	<u>(162,724,035)</u>
	12	Regulatory Accounting Adjustment	-	-	-	-	-	-	-
	13	TOTAL TRUE-UP BALANCE	<u>(223,112,283)</u>	<u>(203,462,533)</u>	<u>(\$188,539,447)</u>	<u>(\$191,416,028)</u>	<u>(\$208,837,972)</u>	<u>(\$215,108,517)</u>	<u>(215,108,517)</u>

Duke Energy Florida, LLC
Fuel Adjustment Clause
Calculation of Actual True-up
January 2018 - December 2018

			JUL ACTUAL	AUG ACTUAL	SEPT ACTUAL	OCT ACTUAL	NOV ACTUAL	DEC ACTUAL	12 MONTH PERIOD
A	1	Fuel Cost of System Generation	\$ 125,129,647	\$ 127,721,637	\$ 128,558,437	\$ 117,580,229	\$ 101,587,441	\$ 114,722,501	\$ 1,322,472,390
	2	Fuel Cost of Power Sold	(3,651,558)	(3,062,643)	(4,398,240)	(4,181,281)	(3,429,695)	(3,142,113)	(48,161,903)
	3	Fuel Cost of Purchased Power	20,739,444	19,697,789	16,251,743	16,835,359	12,901,309	8,196,254	163,859,893
	3a	Demand and Non-Fuel Cost of Purchased Power							0
	3b	Energy Payments to Qualified Facilities	10,674,282	10,909,136	9,942,558	9,199,522	10,608,497	11,143,113	137,425,176
	4	Energy Cost of Economy Purchases	2,189,978	1,591,806	253,698	934,906	673,207	866,974	13,166,647
	5	Adjustments to Fuel Cost	2,753,469	1,201,039	386,571	(1,379,660)	1,176,463	4,883,281	9,029,534
	6	TOTAL FUEL & NET POWER TRANSACTIONS (Sum of Lines A1 Through A5)	<u>157,835,263</u>	<u>158,058,764</u>	<u>150,994,767</u>	<u>138,989,076</u>	<u>123,517,223</u>	<u>136,670,010</u>	<u>1,597,791,739</u>
B	1	Jurisdictional MWH Sales	3,831,457	3,745,109	3,868,735	3,712,056	3,226,851	2,878,702	39,144,650
	2	Non-Jurisdictional MWH Sales	26,681	25,468	31,950	27,796	18,979	17,355	254,173
	3	TOTAL SALES (Lines B1 + B2)	<u>3,858,138</u>	<u>3,770,577</u>	<u>3,900,685</u>	<u>3,739,852</u>	<u>3,245,830</u>	<u>2,896,058</u>	<u>39,398,824</u>
	4	Jurisdictional % of Total Sales (Line B1/B3)	99.31%	99.32%	99.18%	99.26%	99.42%	99.40%	99.35%
C	1	Jurisdictional Fuel Recovery Revenue (Net of Revenue Taxes)	158,980,145	155,282,574	160,484,582	154,057,122	131,568,741	115,795,394	1,603,480,385
	2	True-Up Provision	(8,145,991)	(8,145,991)	(8,145,991)	(8,145,991)	(8,145,991)	(8,145,991)	(97,751,887)
	2a	Incentive Provision	<u>(232,768)</u>	<u>(232,768)</u>	<u>(232,768)</u>	<u>(232,768)</u>	<u>(232,768)</u>	<u>(232,768)</u>	<u>(2,793,216)</u>
	3	FUEL REVENUE APPLICABLE TO PERIOD (Sum of Lines C1 Through C2a)	<u>150,601,386</u>	<u>146,903,816</u>	<u>152,105,824</u>	<u>145,678,363</u>	<u>123,189,983</u>	<u>107,416,635</u>	<u>1,502,935,282</u>
	4	Fuel & Net Power Transactions (Line A6)	157,835,263	158,058,764	150,994,767	138,989,076	123,517,223	136,670,010	1,597,791,739
	5	Jurisdictional Total Fuel Costs & Net Power Transactions (Line A6 * Line B4 * Line Loss Multiplier)	156,794,791	157,032,629	149,803,034	138,003,325	122,838,891	135,892,103	1,588,012,756
	6	Over/(Under) Recovery (Line 3 - Line 5)	(6,193,404)	(10,128,814)	2,302,790	7,675,039	351,092	(28,475,468)	(85,077,474)
	7	Interest Provision	<u>(353,318)</u>	<u>(353,926)</u>	<u>(368,588)</u>	<u>(369,989)</u>	<u>(353,526)</u>	<u>(378,902)</u>	<u>(3,954,025)</u>
	8	TOTAL ESTIMATED TRUE-UP FOR THE PERIOD	<u>(6,546,722)</u>	<u>(10,482,740)</u>	<u>1,934,202</u>	<u>7,305,050</u>	<u>(2,434)</u>	<u>(28,854,370)</u>	<u>(89,031,499)</u>
	9	Plus: Prior Period Balance	(211,599,981)	(211,599,981)	(211,599,981)	(211,599,981)	(211,599,981)	(211,599,981)	(211,599,981)
	10	Plus: Cumulative True-Up Provision	57,021,936	65,167,927	73,313,917	81,459,908	89,605,898	97,751,889	97,751,889
	11	Subtotal Prior Period True-up	<u>(154,578,045)</u>	<u>(146,432,054)</u>	<u>(138,286,064)</u>	<u>(130,140,073)</u>	<u>(121,994,083)</u>	<u>(113,848,092)</u>	<u>(113,848,092)</u>
	12	Regulatory Accounting Adjustment	0	0	0	0	0	0	-
	13	TOTAL TRUE-UP BALANCE	<u>(\$213,509,249)</u>	<u>(\$215,845,998)</u>	<u>(\$205,765,805)</u>	<u>(\$190,314,765)</u>	<u>(\$182,171,209)</u>	<u>(\$202,879,590)</u>	<u>(202,879,590)</u>

Duke Energy Florida, LLC
Fuel Adjustment Clause
Calculation of 2018 Actual/Estimated True-up
January 2018 - December 2018 (Filed July 27, 2018)

			JAN	FEB	MAR	APR	MAY	JUN	6 MONTH SUB-
			ACTUAL	ACTUAL	ACTUAL	ACTUAL	ACTUAL	ACTUAL	TOTAL
A	1	Fuel Cost of System Generation	\$ 112,913,665	\$ 83,401,172	\$ 84,812,907	\$ 89,220,818	\$ 111,294,344	\$ 125,529,591	\$ 607,172,497
	2	Fuel Cost of Power Sold	(9,605,716)	(3,497,655)	(2,583,535)	(2,055,117)	(2,910,542)	(5,643,807)	(26,296,373)
	3	Fuel Cost of Purchased Power	8,102,839	8,081,727	8,846,730	14,994,550	12,024,468	17,187,681	69,237,994
	3a	Demand and Non-Fuel Cost of Purchased Power	-	-	-	-	-	-	-
	3b	Energy Payments to Qualified Facilities	12,317,998	13,169,787	11,522,091	12,129,406	13,617,807	12,190,979	74,948,069
	4	Energy Cost of Economy Purchases	2,201,782	344,053	853,758	1,336,389	1,331,976	588,120	6,656,077
	5	Adjustments to Fuel Cost	104,607	380	470	560	(98,376)	730	8,370
	6	TOTAL FUEL & NET POWER TRANSACTIONS (Sum of Lines A1 Through A5)	<u>126,035,174</u>	<u>101,499,464</u>	<u>103,452,422</u>	<u>115,626,605</u>	<u>135,259,676</u>	<u>149,853,294</u>	<u>731,726,636</u>
B	1	Jurisdictional MWH Sales	2,806,833	2,986,052	2,939,587	2,788,016	2,885,900	3,475,353	17,881,740
	2	Non-Jurisdictional MWH Sales	<u>18,727</u>	<u>11,367</u>	<u>14,028</u>	<u>15,678</u>	<u>20,520</u>	<u>25,623</u>	<u>105,944</u>
	3	TOTAL SALES (Lines B1 + B2)	<u>2,825,560</u>	<u>2,997,418</u>	<u>2,953,615</u>	<u>2,803,694</u>	<u>2,906,421</u>	<u>3,500,976</u>	<u>17,987,684</u>
	4	Jurisdictional % of Total Sales (Line B1/B3)	99.34%	99.62%	99.53%	99.44%	99.29%	99.27%	99.41%
C	1	Jurisdictional Fuel Recovery Revenue (Net of Revenue Taxes)	114,339,903	121,300,462	118,437,965	112,665,165	117,461,745	143,106,586	727,311,827
	2	True-Up Provision	(8,145,991)	(8,145,991)	(8,145,991)	(8,145,991)	(8,145,991)	(8,145,991)	(48,875,946)
	2a	Incentive Provision	<u>(232,768)</u>	<u>(232,768)</u>	<u>(232,768)</u>	<u>(232,768)</u>	<u>(232,768)</u>	<u>(232,768)</u>	<u>(1,396,608)</u>
	3	FUEL REVENUE APPLICABLE TO PERIOD (Sum of Lines C1 Through C2a)	<u>105,961,144</u>	<u>112,921,703</u>	<u>110,059,206</u>	<u>104,286,406</u>	<u>109,082,986</u>	<u>134,727,827</u>	<u>677,039,273</u>
	4	Fuel & Net Power Transactions (Line A6)	126,035,174	101,499,464	103,452,422	115,626,605	135,259,676	149,853,294	731,726,636
	5	Jurisdictional Total Fuel Costs & Net Power Transactions (Line A6 * Line B4 * Line Loss Multiplier)	<u>125,343,570</u>	<u>101,145,111</u>	<u>102,998,115</u>	<u>115,014,740</u>	<u>134,340,965</u>	<u>148,805,481</u>	<u>727,647,982</u>
	6	Over/(Under) Recovery (Line 3 - Line 5)	(19,382,425)	11,776,592	7,061,090	(10,728,334)	(25,257,978)	(14,077,653)	(50,608,709)
	7	Interest Provision	<u>(275,867)</u>	<u>(272,833)</u>	<u>(283,996)</u>	<u>(294,237)</u>	<u>(309,957)</u>	<u>(338,886)</u>	<u>(1,775,776)</u>
	8	TOTAL ESTIMATED TRUE-UP FOR THE PERIOD	<u>(19,658,292)</u>	<u>11,503,759</u>	<u>6,777,095</u>	<u>(11,022,571)</u>	<u>(25,567,935)</u>	<u>(14,416,537)</u>	<u>(52,384,482)</u>
	9	Plus: Prior Period Balance	(211,599,981)	(211,599,981)	(211,599,981)	(211,599,981)	(211,599,981)	(211,599,981)	(211,599,981)
	10	Plus: Cumulative True-Up Provision	<u>8,145,991</u>	<u>16,291,982</u>	<u>24,437,973</u>	<u>32,583,964</u>	<u>40,729,955</u>	<u>48,875,946</u>	<u>48,875,946</u>
	11	Subtotal Prior Period True-up	(203,453,990)	(195,307,999)	(187,162,008)	(179,016,017)	(170,870,026)	(162,724,035)	(162,724,035)
	12	Regulatory Accounting Adjustment	-	-	-	-	-	-	-
	13	TOTAL TRUE-UP BALANCE	<u>(\$223,112,283)</u>	<u>(\$203,462,533)</u>	<u>(\$188,539,447)</u>	<u>(\$191,416,028)</u>	<u>(\$208,837,972)</u>	<u>(\$215,108,517)</u>	<u>(215,108,517)</u>

Duke Energy Florida, LLC
Fuel Adjustment Clause
Calculation of 2017 Actual/Estimated True-up
January 2018 - December 2018 (Filed July 27, 2018)

			JUL ESTIMATED	AUG ESTIMATED	SEPT ESTIMATED	OCT ESTIMATED	NOV ESTIMATED	DEC ESTIMATED	12 MONTH PERIOD
A	1	Fuel Cost of System Generation	\$ 134,146,384	\$ 135,566,020	\$ 127,685,381	\$ 113,036,297	\$ 98,793,448	\$ 105,646,287	\$ 1,322,046,314
	2	Fuel Cost of Power Sold	(2,733,280)	(3,042,758)	(2,389,591)	(1,860,656)	(1,440,801)	(1,898,113)	(39,661,571)
	3	Fuel Cost of Purchased Power	11,454,032	11,066,448	7,669,205	4,622,388	472,290	269,187	104,791,544
	3a	Demand and Non-Fuel Cost of Purchased Power	-	-	-	-	-	-	-
	3b	Energy Payments to Qualified Facilities	14,137,764	11,653,872	10,903,647	7,192,194	10,719,470	11,174,285	140,729,302
	4	Energy Cost of Economy Purchases	314,846	569,569	342,596	204,877	60,855	120,872	8,269,692
	5	Adjustments to Fuel Cost	0	1,261,599	1,257,084	1,252,952	1,248,196	1,246,700	6,274,902
	6	TOTAL FUEL & NET POWER TRANSACTIONS (Sum of Lines A1 Through A5)	<u>157,319,747</u>	<u>157,074,751</u>	<u>145,468,322</u>	<u>124,448,053</u>	<u>109,853,458</u>	<u>116,559,218</u>	<u>1,542,450,184</u>
B	1	Jurisdictional MWH Sales	3,842,941	4,014,062	3,923,616	3,561,556	3,027,388	2,879,737	39,131,041
	2	Non-Jurisdictional MWH Sales	22,368	24,340	21,311	18,093	13,020	17,608	222,684
	3	TOTAL SALES (Lines B1 + B2)	<u>3,865,309</u>	<u>4,038,402</u>	<u>3,944,927</u>	<u>3,579,649</u>	<u>3,040,408</u>	<u>2,897,345</u>	<u>39,353,725</u>
	4	Jurisdictional % of Total Sales (Line B1/B3)	99.42%	99.40%	99.46%	99.49%	99.57%	99.39%	99.43%
C	1	Jurisdictional Fuel Recovery Revenue (Net of Revenue Taxes)	158,485,523	165,542,690	161,812,596	146,881,013	124,851,565	118,762,346	1,603,647,559
	2	True-Up Provision	(8,145,991)	(8,145,991)	(8,145,991)	(8,145,991)	(8,145,991)	(8,145,991)	(97,751,887)
	2a	Incentive Provision	(232,768)	(232,768)	(232,768)	(232,768)	(232,768)	(232,768)	(2,793,216)
	3	FUEL REVENUE APPLICABLE TO PERIOD (Sum of Lines C1 Through C2a)	<u>150,106,764</u>	<u>157,163,931</u>	<u>153,433,837</u>	<u>138,502,254</u>	<u>116,472,806</u>	<u>110,383,587</u>	<u>1,503,102,456</u>
	4	Fuel & Net Power Transactions (Line A6)	157,319,747	157,074,751	145,468,322	124,448,053	109,853,458	116,559,218	1,542,450,184
	5	Jurisdictional Total Fuel Costs & Net Power Transactions (Line A6 * Line B4 * Line Loss Multiplier)	<u>156,455,778</u>	<u>156,180,703</u>	<u>144,727,645</u>	<u>123,851,750</u>	<u>109,414,997</u>	<u>115,884,120</u>	<u>1,534,162,974</u>
	6	Over/(Under) Recovery (Line 3 - Line 5)	(6,349,015)	983,228	8,706,193	14,650,504	7,057,809	(5,500,532)	(31,060,523)
	7	Interest Provision	(342,645)	(334,448)	(314,200)	(282,992)	(253,058)	(239,187)	(3,542,306)
	8	TOTAL ESTIMATED TRUE-UP FOR THE PERIOD	<u>(6,691,660)</u>	<u>648,780</u>	<u>8,391,992</u>	<u>14,367,511</u>	<u>6,804,751</u>	<u>(5,739,719)</u>	<u>(34,602,826)</u>
	9	Plus: Prior Period Balance	(211,599,981)	(211,599,981)	(211,599,981)	(211,599,981)	(211,599,981)	(211,599,981)	(211,599,981)
	10	Plus: Cumulative True-Up Provision	57,021,937	65,167,928	73,313,919	81,459,910	89,605,901	97,751,892	97,751,892
	11	Subtotal Prior Period True-up	<u>(154,578,044)</u>	<u>(146,432,053)</u>	<u>(138,286,062)</u>	<u>(130,140,071)</u>	<u>(121,994,080)</u>	<u>(113,848,089)</u>	<u>(113,848,089)</u>
	12	Regulatory Accounting Adjustment	0	0	0	0	0	0	-
	13	TOTAL TRUE-UP BALANCE	<u>(\$213,654,186)</u>	<u>(\$204,859,415)</u>	<u>(\$188,321,432)</u>	<u>(\$165,807,929)</u>	<u>(\$150,857,187)</u>	<u>(\$148,450,915)</u>	<u>(148,450,915)</u>

Duke Energy Florida, LLC
Fuel Adjustment Clause
Fuel and Net Power Cost Variance Analysis
January 2018 - December 2018

	(A)	(B)	(C)	(D)	(E)
		MWH	Heat Rate	Price	
Energy Source		Variances	Variances	Variances	Total
1 Heavy Oil		0	0	0	0
2 Light Oil		7,922,684	(633,350)	(638,252)	6,651,082
3 Coal		(35,676,689)	(3,612,493)	(5,428,702)	(44,717,885)
4 Gas		21,717,477	24,340,695	(7,565,294)	38,492,878
5 Nuclear		0	0	0	0
6 Other Fuel		0	0	0	0
7 Total Generation		(6,036,528)	20,094,852	(13,632,248)	426,075
8 Firm Purchases		45,785,371	0	13,282,978	59,068,349
9 Economy Purchases		4,332,411	0	564,544	4,896,955
10 Schedule E Purchases		0	0	0	0
11 Qualifying Facilities		(4,943,569)	0	1,639,443	(3,304,126)
12 Total Purchases		45,174,213	0	15,486,965	60,661,178
13 Economy Sales		0	0	0	0
14 Other Power Sales		955,395	0	(612,985)	342,410
15 Supplemental Sales		(7,073,312)	0	(1,769,429)	(8,842,741)
16 Total Sales		(6,117,917)	0	(2,382,414)	(8,500,330)
17 Total Fuel and Net Power Cost Variance		33,019,769	20,094,852	(527,697)	52,586,923

Duke Energy Florida, LLC
 Capacity Cost Recovery Clause
 Summary of Actual True-Up Amount
 January 2018 - December 2018

Line No.	Description	Actual	Actual/Estimated Filing	Variance
	Jurisdictional:			
1	Capacity Cost Recovery Revenues Sheet 2 of 3, Line 38	\$ 470,397,282	\$ 470,752,702	\$ (355,420)
2	Capacity Cost Recovery Expenses Sheet 2 of 3, Line 34	454,952,668	454,457,884	494,784
3	Plus/(Minus) Interest Provision Sheet 2 of 3, Line 41	<u>(25,688)</u>	<u>(30,499)</u>	<u>4,811</u>
4	Sub-Total Current Period Over/(Under) Recovery Sheet 2 of 3, Line 42	\$ 15,418,926	\$ 16,264,319	\$ (845,393)
5	Prior Period True-up - January through December 2017 - Over/(Under) Recovery Sheet 2 of 3, Line 43	(4,775,185)	(4,775,185)	0
6	Prior Period True-up - January through December 2017 - (Refunded)/Collected Sheet 2 of 3, Line 44	<u>5,121,339</u>	<u>5,121,339</u>	<u>0</u>
7	Actual True-Up Ending Balance Over/(Under) Recovery for the Period January through December 2018 Sheet 2 of 3, Line 46	\$ 15,765,080	\$ 16,610,473	\$ (845,393)
8	Estimated True-Up Ending Balance for the Period Included in the Filing of Levelized Fuel Cost Factors January through December 2019 per Order No. PSC-2018-0610-FOF-EI (Sheet 3 of 3, Line 46)	16,610,473		
9	Total Over/(Under) Recovery for the Period January through December 2018 (Line 7 - Line 8)	<u>\$ (845,393)</u>		

REDACTED
Duke Energy Florida, LLC
Capacity Cost Recovery Clause
Calculation of Actual True-Up
January 2018 - December 2018

	JAN ACTUAL	FEB ACTUAL	MAR ACTUAL	APR ACTUAL	MAY ACTUAL	JUN ACTUAL	JUL ACTUAL	AUG ACTUAL	SEPT ACTUAL	OCT ACTUAL	NOV ACTUAL	DEC ACTUAL	Total
1 <u>Base Production Level Capacity Costs</u>													
2 Orange Cogen (ORANGE CO)	5,071,564	5,590,987	5,331,276	5,331,276	5,331,276	5,331,276	5,331,276	5,331,276	5,331,276	5,331,276	5,331,276	5,331,276	63,975,307
3 Orlando Cogen Limited (ORLACOGL)	5,025,789	5,514,457	5,302,972	5,361,969	5,361,790	5,361,790	5,414,950	5,361,790	5,361,790	5,361,790	5,361,790	5,361,790	64,152,667
4 Pasco County Resource Recovery (PASCOUNT)	1,784,800	2,011,580	1,898,190	1,898,190	1,898,190	1,898,190	1,898,190	1,898,190	1,898,190	1,898,190	1,898,190	1,898,190	22,778,280
5 Pinellas County Resource Recovery (PINCOUNT)	4,248,600	4,788,435	4,518,518	4,518,518	4,518,518	4,518,518	4,518,518	4,518,518	4,518,518	4,518,518	4,518,518	4,518,518	54,222,210
6 Polk Power Partners, L.P. (MULBERRY/ROYSTER)	6,965,675	7,676,459	7,321,066	7,321,066	7,321,066	7,321,066	7,321,066	7,321,066	7,321,066	7,321,066	7,321,066	7,321,066	87,852,796
7 Wheelabrator Ridge Energy, Inc. (RIDGEGEN)	765,872	790,760	798,927	800,946	800,946	800,946	800,946	800,946	800,946	800,946	800,946	800,946	9,564,071
8 US EcoGen	(93,000)	(93,000)	(84,000)	(93,000)	(90,000)	(93,000)	0	0	0	0	0	0	(546,000)
9 Subtotal - Base Level Capacity Costs	23,769,300	26,279,678	25,086,949	25,138,964	25,141,785	25,138,785	25,284,945	25,231,785	25,231,785	25,231,785	25,231,785	25,231,785	301,999,331
10 Base Production Jurisdictional Responsibility	92.885%	92.885%	92.885%	92.885%	92.885%	92.885%	92.885%	92.885%	92.885%	92.885%	92.885%	92.885%	
11 Base Level Jurisdictional Capacity Costs	22,078,114	24,409,879	23,302,013	23,350,326	23,352,947	23,350,161	23,485,921	23,436,544	23,436,544	23,436,544	23,436,544	23,436,544	280,512,080
12 <u>Intermediate Production Level Capacity Costs</u>													
13 Southern Franklin	4,609,957	4,467,756	2,685,103	2,663,030	2,934,373	4,811,161	6,285,017	6,268,886	4,634,240	2,701,639	2,384,883	3,505,309	47,951,354
14 Schedule H Capacity Sales - NSB, RCID, Tallahassee & FPL	(208,753)	(31,799)	379,669	270	(27,441)	0	137,852	0	0	(10,758)	191,664	(0)	430,704
15 Subtotal - Intermediate Level Capacity Costs	4,401,204	4,435,957	3,064,772	2,663,300	2,906,932	4,811,161	6,422,869	6,268,886	4,634,240	2,690,881	2,576,547	3,505,309	48,382,058
16 Intermediate Production Jurisdictional Respons bility	72.703%	72.703%	72.703%	72.703%	72.703%	72.703%	72.703%	72.703%	72.703%	72.703%	72.703%	72.703%	
17 Intermediate Level Jurisdictional Capacity Costs	3,199,808	3,225,074	2,228,181	1,936,299	2,113,427	3,497,858	4,669,619	4,557,668	3,369,232	1,956,351	1,873,227	2,548,465	35,175,208
18 <u>Peaking Production Level Capacity Costs</u>													
19 Shady Hills	1,984,500	1,984,500	1,417,500	1,371,600	1,920,240	3,904,200	3,904,200	3,904,200	1,821,960	1,371,600	1,371,600	1,976,940	26,933,040
20 Vandolah (NSG)	2,926,756	2,888,311	1,965,274	1,943,845	2,795,467	5,725,022	5,752,286	5,719,859	2,710,954	1,900,501	2,014,083	2,941,953	39,284,311
21 Other	-	-	-	-	-	-	-	-	-	-	-	-	
22 Subtotal - Peaking Level Capacity Costs	4,911,256	4,872,811	3,382,774	3,315,445	4,715,707	9,629,222	9,656,486	9,624,059	4,532,914	3,272,101	3,385,683	4,918,893	66,217,351
23 Peaking Production Jurisdictional Respons bility	95.924%	95.924%	95.924%	95.924%	95.924%	95.924%	95.924%	95.924%	95.924%	95.924%	95.924%	95.924%	
24 Peaking Level Jurisdictional Capacity Costs	4,711,073	4,674,196	3,244,893	3,180,307	4,523,495	9,236,735	9,262,887	9,231,782	4,348,152	3,138,730	3,247,683	4,718,399	63,518,332
25 <u>Other Capacity Costs</u>													
26 Retail Wheeling													
27 RRSSA Second Amendment ¹													
28 Total Other Capacity Costs													
29 Total Capacity Costs (Line 11+17+24+28)	31,537,913	33,933,287	30,392,188	30,081,704	31,569,791	37,695,859	39,025,569	38,828,605	32,739,268	30,073,141	30,142,053	32,290,733	398,310,113
30 <u>Nuclear Cost Recovery Clause</u>													
31 CR3 Uprate Costs	4,290,186	4,261,861	4,233,534	4,205,208	4,176,884	4,148,557	4,120,232	4,091,907	4,063,580	4,035,255	4,006,929	3,978,603	49,612,736
32 Total Recoverable Nuclear Costs	4,290,186	4,261,861	4,233,534	4,205,208	4,176,884	4,148,557	4,120,232	4,091,907	4,063,580	4,035,255	4,006,929	3,978,603	49,612,736
33 <u>ISFSI Revenue Requirement ²</u>	677,047	628,287	579,175	555,717	573,770	573,765	573,771	573,769	573,883	573,769	573,545	573,320	7,029,819
34 Total Recov Capacity & Nuclear Costs (Line 29+32+33)	36,505,147	38,823,435	35,204,897	34,842,630	36,320,446	42,418,181	43,719,572	43,494,282	37,376,731	34,682,165	34,722,526	36,842,656	454,952,668
35 <u>Capacity Revenues:</u>													
36 Capacity Cost Recovery Revenues (net of tax)	35,082,201	37,272,890	35,441,587	33,706,211	34,969,792	41,859,835	46,095,199	45,344,820	46,506,204	44,848,988	39,179,512	35,211,382	475,518,621
37 Prior Period True-Up Provision Over/(Under) Recovery	(426,778)	(426,778)	(426,778)	(426,778)	(426,778)	(426,778)	(426,778)	(426,778)	(426,778)	(426,778)	(426,778)	(426,778)	(5,121,339)
38 Current Period CCR Revenues (net of tax)	34,655,423	36,846,111	35,014,809	33,279,433	34,543,014	41,433,057	45,668,421	44,918,041	46,079,426	44,422,210	38,752,734	34,784,604	470,397,282
39 <u>True-Up Provision</u>													
40 True-Up Provision - Over/(Under) Recov (Line 38-34)	(1,849,724)	(1,977,324)	(190,089)	(1,563,197)	(1,777,432)	(985,123)	1,948,849	1,423,759	8,702,695	9,740,045	4,030,208	(2,058,053)	15,444,615
41 Interest Provision for the Month	(6,952)	(8,935)	(11,087)	(12,566)	(14,513)	(16,532)	(15,576)	(12,115)	(3,263)	14,549	28,702	32,600	(25,688)
42 Current Cycle Balance - Over/(Under)	(1,856,676)	(3,842,934)	(4,044,110)	(5,619,874)	(7,411,819)	(8,413,473)	(6,480,201)	(5,068,557)	3,630,875	13,385,468	17,444,379	15,418,926	15,418,926
43 Prior Period Balance - Over/(Under) Recovered	(4,775,185)	(4,348,406)	(3,921,629)	(3,494,850)	(3,068,072)	(2,641,293)	(2,214,516)	(1,787,737)	(1,360,959)	(934,181)	(507,403)	(80,624)	(4,775,185)
44 Prior Period Cumulative True-Up Collected/(Refunded)	426,778	426,778	426,778	426,778	426,778	426,778	426,778	426,778	426,778	426,778	426,778	426,778	5,121,339
45 Prior Period True-up Balance - Over/(Under)	(4,348,407)	(3,921,628)	(3,494,850)	(3,068,072)	(2,641,294)	(2,214,515)	(1,787,737)	(1,360,959)	(934,181)	(507,403)	(80,624)	346,154	346,154
46 Net Capacity True-up Over/(Under) (Line 42+45)	(6,205,082)	(7,764,563)	(7,538,961)	(8,687,945)	(10,053,112)	(10,627,989)	(8,267,938)	(6,429,516)	2,696,694	12,878,066	17,363,755	15,765,080	15,765,080

¹ Approved in Commission Order No. PSC-16-0138-FOF-EI

REDACTED
Duke Energy Florida, LLC
Capacity Cost Recovery Clause
Calculation of Actual/Estimated True-Up
January 2018 - December 2018 (Filed July 27, 2018)

	JAN ACTUAL	FEB ACTUAL	MAR ACTUAL	APR ACTUAL	MAY ACTUAL	JUN ACTUAL	JUL ESTIMATED	AUG ESTIMATED	SEPT ESTIMATED	OCT ESTIMATED	NOV ESTIMATED	DEC ESTIMATED	Total
1 <u>Base Production Level Capacity Costs</u>													
2 Orange Cogen (ORANGE CO)	5,071,564	5,590,987	5,331,276	5,331,276	5,331,276	5,331,276	5,331,275	5,331,275	5,331,275	5,331,275	5,331,275	5,331,275	63,975,305
3 Orlando Cogen Limited (ORLACOGL)	5,025,789	5,514,457	5,302,972	5,361,969	5,361,790	5,361,790	5,361,790	5,361,790	5,361,790	5,361,790	5,361,790	5,361,790	64,099,507
4 Pasco County Resource Recovery (PASCOUNT)	1,784,800	2,011,580	1,898,190	1,898,190	1,898,190	1,898,190	1,898,190	1,898,190	1,898,190	1,898,190	1,898,190	1,898,190	22,778,280
5 Pinellas County Resource Recovery (PINCOUNT)	4,248,600	4,788,435	4,518,518	4,518,518	4,518,518	4,518,518	4,518,518	4,518,518	4,518,518	4,518,518	4,518,518	4,518,518	54,222,210
6 Polk Power Partners, L.P. (MULBERRY/ROYSTER)	6,965,675	7,676,459	7,321,066	7,321,066	7,321,066	7,321,066	7,321,066	7,321,066	7,321,066	7,321,066	7,321,066	7,321,066	87,852,794
7 Wheelabrator Ridge Energy, Inc. (RIDGEGEN)	765,872	790,760	798,927	800,946	800,946	800,946	800,946	800,946	800,946	800,946	800,946	800,946	9,564,071
8 US EcoGen	(93,000)	(93,000)	(84,000)	(93,000)	(90,000)	(93,000)	-	-	-	-	-	-	(546,000)
9 Subtotal - Base Level Capacity Costs	23,769,300	26,279,678	25,086,949	25,138,964	25,141,785	25,138,785	25,231,784	25,231,784	25,231,784	25,231,784	25,231,784	25,231,784	301,946,167
10 Base Production Jurisdictional Responsibility	92.885%	92.885%	92.885%	92.885%	92.885%	92.885%	92.885%	92.885%	92.885%	92.885%	92.885%	92.885%	
11 Base Level Jurisdictional Capacity Costs	22,078,114	24,409,879	23,302,013	23,350,326	23,352,947	23,350,161	23,436,543	23,436,543	23,436,543	23,436,543	23,436,543	23,436,543	280,462,697
12 <u>Intermediate Production Level Capacity Costs</u>													
13 Southern Franklin	4,609,957	4,467,756	2,685,103	2,663,030	2,934,373	4,811,161	6,293,135	6,293,135	4,631,783	2,693,539	2,693,539	3,524,215	48,300,723
14 Schedule H Capacity Sales - NSB & RCID	(208,753)	(31,799)	379,669	270	(27,441)	-	-	-	-	-	-	-	111,946
15 Subtotal - Intermediate Level Capacity Costs	4,401,204	4,435,957	3,064,772	2,663,300	2,906,932	4,811,161	6,293,135	6,293,135	4,631,783	2,693,539	2,693,539	3,524,215	48,412,669
16 Intermediate Production Jurisdictional Responsibility	72.703%	72.703%	72.703%	72.703%	72.703%	72.703%	72.703%	72.703%	72.703%	72.703%	72.703%	72.703%	
17 Intermediate Level Jurisdictional Capacity Costs	3,199,808	3,225,074	2,228,181	1,936,299	2,113,427	3,497,858	4,575,298	4,575,298	3,367,445	1,958,283	1,958,283	2,562,210	35,197,463
18 <u>Peaking Production Level Capacity Costs</u>													
19 Shady Hills	1,984,500	1,984,500	1,417,500	1,371,600	1,920,240	3,904,200	3,911,684	3,911,684	1,825,453	1,374,376	1,374,376	1,983,330	26,963,442
20 Vandolah (NSG)	2,926,756	2,888,311	1,965,274	1,943,845	2,795,467	5,725,022	5,539,623	5,495,150	2,629,977	1,937,310	1,981,783	2,788,227	38,616,745
21 Other	-	-	-	-	-	-	-	-	-	-	-	-	-
22 Subtotal - Peaking Level Capacity Costs	4,911,256	4,872,811	3,382,774	3,315,445	4,715,707	9,629,222	9,451,307	9,406,834	4,455,430	3,311,686	3,356,159	4,771,557	65,580,188
23 Peaking Production Jurisdictional Responsibility	95.924%	95.924%	95.924%	95.924%	95.924%	95.924%	95.924%	95.924%	95.924%	95.924%	95.924%	95.924%	
24 Peaking Level Jurisdictional Capacity Costs	4,711,073	4,674,196	3,244,893	3,180,307	4,523,495	9,236,735	9,066,072	9,023,412	4,273,827	3,176,702	3,219,362	4,577,068	62,907,139
25 <u>Other Capacity Costs</u>													
26 Retail Wheeling													
27 RRSSA Second Amendment ¹													
28 Total Other Capacity Costs													
29 Total Capacity Costs (Line 11+17+24+28)	31,537,913	33,933,287	30,392,188	30,081,704	31,569,791	37,695,859	38,691,081	38,651,525	32,683,005	30,171,375	30,222,229	32,184,839	397,814,797
30 <u>Nuclear Cost Recovery Clause</u>													
31 CR3 Uprate Costs	4,290,186	4,261,861	4,233,534	4,205,208	4,176,884	4,148,557	4,120,232	4,091,907	4,063,580	4,035,255	4,006,929	3,978,603	49,612,736
32 Total Recoverable Nuclear Costs	4,290,186	4,261,861	4,233,534	4,205,208	4,176,884	4,148,557	4,120,232	4,091,907	4,063,580	4,035,255	4,006,929	3,978,603	49,612,736
33 ISFSI Revenue Requirement ²	677,047	628,287	579,175	555,717	573,770	573,765	573,765	573,765	573,765	573,765	573,765	573,765	7,030,351
34 Total Recov Capacity & Nuclear Costs (Line 29+32+33)	36,505,147	38,823,435	35,204,897	34,842,630	36,320,446	42,418,181	43,385,077	43,317,197	37,320,350	34,780,394	34,802,924	36,737,207	454,457,884
35 <u>Capacity Revenues</u>													
36 Capacity Cost Recovery Revenues (net of tax)	35,082,201	37,272,890	35,441,587	33,706,211	34,969,792	41,859,835	46,576,445	48,650,437	47,554,221	43,166,059	36,691,945	34,902,418	475,874,041
37 Prior Period True-Up Provision Over/(Under) Recovery	(426,778)	(426,778)	(426,778)	(426,778)	(426,778)	(426,778)	(426,778)	(426,778)	(426,778)	(426,778)	(426,778)	(426,778)	(5,121,339)
38 Current Period Revenues (net of tax)	34,655,423	36,846,111	35,014,809	33,279,433	34,543,014	41,433,057	46,149,667	48,223,659	47,127,442	42,739,281	36,265,167	34,475,639	470,752,702
39 <u>True-Up Provision</u>													
40 True-Up Provision - Over/(Under) Recov (Line 38-34)	(1,849,724)	(1,977,324)	(190,089)	(1,563,197)	(1,777,432)	(985,123)	2,764,590	4,906,462	9,807,092	7,958,887	1,462,243	(2,261,567)	16,294,818
41 Interest Provision for the Month	(6,952)	(8,935)	(11,087)	(12,566)	(14,513)	(16,532)	(5,949)	(1,687)	6,498	13,212	14,734	13,278	(30,499)
42 Current Cycle Balance - Over/(Under)	(1,856,676)	(3,842,934)	(4,044,110)	(5,619,874)	(7,411,819)	(8,413,473)	(5,654,833)	(750,058)	9,063,532	17,035,631	18,512,608	16,264,319	16,264,319
43 Prior Period Balance - Over/(Under) Recovered	(4,775,185)	(4,775,185)	(4,775,185)	(4,775,185)	(4,775,185)	(4,775,185)	(4,775,185)	(4,775,185)	(4,775,185)	(4,775,185)	(4,775,185)	(4,775,185)	(4,775,185)
44 Prior Period Cumulative True-Up Collected/(Refunded)	426,778	853,557	1,280,335	1,707,113	2,133,891	2,560,670	2,987,448	3,414,226	3,841,004	4,267,783	4,694,561	5,121,339	5,121,339
45 Prior Period True-up Balance - Over/(Under)	(4,348,407)	(3,921,628)	(3,494,850)	(3,068,072)	(2,641,294)	(2,214,515)	(1,787,737)	(1,360,959)	(934,181)	(507,402)	(80,624)	346,154	346,154
46 Net Capacity True-up Over/(Under) (Line 42+45)	(6,205,082)	(7,764,563)	(7,538,961)	(8,687,945)	(10,053,112)	(10,627,989)	(7,442,570)	(2,111,017)	8,129,352	16,528,229	18,431,984	16,610,473	16,610,473

¹ Approved in Commission Order No. PSC-16-0138-FOF-EI

² Approved in Commission Order No. PSC-15-0465-S-EI

DUKE ENERGY FLORIDA, LLC
FUEL AND PURCHASED POWER

DECEMBER 2018

		\$				MWH				CENTS/KWH			
		ACTUAL	ESTIMATED	DIFFERENCE AMOUNT	%	ACTUAL	ESTIMATED	DIFFERENCE AMOUNT	%	ACTUAL	ESTIMATED	DIFFERENCE AMOUNT	%
1	FUEL COST OF SYSTEM NET GENERATION (SCH A3)	114,722,501	105,646,287	9,076,214	8.6	2,729,652	2,996,859	(267,206)	(8.9)	4.2028	3.5252	0.6776	19.2
2	COAL CAR SALE	(82,225)	0	(82,225)	0.0	0	0	0	0.0	0.0000	0.0000	0.0000	0.0
3	ADJUSTMENTS TO FUEL COST - MISCELLANEOUS	4,965,506	1,246,700	3,718,806	298.3	0	0	0	0.0	0.0000	0.0000	0.0000	0.0
4	TOTAL COST OF GENERATED POWER	119,605,782	106,892,987	12,712,795	11.9	2,729,652	2,996,859	(267,206)	(8.9)	4.3817	3.5668	0.8149	22.9
5	ENERGY COST OF PURCHASED POWER - FIRM (SCH A7)	8,196,254	269,187	7,927,067	2,944.8	119,633	6,298	113,335	1,799.5	6.8512	4.2742	2.5770	60.3
6	ENERGY COST OF SCH C,X ECONOMY PURCH - BROKER (SCH A9)	-	0	0	0.0	0	0	0	0.0	0.0000	0.0000	0.0000	0.0
7	ENERGY COST OF ECONOMY PURCH - NON-BROKER (SCH A9)	866,974	120,872	746,102	617.3	21,895	3,007	18,887	628.1	3.9597	4.0193	(0.0596)	(1.5)
8	PAYMENTS TO QUALIFYING FACILITIES (SCH A8)	11,143,113	11,174,285	(31,172)	(0.3)	241,709	271,206	(29,497)	(10.9)	4.6101	4.1202	0.4899	11.9
9	TOTAL COST OF PURCHASED POWER	20,206,341	11,564,344	8,641,997	74.7	383,237	280,512	102,725	36.6	5.2725	4.1226	1.1499	27.9
10	TOTAL AVAILABLE MWH					3,112,889	3,277,370	(164,481)	(5.0)				
11	FUEL COST OF OTHER POWER SALES (SCH A6)	(40,550)	(387,492)	346,942	(89.5)	(614)	(12,587)	11,973	(95.1)	6.6064	3.0786	3.5278	114.6
11a	GAIN ON OTHER POWER SALES - 100% (SCH A6)	(26,968)	(107,785)	80,817	(75.0)	(614)	(12,587)	11,973	(95.1)	4.3936	0.8563	3.5373	413.1
11b	GAIN ON TOTAL POWER SALES - 20% (SCH A6)	5,392	21,557	(16,165)	(75.0)	0	0	0	0.0	0.0000	0.0000	0.0000	0.0
12	FUEL COST OF STRATIFIED SALES	(3,079,988)	(1,424,393)	(1,655,594)	116.2	(125,508)	(95,861)	(29,647)	30.9	2.4540	1.4859	0.9681	65.2
13	TOTAL FUEL COST AND GAINS ON POWER SALES	(3,142,113)	(1,898,113)	(1,244,000)	65.5	(126,122)	(108,448)	(17,674)	16.3	2.4913	1.7503	0.7410	42.3
14	NET INADVERTENT AND WHEELED INTERCHANGE					33,377	0	33,377					
15	TOTAL FUEL AND NET POWER TRANSACTIONS	136,670,010	116,559,218	20,110,792	17.3	3,020,144	3,168,923	(148,778)	(4.7)	4.5253	3.6782	0.8471	23.0
16	NET UNBILLED	(403,413)	2,928,938	(3,332,351)	(113.8)	8,915	(79,630)	88,544	(111.2)	(0.0139)	0.1011	(0.1150)	(113.8)
17	COMPANY USE	1,271,809	654,504	617,305	94.3	(28,105)	(17,794)	(10,310)	57.9	0.0439	0.0226	0.0213	94.3
18	T & D LOSSES	4,746,868	6,405,701	(1,658,833)	(25.9)	(104,897)	(174,153)	69,257	(39.8)	0.1639	0.2211	(0.0572)	(25.9)
19	ADJUSTED SYSTEM KWH SALES (SCH A2 PG 1 OF 2)	136,670,010	116,559,218	20,110,792	17.3	2,896,058	2,897,345	(1,288)	(0.0)	4.7192	4.0230	0.6962	17.3
20	WHOLESALE KWH SALES (EXCLUDING STRATIFIED SALES)	(820,020)	(711,011)	(109,009)	15.3	(17,355)	(17,608)	253	(1.4)	4.7249	4.0380	0.6869	17.0
21	JURISDICTIONAL KWH SALES	135,849,990	115,848,207	20,001,783	17.3	2,878,702	2,879,737	(1,035)	(0.0)	4.7191	4.0229	0.6962	17.3
22	JURISDICTIONAL KWH SALES ADJUSTED FOR LINE LOSS - 1.00112	135,892,103	115,884,120	20,007,984	17.3	2,878,702	2,879,737	(1,035)	(0.0)	4.7206	4.0241	0.6965	17.3
23	PRIOR PERIOD TRUE-UP	8,145,991	8,145,991	(0)	0.0	2,878,702	2,879,737	(1,035)	(0.0)	0.2830	0.2829	0.0001	0.0
24	TOTAL JURISDICTIONAL FUEL COST	144,038,094	124,030,111	20,007,983	16.1	2,878,702	2,879,737	(1,035)	(0.0)	5.0036	4.3070	0.6966	16.2
25	REVENUE TAX FACTOR									1.00072	1.00072	0.0000	0.0
26	FUEL COST ADJUSTED FOR TAXES									5.0072	4.3101	0.6971	16.2
27	GPIF	232,768	232,768			2,878,702	2,879,737			0.0081	0.0081	0.0000	0.0
28	TOTAL FUEL COST FACTOR ROUNDED TO THE NEAREST .001 CENTS/KWH									5.015	4.318	0.697	16.1
*Line 15a. MWH Data for Infomational Purposes Only													

DUKE ENERGY FLORIDA, LLC
FUEL AND PURCHASED POWER
COST RECOVERY CLAUSE CALCULATION
YEAR TO DATE - DECEMBER 2018

Docket No. 20190001-EI
Witness: Menendez
Exhibit No. (CAM-3T)
Schedule A1-2
Sheet 2 of 9

		\$				MWH				CENTS/KWH			
		ACTUAL	ESTIMATED	DIFFERENCE AMOUNT	%	ACTUAL	ESTIMATED	DIFFERENCE AMOUNT	%	ACTUAL	ESTIMATED	DIFFERENCE AMOUNT	%
1	FUEL COST OF SYSTEM NET GENERATION (SCH A3)	1,322,472,390	1,322,046,314	426,075	0.0	37,225,085	37,640,386	(415,301)	(1.1)	3.5526	3.5123	0.0403	1.2
2	COAL CAR SALE	(2,149,074)	0	(2,149,074)	0.0	0	0	0	0.0	0.0000	0.0000	0.0000	0.0
3	ADJUSTMENTS TO FUEL COST - MISCELLANEOUS	11,178,608	6,274,902	4,903,706	78.2	0	0	0	0.0	0.0000	0.0000	0.0000	0.0
4	TOTAL COST OF GENERATED POWER	1,331,501,923	1,328,321,216	3,180,707	0.2	37,225,085	37,640,386	(415,301)	(1.1)	3.5769	3.5290	0.0479	1.4
5	ENERGY COST OF PURCHASED POWER - FIRM (SCH A7)	163,859,893	104,791,544	59,068,349	56.4	3,456,477	2,405,479	1,050,998	43.7	4.7407	4.3564	0.3843	8.8
6	ENERGY COST OF SCH C,X ECONOMY PURCH - BROKER (SCH A9)	0	0	0	0.0	0	0	0	0.0	0.0000	0.0000	0.0000	0.0
7	ENERGY COST OF ECONOMY PURCH - NON-BROKER (SCH A9)	13,166,647	8,269,692	4,896,955	59.2	280,750	184,233	96,518	52.4	4.6898	4.4887	0.2011	4.5
8	PAYMENTS TO QUALIFYING FACILITIES (SCH A8)	137,425,176	140,729,302	(3,304,126)	(2.4)	3,065,228	3,176,824	(111,596)	(3.5)	4.4834	4.4299	0.0535	1.2
9	TOTAL COST OF PURCHASED POWER	314,451,717	253,790,538	60,661,178	23.9	6,802,455	5,766,535	1,035,920	18.0	4.6226	4.4011	0.2215	5.0
10	TOTAL AVAILABLE MWH					44,027,540	43,406,921	620,618	1.4				
11	FUEL COST OF OTHER POWER SALES (SCH A6)	(2,628,177)	(3,043,086)	414,909	(13.6)	(59,720)	(73,322)	13,602	(18.6)	4.4008	4.1503	0.2505	6.0
11a	GAIN ON OTHER POWER SALES - 100% (SCH A6)	(2,269,916)	(2,179,293)	(90,623)	4.2	(59,720)	(73,322)	13,602	(18.6)	3.8009	2.9722	0.8287	27.9
11b	GAIN ON TOTAL POWER SALES - 20% (SCH A6)	90,526	72,401	18,125	25.0	0	0	0	0.0	0.0000	0.0000	0.0000	0.0
12	FUEL COST OF STRATIFIED SALES	(43,354,333)	(34,511,593)	(8,842,741)	25.6	(2,069,941)	(1,717,858)	(352,083)	20.5	2.0945	2.0090	0.0855	4.3
13	TOTAL FUEL COST AND GAINS ON POWER SALES	(48,161,901)	(39,661,571)	(8,500,330)	21.4	(2,129,661)	(1,791,180)	(338,481)	18.9	2.2615	2.2143	0.0472	2.1
14	NET INADVERTENT AND WHEELED INTERCHANGE					255,774	96,969	158,805					
15	TOTAL FUEL AND NET POWER TRANSACTIONS	1,597,791,739	1,542,450,184	55,341,555	3.6	42,153,653	41,712,710	440,943	1.1	3.7904	3.6978	0.0926	2.5
16	NET UNBILLED	1,137,950	(9,508,775)	10,646,725	(112.0)	(30,022)	276,694	(306,716)	(110.9)	0.0029	(0.0242)	0.0271	(112.0)
17	COMPANY USE	7,104,381	7,255,402	(151,021)	(2.1)	(187,431)	(195,876)	8,445	(4.3)	0.0180	0.0184	(0.0004)	(2.2)
18	T & D LOSSES	96,174,523	90,195,817	5,978,706	6.6	(2,537,319)	(2,439,804)	(97,516)	4.0	0.2441	0.2292	0.0149	6.5
19	ADJUSTED SYSTEM KWH SALES (SCH A2 PG 1 OF 2)	1,597,791,739	1,542,450,184	55,341,555	3.6	39,398,881	39,353,725	45,156	0.1	4.0554	3.9195	0.1359	3.5
20	WHOLESALE KWH SALES (EXCLUDING STRATIFIED SALES)	(10,372,497)	(8,864,036)	(1,508,461)	17.0	(254,230)	(222,684)	(31,546)	14.2	4.0800	3.9805	0.0995	2.5
21	JURISDICTIONAL KWH SALES	1,587,419,241	1,533,586,147	53,833,094	3.5	39,144,651	39,131,041	13,610	0.0	4.0553	3.9191	0.1362	3.5
22	JURISDICTIONAL KWH SALES ADJUSTED FOR LINE LOSS - 1.00112	1,588,012,756	1,534,162,974	53,849,782	3.5	39,144,651	39,131,041	13,610	0.0	4.0568	3.9206	0.1362	3.5
23	PRIOR PERIOD TRUE-UP	97,751,887	97,751,892	(5)	0.0	39,144,651	39,131,041	13,610	0.0	0.2497	0.2498	(0.0001)	(0.0)
24	TOTAL JURISDICTIONAL FUEL COST	1,685,764,643	1,631,914,866	53,849,777	3.3	39,144,651	39,131,041	13,610	0.0	4.3065	4.1704	0.1361	3.3
25	REVENUE TAX FACTOR									1.00072	1.00072	0.0000	0.0
26	FUEL COST ADJUSTED FOR TAXES									4.3096	4.1734	0.1362	3.3
27	GPIF	2,793,216	2,793,216			39,144,651	39,131,041			0.0071	0.0071	0.0000	100.0
28	TOTAL FUEL COST FACTOR ROUNDED TO THE NEAREST .001 CENTS/KWH									4.317	4.181	0.136	3.3
*Line 15a. MWH Data for Infomational Purposes Only													

DUKE ENERGY FLORIDA, LLC
CALCULATION OF TRUE-UP AND INTEREST PROVISION
DECEMBER 2018

CURRENT MONTH					YEAR TO DATE			
	ACTUAL	ESTIMATED	DIFFERENCE	PERCENT	ACTUAL	ESTIMATED	DIFFERENCE	PERCENT
A . FUEL COSTS AND NET POWER TRANSACTIONS								
1 . FUEL COST OF SYSTEM NET GENERATION	\$114,722,501	105,646,287	\$9,076,214	8.6	\$1,322,472,390	\$1,322,046,314	\$426,075	0.0
1a. COAL CAR SALE	(82,225)	0	(82,225)	0.0	(2,149,074)	0	(2,149,074)	0.0
2 . FUEL COST OF POWER SOLD	(40,550)	(387,492)	346,942	(89.5)	(2,628,177)	(3,043,086)	414,909	(13.6)
2a. GAIN ON POWER SALES	(21,576)	(107,785)	86,209	(80.0)	(2,179,391)	(2,179,293)	(98)	0.0
3 . FUEL COST OF PURCHASED POWER	8,196,254	269,187	7,927,067	2,944.8	163,859,893	104,791,544	59,068,349	56.4
3a. ENERGY PAYMENTS TO QUALIFYING FACILITIES	11,143,113	11,174,285	(31,172)	(0.3)	137,425,176	140,729,302	(3,304,126)	(2.4)
4 . ENERGY COST OF ECONOMY PURCHASES	866,974	120,872	746,102	617.3	13,166,647	8,269,692	4,896,955	59.2
5 . TOTAL FUEL & NET POWER TRANSACTIONS	134,784,491	116,715,354	18,069,137	15.5	1,629,967,464	1,570,614,474	59,352,990	3.8
6 . ADJUSTMENTS TO FUEL COST:								
6a. FUEL COST OF STRATIFIED SALES	(3,079,988)	(1,424,393)	(1,655,594)	116.2	(43,354,333)	(34,511,593)	(8,842,741)	25.6
6b. OTHER- JURISDICTIONAL ADJUSTMENTS (see detail below)	4,965,506	1,246,700	3,718,806	298.3	11,178,608	6,274,902	4,903,706	78.2
6c. OTHER - PRIOR PERIOD ADJUSTMENT	0	0	0	0.0	0	0	0	0.0
7 . ADJUSTED TOTAL FUEL & NET PWR TRNS	\$136,670,010	\$116,537,661	\$20,132,349	17.3	\$1,597,791,739	\$1,542,377,783	\$55,413,956	3.6

FOOTNOTE: DETAIL OF LINE 6b ABOVE

INSPECTION & FUEL ANALYSIS REPORTS {Wholesale Portion}	\$0	\$0	\$0	\$0	\$0	\$0
CITRUS CC INEFFICIENT USE	0	0	0	(1,502,363)	0	(1,502,363)
UNIVERSITY OF FLORIDA STEAM REVENUE ALLOCATION {Wholesale Portion}	600	0	600	7,620	0	7,620
FPD AGREEMENT TERMINATION	0	0	0	0	0	0
TANK BOTTOM ADJUSTMENT	0	0	0	(171,899)	0	(171,899)
AERIAL SURVEY ADJUSTMENT (Coal Pile)	3,719,710	0	3,719,710	5,415,075	0	5,415,075
FDP AGREEMENT TERMINATION	1,245,196	0	1,245,196	7,326,228	0	7,326,228
RAIL CAR SALE PROCEEDS	0	0	0	0	0	0
Gain/Loss on Disposition of Oil	0	0	0	0	0	0
NET METER SETTLEMENT	0	0	0	103,947	0	103,947
N/A - Not used	0	0	0	0	0	0
Derivative Collateral Interest	0	0	0	0	0	0
SUBTOTAL LINE 6b SHOWN ABOVE	\$4,965,506	\$0	\$4,965,506	\$11,178,608	\$0	\$11,178,608

B. KWH SALES								
1 . JURISDICTIONAL SALES	2,878,702,504	2,879,737,426	(1,034,922)	(0.0)	39,144,650,882	39,131,040,949	13,609,933	0.0
2 . NON JURISDICTIONAL (WHOLESALE) SALES	17,355,384	17,608,000	(252,616)	(1.4)	254,173,334	222,684,074	31,489,260	14.1
3 . TOTAL SALES	2,896,057,888	2,897,345,426	(1,287,538)	(0.0)	39,398,824,216	39,353,725,023	45,099,193	0.1
4 . JURISDICTIONAL SALES % OF TOTAL SALES	99.40	99.39	0.01	0.0	99.35	99.43	(0.08)	(0.1)

DUKE ENERGY FLORIDA, LLC
CALCULATION OF TRUE-UP AND INTEREST PROVISION
DECEMBER 2018

		CURRENT MONTH				YEAR TO DATE			
		ACTUAL	ESTIMATED	DIFFERENCE	PERCENT	ACTUAL	ESTIMATED	DIFFERENCE	PERCENT
C.	TRUE UP CALCULATION								
1.	JURISDICTIONAL FUEL REVENUE	\$115,795,394	\$118,762,346	(\$2,966,953)	(2.5)	\$1,603,480,385	\$1,603,647,559	(\$167,174)	(0.0)
2.	ADJUSTMENTS:	0	0	0	0.0	0	0	0	0.0
2a.	TRUE UP PROVISION	(8,145,991)	(8,145,991)	0	0.0	(97,751,887)	(97,751,892)	5	0.0
2b.	INCENTIVE PROVISION	(232,768)	(232,768)	0	0.0	(2,793,216)	(2,793,216)	0	0.0
3.	TOTAL JURISDICTIONAL FUEL REVENUE	107,416,635	110,383,587	(2,966,952)	(2.7)	1,502,935,282	1,503,102,451	(167,169)	(0.0)
4.	ADJ TOTAL FUEL & NET PWR TRNS (LINE A7)	136,670,010	116,537,661	20,132,349	17.3	1,597,791,739	1,542,377,783	55,413,956	3.6
5.	JURISDICTIONAL SALES % OF TOT SALES (LINE B4)	99.40	99.39	0.01	0.0	99.35	99.43	(0.08)	(0.1)
6.	JURISDICTIONAL FUEL & NET POWER TRANSACTIONS (LINE C4 * LINE C5 * 1.00112 LOSS MULTIPLIER)	135,892,103	115,884,120	20,007,984	17.3	1,588,012,756	1,534,162,974	53,849,782	3.5
7.	TRUE UP PROVISION FOR THE MONTH OVER/(UNDER) COLLECTION (LINE C3 - C6)	(28,475,468)	(5,500,532)	(22,974,936)	417.7	(85,077,474)	(31,060,523)	(54,016,951)	173.9
8.	INTEREST PROVISION FOR THE MONTH (LINE D10)	(378,902)	(239,187)	(139,715)	58.4	(3,954,025)	(3,542,306)	(411,719)	11.6
9.	TRUE UP & INTEREST PROVISION BEG OF MONTH/PERIOD	(182,171,211)	(150,857,190)	(31,314,021)	20.8	(211,599,978)	(211,599,981)	3	0.0
10.	TRUE UP COLLECTED (REFUNDED)	8,145,991	8,145,991	(0)	0.0	97,751,887	97,751,892	(5)	0.0
11.	END OF PERIOD TOTAL NET TRUE UP (LINES C7 + C8 + C9 + C10)	(202,879,590)	(148,450,918)	(54,428,672)	36.7	(202,879,590)	(148,450,918)	(54,428,672)	36.7
12.	OTHER:	0				0		0	
13.	END OF PERIOD TOTAL NET TRUE UP (LINES C11 + C12)	(\$202,879,590)	(148,450,918)	(54,428,672)	36.7	(\$202,879,590)	(148,450,918)	(54,428,672)	36.7
D.	INTEREST PROVISION								
1.	BEGINNING TRUE UP (LINE C9)	(\$182,171,211)	N/A	--	--				
2.	ENDING TRUE UP (LINES C7 + C9 + C10 + C12)	(202,500,688)	N/A	--	--				
3.	TOTAL OF BEGINNING & ENDING TRUE UP	(384,671,899)	N/A	--	--				
4.	AVERAGE TRUE UP (50% OF LINE D3)	(192,335,949)	N/A	--	--				
5.	INTEREST RATE - FIRST DAY OF REPORTING MONTH	2.300	N/A	--	--				
6.	INTEREST RATE - FIRST DAY OF SUBSEQUENT MONTH	2.420	N/A	--	--				
7.	TOTAL (LINE D5 + LINE D6)	4.720	N/A						
8.	AVERAGE INTEREST RATE (50% OF LINE D7)	2.360	N/A	--	--				
9.	MONTHLY AVERAGE INTEREST RATE (LINE D8/12)	0.197	N/A	--	--				
10.	INTEREST PROVISION (LINE D4 * LINE D9)	(\$378,902)	N/A	--	--				

NOT

A-3 Generating System Comparative Data Report

Duke Energy Florida, LLC

Docket No. 20190001-EI

Witness: Menendez

Exhibit No. (CAM-3T)

Schedule: A3-1

Sheet 5 of 9

<u>FUEL COST OF SYSTEM</u>	<u>ACTUAL</u>	<u>ESTIMATED</u>	<u>DIFFERENCE</u>	<u>DIFFERENCE (%)</u>
NET GENERATION (\$)				
1 - HEAVY OIL	0	0	0	0.0 %
2 - LIGHT OIL	22,609,544	15,958,463	6,651,081	41.7 %
3 - COAL	276,175,645	320,893,530	(44,717,885)	(13.9 %)
4 - GAS	1,023,687,201	985,194,322	38,492,879	3.9 %
5 - NUCLEAR	0	0	0	0.0 %
6	0	0	0	0.0 %
7	0	0	0	0.0 %
8 - TOTAL (\$)	1,322,472,390	1,322,046,315	426,075	0.0 %
SYSTEM NET GENERATION (MWH)				
9 - HEAVY OIL	0	0	0	0.0 %
10 - LIGHT OIL	90,434	60,434	30,000	49.6 %
11 - COAL	8,421,960	9,475,431	(1,053,471)	(11.1 %)
12 - GAS	28,686,945	28,068,215	618,730	2.2 %
13 - NUCLEAR	0	0	0	0.0 %
14 - SOLAR	25,744	36,310	(10,566)	(29.1 %)
15	0	0	0	0.0 %
16 - TOTAL (MWH)	37,225,084	37,640,390	(415,306)	(1.1 %)
UNITS OF FUEL BURNED				
17 - HEAVY OIL (BBL)	0	0	0	0.0 %
18 - LIGHT OIL (BBL)	198,094	135,384	62,710	46.3 %
19 - COAL (TON)	3,745,945	4,239,712	(493,767)	(11.6 %)
20 - GAS (MCF)	222,082,583	214,463,963	7,618,620	3.6 %
21 - NUCLEAR (MMBTU)	0	0	0	0.0 %
22	0	0	0	0.0 %
23	0	0	0	0.0 %
BTUS BURNED (MILLION BTU)				
24 - HEAVY OIL	0	0	0	0.0 %
25 - LIGHT OIL	1,141,753	783,756	357,997	45.7 %
26 - COAL	86,196,682	98,222,765	(12,026,083)	(12.2 %)
27 - GAS	226,705,787	216,580,572	10,125,215	4.7 %
28 - NUCLEAR	0	0	0	0.0 %
29	0	0	0	0.0 %
30	0	0	0	0.0 %
31 - TOTAL (MILLION BTU)	314,044,222	315,587,093	(1,542,871)	(0.5 %)

A-3 Generating System Comparative Data Report

Duke Energy Florida, LLC

Docket No. 20190001-EI

Witness: Menendez

Exhibit No. (CAM-3T)

Schedule: A3-1

Sheet 6 of 9

<u>FUEL COST OF SYSTEM</u>	<u>ACTUAL</u>	<u>ESTIMATED</u>	<u>DIFFERENCE</u>	<u>DIFFERENCE (%)</u>
GENERATION MIX (% MWH)				
32 - HEAVY OIL	0.0	0.00	0.0	0.0 %
33 - LIGHT OIL	0.2	0.16	0.1	51.3 %
34 - COAL	22.6	25.17	(2.5)	(10.1 %)
35 - GAS	77.1	74.57	2.5	3.3 %
36 - NUCLEAR	0.0	0.00	0.0	0.0 %
37 - SOLAR	0.07	0.10	(0.03)	(28.3 %)
38	0	0	0	0
39 - TOTAL (% MWH)	100	100	0.0	0.0 %
FUEL COST PER UNIT (\$)				
40 - HEAVY OIL (\$/BBL)	0.00	0.00	0.00	0.0 %
41 - LIGHT OIL (\$/BBL)	114.14	117.88	(3.74)	(3.2 %)
42 - COAL (\$/TON)	73.73	75.69	(1.96)	(2.6 %)
43 - GAS (\$/MCF)	4.61	4.59	0.02	0.3 %
44 - NUCLEAR (\$/MBTU)	0.00	0.00	0.00	0.0 %
45	0.00	0.00	0.00	0.0 %
46	0.00	0.00	0.00	0.0 %
FUEL COST PER MILLION BTU (\$/MILLION BTU)				
47 - HEAVY OIL	0.00	0.00	0.00	0.0 %
48 - LIGHT OIL	19.80	20.36	(0.56)	(2.7 %)
49 - COAL	3.20	3.27	(0.06)	(1.9 %)
50 - GAS	4.52	4.55	(0.03)	(0.7 %)
51 - NUCLEAR	0.00	0.00	0.00	0.0 %
52	0.00	0.00	0.00	0.0 %
53	0.00	0.00	0.00	0.0 %
54 - SYSTEM (\$/MBTU)	4.21	4.19	0.02	52.4 %
BTU BURNED PER KWH (BTU/KWH)				
55 - HEAVY OIL	0	0	0	0.0 %
56 - LIGHT OIL	12,625	12,969	(344)	(2.6 %)
57 - COAL	10,235	10,366	(131)	(1.3 %)
58 - GAS	7,903	7,716	187	2.4 %
59 - NUCLEAR	0	0	0	0.0 %
60	0	0	0	0.0 %
61	0	0	0	0.0 %
62 - SYSTEM (BTU/KWH)	8,436	8,384	52	0.6 %

A-3 Generating System Comparative Data Report

Duke Energy Florida, LLC

Docket No. 20190001-EI
Witness: Menendez
Exhibit No. (CAM-3T)
Schedule: A3-1
Sheet 7 of 9

<u>FUEL COST OF SYSTEM</u>	<u>ACTUAL</u>	<u>ESTIMATED</u>	<u>DIFFERENCE</u>	<u>DIFFERENCE (%)</u>
GENERATED FUEL COST PER KWH (CENTS/KWH)				
63 - HEAVY OIL	0.00	0.00	0.00	0.0 %
64 - LIGHT OIL	25.00	26.41	(1.41)	(5.3 %)
65 - COAL	3.28	3.39	(0.11)	(3.2 %)
66 - GAS	3.57	3.51	0.06	1.7 %
67 - NUCLEAR	0.00	0.00	0.00	0.0 %
68	0.00	0.00	0.00	0.0 %
69	0.00	0.00	0.00	0.0 %
70 - SYSTEM (CENTS/KWH)	3.55	3.51	0.04	1.1 %

(1)	(2)	(3)	(4)	(5)	(6a)	(6b)	(7)	(8)	(9)
Sold To	Type & Schedule	Total KWH Sold (000)	KWH Wheeled from Other Systems (000)	KWH from Own Generation (000)	Fuel Cost C/KWH	Total Cost C/KWH	Fuel Adj Total \$	Total Cost \$	Gain on Sales \$
ESTIMATED		12,587		12,587	3.079	3.935	387,492.00	495,277.00	107,785.00
ACTUAL									
Reedy Creek Improvement District	CR-1	670		670	3.041	2.638	20,373.40	17,677.60	(2,695.80)
The Energy Authority	Schedule OS	40		40	4.049	4.000	1,619.60	1,600.00	(19.60)
ADJUSTMENTS									
PJM Settlements							18,556.56	10,441.86	(8,114.70)
City of Tallahassee		(96)						37,797.92	37,797.92
Subtotal - Gain on Other Power Sales		614	0	710	6.606	11.000	40,549.56	67,517.38	26,967.82
CURRENT MONTH TOTAL		614		710	6.606	11.000	40,549.56	67,517.38	26,967.82
DIFFERENCE		(11,973)		(11,877)	3.527	7.065	(346,942.44)	(427,759.62)	(80,817.18)
DIFFERENCE %		(95)		(94)	114.562	179.542	(89.54)	(86.37)	(74.98)
CUMULATIVE ACTUAL		59,720		59,816	4.401	8.202	2,628,177.49	4,898,093.95	2,269,917.44
CUMULATIVE ESTIMATED		73,322		73,322	4.150	7.123	3,043,086.29	5,222,379.32	2,179,293.03
DIFFERENCE		(13,602)		(13,506)	0.251	1.079	(414,908.80)	(324,285.37)	90,624.41
DIFFERENCE %		(19)		(18)	6.037	15.153	(13.63)	(6.21)	4.16

Counterparty	Type	MW	Start Date - End Date	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
1 Orange Cogen (ORANGECO)	QF	74.00	7/1/95 - 12/31/24	5,071,564	5,590,987	5,331,276	5,331,276	5,331,276	5,331,276	5,331,276	5,331,276	5,331,276	5,331,276	5,331,276	5,331,276	63,975,307
2 Orlando Cogen Limited (ORLACOGL)	QF	79.20	9/1/93 - 12/31/23	5,025,789	5,514,457	5,302,972	5,361,969	5,361,790	5,361,790	5,414,950	5,361,790	5,361,790	5,361,790	5,361,790	5,361,790	64,152,667
3 Pasco County Resource Recovery (PASCOUNT)	QF	23.00	1/1/95 - 12/31/24	1,784,800	2,011,580	1,898,190	1,898,190	1,898,190	1,898,190	1,898,190	1,898,190	1,898,190	1,898,190	1,898,190	1,898,190	22,778,280
4 Pinellas County Resource Recovery (PINCOUNT)	QF	54.75	1/1/95 - 12/31/24	4,248,600	4,788,435	4,518,518	4,518,518	4,518,518	4,518,518	4,518,518	4,518,518	4,518,518	4,518,518	4,518,518	4,518,518	54,222,210
5 Polk Power Partners, L.P. (MULBERRY)	QF	115.00	8/1/94 - 8/8/24	6,965,675	7,676,459	7,321,066	7,321,066	7,321,066	7,321,066	7,321,066	7,321,066	7,321,066	7,321,066	7,321,066	7,321,066	87,852,796
6 Wheelabrator Ridge Energy, Inc. (RIDGEGEN)	QF	39.60	8/1/94 - 12/31/23	765,872	790,760	798,927	800,946	800,946	800,946	800,946	800,946	800,946	800,946	800,946	800,946	9,564,071
7 Southern purchase - Franklin	Other	425	6/1/16 - 5/31/21	4,609,957	4,467,756	2,685,103	2,663,030	2,934,373	4,811,161	6,285,017	6,268,886	4,634,240	2,701,639	2,384,883	3,505,309	47,951,354
8 Retail Wheeling				(82,003)	(2,819)	(5,894)	(4,260)	(35,146)	0	0	(567)	(13,875)	(53,736)	(6,689)	0	(204,989)
9 CR-3 Projected Expense				4,290,186	4,261,861	4,233,534	4,205,208	4,176,884	4,148,557	4,120,232	4,091,907	4,063,580	4,035,255	4,006,929	3,978,603	49,612,736
10 ISFSI Return				677,047	628,287	579,175	555,717	573,770	573,765	573,771	573,769	573,883	573,769	573,545	573,320	7,029,819
SUB-TOTAL				33,357,487	35,727,762	32,662,867	32,651,659	32,881,667	34,765,268	36,263,965	36,165,780	34,489,613	32,488,713	32,190,453	33,289,017	406,934,251
<u>Confidential Capacity Contracts (Aggregated):</u>																
Purchases/Sales (Net)		MW	Contracts													
		1176.25	4	6,240,425	6,374,971	5,301,439	4,841,747	6,213,334	11,147,327	11,401,479	11,227,238	6,132,129	4,856,595	5,168,636	6,506,218	85,411,537
TOTAL				39,597,912	42,102,733	37,964,306	37,493,405	39,095,001	45,912,595	47,665,445	47,393,018	40,621,742	37,345,307	37,359,089	39,795,235	492,345,789

Duke Energy Florida, LLC
Capital Structure and Cost Rates Applied to Capital Projects
Estimated for the Period of : January 2018 through June 2018

Adjusted
Retail

	\$000's	Ratio	Cost Rate	Weighted Cost	Pre-Tax Weighted Cost Rate
Common Equity	\$ 4,711,485	44.73%	10.50%	4.70%	6.29%
Preferred Stock	0	0.00%	0.00%	0.00%	0.00%
Long Term Debt	3,931,532	37.33%	5.29%	1.97%	1.97%
Short Term Debt	102,875	0.98%	0.21%	0.00%	0.00%
Customer Deposits - Active	191,025	1.81%	2.26%	0.04%	0.04%
Customer Deposits - Inactive	1,455	0.01%	0.00%	0.00%	0.00%
Deferred Tax	1,772,933	16.83%	0.00%	0.00%	0.00%
Deferred Tax (FAS 109)	(180,391)	-1.71%	0.00%	0.00%	0.00%
ITC	1,968	0.02%	0.00%	0.00%	0.00%
	<u>\$10,532,883</u>	<u>100.00%</u>		<u>6.71%</u>	<u>8.31%</u>
Total Debt				2.02%	2.02%
Total Equity				4.70%	6.29%

Above is the May 2017 DEF Surveillance Report capital structure and cost rates. See Stipulation & Settlement Agreement in Order No. PSC-12-0425-PSS-EU, Docket No. 120007-EI.

The May 2017 Pre-Tax Weighted Cost Rate for Common Equity above reflects the impact of the reduction in the federal corporate income tax rate as a result of the 2018 Tax Cuts and Jobs Act.

Duke Energy Florida, LLC
Capital Structure and Cost Rates Applied to Capital Projects
Estimated for the Period of : July 2018 through December 2018

	Adjusted Retail				Pre-Tax Weighted Cost Rate
	\$000's	Ratio	Cost Rate	Weighted Cost	
Common Equity	\$ 5,022,459	44.29%	10.50%	4.65%	6.23%
Preferred Stock	0	0.00%	0.00%	0.00%	0.00%
Long Term Debt	4,497,052	39.66%	4.90%	1.94%	1.94%
Short Term Debt	(193,058)	-1.70%	0.88%	-0.01%	-0.01%
Customer Deposits - Active	179,649	1.58%	2.35%	0.04%	0.04%
Customer Deposits - Inactive	1,597	0.01%	0.00%	0.00%	0.00%
Deferred Tax	1,826,909	16.11%	0.00%	0.00%	0.00%
Deferred Tax (FAS 109)	0	0.00%	0.00%	0.00%	0.00%
ITC	5,239	0.05%	7.85%	0.00%	0.00%
	<u>\$11,339,847</u>	<u>100.00%</u>		<u>6.62%</u>	<u>8.20%</u>
Total Debt				1.97%	1.97%
Total Equity				4.65%	6.23%

Above is the May 2018 DEF Surveillance Report capital structure and cost rates. See Stipulation & Settlement Agreement in Order No. PSC-12-0425-PSS-EU, Docket No. 120007-EI.

The May 2018 DEF Surveillance Report reflects the tax reform adjustments as set forth in Paragraph 16 of DEF's 2nd Revised and Restated Settlement Agreement.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DIRECT TESTIMONY OF

ARNOLD GARCIA

ON BEHALF OF

DUKE ENERGY FLORIDA

DOCKET NO. 20190001-EI

MARCH 1, 2019

1 **Q. By whom are you employed and in what capacity?**

2 A. I am employed by Duke Energy Business Services, LLC (“DEBS”), a subsidiary of Duke
3 Energy Corporation (“Duke Energy”), as Manager, Insurance. Duke Energy Florida,
4 LLC (“DEF” or the “Company”) is a wholly-owned subsidiary of Duke Energy and
5 affiliate of DEBS.

6 **Q. What are your responsibilities in that position?**

7 A. I am responsible for placing insurance coverage for Duke Energy and its subsidiaries.

8 **Q. Please describe your educational background and professional experience.**

9 A. I earned a Master on Business Administration from Wake Forest University (Winston
10 Salem, NC), and a Bachelors of Arts degree from Colgate University (Hamilton, NY). I
11 also hold an Associate in Risk Management (ARM) designation. I have held similar
12 positions to my current position for other organizations such as a utility, a diversified
13 manufacturer and two consumer product companies (one of which was a Fortune 250
14 Company).

1 **Q. What is the purpose of your testimony?**

2 A. The purpose of my testimony is twofold: first, I will describe the insurance protection
3 that was in place at the Bartow Combined Cycle Power Plant (“Bartow CC”) on February
4 9, 2017; and second, it was made apparent to DEF during the 2018 fuel clause docket
5 that there were questions regarding whether or not DEF had, or should have had,
6 insurance coverage covering replacement power costs, therefore I will provide an
7 overview of the types of coverages that are, and are not, available (commercially or
8 practically) to Duke Energy and the Company for its generating assets.

9 **Q. Are you sponsoring any exhibits?**

10 A. Yes, I am sponsoring Exhibit NO. __ (AG-1), the Bartow CC Insurance Policy in effect
11 on February 9, 2017. This exhibit is confidential.

12 **Q. Please provide a summary of your testimony.**

13 A. In summary, on February 9, 2017, the Bartow CC was covered by a Policy of All Risk
14 Property Insurance Including Machinery Breakdown (“the Policy”) issued by Associated
15 Electric & Gas Insurance Services, Ltd (“AEGIS”) that did not provide coverage for
16 replacement power costs or other business interruption costs. Moreover, an Insurance
17 Product that provided such coverage for generating units such as the Bartow CC was not
18 available in a commercially viable form at that time; that is, the costs to the Company
19 and its customers of any such policy would outweigh the benefit received.

20 **Q. Please describe the Policy.**

1 A. The Policy provides Duke Energy protection against loss occurring from damage to its
2 generation fleet, including the Bartow CC, except under the named exclusions and
3 subject to the limits described therein (subject to any applicable deductible).

4 **Q. Did the Policy include an exclusion for replacement power costs?**

5 A. Yes, it did. Section A provides the Coverage Declarations, and section A.2. is the Extra
6 Expense declaration. Section A.2.c.(3) provides the exclusion for replacement power
7 costs. See Ex. No. __ (AG-1). The exclusion is also shown in section 3 “Limit of
8 Liability” on the Declarations Page, page 3 of 5, where it provides the limitation of
9 liability for Extra Expenses as shown in that section.

10 **Q. Was coverage for replacement power costs available for the Bartow CC during**
11 **February of 2017?**

12 A. From a practical standpoint, the answer is no cost-effective product was available in the
13 market. Allow me to explain, Duke Energy routinely monitors developments in the
14 insurance market and the results of those efforts have consistently shown the coverage is
15 unavailable in the current market at a cost point that would make economic sense.
16 Essentially, any product that would provide this sort of coverage would require a
17 premium that would all but negate the value of the coverage being obtained (i.e., the
18 premiums would be set equal to a high-end expected loss, plus the insurer’s
19 administrative fee).

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

21 A. Yes.

Docket No. 20190001-El
Duke Energy Florida
Witness: Garcia
Exhibit No. ____ (AG-1)

REDACTED
In its entirety

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DIRECT TESTIMONY OF

JEFFREY SWARTZ

ON BEHALF OF

DUKE ENERGY FLORIDA

DOCKET NO. 20190001-EI

MARCH 1, 2019

1 **Q. By whom are you employed and in what capacity?**

2 A. I am employed by Duke Energy Florida (“DEF” or the “Company”) as Vice President
3 – Generation.
4

5 **Q. What are your responsibilities in that position?**

6 A. As Vice President of DEF’s Generation organization, my responsibilities include
7 overall leadership and strategic direction of DEF’s power generation fleet. My major
8 duties and responsibilities include strategic and tactical planning to operate and
9 maintain DEF’s non-nuclear generation fleet; generation fleet project and additions
10 recommendations; major maintenance programs; outage and project management;
11 retirement of generation facilities; asset allocation; workforce planning and staffing;
12 organizational alignment and design; continuous business improvements; retention and
13 inclusion; succession planning; and oversight of hundreds of employees and hundreds
14 of millions of dollars in assets and capital and operating budgets.
15

1 **Q. Please describe your educational background and professional experience.**

2 A. I earned a Bachelor of Science degree in Mechanical Engineering from the United
3 States Naval Academy in 1985. I have 17 years of power plant and production
4 experience in various managerial and executive positions within Duke Energy
5 managing Fossil Steam Operations, Combustion Turbine Operations and Nuclear Plant
6 Operations. While at Duke Energy I have managed new unit projects from construction
7 to operation, and I have extensive contract negotiation and management experience.
8 My prior experience also includes nuclear engineering and operations experience in the
9 United States Navy and project management, engineering, supervisory and
10 management experience with a pulp, paper and chemical manufacturing company.

11

12 **Q. What is the purpose of your testimony?**

13 A. The purpose of my testimony is to provide the Commission with information related to
14 the Bartow Steam Turbine (ST) forced outage that occurred from February 9, 2017
15 through April 8, 2017, including background information on the event that led to the
16 outage, an explanation of DEF's responsive actions, a presentation of DEF's root cause
17 analysis and findings, and an explanation of DEF's reasonable and prudent restoration
18 actions.

19

20 **Q. Please provide a summary of your testimony.**

21 A. On February 9, 2017, the Bartow steam turbine was removed from service due to an
22 indication of a sodium leak into the steam water cycle. During this shutdown, DEF
23 discovered a failed LP turbine rupture disk. The disk had been breached by a foreign

1 object that caused a hole in the rupture diaphragm. DEF performed an inspection of the
2 Bartow Steam Turbine (“ST”) and discovered damage to the ST’s L-0 blades (and
3 determined part of an L-0 blade ruptured the LP turbine rupture disk), resulting in a
4 forced outage to the ST that lasted until April 8, 2017 (while the ST was off-line, the
5 Bartow combustion turbines (“CTs”) remained available to run in simple cycle mode).
6 DEF performed a Root Cause Analysis (“RCA”) that determined the failure of the
7 Bartow ST’s L-0 Blades was caused by events beyond DEF’s control, and DEF could
8 not have reasonably prevented the failure from occurring. The results of DEF’s RCA
9 were discussed in more detail in my March 1, 2018 testimony filed in Docket No.
10 20180001-EI, which I adopt and incorporate as if fully set forth herein. DEF’s actions
11 prior to and in the wake of the blade failure were reasonable and prudent.
12

13 **Q. Are you sponsoring any exhibits?**

14 A. Yes. I am sponsoring the DEF RCA Report, attached as Exhibit No. __ (JS-1) to my
15 March 1, 2018 testimony filed in Docket No. 20180001-EI.
16

17 **Q: Is the RCA considered confidential by the Company?**

18 A: Yes. Portions of the RCA’s findings are considered proprietary and confidential by the
19 blades’ manufacturer. In order to protect the OEM’s rights, this information has been
20 treated by the Company as proprietary confidential business information and has not
21 been made publicly available. As part of the stipulation reached on Issue 1B in Docket
22 No. 20180001-EI, DEF committed to work with the OEM to revise the confidentiality
23 request; DEF intends to fully comply with that stipulation.

1

2 **Q. Please summarize the events leading up to the 2017 Bartow event.**

3 A. Bartow is a 4x1 Combined Cycle (“CC”) Station with a ST manufactured by
4 Mitsubishi Hitachi Power Systems (“MHPS”). The ST was purchased from a company
5 that intended to use it for a 3x1 CC with a gross output of 420MW. The ST was never
6 delivered to that third party but instead remained with MHPS in a warehouse in Japan
7 until DEF purchased the unit in 2006.

8 Before the ST was purchased, DEF contracted with MHPS to evaluate the ST design
9 conditions and to update heat balances for a 4x1 CC configuration. CC units blend
10 steam from the CTs as they start-up and/or shut-down with steam to the ST. These
11 blending events result in brief periods of higher steam temperatures and flows into the
12 condenser below the ST L-0 blades, a common occurrence for CC units.

13 Since commissioning of the Bartow ST in 2009, there have been five (5) events
14 involving L-0 blade failures and/or replacements. The latest blade failure occurred
15 when a “loss of mass” event resulted in a blade fragment traveling through the Low-
16 Pressure Turbine rupture disk diaphragm.

17

18 **Q. What actions did DEF take in response to the February 2017 failure?**

19 A. The Company took three primary actions in the wake of the event: a root cause team
20 was established to investigate the incident and prepare a root cause analysis; a
21 restoration team was formed to bring the unit back on-line; and a team was formed to
22 evaluate a long-term solution for Bartow.

23

1 **Q. Please describe the process DEF followed to ascertain the root cause of the event.**

2 A. DEF created a RCA Team consisting of internal experts to investigate and determine
3 the root cause of the event. The RCA Team consisted of seven individuals with
4 expertise in engineering, operations and process, and human performance.

5

6 Following industry standard procedures, the RCA Team employed specific tools used
7 to determine potential root cause(s) including: interviews, event and causal factor
8 review (“E&CF”), flawed barrier analysis, change analysis, component analysis, visual
9 inspections of the equipment, photographs taken following the event, engineering
10 calculations and measurements, and detailed review of outage reports and maintenance
11 logs.

12

13 DEF’s findings are fully set forth in the RCA identified as Exhibit No. __ (JS-1) to my
14 March 1, 2018 testimony in docket No. 20180001-EI and as summarized in my
15 testimony of that date. To avoid unnecessary repetition, those findings will not be
16 rehashed here.

17

18 **Q. What restoration process did DEF follow to bring tl**
19 **service?**

20 A. It’s important to recall that the four Bartow CTs were able to continue operation in
21 simple cycle mode (i.e., without operation of the ST) notwithstanding the blade failure.
22 DEF worked with the OEM to identify and implement an interim solution that would
23 allow the ST to resume operation, ultimately resulting in the installation of a pressure

1 plate in place of the L-0 blades on March 22, 2017. The plate allows the ST to operate
2 increasing the energy output of Bartow above what was possible in simple cycle mode.
3 As mentioned above, the ST returned to service on April 8, 2017.
4

5 **Q. Could DEF have reasonably prevented the event and the ensuing outage at**
6 **Bartow?**

7 A. No, the outage was caused by circumstances beyond DEF's reasonable control, as
8 demonstrated by the RCA. DEF was not at fault.
9

10 **Q. Did DEF act reasonably and prudently to restore Bartow to service in a timely**
11 **fashion?**

12 A. Yes, DEF took reasonable and prudent steps to develop a restoration team and guiding
13 processes to restore the Bartow ST to service. The restoration team followed those
14 processes and the unit was successfully brought back on line in a timely manner.
15

16 **Q. Did DEF's agreement with the OEM include a provision obligating for the OEM**
17 **to contribute funds towards replacement power costs in the event of an outage**
18 **caused by the OEM's product?**

19 A. No; to the contrary, the agreement specifically disclaimed any liability for
20 consequential damages.
21

22 **Q. In your experience, do DEF's agreements with OEMs usually include a similar**
23 **disclaimer of liability?**

1 A. Yes. In my experience OEMs are not willing to accept the risk of agreeing to pay
2 consequential damages (such as replacement power costs) given the uncertain and
3 potentially open-ended liability. To my knowledge, this is the case throughout the
4 industry.

5
6 **Q. Have you or anyone under your supervision engaged in negotiations with a vendor**
7 **that was willing to accept consequential damages as part of a component part**
8 **purchase order?**

9 A. No, in DEF's experience, vendors do not offer to accept consequential damages as part
10 of the terms and conditions of their agreements. Further, when DEF has indicated that
11 such a provision would be a required part of the agreement, vendors have indicated
12 they would withdraw rather than agree to those terms. DEF simply has not found such
13 a provision to be commercially available.

14
15 **Q. Does that conclude your testimony?**

16 A. Yes.

DEF incorporates
Exhibit No. ____ (JS-1)
filed on March 2, 2018 in
Docket No. 20180001-EI
as if fully set forth herein.

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

FILED 10/31/2019
DOCUMENT NO. 10606-2019
FPSC - COMMISSION CLERK

In the Matter of:

DOCKET NO. 20190001-EI

FUEL AND PURCHASED POWER
COST RECOVERY CLAUSE WITH
GENERATING PERFORMANCE
INCENTIVE FACTOR.

_____ /

PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONERS
PARTICIPATING: COMMISSIONER GARY F. CLARK
PREHEARING OFFICER

DATE: Tuesday, October 22, 2019

TIME: Commenced: 10:28 a.m.
Concluded: 10:53 a.m.

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

REPORTED BY: DEBRA R. KRICK
Court Reporter and
Notary Public in and for
the State of Florida at Large

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23 Service Commission.

24
25

1 P R O C E E D I N G S

2 COMMISSIONER CLARK: All right. Ms.

3 Brownless.

4 MS. BROWNLESS: Thank you, sir. We have no
5 preliminary matters of which we are aware at this
6 time.

7 COMMISSIONER CLARK: Okay. Any of the parties
8 have any preliminary matters?

9 All right. Let's go to the draft prehearing
10 order.

11 Case background.

12 Conduct of proceedings.

13 Jurisdiction.

14 Procedure for handling confidential
15 information.

16 Prefiled testimony.

17 Ms. Brownless.

18 MS. BROWNLESS: And we would just note that a
19 time will need to be set for witness summaries.

20 COMMISSIONER CLARK: Yes, ma'am. Three
21 minutes.

22 MS. BROWNLESS: Yes, sir. Thank you.

23 COMMISSIONER CLARK: Anything else?

24 MS. BROWNLESS: Yes, sir. In the prehearing
25 statement as in the other dockets, FIPUG objects to

1 a witness being considered an expert witness unless
2 the witness affirmatively states the subject matter
3 areas in which he or she claims expertise. None of
4 the witnesses in this case, either IOU or
5 intervenor, all of whom offered expert testimony,
6 have provided this information.

7 There has already been discussion about the
8 provisions in Section VI A(8) of the OEP that sets
9 out the requirements, that a party shall identify
10 with specificity the portions of the witness
11 testimony by page and line number and/or exhibits
12 to which the party objects if they wish to voir
13 dire and question expertise.

14 FIPUG has not done this, and in accord with
15 your previous decisions, we would ask for a ruling
16 on this matter.

17 COMMISSIONER CLARK: Very good.

18 FIPUG.

19 MR. MOYLE: See above.

20 COMMISSIONER CLARK: See above. Thank you.

21 All right. Let's move to order of witnesses.

22 MS. BROWNLESS: Do we have a ruling, sir?

23 COMMISSIONER CLARK: Yes.

24 MS. BROWNLESS: Just in this docket?

25 COMMISSIONER CLARK: Yes. If we need one --

1 we need to do one specifically for --

2 MS. BROWNLESS: Yes, sir, we do.

3 COMMISSIONER CLARK: Okay, then yes.

4 MS. BROWNLESS: Okay. It's going to be
5 consistent with the rulings in the other dockets?

6 COMMISSIONER CLARK: Yes, ma'am, correct.

7 MS. BROWNLESS: Thank you, sir.

8 COMMISSIONER CLARK: All right. Order of
9 witnesses.

10 MS. BROWNLESS: We are not aware of any
11 changes at this time.

12 COMMISSIONER CLARK: Okay. Are there any
13 witnesses that may be excused?

14 MS. BROWNLESS: I think that I have spoken
15 with the parties, and the parties have agreed that
16 staff witnesses Ojada, Dobiak and Terkawi can be
17 excused and their testimony inserted into the
18 record as though read.

19 And my understanding is that the parties have
20 agreed to excuse these witnesses, and I would like
21 to ask the parties at this time to confirm that.

22 COMMISSIONER CLARK: All right. Everybody in
23 agreement? You have got the list.

24 MR. REHWINKEL: Yes, sir.

25 (Various responses.)

1 COMMISSIONER CLARK: Okay. Very good.

2 MS. BROWNLESS: We would note that we will
3 check with the Commissioners to make sure there are
4 no questions for these witnesses before they are
5 excused.

6 COMMISSIONER CLARK: Thank you.

7 All right. Moving to Item 7, basic positions,
8 no changes?

9 Item 8, issues and positions.

10 MS. BROWNLESS: Yes, sir. The OEP requires
11 that each party take a position at the prehearing
12 conference unless good cause can be shown for why
13 they can't do so. If a party's position in the
14 draft prehearing order is listed as no position at
15 this time, that party must change it today or show
16 good cause why it can't take a position. Absent a
17 showing of good cause, the prehearing order will
18 reflect no position for that party on that issue.

19 My understanding is consistent with the other
20 dockets, parties shall have until the close of
21 business tomorrow, October 23rd, to take positions
22 if they are unable to do so today. And no position
23 on an issue prohibits any party from
24 cross-examining witnesses with regard to those
25 issues, or briefing those issues.

1 So we just need to --

2 COMMISSIONER CLARK: All right. So company --
3 company specific, there is one issue, 2H; is that
4 right, Ms. Brownless?

5 MS. BROWNLESS: Yes, sir. But we would ask
6 the Public Counsel, is the Public Counsel, as in
7 the other dockets, able to take no position where
8 it stated no position at this time in the
9 prehearing order?

10 COMMISSIONER CLARK: Mr. Rehwinkel, you want
11 to address that at this time?

12 MR. REHWINKEL: Yes. Commissioner, where we
13 state no position at this time, our positions will
14 revert to no position, and that includes Issue 36
15 with the revised stipulation language.

16 COMMISSIONER CLARK: Okay.

17 MS. BROWNLESS: Thank you.

18 MR. REHWINKEL: Did you say Issue 2H?

19 MS. BROWNLESS: Yes. That's an issue for Mr.
20 Moyle.

21 With regard to Issue 2H, FIPUG has answered
22 this question as follows: FPL must meet its burden
23 of proof with respect to these SoBRA projects, and
24 FIPUG reserves the right to conduct
25 cross-examination on this and related issues.

1 Essentially, this is a statement of the legal
2 standards applicable to all administrative
3 hearings. This is not a position. Therefore, we
4 would request that FIPUG take a position on this
5 issue by close of business tomorrow, October 23rd,
6 or it will be reflected as no position.

7 MR. MOYLE: I will make it easy, just put our
8 position down as no.

9 COMMISSIONER CLARK: No. Okay.

10 MR. REHWINKEL: Commissioner Clark, with
11 respect to Issue 1C, we had taken no position at
12 this time. We were confused about the status of
13 Issues 1B and 1C together.

14 Since they are broken out, I would just ask
15 the staff to take our position on 1B and just cut
16 and paste it for the position on 1C, and that
17 would -- that would be the easiest thing, because
18 it has our position on both the outage and the D
19 rate, our -- it's embedded in both. We wrote the
20 position for both issues 1B and 1C, so --

21 COMMISSIONER CLARK: Okay.

22 MS. BROWNLESS: Thank you.

23 MR. REHWINKEL: Thank you.

24 COMMISSIONER CLARK: You are clear there, Ms.
25 Brownless?

1 MS. BROWNLESS: Yes, sir.

2 COMMISSIONER CLARK: All right. Great. All
3 right, so we cleared up --

4 MS. WYNN: Commissioner Clark --

5 COMMISSIONER CLARK: -- 2H with Mr. Moyle --
6 yes, PCS.

7 MS. WYNN: Yes, Commissioner, there are a
8 number of issues where PCS has agreed with OPC and
9 OPC has not taken a position. We could list them,
10 there is a lot of them, but we would just ask that
11 our position be changed to no position.

12 COMMISSIONER CLARK: Okay. Thank you.

13 MS. BROWNLESS: Thank you.

14 MR. MOYLE: Just to be clear, we have until
15 five o'clock tomorrow to revise --

16 COMMISSIONER CLARK: You have until 5:00
17 tomorrow, yes, sir.

18 Time out. One second.

19 We did noon in one of the other dockets
20 tomorrow, are we --

21 MS. BROWNLESS: Well, whatever we've done for
22 the other dockets, we should do here. I thought it
23 was --

24 COMMISSIONER CLARK: So we did 5:00 in the
25 last ones. One of the first ones, we did talk

1 about a noon deadline, or did I misread that? Are
2 they all five o'clock tomorrow? They are all five
3 o'clock tomorrow.

4 MR. MOYLE: Close of business?

5 COMMISSIONER CLARK: Whatever we said, we are
6 changing to all for five o'clock tomorrow to
7 clarify that issue.

8 Okay. Where were we, Mr. Rehwinkel?

9 MR. REHWINKEL: Yes. Commissioner, with
10 respect to Issue -- Issue 2L, which is defer. I
11 just need to advise you of something.

12 We have no objection to the deferral. In
13 fact, we had suggested it, and the company agreed
14 to it. There is a dollar amount associated with
15 the replacement power for the outage that this
16 issue addresses. Based on some circumstances I
17 won't go into here today, those dollars have
18 remained as filed. And while we would have
19 preferred that those dollars have come out and be
20 part of the deferral, we don't have an objection to
21 that as long as it is clearly understood that when
22 we get to the 2020 fuel cycle and this issue is
23 litigated, if that's what it has done, that there
24 is no presumption of correctness or reasonableness
25 associated with the inclusion of those dollars in

1 rates in the year 2020. It is really more a matter
2 of convenience and the fact that the Commission has
3 ongoing jurisdiction to true those dollars up.

4 We want it to be clear that there be no
5 statements or testimony given that the Commission's
6 adoption of the factors in this case in a final
7 order is a -- creates a presumption of correctness
8 about those dollars. And as long as that's the
9 case, we are not objecting to this deferral being
10 accorded this issue under these circumstances.

11 COMMISSIONER CLARK: Okay. Great. Duly
12 noted.

13 MR. REHWINKEL: Thank you.

14 MS. BROWNLESS: And that's fine with staff,
15 Your Honor.

16 COMMISSIONER CLARK: Okay. All right. Are
17 there any other changes to issues or positions?

18 Ms. Moncada.

19 MS. MONCADA: Commissioner, Issue 2M, which
20 starts at the bottom of page 18 and flows over to
21 page 19, the number that should be reflected as the
22 appropriate base rate percentage decrease
23 associated with the true-up of FPL's 2017 SoBRA
24 should be 0.045 percent.

25 COMMISSIONER CLARK: Okay. As opposed to --

1 it reads 0.049 now. It should read 0.045?

2 MS. MONCADA: Correct.

3 COMMISSIONER CLARK: Okay.

4 MS. MONCADA: Thank you.

5 COMMISSIONER CLARK: Any other changes?

6 MS. BROWNLESS: Are we going to go
7 individually by the issues, sir or are we just
8 going to --

9 COMMISSIONER CLARK: No, ma'am. We are
10 skipping to J.

11 MS. BROWNLESS: We skip to the end. Okay.

12 The issue that we discussed in the previous
13 dockets in our docket is Issue No. 36. And that
14 should the joint motion to modify Order No.
15 PSC-2012-0425-PAA-EU, regarding the weighted
16 average cost of capital methodology be approved.
17 In this docket, my understanding is that the
18 parties are willing to stipulate to the following:

19 No. The normalization provisions of the
20 Internal Revenue Code Treasury Regulation Section
21 1.167(1)-(1)(h)(6) shall be applied to the weighted
22 average cost of capital in this docket subject to
23 true-up. The determination of the WACC to be
24 applied in future clause dockets shall be the
25 subject of a workshop to be held by Commission

1 staff.

2 Inherent in this as well is the deferral of
3 OPC's identified issue, what is the appropriate
4 capital structure to be used in the clause dockets
5 to a later date? And we understand that this is a
6 Type 2 stipulation, in which at least OPC and
7 FIPUG, and I am not clear about PCS, would take no
8 position.

9 So if we could just confirm that for this
10 docket, that would be great.

11 COMMISSIONER CLARK: You have heard the
12 proposed stipulation. Are we all in agreement?

13 MR. REHWINKEL: Yes. No position.

14 MS. WYNN: We would take no position.

15 MR. MOYLE: Yeah, I just want to be clear. We
16 are siting an IRS regulation, and I want there to
17 be no confusion that by taking no position, we are
18 not agreeing that that IRS regulation, if it says
19 XYZ, that that necessarily means you can have a
20 capital structure above the capital structure
21 approved by the Commission. So, you know, we are
22 trying to keep all our arguments and options open,
23 and I don't want there to be confusion on that
24 point.

25 COMMISSIONER CLARK: I think we would all

1 agree to that. There is no misunderstanding there,
2 is there? Okay, yeah, agreed, Mr. Moyle.

3 MR. MOYLE: Thank you.

4 MS. BROWNLESS: Yes, sir.

5 COMMISSIONER CLARK: Okay. We are all in
6 agreement with the stipulated language. Anything
7 else under issues and positions, Ms. Brownless?

8 MS. BROWNLESS: Yes, we did have earlier
9 identified contested Issue No. 1E, which was
10 talking about a spinoff hearing for the Bartow Unit
11 4 plant, my understanding is that all parties at
12 this time believe they have the necessary
13 information to appropriately tie that issue in this
14 docket, and that I would like to confirm with all
15 parties that that is, in fact, the case.

16 COMMISSIONER CLARK: Can we get a
17 confirmation, all parties?

18 MR. REHWINKEL: Commissioner, I just need to
19 say, we raised the issue. I think we are talking
20 about 1E on the spinoff?

21 MS. BROWNLESS: Yes, sir.

22 COMMISSIONER CLARK: Contested issue.

23 MR. REHWINKEL: We raised the issue. We are
24 ready to go to hearing. Between now and the
25 hearing, or even during the hearing, if something

1 changes that changes that presumption, we will
2 raise it at that time, but we believe the issue can
3 go away for purposes of today.

4 COMMISSIONER CLARK: Okay. Great.

5 All in agreement?

6 MS. WYNN: Yeah, we have no position.

7 COMMISSIONER CLARK: Okay. All right.

8 Yes, ma'am, we are all in agreement.

9 MS. BROWNLESS: Thank you.

10 COMMISSIONER CLARK: All right. Item K,
11 closing the docket.

12 MR. MOYLE: Can I --

13 COMMISSIONER CLARK: Yes, Mr. Moyle.

14 MR. MOYLE: Maybe for the good of the order
15 just make two quick comments.

16 COMMISSIONER CLARK: Yes.

17 MR. MOYLE: FIPUG, with respect to all the
18 issues, we have talked with some parties, not all
19 the parties, but, you know, the hedging issue is in
20 this docket, and we have intended to put at issue
21 hedging, but we are open to informal discussions
22 about that.

23 I mean, we've had this discussion, and we
24 don't like to hedge anyone. It's supposed to be
25 phased out, and we want to just make sure it is

1 being phased out, so that is one issue.

2 And then with respect to Maria and FPL on the
3 SoBRA, you know, we put that at issue, but we will
4 engage in conversations on that. Part of the
5 reason we put it at issue, as you know in other
6 SoBRA cases, they are separate dockets. This one
7 is embedded in the fuel clause, so we will talk and
8 look at that issue as we go forward.

9 I just want staff and you and others to be
10 clear about, you know, about what we are intending
11 at this point to say we would like to have some
12 discussions about these issues.

13 COMMISSIONER CLARK: Okay.

14 MS. BROWNLESS: And if I may just --

15 COMMISSIONER CLARK: FPL, Ms. Moncada.

16 MS. MONCADA: Agreed. Mr. Moyle and I will
17 have discussions hopefully right after this, and
18 maybe continuing thereafter to try to resolve and
19 streamline as much as we can.

20 COMMISSIONER CLARK: Great. Thank you so
21 much.

22 Ms. Brownless.

23 MS. BROWNLESS: Yes, sir, and I would note
24 with regard to the hedging issues, we have included
25 the either gains or losses in the proposed

1 stipulation language that the staff floated, and we
2 are hopeful that that can help you resolve the
3 issue.

4 MR. MOYLE: Good. Thank you.

5 COMMISSIONER CLARK: Okay. All right. Item
6 K, closing the docket, Ms. Brownless.

7 MS. BROWNLESS: Oh, that's, we don't have any
8 issues with regard --

9 COMMISSIONER CLARK: No issues there?

10 MS. BROWNLESS: No, sir.

11 COMMISSIONER CLARK: Okay. All right. Item
12 1E, we have resolved the contested issue already.
13 So let's move to, I assume, exhibit list.

14 MS. BROWNLESS: Yes, sir.

15 Staff has prepared a comprehensive exhibit
16 list which includes all prefiled exhibits and also
17 includes exhibits staff wishes to introduce into
18 the record. Staff will work with the parties to
19 determine if there are any objections to the
20 comprehensive exhibit list, or any of staff's
21 exhibits being entered into the record.

22 MR. BERNIER: And thank you, Commissioner. I
23 spoke with Ms. Brownless about this earlier, but we
24 have a couple of additional discovery responses
25 that I think that we are going to try to add to the

1 exhibit list in hopes of facilitating some
2 additional or potential stipulations.

3 COMMISSIONER CLARK: Okay. Good.

4 MR. REHWINKEL: Commissioner Clark.

5 COMMISSIONER CLARK: Mr. Rehwinkel.

6 MR. REHWINKEL: With respect to
7 confidentiality, Mr. Bernier and Mr. David and I
8 have had sporadic conversations about the nature of
9 confidential information that will be addressed at
10 the hearing. We have a tentative schedule to talk
11 about that this week. We will do that.

12 I just wanted to put the Commission on notice
13 that there is, at this point in time, a significant
14 amount of confidential information. Most of it
15 revolves around I think what has been identified as
16 JS-1, Mr. Schwartz's exhibit that's root cause
17 analysis.

18 We would just ask that for the hearing that
19 the Commissioners have a copy of that at the outset
20 rather than us having to stop the hearing and go
21 get it. It's definitely going to be something that
22 we are going to need to refer to, so -- and maybe
23 JS-2 is the right one.

24 MR. BERNIER: That's what I was going to say.

25 JS-2 would be the one. It is the one with the

1 revised confidentiality --

2 MR. REHWINKEL: Okay. So that's something
3 that we intend to work to streamline that process,
4 but it may be -- it may be somewhat cumbersome --

5 COMMISSIONER CLARK: Okay.

6 MR. REHWINKEL: -- because of that, so --

7 COMMISSIONER CLARK: Very good.

8 Ms. Brownless.

9 MS. BROWNLESS: Yes, sir. I believe that what
10 we have discussed with DEF is because JS-1 was
11 filed in the 2018 docket and was more -- had more
12 restrictions placed on it by Mitsubishi, that we
13 will be using JS-2, which has a minimum, or a
14 shorter -- I don't know the word I am trying to
15 look for -- fewer redactions in it, and we will
16 provide a copy of the unredacted JS-2 to all
17 Commissioners.

18 COMMISSIONER CLARK: Okay. All right.
19 Anything else under exhibits?

20 All right. Proposed stipulations.

21 MS. BROWNLESS: Any stipulations entered into
22 at this prehearing conference will be listed. They
23 will be listed as either, one, all parties agree,
24 which we commonly refer to as a Type 1 Stipulation,
25 or, two, all parties either agree or take no

1 position on the proposed stipulations, which we
2 refer to as a Type 2 stipulation.

3 We will continue to work with all parties to
4 reach stipulations on the outstanding issues, and
5 we note that we have compiled stipulations and
6 circulated them to all the parties, and we hope to
7 be able to enter into more stipulations prior to
8 the hearing.

9 A list of the stipulations entered into after
10 this prehearing order is issued will be provided to
11 all Commissioners prior to the hearing.

12 COMMISSIONER CLARK: Very good.

13 All right. Pending motions, we have none.

14 Confidentiality orders. There are no pending
15 orders at this time, is that correct?

16 MS. BROWNLESS: Yes, sir. We -- orders for
17 all confidentiality requests have been written and
18 are in the process of being issued, and I believe
19 most of those will be finalized today.

20 COMMISSIONER CLARK: I think so, is that
21 right?

22 All right. Post-hearing procedures.

23 MS. BROWNLESS: If parties agree to waive
24 briefs, the Commission may make a bench decision
25 for this portion of the docket.

1 Briefs will be limited to 40 pages. Briefs
2 will be due on November 15th, 2019, for
3 consideration at the December 10th, 2019, Agenda
4 Conference.

5 COMMISSIONER CLARK: All right. Anything else
6 under post-hearing procedures? If not, we will
7 issue the five, three, 40 rule.

8 MR. REHWINKEL: Commissioner, I would like to
9 address that --

10 COMMISSIONER CLARK: Okay.

11 MR. REHWINKEL: -- on that.

12 COMMISSIONER CLARK: Yes, sir.

13 MR. REHWINKEL: I believe we are still engaged
14 in discussions about this, but I believe that there
15 will be two witnesses that you will hear from,
16 Mr. Schwartz for the company, and Mr. Polich for
17 the Public Counsel. They are both engineers. They
18 are going to deal with some complicated issues.

19 We would ask your indulgence, and the
20 Commission's indulgence to the extent the Chairman
21 ultimately rules on this, that we be allowed up to
22 10 minutes for opening. It's just going to be the
23 Public Counsel and maybe FIPUG and PCS on this, but
24 I think the Public Counsel is going to take the
25 lead since we have the witness. We would ask that

1 we be given up to 10 minutes for an opening, and we
2 would ask, because we are only going to have two
3 witnesses that have any length of testimony that's
4 going to be relevant to Issues 1B and 1C, that the
5 summary be allowed for five minutes.

6 We believe that that's going to be necessary
7 to provide a minimum of information to the
8 Commissioners. We ask your indulgence on that.

9 COMMISSIONER CLARK: So you got two intended
10 opening statements and two witnesses?

11 MR. REHWINKEL: Yes. I don't know what PCS
12 and Mr. Moyle --

13 MS. WYNN: Commissioner, I think we would ask
14 for the same, the 10 minutes and the five minutes
15 post just the Bartow issue is a big issue, and I
16 think -- I don't know if we would take the whole
17 time, but we would ask.

18 COMMISSIONER CLARK: How many witnesses do you
19 have?

20 MS. WYNN: None.

21 COMMISSIONER CLARK: None.

22 MR. MOYLE: And we will have two witnesses.
23 We will do friendly cross on Mr. Rehwinkel's
24 witness. I am kidding.

25 COMMISSIONER CLARK: I saw that coming.

1 MR. MOYLE: We will probably cross the other
2 witness, but I don't think we will need all the
3 time, you know, that Mr. Rehwinkel is asking for,
4 but, you know, we support his request. It's his
5 case. He has kind of taken the lead on it.

6 COMMISSIONER CLARK: Okay. All right. Mr.
7 Rehwinkel, since you cut all the witnesses down,
8 we've got it whittled down, I am going to acquiesce
9 here. You can have your 10 and five.

10 MR. REHWINKEL: Okay. Thank you.

11 COMMISSIONER CLARK: The Chairman is going to
12 scold me, you know that, right?

13 MR. REHWINKEL: I will defend you.

14 COMMISSIONER CLARK: Thank you.

15 MR. BERNIER: And, Commissioner, I don't have
16 any objection to the additional time. I would just
17 please caution -- and I know Mr. Rehwinkel and
18 everybody is familiar with how to handle
19 confidential information, but it's going to be
20 tough to talk for 10 minutes on this without saying
21 something confidential, so I would just please ask
22 that we are mindful of that. I would be happy to
23 review your statement beforehand.

24 COMMISSIONER CLARK: You get 10 if he gets to
25 approve your remarks. That's a fair deal.

1 MR. REHWINKEL: We will be very mindful of
2 that.

3 And as I said earlier, Commissioner, we intend
4 to sit down and have further conversations with the
5 company about the type of information that we want
6 to stay away from vocalizing.

7 COMMISSIONER CLARK: Okay. Very good.

8 All right. Anything else, Ms. Brownless?

9 MS. BROWNLESS: Yes, sir. I just want to make
10 sure I understand what we are granting here. Are
11 we granting Duke, OPC --

12 COMMISSIONER CLARK: We are granting all
13 parties 10 minutes for opening statement and five
14 minutes for witness summaries.

15 MS. BROWNLESS: Okay. So there would be two
16 witness summaries if I've got this straight, one
17 for Mr. Polich and one for Mr. Schwartz, five
18 minutes a piece?

19 COMMISSIONER CLARK: All the witnesses would
20 be afforded the same five-minute summary.

21 MR. BERNIER: I would just say that
22 Mr. Schwartz does direct and rebuttal testimony, so
23 I would assume that he would take the same -- I
24 would like him to follow that.

25 MS. BROWNLESS: That's five minutes for each,

1 because we are going to do direct first and then
2 rebuttal.

3 COMMISSIONER CLARK: Yes, and this is only in
4 the 01 docket.

5 MR. BERNIER: And I will do everything in my
6 power to keep it shorter than the five minutes.

7 COMMISSIONER CLARK: Okay.

8 MR. REHWINKEL: So, yeah.

9 MR. BERNIER: Thank you.

10 MS. BROWNLESS: And I know there was some
11 discussion before that Mr. Menendez and Mr. Garcia
12 would also testify at this time. Have y'all worked
13 out that we are down to Polich and Schwartz?

14 MR. BERNIER: Working, I think is the --

15 MR. REHWINKEL: Yes, that -- we are working on
16 that.

17 COMMISSIONER CLARK: Okay.

18 MS. BROWNLESS: Okay. All right. Thank you.

19 COMMISSIONER CLARK: All right. Any other
20 matters to address at this prehearing conference?
21 All hearts and minds are clear?

22 MS. BROWNLESS: Yes, sir.

23 COMMISSIONER CLARK: All right. We will
24 adjourn the meeting. Thank you very much.

25 MS. BROWNLESS: Thank you, sir.

1 (Proceedings concluded at 10:53 a.m.)

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1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA)
3 COUNTY OF LEON)
45 I, DEBRA KRICK, Court Reporter, do hereby
6 certify that the foregoing proceeding was heard at the
7 time and place herein stated.8 IT IS FURTHER CERTIFIED that I
9 stenographically reported the said proceedings; that the
10 same has been transcribed under my direct supervision;
11 and that this transcript constitutes a true
12 transcription of my notes of said proceedings.13 I FURTHER CERTIFY that I am not a relative,
14 employee, attorney or counsel of any of the parties, nor
15 am I a relative or employee of any of the parties'
16 attorney or counsel connected with the action, nor am I
17 financially interested in the action.18 DATED this 31st day of October, 2019.
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DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #GG015952
EXPIRES JULY 27, 2020

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
clause with generating performance incentive
factor.

DOCKET NO. 20190001-EI
ORDER NO. PSC-2019-0466-PHO-EI
ISSUED: October 31, 2019

PREHEARING ORDER

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on October 22, 2019, in Tallahassee, Florida, before Commissioner Gary F. Clark, as Prehearing Officer.

APPEARANCES:

MATTHEW BERNIER, ESQUIRE, 106 East College Avenue, Tallahassee, Florida 32301-7740; and DIANNE M. TRIPLETT, ESQUIRE, 299 First Avenue North, St. Petersburg, Florida 33701
On behalf of Duke Energy Florida, LLC (DEF)

MARIA J. MONCADA, WILLIAM P. COX and JOEL BAKER, ESQUIRES, Florida Power & Light Company, 700 Universe Boulevard, Juno Beach, Florida 33408-0420
On behalf of Florida Power & Light Company (FPL)

BETH KEATING, ESQUIRE, Gunster, Yoakley & Stewart, P.A., 215 South Monroe St., Suite 601, Tallahassee, Florida 32301
On behalf of Florida Public Utilities Company (FPUC)

RUSSELL A. BADDERS, Gulf Power Company, One Energy Place, Pensacola, Florida 32520 and STEVEN R. GRIFFIN, ESQUIRES, Beggs & Lane, Post Office Box 12950, Pensacola, Florida 32591-2950
On behalf of Gulf Power Company (Gulf)

JAMES D. BEASLEY and J. JEFFRY WAHLEN, MALCOM N. MEANS, ESQUIRES, Ausley McMullen, Post Office Box 391, Tallahassee, Florida 32302
On behalf of Tampa Electric Company (TECO)

J.R. KELLY, CHARLES REHWINKEL, PATRICIA A. CHRISTENSEN, STEPHANIE MORSE, and THOMAS A. DAVID, ESQUIRES, Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida (OPC)

JON C. MOYLE, JR. and KAREN PUTNAL, ESQUIRES, Moyle Law Firm, PA, The Perkins House, 118 North Gadsden Street, Tallahassee, Florida 32301

On behalf of the Florida Industrial Power Users Group (FIPUG)

JAMES W. BREW and LAURA A. WYNN, ESQUIRES, Stone Mattheis Xenopoulos & Brew, PC, 1025 Thomas Jefferson St., NW, Eighth Floor, West Tower, Washington, DC 20007

On behalf of White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (PCS Phosphate)

SUZANNE BROWNLESS, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

On behalf of the Florida Public Service Commission (Staff)

MARY ANNE HELTON, ESQUIRE, Deputy General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

Advisor to the Florida Public Service Commission

KEITH HETRICK, ESQUIRE, General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
Florida Public Service Commission General Counsel

PREHEARING ORDER

I. CASE BACKGROUND

As part of the continuing fuel and purchased power adjustment and generating performance incentive clause proceedings, an administrative hearing will be held by the Florida Public Service Commission (Commission) on November 5-7, 2019. The purpose of this docket is to review and approve purchased wholesale electric power charges, electric generation facilities' fuel and fuel related costs, and incentives associated with the efficient operation of generation facilities which are passed through to ratepayers through the fuel adjustment factor. The Commission will address those issues listed in this prehearing order. The Commission has the option to render a bench decision with agreement of the parties on any or all of the issues listed below.

II. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 366, Florida Statutes (F.S.). This hearing will be governed by said Chapter and Chapters 25-6, 25-22, and 28-106, F.A.C., as well as any other applicable provisions of law.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing that has not been filed as prefiled testimony or prefiled exhibits, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
*Christopher A. Menendez	DEF	1B, 1C, 6-11, 18-23, 27-37
Jeffrey Swartz	DEF	1B, 1C
*Arnold Garcia	DEF	1B
*James McClay	DEF	1A
*James B. Daniel	DEF	16, 17

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
*R. B. Deaton	FPL	2G, 6-11, 18-22, 24A, 24D, 27-33, 34, 35, 36, 37
*G. J. Yupp	FPL	2C-2F, 6-11, 18
*R. Coffey	FPL	6-11, 18
*C. R. Rote	FPL	16, 17
*L. Fuentes	FPL	2I, 24B
*W. F. Brannen	FPL	2H, 24B
*J. E. Enjamio	FPL	2H
*E. J. Anderson	FPL	2A, 2J, 2K, 2M, 2N, 24B
*Curtis D. Young	FPUC	8, 9
*Michelle Napier	FPUC	10, 11, 18, 19, 20-22, 34-36
*P. Mark Cutshaw	FPUC	10, 11
*C. S. Boyett	Gulf	4A, 6-11, 18-22, 27-37
*C. L. Nicholson	Gulf	16, 17
*Penelope A. Rusk	TECO	6-11, 18-22, 27-35
*Brian S. Buckley	TECO	16, 18
*J. Brent Caldwell	TECO	5A
*Jeremy B. Cain	TECO	17
*Benjamin F. Smith	TECO	18, 31
*John C. Heisey	TECO	5B, 18

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
Richard A. Polich, P.E.	OPC	1B, 1C
*Intesar Terkawi	Staff	5A
*Simon O. Ojada	Staff	1A
*Debra N. Dobiac	Staff	4A

Rebuttal

Jeffrey Swartz	DEF	1B, 1C
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* These witnesses have been stipulated to by the parties.

VII. BASIC POSITIONS

DEF: Not applicable. DEF's positions on specific issues are listed below.

FPL: FPL's 2020 Fuel and Purchased Power Cost Recovery factors and Capacity Cost Recovery factors, including its prior period true-ups, are appropriate and reasonable and should be approved.

FPL's proposed 2020 Solar Project should be approved. The costs of the 2020 Solar Project are reasonable, and the Project is cost effective. The associated revenue requirement of \$50.5 million and solar base rate adjustment ("SoBRA") factor of 0.732% were calculated in accordance with the terms approved in Order No. PSC-16-0560-AS-EI, and should therefore be approved here. The revised tariffs for FPL reflecting the requested base rate percentage increase for the 2020 SoBRA also were calculated in accordance with the terms approved in Order No. PSC-16-0560-AS-EI and should be approved. In addition, FPL's refund, including interest, of \$6.7 million and base rate decrease of 0.045% associated with the true-up of the 2017 SoBRA should be approved.

Finally, the Joint Motion to Modify Order No. PSC-2012-0425-PAA-EU Regarding Weighted Average Cost of Capital Methodology is consistent with Internal Revenue Service requirements and should therefore be approved.

FPUC: The Commission should approve Florida Public Utilities Company's final net true-up for the period January through December, 2018, the estimated true-up for the period January through December, 2019, and the purchase power cost recovery factor for the period January through December, 2020.

Gulf: It is the basic position of Gulf Power Company that the fuel and capacity cost recovery factors proposed by the Company present the best estimate of Gulf's fuel and capacity expense for the period January 2020 through December 2020 including the true-up calculations, GPIF and other adjustments allowed by the Commission.

TECO: The Commission should approve Tampa Electric's calculation of its fuel adjustment, capacity cost recovery and GPIF true-up and projection calculations, including the proposed fuel adjustment factor of 3.012 cents per kWh before any application of time of use multipliers for on-peak or off-peak usage; the company's proposed capacity factor for the period January through December 2020; a GPIF reward of \$4,141,330 for performance during 2018 and the company's proposed GPIF targets and ranges for 2020.

OPC: The utilities have the burden of proof to justify and support the recovery of costs and their proposal(s) seeking the Commission's adoption of policy statements (whether new or changed) or other affirmative relief sought, regardless of whether the Interveners provide evidence to the contrary. Regardless of whether the Commission has previously approved a program as meeting the Commission's requirements, the utilities must still meet their burden of demonstrating that the costs submitted for final recovery meet the statutory test(s) and are reasonable in amount and prudently incurred.

The OPC specifically contests the recovery of approximately \$16.1 million in replacement power costs resulting from DEF's imprudent actions and decisions in operating the Bartow Combined Cycle Unit steam Generator

FIPUG: Only reasonable and prudent costs legally authorized and reviewed for prudence should be recovered through the fuel clause. FIPUG maintains that the respective utilities must satisfy their burden of proof for any and all monies or other relief sought in this proceeding.

PCS

Phosphate: Florida electric utilities, including in particular Duke Energy Florida, Inc. ("DEF"), carry the burden of proving the reasonableness of any expenditures for which recovery or other relief is sought in this proceeding. In this case, PCS agrees with the Office of Public Counsel ("OPC") that Duke has not demonstrated the reasonableness of replacement power costs associated with the outage and prolonged de-rating of its Bartow gas combined cycle unit.

In Docket No. 20180001-EI, Duke acknowledged that the differential between on and off-peak fuel factors has been shrinking. This softens the price signals

intended to help control the growth in peak demands, which is a key FEECA¹ objective. In this docket, DEF presented an assessment of alternative approaches (i.e., maintaining its marginal cost-based calculation, performing a calculation based on average peak and off-peak fuel costs, and establishing a minimum peak/off-peak pricing differential comparable to its Residential 1st tier rate)². Duke proposes continuing the current use of marginal costs for TOU fuel factors. In brief, where the essential goal is to sustain or enhance price signals concerning peak period energy consumption, PCS agrees that an average cost-based approach is not suitable. Duke's presentation, however, does not adequately address the potential benefits of maintaining a threshold differential price signal as its generation fleet becomes heavily gas-fired and DEF continues to expect sustained retail peak load growth.³

Finally, PCS Phosphate is a signatory to the 2017 Second Revised and Restated Settlement Agreement, approved by the Commission in Docket No. 20170183, *Application for Limited Proceeding to Approve 2017 Second Revised and Restated Settlement Agreement* in Order No. PSC-2017-0451-AS-EU on November 20, 2017. That agreement contains provisions that pertain to prior period fuel cost under-recoveries that are included in DEF's filing in this docket. PCS Phosphate supports the recovery of prudently incurred Duke Energy Florida fuel costs that are consistent with that rate settlement agreement.

Staff: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions stated herein.

VIII. ISSUES AND POSITIONS

I. FUEL ISSUES

Duke Energy Florida, LLC

ISSUE 1A: Should the Commission approve as prudent DEF's actions to mitigate the volatility of natural gas, residual oil, and purchased power prices, as reported in DEF's April 2019 and August 2019 hedging reports?

Proposed stipulation – see Section X.

¹ Florida Energy Efficiency and Conservation Act, F.S. § 366.82.

² Direct testimony of Christopher A. Menendez at 8-11 (Mar. 1, 2019).

³ See Duke Energy Florida, LLC 2019 Ten Year Site Plan, schs. 3.1 and 3.2.

ISSUE 1B: Was DEF prudent in its actions and decisions leading up to and in restoring the unit to service after the February 2017 forced outage at the Bartow plant and, if not, what action should the Commission take with respect to replacement power costs?

POSITIONS:

DEF: Yes. DEF's actions leading up to, and in restoring the unit to service after, the Bartow outage were prudent. DEF operated the Bartow unit within the known operating parameters set by the Original Equipment Manufacturer, as further explained in the confidential testimony and exhibits of Mr. Jeff Swartz. DEF included the replacement power costs from the Bartow outage in the 2017 final true-up balance, filed on March 2, 2018 and consistent with the stipulation in Order No. PSC-2018-0610-FOF-EI, the 2019 fuel factors; no further Commission action is needed with respect to replacement power costs. (Swartz, Menendez, Garcia)

FPL: No position.

FPUC: No position.

Gulf: No position.

TECO: No position.

OPC: No. DEF was not prudent in its actions and decisions leading up to and restoring the unit to service after the February 2017 forced outage at the Bartow plant, and the Commission should reduce the requested fuel cost recovery by \$11.1 million. This figure represents the replacement power costs incurred during the 2017 forced outage resulting from DEF's imprudent actions or decisions that resulted in the need for replacement power costs. The imprudent actions led to the need to install a pressure plate to allow the steam turbine to return to service without the damaged blades and resulted in a de-rating of the Bartow plant to approximately 380 MW resulting in an additional \$5.01 million in replacement power costs as demonstrated by OPC witness Richard A. Polich. If DEF had been prudent in those actions or decisions, such replacement power costs would not have been necessary. Therefore, those costs should not be recovered from the ratepayers through the fuel cost recover clause.

FIPUG: No.

PCS

Phosphate: Agree with OPC.

Staff: Staff has no position at this time.

ISSUE 1C: Has DEF made prudent adjustments, if any are needed, to account for replacement power costs associated with any impacts related to the de-rating of the Bartow plant? If adjustments are needed and have not been made, what adjustment(s) should be made?

POSITIONS:

DEF: No adjustments are needed. DEF's actions leading up to, and in restoring the unit to service after, the Bartow outage were prudent, therefore DEF should be permitted to recover its prudently incurred fuel and purchased power costs. Specifically, DEF does not agree that the Bartow Plant was "de-rated" as a result of the installation of the pressure plate. To the contrary, the pressure plate has ensured reliable operation of the plant until the long-term solution can be implemented. (Swartz, Menendez)

FPL: No position.

FPUC: No position.

Gulf: No position.

TECO: No position.

OPC: No. DEF was not prudent in its actions and decisions leading up to and restoring the unit to service after the February 2017 forced outage at the Bartow plant, and the Commission should reduce the requested fuel cost recovery by \$11.1 million. This figure represents the replacement power costs incurred during the 2017 forced outage resulting from DEF's imprudent actions or decisions that resulted in the need for replacement power costs. The imprudent actions led to the need to install a pressure plate to allow the steam turbine to return to service without the damaged blades and resulted in a de-rating of the Bartow plant to approximately 380 MW resulting in an additional \$5.01 million in replacement power costs as demonstrated by OPC witness Richard A. Polich. If DEF had been prudent in those actions or decisions, such replacement power costs would not have been necessary. Therefore, those costs should not be recovered from the ratepayers through the fuel cost recover clause.

FIPUG: No.

PCS

Phosphate: Agree with OPC.

Staff: Staff has no position at this time.

Florida Power & Light Company

ISSUE 2A: What is the appropriate revised SoBRA factor for the 2017 projects to reflect actual construction costs that are less than the projected costs used to develop the initial SoBRA factor?

Proposed stipulation – see Section X.

ISSUE 2B: What is the appropriate revised SoBRA factor for the 2018 projects to reflect actual construction costs that are less than the projected costs used to develop the initial SoBRA factor? (DEFERRED)

Proposed stipulation – see Section X.

ISSUE 2C: What is the appropriate total gain under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL may recover for the period January 2018 through December 2018, and how should that gain to be shared between FPL and customers?

Proposed stipulation – see Section X.

ISSUE 2D: What is the appropriate amount of Incremental Optimization Costs under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL should be allowed to recover through the fuel clause for Personnel, Software, and Hardware costs for the period January 2018 through December 2018?

Proposed stipulation – see Section X.

ISSUE 2E: What is the appropriate amount of Variable Power Plant O&M Attributable to Off-System Sales under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL should be allowed to recover through the fuel clause for the period January 2018 through December 2018?

Proposed stipulation – see Section X.

ISSUE 2F: What is the appropriate amount of Variable Power Plant O&M Avoided due to Economy Purchases under FPL's Incentive Mechanism approved by

Order No. PSC-2016-0560-AS-EI that FPL should be allowed to recover through the fuel clause for the period January 2018 through December 2018?

Proposed stipulation – see Section X.

ISSUE 2G: If the Commission approves the FPL Solar Together Program and Tariff, what is the appropriate total FPL SolarTogether Credit amount to be recovered through the fuel cost recovery clause for the period January 2020 through December 2020?

Proposed stipulation – see Section X.

ISSUE 2H: Are the 2020 SoBRA projects (Hibiscus, Okeechobee, Southfork, and Echo River) proposed by FPL cost effective?

POSITIONS:

DEF: No position.

FPL: Yes. The 2020 projects are projected to result in \$26 million (CPVRR) of customer savings. (Enjamio, Brannen)

FPUC: No position.

Gulf: No position.

TECO: No position.

OPC: No position.

FIPUG: No.

PCS

Phosphate: No position.

Staff: Staff has no position at this time.

ISSUE 2I: What are the revenue requirements associated with the 2020 SoBRA projects?

Proposed stipulation – see Section X.

ISSUE 2J: What is the appropriate base rate percentage increase to be effective when all of the 2020 SoBRA projects are in service, currently projected to be May 1, 2020?

Proposed stipulation – see Section X.

ISSUE 2K: Should the Commission approve revised tariffs for FPL, reflecting the base rate percentage increase for the 2020 SoBRA projects, determined to be reasonable in this proceeding?

Proposed stipulation – see Section X.

ISSUE 2L: Has FPL made prudent adjustments, if any are needed, to account for replacement costs associated with the April 2019 forced outage at Saint Lucie Unit 1 generating station? If adjustments are needed and have not been made, what adjustment(s) should be made?

Proposed stipulation – see Section X.

ISSUE 2M: What is the appropriate base rate percentage decrease associated with the true-up of the 2017 SoBRA projects approved by Order No. PSC-2018-0028-FOF-EI to be effective January 1, 2020?

Proposed stipulation – see Section X.

ISSUE 2N: Should the Commission approve revised tariffs for FPL to be effective January 1, 2020, reflecting the base rate percentage decrease for the true-up of the 2017 SoBRA projects determined to be reasonable in this proceeding?

Proposed stipulation – see Section X.

Florida Public Utilities Company

No company-specific fuel issues for Florida Public Utilities Company have been identified at this time. If such issues are identified, they shall be numbered 3A, 3B, 3C, and so forth, as appropriate.

Gulf Power Company

ISSUE 4A: Should the Commission approve as prudent Gulf's actions to mitigate the volatility of natural gas, residual oil, and purchased power prices, as reported in Gulf's April 2019 and August 2019 hedging reports?

Proposed stipulation – see Section X.

Tampa Electric Company

ISSUE 5A: Should the Commission approve as prudent TECO's actions to mitigate the volatility of natural gas, residual oil, and purchased power prices, as reported in TECO's April 2019 hedging report?

Proposed stipulation – see Section X.

ISSUE 5B What was the total gain under TECO's Optimization Mechanism approved by Order No. PSC-2017-0456-S-EI that TECO may recover for the period January 2018 through December 2018, and how should that gain be shared between TECO and customers?

Proposed stipulation – see Section X.

GENERIC FUEL ADJUSTMENT ISSUES

ISSUE 6: What are the appropriate actual benchmark levels for calendar year 2019 for gains on non-separated wholesale energy sales eligible for a shareholder incentive?

Proposed stipulation – see Section X.

ISSUE 7: What are the appropriate estimated benchmark levels for calendar year 2020 for gains on non-separated wholesale energy sales eligible for a shareholder incentive?

Proposed stipulation – see Section X.

ISSUE 8: What are the appropriate final fuel adjustment true-up amounts for the period January 2018 through December 2018?

Proposed stipulation – see Section X.

ISSUE 9: What are the appropriate fuel adjustment actual/estimated true-up amounts for the period January 2019 through December 2019?

Proposed stipulation – see Section X.

ISSUE 10: What are the appropriate total fuel adjustment true-up amounts to be collected/refunded from January 2020 through December 2020?

Proposed stipulation – see Section X.

ISSUE 11: What are the appropriate projected total fuel and purchased power cost recovery amounts for the period January 2020 through December 2020?

Proposed stipulation – see Section X.

COMPANY-SPECIFIC GENERATING PERFORMANCE INCENTIVE FACTOR (GPIF) ISSUES

Duke Energy Florida, LLC.

No company-specific GPIF issues for Duke Energy Florida, LLC have been identified at this time. If such issues are identified, they shall be numbered 12A, 12B, 12C, and so forth, as appropriate.

Florida Power & Light Company

No company-specific GPIF issues for Florida Power & Light Company have been identified at this time. If such issues are identified, they shall be numbered 13A, 13B, 13C, and so forth, as appropriate.

Gulf Power Company

No company-specific GPIF issues for Gulf Power Company have been identified at this time. If such issues are identified, they shall be numbered 14A, 14B, 14C, and so forth, as appropriate.

Tampa Electric Company

No company-specific GPIF issues for Tampa Electric Company have been identified at this time. If such issues are identified, they shall be numbered 15A, 15B, 15C, and so forth, as appropriate.

GENERIC GPIF ISSUES

ISSUE 16: What is the appropriate generation performance incentive factor (GPIF) reward or penalty for performance achieved during the period January 2018 through December 2018 for each investor-owned electric utility subject to the GPIF?

Proposed stipulation – see Section X.

ISSUE 17: What should the GPIF targets/ranges be for the period January 2020 through December 2020 for each investor-owned electric utility subject to the GPIF?

Proposed stipulation – see Section X.

FUEL FACTOR CALCULATION ISSUES

ISSUE 18: What are the appropriate projected net fuel and purchased power cost recovery and Generating Performance Incentive amounts to be included in the recovery factor for the period January 2020 through December 2020?

Proposed stipulation – see Section X.

ISSUE 19: What is the appropriate revenue tax factor to be applied in calculating each investor-owned electric utility's levelized fuel factor for the projection period January 2020 through December 2020?

Proposed stipulation – see Section X.

ISSUE 20: What are the appropriate levelized fuel cost recovery factors for the period January 2020 through December 2020?

Proposed stipulation – see Section X.

ISSUE 21: What are the appropriate fuel recovery line loss multipliers to be used in calculating the fuel cost recovery factors charged to each rate class/delivery voltage level class?

Proposed stipulation – see Section X.

ISSUE 22: What are the appropriate fuel cost recovery factors for each rate class/delivery voltage level class adjusted for line losses?

Proposed stipulation – see Section X.

II. CAPACITY ISSUES

COMPANY-SPECIFIC CAPACITY COST RECOVERY FACTOR ISSUES

Duke Energy Florida, LLC

ISSUE 23A: What amount has DEF included in the capacity cost recovery clause for nuclear cost recovery?

Proposed stipulation – see Section X.

ISSUE 23B: What is the appropriate true-up adjustment amount associated with the Hamilton SoBRA project approved by Order No. PSC-2019-0159-FOF-EI to be refunded through the capacity clause in 2020?

Proposed stipulation – see Section X.

Florida Power & Light Company

ISSUE 24A: What amount has FPL included in the capacity cost recovery clause for nuclear cost recovery?

Proposed stipulation – see Section X.

ISSUE 24B: What is the appropriate true-up adjustment amount associated with the 2017 SOBRA projects approved by Order No. PSC-2018-0028-FOF-EI to be refunded through the capacity clause in 2020?

Proposed stipulation – see Section X.

ISSUE 24C: What is the appropriate true-up amount associated with the 2018 SOBRA projects approved by Order No. PSC-2018-0028-FOF-EI to be refunded through the capacity clause in 2020? (Deferred)

Proposed stipulation – see Section X.

ISSUE 24D: What are the appropriate Indiantown non-fuel based revenue requirements to be recovered through the Capacity Clause pursuant to the Commission's approval of the Indiantown transaction in Docket No. 160154-EI for 2020?

Proposed stipulation – see Section X.

Gulf Power Company

No company-specific capacity cost recovery factor issues for Gulf Power Company have been identified at this time. If such issues are identified, they shall be numbered 25A, 25B, 25C, and so forth, as appropriate.

Tampa Electric Company

No company-specific capacity cost recovery factor issues for Tampa Electric Company have been identified at this time. If such issues are identified, they shall be numbered 26A, 26B, 26C, and so forth, as appropriate.

GENERIC CAPACITY COST RECOVERY FACTOR ISSUES

ISSUE 27: What are the appropriate final capacity cost recovery true-up amounts for the period January 2018 through December 2018?

Proposed stipulation – see Section X.

ISSUE 28: What are the appropriate capacity cost recovery actual/estimated true-up amounts for the period January 2019 through December 2019?

Proposed stipulation – see Section X.

ISSUE 29: What are the appropriate total capacity cost recovery true-up amounts to be collected/refunded during the period January 2020 through December 2020?

Proposed stipulation – see Section X.

ISSUE 30: What are the appropriate projected total capacity cost recovery amounts for the period January 2020 through December 2020?

Proposed stipulation – see Section X.

ISSUE 31: What are the appropriate projected net purchased power capacity cost recovery amounts to be included in the recovery factor for the period January 2020 through December 2020?

Proposed stipulation – see Section X.

ISSUE 32: What are the appropriate jurisdictional separation factors for capacity revenues and costs to be included in the recovery factor for the period January 2020 through December 2020?

Proposed stipulation – see Section X.

ISSUE 33: What are the appropriate capacity cost recovery factors for the period January 2020 through December 2020?

Proposed stipulation – see Section X.

III. EFFECTIVE DATE

ISSUE 34: What should be the effective date of the fuel adjustment factors and capacity cost recovery factors for billing purposes?

Proposed stipulation – see Section X.

ISSUE 35: Should the Commission approve revised tariffs reflecting the fuel adjustment factors and capacity cost recovery factors determined to be reasonable in this proceeding?

Proposed stipulation – see Section X.

IV. MISCELLANEOUS ISSUES

ISSUE 36: Should the Joint Motion to Modify Order No. PSC-2012-0425-PAA-EU Regarding Weighted Average Cost of Capital Methodology be approved?

Proposed stipulation – see Section X.

ISSUE 37: Should this docket be closed?

POSITIONS:

DEF: Yes. (Menendez)

FPL: No. While a separate docket number is assigned to each year for administrative convenience, this is a continuing docket and should remain open. (Deaton)

FPUC: Yes.

Gulf: No, this is a continuing docket and should remain open. (Boyett)

TECO: Yes.

OPC: No position at this time.

FIPUG: No position at this time.

PCS

Phosphate: No position.

Staff: Staff has no position at this time.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
<u>Direct</u>			
Christopher A. Menendez	DEF	CAM-1T	Fuel Cost Recovery True-Up (Jan – Dec. 2018).
Christopher A. Menendez	DEF	CAM-2T	Capacity Cost Recovery True-Up (Jan – Dec. 2018).
			CONFIDENTIAL DN. 01320-2019
Christopher A. Menendez	DEF	CAM-3T	Schedule A12 for Jan-Dec 2018.
Christopher A. Menendez	DEF	CAM-4T	2018 Capital Structure and Cost Rates Applied to Capital Projects.
Christopher A. Menendez	DEF	CAM-2	Actual/Estimated True-up Schedules for period January – December 2019.
Christopher A. Menendez	DEF	CAM-3	Projection Factors for January - December 2020.
Jeffrey Swartz	DEF	(JS-1) ⁴	Bartow Plant Root Cause Analysis.
			CONFIDENTIAL DN. 02031-2018

⁴ Filed in Docket No. 20180001-EI, incorporated by reference in Mr. Jeffrey Swartz's Direct Testimony filed in this docket on March 2, 2019.

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Arnold Garcia	DEF	AG-1	Bartow CC Insurance Policy in effect on February 9, 2017. CONFIDENTIAL DN. 01320-2019
James McClay	DEF	JM-1T	Hedging True-Up August - December 2018. CONFIDENTIAL DN. 03493-2019
James McClay	DEF	JM-1P	Hedging Report (January – July 2019). CONFIDENTIAL DN. 07514-2019
James B. Daniel	DEF	JBD-1T	Calculation of GPIF Reward for January - December 2018.
James B. Daniel	DEF	JBD-1P	GPIF Targets/Ranges Schedules for January – December 2020).
R. B. Deaton	FPL	RBD-1	2018 FCR Final True Up Calculation.
R. B. Deaton	FPL	RBD-2	2018 CCR Final True Up Calculation. CONFIDENTIAL DN. 01324-2019
R. B. Deaton	FPL	RBD-3	2019 FCR Actual/Estimated True Up Calculation.

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
R. B. Deaton	FPL	RBD-4	2019 CCR Actual/Estimated True Up Calculation.
R. B. Deaton	FPL	RBD-5 (Revised)	2018 FCR Final True Up Calculation.
R. B. Deaton	FPL	RBD-6 (Revised)	2018 CCR Final True Up Calculation.
R. B. Deaton	FPL	RBD-7	Appendix II 2020 FCR Projection (Jan-Apr).
R. B. Deaton	FPL	RBD-8	Appendix III 2020 FCR Projection (May-Dec).
R. B. Deaton	FPL	RBD-9	Appendix IV 2020 FCR Projection (Jan-Dec).
R. B. Deaton	FPL	RBD-10	Appendix V 2020 CCR Projection (Jan-Dec).
			CONFIDENTIAL DN. 08579-2019
G. J. Yupp	FPL	GJY-1	2018 Incentive Mechanism Results.
			CONFIDENTIAL DN. 01324-2019
G. J. Yupp	FPL	GJY-2	Appendix I Fuel Cost Recovery.
C. R. Rote	FPL	CRR-1	Generating Performance Incentive Factor Performance Results for January 2018 through December 2018.

FPL

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
C. R. Rote	FPL	CRR-2	Generating Performance Incentive Factor Performance Targets for January 2020 through December 2020.
L. Fuentes	FPL	LF-1	2020 SoBRA Revenue Requirement Calculation.
L. Fuentes	FPL	LF-2	2017 SoBRA Final Revenue Requirement Calculation.
W. F. Brannen	FPL	WFB-1	List of FPL Universal PV Solar Energy Centers in Service.
W. F. Brannen	FPL	WFB-2	Typical Solar Energy Center Block Diagram.
W. F. Brannen	FPL	WFB-3	Renderings of 2020 Solar Energy Centers.
W. F. Brannen	FPL	WFB-4	Specifications for 2020 Solar Energy Centers.
W. F. Brannen	FPL	WFB-5	Property Delineations, Features and Land Use of 2020 Solar Energy Centers.
W. F. Brannen	FPL	WFB-6	Construction Schedule for 2020 Solar Energy Centers
J. E. Enjamio	FPL	JE-1	Load Forecast.
J. E. Enjamio	FPL	JE-2	FPL Fuel Price Forecast.

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
J. E. Enjamio	FPL	JE-3	FPL Resource Plans.
J. E. Enjamio	FPL	JE-4	CPVRR – Costs and (Benefits).
E. J. Anderson	FPL	EJA-1	2020 SoBRA Factor Calculation.
E. J. Anderson	FPL	EJA-2	Projected Retail Base Revenues for May 1, 2020.
E. J. Anderson	FPL	EJA-3	Summary of Tariff Changes for May 1, 2020.
E. J. Anderson	FPL	EJA-4	Revised 2017 SoBRA Factor.
E. J. Anderson	FPL	EJA-5	2017 Project Refund Calculation.
E. J. Anderson	FPL	EJA-6	2017 SoBRA Prospective Adjustment for January 1, 2020.
E. J. Anderson	FPL	EJA-7	Projected Retail Base Revenues for January 1, 2020.
E. J. Anderson	FPL	EJA-8	Summary of Tariff Changes for January 1, 2020.
E. J. Anderson	FPL	EJA-9	Typical Bill Projections.
Curtis D. Young	FPUC	CDY-1 (Composite)	Final True Up Schedules (Schedules A, C1 and E1-B for FPUC’s Divisions).

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Curtis D. Young	FPUC	CDY-2 (Composite)	Estimated/Actual (Schedules El-A, El-B, and El-B1).
Michelle Napier	FPUC	MDN-1 (Composite) (Revised)	Schedules E1, E1A, E2, E7, E8, E10 and Schedule A.
C.S. Boyett	Gulf	CSB-1	Calculation of Final True-Up January 2018 – December 2018.
C.S. Boyett	Gulf	CSB-2	A-Schedules December 2018.
C.S. Boyett	Gulf	CSB-3	Estimated True-Up January 2019 – December 2019.
C.S. Boyett	Gulf	CSB-4	Estimated PPCC Scherer/Flint Credit Calculation January 2019 – December 2019.
C.S. Boyett	Gulf	CSB-5	Projection January 2020 – December 2020.
C.S. Boyett	Gulf	CSB-6	Hedging Information Report August 2018 – December 2018.
C.S. Boyett	Gulf	CSB-7	Hedging Information Report January 2019– July 2019.

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
C. L. Nicholson	Gulf	CLN-1	Gulf Power Company GPIF Results January 2018 – December 2018.
C. L. Nicholson	Gulf	CLN-2	Gulf Power Company GPIF Targets and Ranges January 2020 – December 2020.
Penelope A. Rusk	TECO	PAR-1	Final True-up Capacity Cost Recovery January 2018 - December 2018. Final True-up Fuel Cost Recovery January 2018-December 2018. Actual Fuel True-up Compared to Original Estimates January 2018 – December 2018. Schedules A-1, A-2 and A-6 through A-9 and A-12 January 2018 – December 2018. Capital Projects Approved for Fuel Clause Recovery January 2018 – December 2018.
Penelope A. Rusk	TECO	PAR-2	Actual/Estimated True-Up Fuel Cost Recovery January 2019 – December 2019. Actual/Estimated True-Up Fuel Capacity Cost Recovery January 2019-December 2019. Capital Projects Approved for Fuel Clause Recovery January 2019 – December 2019.

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Penelope A. Rusk	TECO	PAR-3	Projected Capacity Cost Recovery January 2020 – December 2020. Projected Fuel Cost Recovery January 2010 – December 2010. Levelized and Tiered Fuel Rate January 2020– December 2020. Capital Projects Approved for Fuel Clause Recovery January 2020 – December 2020.
Brian S. Buckley	TECO	BSB-1	Final True-Up Generating Performance Incentive Factor January 2018 – December 2018. Actual Unit Performance Data January 2018 – December 2018.
J. Brent Caldwell	TECO	JBC-1	Final True-Up Hedging Activity Report January 2018 – December 2018.
Jeremy B. Cain	TECO	JC-1	Generating Performance Incentive Factor January 2020 – December 2020. Summary of Generating Performance Incentive Factor Targets January 2020 – December 2020.
John C. Heisey	TECO	JCH-1	Optimization Mechanism Results January 2018 – December 2018
Richard A. Polich, P.E.	OPC	RAP-1	Resume.
Richard A. Polich, P.E.	OPC	RAP-2	Regulatory testimony list.

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Richard A. Polich, P.E.	OPC	RAP-3	Bartow Combined Cycle Thermal Cycle. CONFIDENTIAL DN. 09202-2019, x-ref. 08773-2019
Richard A. Polich, P.E.	OPC	RAP-4	Turbine generator output curve.
Richard A. Polich, P.E.	OPC	RAP-5	BCC ST Operation greater than 420 MW.
Richard A. Polich, P.E.	OPC	RAP-6	Bartow ST#1 LO blade upgrade to achieve 450 MW, dated Sept. 18, 2013. CONFIDENTIAL DN. 09202-2019, x-ref. 08773-2019
Richard A. Polich, P.E.	OPC	RAP-7	Bartow RCA review, dated March 15, 2017. CONFIDENTIAL DN. 09202-2019, x-ref. 08773-2019
Richard A. Polich, P.E.	OPC	RAP-8	Update on 40" last stage blade, dated 2015. CONFIDENTIAL DN. 09202-2019, x-ref. 08773-2019
Richard A. Polich, P.E.	OPC	RAP-9	Bartow combined cycle replacement power costs.
Intesar Terkawi	Staff	IT-1	Auditor's Report Gulf Hedging Activities.

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Simon O. Ojada	Staff	SOO-1	Auditor's Report-TECO Hedging Activities.
Debra N. Dobiac	Staff	DMD-1	Auditor's Report DEF Hedging Activities.

Rebuttal

Jeffrey Swartz	DEF	JS-2	Bartow Plant Root Cause Analysis. CONFIDENTIAL DN. 09061-2019
Jeffrey Swartz	DEF	JS-3	Bartow ST 40" Blade Test. CONFIDENTIAL DN. 09061-2019
Jeffrey Swartz	DEF	JS-4	Bartow RCA Summary. CONFIDENTIAL DN. 09061-2019

Parties and Commission staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

There are proposed Type 2 stipulations as stated below:

I. FUEL ISSUES

ISSUE 1A: Should the Commission approve as prudent DEF's actions to mitigate the volatility of natural gas, residual oil, and purchased power prices, as reported in DEF's April 2019 and August 2019 hedging reports?

STIPULATION:

Yes, the Commission should approve as prudent DEF's actions to mitigate the volatility of natural gas, residual oil, and purchased power prices that are reported in the August 2019 filing in Docket No. 20190001-EI. For the period reported in

the April report, DEF's hedging activities resulted in a net savings of \$588,460. For the period reported in the August report, DEF's hedging activities resulted in a net savings of \$100,700, and the activities in these reports were pursuant to, and were consistent with, previously approved risk management plans. Pursuant to the 2017 RRSSA, DEF agreed not to enter into any additional hedges during the term of the Agreement.

ISSUE 2A: What is the appropriate revised SoBRA factor for the 2017 projects to reflect actual construction costs that are less than the projected costs used to develop the initial SoBRA factor?

STIPULATION:

The appropriate revised SoBRA factor for the 2017 projects is 0.888%, as reflected in Line E of Exhibit EJA-4, Page 1 of 1.

ISSUE 2B: What is the appropriate revised SoBRA factor for the 2018 projects to reflect actual construction costs that are less than the projected costs used to develop the initial SoBRA factor?

STIPULATION:

By agreement of the parties this matter will be addressed during the 2020 Fuel Clause cycle.

ISSUE 2C: What was the total gain under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL may recover for the period January 2018 through December 2018, and how should that gain to be shared between FPL and customers?

STIPULATION:

The total gain under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL may recover for the period January 2018 through December 2018 was \$62,404,332, as reflected in Column 5 of Table 1, Total Gains Schedule, (Exhibit GJY-1, Page 1 of 4). This amount exceeded the sharing threshold of \$40 million, and therefore the incremental gain above that amount should be shared between FPL and customers (60% and 40%, respectively), with FPL retaining \$13,442,599, as reflected in Column 9 of Table 2, Total Gains Schedule (Exhibit GJY-1, Page 1 of 4).

ISSUE 2D: What is the appropriate amount of Incremental Optimization Costs under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL should be allowed to recover through the fuel clause for Personnel,

Software, and Hardware costs for the period January 2018 through December 2018?

STIPULATION:

The appropriate amount of Incremental Optimization Costs under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL should be allowed to recover through the fuel clause for Personnel, Software, and Hardware costs for the period January 2018 through December 2018 is \$516,451, as reflected in Columns 2 and 3 of the Incremental Optimization Costs Schedule (Exhibit GJY-1, Page 4 of 4).

ISSUE 2E: **What is the appropriate amount of Variable Power Plant O&M Attributable to Off-System Sales under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL should be allowed to recover through the fuel clause for the period January 2018 through December 2018?**

STIPULATION:

The appropriate amount of Variable Power Plant O&M Attributable to Off-System Sales under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL should be allowed to recover through the fuel clause for the period January 2018 through December 2018 is \$1,611,119, as reflected in Column 6 of the Incremental Optimization Costs Schedule (Exhibit GJY-1, Page 4 of 4).

ISSUE 2F: **What is the appropriate amount of Variable Power Plant O&M Avoided due to Economy Purchases under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL should be allowed to recover through the fuel clause for the period January 2018 through December 2018?**

STIPULATION:

The appropriate amount of Variable Power Plant O&M Avoided due to Economy Purchases under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL should be allowed to recover through the fuel clause for the period January 2018 through December 2018 is (\$151,215), as reflected in Column 7 of the Incremental Optimization Costs Schedule (Exhibit GJY-1, Page 4 of 4).

ISSUE 2G: **If the Commission approves the FPL SolarTogether Program and Tariff, what is the appropriate total FPL SolarTogether Credit amount to be recovered through the fuel cost recovery clause for the period January 2020 through December 2020?**

STIPULATION:

\$0. Removal of the FPL SolarTogether Program costs from the cost recovery factors for 2020 is appropriate until a decision is made in FPL's SolarTogether Program docket (Docket No. 20190061-EI), for which the hearing is currently scheduled to begin on January 14, 2020. If the Program is approved, the actual FPL SolarTogether Credit amount for the 2020 calendar year will be reflected in FPL's True-Up filing to be submitted in 2021.

ISSUE 2H: Are the 2020 SoBRA projects (Hibiscus, Okeechobee, Southfork, and Echo River) proposed by FPL cost effective?

STIPULATION:

Yes.

ISSUE 2I: What are the revenue requirements associated with the 2020 SoBRA projects?

STIPULATION:

The appropriate revenue requirements associated with the 2020 SoBRA projects is \$50,491,000, as reflected on Line 7 of the 2020 SoBRA Revenue Requirement Calculation Schedule (Exhibit LF-1, Page 1 of 5).

ISSUE 2J: What is the appropriate base rate percentage increase to be effective when all of the 2020 SoBRA projects are in service, currently projected to be May 1, 2020?

STIPULATION:

The appropriate base rate percentage increase to be effective when all of the 2020 SoBRA projects are in service, currently projected to be May 1, 2020, is 0.732%, as reflected on Line C of the 2020 SoBRA Factor Calculation Schedule (Exhibit EJA-1, Page 1 of 1).

ISSUE 2K: Should the Commission approve revised tariffs for FPL reflecting the base rate percentage increase for the 2020 SoBRA projects determined to be appropriate in this proceeding?

STIPULATION:

Yes.

ISSUE 2L: Has the Commission made prudent adjustments, if any are needed, to account for replacement power costs associated with the April 2019 forced outage at Saint Lucie Unit 1 generating station? If adjustments are needed and have not been made, what adjustment(s) should be made?

STIPULATION:

The parties have agreed to defer this issue to the 2020 Fuel Cost Recovery Clause docket. It is understood that any amounts associated with the April 2019 St. Lucie outage included in this docket are subject to true-up in the subsequent proceeding in which this issue is heard and that no presumption of prudence attaches.

ISSUE 2M: What is the appropriate base rate percentage decrease associated with the true-up of the 2017 SoBRA?

STIPULATION:

The appropriate base rate percentage decrease associated with the true-up of the 2017 SoBRA is 0.045%, as reflected on Line C of the 2017 SoBRA Prospective Adjustment Schedule (Exhibit EJA-6, Page 1 of 1).

ISSUE 2N: Should the Commission approve revised tariffs for FPL reflecting the base rate percentage decrease for the true-up of the 2017 SoBRA projects determined to be reasonable in this proceeding?

STIPULATION:

Yes.

Gulf Power Company

ISSUE 4A: Should the Commission approve as prudent Gulf's actions to mitigate the volatility of natural gas, residual oil, and purchased power prices, as reported in Gulf's April 2019 and August 2019 hedging reports?

STIPULATION:

Yes, the Commission should approve as prudent Gulf's actions to mitigate the volatility of natural gas, residual oil, and purchased power prices that are reported in April 2019 and August 2019 filings in Docket No. 20190001-EI. For the period reported in the April report, Gulf's hedging activities resulted in a net cost of \$3,049,820. For the period reported in the August report, Gulf's hedging activities resulted in a net cost of \$3,629,330. and the activities in these reports were pursuant to, and were consistent with, previously approved risk management

plans. Pursuant to the 2017 Stipulation and Settlement Agreement, Gulf agreed not to enter into any additional hedges during the term of the Agreement.

Tampa Electric Company

ISSUE 5A: Should the Commission approve as prudent TECO's actions to mitigate the volatility of natural gas, residual oil, and purchased power prices, as reported in TECO's April 2019 and August 2019 hedging reports?

STIPULATION:

Yes, the Commission should approve as prudent TECO's actions to mitigate the volatility of natural gas, residual oil, and purchased power prices that are reported in the April 2019 filing in Docket No. 20190001-EI. For the period August 1, 2018 through November 30, 2018, TECO's hedging activities resulted in a net gain of \$106,110, and these activities were pursuant to, and were consistent with, previously approved risk management plans. Pursuant to the 2017 Amended and Restated Stipulation and Settlement Agreement, TECO agreed not to enter into any additional hedges through December 31, 2022. TECO did not file an August 2019 hedging report.

ISSUE 5B: What was the total gain under TECO's Optimization Mechanism approved by Order No. PSC-2017-0456-S-EI that TECO may recover for the period January 2018 through December 2018, and how should that gain to be shared between TECO and customers?

STIPULATION:

The total gain under TECO's Optimization Mechanism approved by Order No. PSC-2017-0456-S-EI for the period January 2018 through December 2018 was \$6,367,256, as reflected in Column 5 of Table 1, Total Gains Threshold Schedule (Exhibit JCH-1, Page 1 of 3). This amount should be shared between TECO and customers (60% and 40%, respectively), with TECO customers receiving \$5,246,902, and TECO retaining \$1,120,353, as reflected in Columns 7 and 8 of Table 2, Total Gains Threshold Schedule (Exhibit JCH-1, Page 1 of 3).

ISSUE 6: What are the appropriate actual benchmark levels for calendar year 2019 for gains on non-separated wholesale energy sales eligible for a shareholder incentive?

STIPULATION:

The appropriate actual benchmark levels for calendar year 2019 for gains on non-separated wholesale energy sales eligible for a shareholder incentive are as follows:

DEF: \$1,333,709.

FPL: Pursuant to the Stipulation and Settlement that was approved in Order No. PSC-2016-0560-AS-EI, FPL revised its Incentive Mechanism program, which does not rely upon the three-year average Shareholder Incentive Benchmark specified in Order No. PSC-00-1744-PAA-EI. Setting the appropriate actual benchmark levels for calendar year 2019 for gains on non-separated wholesale energy sales eligible for a shareholder incentive is not applicable to FPL as part of its revised Incentive Mechanism.

Gulf: \$1,092,804.

TECO: The Company did not set a benchmark level for calendar year 2019. Pursuant to the Stipulation and Settlement that was approved in Order No. PSC-2017-0456-S-EI, the Company's Optimization Mechanism replaces the incentive program that used benchmark levels for gains on non-separated wholesale energy sales eligible for a shareholder incentive.

ISSUE 7: **What are the appropriate estimated benchmark levels for calendar year 2020 for gains on non-separated wholesale energy sales eligible for a shareholder incentive?**

STIPULATION:

The appropriate estimated benchmark levels for calendar year 2020 for gains on non-separated wholesale energy sales eligible for a shareholder incentive are as follows:

DEF: \$1,604,573.

FPL: Pursuant to the Stipulation and Settlement that was approved in Order No. PSC-2016-0560-AS-EI, FPL revised its Incentive Mechanism program, which does not rely upon the three-year average Shareholder Incentive Benchmark specified in Order No. PSC-00-1744-PAA-EI. Setting the appropriate estimated benchmark levels for calendar year 2020 for gains on non-separated wholesale energy sales eligible for a shareholder incentive is not applicable to FPL as part of its revised Incentive Mechanism.

Gulf: \$900,572.

TECO: The Company did not set an estimated benchmark level for calendar year 2020. Pursuant to the Stipulation and Settlement that was approved in Order No. PSC-2017-0456-S-EI, the Company's Optimization Mechanism replaces the incentive

program that used benchmark levels for gains on non-separated wholesale energy sales eligible for a shareholder incentive.

ISSUE 8: **What are the appropriate final fuel adjustment true-up amounts for the period January 2018 through December 2018?**

STIPULATION:

The appropriate final fuel adjustment true-up amounts for the period January 2018 through December 2018 are as follows:

DEF: \$54,428,676, under-recovery, as reflected on Line 13 of the Summary of Actual True-Up Amount Schedule (Exhibit CAM-1T, Sheet 1 of 6).

FPL: \$70,653,405, under-recovery, as reflected on Line 41 of Schedule E1b, (2019 FCR Actual/Estimated True-up, Exhibit RBD-3, Page 1 of 27).

FPUC: \$2,475,441, over-recovery, as reflected on Line 10 of Schedule A (Exhibit CDY-1, Page 1 of 3).

Gulf: \$4,512,071, over-recovery, as reflected on Line 3, Schedule 1, 2018 Final True-Up Schedules (Exhibit CSB-1, Page 1 of 8).

TECO: \$43,986,397, under-recovery, as reflected on Line 11, Final Fuel and Purchased Power Over/(Under) Recovery Schedule (Exhibit PAR-1, Document No.2, Page 1 of 1).

ISSUE 9: **What are the appropriate fuel adjustment actual/estimated true-up amounts for the period January 2019 through December 2019?**

STIPULATION:

The appropriate fuel adjustment actual/estimated true-up amounts for the period January 2019 through December 2019 are as follows:

DEF: \$39,965,991 over-recovery as reflected on Line 8 of Schedule E1-B (Exhibit CAM-2, Part 1, Page 2 of 2).

FPL: \$128,735,937 over-recovery as reflected on Lines 38 plus 39 of Schedule E1-B (2019 FCR Actual Estimated, Exhibit RBD-3, Page 1 of 27).

FPUC: \$4,409,893 under-recovery as reflected on Lines 83 and 84 of Schedule E-1b (Exhibit CDY-2, Page 2 of 3).

Gulf: \$5,178,904, under-recovery, as reflected on Line C9 of Schedule E-1B (Exhibit CSB-3, Page 2 of 32).

TECO: \$13,244,371, over-recovery as reflected on Schedule E1-A, Line 4 (Exhibit PAR-2, Document No. 1, Page 2 of 31).

ISSUE 10: What are the appropriate total fuel adjustment true-up amounts to be collected/refunded from January 2020 through December 2020?

STIPULATION:

The appropriate total fuel adjustment true-up amounts to be collected/refunded from January 2020 through December 2020 are as follows:

DEF: \$14,462,684 under-recovery as reflected on Line 13 of Schedule E1-B (Exhibit CAM-2, Part 1, Page 2 of 2).

FPL: \$58,082,532 over-recovery as reflected on Line 43 of Schedule E1-B (2019 FCR Actual Estimated, Exhibit RBD-3, Page 1 of 27).

FPUC: \$1,934,452 under-recovery as reflected Line 88 of Schedule E-1b (Exhibit CDY-2, Page 2 of 3).

Gulf: \$666,833, under-recovery, as reflected on Line 22, Schedule E-1 (Exhibit CSB-5, 2020 Projection Filing, Page 1 of 41).

TECO: \$30,742,026, under-recovery as reflected on Line 6, Schedule E1-A (Exhibit PAR-2, Document No. 1, Page 2 of 31).

ISSUE 11: What are the appropriate projected total fuel and purchased power cost recovery amounts for the period January 2020 through December 2020?

STIPULATION:

The appropriate projected total fuel and purchased power cost recovery amounts for the period January 2020 through December 2020 are as follows:

DEF: \$1,303,329,632. which is adjusted for line losses and excludes prior period true-up amounts, revenue taxes and GPIF amounts, as reflected on Line 21 of Schedule E1. This amount is subject to possible adjustments ordered in Issues 1B and C. If any adjustments are ordered by the Commission in relation to Issues 1B and 1C, that amount will be reflected in Duke's 2020 filing that reports the final true up of fuel costs for the period January through December, 2019.

FPL: \$2,488,782,409, which is adjusted for jurisdictional losses, and includes the jurisdictional savings amount associated with the 2020 solar Project, but excludes prior period true-up amounts, revenue taxes, GPIF amounts, and FPL's portion of

Incentive Mechanism gains, as reflected on Line 28 of Schedule E1 (Discovery Response Version of 2020 FCR Projection Schedule, Page FCR-19-029127).

- FPUC:** \$42,849,420, as reflected on Line 27, Schedule E1 (Revised Exhibit MDN-1, Page 1 of 8).
- Gulf:** \$354,335,230, which is adjusted for line losses, but excluding prior period true-up amounts, revenue taxes and GPIF amounts, as reflected on Line 21, Schedule E1 (Exhibit CSB-5, 2020 Projection Filing, Page 1 of 41).
- TECO:** \$582,744,972, which is adjusted for jurisdictional separation, the results of the optimization program, and prior period true-up amounts, but excludes revenue taxes and GPIF amounts, as reflected on Line 30, Schedule E1 (Exhibit PAR-3, Document No. 2, Page 2 of 30).

GENERIC GPIF ISSUES

ISSUE 16: What is the appropriate generation performance incentive factor (GPIF) reward or penalty for performance achieved during the period January 2018 through December 2018 for each investor-owned electric utility subject to the GPIF?

STIPULATION:

The appropriate generation performance incentive factor (GPIF) reward or penalty for performance achieved during the period January 2018 through December 2018 for each investor-owned electric utility subject to the GPIF is as follows:

- DEF:** \$2,591,697, reward, as reflected on Original Sheet No. 6.101.1, GPIF Reward/Penalty Table (Exhibit JBD, Page 2 of 24).
- FPL:** \$8,577,071 reward, as reflected in Reward/Penalty Table (Actual) For the Period January through December, 2018 (Exhibit CRR-1, Page 2 of 20).
- Gulf:** \$10,384, reward, as reflected in GPIF 2018 Results Filing (Exhibit CLN-1, Page 28 of 51, Schedule 4, Page 2 of 2).
- TECO:** \$4,141,330 reward, as reflected GPIF Reward/Penalty Table (Exhibit BSB-1, Document No. 1, Page 2 of 32).

ISSUE 17: What should the GPIF targets/ranges be for the period January 2020 through December 2020 for each investor-owned electric utility subject to the GPIF?

STIPULATION:

The appropriate GPIF targets/ranges be for the period January 2020 through December 2020 for each investor-owned electric utility subject to the GPIF are shown in Tables 17-1 through 17-4 below:

DEF: See Table 17-1 below:

Table 17-1
GPIF Targets/Ranges for the period January-December, 2020

	Plant/Unit	EAF			ANOHR		
		Target	Maximum		Target	Maximum	
		EAF (%)	EAF (%)	Savings (\$000's)	ANOHR BTU/KWH	ANOHR BTU/KWH	Savings (\$000's)
DEF	Bartow 4	88.20	92.74	1,617	7,892	8,289	6,774
	Hines 1	87.02	89.01	160	7,261	7,600	2,659
	Hines 2	90.32	91.15	25	7,410	7,660	1,937
	Hines 3	93.73	94.89	159	7,266	7,514	2,089
	Hines 4	83.95	87.02	866	6,982	7,162	1,611
	Osprey 1	88.14	91.02	521	7,291	7,866	3,517
	Total			3,348			18,586

Source: GPIF Target and Range Summary (Exhibit JBD-1P, Page 4 of 67).

FPL: See Table 17-2 below:

Table 17-2
GPIF Targets/Ranges for the period January-December, 2020

	Plant/Unit	EAF			ANOHR		
		Target	Maximum		Target	Maximum	
		EAF (%)	EAF (%)	Savings (\$000's)	ANOHR BTU/KWH	ANOHR BTU/KWH	Savings (\$000's)
FPL	Canaveral 3	83.4	85.9	469	6,615	6,737	2,376
	Manatee 3	91.3	93.8	158	6,880	7,002	1,264
	Ft. Myers 2	90.1	92.6	232	7,342	7,455	2,277
	Port Everglades 5	81.8	84.8	822	6,525	6,695	3,847
	Riviera 5	84.7	87.2	446	6,567	6,684	2,389
	St. Lucie 1	87.4	90.9	3,728	10,421	10,525	413

FPL	Plant/Unit	EAF			ANOHR		
		Target	Maximum		Target	Maximum	
		EAF (%)	EAF (%)	Savings (\$000's)	ANOHR BTU/KWH	ANOHR BTU/KWH	Savings (\$000's)
	St. Lucie 2	85.7	88.7	2,576	10,262	10,355	278
	Turkey Point 3	85.7	88.7	2,403	11,228	11,418	661
	Turkey Point 4	82.7	85.7	2,250	10,865	11,035	561
	West County 1	68.5	71.0	496	7,060	7,218	2,532
	West County 2	90.2	92.7	614	6,918	7,064	3,126
	West County 3	85.3	88.3	608	6,921	7,084	3,274
	Total			14,802			22,998

Source: GPIF Target and Range Summary (Exhibit CRR-2, Pages 6-7 of 34).

Gulf: See Table 17-3 below:

Table 17-3
GPIF Targets/Ranges for the period January-December, 2020

GULF	Plant/Unit	EAF			ANOHR		
		Target	Maximum		Target	Minimum	Maximum
		EAF (%)	EAF (%)	Savings (\$000's)	ANOHR BTU/KWH	ANOHR BTU/KWH	Savings (\$000's)
	Scherer 3	96.8	97.8	23	10,616	10,298	1,211
	Crist 7	78.4	80.9	4	10,584	10,266	365
	Daniel 1	70.9	73.8	1	11,404	11,062	64
	Daniel 2	84.7	86.5	3	11,057	10,725	164
	Smith 3	89.9	90.8	66	6,900	6,693	3,011
	Total			97			4,815

Source: GPIF Unit Performance Summary (Exhibit CLN-2, Schedule 3, Page 41 of 64).

TECO: See Table 17-4 below:

Table 17-4
GPIF Targets/Ranges for the period January-December, 2020

	Plant/Unit	Target	Maximum		Target	Maximum	
		EA (%)	EA (%)	Savings (\$000's)	ANOHR BTU/KWH	ANOHR BTU/KWH	Savings (\$000's)
TECO	Big Bend 4	55.4	61.0	301.8	10,837	11,264	956.4
	Polk 1	75.5	79.1	680.0	10,018	11,429	2,408.6
	Polk 2	84.9	86.1	1,477.8	7,209	7,603	7,768.2
	Bayside 1	91.7	92.4	1,216.3	7,379	7,498	1,649.5
	Bayside 2	88.9	90.1	1,811.8	7,499	7,749	3,332.3
	Total			5487.7			16,115.0

Source: GPIF Target and Range Summary (Exhibit JC-1, Document 1, Page 4 of 31).

FUEL FACTOR CALCULATION ISSUES

ISSUE 18: What are the appropriate projected net fuel and purchased power cost recovery and Generating Performance Incentive amounts to be included in the recovery factor for the period January 2020 through December 2020?

STIPULATION:

The appropriate projected total fuel and purchased power cost recovery amounts for the period January 2020 through December 2020 are as follows:

DEF: \$1,321,332,823 as reflected on Line 27 of Schedule E1. This amount is subject to possible adjustments ordered in Issues 1B and C. If any adjustments are ordered by the Commission in relation to Issues 1B and 1C, that amount will be reflected in Duke's 2020 filing that reports the final true up of fuel costs for the period January through December, 2019.

FPL: \$2,453,813,512, which includes prior period true-up amounts, revenue taxes, the GPIF reward, FPL's portion of Incentive Mechanism gains, and the jurisdictional savings amount associated with the 2020 solar Project, as reflected on Line 35 of Schedule E1 (Discovery Response Version of 2020 FCR Projection Schedule, Page FCR-19-029127).

FPUC: \$44,783,872 which includes prior period true-up amounts, as reflected on Line 31, Schedule E1 (Revised Exhibit MDN-1, Page 1 of 8).

Gulf: \$355,268,048 which is adjusted for line losses, and includes prior period true-up amounts, revenue taxes and GPIF amounts, as reflected on Line 28, Schedule E1 (Exhibit CSB-5, 2020 Projection Filing, Page 1 of 41).

TECO: \$587,305,878 which is adjusted for jurisdictional separation, and includes prior period true-up amounts, revenue taxes, and GPIF amounts and optimization mechanism, as reflected on Line 33, Schedule E1 (Exhibit PAR-3, Document No. 2, Page 2 of 30).

ISSUE 19: What is the appropriate revenue tax factor to be applied in calculating each investor-owned electric utility's levelized fuel factor for the projection period January 2020 through December 2020?

STIPULATION:

The appropriate revenue tax factor to be applied in calculating each investor-owned electric utility's levelized fuel factor for the projection period January 2020 through December 2020 is 1.00072.

ISSUE 20: What are the appropriate levelized fuel cost recovery factors for the period January 2020 through December 2020?

STIPULATION:

The appropriate levelized fuel cost recovery factors for the period January 2020 through December 2020 are as follows:

DEF: The appropriate levelized factor is 3.345 cents per kWh (adjusted for jurisdictional losses), as reflected on Line 6, Schedule E1-D (Exhibit CAM-3, Part 2, Page 1 of 1).

FPL: The appropriate levelized factors are as follows:

- A. 2.224 cents per kWh (adjusted for jurisdictional losses), for January 2020 through the day prior to the 2020 Project in-service date (projected to be April 30, 2020), as reflected on Line 37 of Schedule E1 (Discovery Response Version of 2020 FCR Projection Schedule, Page FCR-19-029115).
- B. 2.211 cents per kWh (adjusted for jurisdictional losses), from the 2020 Project in-service date (projected to be May 1, 2020) until the fuel factor is reset by the Commission, as reflected on Line 38 of Schedule E1 (Discovery Response Version of 2020 FCR Projection Schedule, Page FCR-19-029121).

FPUC: The appropriate levelized factor is 5.109 cents per kWh, as reflected on Line 43, Schedule E1 (Revised Exhibit MDN-1, Page 2 of 8).

Gulf: The appropriate levelized factor is 3.244 per kWh, as reflected on Line 31, Schedule E-1 (Exhibit CSB-5, 2020 Projection Filing, Page 1 of 41).

TECO: The appropriate factor is 3.012 cents per kWh before any application of time of use multipliers for on-peak or off-peak usage, as reflected on Line 34, Schedule E1 (Exhibit PAR-3, Document No. 2, Page 2 of 30).

ISSUE 21: What are the appropriate fuel recovery line loss multipliers to be used in calculating the fuel cost recovery factors charged to each rate class/delivery voltage level class?

STIPULATION:

The appropriate fuel recovery line loss multipliers to be used in calculating the fuel cost recovery factors charged to each rate class/delivery voltage level class are shown below:

DEF: See Table 21-1 below:

Table 21-1
DEF Fuel Recovery Line Loss Multipliers
for the period January-December, 2020

Group	Delivery Voltage Level	Line Loss Multiplier
A	Transmission	0.98
B	Distribution Primary	0.99
C	Distribution Secondary	1.00
D	Lighting Service	1.00

Source: Menendez Testimony, dated September 3, 2019 (Page 3).

FPL: The appropriate fuel recovery line loss multipliers to be used in calculating the fuel cost recovery factors charged to each rate class/delivery voltage level class are provided in response to Issue No. 22.

FPUC: The appropriate fuel recovery line loss multiplier to be used in calculating the fuel cost recovery factors charged to each rate class/delivery voltage level class is 1.0000, as reflected on Line 26a, Schedule E1 (Revised Exhibit MDN-1, Page 1 of 8).

Gulf: See Table 21-2 below:

Table 21-2
GULF Fuel Recovery Line Loss Multipliers
for the period January-December, 2020

Group	Rate Schedules	Fuel Recovery Loss Multipliers
A	RS, RSVP, RSTOU, GS, GSD, GSDT, GSTOU, OSIII, SBS(1)	1.00555
B	LP, LPT, SBS(2)	0.99188
C	PX, PXT, RTP, SBS(3)	0.97668
D	OSI/II	1.00560
(1) Includes SBS customers with a contract demand in the range of 100 to 499 kW (2) Includes SBS customers with a contract demand in the range of 500 to 7,499 kW (3) Includes SBS customers with a contract demand over 7,499 kW		

Source: Schedule E1-E (Exhibit CSB-5, 2020 Projection Filing, Page 8 of 41).

TECO: See Table 21-3 below:

Table 21-3
TECO Fuel Recovery Line Loss Multipliers
for the period January-December, 2020

Delivery Voltage Level	Line Loss Multiplier
Transmission	0.98
Distribution Primary	0.99
Distribution Secondary	1.00
Lighting Service	1.00

Source: Schedule E1-D, BSP 23 (Exhibit PAR-3, Document Number 2, Page 6 of 30).

ISSUE 22: What are the appropriate fuel cost recovery factors for each rate class/delivery voltage level class adjusted for line losses?

STIPULATION:

The appropriate fuel cost recovery factors for each rate class/delivery voltage level class adjusted for line losses are shown in Tables 22-1 through 22-8 below:

DEF: The appropriate fuel cost recovery factors for each rate class/delivery voltage level class adjusted for line losses for the period January 2020 through December

2020, are shown Table 22-1 below. DEF agrees in its next base rate case to consult with PCS Phosphate concerning DEF's on and off peak rate design.

Table 22-1
Fuel Cost Recovery Factors for the period January-December, 2020

Fuel Cost Recovery Factors For the Period January-December, 2020						
Group	Delivery Voltage Level	Fuel Cost Recovery Factors (cents/kWh)			Time of Use	
		First Tier	Second Tier	Levelized	On-Peak Multiplier 1.286	Off-Peak Multiplier 0.872
A	Transmission	--	--	3.350	4.308	2.921
B	Distribution Primary	--	--	3.317	4.266	2.892
C	Distribution Secondary	3.067	4.067	3.283	4.222	2.863
D	Lighting Service	--	--	3.181	--	--

Source: Schedule E1-E (Exhibit CAM-3, Part 2, Page 1 of 1).

FPL: The appropriate fuel cost recovery factors for each rate class/delivery voltage level class adjusted for line losses are shown below in Tables 22-2 through 22-5. The factors for January and April, 2020 are shown in Tables 22-2 and 22-3, and the factors for May through December, 2020 are shown in Tables 22-4 and 22-5:

Table 22-2
FPL Fuel Cost Recovery Factors for the period January-April, 2020

Fuel Recovery Factors – By Rate Group (Adjusted for Line Losses)				
For the Period January through April, 2020				
Group	Rate Schedule	Avg. Factor	Loss Multiplier	Fuel Recovery Factor
A	RS-1 first 1,000 kWh	2.224	1.00212	1.897
	RS-1, all addl. kWh	2.224	1.00212	2.897
	GS-1, SL-2, GSCU-1, WIES-1	2.224	1.00212	2.229
A-1	SL-1, OL-1, PL-1	2.158	1.00212	2.163
B	GSD-1	2.224	1.00207	2.229
C	GSLD-1, CS-1	2.224	1.00157	2.227
D	GSLD-2, CS-2, OS-2, MET	2.224	0.99555	2.214
E	GSLD-3, CS-3	2.224	0.97529	2.169
A	GST-1 On-Peak	2.555	1.00212	2.560
	GST-1 Off Peak	2.082	1.00212	2.086
	RTR-1 On-Peak	-	-	0.331
	RTR-1 Off-Peak	-	-	(0.143)

B	GSLDT-1, CILC-1(G), HLFT-1 (21-499 kW) On Peak	2.555	1.00207	2.560
	GSLDT-1, CILC-1(G), HLFT-1 (21-499 kW) Off Peak	2.082	1.00207	2.086
C	GSLDT-1, CST-1, HLFT-2 (500-1,999 kW) On Peak	2.555	1.00157	2.559
	GSLDT-1, CST-1, HLFT-2 (500-1,999 kW) Off Peak	2.082	1.00157	2.085
D	GSLDT-2, CST-2, HLFT-3 (2,000+ kW) On Peak	2.555	0.99588	2.544
	GSLDT-2, CST-2, HLFT-3 (2,000+ kW) Off Peak	2.082	0.99588	2.073
E	GSLDT-3, CST-3, CILC-1(T), ISST-1(T) On Peak	2.555	0.97529	2.492
	GSLDT-3, CST-3, CILC-1(T), ISST-1(T) Off Peak	2.082	0.97529	2.031
F	CILC-1(D), ISST-1(D) On Peak	2.555	0.99566	2.544
	CILC-1(D), ISST-1(D) Off Peak	2.082	0.99566	2.073

Source: Schedule E1-E, Page 1 of 2 (Discovery Response Version of 2020 FCR Projection Schedule, Page FCR-19-029116).

Table 22-3
FPL Fuel Cost Recovery Factors for the period January- April, 2020

Seasonal Demand Time of Use Rider (SDTR) Fuel Recovery Factors				
For the Period June through September, 2020				
Group	Rate Schedule	Avg. Factor	Loss Multiplier	Fuel Recovery Factor
B	GSD(T)-1 On-Peak	3.051	1.00207	3.057
	GSD(T)-1 Off-Peak	2.115	1.00207	2.119
C	GSLD(T)-1 On-Peak	3.051	1.00157	3.056
	GSLD(T)-1 Off-Peak	2.115	1.00157	2.118
D	GSLD(T)-2 On-Peak	3.051	0.99588	3.038
	GSLD(T)-2 Off-Peak	2.115	0.99588	2.106

Source: Schedule E1- E, Page 2 of 2 (Discovery Response Version of 2020 FCR Projection Schedule, Page FCR-19-029117).

Table 22-4
FPL Fuel Cost Recovery Factors for the period May through December, 2020

Fuel Recovery Factors – By Rate Group (Adjusted for Line Losses)				
For the Period May through December, 2020				
Group	Rate Schedule	Avg. Factor	Loss Multiplier	Fuel Recovery Factor
A	RS-1 first 1,000 kWh	2.211	1.00212	1.884
	RS-1, all addl. kWh	2.211	1.00212	2.884
	GS-1, SL-2, GSCU-1, WIES-1	2.211	1.00212	2.216
A-1	SL-1, OL-1, PL-1	2.144	1.00212	2.149
B	GSD-1	2.211	1.00207	2.216
C	GSLD-1, CS-1	2.211	1.00157	2.214
D	GSLD-2, CS-2, OS-2, MET	2.211	0.99555	2.201
E	GSLD-3, CS-3	2.211	0.97529	2.156
A	GST-1 On-Peak	2.540	1.00212	2.545
	GST-1 Off Peak	2.069	1.00212	2.073
	RTR-1 On-Peak	-	-	0.329
	RTR-1 Off-Peak	-	-	(0.143)
B	GSDT-1, CILC-1(G), HLFT-1 (21-499 kW) On Peak	2.540	1.00207	2.545
	GSDT-1, CILC-1(G), HLFT-1 (21-499 kW) Off Peak	2.069	1.00207	2.073
C	GSLDT-1, CST-1, HLFT-2 (500-1,9999 kW) On Peak	2.540	1.00157	2.544
	GSLDT-1, CST-1, HLFT-2 (500-1,9999 kW) Off Peak	2.069	1.00157	2.072
D	GSLDT-2, CST-2, HLFT-3 (2,000+ kW) On Peak	2.540	0.99588	2.530
	GSLDT-2, CST-2, HLFT-3 (2,000+ kW) Off Peak	2.069	0.99588	2.060
E	GSLDT-3, CST-3, CILC-1(T), ISST-1(T) On Peak	2.540	0.97529	2.477
	GSLDT-3, CST-3, CILC-1(T), ISST-1(T) Off Peak	2.069	0.97529	2.018
F	CILC-1(D), ISST-1(D) On Peak	2.540	0.99566	2.529
	CILC-1(D), ISST-1(D) Off Peak	2.069	0.99566	2.060

Source: Schedule E1-E, Page 1 of 2 (Discovery Response Version of 2020 FCR Projection Schedule, Page FCR-19-029122).

Table 22-5
FPL Fuel Cost Recovery Factors for the period May through December, 2020

Seasonal Demand Time of Use Rider (SDTR) Fuel Recovery Factors				
For the Period June through September, 2020				
Group	Rate Schedule	Avg. Factor	Loss Multiplier	Fuel Recovery Factor
B	GSD(T)-1 On-Peak	3.033	1.00207	3.039
	GSD(T)-1 Off-Peak	2.103	1.00207	2.107
C	GSLD(T)-1 On-Peak	3.033	1.00157	3.038
	GSLD(T)-1 Off-Peak	2.103	1.00157	2.106
D	GSLD(T)-2 On-Peak	3.033	0.99588	3.021
	GSLD(T)-2 Off-Peak	2.103	0.99588	2.094

Source: Schedule E1- E, Page 2 of 2 (Discovery Response Version of 2020 FCR Projection Schedule, Page FCR-19-029123).

FPUC: The appropriate levelized fuel adjustment and purchased power cost recovery factors for the period January 2020 through December 2020 for the Consolidated Electric Division, adjusted for line loss multipliers and including taxes, are shown in Tables 22-8 through 22-10 below:

Table 22-8
FPUC Fuel Cost Recovery Factors for the period January-December, 2020

Fuel Recovery Factors – By Rate Schedule	
For the Period January through December, 2020	
Rate Schedule	Levelized Adjustment (cents/kWh)
RS	7.766
GS	7.535
GSD	7.228
GSLD	7.009
LS	5.621

Source: Schedule E1, Page 3 of 3 (Revised Exhibit MDN-1, Cost Recovery Clause Calculation, Page 3 of 8).

Table 22-9
FPUC Fuel Cost Recovery Factors for the period January-December, 2020

Step Rate Allocation For Residential Customers (RS Rate Schedule)	
For the Period January through December, 2020	
Rate Schedule and Allocation	Levelized Adjustment (cents/kWh)
RS Rate Schedule – Sales Allocation	7.766
RS Rate Schedule with less than or equal to 1,000 kWh/month	7.459
RS Rate Schedule with more than 1,000 kWh/month	8.709

Source: Schedule E1, Page 3 of 3 (Revised Exhibit MDN-1, Cost Recovery Clause Calculation, Page 3 of 8).

Table 22-10
FPUC Fuel Cost Recovery Factors for the period January-December, 2020

Fuel Recovery Factors for Time Of Use – By Rate Schedule		
For the Period January through December, 2020		
Rate Schedule	Levelized Adjustment On Peak (cents/kWh)	Levelized Adjustment Off Peak (cents/kWh)
RS	15.859	3.559
GS	11.535	2.535
GSD	11.228	3.978
GSLD	13.009	4.009
Interruptible	5.509	7.009

Source: Schedule E1, Page 3 of 3 (Revised Exhibit MDN-1, Cost Recovery Clause Calculation, Page 3 of 8).

Gulf: The appropriate fuel cost recovery factors for each rate class/delivery voltage level class adjusted for line losses for the period January 2020 through December 2020, are shown in Tables 22-11 and 22-12 below:

Table 22-11
Gulf Standard Fuel Cost Recovery Factors
for the period January-December, 2020

Group	Rate Schedules	Fuel Cost Recovery Factors ¢/KWH
A	RS, RSVP, RSTOU, GS, GSD, GSDT, GSTOU, OSIII	3.262
B	LP	3.218
C	PX, RTP	3.168
D	OSI/II	3.236

Source: Schedule E1-E (Exhibit CSB-5, 2020 Projection Filing, Page 7 of 41).

Table 22-12
Gulf Time-of-Use Fuel Cost Recovery Factors
for the period January-December, 2020

Group	Time-of-Use Rate Schedules	Fuel Recovery Loss Multipliers	Fuel Cost Recovery Factors ¢/KWH	
			On-Peak	Off-Peak
A	GSDT, SBS(1)	1.00555	3.762	3.059
B	LPT, SBS(2)	0.99188	3.711	3.017
C	PXT, SBS(3)	0.97668	3.654	2.971
(1) Includes SBS customers with a contract demand in the range of 100 to 499 kW (2) Includes SBS customers with a contract demand in the range of 500 to 7,499 kW (3) Includes SBS customers with a contract demand over 7,499 kW				

Source: Schedule E1-E (Exhibit CSB-5, 2020 Projection Filing, Page 8 of 41).

TECO: The appropriate fuel cost recovery factors for each rate class/delivery voltage level class adjusted for line losses for the period January 2020 through December 2020, are shown in Table 22-13 below:

Table 22-13
TECO Fuel Cost Recovery Factors for the period January-December, 2020

2020 Fuel Cost Recovery Factors for the period ending December, 2020				
Metering Voltage Level		Fuel Cost Recovery Factors (cents per kWh)		
		Levelized Fuel Recovery Factor	First Tier (Up to 1,000 kWh)	Second Tier (Over 1,000 kWh)
STANDARD				
	Distribution Secondary (RS only)	--	2.702	3.702
	Distribution Secondary	3.016		
	Distribution Primary	2.986		
	Transmission	2.956		
	Lighting Service	2.989		
TIME OF USE				
	Distribution Secondary- On-Peak	3.162		
	Distribution Secondary- Off-Peak	2.953		
	Distribution Primary- On-Peak	3.130		
	Distribution Primary- Off-Peak	2.923		
	Transmission – On-Peak	3.099		
	Transmission – Off-Peak	2.894		

Source: Schedule E1-E, Bates Stamped Page 23 (Exhibit PAR-3, Document Number 2, Page 6 of 30).

II. CAPACITY ISSUES

COMPANY-SPECIFIC CAPACITY COST RECOVERY FACTOR ISSUES

Duke Energy Florida, LLC

ISSUE 23A: What amount has DEF included in the capacity cost recovery clause for nuclear cost recovery?

STIPULATION:

Duke has included \$0 in the capacity cost recovery clause for nuclear cost recovery.

ISSUE 23B: What is the appropriate true-up adjustment amount associated with the Hamilton SoBRA project approved by Order No. PSC-2019-0159-FOF-EI to be refunded through the capacity clause in 2020?

STIPULATION:

The appropriate true-up adjustment amount associated with the Hamilton SoBRA project approved by Order No. PSC-2019-015-FOF-EI to be refunded through the capacity clause in 2020 is \$478,334, as reflected on Schedule E-12A, Line 26, in Exhibit CAM-3, Part 3.

Florida Power & Light Company

ISSUE 24A: What amount has FPL included in the capacity cost recovery clause for nuclear cost recovery?

STIPULATION:

\$0.

ISSUE 24B: What is the appropriate true-up adjustment amount associated with the 2017 SOBRA projects approved by Order No. PSC-2018-0028-FOF-EI to be refunded through the capacity clause in 2020?

STIPULATION:

\$6,657,892, as reflected in the 2017 Project Refund Calculation Schedule (EJA-5, Page 2 of 2).

ISSUE 24C: What is the appropriate true-up amount associated with the 2018 SOBRA projects approved by Order No. PSC-2018-0028-FOF-EI to be refunded through the capacity clause in 2020?

STIPULATION:

The parties have agreed to address this matter in the 2020 Fuel Clause cycle.

ISSUE 24D: What are the appropriate Indiantown non-fuel base revenue requirements to be recovered through the Capacity Clause pursuant to the Commission's approval of the Indiantown transaction in Docket No. 160154-EI for 2020?

STIPULATION:

The appropriate Indiantown non-fuel base revenue requirements to be recovered through the Capacity Clause pursuant to the Commission's approval of the Indiantown transaction in Docket No. 160154-EI for 2020 are \$3,687,779, as reflected on Line 15 of Rate Case Allocation of Indiantown Revenue Requirement Schedule in Appendix V – 2020 CCR Projections (Exhibit RBD-10, Page 18 of 32).

GENERIC CAPACITY COST RECOVERY FACTOR ISSUES

ISSUE 27: What are the appropriate final capacity cost recovery true-up amounts for the period January 2018 through December 2018?

STIPULATION:

The appropriate final capacity cost recovery true-up amounts for the period January 2018 through December 2018 are as follows:

- DEF:** \$845,393, under-recovery, as reflected on Line 9 of Capacity Cost Recovery Clause Summary of Actual True-Up Amount (Exhibit CAM-2T, Sheet 1 of 3).
- FPL:** \$7,161,719, over-recovery, as reflected on Line 32 of Capacity Cost Recovery Clause Summary Schedule (Exhibit RBD-10, 2020 CCR Projections, Page 2 of 32).
- Gulf:** \$384,798, over-recovery, as reflected on Line 3, Schedule CCA-1, 2018 Final True-Up Schedule (Exhibit CSB-1, Page 5 of 8).
- TECO:** \$0, as reflected on Line 3, CCR 2018 Final True-Up (Exhibit PAR-1, Document No. 1, Page 1 of 4). The appropriate final capacity cost recovery true-up amounts for the period January 2018 through December 2018, was addressed in Order No. PSC-2019-0109-PCO-EI, Order Approving TECO's Petition for Mid-Course Correction, issued March 22, 2019.

ISSUE 28: What are the appropriate capacity cost recovery actual/estimated true-up amounts for the period January 2019 through December 2019?

STIPULATION:

The appropriate capacity cost recovery actual/estimated true-up amounts for the period January 2019 through December 2019 are as follows:

- DEF:** \$2,693,901, over-recovery as reflected on Line 41, Schedule E12-B (Exhibit CAM-2, Part 2, Page 1 of 2).
- FPL:** \$9,002,615 over-recovery, as reflected on Lines 8 plus 9, Capacity Cost Recovery Calculation of Actual/Estimated True-Up Amount (Exhibit RBD-4, 2019 CCR Actual Estimated, Page 3 of 17).
- Gulf:** \$622,746, under-recovery, as reflected on Line 1, Schedule CCE-1A, 2020 Projection Filing (Exhibit CSB-5, Page 37 of 41).

TECO: \$2,179,217, under-recovery, as reflected on Line 15, Capacity Cost Recovery Calculation of the Actual/Estimated True-Up Amount (Exhibit PAR-2, Document No. 2, Page 2 of 4).

ISSUE 29: What are the appropriate total capacity cost recovery true-up amounts to be collected/refunded during the period January 2020 through December 2020?

STIPULATION:

The appropriate total capacity cost recovery true-up amounts to be collected/refunded during the period January 2020 through December 2020 are as follows:

DEF: \$1,848,509, over-recovery as reflected on Line 45, Schedule E12-B (Exhibit CAM-2, Part 2, Page 1 of 2).

FPL: \$16,164,334, over-recovery as reflected on Line 13, Capacity Cost Recovery Calculation of Actual/Estimated True-Up Amount (Exhibit RBD-4, 2019 CCR Actual Estimated, Page 3 of 17).

Gulf: \$237,948, under-recovery , as reflected on Line 3, Schedule CCE-1A, 2019 Est/Actual Schedules (Exhibit CSB-3, Page 28 of 32).

TECO: \$2,179,217, under-recovery, as reflected on Line 6, Capacity Cost Recovery Calculation of the Current Period True-Up (Exhibit PAR-2, Document No. 2, Page 1 of 4).

ISSUE 30: What are the appropriate projected total capacity cost recovery amounts for the period January 2020 through December 2020?

STIPULATION:

The appropriate projected total capacity cost recovery amounts for the period January 2020 through December 2020 are as follows:

DEF: \$409,624,753, as reflected on Line 28, Schedule E12-A (Exhibit CAM-2, Part 3, Page 1 of 2).

FPL: \$256,597,002, which excludes prior period true-up amounts, revenue taxes, and the Indiantown non-fuel base revenue requirement, as reflected on Line 30, Appendix VI - 2020 CCR Projections Schedule (Exhibit RBD-10, Page 2 of 32).

Gulf: \$83,486,772, which is adjusted for jurisdictional separation, but excludes prior period true-up amounts, and revenue taxes, as reflected on Line 7 of Schedule CCE-1, 2020 Projection Filing (Exhibit CSB-5, Page 36 of 41).

TECO: (\$560,376), which excludes prior period true-up amounts and revenue taxes, as reflected on Line 6, Capacity Cost Recovery Clause Calculation of Energy and Demand Allocation By Rate Class (Exhibit PAR-3, Document No. 1, Page 2 of 4).

ISSUE 31: What are the appropriate projected net purchased power capacity cost recovery amounts to be included in the recovery factor for the period January 2020 through December 2020?

STIPULATION:

The appropriate projected net purchased power capacity cost recovery amounts to be included in the recovery factor for the period January 2020 through December 2020 are as follows:

DEF: \$414,954,634, as reflected on Line 39, Schedule E12-A (Exhibit CAM-3, Part 3, Page 1 of 2).

FPL: \$237,630,783, which includes the net total recoverable capacity costs of \$233,943,004, as reflected on Line 37, Appendix V - 2020 CCR Projections Schedule (Exhibit RBD-10, Page 2 of 32), plus \$3,687,779, the Indiantown non-fuel base revenue requirement, as reflected on Line 15, Appendix V - 2020 CCR Projections Schedule (Exhibit RBD-10, Page 18 of 32). The net total recoverable capacity costs includes the 2017 SoBRA true-up credit, the final true up from 2018, and the actual/estimated true up from 2019, and revenue taxes.

Gulf: \$83,785,002, which is adjusted for jurisdictional separation, and includes prior period true-up amounts and revenue taxes, as reflected on Line 11 of Schedule CCE-1, 2020 Projection Filing (Exhibit CSB-5, Page 36 of 41).

TECO: \$1,620,007, which includes prior period true-up amounts and revenue taxes, as reflected on Line 10, Capacity Cost Recovery Clause Calculation of Energy and Demand Allocation By Rate Class (Exhibit PAR-3, Document No. 1, Page 2 of 4).

ISSUE 32: What are the appropriate jurisdictional separation factors for capacity revenues and costs to be included in the recovery factor for the period January 2020 through December 2020?

STIPULATION

The appropriate jurisdictional separation factors for capacity revenues and costs to be included in the recovery factor for the period January 2020 through December 2020 are as follows:

DEF: Base – 92.885%, Intermediate – 72.703%, and Peaking – 95.924%, as reflected on Lines 8, 14, and 21, respectively, on Schedule E12-A (Exhibit CAM-3, Part 3, Page 1 of 2).

FPL:

2020 Projected Separation Factors	
	SUMMARY
DEMAND	
FPL101 - Transmission	0.899387
FPL102 – Non-Stratified Production	0.957922
FPL103INT – Intermediate Strata Production	0.941569
FPL103PEAK – Peaking Strata Production	0.950455
ENERGY	
FPL201 – Total Sales	0.950640
FPL202 – Non-Stratified Sales	0.958799
FPL203INT – Intermediate Strata Sales	0.942430
FPL203PEAK – Peaking Strata Sales	0.951325
GENERAL PLANT	
I900 - LABOR	0.969124

Source: Appendix V – 2020 CCR Projections (Exhibit RBD-10, Page 23 of 32).

Gulf: FPSC – 97.23427%, and FERC – 2.76573%, as reflected on Schedule CCE-1, 2020 Projection Filing (Exhibit CSB-5, Page 36 of 41).

TECO: The appropriate jurisdictional separation factor is 1.00, as reflected on Line 5, Capacity Cost Recovery Clause Calculation of Energy and Demand Allocation By Rate Class (Exhibit PAR-3, Document No. 1, Page 2 of 4).

ISSUE 33: What are the appropriate capacity cost recovery factors for the period January 2020 through December 2020?

STIPULATION

The appropriate capacity cost recovery factors for the period January 2020 through December 2020 are shown in Tables 33-1 through 33-6 below.

DEF: The appropriate capacity cost recovery factors for the period January 2020 through December 2020 are shown in Table 33-1 below.

Table 33-1
DEF Capacity Cost Recovery Factors for the period January-December, 2020

Rate Class		2020 Capacity Cost Recovery Factors	
		Cents / kWh	Dollars / kW-month
Residential (RS-1, RST-1, RSL-1, RSL-2, RSS-1) At Secondary Voltage		1.200	
General Service Non-Demand (GS-1, GST-1)			
	At Secondary Voltage	1.147	
	At Primary Voltage	1.136	
	At Transmission Voltage	1.124	
General Service (GS-2)		0.690	
Lighting (LS-1)		0.147	
General Service Demand (GSD-1, GSDD-1, SS-1)			
	At Secondary Voltage		3.60
	At Primary Voltage		3.56
	At Transmission Voltage		3.53
Curtable (CS-1, CST-1, CS-2, CST-2, CS-3, CST-3, SS-3)			
	At Secondary Voltage		1.38
	At Primary Voltage		1.37
	At Transmission Voltage		1.35
Interruptible (IS-1, IST-1, IS-2, IST-2, SS-2)			
	At Secondary Voltage		3.00
	At Primary Voltage		2.97
	At Transmission Voltage		2.94
Standby Monthly (SS-1, 2, 3)			
	At Secondary Voltage		0.349
	At Primary Voltage		0.346
	At Transmission Voltage		0.342
Standby Daily (SS-1, 2, 3)			
	At Secondary Voltage		0.166
	At Primary Voltage		0.164
	At Transmission Voltage		0.163

Source: Schedule E12-E (Exhibit CAM-3, Part 3).

FPL: The appropriate capacity cost recovery factors for the period January 2020 through December 2020 are shown in Tables 33-2 through 33-4 below:

Table 33-2
FPL Capacity Cost Recovery Factors for the period January-December, 2020

Rate Schedule	2020 Capacity Cost Recovery Factors, Excluding Indiantown			
	\$/kW	\$/kWh	Reservation Demand Charge (RDC) \$/kW	Sum of Daily Demand Charge (SDD) \$/kW
RS1/RTR1	-	0.00226	-	-
GS1/GST1	-	0.00222	-	-
GSD1/GSDT1/HLFT1	0.74	-	-	-
OS2	-	0.00093	-	-
GSLD1/GSLDT1/CS1/CST1/HLFT2	0.84	-	-	-
GSLD2/GSLDT2/CS2/CST2/HLFT3	0.80	-	-	-
GSLD3/GSLDT3/CS3/CST3	0.83	-	-	-
SST1T	-	-	0.10	0.05
SST1D1/SST1D2/SST1D3	-	-	0.10	0.05
CILC D/CILC G	0.86	-	-	-
CILC T	0.83	-	-	-
MET	0.74	-	-	-
OL1/SL1/SL1M/PL1	-	0.00017	-	-
SL2/SL2M/GSCU1	-	0.00151	-	-

Source: Appendix V – 2020 CCR Projections (Exhibit RBD-10, Page 4 of 32).

Table 33-3
FPL Capacity Cost Recovery Factors for the period January-December, 2020

Rate Schedule	2020 Indiantown Capacity Cost Recovery Factors			
	\$/kW	\$/kWh	Reservation Demand Charge (RDC) \$/kW	Sum of Daily Demand Charge (SDD) \$/kW
RS1/RTR1	-	0.00004	-	-
GS1/GST1	-	0.00003	-	-
GSD1/GSDT1/HLFT1	0.01	-	-	-
OS2	-	0.00002	-	-
GSLD1/GSLDT1/CS1/CST1/HLFT2	0.01	-	-	-
GSLD2/GSLDT2/CS2/CST2/HLFT3	0.01	-	-	-
GSLD3/GSLDT3/CS3/CST3	0.01	-	-	-
SST1T	-	-	-	-
SST1D1/SST1D2/SST1D3	-	-	-	-
CILC D/CILC G	0.01	-	-	-
CILC T	0.01	-	-	-

MET	0.01	-	-	-
OL1/SL1/SL1M/PL1	-	0.00001	-	-
SL2/SL2M/GSCU1	-	0.00002	-	-

Source: Appendix V – 2020 CCR Projections (Exhibit RBD-10, Page 19 of 32).

Table 33-4
FPL Capacity Cost Recovery Factors for the period January-December, 2020

Rate Schedule	2020 Total Capacity Cost Recovery Factors			
	\$/kW	\$/kWh	Reservation Demand Charge (RDC) \$/kW	Sum of Daily Demand Charge (SDD) \$/kW
RS1/RTR1	-	0.00230	-	-
GS1/GST1	-	0.00225	-	-
GSD1/GSDT1/HLFT1	0.75	-	-	-
OS2	-	0.00095	-	-
GSLD1/GSLDT1/CS1/CST1/HLFT2	0.85	-	-	-
GSLD2/GSLDT2/CS2/CST2/HLFT3	0.81	-	-	-
GSLD3/GSLDT3/CS3/CST3	0.84	-	-	-
SST1T	-	-	0.10	0.05
SST1D1/SST1D2/SST1D3	-	-	0.10	0.05
CILC D/CILC G	0.87	-	-	-
CILC T	0.84	-	-	-
MET	0.75	-	-	-
OL1/SL1/SL1M/PL1	-	0.00018	-	-
SL2/SL2M/GSCU1	-	0.00153	-	-

Source: Appendix V – 2020 CCR Projections (Exhibit RBD-10, Page 20 of 32).

Gulf: The appropriate capacity cost recovery factors for the period January 2020 through December 2020 are shown in Table 33-5 below:

Table 33-5
GULF Capacity Cost Recovery Factors for the period January-December, 2020

Rate Class	2019 Capacity Cost Recovery Factors	
	Cents / kWh	Dollars / kW-month
RS, RSVP, RSTOU	0.878	-
GS	0.893	
GSD, GSDT, GSTOU	0.703	
LP, LPT	-	2.92
PX, PXT, RTP, SBS	0.598	-
OS-I/II	0.121	
OSIII	0.543	

Source: Schedule CCE-2, Page 2 of 2 (Exhibit CSB-5, Columns G and I, Page 40 of 41).

TECO: The appropriate capacity cost recovery factors for the period January 2020 through December 2020 are shown in Table 33-6 below:

Table 33-6
TECO Capacity Cost Recovery Factors for the period January-December, 2020

Rate Class and Metering Voltage	2020 Capacity Cost Recovery Factors	
	Cents / kWh	Dollars / kW
RS Secondary	0.010	-
GS and CS	0.008	
GSD, SBF Standard		
Secondary	-	0.03
Primary		0.03
Transmission		0.03
GSD Optional		
Secondary	0.007	-
Primary	0.007	
Transmission	0.007	
IS, SBI		
Primary	-	0.03
Transmission		0.03
LS1 Secondary	0.002	-

Source: Exhibit PAR-3, Document Number 1, Columns 10 and 11, Page 3 of 4.

III. EFFECTIVE DATE

ISSUE 34: What should be the effective date of the fuel adjustment factors and capacity cost recovery factors for billing purposes?

STIPULATION

The new factors should be effective begin with the first billing cycle for January 2020 through the last billing cycle for December 2020. The first billing cycle may start before January 1, 2020, and the last cycle may be read after December 31, 2020, so that each customer is billed for twelve months regardless of when the recovery factors became effective. The new factors shall continue in effect until modified by this Commission.

ISSUE 35: Should the Commission approve revised tariffs reflecting the fuel adjustment factors and capacity cost recovery factors determined to be appropriate in this proceeding?

STIPULATION

Yes.

ISSUE 36: **Should the Joint Motion to Modify Order No. PSC-2012-0425-PAA-EU regarding Weighted Average Cost of Capital Methodology be approved?**

STIPULATION

No. The normalization provisions of the Internal Revenue Code (IRC) Treasury Regulation Section 1.167(1)-1(h)(6) shall be applied to the Weighted Average Cost of Capital (WACC) in this docket subject to true-up. The determination of the WACC to be applied in future clause dockets shall be the subject of a workshop to be held by Commission staff.

XI. PENDING MOTIONS

On August 21, 2019, DEF, Gulf, TECO, and FPUC filed a Joint Motion to Modify Order No. PSC-2012-0425-PAA-EI Regarding Weighted Average Cost of Capital Methodology. This motion is the subject of Issue 36 and a stipulation of the issue as stated above has been reached.

XII. PENDING CONFIDENTIALITY MATTERS

There are no pending confidentiality matters.

XIII. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time.

XIV. RULINGS

Opening statements, if any, shall not exceed ten minutes per party unless a party chooses to waive its opening statement. Each witness shall be given five minutes for a summary of their testimony.

At this time all parties have stipulated to the entry of the pre-filed testimony and exhibits of all witnesses into the record with the exception of witnesses Swartz and Polich who are addressing Issues 1B and 1C, replacement power costs for the Bartow Unit 4 power plant and its de-rating. Issues 1B and 1C have been referred by Chairman Graham to the Division of

Administrative Hearings (DOAH) for hearing in order to maintain the confidentiality of the materials necessary to be discussed to resolve these issues.

Contested Issue 1E was raised by OPC and states as follows: "Should the Commission hold a separate "spin-off" hearing to determine a cause of the Bartow outage and the prudence of DEF's decisions on all factors related to the cause(s) and duration of any outages and the de-rating of the Bartow plant?" At the Prehearing Conference the parties all agreed that they were prepared to try the issue and no longer wished to spin it off into a separate docket. Subsequent to the Prehearing Conference, Issues 1B and 1C have been referred by Chairman Graham to the Division of Administrative Hearings in order to protect the confidentiality of the materials relevant to the resolution of those issues. For this reason, I find that this issue is now moot.

FIPUG has objected to a witness being considered an expert witness unless the witness states the subject matter area(s) in which he or she claims expertise, and voir dire, if requested, is permitted. Section VI.A(8) of Order No. PSC-2019-0059-PCO-EI (OEP), issued on February 13, 2019, requires that a party identify each witness the party wishes to voir dire and specify the portions of the witness' testimony to which it objects. Since FIPUG has not complied with the OEP by naming witnesses whose expertise it wishes to challenge or identifying the witness testimony to which it objects, I find that FIPUG shall not be allowed to voir dire or challenge the expertise of any witness at the final hearing.

It is therefore,

ORDERED by Commissioner Gary F. Clark, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Gary F. Clark, as Prehearing Officer, this 31th day of October, 2019.



GARY F. CLARK
Commissioner and Prehearing Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

SBr

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.



Matthew R. Bernier

Associate General Counsel
Duke Energy Florida, LLC.

February 17, 2020

VIA ELECTRONIC FILING

Adam Teitzman, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: *Fuel and purchased power cost recovery clause with generating performance incentive factor; Docket No. 20200001-EI*

Dear Mr. Teitzman:

Please find enclosed for electronic filing on behalf of Duke Energy Florida, LLC ("DEF"), DEF's Request for Confidential Classification for certain information provided to Staff for DEF's Response to OPC's Fourth Request to Produce (Nos. 34-39), specifically question 36. The filing includes the following:

- DEF's Request for Confidential Classification
- Slip-sheet for confidential Exhibit A
- Redacted Exhibit B (two copies)
- Exhibit C (justification matrix), and
- Exhibit D (affidavit of Jeffrey Swartz)

DEF's confidential Exhibit A that accompanies the above-referenced was submitted with DEF's Notice of Intent to Request Confidential Classification on January 27, 2020, under separate cover.

Thank you for your assistance in this matter. Please feel free to call me at (850) 521-1428 should you have any questions concerning this filing.

Respectfully,

s/Matthew R. Bernier

Matthew R. Bernier

MRB/mw
Enclosures

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost
recovery clause with generating performance
incentive factor.

Docket No. 20200001-EI

Dated: February 17, 2020

**DUKE ENERGY FLORIDA LLC'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

Duke Energy Florida, LLC (“DEF” or “Company”), pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), submits this Request for Confidential Classification for certain information provided in its response to the Office of the Public Counsel’s (“OPC”) Fourth Request to produce Documents (Nos. 34-39, served on January 27, 2020 with DEF’s Notice of Intent to Request Confidential Classification. This Request is timely. See Rule 25-22.006(3)(a)1, F.A.C. In support of this Request, DEF states:

1. DEF’s Response to OPC’s Request to Produce Documents (Nos. 34-39), specifically, number 36, bearing bates numbers DEF-19FL-FUEL-006986 through DEF-19FL-FUEL-007016, provided to Staff pursuant to DEF’s Notice of Intent contain “proprietary confidential business information” under § 366.093(3), Florida Statutes.

2. The following exhibits are included with this request:

(a) Sealed Composite Exhibit A is a package containing unredacted copies of all the documents for which DEF seeks confidential treatment. Composite Exhibit A was submitted separately in a sealed envelope labeled “CONFIDENTIAL” on January 27, 2020, with DEF’s Notice

of Intent to Request Confidential Classification. In the unredacted versions, the information asserted to be confidential is highlighted in yellow.

(b) Composite Exhibit B is a package containing two copies of redacted versions of the documents for which the Company requests confidential classification. The specific information for which confidential treatment is requested has been blocked out by opaque marker or other means.

(c) Exhibit C is a table which identifies by page and line the information for which DEF seeks confidential classification and the specific statutory bases for seeking confidential treatment.

3. As indicated in Exhibit C, the information for which DEF requests confidential classification is “proprietary confidential business information” within the meaning of Section 366.093(3), F.S. Specifically, the information at issue includes proprietary and confidential third-party owned information, the disclosure of which would impair the third-party’s competitive business interests, and if disclosed, the Company’s competitive business interests and efforts to contract for goods and services on favorable terms. *See* § 366.093(3)(d) & (e), F.S.; Affidavit of Jeffrey Swartz at ¶¶ 4, 5 and 6. Accordingly, such information constitutes “proprietary confidential business information” which is exempt from disclosure under the Public Records Act pursuant to Section 366.093(1), F.S.

4. The information at issue relates to proprietary and confidential third-party operating procedures, drawings, and technical information regarding the third-party’s proprietary component design and operation parameters. If DEF cannot demonstrate to its third-party OEM, and others that may enter contracts with DEF in the future, that DEF has the ability to protect those third-parties’ confidential and proprietary business information, third-parties will be less likely to provide that

information to DEF – harming DEF’s ability to prudently operate its business. *See* § 366.093(3)(d) & (e), F.S.; Affidavit of Jeffrey Swartz at ¶¶ 4, 5 and 6. Furthermore, disclosure of the information could detrimentally impact DEF’s ability to negotiate favorable contracts as third-parties may begin to demand a “premium” to do business with DEF to account for the risk that its proprietary information will become a matter of public record, thereby harming DEF’s competitive interests and ultimately its customers’ financial interests. *See* § 366.093(3)(e), F.S.; Affidavit of Jeffrey Swartz at ¶ 6. Accordingly, such information constitutes “proprietary confidential business information” which is exempt from disclosure under the Public Records Act pursuant to Section 366.093(1), F.S.

5. The information identified as Exhibit “A” is intended to be and is treated as confidential by the Company. *See* Affidavit of Jeffrey Swartz at ¶ 7. The information has not been disclosed to the public, and the Company has treated and continues to treat the information and contracts at issue as confidential. *See* Affidavit of Jeffrey Swartz at ¶¶ 6 and 7.

6. DEF requests that the information identified in Exhibit A be classified as “proprietary confidential business information” within the meaning of section 366.093(3), F.S., that the information remain confidential for a period of at least 18 months as provided in section 366.093(4) F.S., and that the information be returned as soon as it is no longer necessary for the Commission to conduct its business.

WHEREFORE, for the foregoing reasons, DEF respectfully requests that this Request for Confidential Classification be granted.

RESPECTFULLY SUBMITTED this 17th day of February, 2020.

s/Matthew R. Bernier

DIANNE M. TRIPLETT

Deputy General Counsel

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St. Petersburg, FL 33701

T: 727-820-4692

F: 727-820-5041

Email: Dianne.Triplett@duke-energy.com

MATTHEW R. BERNIER

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Tallahassee, Florida 32301

T: 850-521-1428

F: 727-820-5519

Email: Matthew.Bernier@duke-energy.com

Attorneys for Duke Energy Florida, LLC

CERTIFICATE OF SERVICE

Docket No. 20190001-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via email this 17th day of February, 2020, to all parties of record as indicated below.

s/Matthew R. Bernier

Attorney

<p>Suzanne Brownless Office of General Counsel FL Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 sbrownle@psc.state.fl.us</p> <p>J. Beasley / J. Wahlen / M. Means Ausley McMullen P.O. Box 391 Tallahassee, FL 32302 jbeasley@ausley.com jwahlen@ausley.com mmeans@ausley.com</p> <p>Russell A. Badders Gulf Power Company One Energy Place Pensacola, FL 32520 russell.badders@nexteraenergy.com</p> <p>Kenneth A. Hoffman Florida Power & Light Company 134 W. Jefferson Street Tallahassee, FL 32301-1713 ken.hoffman@fpl.com</p> <p>Jon C. Moyle, Jr. Moyle Law Firm, P.A. 118 North Gadsden Street Tallahassee, FL 32301 jmoyle@moylelaw.com mqualls@moylelaw.com</p>	<p>J.R. Kelly / T. David Office of Public Counsel 111 W. Madison St., Room 812 Tallahassee, FL 32399-1400 kelly.jr@leg.state.fl.us david.tad@leg.state.fl.us</p> <p>Paula K. Brown Regulatory Affairs Tampa Electric Company P.O. Box 111 Tampa, FL 33601-0111 regdept@tecoenergy.com</p> <p>Maria Moncada / David Lee Florida Power & Light Company 700 Universe Blvd. (LAW/JB) Juno Beach, FL 33408-0420 maria.moncada@fpl.com david.lee@fpl.com</p> <p>James Brew / Laura W. Baker Stone Law Firm 1025 Thomas Jefferson St., N.W. Suite 800 West Washington, DC 20007 jbrew@smxblaw.com lwb@smxblaw.com</p> <p>Mike Cassel Florida Public Utilities Company 208 Wildlight Avenue Yulee, FL 32097 mcassel@fpuc.com</p> <p>Beth Keating Gunster, Yoakley & Stewart, P.A. 215 South Monroe Street, Suite 601 Tallahassee, FL 32301 bkeating@gunster.com</p>
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Exhibit A

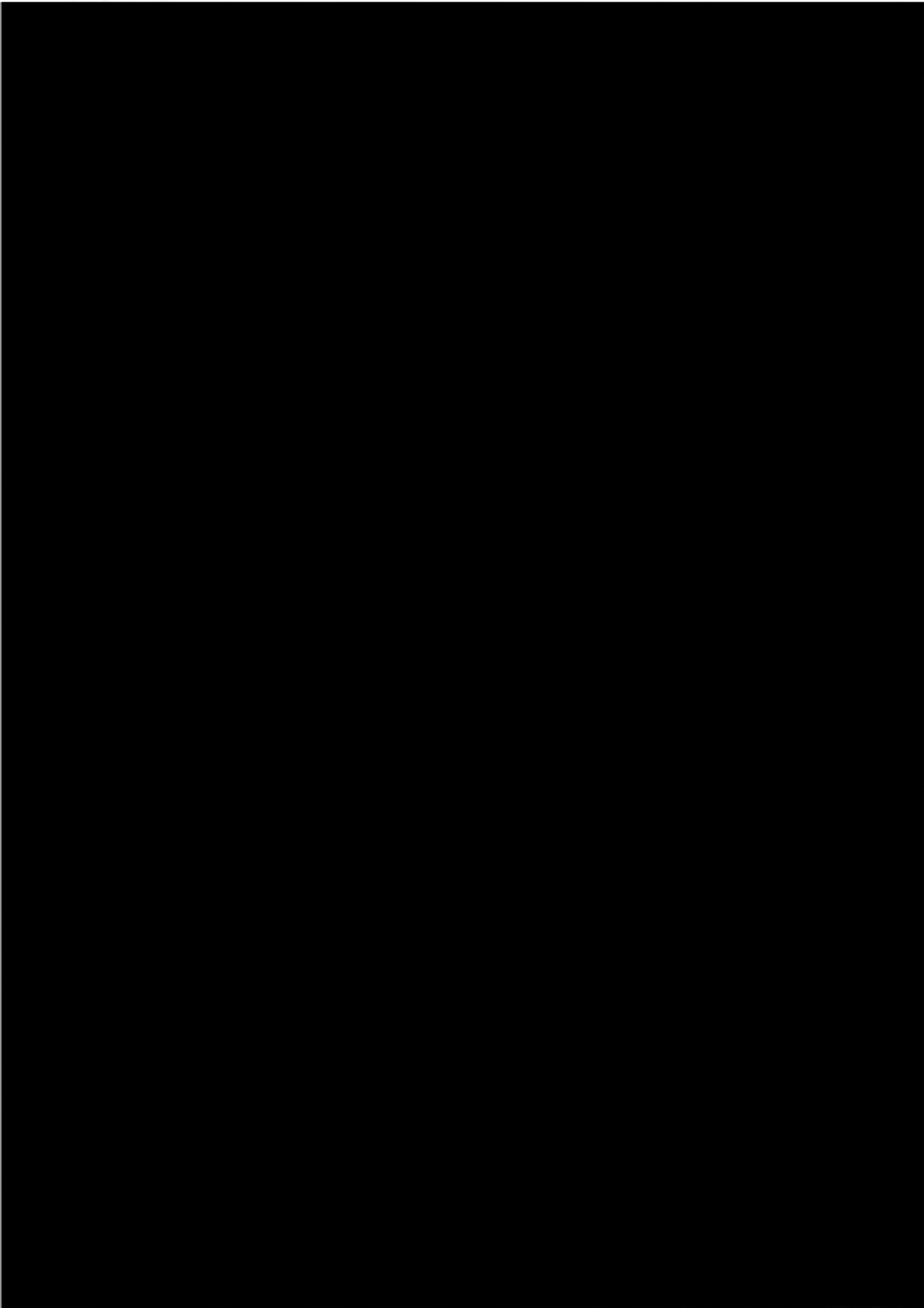
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**(submitted on January 27, 2020, under separate
cover)**

Exhibit B

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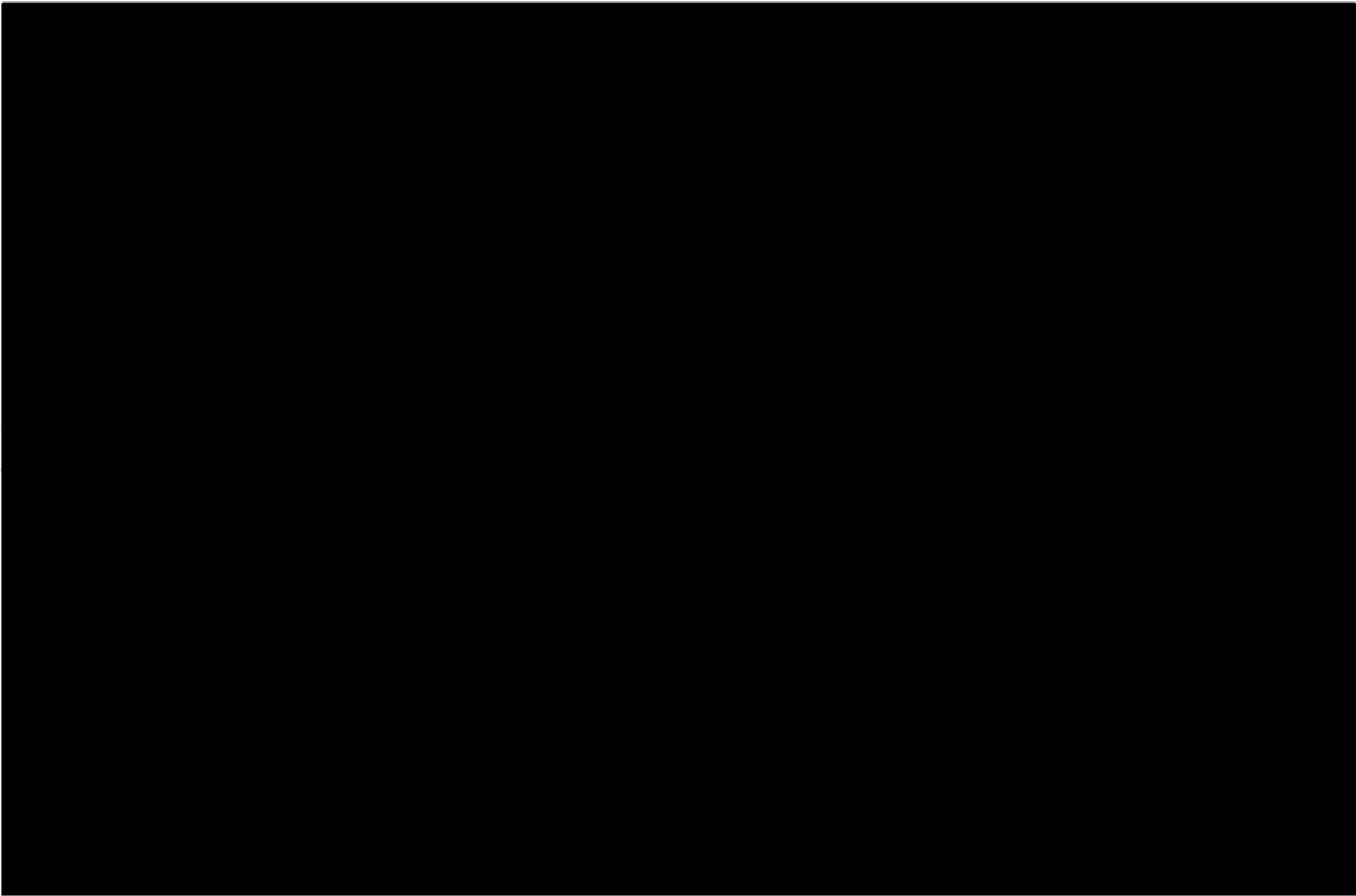
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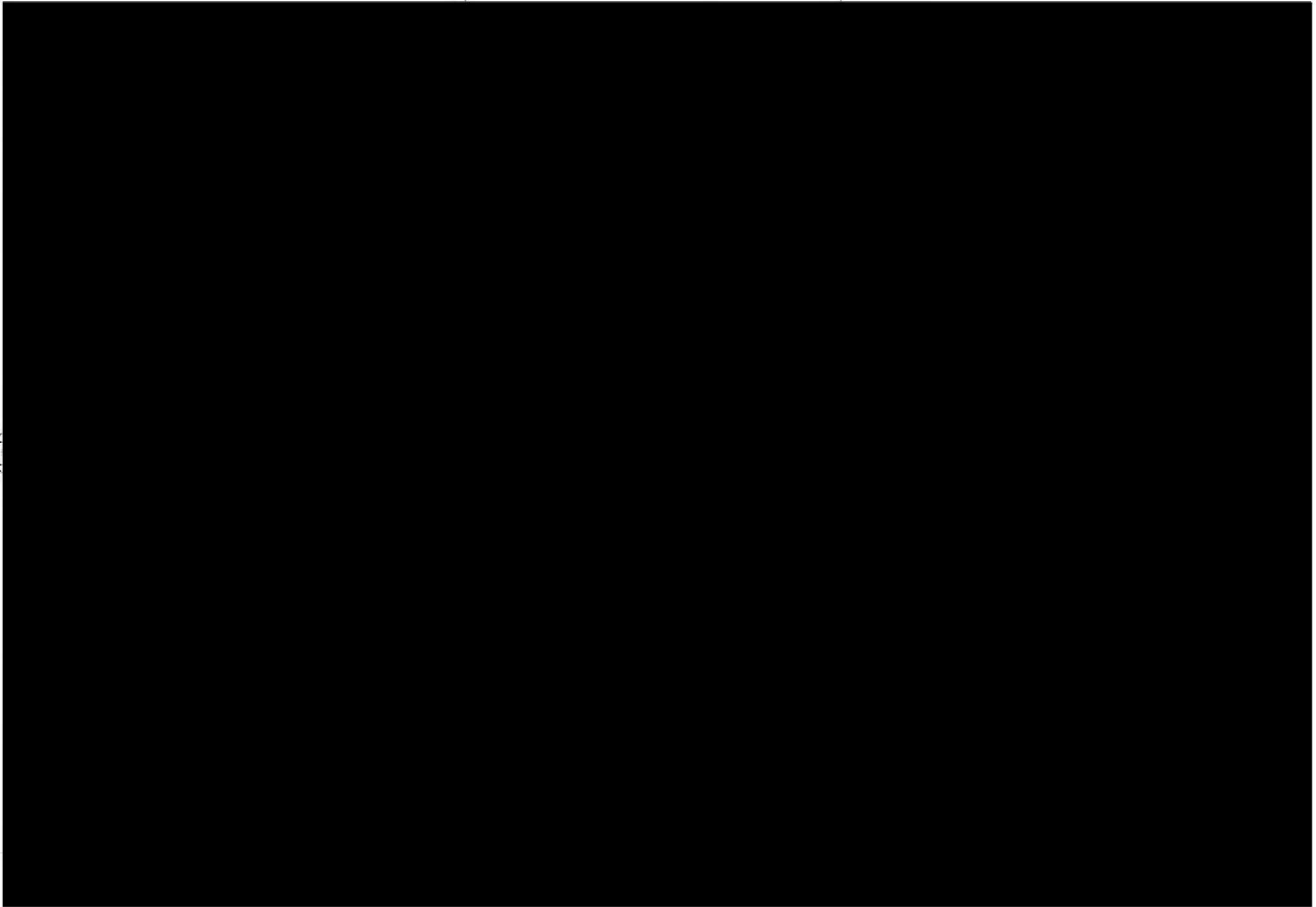


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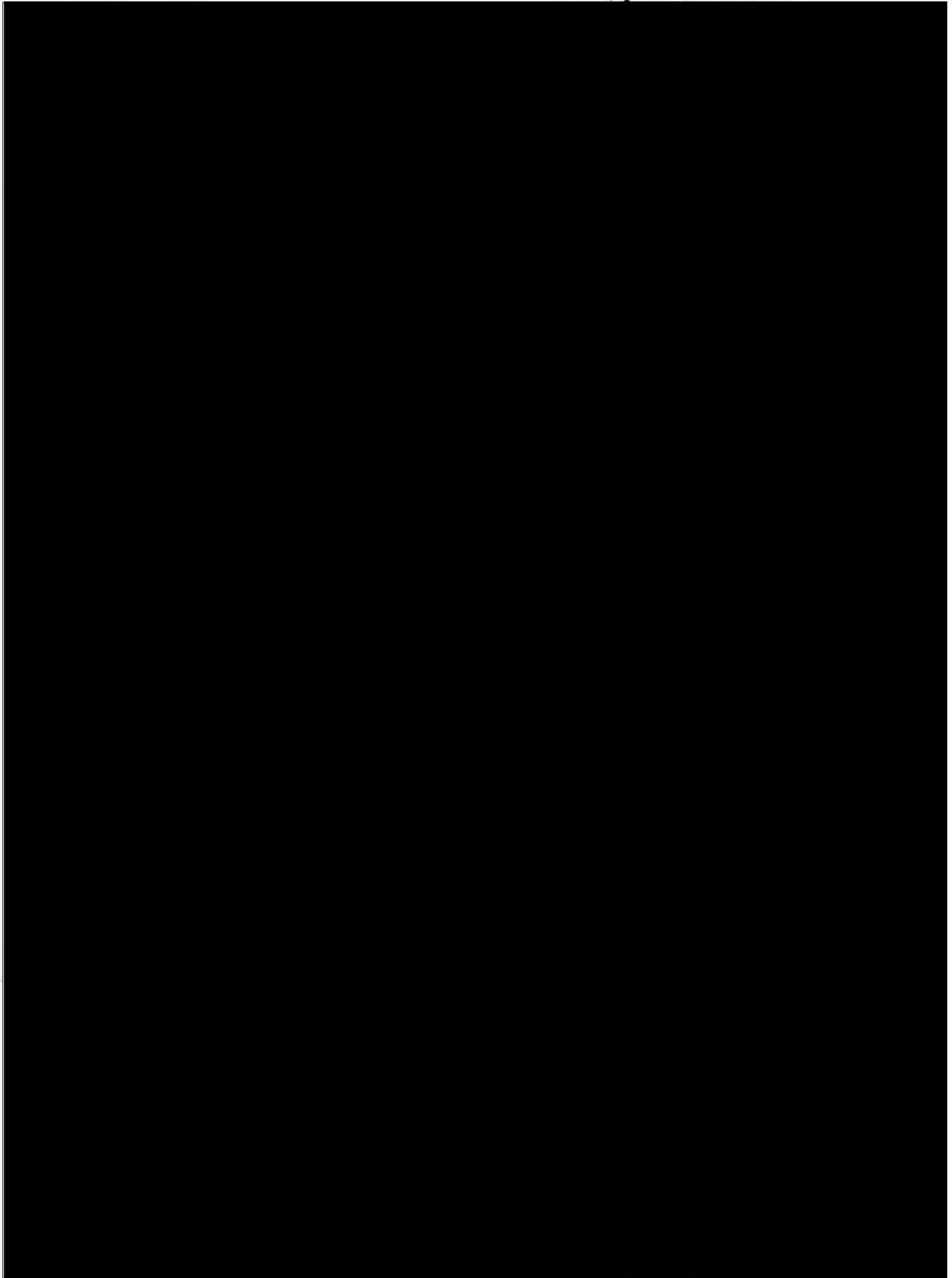
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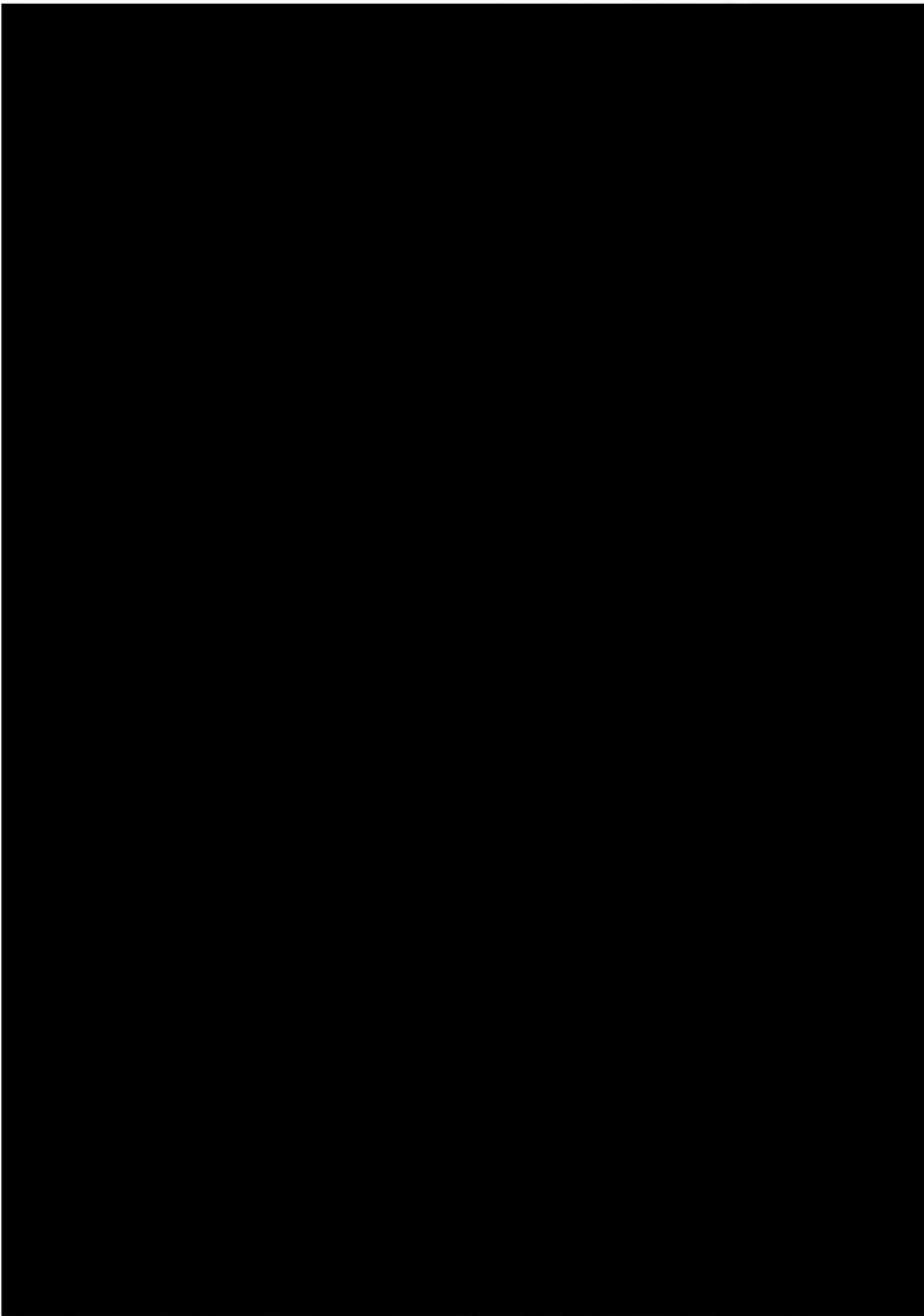
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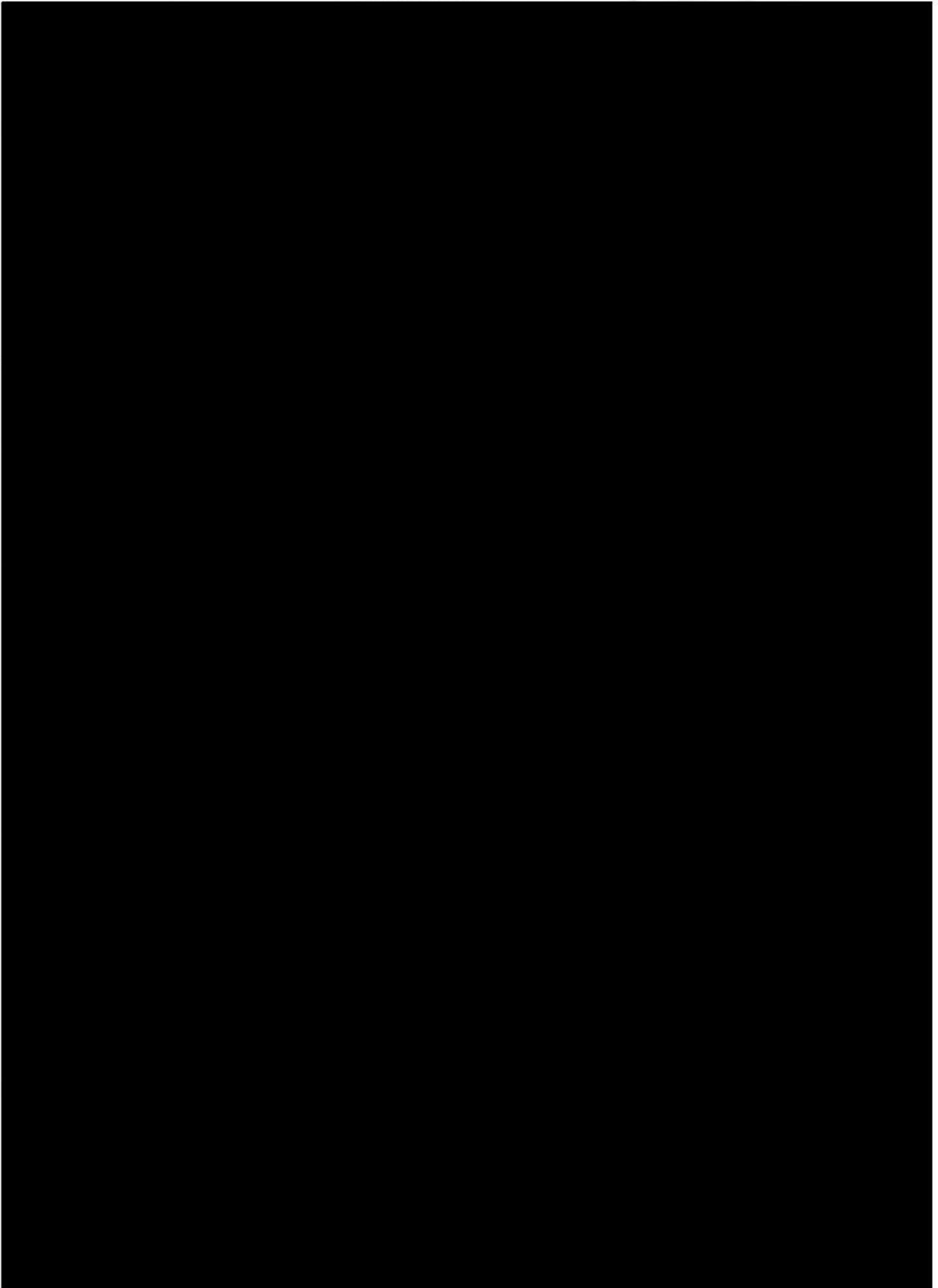


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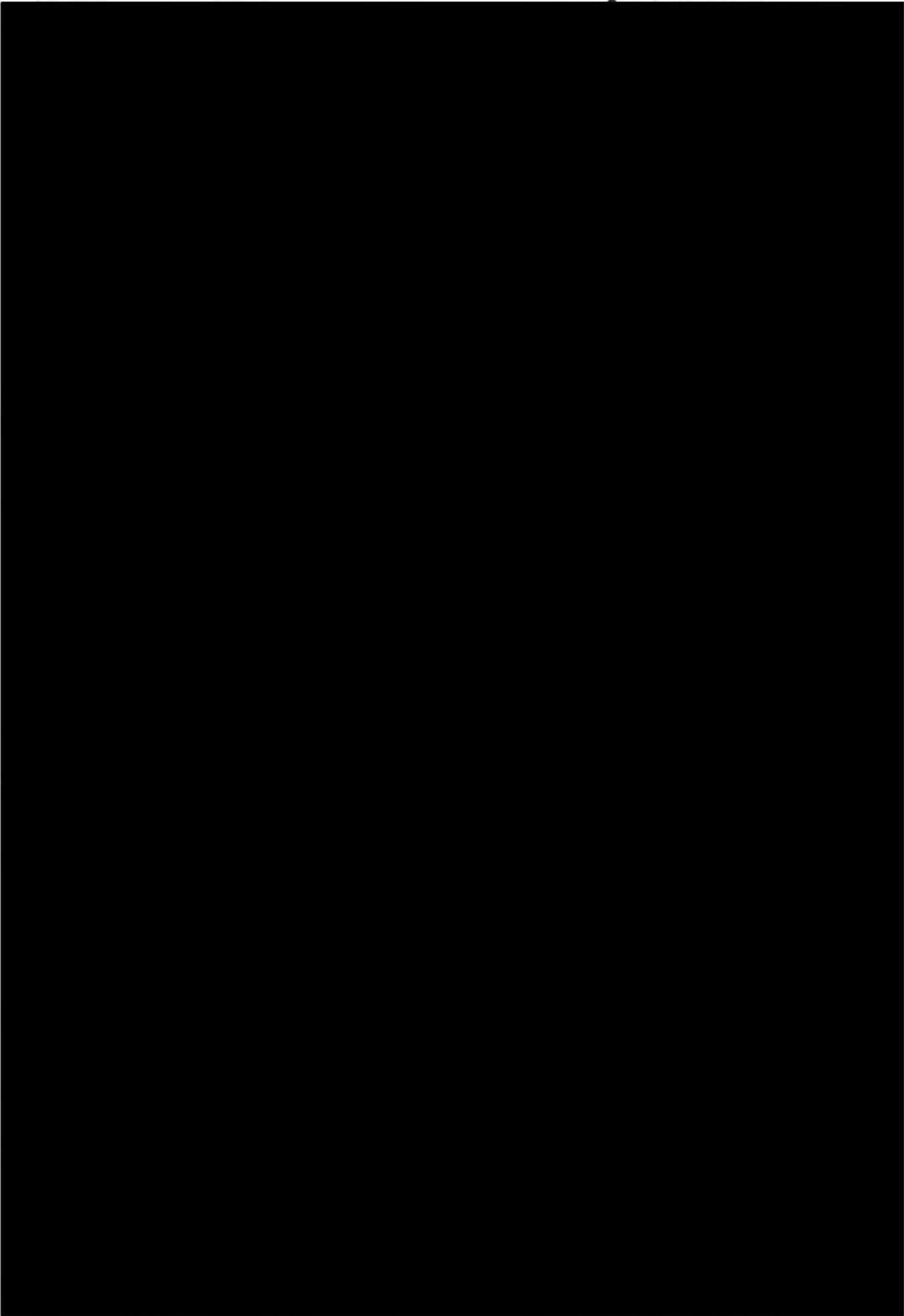
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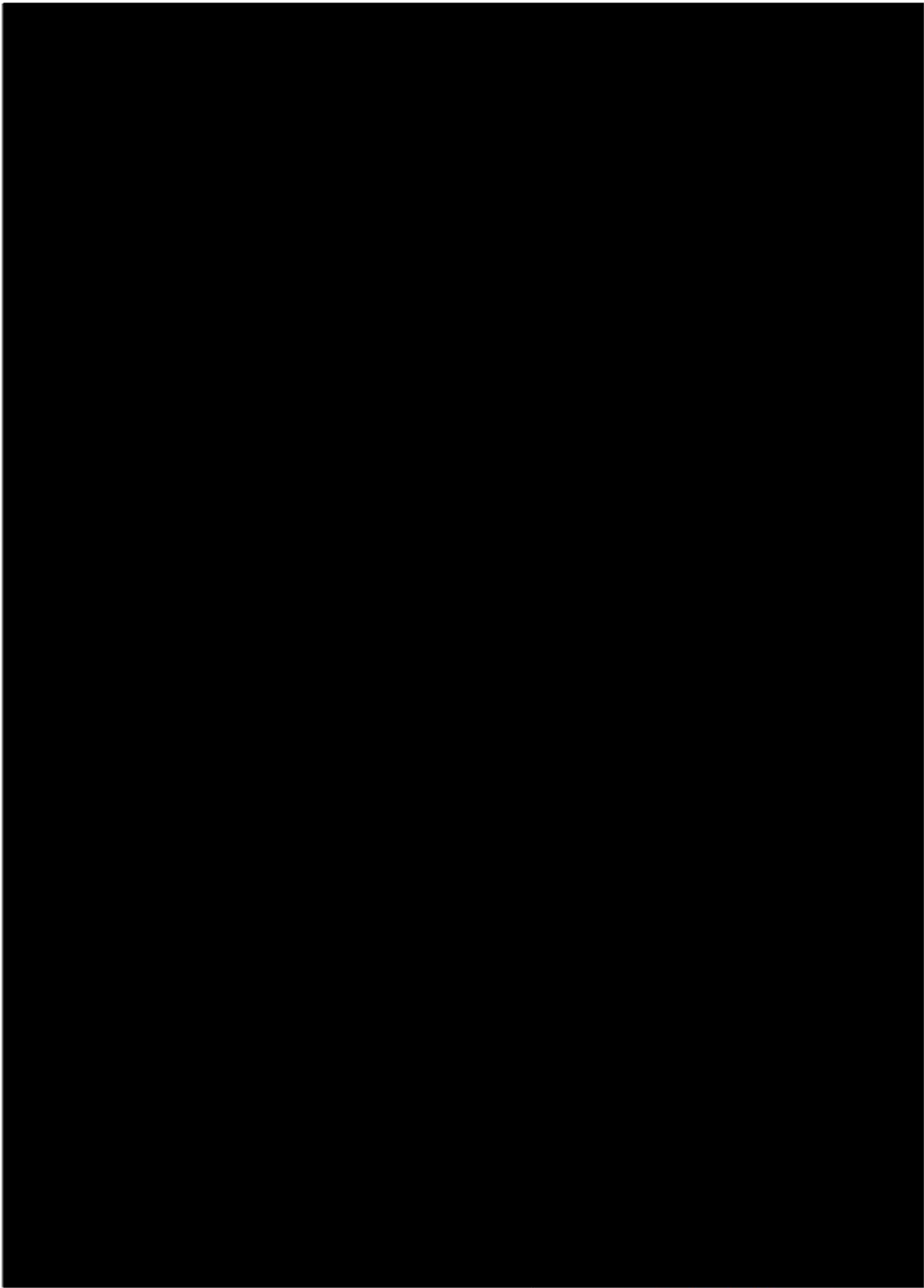
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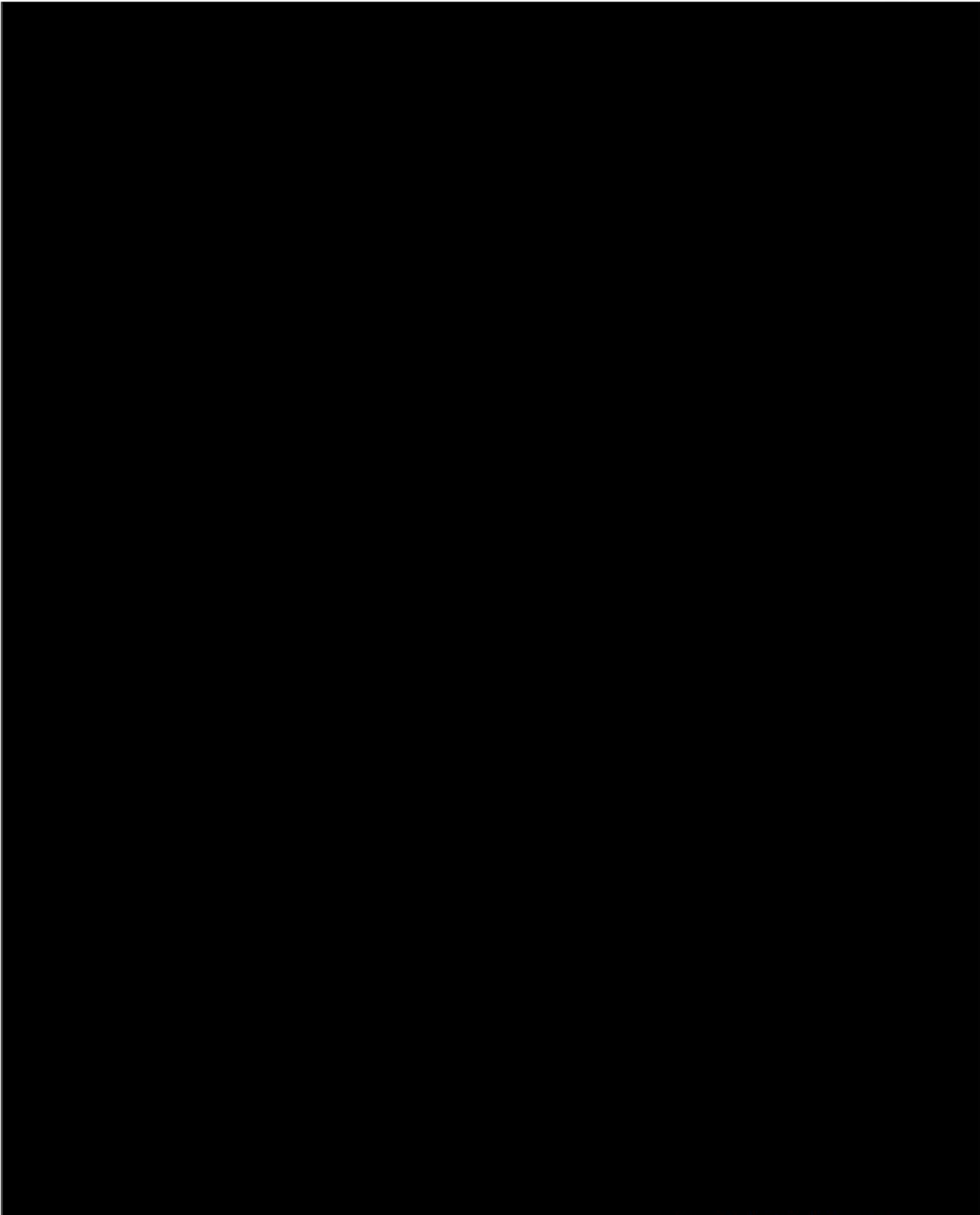


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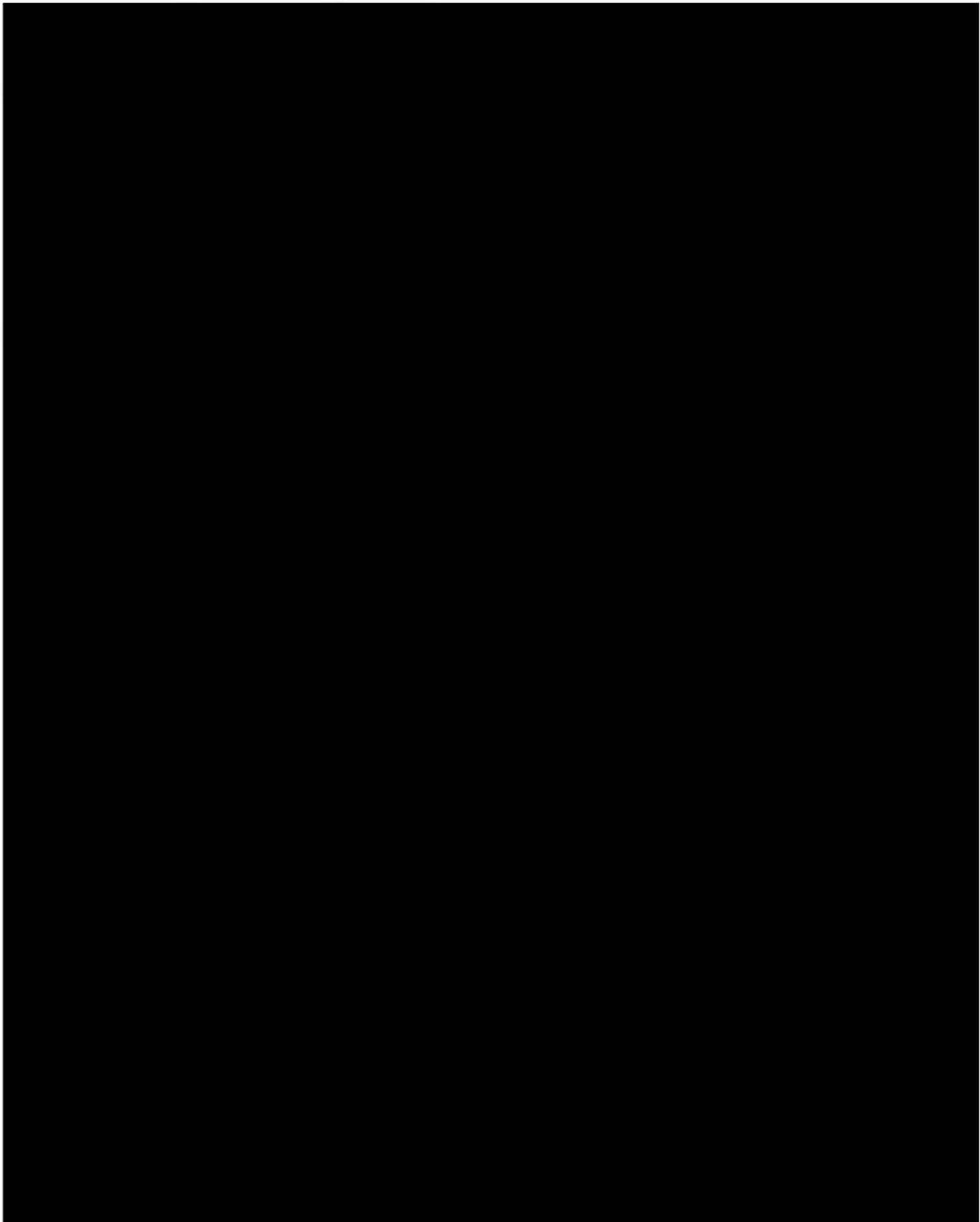


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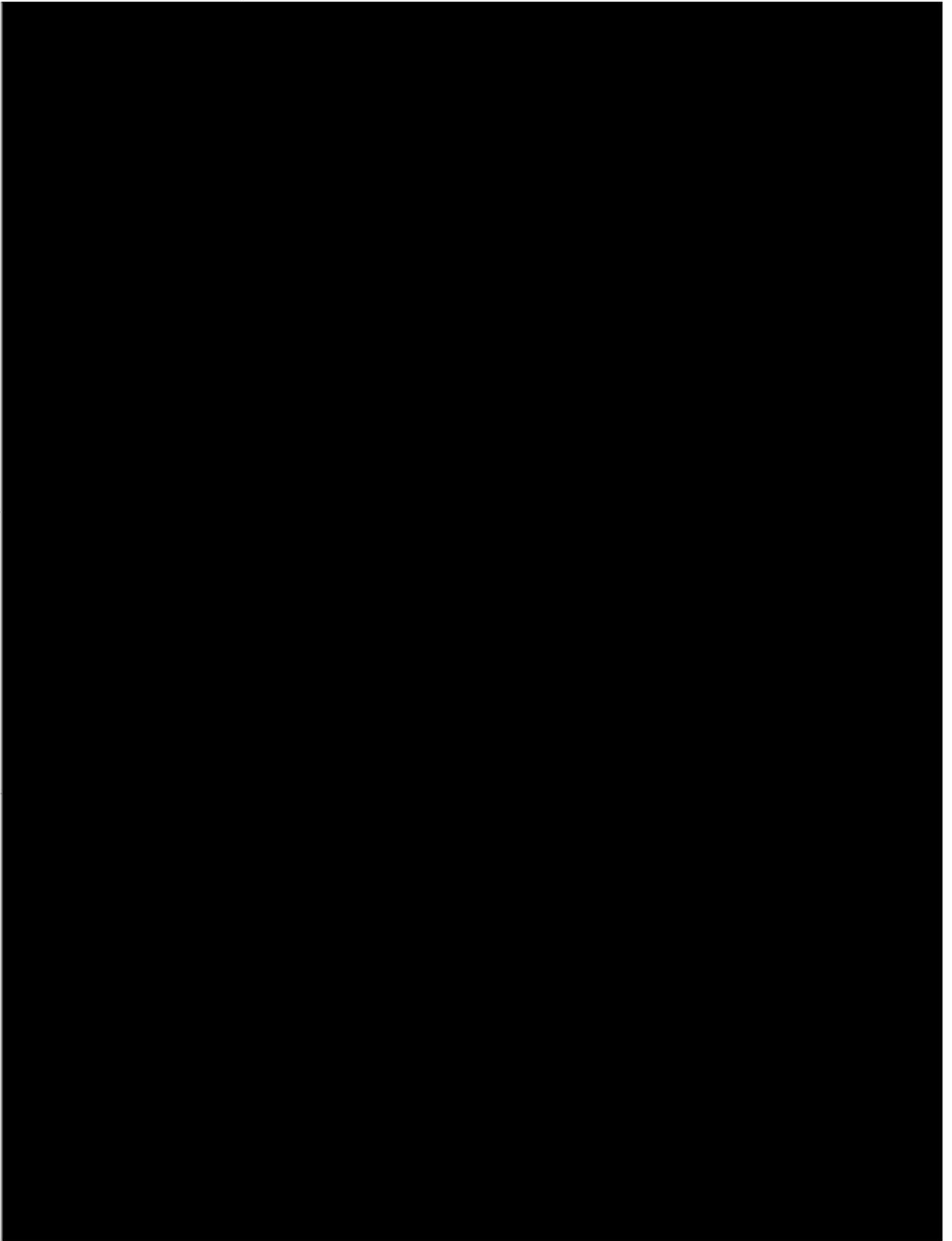
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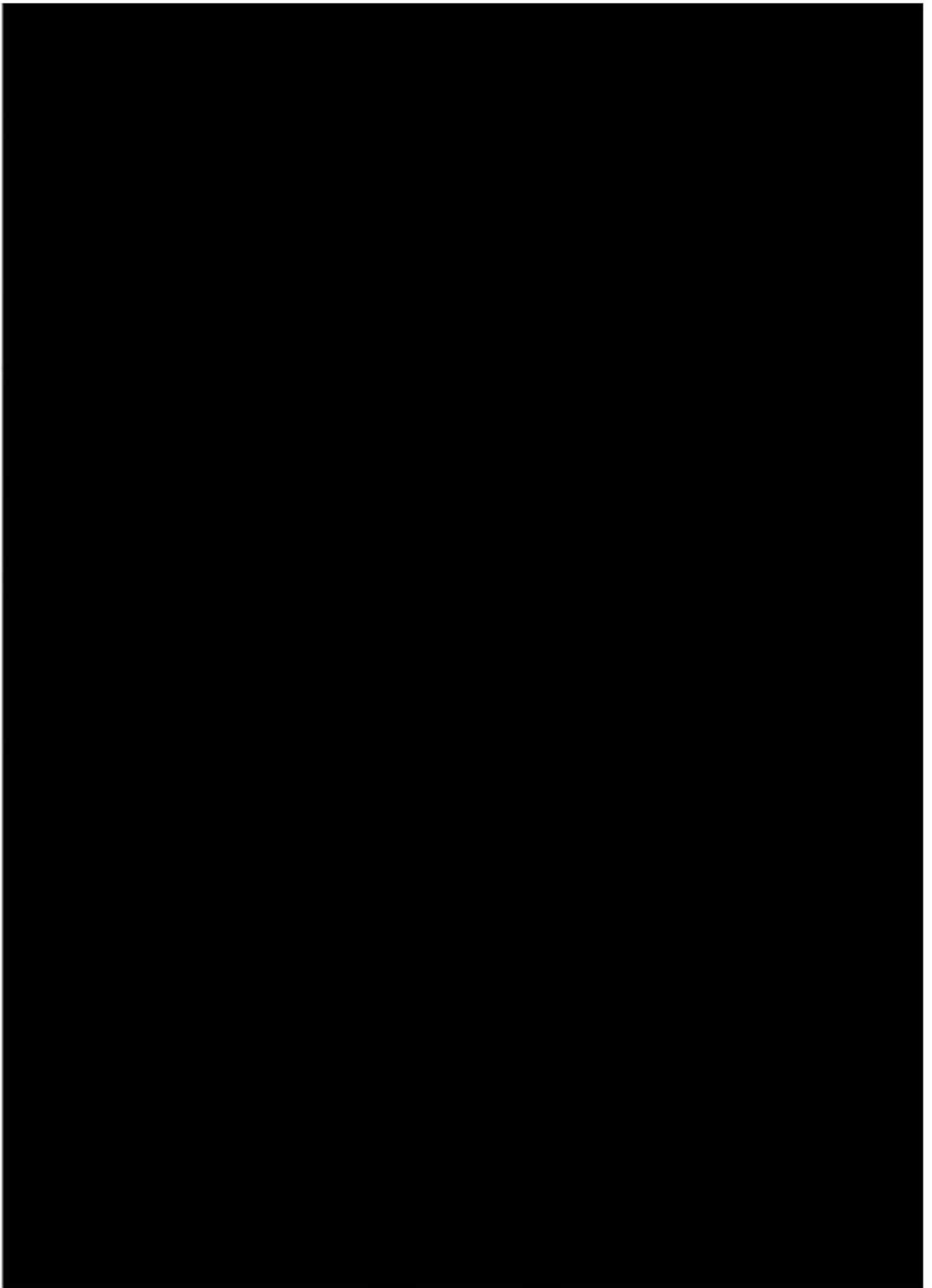
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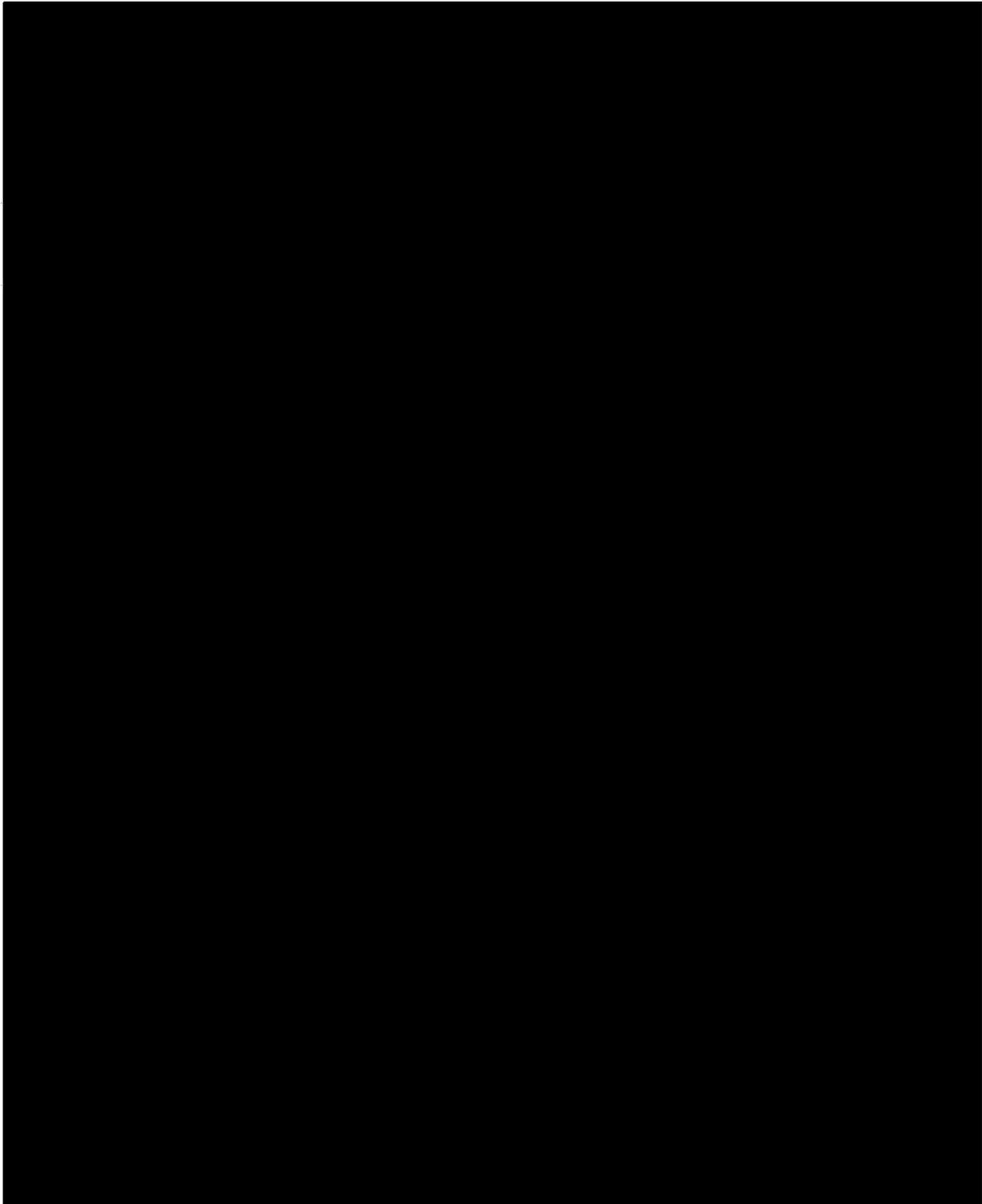
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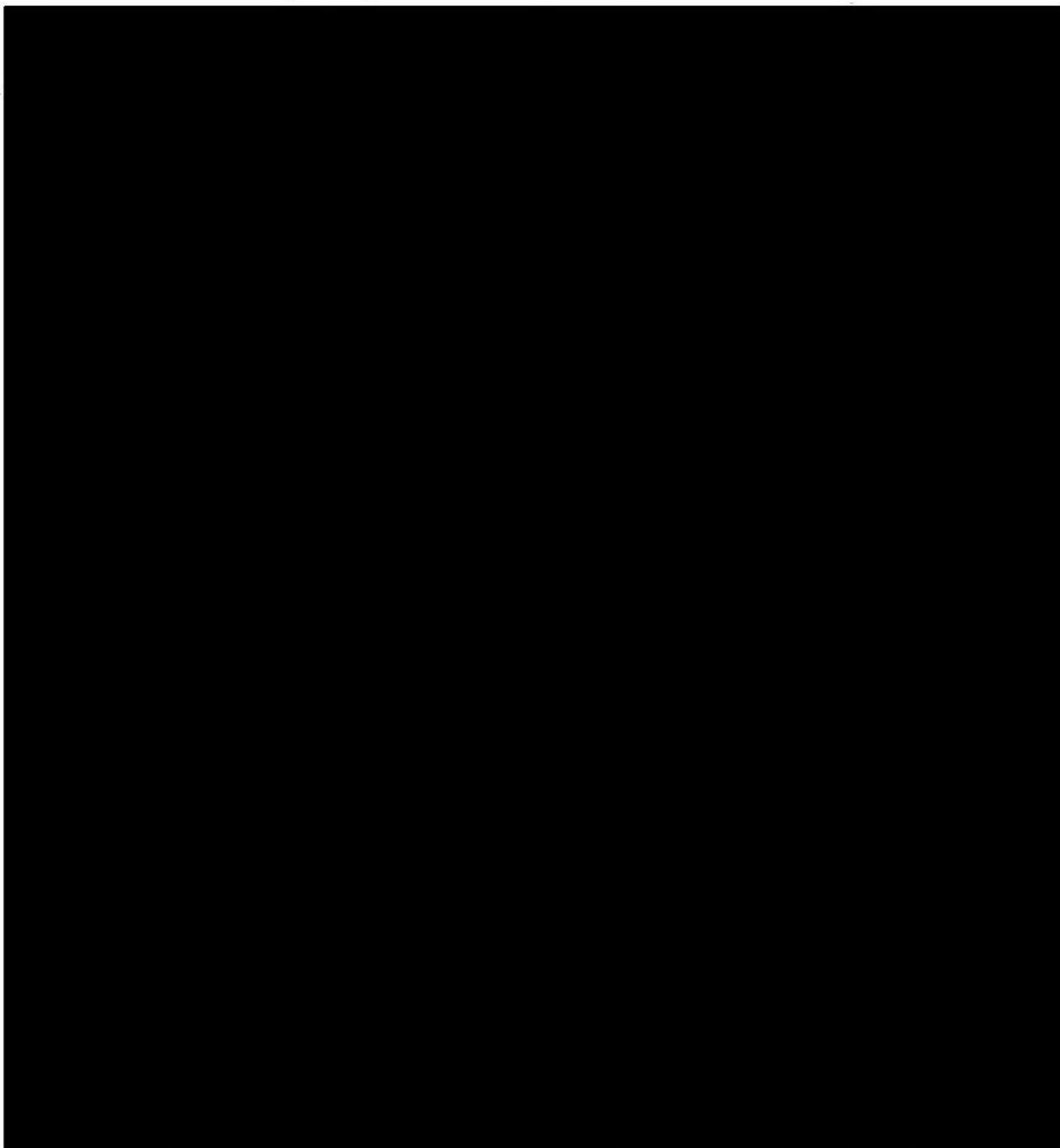
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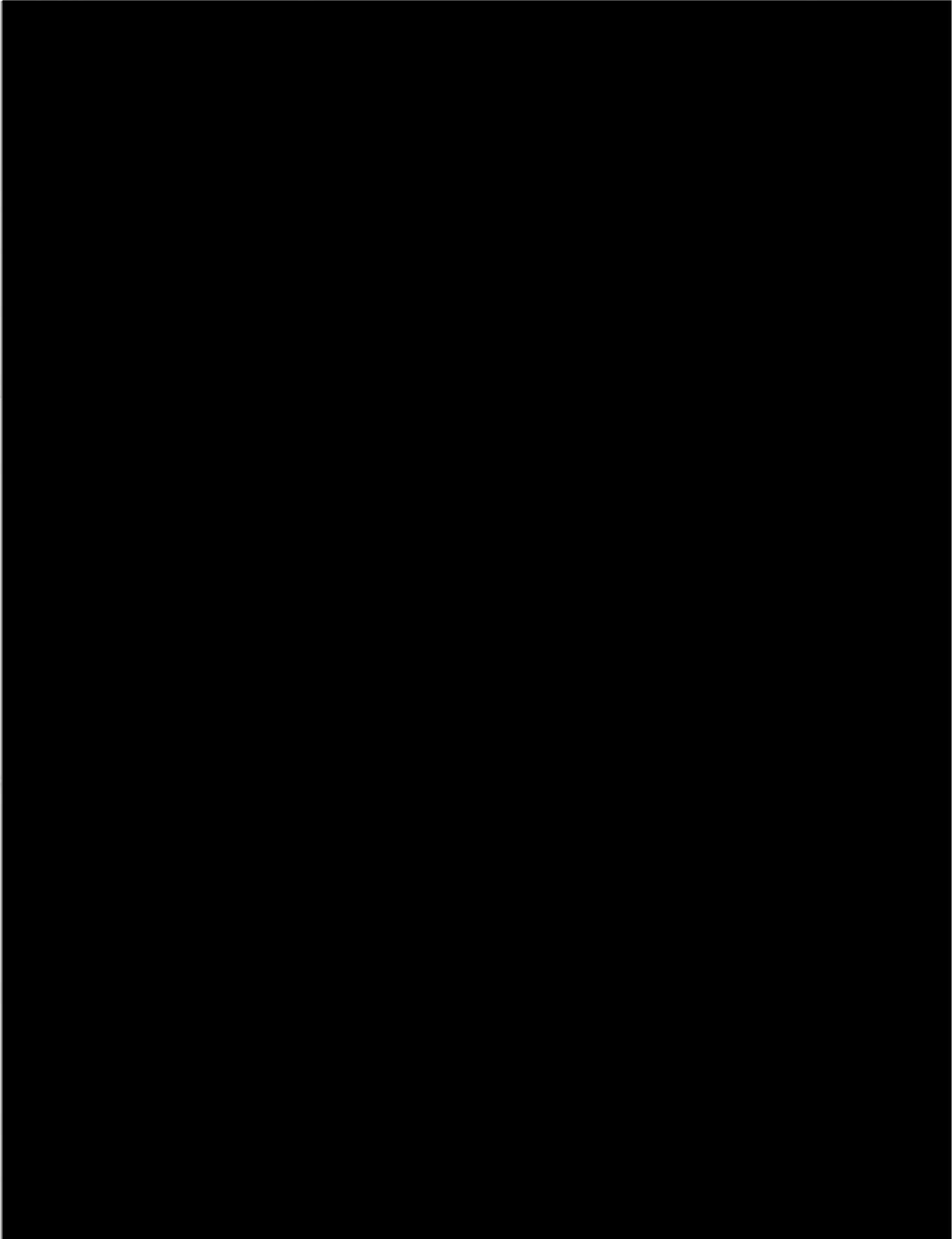
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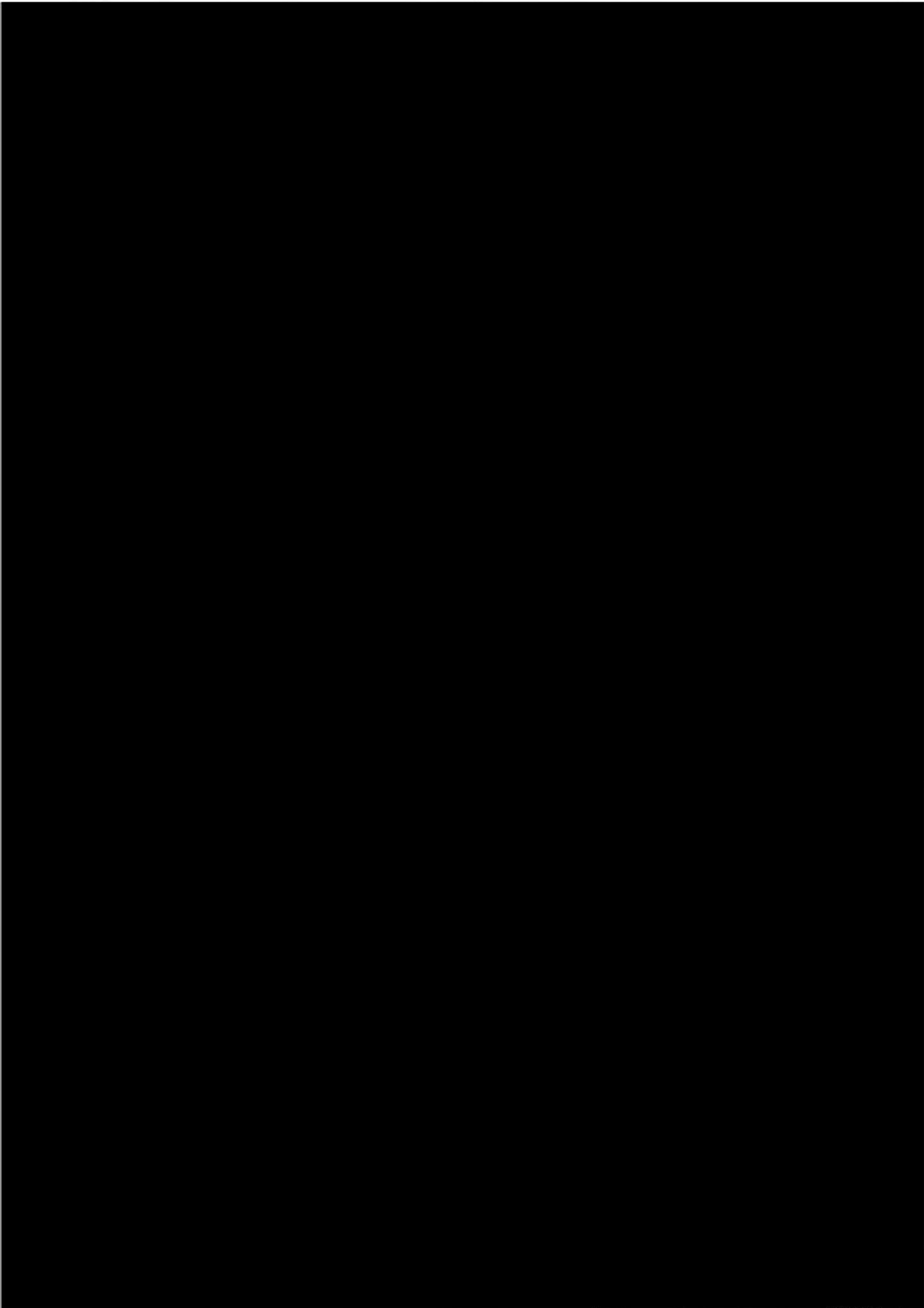
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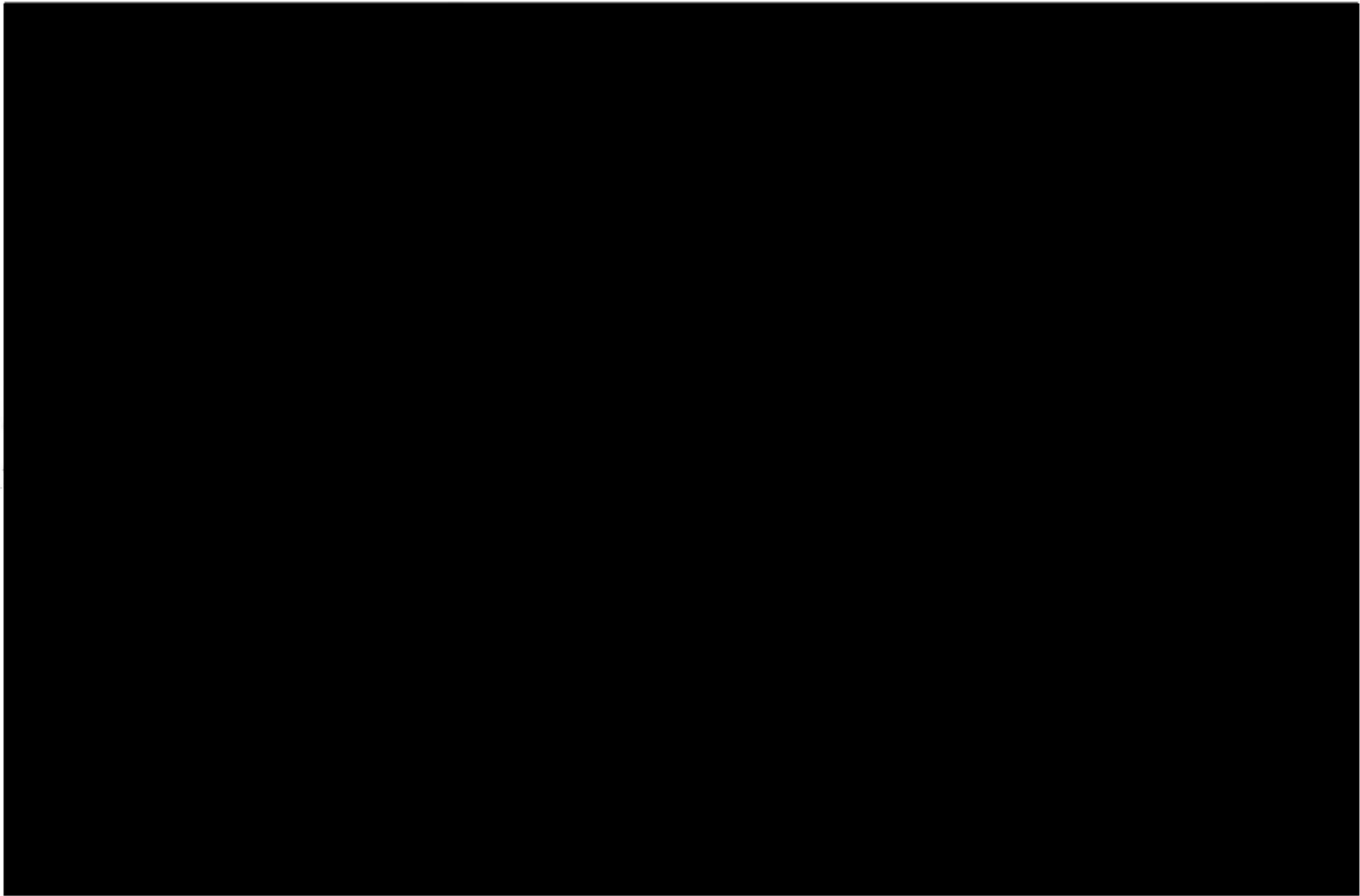
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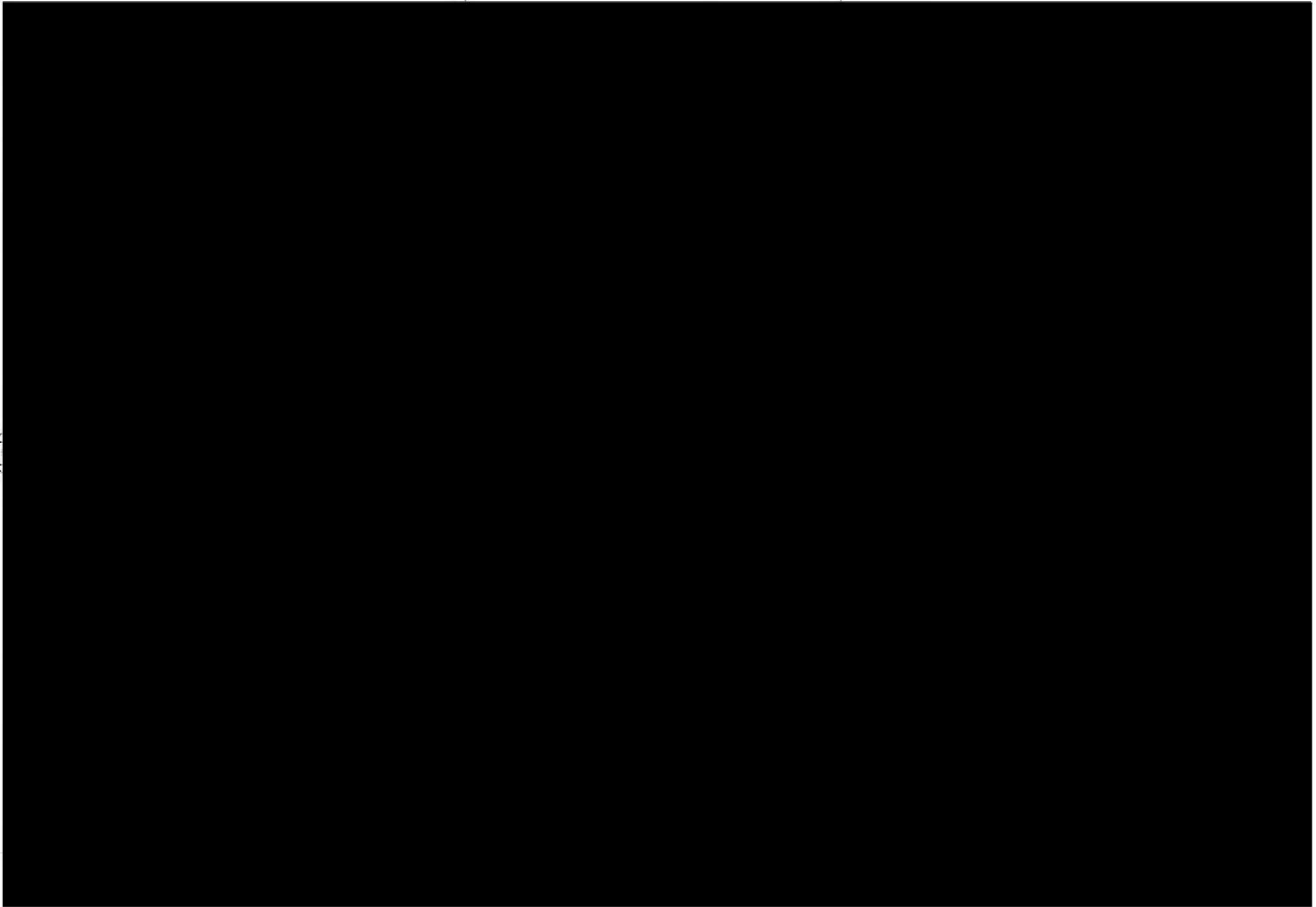


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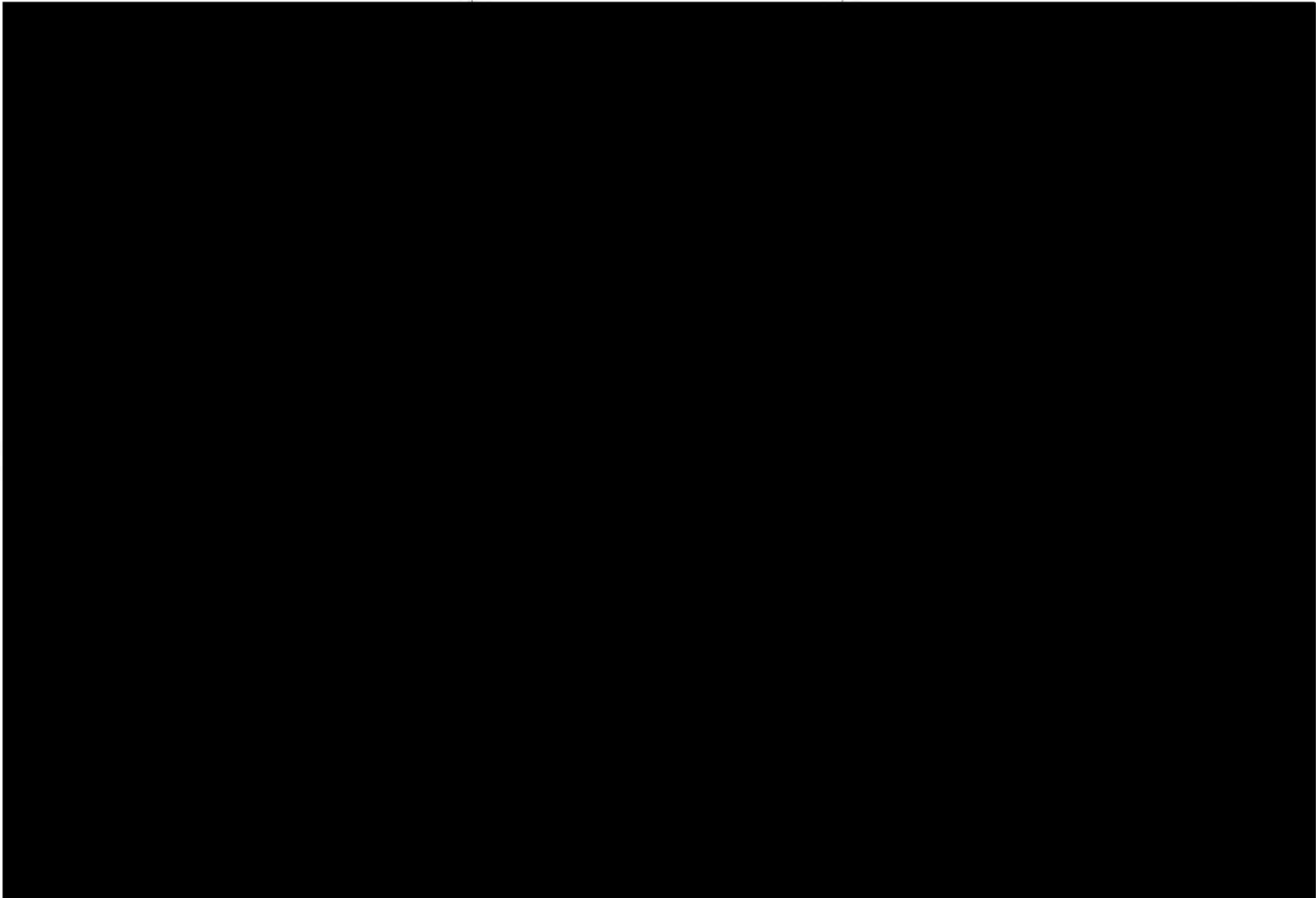
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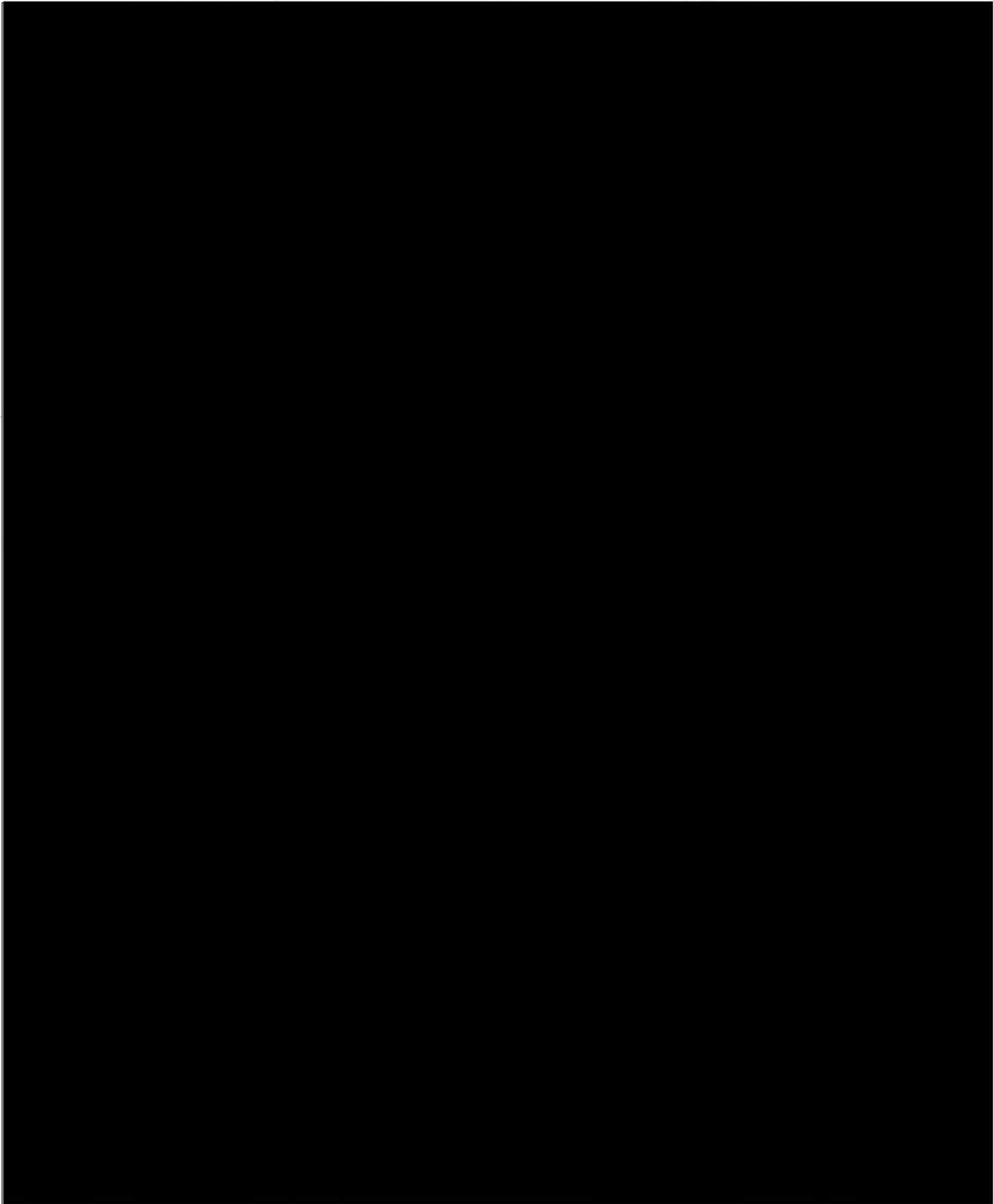
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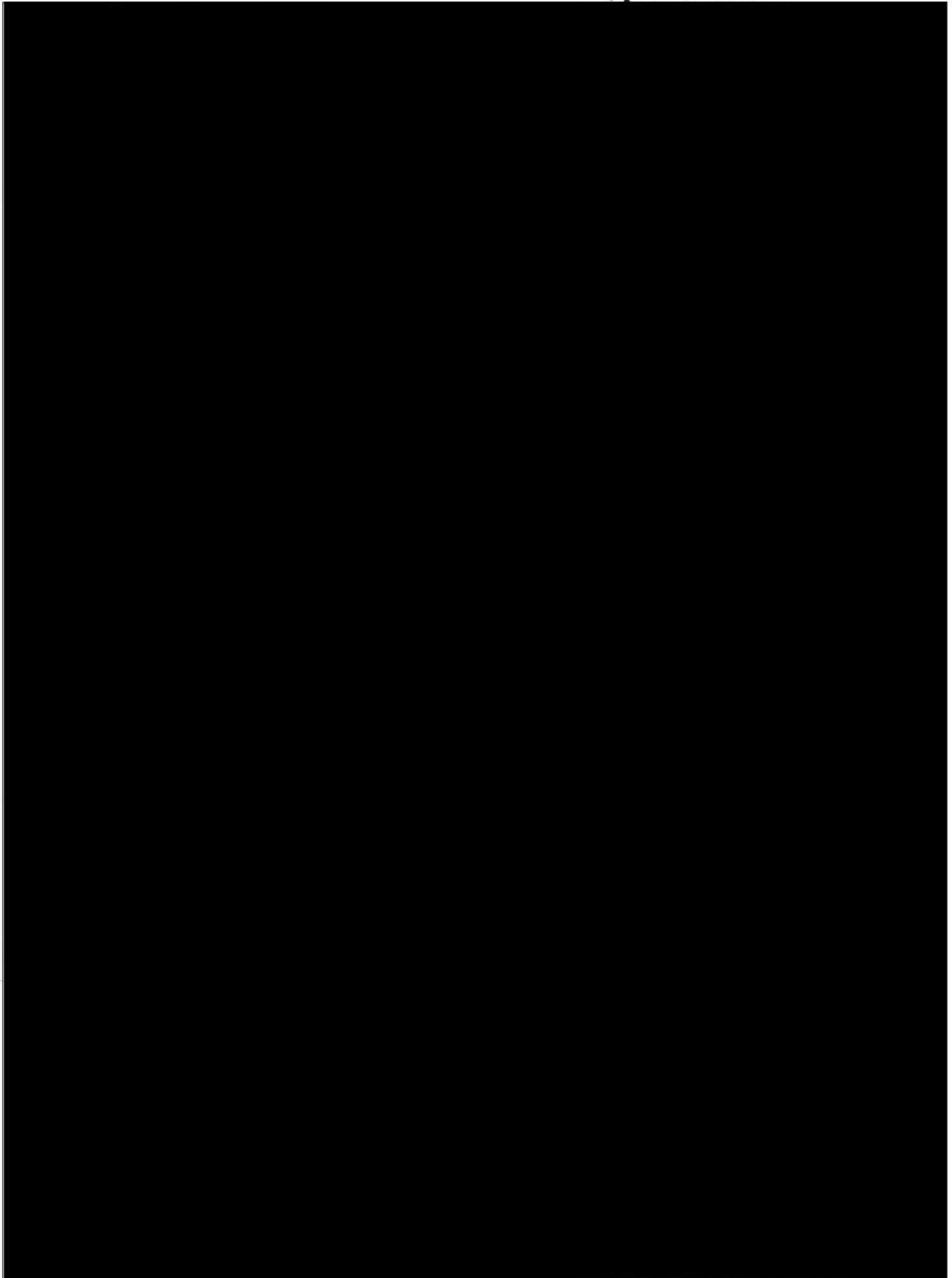
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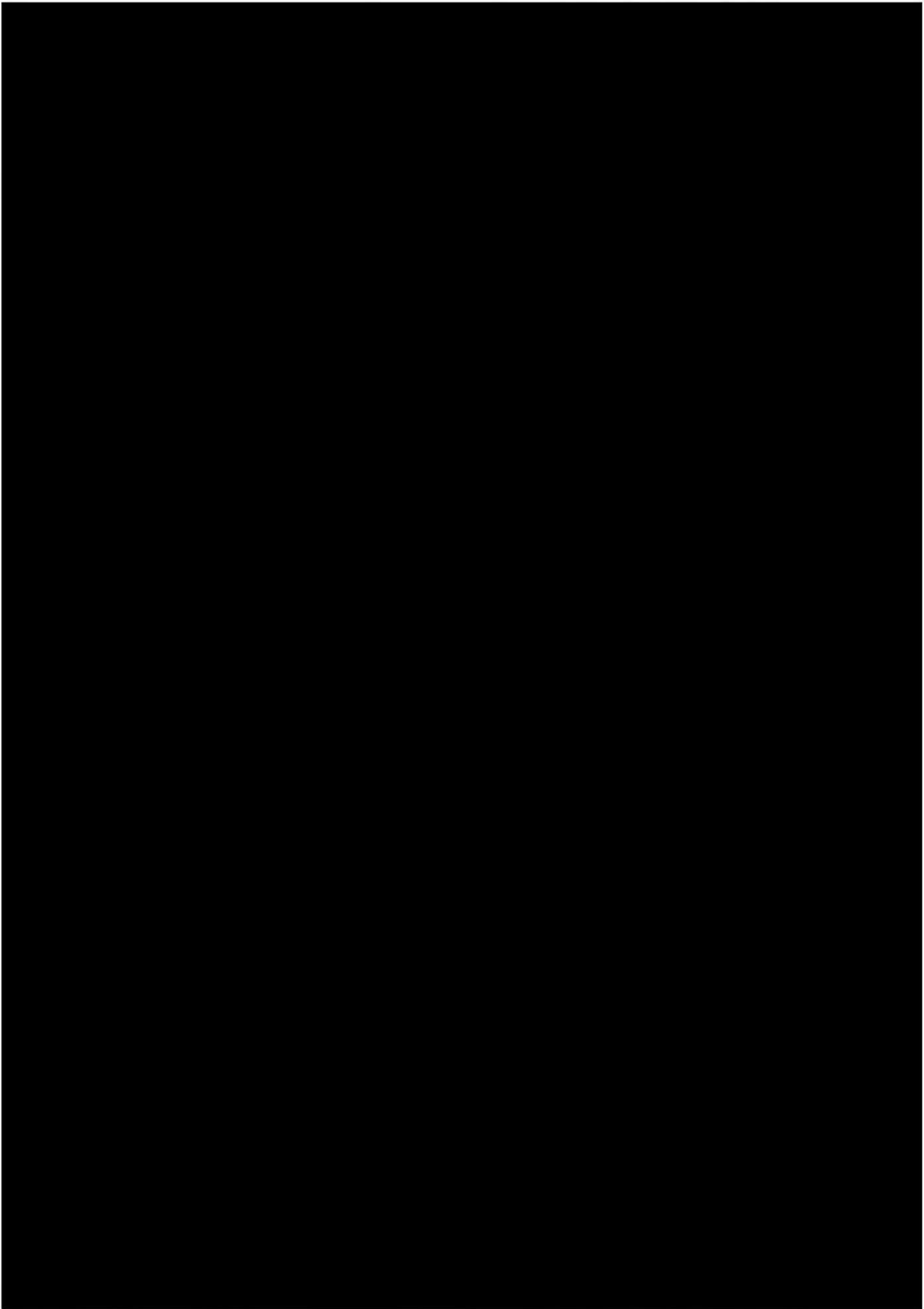


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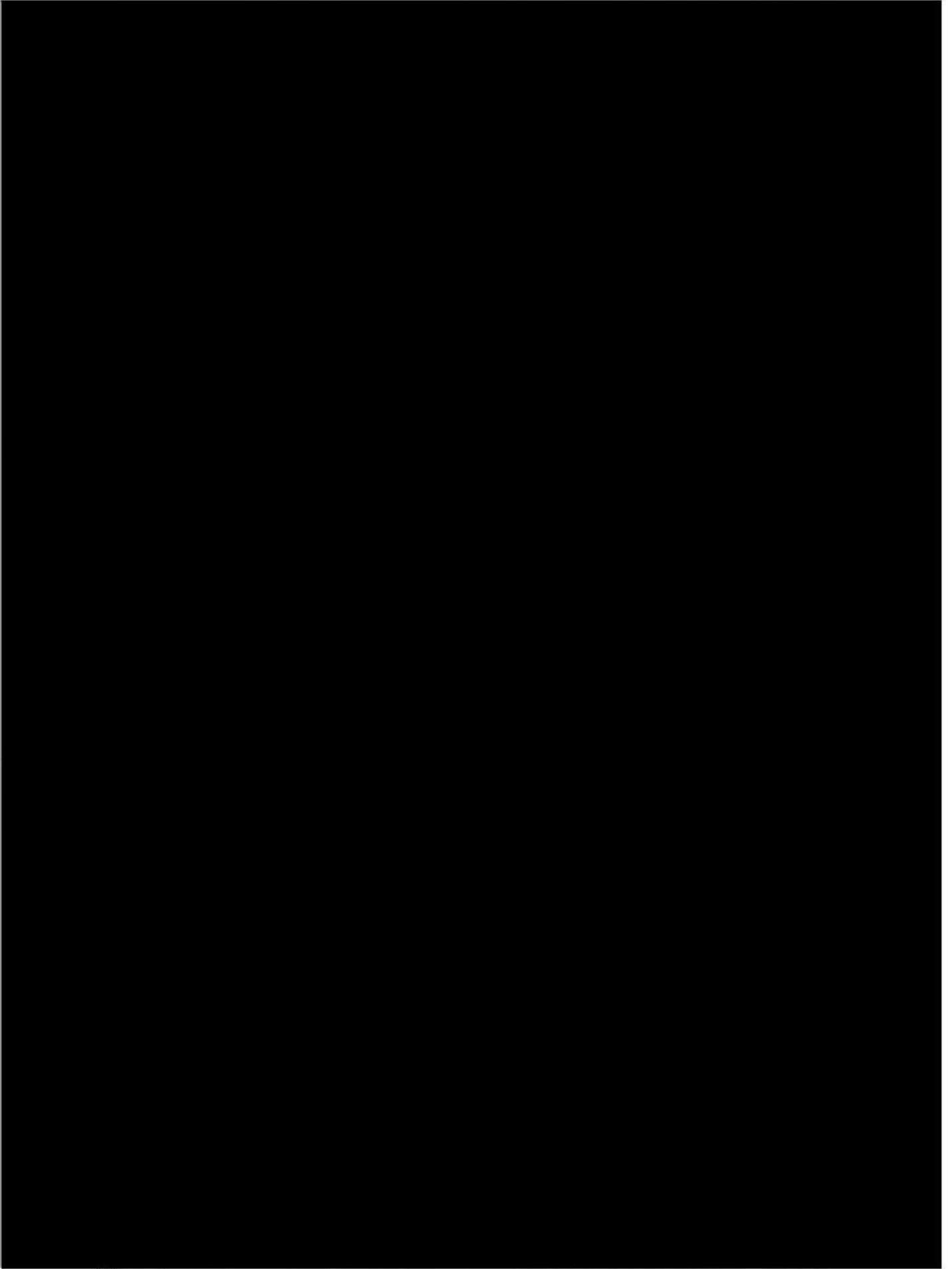


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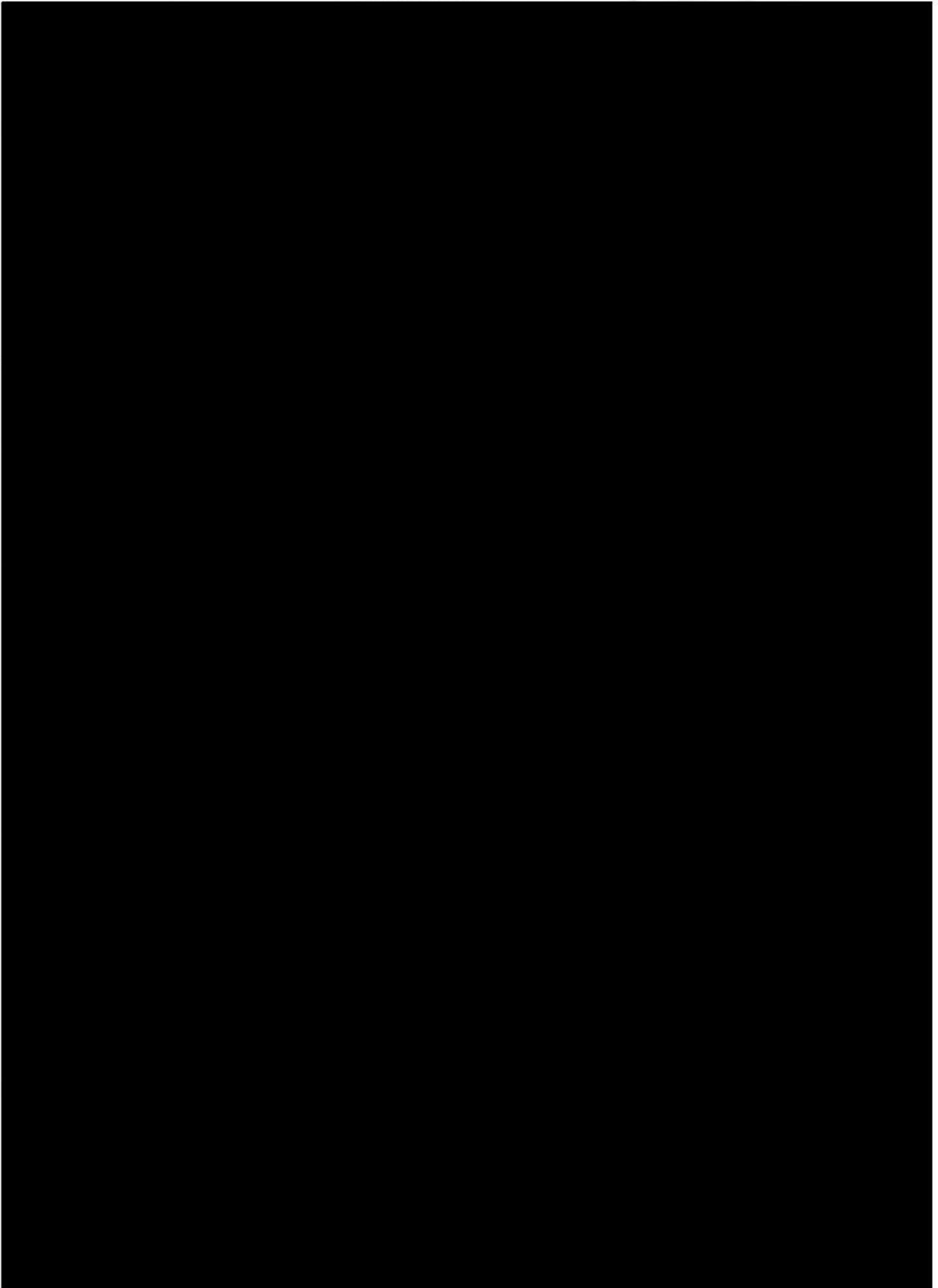
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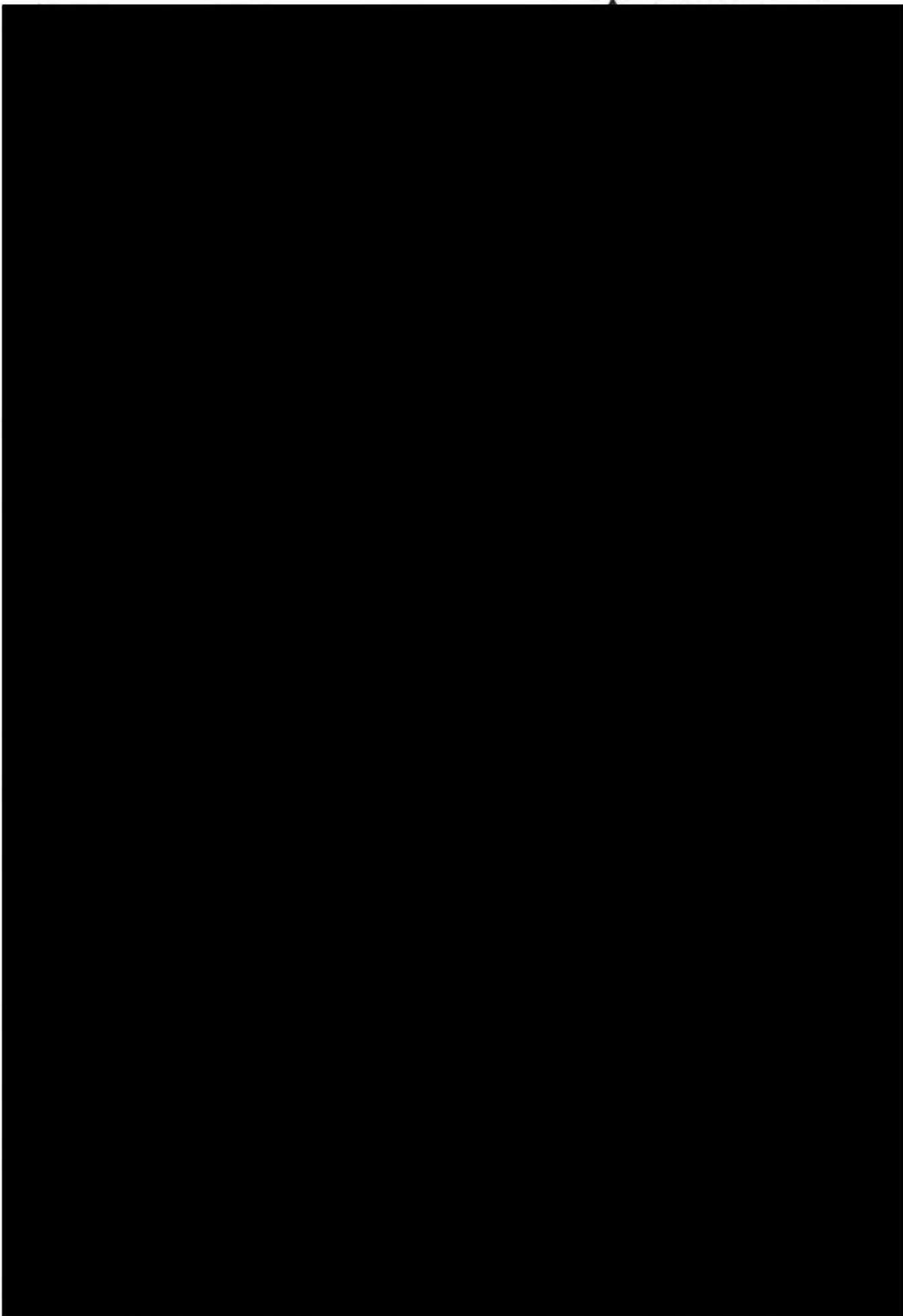


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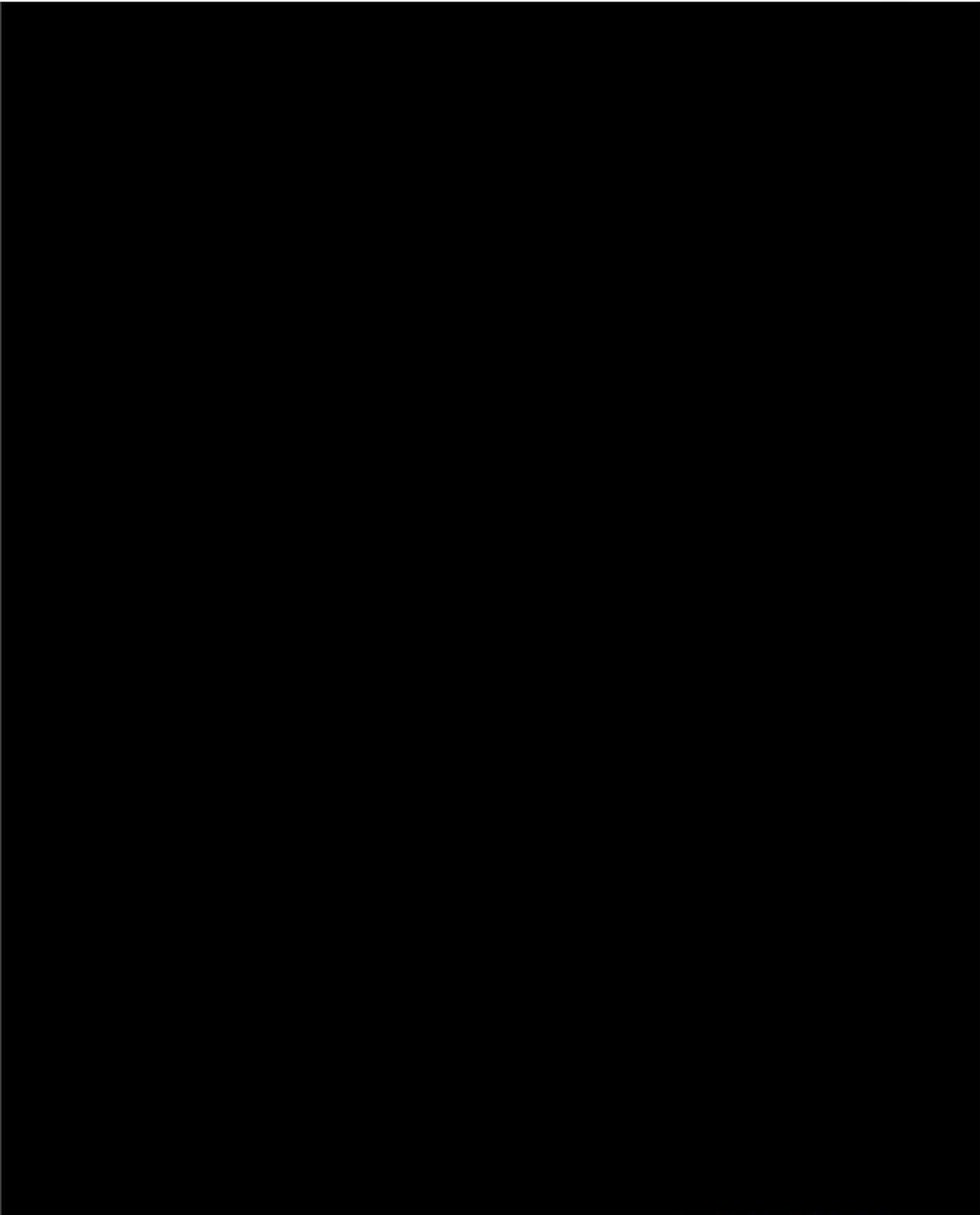


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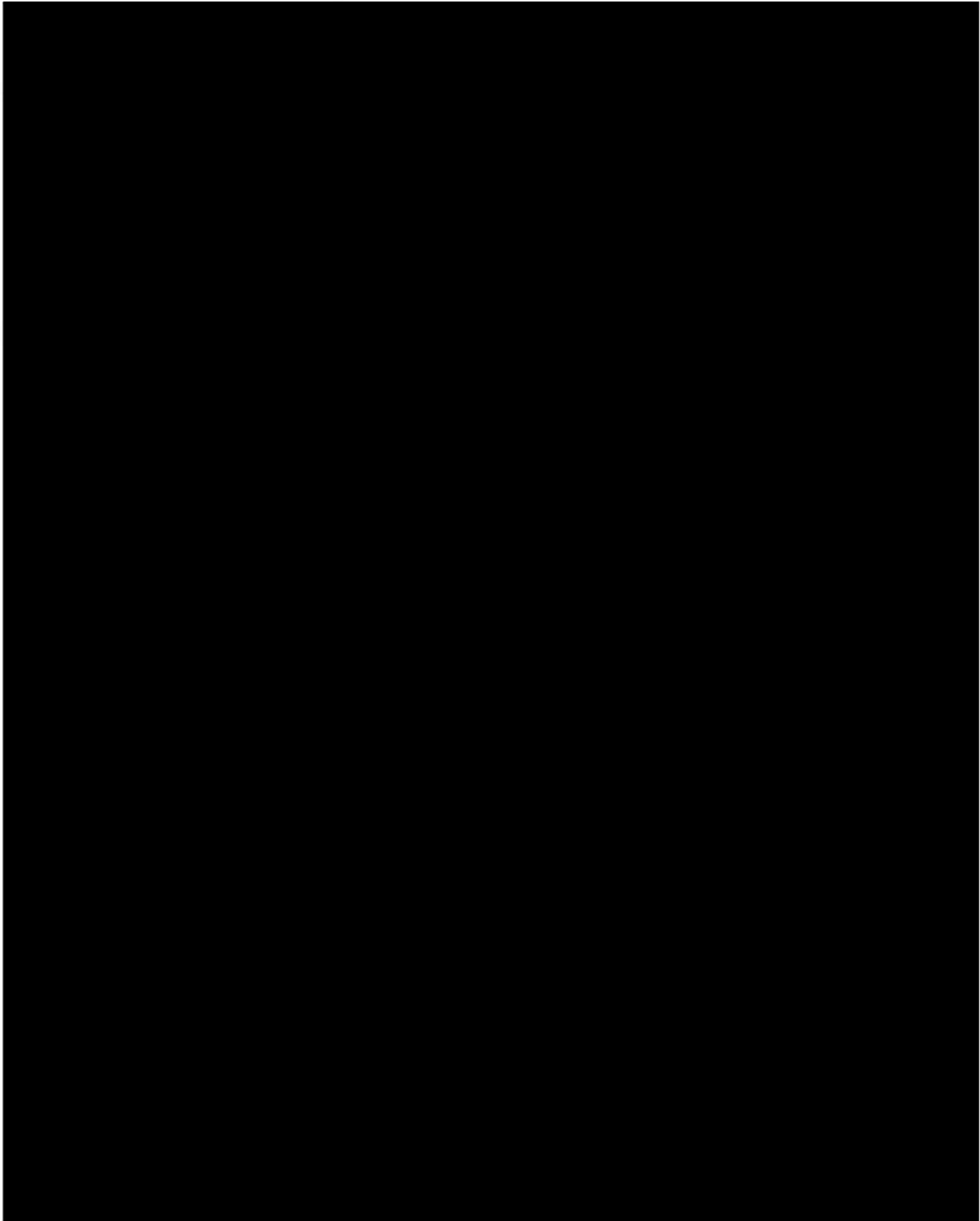


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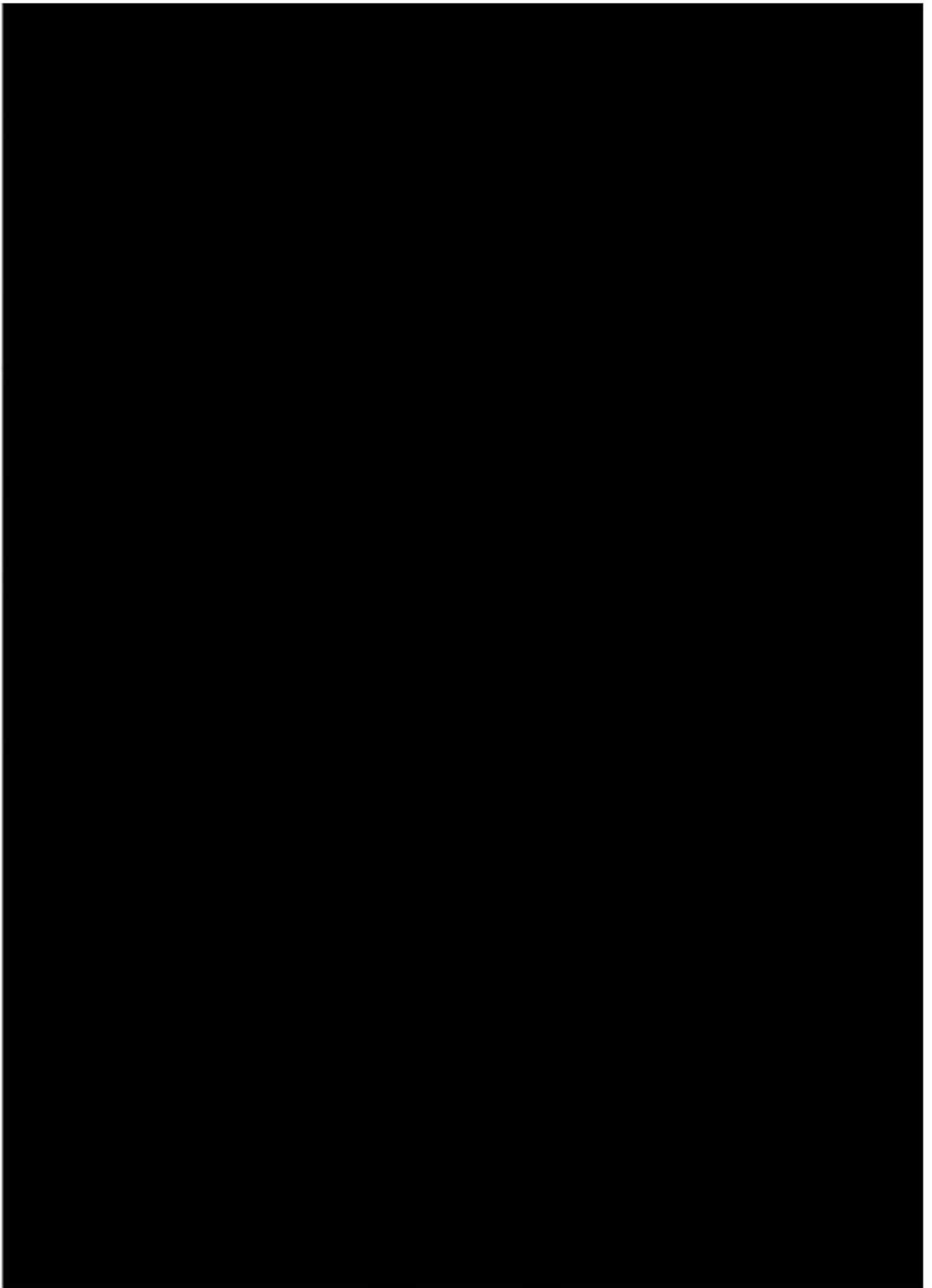


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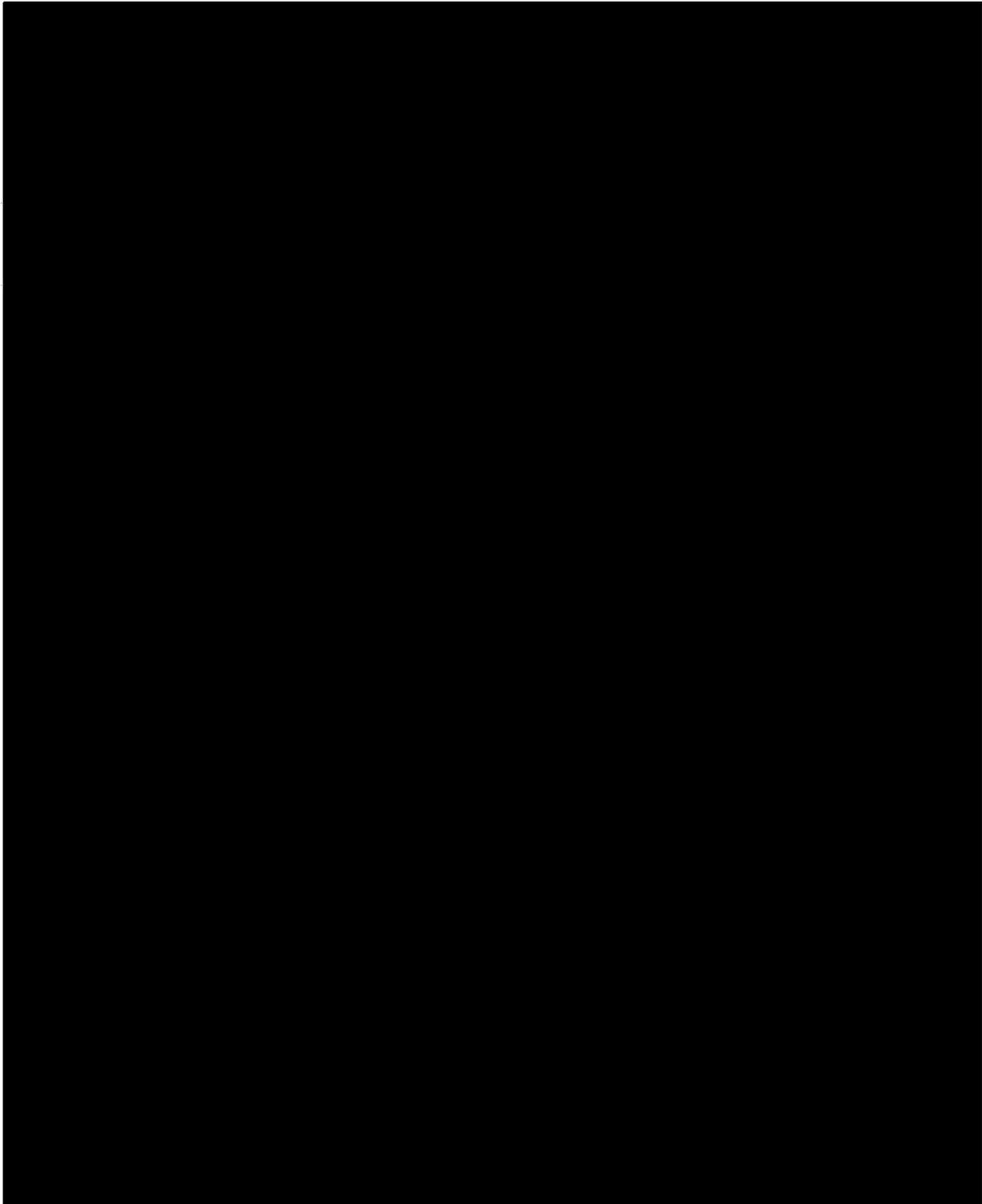


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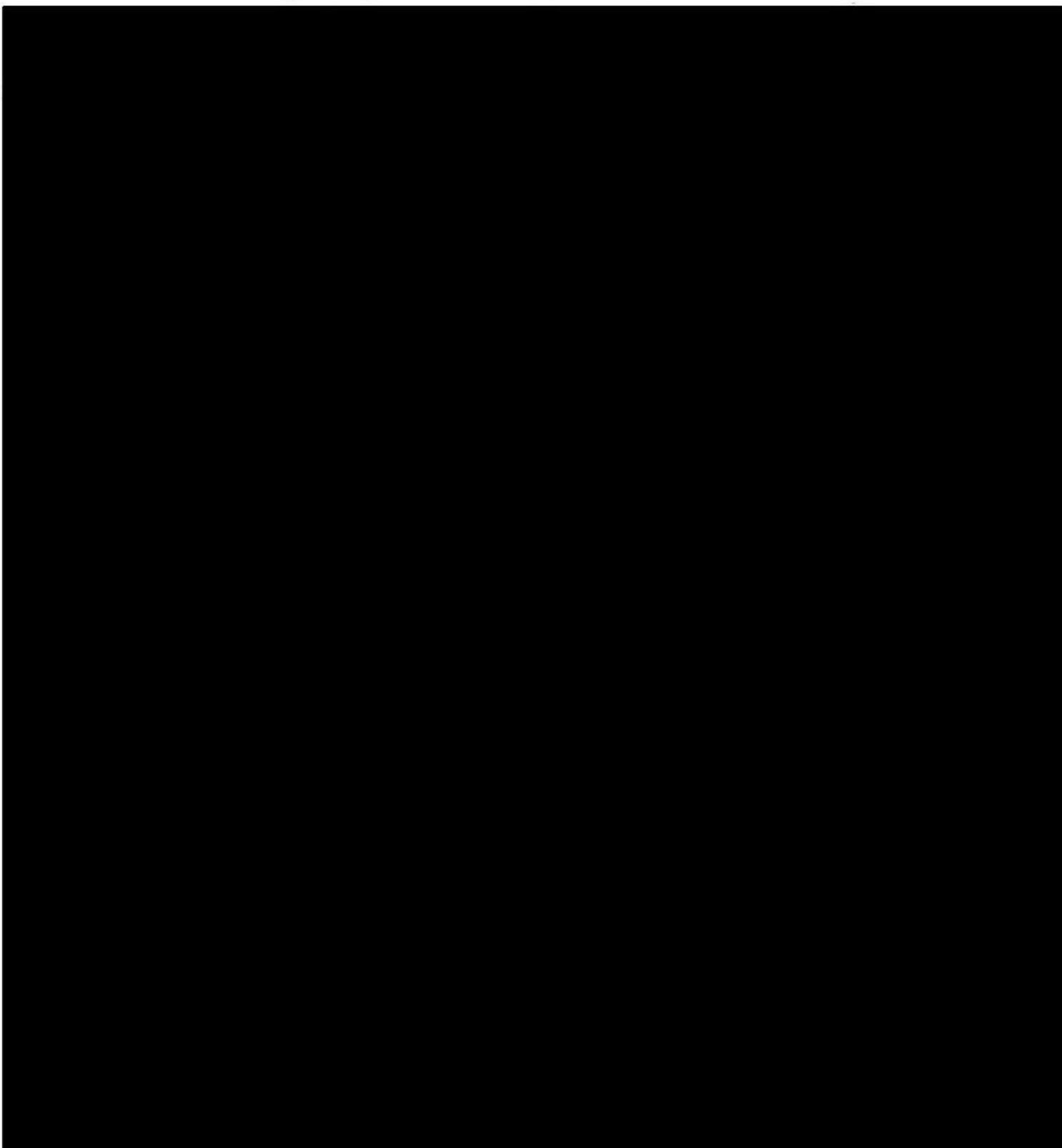
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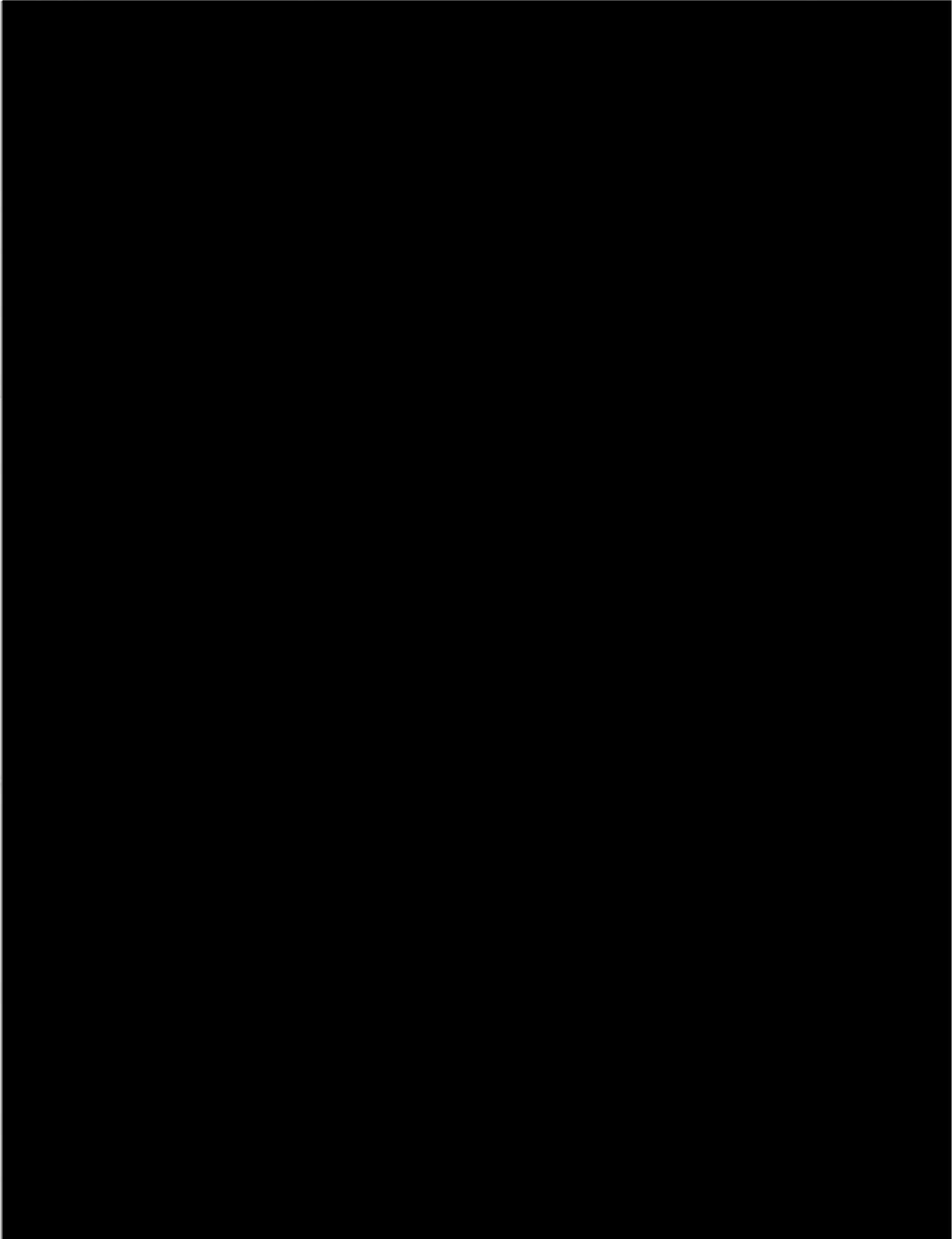
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Exhibit C

DUKE ENERGY FLORIDA Confidentiality Justification Matrix

DOCUMENT/RESPONSES	PAGE/LINE	JUSTIFICATION
Documents provided to Staff regarding DEF's Response to OPC's Request to Produce Documents (Nos. 34-39), specifically question 36	Q36: All information on documents DEF-19FL-FUEL-006986 through DEF-19FL-FUEL-007016 is confidential in their entirety.	<p>§366.093(3)(d), F.S. The document in question contains confidential information, the disclosure of which would impair DEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), F.S. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>

Exhibit D

AFFIDAVIT OF JEFFREY SWARTZ

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost
recovery clause with generating
performance incentive factor.

Docket No. 20200001-EI

Dated: February 17, 2020

**AFFIDAVIT OF JEFFREY SWARTZ IN SUPPORT OF
DUKE ENERGY FLORIDA'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

STATE OF FLORIDA

COUNTY OF PINELLAS

BEFORE ME, the undersigned authority duly authorized to administer oaths, personally appeared Jeffrey Swartz, who being first duly sworn, on oath deposes and says that:

1. My name is Jeffrey Swartz. I am over the age of 18 years old and I have been authorized by Duke Energy Florida (hereinafter "DEF" or the "Company") to give this affidavit in the above-styled proceeding on DEF's behalf and in support of DEF's Request for Confidential Classification (the "Request"). The facts attested to in my affidavit are based upon my personal knowledge.

2. I am the Vice President of Florida Generation in the Fossil Hydro Operations Department. This section is responsible for overall leadership and strategic direction of DEF's power generation fleet.

3. As the Vice President of Florida Generation, I am responsible, along with the other members of the section, for strategic and tactical planning to operate and maintain DEF's non-nuclear generation fleet, generation fleet project and additions

recommendations, major maintenance programs, outage and project management, and retirement of generation facilities.

4. DEF is seeking confidential classification for certain information provided to Staff regarding its response to OPC's Fourth Request to Produce Documents (Nos. 34-39), bearing bates numbers DEF-19FL-FUEL-006986 through DEF-19FL-FUEL-007016. The confidential information at issue is contained in confidential Exhibit A to DEF's Request and is outlined in DEF's Justification Matrix that is attached to DEF's Request as Exhibit C. DEF is requesting confidential classification of this information because it contains sensitive business information, the disclosure of which would impair the Company's competitive business interests and ability to contract for goods and services on favorable terms.

5. The confidential information at issue relates to proprietary and confidential third-party operating procedures, drawings, and technical information regarding the third-party's proprietary component design and operation parameters, the disclosure of which would impair third-party's competitive business interests, and if disclosed, the Company's competitive business interests and efforts to contact for goods or services on favorable terms.

6. Further, if DEF cannot demonstrate to its third-party OEM, and others that may enter contracts with DEF in the future, that DEF has the ability to protect those third-parties' confidential and proprietary business information, third-parties will be less likely to provide that information to DEF – harming DEF's ability to prudently operate its business. DEF has not publicly disclosed the information. Without DEF's measures to maintain the confidentiality of this sensitive business information, DEF's ability to

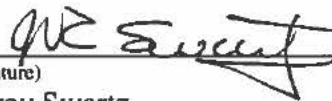
contract with third-parties could detrimentally impact DEF's ability to negotiate favorable contracts, as third-parties may begin to demand a "premium" to do business with DEF to account for the risk that its proprietary information will become a matter of public record, thereby harming DEF's competitive interests and ultimately its customers' financial interests.

7. Upon receipt of its own confidential information, strict procedures are established and followed to maintain the confidentiality of the terms of the documents and information provided, including restricting access to those persons who need the information to assist the Company, and restricting the number of, and access to the information and contracts. At no time since receiving the information in question has the Company publicly disclosed that information. The Company has treated and continues to treat the information at issue as confidential.

8. This concludes my affidavit.

Further affiant sayeth not.

Dated the 11th day of February, 2020.



(Signature)

Jeffrey Swartz

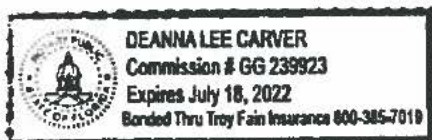
Vice President Florida Generation

Duke Energy Florida, LLC

Florida Regional Headquarters

St. Petersburg, FL

THE FOREGOING INSTRUMENT was sworn to and subscribed before me this 11th day of February, 2020 by Jeffrey Swartz. He is personally known to me or has produced his _____ driver's license, or his _____ as identification.



(AFFIX NOTARIAL SEAL)



(Signature)

Deanna Lee Carver

(Printed Name)

NOTARY PUBLIC, STATE OF FL

July 18, 2022

(Commission Expiration Date)

(Serial Number, If Any)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased Power Cost
Recovery Clause and Generating
Performance Incentive Factor

Docket No. 20200001-EI

Filed: February 18, 2020

COMMISSION
CLERK

2020 FEB 18 PM 3:04

RECEIVED-FPSC

DUKE ENERGY FLORIDA, LLC'S
NOTICE OF INTENT TO REQUEST CONFIDENTIAL CLASSIFICATION

Duke Energy Florida, LLC ("DEF" or the "Company"), pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), submits this Notice of Intent to Request Confidential Classification regarding the transcript of the hearing held on February 4 and 5, 2020, at the Division of Administrative Hearings ("DOAH"). The confidential documents have been filed with the clerk. The transcript contains confidential proprietary business information relating to competitive business information of both DEF and third-party companies and has not been publicly disclosed. The disclosure of this information to the public could adversely affect the Company's competitive business interests and efforts to contract for goods or services on favorable terms. Furthermore, the release of this information could adversely impact the proprietary rights of third parties, therefore impacting the company's competitive interest and ultimately have a detrimental impact on DEF's customers.

A highlighted copy of the above-referenced confidential documents labeled as Exhibit A, has been filed under a separate cover letter.

Pursuant to Rule 25-22.006(3)(a)(1), DEF will file its Request for Confidential Classification for the confidential information contained herein within twenty-one (21) days of filing this request.

RESPECTFULLY SUBMITTED this 18th day of February, 2020.

s/ Matthew R. Bernier

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail to the following this 18th day of February, 2020.

s/ Matthew R. Bernier

Attorney

<p>Suzanne Brownless Office of General Counsel FL Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 sbrownle@psc.state.fl.us</p> <p>J. Beasley / J. Wahlen / M. Means Ausley McMullen P.O. Box 391 Tallahassee, FL 32302 jbeasley@ausley.com jwahlen@ausley.com mmeans@ausley.com</p> <p>Russell A. Badders Gulf Power Company One Energy Place, Bin 100 Pensacola, FL 32520-0100 russell.badders@nexteraenergy.com</p> <p>Kenneth A. Hoffman Florida Power & Light Company 134 W. Jefferson Street Tallahassee, FL 32301-1713 ken.hoffman@fpl.com</p> <p>Jon C. Moyle, Jr. Moyle Law Firm, P.A. 118 North Gadsden Street Tallahassee, FL 32301 jmoyle@moylelaw.com mqualls@moylelaw.com</p>	<p>J.R. Kelly / T. David Office of Public Counsel 111 W. Madison St., Room 812 Tallahassee, FL 32399-1400 kelly.jr@leg.state.fl.us david.tad@leg.state.fl.us</p> <p>Paula K. Brown Regulatory Affairs Tampa Electric Company P.O. Box 111 Tampa, FL 33601-0111 regdept@tecoenergy.com</p> <p>Maria Moncada / David Lee Florida Power & Light Company 700 Universe Blvd. (LAW/JB) Juno Beach, FL 33408-0420 maria.moncada@fpl.com david.lee@fpl.com</p> <p>James Brew / Laura W. Baker Stone Law Firm 1025 Thomas Jefferson St., N.W. Suite 800 West Washington, DC 20007 jbrew@smxblaw.com lwb@smxblaw.com</p> <p>Mike Cassel Florida Public Utilities Company 208 Wildlight Avenue Yulee, FL 32097 mcassel@fpuc.com</p> <p>Beth Keating Gunster, Yoakley & Stewart, P.A. 215 South Monroe Street, Suite 601 Tallahassee, FL 32301 bkeating@gunster.com</p>
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DOAH CASE NO. 19-006022

COMMISSION STAFF EXHIBIT NO. 114

Revised Comprehensive Exhibit List

Docket No. 20190001-EI
Comprehensive Exhibit List for Entry into Hearing Record
(November 5 - 7, 2019)

EXH #	Witness	I.D. # As Filed	Exhibit Description	Issue Nos.	Entered
STAFF					
1		Exhibit List	Comprehensive Exhibit List		
DUKE ENERGY FLORIDA – (DIRECT)					
2	Christopher Menendez	CAM-1T	Fuel Cost Recovery True-Up (Jan – Dec. 2018).	1B, 1C, 6-11, 18-23, 27-37	
3	Christopher Menendez	CAM-2T	Capacity Cost Recovery True-Up (Jan – Dec. 2018). CONFIDENTIAL DN. 01320-2019	1B, 1C, 6-11, 18-23, 27-37	
4	Christopher Menendez	CAM-3T	Schedule A12 for Jan-Dec 2018.	1B, 1C, 6-11, 18-23, 27-37	
5	Christopher Menendez	CAM-4T	2018 Capital Structure and Cost Rates Applied to Capital Projects.	1B, 1C, 6-11, 18-23, 27-37	
6	Christopher Menendez	CAM-2	Actual/Estimated True-up Schedules for period January – December 2019.	1B, 1C, 6-11, 18-23, 27-37	
7	Christopher Menendez	CAM-3	Projection Factors for January - December 2020.	1B, 1C, 6-11, 18-23, 27-37	

Docket No. 20190001-EI
Comprehensive Exhibit List for Entry into Hearing Record
(November 5 - 7, 2019)

EXH #	Witness	I.D. # As Filed	Exhibit Description	Issue Nos.	Entered
8	Jeffrey Swartz ¹	(JS-1)	Bartow Plant Root Cause Analysis. CONFIDENTIAL DN. 02031-2018	1B, 1C	
9	Arnold Garcia	AG-1	Bartow CC Insurance Policy in effect on February 9, 2017. CONFIDENTIAL DN. 01320-2019	1B	
10	James McClay	JM-1T	Hedging True-Up August - December 2018. CONFIDENTIAL DN. 03493-2019	1A	
11	James McClay	JM-1P	Hedging Report (January – July 2019). CONFIDENTIAL DN. 07514-2019	1A	
12	James B. Daniel	JBD-1T	Calculation of GPIF Reward for January - December 2018.	16	
13	James B. Daniel	JBD-1P	GPIF Targets/Ranges Schedules for January – December 2020).	17	
FLORIDA POWER & LIGHT COMPANY – (DIRECT)					

¹ Filed in Docket No. 20180001-EI, incorporated by reference in Mr. Jeffrey Swartz's Direct Testimony filed in this docket on March 2, 2019.

Docket No. 20190001-EI
Comprehensive Exhibit List for Entry into Hearing Record
(November 5 - 7, 2019)

EXH #	Witness	I.D. # As Filed	Exhibit Description	Issue Nos.	Entered
14	R. B. Deaton	RBD-1	2018 FCR Final True Up Calculation.	6-11, 18-22	
15	R. B. Deaton	RBD-2	2018 CCR Final True Up Calculation. CONFIDENTIAL DN. 01324-2019	6-11, 18-22	
16	R. B. Deaton	RBD-3	2019 FCR Actual/Estimated True Up Calculation.	6-11, 18-22	
17	R. B. Deaton	RBD-4	2019 CCR Actual/Estimated True Up Calculation.	34	
18	R. B. Deaton	RBD-5 (Revised)	2018 FCR Final True Up Calculation.	6-11, 18-22	
19	R. B. Deaton	RBD-6 (Revised)	2018 CCR Final True Up Calculation.	27-33	
20	R. B. Deaton	RBD-7	Appendix II 2020 FCR Projection (Jan-Apr).	27-33	
21	R. B. Deaton	RBD-8	Appendix III 2020 FCR Projection (May-Dec).	27-33	
22	R. B. Deaton	RBD-9	Appendix IV 2020 FCR Projection (Jan-Dec).	27-33	
23	R. B. Deaton	RBD-10	Appendix V 2020 CCR Projection (Jan-Dec). CONFIDENTIAL DN. 08579-2019	27-33	

Docket No. 20190001-EI
Comprehensive Exhibit List for Entry into Hearing Record
(November 5 - 7, 2019)

EXH #	Witness	I.D. # As Filed	Exhibit Description	Issue Nos.	Entered
24	G. J. Yupp	GJY-1	2018 Incentive Mechanism Results. CONFIDENTIAL DN. 01324-2019	2C	
25	G. J. Yupp	GJY-2	Appendix I Fuel Cost Recovery.	6-11, 18	
26	C. R. Rote	CRR-1	Generating Performance Incentive Factor Performance Results for January 2018 through December 2018.	2C	
27	C. R. Rote	CRR-2	Generating Performance Incentive Factor Performance Targets for January 2020 through December 2020.	2C	
28	L. Fuentes	LF-1	2020 SoBRA Revenue Requirement Calculation.	2I	
29	L. Fuentes	LF-2	2017 SoBRA Final Revenue Requirement Calculation.	2I	
30	W. F. Brannen	WFB-1	List of FPL Universal PV Solar Energy Centers in Service.	2H	
31	W. F. Brannen	WFB-2	Typical Solar Energy Center Block Diagram.	2H	
32	W. F. Brannen	WFB-3	Renderings of 2020 Solar Energy Centers.	2H	
33	W. F. Brannen	WFB-4	Specifications for 2020 Solar Energy Centers.	2H	
34	W. F. Brannen	WFB-5	Property Delineations, Features and Land Use of 2020 Solar Energy Centers.	2H	

Docket No. 20190001-EI
Comprehensive Exhibit List for Entry into Hearing Record
(November 5 - 7, 2019)

EXH #	Witness	I.D. # As Filed	Exhibit Description	Issue Nos.	Entered
35	W. F. Brannen	WFB-6	Construction Schedule for 2020 Solar Energy Centers	2H	
36	J. Enjamio	JE-1	Load Forecast.	2H	
37	J. Enjamio	JE-2	FPL Fuel Price Forecast.	2H	
38	J. Enjamio	JE-3	FPL Resource Plans.	2H	
39	J. Enjamio	JE-4	CPVRR – Costs and (Benefits).	2H	
40	E. J. Anderson	EJA-1	2020 SoBRA Factor Calculation.	2J	
41	E. J. Anderson	EJA-2	Projected Retail Base Revenues for May 1, 2020.	2M	
42	E. J. Anderson	EJA-3	Summary of Tariff Changes for May 1, 2020.	2N	
43	E. J. Anderson	EJA-4	Revised 2017 SoBRA Factor.	2A, 24B	
44	E. J. Anderson	EJA-5	2017 Project Refund Calculation.	2A, 24B	
45	E. J. Anderson	EJA-6	2017 SoBRA Prospective Adjustment for January 1, 2020.	2A, 24B	
46	E. J. Anderson	EJA-7	Projected Retail Base Revenues for January 1, 2020.	2K	
47	E. J. Anderson	EJA-8	Summary of Tariff Changes for January 1, 2020.	2K	
48	E. J. Anderson	EJA-9	Typical Bill Projections.	2N	

Docket No. 20190001-EI
Comprehensive Exhibit List for Entry into Hearing Record
(November 5 - 7, 2019)

EXH #	Witness	I.D. # As Filed	Exhibit Description	Issue Nos.	Entered
FLORIDA PUBLIC UTILITIES COMPANY – (DIRECT)					
49	Curtis D. Young	CDY-1 (Composite)	Final True Up Schedules (Schedules A, C1 and E1-B for FPUC's Divisions).	8, 9	
50	Curtis D. Young	CDY-2 (Composite)	Estimated/Actual (Schedules E1-A, E1-B, and E1-B1).	8, 9	
51	Michelle Napier	MDN-1 (Composite) (Revised)	Schedules E1, E1A, E2, E7, E8, E10 and Schedule A.	10, 11, 18, 19, 20, 21, 22, 34, 35, 36	
GULF POWER – (DIRECT)					
52	C. S. Boyett	CSB-1	Calculation of Final True-Up January 2018 – December 2018.	8, 27	
53	C. S. Boyett	CSB-2	A-Schedules December 2018.	8	
54	C. S. Boyett	CSB-3	Estimated True-Up January 2019 – December 2019.	6, 9, 28	
55	C. S. Boyett	CSB-4	Estimate PPCC Scherer/Flint Credit Calculation January 2019 – December 2019.	9	
56	C. S. Boyett	CSB-5	Projection January 2020 – December 2020.	7, 10, 11, 18-22, 29- 33	
57	C. S. Boyett	CSB-6	Hedging Information Report August 2018 – December 2018.	4A	

Docket No. 20190001-EI
Comprehensive Exhibit List for Entry into Hearing Record
(November 5 - 7, 2019)

EXH #	Witness	I.D. # As Filed	Exhibit Description	Issue Nos.	Entered
58	C. S. Boyett	CSB-7	Hedging Information Report January 2019– July 2019.	4A	
59	C. L. Nicholson	CLN-1	Gulf Power Company GPIF Results January 2018 – December 2018.	16	
60	C. L. Nicholson	CLN-2	Gulf Power Company GPIF Targets and Ranges January 2020 – December 2020.	17	
TAMPA ELECTRIC COMPANY – (DIRECT)					
61	Penelope A. Rusk	PAR-1	Final True-up Capacity Cost Recovery January 2018 - December 2018. Final True-Up Fuel Cost Recovery January 2018 – December 2018. Actual Fuel True- up Compared to Original Estimates January 2018 – December 2018. Schedules A-1, A-2 and A-6 through A-9 and A-12 January 2018 – December 2018. Capital Projects Approved for Fuel Clause Recovery January 2018 – December 2018.	6, 7, 8, 9, 10, 11, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34, 35	
62	Penelope A. Rusk	PAR-2	Actual/Estimated True-Up Fuel Cost Recovery January 2019 – December 2019. Actual/Estimated True-Up Capacity Cost Recovery January 2019 – December 2019. Capital Projects Approved for Fuel Clause Recovery January 2019 – December 2019.	6, 7, 8, 9, 10, 11, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34, 35	

Docket No. 20190001-EI
Comprehensive Exhibit List for Entry into Hearing Record
(November 5 - 7, 2019)

EXH #	Witness	I.D. # As Filed	Exhibit Description	Issue Nos.	Entered
63	Penelope A. Rusk	PAR-3	Projected Capacity Cost Recovery January 2020 – December 2020. Projected Fuel Cost Recovery January 2020 - December 2020. Levelized and Tiered Fuel Rate January 2020– December 2020. Capital Projects Approved for Fuel Clause Recovery January 2020 – December 2020.	6, 7, 8, 9, 10, 11, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34, 35	
64	Brian S. Buckley	BSB-1	Final True-Up Generating Performance Incentive Factor January 2018 – December 2018. Actual Unit Performance Data January 2018 – December 2018.	16, 18	
65	J. Brent Caldwell	JBC-1	Final True-Up Hedging Activity Report January 2018 – December 2018.	5A	
66	Jeremy B. Cain	JC - 1	Generating Performance Incentive Factor January 2020 – December 2020. Summary of Generating Performance Incentive Factor Targets January 2020 – December 2020.	17	
67	John C. Heisey	JCH-1	Optimization Mechanism Results January 2018 – December 2018	5B, 18	
OFFICE OF PUBLIC COUNSEL – DIRECT					
68	Richard A. Polich, P.E.	RAP-1	Resume	1B and 1C	
69	Richard A. Polich, P.E.	RAP-2	Regulatory Testimony List	1B and 1C	

Docket No. 20190001-EI
Comprehensive Exhibit List for Entry into Hearing Record
(September 5 - 7, 2019)

EXH #	Witness	I.D. # As Filed	Exhibit Description	Issue Nos.	Entered
70	Richard A. Polich, P.E.	RAP-3	Bartow Combined Cycle Thermal Cycle. CONFIDENTIAL DN. 09202-2019, X-REF. 08773-2019	1B and 1C	
71	Richard A. Polich, P.E.	RAP-4	Turbine Generator Output Curve.	1B and 1C	
72	Richard A. Polich, P.E.	RAP-5	BCC ST Operation Greater Than 420 MW.	1B and 1C	
73	Richard A. Polich, P.E.	RAP-6	Bartow ST #1 LO Blade Upgrade To Achieve 450 MW, Dated September 18, 2013. CONFIDENTIAL DN. 09202-2019, X-REF. 08773-2019	1B and 1C	
74	Richard A. Polich, P.E.	RAP-7	Bartow RCA Review, Dated March 15, 2017. CONFIDENTIAL DN. 09202-2019, X-REF. 08773-2019	1B and 1C	
75	Richard A. Polich, P.E.	RAP-8	Update On 40" Last Stage Blade, Dated 2015. CONFIDENTIAL DN. 09202-2019, X-REF. 08773-2019	1B and 1C	
76	Richard A. Polich, P.E.	RAP-9	Bartow Combined Cycle Replacement Power Costs.	1B and 1C	
STAFF – (DIRECT)					

Docket No. 20190001-EI
Comprehensive Exhibit List for Entry into Hearing Record
 (November 5 - 7, 2019)

EXH #	Witness	I.D. # As Filed	Exhibit Description	Issue Nos.	Entered
77	Intesar Terkawi	IT-1	Auditor's Report-TECO Hedging Activities.	5A	
78	Simon O. Ojada	SOO-1	Auditor's Report DEF Hedging Activities.	1A	
79	Debra Dobiac	DMD-1	Auditor's Report Gulf Hedging Activities.	4A	

DUKE ENERGY FLORIDA – (REBUTTAL)

80	Jeffrey Swartz	JS-2	Bartow Plant Root Cause Analysis. CONFIDENTIAL DN. 09061-2019	1B, 1C	
81	Jeffrey Swartz	JS-3	Bartow ST 40" Blade Test. CONFIDENTIAL DN. 09061-2019	1B, 1C	
82	Jeffrey Swartz	JS-4	Bartow RCA Summary. CONFIDENTIAL DN. 09061-2019	1B, 1C	

STAFF HEARING EXHIBITS

Docket No. 20190001-EI
Comprehensive Exhibit List for Entry into Hearing Record
(November 5 - 7, 2019)

EXH #	Witness	I.D. # As Filed	Exhibit Description	Issue Nos.	Entered
83	Gerald J. Yupp (1-7) Renae B. Deaton (8)		FPL's Response to Staff's First Set of Interrogatories, Nos. 1-8 CONFIDENTIAL DN. 03165-2019 <i>[Bates No. 00001-00016]</i>	8	
84	Gerald J. Yupp (9-16) Renae B. Deaton (17)		FPL's Response to Staff's Second Set of Interrogatories, Nos. 9-17 <i>[Bates No. 00017-00029]</i>	9	
85	William F. Brannen (18-19, 21-24) Juan E. Enjamio (20)		FPL's Response to Staff's Third Set of Interrogatories, Nos. 18-23, and 24 (amended) Additional files contained on Staff Hearing Exhibits CD/USB for No. 19 <i>[Bates No. 00030-00040]</i>	2G	
86	William F. Brannen (25-26, 38) Juan E. Enjamio (27-37, 39-40)		FPL's Response to Staff's Fourth Set of Interrogatories, Nos. 25 (amended) and 26-40 Additional files contained on Staff Hearing Exhibits CD/USB for Nos. 21, 36, 37, 38, and 39. <i>[Bates No. 00041-00068]</i>	2G	

Docket No. 20190001-EI
Comprehensive Exhibit List for Entry into Hearing Record
(November 5 - 7, 2019)

EXH #	Witness	I.D. # As Filed	Exhibit Description	Issue Nos.	Entered
87	Juan E. Enjamio (43-51, 52, 54) William F. Brannen (53)		FPL's Response to Staff's Sixth Set of Interrogatories, Nos. 43-54 Additional files contained on Staff Hearing Exhibits CD/USB for Nos. 45, 47, 48, 49, 50. CONFIDENTIAL DN. 08889-2019 <i>[Bates No. 00069-00092]</i>	2H, 2I, 2J, 2K	
88	Renae B. Deaton		FPL's Response to Staff's Seventh Set of Interrogatories, No. 55b <i>[Bates No. 00093-00095]</i>	11, 18, 20, 22	
89	Renae B. Deaton		FPL's Response to Staff's Fourth Request for Production of Documents, No. 5 <i>[Bates No. 00096-00097]</i>	11, 18, 20, 22	
90	Jim McClay (1-7) Christopher A. Menendez (8)		DEF's Response to Staff's First Set of Interrogatories, Nos. 1-8 CONFIDENTIAL DN. 03322-2019 <i>[Bates No. 00098-00114]</i>	8	
91	Christopher A. Menendez (9-17)		DEF's Response to Staff's Second Set of Interrogatories, Nos. 9-17 <i>[Bates No. 00115-00121]</i>	9	
92	Christopher A. Menendez (18)		DEF's Response to Staff's Third Set of Interrogatories, No. 18 <i>[Bates No. 00122-00125]</i>	9	

Docket No. 20190001-EI
Comprehensive Exhibit List for Entry into Hearing Record
(November 5 - 7, 2019)

EXH #	Witness	I.D. # As Filed	Exhibit Description	Issue Nos.	Entered
93	Mark Cutshaw (1)		FPUC's Response to Staff's First Set of Interrogatories, No. 1 [Bates No. 00126-00130]	8	
94	Curtis D. Young (2-10)		FPUC's Response to Staff's Second Set of Interrogatories, Nos. 2-10 [Bates No. 00131-00147]	9	
95	Shane Boyett (1-7)		Gulf's Response to Staff's First Set of Interrogatories, Nos. 1-7 CONFIDENTIAL DN. 03157-2019 [Bates No. 00148-00171]	8	
96	Shane Boyett (8-15), C. Shane Boyett (16)		Gulf's Response to Staff's Second Set of Interrogatories, Nos. 8-16 [Bates No. 00172-00184]	9	
97	John Heisey		TECO's Response to Staff's First Set of Interrogatories, Nos. 1-7 CONFIDENTIAL DN. 03169-2019 [Bates No. 00185-00200]	8	
98	John Heisey (8-15) Penelope Rusk (16)		TECO's Response to Staff's Second Set of Interrogatories, Nos. 8-16 [Bates No. 00201-00218]	9	
99	Penelope Rusk		TECO's Response to Staff's Third Set of Interrogatories, Nos. 17-18 CONFIDENTIAL DN. 09112-2019 [Bates No. 00219-00222]	11	

HEARING EXHIBITS – DOAH
February 4-5, 2020

Exhibit Numbe	Witness	Party	Description	Moved In/Due Date of Late Filed
100	Jeffrey Swartz	PSC	DEF's Responses to OPC's Fifth Set of Interrogatories (Nos. 32-35) - Issue 1C Written responses only, Attachments not included.	
101	Jeffrey Swartz	OPC	Late filed deposition Exhibit No. 2 – Panel deposition of Jeffrey Swartz, Anthony Salvarezza and C. Wayne Toms, August 30, 2019.	
102	Jeffrey Swartz	OPC	Late filed deposition Exhibit No. 4 – Panel deposition of Jeffrey Swartz, Anthony Salvarezza and C. Wayne Toms, August 30, 2019.	
103	Jeffrey Swartz	OPC	Late filed deposition Exhibit No. 5 – Panel deposition of Jeffrey Swartz, Anthony Salvarezza and C. Wayne Toms, August 30, 2019.	
104	Jeffrey Swartz	OPC	Late filed deposition Exhibit No. 6 – Panel deposition of Jeffrey Swartz, Anthony Salvarezza and C. Wayne Toms, August 30, 2019.	
105	Jeffrey Swartz	OPC	Revised DEF response to OPC POD No. 31 <i>Bates DEF-19-FUEL-06868-6962</i>	
106	Jeffrey Swartz	OPC	August 31, 2018 Confidential settlement document <i>Bates No. DEF-18FUEL-0075-85</i>	
107	Jeffrey Swartz	OPC	Harry Carbone spreadsheet <i>Bates DEF-19FUEL-000430-433</i>	
108	Jeffrey Swartz	OPC	February 13, 2018 MHPS RFP response <i>Bates DEF-19FUEL- 002382-2611</i>	

HEARING EXHIBITS – DOAH
February 4-5, 2020

Exhibit Numbe	Witness	Party	Description	Moved In/Due Date of Late Filed
109	Jeffrey Swartz	OPC	Tenaska Contract No. 270810 in three parts: a. DEF-19FUEL-007536-7580 (May 3, 2006) b. DEF-19FUEL-012419-12724 (January 2, 2008) (Appendix A) c. May 2002 contract No. 270810 (“Volume 1”)	
110	Jeffrey Swartz	PSC	Progress Energy-Mitsubishi 2008 contract	
111	Jeffrey Swartz	PSC	Tenaska-Mitsubishi 2002 contract	
112	Jeffrey Swartz	PCS Phosphate	DEF response to OPC’s Third Set of Interrogatories No. 16 Bates No. 001602-001679	
113	Richard A. Polich, P.E.	PCS Phosphate	Enlarged Ex. 74 (Polich Ex. RAP-7, page 13 of 16.	
114		PSC	Revised Comprehensive Exhibit List	



U.S. Energy Information
Administration

FILED 2/18/2020
DOCUMENT NO. 00984-2020
FPSC - COMMISSION CLERK

Glossary

[A](#)[B](#)[C](#)[D](#)[E](#)[F](#)[G](#)[H](#)[I](#)[J](#)[K](#)[L](#)[M](#)[N](#)[O](#)[P](#)[Q](#)[R](#)[S](#)[T](#)[U](#)[V](#)[W](#)[X](#)[Y](#)[Z](#)

Browse terms related to these fuel groups:[alternative fuels](#)[coal](#)[electricity](#)[natural gas](#)[nuclear](#)[petroleum](#)[renewable](#)

G

GAAP: See [Generally Accepted Accounting Principles](#).

gal: [gallon](#)

Gallon: A volumetric measure equal to 4 quarts (231 cubic inches) used to measure fuel oil. One barrel equals 42 gallons.

Gas: A non-solid, non-liquid combustible energy source that includes natural gas, coke-oven gas, blast-furnace gas, and refinery gas.

Gas Condensate Well Gas: Natural gas remaining after the removal of the lease condensate.

Gas cooled fast breeder reactor (GCFB): A fast breeder reactor that is cooled by a gas (usually helium) under pressure.

Gas plant operator: Any firm, including a natural gas processing plant owner, that operates a gas plant and keeps the gas plant records.

Gas processing unit: A facility designed to recover natural gas liquids from a stream of natural gas that may or may not have passed through lease separators and/or field separation facilities. Another function of natural gas processing plants is to control the quality of the processed natural gas stream. Cycling plants are considered natural gas processing plants.

Gas to liquids (GTL): A process that combines the carbon and hydrogen elements in natural gas molecules to make synthetic liquid petroleum products, such as diesel fuel.

Gas turbine plant: A plant in which the prime mover is a gas turbine. A gas turbine consists typically of an axial-flow air compressor and one or more combustion chambers where liquid or gaseous fuel is burned and the hot gases are passed to the turbine and where the hot gases expand drive the generator and are then used to run the compressor.

Gas well: A well completed for production of natural gas from one or more gas zones or reservoirs. Such wells contain no completions for the production of crude oil.

Gas well productivity: Derived annually by dividing gross natural gas withdrawals from gas wells by the number of producing gas wells on December 31 and then dividing the quotient by the number of days in the year.

Gasification: A method for converting coal, petroleum, biomass, wastes, or other carbon-containing materials into a gas that can be burned to generate power or processed into chemicals and fuels.

Gasohol: A blend of finished motor gasoline containing alcohol (generally ethanol but sometimes methanol) at a concentration between 5.7 percent and 10 percent by volume. Also see [Oxygenates](#).

Gasoil: European and Asian designation for No. 2 heating oil and No. 2 diesel fuel.

Gasoline: See [Motor gasoline \(finished\)](#).

Gasoline blending components: Naphthas which will be used for blending or compounding into finished aviation or motor gasoline (e.g., straight-run gasoline, alkylate, reformat, benzene, toluene, and xylene). Excludes oxygenates (alcohols, ethers), butane, and pentanes plus.

Gasoline grades: The classification of gasoline by octane ratings. Each type of gasoline (conventional, oxygenated, and reformulated) is classified by three grades - Regular, Midgrade, and Premium. Note: Gasoline sales are reported by grade in accordance with their classification at the time of sale. In general, automotive octane requirements are lower at high altitudes. Therefore, in some areas of the United States, such as the Rocky Mountain States, the octane ratings for the gasoline grades may be 2 or more octane points lower.

- **Regular gasoline:** Gasoline having an antiknock index, i.e., octane rating, greater than or equal to 85 and less than 88. Note: Octane requirements may vary by altitude.
- **Midgrade gasoline:** Gasoline having an antiknock index, i.e., octane rating, greater than or equal to 88 and less than or equal to 90. Note: Octane requirements may vary by altitude.
- **Premium gasoline:** Gasoline having an antiknock index, i.e., octane rating, greater than 90. Note: Octane requirements may vary by altitude.

Gasoline motor, (leaded): Contains more than 0.05 grams of lead per gallon or more than 0.005 grams of phosphorus per gallon. The actual lead content of any given gallon may vary. Premium and regular grades are included, depending on the octane rating. Includes leaded gasohol. Blendstock is excluded until blending has been completed. Alcohol that is to be used in the blending of gasohol is also excluded.

Gasoline treated as blendstock (GTAB): Non-certified Foreign Refinery gasoline classified by an importer as blendstock to be either blended or reclassified with respect to reformulated or conventional gasoline. GTAB is classified as either reformulated or conventional quality based on emissions performance, formulation, and intended end use.

Gate station: Location where the pressure of natural gas being transferred from the transmission system to the distribution system is lowered for transport through small diameter, low pressure pipelines.

Gatherer: A company primarily engaged in the gathering of natural gas from well or field lines for delivery, for a fee, to a natural gas processing plant or central point. Gathering companies may also provide compression, dehydration, and/or treating services.

GDP: [Gross Domestic Product](#)

Generally accepted accounting principles (GAAP): Defined by the FASB as the conventions, rules, and procedures necessary to define accepted accounting practice at a particular time, includes both broad guidelines and relatively detailed practices and procedures.

Generating facility: An existing or planned location or site at which electricity is or will be produced.

Generating station: A station that consists of electric generators and auxiliary equipment for converting mechanical, chemical, or nuclear energy into electric energy.

Generating unit: Any combination of physically connected generators, reactors, boilers, combustion turbines, and other prime movers operated together to produce electric power.

Generation: The process of producing electric energy by transforming other forms of energy; also, the amount of electric energy produced, expressed in kilowatthours.

Generation company: An entity that owns or operates generating plants. The generation company may own the generation plants or interact with the short-term market on behalf of plant owners.

Generator capacity: The maximum output, commonly expressed in megawatts (MW), that generating equipment can supply to system load, adjusted for ambient conditions.

Generator nameplate capacity (installed): The maximum rated output of a generator, prime mover, or other electric power production equipment under specific conditions designated by the manufacturer. Installed generator nameplate capacity is commonly expressed in megawatts (MW) and is usually indicated on a nameplate physically attached to the generator.

Geologic assurance: State of sureness, confidence, or certainty of the existence of a quantity of resources based on the distance from points where coal is measured or sampled and on the abundance and quality of geologic data as related to thickness of over burden, rank, quality, thickness of coal, areal extent, geologic history, structure, and correlations of coal beds and enclosing rocks. The degree of assurance increases as the nearness to points of control, abundance, and quality of geologic data increases.

Geologic considerations: Conditions in the coal deposit or in the rocks in which it occurs that may complicate or preclude mining. Geologic considerations are evaluated in the context of the current state of technology and regulations, so the impact on mining may change with time.

Geologic sequestration: A type of engineered sequestration, where captured carbon dioxide is injected for permanent storage into underground geologic reservoirs, such as oil and natural gas fields, saline aquifers, or abandoned coal mines.

Geological and geophysical (G) costs: Costs incurred in making geological and geophysical studies, including, but not limited to, costs incurred for salaries, equipment, obtaining rights of access, and supplies for scouts, geologists, and geophysical crews.

Geological repository: A mined facility for disposal of radioactive waste that uses waste packages and the natural geology as barriers to provide waste isolation.

Geopressured: A type of geothermal resource occurring in deep basins in which the fluid is under very high pressure.

Geothermal energy: Hot water or steam extracted from geothermal reservoirs in the earth's crust. Water or steam extracted from geothermal reservoirs can be used for geothermal heat pumps, water heating, or electricity generation.

Geothermal plant: A plant in which the prime mover is a steam turbine. The turbine is driven either by steam produced from hot water or by natural steam that derives its energy from heat found in rock.

Geyser: A special type of thermal spring that periodically ejects water with great force.

Giga: One billion

Gigawatt (GW): One billion watts or one thousand megawatts.

Gigawatt-electric (GWe): One billion watts of electric capacity.

Gigawatthour (GWh): One billion watthours.

Gilsonite: Trademark name for uintaite (or uintahite), a black, brilliantly lustrous natural variety of asphalt found in parts of Utah and western Colorado.

Global climate change: See [Climate change](#).

Global warming: An increase in the near surface temperature of the Earth. Global warming has occurred in the distant past as the result of natural influences, but the term is today most often used to refer to the warming some scientists predict will occur as a result of increased anthropogenic emissions of greenhouse gases.

Global warming potential (GWP): An index used to compare the relative radiative forcing of different gases without directly calculating the changes in atmospheric concentrations. GWPs are calculated as the ratio of the radiative forcing that would result from the emission of one kilogram of a greenhouse gas to that from the emission of one kilogram of carbon dioxide over a fixed period of time, such as 100 years.

GNP: [Gross National Product](#)

Gob: To leave in a mine coal and other materials that cannot be sold.

Gob Pile: A pile of loose waste material in a mine, or backfill waste material packed in stopes (steps or layers) to support the roof of a mine. A gob pile is also called a "honey" or "refuse" pile. This term is primarily used in underground mining.

Government-owned stocks: Oil stocks owned by the national government and held for national security. In the United States, these stocks are known as the Strategic Petroleum Reserve.

Green pricing: In the case of renewable electricity, green pricing represents a market solution to the various problems associated with regulatory valuation of the nonmarket benefits of renewables. Green pricing programs allow electricity customers to express their willingness to pay for renewable energy development through direct payments on their monthly utility bills.

Greenhouse effect: The result of water vapor, carbon dioxide, and other atmospheric gases trapping radiant (infrared) energy, thereby keeping the earth's surface warmer than it would otherwise be. Greenhouse gases within the lower levels of the atmosphere trap this radiation, which would otherwise escape into space, and subsequent re-radiation of some of this energy back to the Earth maintains higher surface temperatures than would occur if the gases were absent.

Greenhouse gases: Those gases, such as water vapor, carbon dioxide, nitrous oxide, methane, hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride, that are transparent to solar (short-wave) radiation but opaque to long-wave (infrared) radiation, thus preventing long-wave radiant energy from leaving Earth's atmosphere. The net effect is a trapping of absorbed radiation and a tendency to warm the planet's surface.

Grid: The layout of an electrical distribution system. See [electric power grid](#).

Gross additions to construction work in progress for the month: This amount should include the monthly gross additions for an electric plant in the process of construction.

Gross company-operated production: Total production from all company-operated properties, including all working and nonworking interests.

Gross domestic product (GDP): The total value of goods and services produced by labor and property located in the United States. As long as the labor and property are located in the United States, the supplier (that is, the workers and, for property, the owners) may be either U.S. residents or residents of foreign countries.

Gross domestic product (GDP) implicit price deflator: The implicit price deflator, published by the U.S. Department of Commerce, Bureau of Economic Analysis, is used to convert nominal figures to real figures.

Gross energy intensity: Total consumption of a particular energy source(s) or fuel(s) by a group of buildings, divided by the total floor space of those buildings, including buildings and floor space where the energy source or fuel is not used, i.e., the ratio of consumption to gross floor space.

Gross gas withdrawal: The full-volume of compounds extracted at the wellhead, including nonhydrocarbon gases and natural gas plant liquids.

Gross generation: The total amount of electric energy produced by generating units and measured at the generating terminal in kilowatthours (kWh) or megawatthours (MWh).

Gross head: A dam's maximum allowed vertical distance between the upstream's surface water (headwater) forebay elevation and the downstream's surface water (tailwater) elevation at the tail-race for reaction wheel dams or the elevation of the jet at impulse wheel dams during specified operation and water conditions.

Gross input to atmospheric crude oil distillation units: Total input to atmospheric crude oil distillation units. Includes all crude oil, lease condensate, natural gas plant liquids, unfinished oils, liquefied refinery gases, slop oils, and other liquid hydrocarbons produced from tar sands, gilsonite, and oil shale.

Gross inputs: The crude oil, unfinished oils, and natural gas plant liquids put into atmospheric crude oil distillation units.

Gross national product (GNP): The total value of goods and services produced by the nation's economy before deduction of depreciation charges and other allowances for capital consumption. It includes the total purchases of goods and services by private consumers and government, gross private domestic capital investment, and net foreign trade.

Gross vehicle weight rating (GVWR): Vehicle weight plus carrying capacity.

Gross withdrawals: Full well stream volume from both oil and gas wells, including all natural gas plant liquids and nonhydrocarbon gases after oil, lease condensate, and water have been removed. Also includes production delivered as royalty payments and production used as fuel on the lease.

Gross working interest ownership basis: Gross working interest ownership is the respondent's working interest in a given property plus the proportionate share of any royalty interest, including overriding royalty interest, associated with the working interest.

Group: A group is a logical grouping of assemblies with similar characteristics. All assemblies in a group have the same initial average enrichment, the same cycle/reactor history, the same current location, the same burnup, the same owner, and the same assembly type.

Group 3: A petroleum products spot market trading hub based in Tulsa, Oklahoma that serves the U.S. Mid-Continent region.

Group name: The DOE/EIA-assigned name identifying a composite supply source (i.e., commonly metered gas streams from more than one field), which is often the case in contract areas, field areas, and plants. A group name can also be a pipeline purchase (i.e., FERC Gas Tariff, Canadian Gas, Mexican Gas, and Algerian LNG). Emergency purchases and short term purchases are also group names. **Group Code** - The DOE/EIA-assigned code identifying a composite supply source.

Group quarters: Living arrangement for institutional groups containing ten or more unrelated persons. Group quarters are typically found in hospitals, nursing or rest homes, military barracks, ships, halfway houses, college dormitories, fraternity and sorority houses, convents, monasteries, shelters, jails, and correctional institutions. Group quarters may also be found in houses or apartments shared by ten or more unrelated persons. Group quarters are often equipped with a dining area for residents.

GVW: Gross Vehicle Weight

→ **GW:** see [Gigawatt](#)

Gwe: See [Gigawatt-electric](#).

GWh: see [Gigawatthour](#)

GWP: see [Global Warming Potential](#)

Gypsum: Calcium sulfate dihydrate ($\text{CaSO}_4 \cdot 2\text{H}_2\text{O}$) a sludge constituent from the conventional lime scrubber process, obtained as a byproduct of the dewatering operation and sold for commercial use.

[A](#) [B](#) [C](#) [D](#) [E](#) [F](#) [G](#) [H](#) [I](#) [J](#) [K](#) [L](#) [M](#) [N](#) [O](#) [P](#) [Q](#) [R](#) [S](#) [T](#) [U](#) [V](#) [W](#) [X](#) [Y](#) [Z](#)

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STATE OF FLORIDA



KEITH C. HETRICK
GENERAL COUNSEL
(850) 413-6199

DFT #: 20200001

Public Service Commission

February 24, 2020

VIA HAND DELIVERY

The Honorable Lawrence P. Stevenson
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060


Re: DOAH Case No. 19-6022 –In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.

Dear Judge Stevenson:

Attached please find the confidential three volume transcript of the February 4-5, 2020 hearing conducted in the above-styled case. As per your December 9, 2019 Order Adopting Joint Motion on Confidentiality, Duke Energy Florida, LLC filed a Notice of Intent to Request Confidential Classification with the Florida Public Service Commission Clerk on February 18, 2020, for this material. That being the case, please treat these transcripts as confidential.

Should you have any questions or need any further information regarding these transcripts, please contact me at 413-6218.

Very truly yours,


Suzanne Brownless
Special Counsel

RECEIVED-FPSC
2020 FEB 24 AM 11:45
COMMISSION
CLERK

cc: All parties
FPSC Clerk



Matthew R. Bernier

Associate General Counsel
Duke Energy Florida, LLC.

March 10, 2020

VIA ELECTRONIC FILING

Adam Teitzman, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: *Fuel and purchased power cost recovery clause with generating performance incentive factor; Docket No. 20200001-EI*

Dear Mr. Teitzman:

Please find enclosed for electronic filing on behalf of Duke Energy Florida, LLC ("DEF"), DEF's Request for Confidential Classification for certain information contained in the Division of Administrative Hearings' Transcript and Exhibits held on February 4 and 5, 2020. The filing includes the following:

- DEF's Request for Confidential Classification
- Slip-sheet for confidential Exhibit A
- Redacted Exhibit B (two copies)
- Exhibit C (justification matrix), and
- Exhibit D (affidavit of Jeffrey Swartz)

DEF's confidential Exhibit A that accompanies the above-referenced was submitted with DEF's Notice of Intent to Request Confidential Classification on February 18, 2020, under separate cover.

Thank you for your assistance in this matter. Please feel free to call me at (850) 521-1428 should you have any questions concerning this filing.

Respectfully,

s/Matthew R. Bernier

Matthew R. Bernier

MRB/mw
Enclosures

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost
recovery clause with generating performance
incentive factor.

Docket No. 20200001-EI

Dated: March 10, 2020

**DUKE ENERGY FLORIDA LLC'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

Duke Energy Florida, LLC (“DEF” or “Company”), pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), submits this Request for Confidential Classification for certain information provided in the Exhibits and hearing transcript held on February 4 and 5, 2020 at the Division of Administrative Hearings’ (“DOAH”), submitted on February 18, 2020 with DEF’s Notice of Intent to Request Confidential Classification. This Request is timely. See Rule 25-22.006(3)(a)1, F.A.C. In support of this Request, DEF states:

1. The DOAH transcript, Volumes 1, 2, and 3 and Exhibits 101 through 113 and 115 through 117, contain “proprietary confidential business information” under § 366.093(3), Florida Statutes.

2. The following exhibits are included with this request:

(a) Sealed Composite Exhibit A is a package containing unredacted copies of all the documents for which DEF seeks confidential treatment. Composite Exhibit A was submitted separately in a sealed envelope labeled “CONFIDENTIAL” on February 18, 2020, with DEF’s Notice of Intent to Request Confidential Classification.

(b) Composite Exhibit B is a package containing two copies of redacted versions of the documents for which the Company requests confidential classification. The specific information for which confidential treatment is requested has been blocked out by opaque marker or other means.

(c) Exhibit C is a table which identifies by page and line the information for which DEF seeks confidential classification and the specific statutory bases for seeking confidential treatment.

3. As indicated in Exhibit C, the information for which DEF requests confidential classification is “proprietary confidential business information” within the meaning of Section 366.093(3), F.S. Specifically, the information at issue includes proprietary and confidential third-party owned information, the disclosure of which would impair the third-party’s competitive business interests, and if disclosed, the Company’s competitive business interests and efforts to contract for goods and services on favorable terms. *See* § 366.093(3)(d) & (e), F.S.; Affidavit of Jeffrey Swartz at ¶¶ 4, 5 and 6. Accordingly, such information constitutes “proprietary confidential business information” which is exempt from disclosure under the Public Records Act pursuant to Section 366.093(1), F.S.

4. The information at issue contains proprietary and confidential third-party owned information, diagrams, and technical information regarding the third-party’s proprietary component design and operation parameters. If DEF cannot demonstrate to its third-party OEM, and others that may enter contracts with DEF in the future, that DEF has the ability to protect those third-parties’ confidential and proprietary business information, third-parties will be less likely to provide that information to DEF – harming DEF’s ability to prudently operate its business. *See* § 366.093(3)(d) & (e), F.S.; Affidavit of Jeffrey Swartz at ¶¶ 4, 5 and 6. Furthermore, disclosure of the information

could detrimentally impact DEF's ability to negotiate favorable contracts as third-parties may begin to demand a "premium" to do business with DEF to account for the risk that its proprietary information will become a matter of public record, thereby harming DEF's competitive interests and ultimately its customers' financial interests. *See* § 366.093(3)(e), F.S.; Affidavit of Jeffrey Swartz at ¶ 6. Accordingly, such information constitutes "proprietary confidential business information" which is exempt from disclosure under the Public Records Act pursuant to Section 366.093(1), F.S.

5. The information identified as Exhibit "A" is intended to be and is treated as confidential by the Company. *See* Affidavit of Jeffrey Swartz at ¶ 7. The information has not been disclosed to the public, and the Company has treated and continues to treat the information and contracts at issue as confidential. *See* Affidavit of Jeffrey Swartz at ¶ 7.

6. DEF requests that the information identified in Exhibit A be classified as "proprietary confidential business information" within the meaning of section 366.093(3), F.S., that the information remain confidential for a period of at least 18 months as provided in section 366.093(4) F.S., and that the information be returned as soon as it is no longer necessary for the Commission to conduct its business.

WHEREFORE, for the foregoing reasons, DEF respectfully requests that this Request for Confidential Classification be granted.

RESPECTFULLY SUBMITTED this 10th day of March, 2020.

s/Matthew R. Bernier

DIANNE M. TRIPLETT

Deputy General Counsel

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St. Petersburg, FL 33701

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MATTHEW R. BERNIER

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Tallahassee, Florida 32301

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F: 727-820-5519

Email: Matthew.Bernier@duke-energy.com

Attorneys for Duke Energy Florida, LLC

**CERTIFICATE OF
SERVICE** Docket No.
20200001-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via email this 10th day of March, 2020, to all parties of record as indicated below.

s/Matthew R. Bernier
Attorney

<p>Suzanne Brownless Office of General Counsel FL Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 sbrownle@psc.state.fl.us</p> <p>J. Beasley / J. Wahlen / M. Means Ausley McMullen P.O. Box 391 Tallahassee, FL 32302 jbeasley@ausley.com jwahlen@ausley.com mmeans@ausley.com</p> <p>Russell A. Badders Gulf Power Company One Energy Place, Bin 100 Pensacola, FL 32520-0100 russell.badders@nexteraenergy.com</p> <p>Kenneth A. Hoffman Florida Power & Light Company 134 W. Jefferson Street Tallahassee, FL 32301-1713 ken_hoffman@fpl.com</p> <p>Jon C. Moyle, Jr. Moyle Law Firm, P.A. 118 North Gadsden Street Tallahassee, FL 32301 jmoyle@moylelaw.com mqualls@moylelaw.com</p>	<p>J.R. Kelly / T. David Office of Public Counsel 111 W. Madison St., Room 812 Tallahassee, FL 32399-1400 kelly.jr@leg.state.fl.us david.tad@leg.state.fl.us</p> <p>Paula K. Brown Regulatory Affairs Tampa Electric Company P.O. Box 111 Tampa, FL 33601-0111 regdept@tecoenergy.com</p> <p>Maria Moncada / David Lee Florida Power & Light Company 700 Universe Blvd. (LAW/JB) Juno Beach, FL 33408-0420 maria.moncada@fpl.com david.lee@fpl.com</p> <p>James Brew / Laura W. Baker Stone Law Firm 1025 Thomas Jefferson St., N.W. Suite 800 West Washington, DC 20007 jbrew@smxblaw.com lwb@smxblaw.com</p> <p><u>Mike Cassel</u> Florida Public Utilities Company 208 Wildlight Avenue Yulee, FL 32097 mcassel@fpuc.com</p> <p>Beth Keating Gunster, Yoakley & Stewart, P.A. 215 South Monroe Street, Suite 601 Tallahassee, FL 32301 bkeating@gunster.com</p>
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Exhibit A

“CONFIDENTIAL”

(submitted on February 18, 2020, under separate cover)

Exhibit B

REDACTED
(Copy one)

Docket No. 20200001

DOAH Transcript

Volume 1

REDACTED in its entirety

Docket No. 20200001

DOAH Transcript

Volume 2

REDACTED in its entirety

Docket No. 20200001

DOAH Transcript

Volume 3

REDACTED in its entirety

Docket No. 20200001

DOAH Transcript

Exhibits 101 through 113 and 115-117

REDACTED in their entirety

Exhibit B

REDACTED
(Copy two)

Docket No. 20200001

DOAH Transcript

Volume 1

REDACTED in its entirety

Docket No. 20200001

DOAH Transcript

Volume 2

REDACTED in its entirety

Docket No. 20200001

DOAH Transcript

Volume 3

REDACTED in its entirety

Docket No. 20200001

DOAH Transcript

Exhibits 101 through 113 and 115-117

REDACTED in their entirety

Exhibit C

DUKE ENERGY FLORIDA Confidentiality Justification Matrix

DOCUMENT/RESPONSES	PAGE/LINE	JUSTIFICATION
DOAH Transcript-Volumes 1, 2, and 3 and Exhibits 101-113 and 115-117	All information in Volumes 1, 2, and 3 is confidential in their entirety. All information in Exhibits 101 through 113 and 115 through 117.	§366.093(3)(d), F.S. The document in question contains confidential information, the disclosure of which would impair DEF's efforts to contract for goods or services on favorable terms. §366.093(3)(e), F.S. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.

Exhibit D

AFFIDAVIT OF JEFFREY SWARTZ

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost
recovery clause with generating
performance incentive factor.

Docket No. 20200001-EI

Dated: March 10, 2020

**AFFIDAVIT OF JEFFREY SWARTZ IN SUPPORT OF
DUKE ENERGY FLORIDA'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

STATE OF FLORIDA

COUNTY OF PINELLAS

BEFORE ME, the undersigned authority duly authorized to administer oaths, personally appeared Jeffrey Swartz, who being first duly sworn, on oath deposes and says that:

1. My name is Jeffrey Swartz. I am over the age of 18 years old and I have been authorized by Duke Energy Florida (hereinafter "DEF" or the "Company") to give this affidavit in the above-styled proceeding on DEF's behalf and in support of DEF's Request for Confidential Classification (the "Request"). The facts attested to in my affidavit are based upon my personal knowledge.

2. I am the Vice President of Florida Generation in the Fossil Hydro Operations Department. This section is responsible for overall leadership and strategic direction of DEF's power generation fleet.

3. As the Vice President of Florida Generation, I am responsible, along with the other members of the section, for strategic and tactical planning to operate and maintain DEF's non-nuclear generation fleet, generation fleet project and additions

recommendations, major maintenance programs, outage and project management, and retirement of generation facilities.

4. DEF is seeking confidential classification information contained in the exhibits and hearing transcript held on February 4 and 5, 2020, specifically Volumes 1, 2, and 3 and Exhibits 101 through 113 and 115 through 117. The confidential information at issue is contained in confidential Exhibit A to DEF's Request and is outlined in DEF's Justification Matrix that is attached to DEF's Request as Exhibit C. DEF is requesting confidential classification of this information because it contains sensitive business information, the disclosure of which would impair the Company's competitive business interests and ability to contract for goods and services on favorable terms.

5. The confidential information at issue relates to proprietary and confidential third-party operating procedures, drawings, and technical information regarding the third-party's proprietary component design and operation parameters, the disclosure of which would impair third-party's competitive business interests, and if disclosed, the Company's competitive business interests and efforts to contract for goods or services on favorable terms.

6. Further, if DEF cannot demonstrate to its third-party OEM, and others that may enter contracts with DEF in the future, that DEF has the ability to protect those third-parties' confidential and proprietary business information, third-parties will be less likely to provide that information to DEF – harming DEF's ability to prudently operate its business. DEF has not publicly disclosed the information. Without DEF's measures to maintain the confidentiality of this sensitive business information, DEF's ability to contract with third-parties could detrimentally impact DEF's ability to negotiate

favorable contracts, as third-parties may begin to demand a “premium” to do business with DEF to account for the risk that its proprietary information will become a matter of public record, thereby harming DEF’s competitive interests and ultimately its customers’ financial interests.

7. Upon receipt of its own confidential information, strict procedures are established and followed to maintain the confidentiality of the terms of the documents and information provided, including restricting access to those persons who need the information to assist the Company, and restricting the number of, and access to the information and contracts. At no time since receiving the information in question has the Company publicly disclosed that information. The Company has treated and continues to treat the information at issue as confidential.

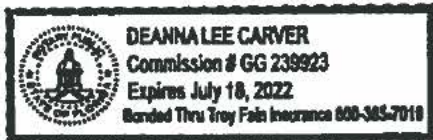
8. This concludes my affidavit.

Further affiant sayeth not.

Dated the 9th day of March, 2020.

Jeffrey Swartz
(Signature)
Jeffrey Swartz
Vice President Florida Generation
Duke Energy Florida, LLC
Florida Regional Headquarters
St. Petersburg, FL

9 THE FOREGOING INSTRUMENT was sworn to and subscribed before me this 9 day of March, 2020 by Jeffrey Swartz. He is personally known to me or has produced his _____ driver's license, or his _____ as identification.



(AFFIX NOTARIAL SEAL)

Deanna Lee Carver
(Signature)
Deanna Lee Carver
(Printed Name)
NOTARY PUBLIC, STATE OF FL
July 18, 2022
(Commission Expiration Date)

(Serial Number, If Any)

State of Florida




Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: March 11, 2020

TO: Suzanne S. Brownless, Special Counsel, Office of the General Counsel

FROM:  Devlin Higgins, Public Utility Analyst IV, Division of Accounting & Finance

RE: CONFIDENTIALITY OF CERTAIN INFORMATION

DOCKET NO: 20200001-EI DOCUMENT NOs: *Please see below

DESCRIPTION: Transcript and Exhibits from the February 4-5, 2020 hearing (at the Florida Division of Administrative Hearings) concerning Plant Bartow.

SOURCE: Duke Energy Florida

Pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code, Duke Energy Florida (DEF or Company) requests confidential classification of certain information produced by the February 4-5, 2020 hearing concerning operations at Plant Bartow. Due to concerns regarding the maintenance of confidentiality with respect to the information subject to this request, the Florida Public Service Commission by Order No. PSC-2019-0484-FOF-EI, and Document No. 10846-2019, sent this matter for hearing to the Florida Division of Administrative Hearings.¹

The Company is claiming confidentiality of its filing under Section 366.093(3)(d), F.S., and Section 366.093(3)(e), F.S. Per the Statute, propriety of confidential business information includes, but is not limited to: Subsection (d) "[i]nformation concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms," and Subsection (e) "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information."

More specifically, the information at issue relates to claimed proprietary and confidential operating procedures, drawings, and technical information regarding a third-party's (to DEF) component/equipment design and operation parameters. DEF asserts that if it cannot demonstrate to its third-party partners that the Company has the ability to protect those third-parties' confidential and proprietary business information, it will be less likely that DEF can secure contracts that benefit its customers.

¹Order No. PSC-2019-0484-FOF-EI, Issued November 18, 2019, Docket No. 20190001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.*

Staff has reviewed the subject information as well as the Company's confidentiality request. It is staff's opinion that the information subject to this request meets the criteria for confidentiality contained in Section 366.093(3)(d), F.S. and Section 366.093(3)(e), F.S.

*This is a comprehensive recommendation which is applicable to the following documents:

<u>Document No.</u>	<u>Document Description</u>
00962-2020	Hearing Transcript - Volume 1, pages 1 to 156.
00963-2020	Hearing Transcript - Volume 2, pages 157 to 290.
00964-2020	Hearing Transcript - Volume 3, pages 291 to 427.
00967-2020	Hearing Exhibit No. 101.
00968-2020	Hearing Exhibit No. 102.
00969-2020	Hearing Exhibit No. 103.
00970-2020	Hearing Exhibit No. 104.
00971-2020	Hearing Exhibit No. 105.
00972-2020	Hearing Exhibit No. 106.
00973-2020	Hearing Exhibit No. 107.
00974-2020	Hearing Exhibit No. 108.
00975-2020	Hearing Exhibit No. 109.
00976-2020	Hearing Exhibit No. 110.
00977-2020	Hearing Exhibit No. 111.
00978-2020	Hearing Exhibit No. 112.
00979-2020	Hearing Exhibit No. 113.
00981-2020	Hearing Exhibit No. 115.
00982-2020	Hearing Exhibit No. 116.
00983-2020	Hearing Exhibit No. 117.



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: March 10, 2020

TO: Division of Accounting and Finance, Office of Primary Responsibility

FROM: OFFICE OF COMMISSION CLERK

RE: CONFIDENTIALITY OF CERTAIN INFORMATION

DOCKET NOS: 20200001-EI DOCUMENT NOS: 00962-2020, 00963-2020, 00964-2020, 00967-2020,
00968-2020, 00969-2020, 00970-2020, 00971-2020,
00972-2020, 00973-2020, 00974-2020, 00975-2020,
00976-2020, 00977-2020, 00978-2020, 00979-2020,
00981-2020, 00982-2020, 00983-2020

DESCRIPTION: TRANSCRIPT (CONFIDENTIAL) - Volume I, pages 1 to 156, of 2/4/20 final hearing held
at DOAH before The Honorable Lawrence P. Stevenson [Case No. 19-006022] [x-ref DNs 00963-2020,
00964-2020, 00967-2020, 00968-2020, 00969-2020, 00970-2020, 00971-2020, 00972-2020, 00973-2020,
00974-2020, 00975-2020, 00976-2020, 00977-2020, 00978-2020, 00979-2020, 00981-2020, 00982-2020,
00983-2020]

SOURCE: Duke Energy Florida, LLC

The above confidential material was filed along with a request for confidential classification. Please complete the following form by checking all applicable information and forward it to the attorney assigned to the docket, along with a brief memorandum supporting your recommendation.

- ☒ The document(s) is (are), in fact, what the utility asserts it (them) to be.
- ☒ The utility has provided enough details to perform a reasoned analysis of its request.
- ☐ The material has been received incident to an inquiry.
- ☒ The material is confidential business information because it includes:
- ☐ (a) Trade secrets;
 - ☐ (b) Internal auditing controls and reports of internal auditors;
 - ☐ (c) Security measures, systems, or procedures;
 - ☒ (d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms;
 - ☒ (e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of information;
 - ☐ (f) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities;
- ☒ The material appears to be confidential in nature and harm to the company or its ratepayers will result from public disclosure.
- ☐ The material appears not to be confidential in nature.
- ☐ The material is a periodic or recurring filing and each filing contains confidential information.

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This response was prepared by Devlin Higgins on 3/11/20, a copy of which has been sent to the Office of Commission Clerk and the Office of General Counsel.



Dianne M. Triplett
DEPUTY GENERAL COUNSEL

March 13, 2020

VIA ELECTRONIC DELIVERY

Adam J. Teitzman, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: *Joint Comments on February 6, 2020 Staff Workshop Held to Address Modifications to Order No. PSC-2012-0425-PAA-EU Regarding Weighted Average Cost of Capital Methodology*; Docket Nos. 20200001-EI, 20200002-EG, and 20200007-EI

Dear Mr. Teitzman:

Enclosed to be filed in the above-referenced Dockets on behalf of Duke Energy Florida, LLC, Florida Power & Light Company, Gulf Power Company, Tampa Electric Company, and Florida Public Utilities Company are the Joint Comments on February 6, 2020 Staff Workshop Held to Address Modifications to Order No. PSC-2012-0425-PAA-EU Regarding Weighted Average Cost of Capital Methodology.

Thank you for your assistance in this matter. Please feel free to call me at (727) 820-4692 should you have any questions concerning this filing.

Respectfully,

/s/ Dianne M. Triplett

Dianne M. Triplett

DMT/cmk
Enclosure

cc: Parties of Record

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.

DOCKET NO. 20200001-EI

In re: Energy conservation cost recovery clause.

DOCKET NO. 20200002-EG

In re: Environmental cost recovery clause.

DOCKET NO. 20200007-EI

Filed: March 13, 2020

JOINT COMMENTS ON FEBRUARY 6, 2020 STAFF WORKSHOP HELD TO ADDRESS MODIFICATIONS TO ORDER NO. PSC-2012-0425-PAA-EU REGARDING WEIGHTED AVERAGE COST OF CAPITAL METHODOLOGY

Duke Energy Florida, LLC (“DEF”), Florida Power & Light Company (“FPL”), Gulf Power Company (“Gulf”), Tampa Electric Company (“Tampa Electric”), and Florida Public Utilities Company (“FPUC”) (collectively, “the IOUs”), pursuant to Rule 28-106.204, Florida Administrative Code, hereby file joint comments to the workshop held by the Florida Public Service Commission (“FPSC” or “Commission”) Staff on February 6, 2020 regarding the Unopposed Joint Motion filed by the IOUs, which addressed the methodology for calculating the weighted average cost of capital (“WACC”) applicable to clause-recoverable investments.

The Unopposed Joint Motion requested modifications to Order No. PSC-2012-0425-PAA-EU (the “Order”) in which the Commission approved a stipulation and settlement agreement entered into by the IOUs, the Office of Public Counsel (“OPC”), and the Florida Industrial Power Users Group (“FIPUG”) to specify the methodology for calculating the weighted average cost of capital (“WACC”) applicable to clause-recoverable investments.

At the February 6th workshop, the Commission Staff suggested the implementation of a methodology similar to that presented in the Unopposed Joint Motion filed by the IOUs on August

21, 2019 to comply with the Internal Revenue Code (“IRC”) Treasury Regulation Section §1.167(1)-1(h)(6) which requires public utilities to apply Normalization by utilizing a consistency adjustment and proration formula to compute the depreciation-related Accumulated Deferred Federal Income Tax (“ADFIT”) balance to be included for ratemaking purposes when a forecasted test period is utilized to set rates unless the Limitation Provision is met or exceeded. In response to Staff’s suggestion, the IOUs state:

1. The IOUs collectively agree with Staff’s position as outlined in their presentation on February 6, 2020. The IOUs’ interpretation of Staff’s position is described below:

a) For the Projection Filing, in all cases, the IOUs will project their entire WACC using their current approved mid-point ROE for the clause projection year and apply the Proration Formula prescribed by Treasury Regulation Section §1.167(1)-1(h)(6)(i) to the depreciation-related ADFIT included in capital structure. For example, the IOUs will project the mid-point return on equity (“ROE”) 13-month average WACC for 2021 and apply a proration adjustment to the depreciation-related ADFIT. The resulting WACC calculation will be used to calculate a monthly return on all projected clause investments in the 2021 Projection filing, which will be made in August/September of 2020.

b) For the Actual/Estimated True-up Filing, in all cases, the IOUs will use the mid-point ROE WACC calculation from the current year Forecasted Earnings Surveillance Report (“FESR”) for the Actual/Estimated true-up year and will carry forward the proration adjustment included in the Projection Filing. However, if the depreciation-related ADFIT balance in the Projection Filing was over-estimated, the Proration Formula adjustment will be reduced to reflect the difference between the originally projected and prorated depreciation-related ADFIT balance and the re-projected depreciation-related ADFIT balance. For example, the IOUs will utilize the

mid-point ROE 13-month average WACC from the 2021 FESR and carry forward the same proration adjustment reflected in the 2021 Projection Filing or adjust it downward if it had been over-projected. The resulting WACC calculation will be used to calculate a monthly return on all projected clause investments in the 2021 Actual/Estimated Filing, which will be made in August/September of 2021.

c) For the Final True-up Filing, in all cases, the IOUs will use the mid-point ROE WACC calculation from the December ESR for the true-up year and carry forward the proration adjustment included in the Projection Filing. However, similar to the Actual/Estimated Filing, if the depreciation-related ADFIT balance in the Projection Filing was over-estimated, the Proration Formula adjustment will be reduced to reflect the difference between the originally projected and prorated depreciation-related ADFIT balance and the actual depreciation-related ADFIT balance. For example, in the Final True-Up filing to be made in the Spring of 2022, the IOUs will utilize the mid-point ROE 13-month average WACC from the 2021 December ESR and carry forward the same proration adjustment reflected in the 2021 Projection Filing or adjust it downward if it had been over-projected. The resulting WACC calculation will be used to calculate a monthly return on all projected clause investments in the 2021 Final True-Up Filing, which will be made in early 2022.

2. Since the methodology described above does not require a consistency adjustment and will reflect the application of the Proration Formula each year, the IOUs do not believe it is necessary to provide a separate calculation demonstrating the Limitation Provision has been met or exceeded.

3. In addition to accepting Staff's proposal as outlined above, the IOUs propose that the Final True-Up Filing date for all clauses be no earlier than April 1st of each year in order to

allow the IOUs enough time to incorporate the WACC from the December ESR, which is completed and filed with the Commission on February 15th each year.

4. The IOUs also propose to begin the process outlined herein with the 2021 Projection Filings. Therefore, the IOUs would apply the new methodology starting with the 2021 clause filing cycle, which would begin with the 2021 Projection Filings to be filed in 2020, and then carried through to the 2021 Actual/Estimated Filings to be filed in 2021 and 2021 Final True-Up Filings to be filed in 2022. For the 2019 and 2020 true-up filings, the methodology outlined in Order No. PSC-2012-0425-PAA-EU shall continue to apply. This will allow the WACC used in the clauses to be consistent with budgets that have already been prepared for 2020 by the IOUs, and it will allow the new methodology to begin with the next clause cycle, which is the 2021 Projection Filings.

5. In its Order No. PSC-12-0425-PAA-EU, the Commission concluded that “[e]videntiary debates regarding the appropriate capital structure and the return on equity shall be the subject of proceedings other than the clause proceedings.” The Commission’s conclusion was correct then and is equally applicable now. The IOUs request that the Commission confirm that updating the WACC calculation methodology to comply with IRS regulations does not open the door to evidentiary debates that should be the subject of proceedings other than clause proceedings.

Respectfully submitted this 13th day of March 2020.

DUKE ENERGY FLORIDA, LLC

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BY: /s/ Dianne M. Triplett

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BY: /s/ Maria Jose Moncada

FLORIDA PUBLIC UTILITIES
COMPANY

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Telephone: (850) 521-1706

BY: /s/ Beth Keating

CERTIFICATE OF SERVICE – Dkt. Nos. 20200001-EI, 20200002-EG, 20200007-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail to the following this 13th day of March, 2020.

/s/ Dianne M. Triplett

Attorney

<p>Suzanne Brownless / Margo DuVal / Charles Murphy / Ashley Weisenfeld Office of General Counsel FL Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 sbrownle@psc.state.fl.us mduval@psc.state.fl.us cmurphy@psc.state.fl.us awaisenf@psc.state.fl.us</p> <p>J. Beasley / J. Wahlen / M. Means P.O. Box 391 Tallahassee, FL 32302 jbeasley@ausley.com jwahlen@ausley.com mmeans@ausley.com</p> <p>Steven Griffin P.O. Box 12950 Pensacola, FL 32591 srg@beggsllane.com</p> <p>Russell A. Badders Gulf Power Company One Energy Place Pensacola, FL 32520 russell.badders@nexteraenergy.com</p> <p>Lisa Roddy Gulf Power Company 134 W. Jefferson Street Tallahassee, FL 32301 Lisa.Roddy@nexteraenergy.com</p> <p>Kenneth A. Hoffman Florida Power & Light Company 134 W. Jefferson Street Tallahassee, FL 32301-1713 ken.hoffman@fpl.com</p> <p>Jon C. Moyle, Jr. 118 North Gadsden Street Tallahassee, FL 32301 jmoyle@moylelaw.com mqualls@moylelaw.com</p>	<p>J.R. Kelly / P. Christensen / C. Rehwinkel / T. David / S. Morse Office of Public Counsel 111 W. Madison St., Room 812 Tallahassee, FL 32399-1400 kelly.jr@leg.state.fl.us christensen.patty@leg.state.fl.us Rehwinkel.charles@leg.state.fl.us david.tad@leg.state.fl.us morse.stephanie@leg.state.fl.us</p> <p>Paula K. Brown Tampa Electric Company P.O. Box 111 Tampa, FL 33601-0111 regdept@tecoenergy.com</p> <p>Maria Moncada / Joel Baker Florida Power & Light Company 700 Universe Blvd. (LAW/JB) Juno Beach, FL 33408-0420 maria.moncada@fpl.com joel.baker@fpl.com</p> <p>James Brew / Laura Wynn 1025 Thomas Jefferson St., N.W. Suite 800 West Washington, DC 20007 jbrew@smxblaw.com law@smxblaw.com</p> <p>Mike Cassel Florida Public Utilities Company 1750 S. 14th Street, Suite 200 Fernandina Beach, FL 32034 mcassel@fpuc.com</p> <p>Beth Keating 215 South Monroe Street, Suite 601 Tallahassee, FL 32301 bkeating@gunster.com</p> <p>George Cavros 120 E. Oakland Park Blvd., Ste. 105 Fort Lauderdale, FL 33334 george@cavros-law.com</p>
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SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none">■ Complete items 1, 2, and 3.■ Print your name and address on the reverse so that we can return the card to you.■ Attach this card to the back of the mailpiece, or on the front if space permits.		<p>A. Signature X <i>Dann Clark</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>Dana Clark</i> C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>1. Article Addressed to: Docket 20150009-EI, 20190001-EI 20190018-EG DNs 05217-2014, 07985-2015, 11143-2019, 04684-2019, 06111-2019 Duke Energy Florida ATTN: Dianne M. Triplett 299 First Avenue North St. Petersburg FL 33701</p> <p>9590 9402 3287 7196 4729 38</p>		<p>3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery</p> <p><input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery</p>	
<p>2. Article Number (Transfer from service label) 7017 1000 0000 4194 4796</p>		<p>restricted Delivery</p>	
<p>PS Form 3811, July 2015 PSN 7530-02-000-9053</p>		<p>Domestic Return Receipt</p>	

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased Power Cost
Recovery Clause and Generating
Performance Incentive Factor

Docket No. 20200001-EI
DOAH No. 19-6022

Filed: March 20, 2020

**DUKE ENERGY FLORIDA, LLC'S
NOTICE OF INTENT TO REQUEST CONFIDENTIAL CLASSIFICATION**

Duke Energy Florida, LLC (“DEF” or the “Company”), pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), submits this Notice of Intent to Request Confidential Classification regarding the Proposed Recommended Orders (“PRO”) submitted by DEF, the Office of Public Counsel (“OPC”), the Florida Industrial Power Users Group (“FIPUG”), and White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate – White Springs (“PCS Phosphate”) referred to as the “Parties” to the Division of Administrative Hearings (“DOAH”). The confidential documents will be filed with the clerk on or shortly after the date of this filing. The PROs contain confidential proprietary business information relating to competitive business information of both DEF and third-party companies and has not been publicly disclosed. The disclosure of this information to the public could adversely affect the Company’s competitive business interests and efforts to contract for goods or services on favorable terms. Furthermore, the release of this information could adversely impact the proprietary rights of third parties, therefore impacting the company’s competitive interest and ultimately have a detrimental impact on DEF’s customers.

A highlighted copy of DEF’s confidential documents labeled as Exhibit A, has been filed under a separate cover letter. Each Party will be filing their confidential documents separately under a separate cover letter but will reference and are subject to this NOI.

Pursuant to Rule 25-22.006(3)(a)(1), DEF will file its Request for Confidential Classification for the confidential information contained herein within twenty-one (21) days of filing this request.

RESPECTFULLY SUBMITTED this 20th day of March, 2020.

s/ Matthew R. Bernier

DIANNE M. TRIPLETT

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MATTHEW R. BERNIER

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FLRegulatoryLegal@duke-energy.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail to the following this 20th day of March, 2020.

s/ Matthew R. Bernier

Attorney

<p>Suzanne Brownless Office of General Counsel FL Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 sbrownle@psc.state.fl.us</p> <p>J. Beasley / J. Wahlen / M. Means Ausley McMullen P.O. Box 391 Tallahassee, FL 32302 jbeasley@ausley.com jwahlen@ausley.com mmeans@ausley.com</p> <p>Russell A. Badders Gulf Power Company One Energy Place, Bin 100 Pensacola, FL 32520-0100 russell.badders@nexteraenergy.com</p> <p>Kenneth A. Hoffman Florida Power & Light Company 134 W. Jefferson Street Tallahassee, FL 32301-1713 ken_hoffman@fpl.com</p> <p>Jon C. Moyle, Jr. Moyle Law Firm, P.A. 118 North Gadsden Street Tallahassee, FL 32301 jmoyle@moylelaw.com mqualls@moylelaw.com</p>	<p>J.R. Kelly / T. David Office of Public Counsel 111 W. Madison St., Room 812 Tallahassee, FL 32399-1400 kelly.jr@leg.state.fl.us david.tad@leg.state.fl.us</p> <p>Paula K. Brown Regulatory Affairs Tampa Electric Company P.O. Box 111 Tampa, FL 33601-0111 regdept@tecoenergy.com</p> <p>Maria Moncada / David Lee Florida Power & Light Company 700 Universe Blvd. (LAW/JB) Juno Beach, FL 33408-0420 maria.moncada@fpl.com david.lee@fpl.com</p> <p>James Brew / Laura W. Baker Stone Law Firm 1025 Thomas Jefferson St., N.W. Suite 800 West Washington, DC 20007 jbrew@smxblaw.com lwb@smxblaw.com</p> <p>Mike Cassel Florida Public Utilities Company 208 Wildlight Avenue Yulee, FL 32097 mcassel@fpuc.com</p> <p>Beth Keating Gunster, Yoakley & Stewart, P.A. 215 South Monroe Street, Suite 601 Tallahassee, FL 32301 bkeating@gunster.com</p>
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State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: March 20, 2020

TO: Adam J. Teitzman, Commission Clerk, Office of Commission Clerk

FROM: Suzanne S. Brownless, Special Counsel, Office of the General Counsel *SSB*

RE: DOAH Case No. 19-6022/PSC Docket No. 20200001-EI - In Re: Fuel and purchased power cost recovery clause with generating performance incentive factor.

Please file the attached **CONFIDENTIAL** Proposed Recommended Order (PRO) in Docket No. 20200001-EI. This PRO contains confidential information which is the subject of Duke Energy Florida, LLC's Notice of Intent to Request Confidential Classification (DN 01525-2020) filed in Docket No. 20200001-EI today.

Should you have any questions or need any further information regarding this matter, please contact me at 413-6218.

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Matthew R. Bernier
Associate General Counsel
Duke Energy Florida, LLC.

March 20, 2020

VIA HAND DELIVERY

Adam Teitzman, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: *Fuel and purchased power cost recovery clause with generating performance
incentive factor; Docket No. 20200001-EI/DOAH Case No. 19-6022*

Dear Mr. Teitzman:

On March 20, 2020, Duke Energy Florida, LLC ("DEF") electronically filed its Notice of Intent (NOI) to Request Confidential Classification concerning the confidential information provided in DEF, the Florida Public Service Commission, Florida Office of Public Counsel, Florida Industrial Power Users Group, and White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate's Proposed Recommended Orders (PRO) regarding the Hearing held on February 18, 2020 at the State of Florida Division of Administrative Hearings (DOAH) in the above-referenced matter.

As referenced in the Notice of Intent to Request Confidential Classification, enclosed with this cover letter is DEF's confidential Exhibit A (in a separate sealed envelope) that accompanies the above-referenced filing.

The afore-mentioned parties will likewise file their PROs on March 20, 2020, which should also be held confidential and subject to the NOI.

Thank you for your assistance in this matter. Please feel free to call me at (850) 521-1428 should you have any questions concerning this filing.

Respectfully,

s/ Matthew R. Bernier
Matthew R. Bernier

MRB/mw
Enclosure

COMMISSION
CLERK

2020 MAR 20 PM 12:36

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Matthew R. Bernier

Associate General Counsel
Duke Energy Florida, LLC.

April 9, 2020

VIA ELECTRONIC FILING

Adam Teitzman, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: *Fuel and purchased power cost recovery clause with generating performance incentive factor; Docket No. 20200001-EI*

Dear Mr. Teitzman:

Please find enclosed for electronic filing on behalf of Duke Energy Florida, LLC ("DEF"), DEF's Request for Confidential Classification for certain information contained in DEF, OPC, FIPUG, PCS Phosphate and Staff's Proposed Recommended Orders. The filing includes the following:

- DEF's Request for Confidential Classification
- Slip-sheet for confidential Exhibit A
- Redacted Exhibit B (two copies)
- Exhibit C (justification matrix), and
- Exhibit D (affidavit of Jeffrey Swartz-unverified)

DEF, OPC, FIPUG, PCS Phosphate and Staff's confidential Exhibit A that accompanies the above-referenced filing were submitted separately in conjunction with DEF's Notice of Intent to Request Confidential Classification on March 20, 2020, under separate cover.

Thank you for your assistance in this matter. Please feel free to call me at (850) 521-1428 should you have any questions concerning this filing.

Respectfully,

s/Matthew R. Bernier

Matthew R. Bernier

MRB/mw
Enclosures

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost
recovery clause with generating performance
incentive factor.

Docket No. 20200001-EI
DOAH No. 19-6022

Dated: April 9, 2020

**DUKE ENERGY FLORIDA LLC'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

Duke Energy Florida, LLC (“DEF” or “Company”), pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), submits this Request for Confidential Classification for certain information provided in the Proposed Recommended Orders (“PRO”) submitted by DEF, the Office of Public Counsel (“OPC”), the Florida Industrial Power Users Group (“FIPUG”), White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate – White Springs (“PCS Phosphate”) and Staff to the Florida Public Service Commission (“Staff”), referred to as the “Parties” to the Division of Administrative Hearings (“DOAH”), submitted on March 20, 2020 with DEF’s Notice of Intent to Request Confidential Classification. This Request is timely. See Rule 25-22.006(3)(a)1, F.A.C. In support of this Request, DEF states:

1. The PROs contain “proprietary confidential business information” under § 366.093(3), Florida Statutes.
2. The following exhibits are included with this request:
 - (a) Sealed Composite Exhibit A is a package containing unredacted copies of all the documents for which DEF seeks confidential treatment. Composite Exhibit A was

submitted separately in sealed envelopes labeled “CONFIDENTIAL” by the Parties on or around March 20, 2020, in conjunction with DEF’s Notice of Intent to Request Confidential Classification.

(b) Composite Exhibit B is a package containing two copies of redacted versions of the documents for which the Company requests confidential classification. The specific information for which confidential treatment is requested has been blocked out by opaque marker or other means.

(c) Exhibit C is a table which identifies by page and line the information for which DEF seeks confidential classification and the specific statutory bases for seeking confidential treatment.

3. As indicated in Exhibit C, the information for which DEF requests confidential classification is “proprietary confidential business information” within the meaning of Section 366.093(3), F.S. Specifically, the information at issue includes proprietary and confidential third-party owned information and costs, the disclosure of which would impair the third-party’s competitive business interests, and if disclosed, the Company’s competitive business interests and efforts to contract for goods and services on favorable terms. *See* § 366.093(3)(d) & (e), F.S.; Affidavit of Jeffrey Swartz at ¶¶ 4, 5 and 6. Accordingly, such information constitutes “proprietary confidential business information” which is exempt from disclosure under the Public Records Act pursuant to Section 366.093(1), F.S.

4. The information at issue contains proprietary and confidential third-party owned information and technical information regarding the third-party’s proprietary component design and operation parameters. If DEF cannot demonstrate to its third-party OEM, and others that may

enter contracts with DEF in the future, that DEF has the ability to protect those third-parties' confidential and proprietary business information, third-parties will be less likely to provide that information to DEF – harming DEF's ability to prudently operate its business. *See* § 366.093(3)(d) & (e), F.S.; Affidavit of Jeffrey Swartz at ¶¶ 4, 5 and 6. Furthermore, disclosure of the information could detrimentally impact DEF's ability to negotiate favorable contracts as third-parties may begin to demand a “premium” to do business with DEF to account for the risk that its proprietary information will become a matter of public record, thereby harming DEF's competitive interests and ultimately its customers' financial interests. *See* § 366.093(3)(e), F.S.; Affidavit of Jeffrey Swartz at ¶ 6. Accordingly, such information constitutes “proprietary confidential business information” which is exempt from disclosure under the Public Records Act pursuant to Section 366.093(1), F.S.

5. The information identified as Exhibit “A” is intended to be and is treated as confidential by the Company. *See* Affidavit of Jeffrey Swartz at ¶ 7. The information has not been disclosed to the public, and the Company has treated and continues to treat the information and contracts at issue as confidential. *See* Affidavit of Jeffrey Swartz at ¶ 7.

6. DEF requests that the information identified in Exhibit A be classified as “proprietary confidential business information” within the meaning of section 366.093(3), F.S., that the information remain confidential for a period of at least 18 months as provided in section 366.093(4) F.S., and that the information be returned as soon as it is no longer necessary for the Commission to conduct its business.

WHEREFORE, for the foregoing reasons, DEF respectfully requests that this Request for Confidential Classification be granted.

RESPECTFULLY SUBMITTED this 9th day of April, 2020.

s/Matthew R. Bernier

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F: 727-820-5519

Email: Matthew.Bernier@duke-energy.com

Attorneys for Duke Energy Florida, LLC

CERTIFICATE OF SERVICE

Docket No. 20200001-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via email this 9th day of April, 2020, to all parties of record as indicated below.

s/Matthew R. Bernier

Attorney

<p>Suzanne Brownless Office of General Counsel FL Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 sbrownle@psc.state.fl.us</p> <p>J. Beasley / J. Wahlen / M. Means Ausley McMullen P.O. Box 391 Tallahassee, FL 32302 jbeasley@ausley.com jwahlen@ausley.com mmeans@ausley.com</p> <p>Russell A. Badders Gulf Power Company One Energy Place, Bin 100 Pensacola, FL 32520-0100 russell.badders@nexteraenergy.com</p> <p>Kenneth A. Hoffman Florida Power & Light Company 134 W. Jefferson Street Tallahassee, FL 32301-1713 ken_hoffman@fpl.com</p> <p>Jon C. Moyle, Jr. Moyle Law Firm, P.A. 118 North Gadsden Street Tallahassee, FL 32301 jmoyle@moylelaw.com mqualls@moylelaw.com</p>	<p>J.R. Kelly / T. David Office of Public Counsel 111 W. Madison St., Room 812 Tallahassee, FL 32399-1400 kelly.jr@leg.state.fl.us david.tad@leg.state.fl.us</p> <p>Paula K. Brown Regulatory Affairs Tampa Electric Company P.O. Box 111 Tampa, FL 33601-0111 regdept@tecoenergy.com</p> <p>Maria Moncada / David Lee Florida Power & Light Company 700 Universe Blvd. (LAW/JB) Juno Beach, FL 33408-0420 maria.moncada@fpl.com david.lee@fpl.com</p> <p>James Brew / Laura W. Baker Stone Law Firm 1025 Thomas Jefferson St., N.W. Suite 800 West Washington, DC 20007 jbrew@smxblaw.com lwb@smxblaw.com</p> <p>Mike Cassel Florida Public Utilities Company 208 Wildlight Avenue Yulee, FL 32097 mcassel@fpuc.com</p> <p>Beth Keating Gunster, Yoakley & Stewart, P.A. 215 South Monroe Street, Suite 601 Tallahassee, FL 32301 bkeating@gunster.com</p>
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Exhibit A

“CONFIDENTIAL”

(submitted on March 20, 2020, under separate cover)

Exhibit B

REDACTED
(Copy one)

DEF'S PROPOSED RECOMMENDED ORDER
REDACTED IN ITS ENTIRETY

STAFF'S PROPOSED RECOMMENDED ORDER
REDACTED IN ITS ENTIRETY

OPC, FIPUG, PCS PHOSPHATE'S
PROPOSED RECOMMENDED ORDER
REDACTED IN ITS ENTIRETY

Exhibit B

REDACTED
(Copy two)

DEF'S PROPOSED RECOMMENDED ORDER
REDACTED IN ITS ENTIRETY

STAFF’S PROPOSED RECOMMENDED ORDER
REDACTED IN ITS ENTIRETY

OPC, FIPUG, PCS PHOSPHATE'S
PROPOSED RECOMMENDED ORDER
REDACTED IN ITS ENTIRETY

Exhibit C

DUKE ENERGY FLORIDA Confidentiality Justification Matrix

DOCUMENT/RESPONSES	PAGE/LINE	JUSTIFICATION
DEF's Proposed Recommended Order	All information in DEF's PRO is confidential in its entirety.	<p>§366.093(3)(d), F.S. The document in question contains confidential information, the disclosure of which would impair DEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), F.S. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>
DOCUMENT/RESPONSES	PAGE/LINE	JUSTIFICATION
OPC, FIPUG & PCS Phosphate Joint Proposed Recommended Order	All information in OPC, FIPUG & PCS Phosphate's PRO is confidential in its entirety.	<p>§366.093(3)(d), F.S. The document in question contains confidential information, the disclosure of which would impair DEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), F.S. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>

DOCUMENT/RESPONSES	PAGE/LINE	JUSTIFICATION
Staff's Proposed Recommended Order	All information in Staff's PRO is confidential in its entirety.	<p>§366.093(3)(d), F.S. The document in question contains confidential information, the disclosure of which would impair DEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), F.S. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>

Exhibit D

AFFIDAVIT OF JEFFREY SWARTZ

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost
recovery clause with generating
performance incentive factor.

Docket No. 20200001-EI

Dated: April 9, 2020

**AFFIDAVIT OF JEFFREY SWARTZ IN SUPPORT OF
DUKE ENERGY FLORIDA'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

STATE OF FLORIDA

COUNTY OF PINELLAS

BEFORE ME, the undersigned authority duly authorized to administer oaths, personally appeared Jeffrey Swartz, who being first duly sworn, on oath deposes and says that:

1. My name is Jeffrey Swartz. I am over the age of 18 years old and I have been authorized by Duke Energy Florida (hereinafter "DEF" or the "Company") to give this affidavit in the above-styled proceeding on DEF's behalf and in support of DEF's Request for Confidential Classification (the "Request"). The facts attested to in my affidavit are based upon my personal knowledge.

2. I am the Vice President of Florida Generation in the Fossil Hydro Operations Department. This section is responsible for overall leadership and strategic direction of DEF's power generation fleet.

3. As the Vice President of Florida Generation, I am responsible, along with the other members of the section, for strategic and tactical planning to operate and maintain DEF's non-nuclear generation fleet, generation fleet project and additions

recommendations, major maintenance programs, outage and project management, and retirement of generation facilities.

4. DEF is seeking confidential classification for information contained in the Proposed Recommended Orders (“PRO”) submitted by DEF, the Office of Public Counsel (“OPC”), the Florida Industrial Power Users Group (“FIPUG”), White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate – White Springs (“PCS Phosphate”) and Staff to the Florida Public Service Commission (“Staff”) referred to as the “Parties” to the Division of Administrative Hearings (“DOAH”). The confidential information at issue is contained in confidential Exhibit A to DEF’s Request and is outlined in DEF’s Justification Matrix that is attached to DEF’s Request as Exhibit C. DEF is requesting confidential classification of this information because it contains sensitive business information, the disclosure of which would impair the Company’s competitive business interests and ability to contract for goods and services on favorable terms.

5. The confidential information at issue relates to proprietary and confidential third-party operating procedures, drawings, and technical information regarding the third-party’s proprietary component design and operation parameters, the disclosure of which would impair third-party’s competitive business interests, and if disclosed, the Company’s competitive business interests and efforts to contact for goods or services on favorable terms.

6. Further, if DEF cannot demonstrate to its third-party OEM, and others that may enter contracts with DEF in the future, that DEF has the ability to protect those third-parties’ confidential and proprietary business information, third-parties will be less likely to provide that information to DEF – harming DEF’s ability to prudently operate its business. DEF has not publicly disclosed the information. Without DEF’s measures to

maintain the confidentiality of this sensitive business information, DEF's ability to contract with third-parties could detrimentally impact DEF's ability to negotiate favorable contracts, as third-parties may begin to demand a "premium" to do business with DEF to account for the risk that its proprietary information will become a matter of public record, thereby harming DEF's competitive interests and ultimately its customers' financial interests.

7. Upon receipt of its own confidential information, strict procedures are established and followed to maintain the confidentiality of the terms of the documents and information provided, including restricting access to those persons who need the information to assist the Company, and restricting the number of, and access to the information and contracts. At no time since receiving the information in question has the Company publicly disclosed that information. The Company has treated and continues to treat the information at issue as confidential.

8. This concludes my affidavit.

Further affiant sayeth not.

Dated the _____ day of _____, 2020.

(Signature)

Jeffrey Swartz
Vice President Florida Generation
Duke Energy Florida, LLC
Florida Regional Headquarters
St. Petersburg, FL

THE FOREGOING INSTRUMENT was sworn to and subscribed before me this
____ day of _____, 2020 by Jeffrey Swartz. He is personally known to me or has
produced his _____ driver's license, or his _____
as identification.

(Signature)

(Printed Name)

NOTARY PUBLIC, STATE OF _____

(Commission Expiration Date)

(Serial Number, If Any)

(AFFIX NOTARIAL SEAL)

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: April 14, 2020

TO: Division of Accounting and Finance, Office of Primary Responsibility

FROM: OFFICE OF COMMISSION CLERK

RE: CONFIDENTIALITY OF CERTAIN INFORMATION

DOCKET NOS: 20200001-EI DOCUMENT NO: 01546-2020, 01544-2020

DESCRIPTION: Duke Energy (Bernier) - (CONFIDENTIAL) Proposed recommended order regarding DOAH Case No. 19-6022. [x-ref DN 01544-2020]

SOURCE: Duke Energy Florida, LLC

The above confidential material was filed along with a request for confidential classification. Please complete the following form by checking all applicable information and forward it to the attorney assigned to the docket, along with a brief memorandum supporting your recommendation.

- ☒ The document(s) is (are), in fact, what the utility asserts it (them) to be.
- ☒ The utility has provided enough details to perform a reasoned analysis of its request.
- ☐ The material has been received incident to an inquiry.
- ☒ The material is confidential business information because it includes:
- ☐ (a) Trade secrets;
 - ☐ (b) Internal auditing controls and reports of internal auditors;
 - ☐ (c) Security measures, systems, or procedures;
 - ☒ (d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms;
 - ☒ (e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of information;
 - ☐ (f) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities;
- ☒ The material appears to be confidential in nature and harm to the company or its ratepayers will result from public disclosure.
- ☐ The material appears not to be confidential in nature.
- ☐ The material is a periodic or recurring filing and each filing contains confidential information.

This response was prepared by /s/Devlin Higgins on 4/14/20_____, a copy of which has been sent to the Office of Commission Clerk and the Office of General Counsel.

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: April 14, 2020

TO: Suzanne S. Brownless, Special Counsel, Office of the General Counsel

FROM: Devlin Higgins, Public Utility Analyst IV, Division of Accounting & Finance

RE: CONFIDENTIALITY OF CERTAIN INFORMATION
DOCKET NO: 20200001-EI DOCUMENT Nos: 01544-2020, 01546-2020
DESCRIPTION: Duke Energy (Bernier) - (CONFIDENTIAL) Proposed
recommended order regarding DOAH Case No. 19-6022.

SOURCE: Duke Energy Florida

Pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code, Duke Energy Florida (DEF or Company) requests confidential classification of certain information provided in order to compose Proposed Recommended Orders (PRO) submitted to the Division of Administrative Hearings (DOAH). Due to concerns regarding the maintenance of confidentiality with respect to the information subject to this request, the Florida Public Service Commission by Order No. PSC-2019-0484-FOF-EI, and Document No. 10846-2019, sent this matter for hearing to the Florida Division of Administrative Hearings.¹ The information provided by DEF for the PROs was available to the Office of Public Counsel, the Florida Industrial Power Users Group, White Springs agricultural Chemicals, Inc., d/b/a PCS Phosphate – White Springs, and Staff of the Florida Public Service Commission, collectively referred to as the “Parties” to the proceeding at DOAH concerning operations at Plant Bartow.

The Company is claiming confidentiality of its filing under Section 366.093(3)(d), F.S., and Section 366.093(3)(e), F.S. Per the Statute, propriety of confidential business information includes, but is not limited to: Subsection (d) “[i]nformation concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms,” and Subsection (e) “[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.”

¹Order No. PSC-2019-0484-FOF-EI, Issued November 18, 2019, Docket No. 20190001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.*

More specifically, the information at issue relates to claimed proprietary and confidential operating procedures, drawings, and technical information regarding a third-party's (to DEF) component/equipment design and operation parameters. DEF asserts that if it cannot demonstrate to its third-party partners that the Company has the ability to protect those third-parties' confidential and proprietary business information, it will be less likely that DEF can secure contracts that benefit its customers.

Staff has reviewed the subject information as well as the Company's confidentiality request. It is staff's opinion that the information subject to this request meets the criteria for confidentiality contained in Section 366.093(3)(d), F.S. and Section 366.093(3)(e), F.S.

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: April 20, 2020

TO: Adam J. Teitzman, Commission Clerk, Office of Commission Clerk

FROM: Suzanne S. Brownless, Special Counsel, Office of the General Counsel *SSB*

RE: DOAH Case No. 19-6022/PSC Docket No. 20200001-EI - In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.

Please file the attached **CONFIDENTIAL** Proposed Recommended Order (PRO) of the Office of Public Counsel, PCS Phosphate-White Springs and the Florida Industrial Power Users Group in Docket No. 20200001-EI. This PRO contains confidential information which is the subject of Duke Energy Florida, LLC's Notice of Intent to Request Confidential Classification (DN 01525-2020) filed in Docket No. 20200001-EI on March 20, 2020, and Request for Confidential Classification filed on April 9, 2020 (DN 01877-2020).

Should you have any questions or need any further information regarding this matter, please contact me at 413-6218.

RECEIVED-FPSC
2020 APR 20 PM 1:24
COMMISSION
CLERK

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: April 21, 2020

TO: Division of Accounting and Finance, Office of Primary Responsibility

FROM: OFFICE OF COMMISSION CLERK

RE: CONFIDENTIALITY OF CERTAIN INFORMATION

DOCKET NOS: 20200001-EI DOCUMENT NO: 01546-2020, 01544-2020
02089-2020

DESCRIPTION: Duke Energy (Bernier) - (CONFIDENTIAL) Proposed recommended order regarding DOAH Case No. 19-6022. [x-ref DNs 01544-2020 and 02089-2020]

SOURCE: Duke Energy Florida, LLC
REVISED STAFF RECOMMEDATION

The above confidential material was filed along with a request for confidential classification. Please complete the following form by checking all applicable information and forward it to the attorney assigned to the docket, along with a brief memorandum supporting your recommendation.

- ☒ The document(s) is (are), in fact, what the utility asserts it (them) to be.
- ☒ The utility has provided enough details to perform a reasoned analysis of its request.
- ☐ The material has been received incident to an inquiry.
- ☒ The material is confidential business information because it includes:
- ☐ (a) Trade secrets;
 - ☐ (b) Internal auditing controls and reports of internal auditors;
 - ☐ (c) Security measures, systems, or procedures;
 - ☒ (d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms;
 - ☒ (e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of information;
 - ☐ (f) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities;
- ☒ The material appears to be confidential in nature and harm to the company or its ratepayers will result from public disclosure.
- ☐ The material appears not to be confidential in nature.
- ☐ The material is a periodic or recurring filing and each filing contains confidential information.

This response was prepared by /s/Devlin Higgins on 4/21/20, a copy of which has been sent to the Office of Commission Clerk and the Office of General Counsel.

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: April 21, 2020

TO: Suzanne S. Brownless, Special Counsel, Office of the General Counsel

FROM: Devlin Higgins, Public Utility Analyst IV, Division of Accounting & Finance

RE: CONFIDENTIALITY OF CERTAIN INFORMATION
DOCKET NO: 20200001-EI DOCUMENT Nos: 01546-2020, 01544-2020,
and 02089-2020.
DESCRIPTION: Duke Energy (Bernier) - (CONFIDENTIAL) Proposed recommended
order regarding DOAH Case No. 19-6022. [x-ref DNs 01544-2020 and 02089-2020]

SOURCE: Duke Energy Florida

Pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code, Duke Energy Florida (DEF or Company) requests confidential classification of certain information provided in order to compose Proposed Recommended Orders (PRO) submitted to the Division of Administrative Hearings (DOAH). Due to concerns regarding the maintenance of confidentiality with respect to the information subject to this request, the Florida Public Service Commission by Order No. PSC-2019-0484-FOF-EI, and Document No. 10846-2019, sent this matter for hearing to the Florida Division of Administrative Hearings.¹ The information provided by DEF for the PROs was available to the Office of Public Counsel, the Florida Industrial Power Users Group, White Springs agricultural Chemicals, Inc., d/b/a PCS Phosphate – White Springs, and Staff of the Florida Public Service Commission, collectively referred to as the “Parties” to the proceeding at DOAH concerning operations at Plant Bartow.

The Company is claiming confidentiality of its filing under Section 366.093(3)(d), F.S., and Section 366.093(3)(e), F.S. Per the Statute, propriety of confidential business information includes, but is not limited to: Subsection (d) “[i]nformation concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms,” and Subsection (e) “[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.”

More specifically, the information at issue relates to claimed proprietary and confidential operating procedures, drawings, and technical information regarding a third-party’s (to DEF)

¹Order No. PSC-2019-0484-FOF-EI, Issued November 18, 2019, Docket No. 20190001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.*

component/equipment design and operation parameters. DEF asserts that if it cannot demonstrate to its third-party partners that the Company has the ability to protect those third-parties' confidential and proprietary business information, it will be less likely that DEF can secure contracts that benefit its customers.

Staff has reviewed the subject information as well as the Company's confidentiality request. It is staff's opinion that the information subject to this request meets the criteria for confidentiality contained in Section 366.093(3)(d), F.S. and Section 366.093(3)(e), F.S.

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: April 28, 2020

TO: Adam J. Teitzman, Commission Clerk, Office of Commission Clerk

FROM: Suzanne S. Brownless, Special Counsel, Office of the General Counsel *SSB*

RE: PSC Docket No. 20200001-EI; DOAH Case No. 19-6022; In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.

Attached please find the Recommended Order entered by Administrative Law Judge Stevenson on April 27, 2020, to be filed in Docket No. 20200001-EI. This document contains **confidential** material and should not be placed on the Commission's website.

Should you have any questions or need any additional information, please contact me at 413-6218.

RECEIVED-FPSC
2020 APR 28 PM 12:10
COMMISSION
CLERK

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: April 29, 2020

TO: Nickalus Holmes, Commission Deputy Clerk II, Office of Commission Clerk

FROM: Delores A. Reecy, Administrative Assistant III, Division of Accounting & Finance

RE: Inventory of Confidential Documents by Responsible Division/Office as of April 13, 2020

Attached is a listing of confidential documents in dockets as of April 13, 2020 identifying whether each document should be retained at the Commission or returned to their source.

DR
Attachment

cc: Mark Futrell (w/o) attachment
Kandis May (w/o) attachment
Andrew L. Maurey
Cheryl Bulecza-Banks

RECEIVED-FPSC
2020 APR 30 PM 1:07
COMMISSION
CLERK

Florida Public Service Commission
Inventory of Confidential Documents by Responsible Division/Office

Report Date : 13 -Apr -2020 at 2:05:30 PM

Document File Begin Date: 4/1/2020 Document File End Date: 4/30/2020 Document Confidential Status: Begin Date: 4/1/2020 Document Confidential Status End Date: 4/30/2020 Document Confidential Status: Confidential claim per 364.183(1), F.S., Declassified - on appeal, Filed by OPC, awaiting on request, Filed by staff, NOT filed, awaiting request, Order issued, Order protested, awaiting ruling, Other, Req for ext of classification fd, Req forwarded to staff for recom, Staff recom fd, awaiting order, Undefined, under 3-yr retention, Under 5-year retention, Under Protective Order, Undocketed telecom on request - treated as claim Division: AFD

Search Result Total: 1 (Division/Office) -- 12 (Docket) -- 76 (Document)

1	AFD #	Docket #	Title -- Division of Accounting & Finance	#	Document	Date Filed	Lead OPR	Lead Staff/Att.	Conf. Status	Status Date	Description	Retain	Return
		1	20180001-EI								Duke Energy (Bernier) - (CONFIDENTIAL) Certain information contained in direct testimony of Jeffrey Swartz and Exh JS-1; Exhs CAM-2T, Sheets 2 and 3 of 3, and Exh CAM-3T, Schedule A12, Sheet 9 of 9, to direct testimony of Christopher A. Menendez. [x-ref DN 09533-2019]	-X	--
				2	06961-2018	11/02/2018	Harper, Adria	Harper, Adria	Order issued	12/21/2018	Duke Energy (Bernier) - (CONFIDENTIAL) Documents provided in response to OPC's 2nd set of interrogatories [(Nos. 11-14)], specifically question 12.	-X	--
		2	20180162-EI								GPC (Badders) - (CONFIDENTIAL) Certain portions of documents filed as Exhs 1(m), 1(n), 2(c) and 2(d) to consummation report.	-X	--
		3	20180165-EI								Application for authority to issue and sell securities and to receive common equity contributions during 12 months ending December 31, 2019, pursuant to Chapter 25-8, F.A.C., and Section 366.04, F.S., by Gulf Power Company.	-X	--
				1	01643-2020	03/27/2020	Smith II, Gary	Schrader, Kurt	Req forwarded to staff for recom	03/27/2020	Duke Energy (Bernier) - (CONFIDENTIAL) Certain information contained in consummation report; specifically, Exh Nos. (1)-c, (1)-d, (1)-e, and (1)-f.	-X	--
		4	20190001-EI								Duke Energy (Bernier) - (CONFIDENTIAL) Exh A to request for confidential classification regarding certain information contained in Exh AG-1 to direct testimony of Arnold Garcia; and Exh CAM-2T, sheets 2 and 3, to the direct testimony of Christopher A. Menendez.	-X	--
				2	01322-2019	03/01/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	05/30/2019	GPC (Griffin) - (CONFIDENTIAL) Certain information contained in Schedule CCA-4 of Exh CSB-1 to the direct testimony of C. Shane Boyett dated 3/1/2019	X	--
				3	01324-2019	03/01/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	05/30/2019	FPL (Moncada) - (CONFIDENTIAL) Certain portions of Exh RBD-2 to direct testimony of Renae B. Deaton; and Exh GJY-1 to direct testimony of Gerard J. Yupp.	X	--
				4	01349-2019	03/01/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	05/30/2019	TECO (Beasley) - (CONFIDENTIAL) Highlighted Exh JCH-1 (Bates stamp page 12) of John Heisey for 1/18 through 12/18.	X	--
				5	01351-2019	03/01/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	05/30/2019	TECO (Beasley) - (CONFIDENTIAL) Schedule A12, Page 2 of 2 (Bates stamp page 38), of Penelope A. Rusk, for 1/18 through 12/18.	-X	--

				6	03157-2019	03/18/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	05/30/2019	GPC (Griffin) - (CONFIDENTIAL) A portion of the information submitted in response to staff's 1st set of interrogatories (Nos. 1, 2, 4, and 5), business information concerning bids or other contractual data.	-X	--
				7	03165-2019	03/18/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	05/30/2019	FPL (Moncada) - (CONFIDENTIAL) Response to staff's 1st set for interrogatories (Nos. 1 and 2).	-X	--
				8	03169-2019	03/18/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	05/30/2019	TECO (Beasley) - (CONFIDENTIAL) Answers to staff's 1st set of interrogatories (Nos. 1-7).	-X	--
				9	03322-2019	03/25/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	05/30/2019	Duke Energy (Bernier) - (CONFIDENTIAL) Information contained in response to staff's 1st set of interrogatories (Nos. 1-8); specifically, questions 1, 3, 4, 5, and 6).	-X	--
				10	03493-2019	04/03/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	05/30/2019	Duke Energy (Bernier) - (CONFIDENTIAL) Information contained in Exh JM-1T to direct testimony of James McClay.	-X	--
				11	03495-2019	04/03/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	05/30/2019	GPC (Griffin) - (CONFIDENTIAL) Certain portions of hedging activity report; specifically, pricing terms for natural gas hedging transactions with various counterparties.	-X	--
				12	03506-2019	04/03/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	05/30/2019	TECO (Beasley) - (CONFIDENTIAL) Highlighted portions of Exh JBC-1 of witness J. Brent Caldwell (pages 12 and 14) to 2018 hedging activity true-up.	-X	--
				13	03955-2019	04/26/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	08/22/2019	Duke Energy (Triplett) - (CONFIDENTIAL) Forms 423 for 1/19, 2/19 and 3/19.	X	--
				14	04028-2019	04/30/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	08/22/2019	TECO (Beasley) - (CONFIDENTIAL) Forms 423-2, 2(a), and 2(b) for 12/18, 1/19, and 2/19.	-X	--
				15	04035-2019	04/30/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	08/21/2019	FPL (Moncada) - (CONFIDENTIAL) Highlighted portions of Forms 423-1, 1(a), and 1(b) for 1/19 through 3/19; Forms 423-2, 2(a) and 2(b) for Plant Scherer for 12/18, 1/19, and 2/19, Attachment A to request for confidential classification [DN 04034-2019].	-X	--
				16	04047-2019	05/01/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	08/22/2019	GPC (Griffin) - (CONFIDENTIAL) Form 423 fuel report for 1/19 through 3/19.	X	--
				17	05279-2019	07/01/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	08/22/2019	Duke Energy (Bernier) - (CONFIDENTIAL) Documents contained in response to OPC's 2nd request for PODs (Nos. 26-29), specifically questions 26, 27, and 29, Exh A [to notice of intent (DN 05232-2019)].	X	--
				18	06042-2019	07/26/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	10/24/2019	GPC (Griffin) - (CONFIDENTIAL) Certain information contained in Schedule CCE-4 of Exh CSB-3 to direct testimony of C. Shane Boyett [DN 06036-2019].	-X	--
				19	06046-2019	07/26/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	10/16/2019	Duke Energy (Bernier) - (CONFIDENTIAL) Documents contained in response to Citizens' 3rd request for PODs (Nos. 30-33), specifically questions 30 and 33. [x-ref DNs 06052-2019 and 07512-2019]	-X	--

				20	06052-2019	07/26/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	10/16/2019	Duke Energy (Bernier) - (CONFIDENTIAL) Documents contained in corrected response to Citizens' 3rd set of interrogatories (Nos. 16-17); specifically, question 16. [x-ref DNs 06046-2019 and 07512-2019]	-X	--
				21	06057-2019	07/26/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	10/22/2019	TECO (Beasley) - (CONFIDENTIAL) Certain highlighted information contained in Schedule E12, (Bates stamp page 47; Exh PAR-2), document 2, page 5 of 5, of direct testimony of Penelope A. Rusk [DN 06033-2019].	-X	--
				22	06193-2019	07/30/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	10/16/2019	Duke Energy (Triplet) - (CONFIDENTIAL) Forms 423 for 4/19, 5/19, and 6/19.	-X	--
				23	06224-2019	07/31/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	10/24/2019	TECO (Beasley) - (CONFIDENTIAL) Highlighted forms 423-2, 2(a), and 2(b) 3/19 and 5/19.	-X	--
				24	06227-2019	07/31/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	10/22/2019	GPC (Griffin) - (CONFIDENTIAL) Forms 423 for 4/19, 5/19, and 6/19.	-X	--
				25	06231-2019	07/31/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	10/22/2019	FPL (Moncada) - (CONFIDENTIAL) Attachment A, Forms 423-1, 1(a), and 1(b) for 4/19, 5/19, and 6/19; and Forms 423-2, 2(a), and 2(b) for Plant Scherer for 3/19, 4/19, and 5/19.	-X	--
				26	07296-2019	08/09/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	10/16/2019	Duke Energy (Bernier) - (CONFIDENTIAL) Information contained in Exh JM-1P to direct testimony of James McClay, supplemental hedging activity report for 1/19 through 7/19, Exh A [to request for confidential classification (DN 07294-2019)]. [CLK note: See confidential DN 07514-2019 which replaces this document.]	-X	--
				27	07334-2019	08/09/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	10/22/2019	GPC (Griffin) - (CONFIDENTIAL) Certain portions of hedging activity report; specifically, pricing terms for natural gas hedging transactions between GPC and various counterparties.	-X	--
				28	07512-2019	08/12/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	10/16/2019	Duke Energy (Bernier) - (CONFIDENTIAL) Documents contained in corrected response to Citizens' 3rd set of interrogatories (Nos. 16-17), specifically question 16; and 3rd request for PODs (Nos. 30-33), specifically question 30. [x-ref DNs 06046-2019 and 06052-2019]	-X	--
				29	07514-2019	08/12/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	10/16/2019	Duke Energy (Bernier) - (CONFIDENTIAL) Exh JM-1P to direct testimony of James McClay, supplemental hedging activity report for 1/19 through 7/19.	-X	--
				30	08426-2019	08/26/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	10/24/2019	FPL (Moncada) - (CONFIDENTIAL) Information provided in response to OPC's 1st request for [PODs] (No. 1).	-X	--
				31	08571-2019	09/03/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	10/22/2019	GPC (Griffin) - (CONFIDENTIAL) Certain information contained in Schedule CCE-4 of Exh CSB-5 to the direct testimony of C. Shane Boyett.	-X	--

				32	08579-2019	09/03/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	10/24/2019	FPL (Moncada) - (CONFIDENTIAL) Certain information contained in Schedule E12 of Appendix V to the testimony of Renae D. Beaton, Exh A [to request for confidential classification (DN 08578-2019)].	-X	--
				33	08602-2019	09/03/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	10/24/2019	TECO (Beasley) - (CONFIDENTIAL) Highlighted information contained in Schedule E12 to the direct testimony of Penelope A. Rusk (Bates stamp page 17).	-X	--
				34	08671-2019	09/09/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	10/16/2019	Duke Energy (Bernier) - (CONFIDENTIAL) Response to OPC's 4th set of interrogatories (Nos. 18-31), specifically Nos. 23 and 27.	X	--
				35	08773-2019	09/13/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	10/22/2019	OPC (Rehwinkel) - (CONFIDENTIAL) Direct testimony and exhibits of Richard A. Polich. [x-ref DN 09202-2019]	-X	--
				36	08889-2019	09/19/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	10/24/2019	FPL (Moncada) - (CONFIDENTIAL) Certain information provided in response to staff's 6th set of interrogatories (No. 50), Exh A [to request for confidential classification (DN 08888-2019)].	-X	--
				37	08994-2019	09/23/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	10/24/2019	OPC (David) - (CONFIDENTIAL) Disc containing objections and confidential amended and supplemental responses (Request No. 2) to Duke Energy's 1st set of PODs (Nos. 1-6).	-X	--
				38	09061-2019	09/26/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	10/16/2019	Duke Energy (Bernier) - (CONFIDENTIAL) Information contained in rebuttal testimony of Jeffrey Swartz and Exhs JS-2 through JS-4, Exh A [to request for confidential classification (DN 09058-2019)].	-X	--
				39	09112-2019	09/30/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	10/16/2019	TECO (Beasley) - (CONFIDENTIAL) All yellow highlighted information in answer to staff's 3rd set of interrogatories No. 18 (Bates stamp page 2).	-X	--
				40	09202-2019	10/04/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	10/22/2019	Duke Energy (Bernier) - (CONFIDENTIAL) Information contained in the direct testimony of Richard A. Polich and Exhs RAP-3, RAP-6, RAP-7 and RAP-8. [x-ref DN 08773-2019]	-X	--
				41	09342-2019	10/11/2019	Higgins, Devlin	Brownless, Suzanne	Order issued	10/24/2019	Duke Energy (Bernier) - (CONFIDENTIAL) Information contained in OPC's response to Duke Energy's 1st request for PODs (Nos. 1-6)	X	--
				42	09533-2019	10/23/2019	Higgins, Devlin	Brownless, Suzanne	Staff recom fld; awaiting order	10/28/2019	Duke Energy (Bernier) - (CONFIDENTIAL) Revised Exh A [to request for extension of confidential classification concerning information contained in the direct testimony and Exh JS-1 of Jeffrey Swartz; and Exh CAM-2T and CAM-3T to the direct testimony of Christopher A. Menendez]. [x-ref DN 02031-2018]	-X	--
				43	09592-2019	10/25/2019	Higgins, Devlin	Brownless, Suzanne	Staff recom fld; awaiting order	11/04/2019	Duke Energy (Triplett) - (CONFIDENTIAL) 423 Forms for 7/19, 8/19, and 11/19	-X	--

				44	10386-2019	10/30/2019	Higgins, Devlin	Brownless, Suzanne	Staff recom fld; awaiting order	11/04/2019	TECO (Beasley) - (CONFIDENTIAL) Forms 423-2, 2(a), and 2(b) for 6/19 and 7/19.	-X	--
				45	10419-2019	10/30/2019	Higgins, Devlin	Brownless, Suzanne	Staff recom fld; awaiting order	11/04/2019	FPL (Lee) - (CONFIDENTIAL) Forms 423-1 (a), 2, 2(a), and 2(b) for third quarter of 2019.	-X	--
				46	10615-2019	10/31/2019	Higgins, Devlin	Brownless, Suzanne	Staff recom fld; awaiting order	11/04/2019	GPC (Griffin) - (CONFIDENTIAL) Certain information submitted on Form 423 fuel reports for 7/19, 8/19, and 9/19; specifically, pricing for coal and related transportation services purchased by GPC.	-X	--
				47	11345-2019	12/17/2019	Higgins, Devlin	Brownless, Suzanne	Staff recom fld; awaiting order	12/17/2019	Duke Energy (Bernier) - (CONFIDENTIAL) Late-filed exhibit documents provided to staff regarding depositions held 8/29/19-30/19; specifically, late-filed Exhs 2, 4, 5, and 6, to deposition of Messrs. Swartz, Toms and Salvarezza, and the contract produced in response to OPC's 5th request for PODs (No. 41).	X	--
5	20190038-EI	Petition for limited proceeding for recovery of incremental storm restoration costs related to Hurricane Michael, by Gulf Power Company.	1	00188-2020	01/10/2020	Snyder, Paul	Simmons, Kristen	NOI filed; awaiting request	01/10/2020	FPL (Rubin) - (CONFIDENTIAL) Information that will be provided in response to OPC's 1st set of interrogatories (Nos. 1-35) and 1st request for PODs (Nos. 1-22); provided on three thumb drives. [x-ref DN 00737-2020]	--X	--	
			2	00737-2020	01/31/2020	Snyder, Paul	Simmons, Kristen	Req forwarded to staff for recom	01/31/2020	GPC (Higginbotham) - (CONFIDENTIAL) Information provided in response to OPC's 1st set of interrogatories (No. 15) and 1st request for PODs (Nos. 1, 2, 6, 9-15, 18, and 20); provided on three thumb drives only. [x-ref DN 00188-2020]	-X	--	
			3	01641-2020	03/27/2020	Snyder, Paul	Simmons, Kristen	Req forwarded to staff for recom	03/27/2020	GPC (Higginbotham) - (CONFIDENTIAL) Information provided in response to OPC's 2nd set of interrogatories (Nos. 47, 59, 65, 75, and 76) and 2nd request for PODs (Nos. 23, 24, 26, 27, and 29-32).	-X	--	
6	20190044-EI	Request for confidentiality for ESR, Supplemental for December 2018, by Gulf Power Company.	1	00998-2019	02/15/2019	Mouring, Curtis	Harper, Adria	Order issued	02/28/2019	GPC (Griffin) - (CONFIDENTIAL) Business information contained in 12/18 supplements for earnings surveillance report, which are being submitted to FPSC pursuant to Orders PSC-96-1219-FOF-EI, PSC-01-0390-TRF-EI, and PSC-14-0197-PAA-EI.	X	--	
7	20190045-EI	Request for confidentiality for ESR, Supplemental for December 2018, by Florida Power & Light Company.	1	01033-2019	02/15/2019	Mouring, Curtis	Harper, Adria	Order issued	02/28/2019	FPL (Donaldson) - (CONFIDENTIAL) Exh A; Certain information in 12/18 earnings surveillance report.	--X	--	
8	20190110-EI	Petition for limited proceeding for recovery of incremental storm restoration costs related to Hurricane Michael and approval of second implementation stipulation, by Duke Energy Florida, LLC.	1	01542-2020	03/20/2020	Snyder, Paul	Dziechciarz, Rachael	Req forwarded to staff for recom	03/20/2020	Duke Energy (Hernandez) - (CONFIDENTIAL) Response to request nos. 19, 24a, 24b, 24c and 25 of OPC's corrected 3rd request for PODs (19-27).	-X	--	
9	20190114-WU	Application for staff-assisted rate case in Alachua County, and	1	04598-2019	05/29/2019	Bruce,	DuVal,	Req forwarded to	05/29/2019	Gator Waterworks; Merritt Island (Rendell) - (CONFIDENTIAL) Shareholder's personal financial records required for consideration	--	--	

			request for interim rate increase by Gator Waterworks, Inc.				Sonica	Margo	staff for recom		of a corporate guarantee; specifically, the personal financial statement of the owner of Gator Waterworks and Merritt Island.		
10	20190116-SU		Application for staff-assisted rate case in Brevard County, and request for interim rate increase by Merritt Island Utility Company.	1	04598-2019	05/29/2019	Brown, Todd	Dziechciarz, Rachael	Req forwarded to staff for recom	05/29/2019	Gator Waterworks; Merritt Island (Rendell) - (CONFIDENTIAL) Shareholder's personal financial records required for consideration of a corporate guarantee; specifically, the personal financial statement of the owner of Gator Waterworks and Merritt Island.	-X	--
11	20190156-EI		Petition for a limited proceeding to recover incremental storm restoration costs, capital costs, revenue reduction for permanently lost customers, and regulatory assets related to Hurricane Michael, by Florida Public Utilities Company.	1	10777-2019	11/05/2019	Andrews, Matthew	Dziechciarz, Rachael	Order issued	12/06/2019	FPUC (Keating) - (CONFIDENTIAL) Certain material contained in the attachment to response to OPC's 4th set of interrogatories (Nos. 67-95); specifically, No. 95.	X	--
				2	00652-2020	01/29/2020	Andrews, Matthew	Dziechciarz, Rachael	Order issued	02/24/2020	FPUC (Keating) - (CONFIDENTIAL) Certain documents provided in supplemental response to prior responses to OPC's 1st requests for PODs (Nos. 1-15), information regarding rates and terms in contracts with vendors; provided on CD only.	X	--
				3	01402-2020	03/13/2020	Andrews, Matthew	Dziechciarz, Rachael	Req forwarded to staff for recom	03/13/2020	FPUC (Keating) - (CONFIDENTIAL) Certain material in response to OPC's 4th request for PODs and 7th set of interrogatories.	X	--
12	20200001-EI		Fuel and purchased power cost recovery clause with generating performance incentive factor.	1	00223-2020	01/13/2020	Higgins, Devlin	Brownless, Suzanne	Req forwarded to staff for recom	01/30/2020	Duke Energy (Bernier) - (CONFIDENTIAL) Exh A [to notice of intent to request confidential classification], information contained in 8/29/19 and 8/30/19, late-filed exhibits to deposition of Messrs. Swartz, Toms, and Salvarezza.	X	--
				2	00571-2020	01/27/2020	Higgins, Devlin	Brownless, Suzanne	Staff recom fid; awaiting order	02/17/2020	Duke Energy (Bernier) - (CONFIDENTIAL) Information provided in response to OPC's 4th request [for] PODs (Nos. 34-39), Exh A to notice of intent to request confidential classification [00569-2020].	-X	--
				3	00679-2020	01/30/2020	Higgins, Devlin	Brownless, Suzanne	Staff recom fid; awaiting order	02/03/2020	Duke Energy (Triplett) - (CONFIDENTIAL) Forms 423 for 10/19 through 12/19.	-X	--
				4	00718-2020	01/31/2020	Higgins, Devlin	Brownless, Suzanne	Staff recom fid; awaiting order	02/03/2020	FPL (Lee) - (CONFIDENTIAL) Attachment A, Form 423-1(a) for 10/19 and 11/19; Forms 423-2, 2(a) and 2(b) for Plant Scherer for 9/19 through 12/12.	-X	--
				5	00730-2020	01/31/2020	Higgins, Devlin	Brownless, Suzanne	Staff recom fid; awaiting order	02/03/2020	GPC (Griffin) - (CONFIDENTIAL) Forms 423 fuel reports for 10/19 through 12/19; specifically, information consisting or pricing for coal and related transportation services purchased.	-X	--
				6	00734-2020	01/31/2020	Higgins, Devlin	Brownless, Suzanne	Staff recom fid; awaiting order	02/03/2020	TECO (Beasley) - (CONFIDENTIAL) Forms 423-2, 2(a), and 2(b) for 11/19.	-X	--
											TRANSCRIPT (CONFIDENTIAL) - Volume		

				7	00962-2020	02/18/2020	Higgins, Devlin	Brownless, Suzanne	Staff recom fld; awaiting order	03/12/2020	1, pages 1 to 156, of 2/4/20 final hearing held at DOAH before The Honorable Lawrence P. Stevenson [Case No. 19-006022]. [x-ref DNs 00963-2020, 00964-2020, 00967-2020, 00968-2020, 00969-2020, 00970-2020, 00971-2020, 00972-2020, 00973-2020, 00974-2020, 00975-2020, 00976-2020, 00977-2020, 00978-2020, 00979-2020, 00981-2020, 00982-2020, 00983-2020]	X	-
				8	00963-2020	02/18/2020	Higgins, Devlin	Brownless, Suzanne	NOI filed; awaiting request	02/18/2020	TRANSCRIPT (CONFIDENTIAL) - Volume 2, pages 157 to 290, of 2/4/20 final hearing held at DOAH before The Honorable Lawrence P. Stevenson [Case No. 19-006022]. [x-ref DNs 00962-2020, 00964-2020, 00967-2020, 00968-2020, 00969-2020, 00970-2020, 00971-2020, 00972-2020, 00973-2020, 00974-2020, 00975-2020, 00976-2020, 00977-2020, 00978-2020, 00979-2020, 00981-2020, 00982-2020, 00983-2020]	X	-
				9	00964-2020	02/18/2020	Higgins, Devlin	Brownless, Suzanne	NOI filed; awaiting request	02/18/2020	TRANSCRIPT (CONFIDENTIAL) - Volume 3, pages 291 to 427, of 2/5/20 final hearing held at DOAH before The Honorable Lawrence P. Stevenson [Case No. 19-006022]. [x-ref DNs 00962-2020, 00963-2020, 00967-2020, 00968-2020, 00969-2020, 00970-2020, 00971-2020, 00972-2020, 00973-2020, 00974-2020, 00975-2020, 00976-2020, 00977-2020, 00978-2020, 00979-2020, 00981-2020, 00982-2020, 00983-2020]	X	--
				10	01195-2020	03/02/2020	Higgins, Devlin	Brownless, Suzanne	Staff recom fld; awaiting order	03/03/2020	GPC (Badders) - (CONFIDENTIAL) Schedule CCA-4 of Exh RLH-1 to the direct testimony of Richard L. Hume dated 2/2/20. [Exh A to request for confidential classification, DN 01193-2020]	X	--
				11	01197-2020	03/02/2020	Higgins, Devlin	Brownless, Suzanne	Staff recom fld; awaiting order	03/03/2020	FPL (Moncada) - (CONFIDENTIAL) Certain information provided in exhs to the prepared direct testimony of FPL witnesses Renae B. Deaton (Exh RBD-2) and Gerald J. Yupp (GJY-1). [Exh A to request for confidential classification, DN 01196-2020]	X	-
				12	01224-2020	03/02/2020	Higgins, Devlin	Brownless, Suzanne	Staff recom fld; awaiting order	03/03/2020	TECO (Means) - (CONFIDENTIAL) Highlighted information contained in Penelope Rusk's Schedule A12, Page 2 of 2 (Bates Stamp page 38) for the period 1/19-12/19.	X	--
				13	01227-2020	03/02/2020	Higgins, Devlin	Brownless, Suzanne	Staff recom fld; awaiting order	03/03/2020	TECO (Beasley) - (CONFIDENTIAL) Highlighted information contained in the Exh [JCH-1] of witness John C. Heisey (Bates Stamp page 11) for the period of 1/19-12/19.	X	-
				14	01856-2020	04/03/2020	Higgins, Devlin	Brownless, Suzanne	Req forwarded to staff for	04/03/2020	GPC (Badders) - (CONFIDENTIAL) Highlighted portions of 8/19 through 12/19 hedging activity report. [CLK note: See DN	X	-

Search Result Total: 1 (Division/Office) + 12 (Docket) + 76 (Document)

State of Florida
Division of Administrative Hearings

Ron DeSantis
Governor

John MacIver
Director and Chief Judge

Claudia Lladó
Clerk of the Division



Vacant
Deputy Chief
Administrative Law Judge

David W. Langham
Deputy Chief Judge
Judges of Compensation Claims

April 27, 2020

FILED 5/7/2020
DOCUMENT NO. 02455-2020
FPSC - COMMISSION CLERK

Adam Teitzman, Commission Clerk
Office of the Commission Clerk
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
(eServed)

Re: IN RE: FUEL AND PURCHASED POWER COST RECOVERY CLAUSE WITH GENERATING
PERFORMANCE INCENTIVE FACTOR, DOAH Case No. 19-6022

Dear Mr. Teitzman:

The Recommended Order has been transmitted in electronic format to the registered eALJ users and is enclosed for the non-registered parties in the referenced case. Also, enclosed is the three-volume Transcript, together with DEF's Exhibits numbered 80 through 82; OPC's Exhibits numbered 68 through 75, 101 through 109, and 115 through 117; the Commission's Exhibits numbered 110 and 111; FIPUG's Exhibits numbered 118; White Springs's Exhibits numbered 112 and 113; and the parties' Joint Exhibit numbered 114. Copies of this letter will serve to notify the parties that my Recommended Order and the hearing record have been transmitted this date.

As required by section 120.57(1)(m), Florida Statutes, you are requested to furnish the Division of Administrative Hearings with a copy of the Final Order within 15 days of its rendition. Any exceptions to the Recommended Order filed with the agency shall be forwarded to the Division of Administrative Hearings with the Final Order.

Sincerely,

LAWRENCE P. STEVENSON
Administrative Law Judge

LPS/lb

Enclosures

Adam Teitzman, Commission Clerk
DOAH Case No. 19-6022
April 27, 2020
Page 2

cc: Jon C. Moyle, Esquire (eServed)
Nickalus Austin Holmes, Commission Deputy Clerk I (eServed)
Matthew Bernier, Esquire (eServed)
James Ray Kelly, Esquire (eServed)
Dianne M. Triplett, Esquire (eServed)
Patty Christensen, Esquire
Stephanie Morse, Esquire
James Walter Brew, Esquire (eServed)
Suzanne Smith Brownless, Esquire (eServed)
Thomas A. (Tad) David, Esquire (eServed)
Laura Wynn Baker, Associate (eServed)
Daniel Hernandez, Esquire (eServed)
Charles John Rehwinkel, Deputy Public Counsel (eServed)
Karen Ann Putnal, Esquire (eServed)
Bianca Lherisson (eServed)
Braulio Baez, Executive Director (eServed)
Keith Hetrick, General Counsel (eServed)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased Power Cost
Recovery Clause and Generating
Performance Incentive Factor

Docket No. 20200001-EI
DOAH No. 19-6022

Filed: May 12, 2020

**DUKE ENERGY FLORIDA, LLC'S
NOTICE OF INTENT TO REQUEST CONFIDENTIAL CLASSIFICATION**

Duke Energy Florida, LLC (“DEF” or the “Company”), pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), submits this Notice of Intent to Request Confidential Classification regarding its Exceptions to the Administrative Law Judge (“ALJ”) of the Division of Administrative Hearings’ (“DOAH”) Recommended Order for final hearing held on February 4 and 5, 2020. DEF’s Exceptions contain confidential proprietary business information relating to competitive business information of both DEF and third-party companies and has not been publicly disclosed. The disclosure of this information to the public could adversely affect the Company’s competitive business interests and efforts to contract for goods or services on favorable terms. Furthermore, the release of this information could adversely impact the proprietary rights of third parties, therefore impacting the company’s competitive interest and ultimately have a detrimental impact on DEF’s customers.

A highlighted copy of DEF’s confidential documents labeled as Exhibit A, has been filed under a separate cover letter.

Pursuant to Rule 25-22.006(3)(a)(1), DEF will file its Request for Confidential Classification for the confidential information contained herein within twenty-one (21) days of filing this request.

RESPECTFULLY SUBMITTED this 12th day of May, 2020.

s/ Matthew R. Bernier

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FLRegulatoryLegal@duke-energy.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail to the following this 12th day of May, 2020.

s/ Matthew R. Bernier

Attorney

<p>Suzanne Brownless Office of General Counsel FL Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 sbrownle@psc.state.fl.us</p> <p>J. Beasley / J. Wahlen / M. Means Ausley McMullen P.O. Box 391 Tallahassee, FL 32302 jbeasley@ausley.com jwahlen@ausley.com mmeans@ausley.com</p> <p>Russell A. Badders Gulf Power Company One Energy Place, Bin 100 Pensacola, FL 32520-0100 russell.badders@nexteraenergy.com</p> <p>Kenneth A. Hoffman Florida Power & Light Company 134 W. Jefferson Street Tallahassee, FL 32301-1713 ken.hoffman@fpl.com</p> <p>Jon C. Moyle, Jr. Moyle Law Firm, P.A. 118 North Gadsden Street Tallahassee, FL 32301 jmoyle@moylelaw.com mqualls@moylelaw.com</p>	<p>J.R. Kelly / T. David Office of Public Counsel 111 W. Madison St., Room 812 Tallahassee, FL 32399-1400 kelly.jr@leg.state.fl.us david.tad@leg.state.fl.us</p> <p>Paula K. Brown Regulatory Affairs Tampa Electric Company P.O. Box 111 Tampa, FL 33601-0111 regdept@tecoenergy.com</p> <p>Maria Moncada / David Lee Florida Power & Light Company 700 Universe Blvd. (LAW/JB) Juno Beach, FL 33408-0420 maria.moncada@fpl.com david.lee@fpl.com</p> <p>James Brew / Laura W. Baker Stone Law Firm 1025 Thomas Jefferson St., N.W. Suite 800 West Washington, DC 20007 jbrew@smxblaw.com lwb@smxblaw.com</p> <p><u>Mike Cassel</u> Florida Public Utilities Company 208 Wildlight Avenue Yulee, FL 32097 mcassel@fpuc.com</p> <p>Beth Keating Gunster, Yoakley & Stewart, P.A. 215 South Monroe Street, Suite 601 Tallahassee, FL 32301 bkeating@gunster.com</p>
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Matthew R. Bernier

Associate General Counsel
Duke Energy Florida, LLC.

May 12, 2020

VIA HAND DELIVERY

Adam Teitzman, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: *Fuel and purchased power cost recovery clause with generating performance
incentive factor; Docket No. 20200001-EI/DOAH Case No. 19-6022*

Dear Mr. Teitzman:

On May 12, 2020, Duke Energy Florida, LLC ("DEF") electronically filed its Notice of Intent (NOI) to Request Confidential Classification concerning the confidential information contained in DEF's Exceptions to the Administrative Law Judge's Recommended Order regarding the final hearing held on February 4 and 5, 2020 at the State of Florida Division of Administrative Hearings (DOAH) in the above-referenced matter.

As referenced in the Notice of Intent to Request Confidential Classification, enclosed with this cover letter is DEF's confidential Exhibit A (in a separate sealed envelope) that accompanies the above-referenced filing.

Thank you for your assistance in this matter. Please feel free to call me at (850) 521-1428 should you have any questions concerning this filing.

Respectfully,

s/ Matthew R. Bernier
Matthew R. Bernier

MRB/mw
Enclosure

RECEIVED-FPSC
2020 MAY 12 PM 3:49
COMMISSION
CLERK

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail this 12th day of May, 2020, to all parties of record as indicated below.

s/Matthew R. Bernier

Attorney

<p>Suzanne Brownless Office of General Counsel FL Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 sbrownle@psc.state.fl.us</p> <p>J. Beasley / J. Wahlen / M. Means Ausley McMullen P.O. Box 391 Tallahassee, FL 32302 jbeasley@ausley.com jwahlen@ausley.com mmeans@ausley.com</p> <p>Russell A. Badders Gulf Power Company One Energy Place, Bin 100 Pensacola, FL 32520-0100 russell.badders@nexteraenergy.com</p> <p>Kenneth A. Hoffman Florida Power & Light Company 134 W. Jefferson Street Tallahassee, FL 32301-1713 ken.hoffman@fpl.com</p> <p>Jon C. Moyle, Jr. Moyle Law Firm, P.A. 118 North Gadsden Street Tallahassee, FL 32301 jmoyle@moylelaw.com mqualls@moylelaw.com</p>	<p>J.R. Kelly / T. David Office of Public Counsel 111 W. Madison St., Room 812 Tallahassee, FL 32399-1400 kelly.jr@leg.state.fl.us david.tad@leg.state.fl.us</p> <p>Paula K. Brown Regulatory Affairs Tampa Electric Company P.O. Box 111 Tampa, FL 33601-0111 regdept@tecoenergy.com</p> <p>Maria Moncada / David Lee Florida Power & Light Company 700 Universe Blvd. (LAW/JB) Juno Beach, FL 33408-0420 maria.moncada@fpl.com david.lee@fpl.com</p> <p>James Brew / Laura W. Baker Stone Law Firm 1025 Thomas Jefferson St., N.W. Suite 800 West Washington, DC 20007 jbrew@smxblaw.com lwb@smxblaw.com</p> <p>Mike Cassel Florida Public Utilities Company 208 Wildlight Avenue Yulee, FL 32097 mcassel@fpuc.com</p> <p>Beth Keating Gunster, Yoakley & Stewart, P.A. 215 South Monroe Street, Suite 601 Tallahassee, FL 32301 bkeating@gunster.com</p>
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Matthew R. Bernier
ASSOCIATE GENERAL COUNSEL

May 18, 2020

VIA OVERNIGHT MAIL

Adam J. Teitzman, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: *Fuel and purchased power cost recovery clause with generating performance
incentive factor; Docket No. 20200001-EI*

Dear Mr. Teitzman:

Please find enclosed for electronic filing on behalf of Duke Energy Florida, LLC ("DEF"), DEF's Request for Confidential Classification filed in connection with certain information provided in the 2020 Recommended Order from the State of Florida Division of Administrative Hearings, where the final hearing was conducted on February 4-5, 2020. The filing includes the following:

- DEF's Request for Confidential Classification
- Exhibit A (Slip Sheet for Confidential Documents)
- Exhibit B (two redacted copies)
- Exhibit C (Justification Matrix), and
- Exhibit D (affidavit of Jeffrey Swartz)

DEF's confidential Exhibit A that accompanies the above-referenced filing has been submitted under separate cover.

Thank you for your assistance in this matter. Please feel free to call me at (850) 521-1428 should you have any questions concerning this filing.

Respectfully,

/s/ Matthew R. Bernier

Matthew R. Bernier

MRB/cmw
Enclosures

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
Clause with generating performance incentive
Factor

Docket No. 20200001-EI

Filed: May 18, 2020

**DUKE ENERGY FLORIDA, LLC'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

Duke Energy Florida, LLC, (“DEF” or “Company”), pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), submits this Request for Confidential Classification for certain information provided in the 2020 Recommended Order from the State of Florida Division of Administrative Hearings, where the final hearing was conducted on February 4-5, 2020. This Request is timely. *See* Rule 25-22.006(3)(a)1, F.A.C. In support of this Request, DEF states:

The 2020 Recommended Order from the State of Florida Division of Administrative Hearings contains “proprietary confidential business information” under § 366.093(3), Florida Statutes.

1. The following exhibits are included with this request:

(a) Sealed Composite Exhibit A is a package containing an unredacted copy of all the documents for which DEF seeks confidential treatment. In the unredacted version, the information asserted to be confidential is highlighted in yellow.

(b) Composite Exhibit B is a package containing two copies of redacted versions of the documents for which the Company requests confidential classification, or slip-sheets for documents which are confidential in their entirety. The specific information for which confidential treatment is requested has been blocked out by opaque marker or other means.

(c) Exhibit C is a table which identifies the information for which DEF seeks confidential classification and the specific statutory bases for seeking confidential treatment.

(d) Exhibit D is an affidavit attesting to the confidential nature of information identified in this request.

2. As indicated in Exhibit C, the information for which DEF requests confidential classification is “proprietary confidential business information” within the meaning of § 366.093(3), F.S. DEF is requesting confidential classification of this information because it contains contractual information or information provided by a third party that DEF is obligated to keep confidential, the disclosure of which would harm its competitive business interest and ability to contract for goods or services on favorable terms. *See* §§ 366.093(3)(d) & (e), F.S.; Affidavit of Jeffrey Swartz at ¶¶ 3, 4 and 5. Accordingly, such information constitutes “proprietary confidential business information” which is exempt from disclosure under the Public Records Act pursuant to § 366.093(1), F.S.

3. In order to contract with third-party vendors and Original Equipment Manufacturers on favorable terms, DEF must keep contractual terms and third-party proprietary information confidential. The disclosure of which would be to the detriment of DEF and its customers. Additionally, the disclosure of confidential information provided by a third party could adversely impact DEF’s competitive business interests. If such information was disclosed to DEF’s competitors, DEF’s efforts to obtain competitive contracts that add economic value to both DEF and its customers could be undermined. *See* Affidavit of Swartz at ¶¶ 4 and 5. *Id.*

4. The information identified as Exhibit “A” is intended to be and is treated as confidential by the Company. *See* Affidavit of Swartz at ¶¶ 4 and 6. The information has not

been disclosed to the public, and the Company and third-party vendors have treated and continue to treat this information as confidential. *Id.*

5. DEF requests that the information identified in Exhibit A be classified as “proprietary confidential business information” within the meaning of § 366.093(3), F.S., that the information remains confidential for a period of at least 18 months as provided in § 366.093(4) F.S., and that the information be returned as soon as it is no longer necessary for the Commission to conduct its business.

WHEREFORE, for the foregoing reasons, DEF respectfully requests that this Request for Confidential Classification be granted.

RESPECTFULLY SUBMITTED this 18th day of May, 2020.

/s/ Matthew R. Bernier

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Deputy General Counsel

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail to the following this 18th day of May, 2020.

/s/ Matthew R. Bernier

Attorney

<p>Suzanne Brownless Office of General Counsel FL Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 sbrownle@psc.state.fl.us</p> <p>J. Beasley / J. Wahlen / M. Means Ausley McMullen P.O. Box 391 Tallahassee, FL 32302 jbeasley@ausley.com jwahlen@ausley.com mmeans@ausley.com</p> <p>Steven Griffin Beggs & Lane P.O. Box 12950 Pensacola, FL 32591 srg@beggslane.com</p> <p>Russell A. Badders Gulf Power Company One Energy Place Pensacola, FL 32520 russell.badders@nexteraenergy.com</p> <p>Holly Henderson Gulf Power Company 215 S. Monroe St., Ste. 618 Tallahassee, FL 32301 holly.henderson@nexteraenergy.com</p> <p>Kenneth A. Hoffman Florida Power & Light Company 134 W. Jefferson Street Tallahassee, FL 32301-1713 ken.hoffman@fpl.com</p> <p>Jon C. Moyle, Jr. Moyle Law Firm, P.A. 118 North Gadsden Street Tallahassee, FL 32301 jmoyle@moylelaw.com mqualls@moylelaw.com</p>	<p>J.R. Kelly / P. Christensen / T. David / S. Morse Office of Public Counsel 111 W. Madison St., Room 812 Tallahassee, FL 32399-1400 kelly.jr@leg.state.fl.us christensen.patty@leg.state.fl.us david.tad@leg.state.fl.us morse.stephanie@leg.state.fl.us</p> <p>Ms. Paula K. Brown Regulatory Affairs Tampa Electric Company P.O. Box 111 Tampa, FL 33601-0111 regdept@tecoenergy.com</p> <p>Maria Moncada / Joel Baker Florida Power & Light Company 700 Universe Blvd. (LAW/JB) Juno Beach, FL 33408-0420 maria.moncada@fpl.com joel.baker@fpl.com</p> <p>James Brew / Laura Wynn Stone Law Firm 1025 Thomas Jefferson St., N.W. Suite 800 West Washington, DC 20007 jbrew@smxblaw.com law@smxblaw.com</p> <p><u>Mike Cassel</u> Florida Public Utilities Company 1750 S. 14th Street, Suite 200 Fernandina Beach, FL 32034 mcassel@fpuc.com</p> <p>Beth Keating Gunster, Yoakley & Stewart, P.A. 215 South Monroe Street, Suite 601 Tallahassee, FL 32301 bkeating@gunster.com</p>
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Exhibit A

CONFIDENTIAL

(Slip Sheet)

Exhibit B
(Two Copies)

REDACTED

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: FUEL AND PURCHASED POWER
COST RECOVERY CLAUSE WITH
GENERATING PERFORMANCE INCENTIVE
FACTOR,

Case No. 19-6022

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on February 4 and 5, 2020, in Tallahassee, Florida, before Lawrence P. Stevenson, a duly-designated Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Duke Energy Florida, LLC ("DEF"¹):

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St. Petersburg, Florida 33701

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106 East College Avenue, Suite 800
Tallahassee, Florida 32301

Daniel Hernandez, Esquire
Shutts & Bowen, LLP
4301 West Boy Scout Boulevard, Suite 300
Tampa, Florida 33607

¹ References to DEF include Progress Energy, DEF's predecessor in interest in the Bartow power plant that is the subject of this proceeding. DEF purchased Progress Energy in 2011.

For the Public Service Commission (the "Commission"):

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Bianca Y. Lherisson, Esquire
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32339-0850

For the Office of Public Counsel ("OPC"):

James Ray Kelly, Public Counsel
Charles John Rehwinkel, Deputy Public Counsel
Thomas A. (Tad) David, Esquire
Patty Christensen, Esquire
Stephanie Morse, Esquire
Office of Public Counsel
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Tallahassee, Florida 32399-1400

For Florida Industrial Power Users Group ("FIPUG"):

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Karen Ann Putnal, Esquire
Moyle Law Firm, P.A.
118 North Gadsden Street
Tallahassee, Florida 32301

For White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate—
White Springs ("White Springs"):

James Walter Brew, Esquire
Stone Law Firm
Eighth Floor, West Tower
1025 Thomas Jefferson Street Northwest
Washington, DC 20007

STATEMENT OF THE ISSUES

Two issues have been referred by the Commission to DOAH for a
disputed-fact hearing:

ISSUE 1B: Was DEF prudent in its actions and decisions leading up to
and in restoring the unit to service after the February 2017 forced outage at

the Bartow plant and, if not, what action should the Commission take with respect to replacement power costs?

ISSUE 1C: Has DEF made prudent adjustments, if any are needed, to account for replacement power costs associated with any impacts related to the de-rating of the Bartow plant? If adjustments are needed and have not been made, what adjustment(s) should be made?

PRELIMINARY STATEMENT

On January 2, 2019, the Commission opened Docket No. 20190001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*, commonly referred to as the “Fuel Clause” docket. The Fuel Clause docket is a recurring, annual docket to which all investor-owned electric utilities serving customers in Florida are parties. Through the Fuel Clause docket, utilities are permitted to recover reasonably and prudently incurred costs of the fuel and fuel-related activities needed to generate electricity. Among the issues raised in the 2019 Fuel Clause docket was DEF’s request to recover the replacement power costs incurred in connection with an unplanned outage to the steam turbine at DEF’s Bartow Unit 4 combined cycle power plant (the “Bartow Plant”) in February 2017. Issues 1B and 1C were raised as part of the 2019 Fuel Clause docket.

On November 5, 2019, the Commission held a final hearing in the 2019 Fuel Clause docket. All issues related to DEF’s request to recover its fuel and purchased power costs were addressed, except for Issues 1B and 1C. Both Issues 1B and 1C involved extensive claims of confidentiality with respect to the pre-filed testimony of DEF witness Jeffrey Swartz, OPC witness Richard Polich, and the proposed trial exhibits.

The Commission found that it was impracticable to conduct direct or cross-examination in an open hearing without extensive reference to

confidential material. Despite its apparent authority under section 366.093, Florida Statutes, to declare documents confidential, the Commission took the position that it lacked authority to close a public hearing to protect materials and topics it had previously determined to be confidential. The Commission therefore referred Issues 1B and 1C to DOAH for a closed evidentiary hearing and issuance of a Recommended Order.

On November 26, 2019, a telephonic status conference was held to set hearing dates, establish the procedures for handling confidential material, the need for discovery, the use of written testimony, and the use of the Comprehensive Exhibit List ("CEL") admitted into evidence at the Commission's November 5, 2019, hearing. At the status conference, the parties agreed to the hearing dates of February 4 and 5, 2020. The undersigned requested the parties to confer and file a motion setting forth proposed procedures for the handling of confidential material before, during, and after the hearing. The parties filed a Joint Motion on Confidentiality on December 6, 2019, which was adopted by Order issued December 9, 2019.

On December 23, 2019, the Commission's record was transmitted to DOAH on two CD-ROM discs. Disc One contained non-confidential information and Disc Two contained information held as confidential.

The final hearing was convened and completed as scheduled on February 4 and 5, 2020. At the outset of the hearing, the parties submitted an updated CEL from the November 2019 proceeding before the Commission. The revised CEL listed 114 exhibits. The revised CEL was numbered as Exhibit 114 and admitted by stipulation.

DEF presented the direct and rebuttal testimony of Jeffrey R. Swartz, its Vice President of Generation. DEF moved for the admission of Exhibits 80 through 82, which were admitted into the record.

OPC presented the testimony of Richard Polich, an engineer with expertise in the design of power generation systems, including steam turbines. OPC moved for the admission of Exhibits 68 through 75 and 101 through 109, which were admitted into the record. At the hearing, OPC Exhibits 115 through 117 were marked, moved, and admitted into the record.

The Commission moved for the admission of Exhibits 110 and 111, which were admitted into the record.

FIPUG moved for the admission of Exhibit 118, which was admitted into the record.

White Springs moved for the admission of Exhibits 112 and 113, which were admitted into the record.

The three-volume Transcript of the final hearing was filed with DOAH on February 24, 2020. Pursuant to an agreement approved by the undersigned, the parties timely filed their Proposed Recommended Orders on March 20, 2020. DEF and the Commission filed separate Proposed Recommended Orders. OPC, FIPUG, and White Springs submitted a joint Proposed Recommended Order (unless otherwise specified, references to OPC as to positions stated in its Proposed Recommended Order should be understood to include FIPUG and White Springs). All three Proposed Recommended Orders have been duly considered in the writing of this Recommended Order.

Unless otherwise indicated, statutory references are to the 2019 edition of the Florida Statutes.

FINDINGS OF FACT

Based on the evidence adduced at hearing, and the record as a whole, the following Findings of Fact are made:

THE PARTIES

1. The Commission is the state agency authorized to implement and enforce Chapter 366, Florida Statutes, which governs the regulation of every “public utility” as defined in section 366.02(1).

2. DEF is a public utility and is therefore subject to the Commission’s jurisdiction. DEF is a subsidiary of Duke Energy, one of the largest energy holding companies in the United States.

3. OPC is statutorily authorized to represent the citizens of the state of Florida in matters before the Commission, and to appear before other state agencies in connection with matters under the Commission’s jurisdiction. § 350.0611(1), (3), and (5), Fla. Stat.

4. FIPUG is an association comprising large commercial and industrial power users within Florida. A substantial number of FIPUG’s members are customers of DEF.

5. White Springs operates energy intensive phosphate mining and processing facilities in Hamilton County and is one of DEF’s largest industrial customers.

THE BARTOW PLANT

6. The Bartow Plant is a 4x1 combined cycle power plant composed of combustion turbine generators whose waste heat is used to produce steam that powers a steam turbine manufactured by Mitsubishi Hitachi Power Systems (“Mitsubishi”). “4x1” references the fact that there are four Siemens

180 megawatt ("MW") Type 501 F combustion turbines, each connected to one of four heat recovery steam generators ("HRSG"), all of which in turn are connected to one steam turbine.

7. A combined cycle power plant uses gas and steam turbines together to produce electricity. Combustion of natural gas in the combustion turbine turns a generator that produces electricity. The waste heat from the combustion turbine is routed to an HRSG. The HRSG produces steam that is then routed to the steam turbine which, in turn, generates extra power.

8. Combined cycle plants can be set up in multiple configurations, providing considerable operational flexibility and efficiency. It is not necessary for all four HRSGs to provide steam to the steam turbine at the same time. The Bartow Plant can operate on all possible configurations of 4x1, i.e., 1x1, 2x1, 3x1, or 4x1. It also has the ability to augment heat through the use of duct burners. The combustion turbines can operate in "simple cycle" mode to generate electricity when the steam turbine is off-line.

9. The steam turbine is made up of a high pressure ("HP")/intermediate pressure ("IP") section and a low-pressure ("LP") section. Each of these turbine sections has a series of blades. As the steam passes through the blades, the steam exerts its force to turn the blades which, in their turn, cause a rotor to spin. The rotor is connected to a generator, and the generator produces electricity.

10. Steam leaving the HRSGs is introduced to the steam turbine at a high-pressure inlet into the HP turbine. The steam is returned to the HRSG for reheating, then enters the IP turbine. Finally, steam exiting the IP turbine is directed into the LP turbine.

11. The LP section of the steam turbine is dual-flow. The steam is admitted in the middle and flows axially in opposite directions through two opposing mirror-image turbine sections, each of which contains four sets of blades. After passing through the LP section, the steam exhausts into a condenser.

12. The sets of blades increase in size from the front to the back of the LP section. The blades get longer as the steam flows through the turbine. The steam loses energy as it passes through the machine and thus more surface area of blade is needed for the weaker steam to produce the force needed to spin the rotor. The final stage of blades in the LP section consists of 40" L-0 blades, the longest blades in the steam turbine.

13. [REDACTED]

14. The Mitsubishi steam turbine was originally designed for Tenaska Power Equipment, LLC ("Tenaska"), to be used in a 3x1 combined cycle configuration with three M501 Type F combustion turbines connected to the steam turbine with a gross output of 420 MW of electricity. For reasons unexplored at the hearing, Tenaska never took delivery of the turbine. It was stored in a Mitsubishi warehouse under controlled conditions that kept it in like-new condition.

15. During the design and planning process for the Bartow Plant, DEF's employees responsible for obtaining company approval to build the plant, reported to senior executives that they had found this already-built steam turbine. The Business Analysis Package of DEF's project authorization documents stated that the Mitsubishi steam turbine "proved to be a very good fit for the 4 CT and 4 HRSG combinations."

16. Prior to purchasing the steam turbine, DEF contracted with Mitsubishi to evaluate the design conditions to ensure the steam turbine was compatible with the Bartow Plant's proposed 4x1 combined cycle configuration. [REDACTED]

[REDACTED]

17. A "heat balance" is an engineering calculation that predicts the performance and output of power plant equipment based on different variables of ambient conditions and operating parameters. Any change in a variable causes a distinct "heat balance" and calculation of the expected plant output and performance.

18. One such variable was "power factor," a measure of the efficiency of how current is converted to useful power. A power factor of 1.0 indicates "unity," i.e., the most efficient possible conversion of load current. [REDACTED]

[REDACTED]

[REDACTED]

19. Jeffrey R. Swartz, DEF's Vice President of Generation, testified that DEF in fact operates the Bartow Plant at a power factor number that falls between .97 and .995.

20. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

24. Mr. Swartz further asserted that, prior to completion of the Purchase Agreement, Mitsubishi understood that DEF intended to operate the steam turbine in a 4x1 configuration with a power factor exceeding [REDACTED] which would result in the generation of more than 420 MW of electrical output.

25. Section 3.2 of the Purchase Agreement, titled [REDACTED] states, in relevant part:

[REDACTED]

26. The plain language of section 3.2.1 establishes [REDACTED]

² MPS stands for Mitsubishi Power Systems, Inc.

[REDACTED] It is unclear how Mr. Swartz translated this language into a [REDACTED]
[REDACTED]

27. In any event, the parties disagree as to the significance of the 420 MW maximum output designation. DEF and the Commission contend that the designated megawatt capacity of a steam turbine is not a control mechanism or a limit that the operator must stay below, but is the byproduct of operating the unit within the design parameters provided by the manufacturer at various combinations of such factors as steam flows, steam temperatures, steam pressures, exhaust pressures, ambient temperatures, and humidity.

28. DEF and the Commission contend that the numbers stated in the [REDACTED] are calculated estimates of the conditions that will achieve [REDACTED]
[REDACTED]

[REDACTED] output. If DEF was able in practice to operate the steam turbine within the design parameters and achieve output in excess of [REDACTED] then it was simply delivering maximum value to its ratepayers.

29. OPC asserts 420 MW is an operational limitation. [REDACTED]
[REDACTED]

[REDACTED] OPC points out that Mitsubishi conducted extensive [REDACTED] (from December 2014 until April 2016) that resulted in a document titled, [REDACTED]
[REDACTED] dated March 18, 2015 (the "Report"). The Report expressly stated that the [REDACTED]
[REDACTED] The Report also stated that the [REDACTED]
[REDACTED] These statements were supported by section 3.2.1.2 of the Purchase Agreement, which states that [REDACTED]
[REDACTED] of the steam turbine.

30. OPC points out that section 4.1 of the Purchase Agreement, titled [REDACTED] expressly states: [REDACTED]

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

31. OPC notes that [REDACTED] reached [REDACTED] of output using only [REDACTED]. OPC further notes that the Bartow Plant had a [REDACTED] meaning that it had the ability to produce [REDACTED] of output when compared to the [REDACTED] for which the steam turbine was originally designed.

32. The Mitsubishi steam turbine converts steam energy into rotational force (horsepower) that in turn drives an electric generator. The generator purchased by DEF for the Bartow Plant that was attached to the Mitsubishi steam turbine was manufactured by a different vendor and is rated at 468 MW. The generator thus was capable of reliably producing more electrical output than Mitsubishi stated its steam turbine was designed to supply.

33. The greater weight of the evidence establishes that the Mitsubishi steam turbine was designed to operate at 420 MW of output and that 420 MW was an operational limitation of the turbine.

OUTAGES AND BLADE FAILURES

34. DEF has classified the periods during which the Bartow Plant has been operational as: Period 1-- from June 2009 until March 2012; Period 2-- from April 2012 until August 2014; Period 3-- from December 2014 until April 2016; Period 4-- from May 2016 until October 2016; and Period 5-- from December 2016 until February 2017.

35. DEF placed the Bartow Plant into commercial service in June 2009. Later that year, DEF began operating the steam turbine above 420 MW

under varying system conditions. Mr. Swartz estimated that DEF operated the steam turbine above 420 MW about half the time between June 2009 and March 2012, the time span that has been designated as Period 1 of the five periods in question in this proceeding. The Bartow Plant operated for a total of 21,734 hours during Period 1.

36. In March 2012, while conducting a routine inspection of the steam turbine during a planned power outage, DEF found that [REDACTED]
[REDACTED]
[REDACTED] DEF consulted with Mitsubishi regarding the damage. Mitsubishi inspected the blades and recommended [REDACTED]
[REDACTED]

37. Mitsubishi concluded that the damage to the blades was caused by [REDACTED]
[REDACTED]
[REDACTED] Up to this point, Mitsubishi had [REDACTED]
[REDACTED] DEF and Mitsubishi had assumed that if [REDACTED]
[REDACTED] of the steam turbine, then the [REDACTED]
[REDACTED] would be acceptable. After discovery of the blade failure in March 2012, [REDACTED]
[REDACTED]
[REDACTED]³

38. Period 2 commenced in April 2012 and ended in August 2014, a period of 28 months. At the beginning of Period 2, DEF and Mitsubishi replaced all of the L-0 blades on the affected end of the LP turbine with [REDACTED]
[REDACTED]

39. During Period 2, DEF operated the steam turbine a total of 21,284 hours. For all but two hours of this period, DEF operated the steam turbine

³ [REDACTED]
[REDACTED]

at less than 420 MW and complied with Mitsubishi's [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

40. During a planned outage beginning in August 2014, Mitsubishi replaced the [REDACTED] used in Period 2 with [REDACTED] [REDACTED] thus beginning Period 3. During this planned outage, DEF and Mitsubishi conducted an inspection of the Period 2 [REDACTED] blades. The inspection revealed a [REDACTED] consistent with ordinary usage over the course of Period 2. There was no damage noted to [REDACTED]. There was some [REDACTED] described as [REDACTED].

41. Between Period 2 and Period 3, Mitsubishi and DEF installed [REDACTED] in the steam turbine to allow for [REDACTED] which they expected would help them to understand why the L-0 blades were experiencing damage and to [REDACTED] [REDACTED] protect the equipment.

42. It was undisputed that DEF's operation of the steam turbine was prudent at all times during Period 2.

43. Period 3 commenced in December 2014 and ended in April 2016. During Period 3, DEF operated the steam turbine a total of 10,286 hours. DEF never exceeded 420 MW of output, except for a [REDACTED]

[REDACTED]

[REDACTED]

44. During Period 3, Mitsubishi [REDACTED] on the steam turbine. The [REDACTED]

calculated that the Bartow steam turbine experienced approximately [REDACTED] and Mitsubishi's fleet experience had been [REDACTED] on last stage blades including the 40" L-0 blades. Mitsubishi was uncertain what impact the L-0 blades would experience at [REDACTED]

45. Mitsubishi concluded that [REDACTED]

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

46. It was undisputed that DEF's operation of the steam turbine was prudent at all times during Period 3.

47. Despite DEF's having [REDACTED]

[REDACTED] DEF and Mitsubishi's examination of the steam turbine at the end of Period 3 revealed that [REDACTED] of [REDACTED]

[REDACTED] DEF and Mitsubishi decided that [REDACTED]

[REDACTED] [REDACTED] were installed.

48. Period 4 commenced in June 2016 and ended five months later in October 2016. During Period 4, DEF operated the steam turbine a total of 2,942 hours. DEF did not exceed 420 MW of output during this period and

[REDACTED]
[REDACTED]

49. Just five months after the commencement of Period 4, DEF detected vibration changes in the LP turbine and stopped operation of the steam turbine to inspect the L-0 blades. During this inspection, DEF and Mitsubishi once again found several damaged L-0 blades. At the time of this blade damage, DEF was operating the steam turbine below 420 MW and observing the operating parameters established by Mitsubishi [REDACTED]

50. It was undisputed that DEF's operation of the steam turbine was prudent at all times during Period 4.

51. Period 5 began in December 2016 and ended two months later in February 2017.

52. At the beginning of Period 5, DEF and Mitsubishi [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] of 1,561 hours. DEF never exceeded 420 MW of output during this period and operated the steam turbine within the operating parameters established by Mitsubishi [REDACTED]

54. On February 9, 2017, the steam turbine was removed from service when DEF detected the presence of sodium in the steam water cycle. The cooling water used for the condenser is salt water from Tampa Bay. Mr. Swartz testified that any indication of sodium inside the condenser above minute amounts is alarming. During this shutdown, DEF performed an inspection of the steam turbine and discovered that a [REDACTED]

device known as a rupture disk had failed in the LP turbine and that the L-0 blades were damaged. DEF concluded that [REDACTED] the rupture disk. This forced outage lasted until April 8, 2017.

55. Based on the sequence of events, DEF was able to determine with certainty that the blade damage during Period 5 occurred on February 9, 2017. At that time, DEF was operating the steam turbine below 420 MW and within the operating parameters established by Mitsubishi [REDACTED]

56. It was undisputed that DEF's operation of the steam turbine was prudent at all times during Period 5.

57. During the February 2017 forced outage of the steam turbine, DEF continued to operate the Bartow Plant with the gas turbines running in simple cycle mode.

58. DEF took three primary actions in the wake of the Period 5 outage: a root cause analysis ("RCA") team, established after the first blade failure in Period 1, continued its mission to investigate and prepare an RCA; a restoration team was formed to bring the steam turbine back online; and a team was formed to evaluate a long-term solution for the steam turbine.

[REDACTED]
[REDACTED]
[REDACTED]

60. Instead, DEF and Mitsubishi installed pressure plates in place of the L-0 blades as an interim solution that would bring the steam turbine back into operation quickly and give Mitsubishi and DEF time to develop a permanent solution. A pressure plate is a non-rotating plate that has holes drilled into it. The pressure plate reduces the pressure of the steam passing through a steam turbine, keeping the steam from damaging the unit's condenser. A pressure plate does not use the steam passing through it to produce electricity and therefore decreases the efficiency of a steam turbine.

The pressure plate applied by DEF limited the output of the steam turbine to 380 MW.

61. The parties have agreed and the undersigned accepts that the period of the steam turbine's "de-rating" from 420 MW to 380 MW should be calculated as running from April 2017 through the end of September 2019.

THE MITSUBISHI AND DEF ROOT CAUSE ANALYSES

62. Mitsubishi's [REDACTED] during Period 3 [REDACTED]

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

[REDACTED] of its RCA in a 35-page "Bartow RCA Summary" ("Mitsubishi RCA"). The Mitsubishi RCA documented the [REDACTED]

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

64. The Mitsubishi RCA also stated that an [REDACTED]

65. After the discovery of the blade damage in March 2012, DEF formed an RCA team and began a years-long RCA process that ended with its own February 6, 2018, RCA report ("DEF RCA").

66. DEF's RCA [REDACTED]

67. [REDACTED]

team produced between 2012 and the final DEF RCA in February 2018. Mr. Swartz declined to call these documents "drafts" of the RCA, preferring to say they were "working papers" that provided snapshots of the RCA team's investigation at a given time. Mr. Swartz emphasized that only the February 2018 RCA report stated DEF's official position as to the cause of the blade failures.

69. The working papers indicate that as late as October 15, 2016, DEF [REDACTED]

70. The working papers show that as late as June 26, 2017, DEF maintained that one of "the most significant contributing factors toward root

cause of the history of Bartow Unit 4 L-0 events" was [REDACTED]
[REDACTED]

71. OPC accurately states that the DEF working documents demonstrate that during the RCA process, before and after the Period 5 event, DEF consistently identified excessive steam flow in the LP turbine as one of the "most significant contributing factors" toward blade failure over the history of the steam turbine, the [REDACTED].

72. Mr. Swartz attempted to minimize the significance of the working papers by stating that DEF was obliged to investigate the issue of excessive steam flow because [REDACTED]
[REDACTED]

73. DEF's final RCA did not include a statement that excessive steam flow was a significant contributing factor in the blade failures. The final DEF RCA instead noted that "excessive steam flow" had been a "potential" operational factor that DEF examined during the RCA process. The RCA states that DEF had been unable to find a correlation between [REDACTED] and the five failure periods. In particular, the RCA pointed out that [REDACTED]
[REDACTED]
[REDACTED]

74. OPC concludes that the final DEF RCA was DEF's self-serving attempt to exonerate its own overloading of the steam turbine and to shift responsibility onto Mitsubishi for [REDACTED] DEF contends that it simply followed the data throughout the RCA process and arrived at the only conclusion consistent with the findings of its engineers.

POST-RCA ACTIONS

75. As noted above, pressure plates were installed in place of the L-0 blades at the conclusion of Period 5. The pressure plates allowed DEF to keep the steam turbine running at a lower level of output while it sought a permanent solution to the blade damage problem.

76. In 2018, DEF solicited proposals to implement a long-term solution that would allow it to reliably operate the steam turbine to support 450 MW of electrical output from the generator. Three vendors responded. [REDACTED]

[REDACTED] DEF selected the Mitsubishi proposal.

77. In December 2019, Mitsubishi installed [REDACTED]

[REDACTED] As of the hearing date, DEF had operated the Bartow Plant with the [REDACTED] L-0 blades without incident on a 1x1, 2x1, and 3x1 configuration, but had yet to operate with all four combustion turbines.

78. OPC points out that in proposing its [REDACTED] blades, Mitsubishi did not waver from the conclusion of its RCA. Mitsubishi stated the following as the first three bullet points in the introduction to its paper describing the testing of the [REDACTED] blades:

[REDACTED]

[REDACTED]

[REDACTED]

REPLACEMENT POWER AND DE-RATING COSTS

79. The record evidence established that the replacement power costs stemming from the February 2017 outage are \$11.1 million.

80. Further, the record evidence established that DEF incurred replacement power costs from May 2017 through September 2019, the period of the “de-rating” of the steam turbine, i.e., the reduction in output from 420 MW to 380 MW while it operated with the pressure plate. Those costs, calculated by year, are \$1,675,561 (2017), \$2,215,648 (2018), and \$1,125,573 (2019), for a total of \$5,016,782.

81. Therefore, the total replacement power costs incurred as a result of DEF’s operation of the steam turbine are \$16,116,781, without considering interest.

DISCUSSION

82. As noted above, the parties have a fundamental disagreement as to the significance of the 420 MW maximum output designation that Mitsubishi placed on the steam turbine. The Energy Information Administration of the U.S. Department of Energy defines “generator nameplate capacity” as the “maximum rated output of a generator, prime mover, or other electric power production equipment under specific conditions designated by the manufacturer.” There was no dispute that 420 MW was the “nameplate capacity” of the Mitsubishi steam turbine. OPC argues that the nameplate capacity of 420 MW is by definition an operational limitation and that operation of the steam turbine beyond the maximum rated output of 420 MW threatened safe operation.

83. OPC points to the fact that there are 3 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] OPC notes that the DEF RCA report does not explain why a [REDACTED]

[REDACTED]

[REDACTED]

84. As to DEF's argument that [REDACTED]

[REDACTED]

[REDACTED] OPC replies that had DEF operated the turbine within its original operating limitations during Period 1, there is every reason to believe that the original L-0 blades would still be functioning, consistent with [REDACTED] In other words, there would have been no Periods 2, 3, 4, or 5 but for DEF's actions during Period 1.

85. OPC points out that neither DEF nor any other subsidiary of Duke Energy had experience running a 4x1 combined cycle plant prior to purchasing the Mitsubishi steam turbine and commencing operation of the Bartow Plant. Further, neither DEF nor Mitsubishi had any experience operating a steam turbine at the [REDACTED]

86. Given the lack of experience on either side, OPC contends that DEF should have consulted Mitsubishi before purchasing the steam turbine to ask whether Mitsubishi believed it was capable of an output in excess of its nameplate capacity of 420 MW. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

87. OPC's expert witness, Richard Polich, pointed out that Mitsubishi's consultant ran over [REDACTED]

88. Mr. Polich testified that the Mitsubishi steam turbine was an aftermarket unit designed for a [REDACTED]

[REDACTED] To support his opinion, Mr. Polich pointed out that when DEF finally did ask whether the turbine could run past 420 MW, [REDACTED]

89. DEF ran the unit beyond 420 MW without consulting Mitsubishi. Mr. Polich found it a tribute to the design of the [REDACTED] 40" L-0 blades that they did not suffer damage sooner than they did. The steam turbine operated from June 2009 until March 2012 before the blade damage was noted. It was impossible to state exactly when the blade damage occurred in Period 1, but Mr. Polich opined that the damage was most likely cumulative.⁴

90. Mr. Polich noted that the blade failure in Period 5 was the fastest of any period, though the [REDACTED] Mr. Polich further noted that the DEF RCA did not address why the blades lasted longer in Periods 1 and 2 than in the other three periods. Mr. Polich reasonably concluded that there had to be something about the blades' [REDACTED]

⁴ DEF made much of the fact that it could not be said precisely when during Period 1 the damage to the blades occurred, pointing out that there was a 50-50 chance that the blades were damaged when the turbine was operating below 420 MW. This argument fails to consider the cumulative wear caused by running the unit in excess of its capacity half of the time. The exact moment the damage occurred is beside the point.

that allowed them to last longer, and something in the [REDACTED]

[REDACTED] that caused them to fail quickly.

91. Mr. Polich believed that the [REDACTED]

[REDACTED] He noted that there were 28 months of operation below 420 MW during Period 2 and that there was basically no damage to the blades beyond the usual [REDACTED]

92. Mr. Polich thought that [REDACTED]

[REDACTED] Mr. Polich did not believe the five periods could be correlated, [REDACTED]

93. Mr. Polich testified that DEF would have acted prudently from both a warranty and a regulatory perspective by requesting written verification from Mitsubishi that the steam turbine could be safely operated above 420 MW of output.

94. Mr. Swartz countered that it would not be a “typical conversation” in the industry to ask Mitsubishi whether and how long the unit could be operated above 420 MW. He pointed out that pounds per hour per square foot of steam flow is not a parameter that can be measured during operation. It is a calculated number that DEF could not possibly have used to govern operation of the turbine.

95. Mr. Swartz testified that “420 MW” is the electrical output of the generator, which is coupled to the steam turbine. The steam turbine’s operation is governed by parameters such as pressures, steam flows, and temperatures. Mr. Swartz stated that it is common in the industry to speak in terms of megawatts to get a feel for the size of the unit, but that generator output is dependent on many factors.

96. Mr. Swartz stated that when Mitsubishi criticized DEF for operations above 420 MW, it was using that term as a proxy for [REDACTED]. It was his opinion that 420 MW was not an operational limit on the steam turbine.

97. Mr. Swartz testified that the [REDACTED]. He stated that operation of the steam turbine above 420 MW could be correlated with [REDACTED] but many other factors are involved in determining what a generator can produce.

98. Mr. Swartz stated that the power factor was the key to DEF's ability to operate the steam turbine above 420 MW. Mitsubishi used [REDACTED] with a power factor of [REDACTED] to predict an output of 420 MW. Using the same operating factors, DEF was able to run the steam turbine at a power rating between .97 and .995. Mr. Swartz testified that this increased efficiency enabled the Bartow generator to operate above 420 MW.

99. Mr. Swartz conceded that the [REDACTED]
[REDACTED]
[REDACTED] at least from DEF's perspective. If DEF was able to obtain more, such was to the ultimate benefit of its ratepayers and was consistent with the operating limitations set forth in the Purchasing Agreement.

100. OPC responds that the record of this proceeding contains no indication that at any time during the five-year long, continuous, iterative RCA process did DEF's engineers suggest that the power factor of [REDACTED] in [REDACTED] an indication that the steam turbine output of 420 MW could be safely exceeded.

101. OPC points to several statements recorded during the RCA process indicating that DEF's engineers and Mitsubishi alike acknowledged that 420 MW was the design limit of the steam turbine: [REDACTED]
[REDACTED]

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

102. OPC's essential criticism was that DEF pushed the Mitsubishi steam turbine beyond its operational limits, whether the issue is framed in terms of megawatts of electrical output beyond the design point or in terms of steam flow [REDACTED]. The evidence was clear that Mitsubishi did not contemplate DEF's operation of the steam turbine beyond the [REDACTED]. The evidence was also clear that DEF made no effort before the fact to notify Mitsubishi of its intended intensity of operation or to ask Mitsubishi whether it could safely exceed the [REDACTED]. Mr. Swartz was unable to explain away this criticism and thus DEF failed to meet its burden of demonstrating that it prudently operated the Bartow Plant during the times relevant to this proceeding.

CONCLUSIONS OF LAW

103. DOAH has jurisdiction of the subject matter of and the parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat.

104. The Commission has the authority to regulate electric utilities in the State of Florida pursuant to the provisions of chapter 366, including sections 366.04, 366.05, and 366.06.

105. An "electric utility" is defined as "any municipal electric utility, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state." § 366.02(2), Fla. Stat.

106. DEF is an investor-owned electric utility operating within the State of Florida subject to the jurisdiction of the Commission pursuant to chapter 366.

107. OPC, FIPUG, and White Springs are parties to the Fuel Clause docket, which included the issues to be resolved here, and as such are entitled to participate as parties in this proceeding.

108. This is a de novo proceeding. § 120.57(1)(k), Fla. Stat. Petitioner, DEF, has the burden of proving, by a preponderance of the evidence, that it acted prudently in its actions and decisions leading up to and in restoring the unit to service after the February 2017 forced outage at the Bartow Plant. Additionally, DEF must prove by a preponderance of the evidence that no adjustment to replacement power costs should be made to account for the fact that after the installation of a pressure plate in March 2017, the Bartow Plant could no longer produce its rated nameplate capacity of 420 MW. *Dep't of Transp. v. J.W.C. Co.*, 396 So. 2d 778, 788 (Fla. 1st DCA 1981); § 120.57(1)(j), Fla. Stat.

109. The legal standard for determining whether replacement power costs are prudent is “what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or should [have] been known, at the time the decision was made.” *S. Alliance for Clean Energy v. Graham*, 113 So. 3d 742, 750 (Fla. 2013).

110. DEF failed to demonstrate by a preponderance of the evidence that its actions during Period 1 were prudent. DEF purchased an aftermarket steam turbine from Mitsubishi with the knowledge that it had been manufactured to the specifications of Tenaska with a design point of 420 MW of output. Mr. Swartz’s testimony regarding the irrelevance of the 420 MW limitation was unpersuasive in light of the documentation that after the initial blade failure, DEF itself accepted the limitation and worked with Mitsubishi to find a way to increase the output of the turbine to [REDACTED]

111. DEF’s RCA concluded that the blade failures were caused [REDACTED]

[REDACTED] This conclusion is belied by the fact that [REDACTED]

[REDACTED] Mitsubishi cannot be faulted for

[REDACTED] in a way that would allow an operator to run the turbine consistently beyond its capacity.

112. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

113. Mr. Polich persuasively argued that it would have been simple prudence for DEF to ask Mitsubishi about the ability of the turbine to operate continuously in excess of 420 MW output before actually operating it at those levels. DEF understood that the blades had been designed for the Tenaska 3x1 configuration and should have at least explored with Mitsubishi the wisdom of operating the steam turbine with steam flows in excess of those anticipated in the original design.

114. The record evidence demonstrated an [REDACTED] that vibrations associated with high energy loadings were the primary cause of the L-0 blade failures. DEF failed to satisfy its burden of showing its actions in operating the steam turbine in Period 1 did not cause or contribute significantly to the vibrations that repeatedly damaged the L-0 blades. To the contrary, the preponderance of the evidence pointed to DEF's operation of the steam turbine in Period 1 as the most plausible culprit.

115. DEF demonstrated by a preponderance of the evidence that its actions during Periods 2 through 5 were prudent.

116. DEF argues that even if it failed to exercise prudence during Period 1, those actions were so attenuated by DEF's subsequent actions during Periods 2 through 5 that the outage and de-rating that began in 2017 cannot be fairly attributed to DEF's failures from 2009 through March 2012. If the imprudent operation in Period 1 did not cause the Period 5 outage, then the imprudent operation cannot be a basis for disallowance of the replacement power costs at issue.

117. OPC argues that Periods 2 through 5 would not have been necessary had DEF operated the turbine within its original operating limitations during Period 1. OPC contends that, based on [REDACTED], there is every reason to believe that the original L-0 blades would still be functioning but for DEF's overstressing them in Period 1.

118. OPC states that the applicable standard for prudence review is how a prudent and reasonable utility manager would have operated a new steam turbine under the conditions and circumstances which were known, or reasonably should have been known, when decisions were made in 2008 through 2012. OPC argues that it was imprudent and unreasonable for DEF to regularly supply steam to the steam turbine at levels causing the steam turbine to operate above the design point of 420 MW, especially given the fact that the steam turbine was not designed for the Bartow Plant and was sold to DEF with an [REDACTED]

119. It is speculative to state that the original Period 1 L-0 blades would still be operating today had DEF observed the [REDACTED] of 420 MW. It is not speculative to state that the events of Periods 2 through 5 were precipitated by DEF's actions during Period 1. It is not possible to state what would have happened from 2012 to 2017 if the excessive loading had not occurred, but it is possible to state that events would not have been the same.

120. In his closing argument, counsel for White Springs summarized the equities of the situation very well:

You can drive a four-cylinder Ford Fiesta like a V8 Ferrari, but it's not quite the same thing. At 4,000 RPMs, in second gear, the Ferrari is already doing 60 and it's just warming up. The Ford Fiesta, however, will be moaning and begging you to slow down and shift gears. And that's kind of what we're talking about here.

It's conceded as fact that the root cause of the Bartow low pressure turbine problems is [REDACTED]

██████ caused repeatedly over time. The answer to the question is was this due to the way [DEF] ran the plant or is it due to a ██████ Well, the answer is both.

The fact is that [DEF] bought a steam turbine that was already built for a different configuration that was in storage, and then hooked it up to a configuration ... that it knew could produce much more steam than it needed. It had a generator that could produce more megawatts, so the limiting factor was the steam turbine.

On its own initiative, it decided to push more steam through the steam turbine to get more megawatts until it broke.

* * *

So from our perspective, [DEF] clearly was at fault for pushing excessive steam flow into the turbine in the first place. The repair which has been established ... may or may not work, but the early operation clearly impeded [DEF's] ability to simply claim that Mitsubishi was entirely at fault. And under those circumstances, it's not appropriate to assign the cost to the consumers.

121. The greater weight of the evidence supports the conclusion that DEF did not exercise reasonable care in operating the steam turbine in a configuration for which it was not designed and under circumstances which DEF knew, or should have known, that it should have proceeded with caution, seeking the cooperation of Mitsubishi to devise a means to operate the steam turbine above 420 MW.

122. Given DEF's failure to meet its burden, a refund of replacement power costs is warranted. At least \$11.1 million in replacement power was required during the Period 5 outage. This amount should be refunded to DEF's customers.

123. DEF failed to carry its burden to show that the Period 5 blade damage and the required replacement power costs were not consequences of DEF's imprudent operation of the steam turbine in Period 1.

124. The de-rating of the steam turbine that required the purchase of replacement power for the 40 MW loss caused by installation of the pressure plate was a consequence of DEF's failure to prudently operate the steam turbine during Period 1. Because it was ultimately responsible for the de-rating, DEF should refund replacement costs incurred from the point the steam turbine came back online in May 2017 until the start of the planned fall 2019 outage that allowed the replacement of the pressure plate with the [REDACTED] in December 2019. Based on the record evidence, the amount to be refunded due to the de-rating is \$5,016,782.

125. The total amount to be refunded to customers as a result of the imprudence of DEF's operation of the steam turbine in Period 1 is \$16,116,782, without interest.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Public Service Commission enter a final order finding that Duke Energy Florida, LLC, failed to demonstrate that it acted prudently in operating its Bartow Unit 4 plant and in restoring the unit to service after the February 2017 forced outage, and that Duke Energy Florida, LLC, therefore may not recover, and thus should refund, the \$16,116,782 for replacement power costs resulting from the steam turbine outages from April 2017 through September 2019.

DONE AND ENTERED this 27th day of April, 2020, in Tallahassee, Leon
County, Florida.

Lawrence P. Stevenson

LAWRENCE P. STEVENSON
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Division of Administrative Hearings
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Filed with the Clerk of the
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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: FUEL AND PURCHASED POWER
COST RECOVERY CLAUSE WITH
GENERATING PERFORMANCE INCENTIVE
FACTOR,

Case No. 19-6022

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on February 4 and 5, 2020, in Tallahassee, Florida, before Lawrence P. Stevenson, a duly-designated Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH").

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¹ References to DEF include Progress Energy, DEF's predecessor in interest in the Bartow power plant that is the subject of this proceeding. DEF purchased Progress Energy in 2011.

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STATEMENT OF THE ISSUES

Two issues have been referred by the Commission to DOAH for a
disputed-fact hearing:

ISSUE 1B: Was DEF prudent in its actions and decisions leading up to
and in restoring the unit to service after the February 2017 forced outage at

the Bartow plant and, if not, what action should the Commission take with respect to replacement power costs?

ISSUE 1C: Has DEF made prudent adjustments, if any are needed, to account for replacement power costs associated with any impacts related to the de-rating of the Bartow plant? If adjustments are needed and have not been made, what adjustment(s) should be made?

PRELIMINARY STATEMENT

On January 2, 2019, the Commission opened Docket No. 20190001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*, commonly referred to as the “Fuel Clause” docket. The Fuel Clause docket is a recurring, annual docket to which all investor-owned electric utilities serving customers in Florida are parties. Through the Fuel Clause docket, utilities are permitted to recover reasonably and prudently incurred costs of the fuel and fuel-related activities needed to generate electricity. Among the issues raised in the 2019 Fuel Clause docket was DEF’s request to recover the replacement power costs incurred in connection with an unplanned outage to the steam turbine at DEF’s Bartow Unit 4 combined cycle power plant (the “Bartow Plant”) in February 2017. Issues 1B and 1C were raised as part of the 2019 Fuel Clause docket.

On November 5, 2019, the Commission held a final hearing in the 2019 Fuel Clause docket. All issues related to DEF’s request to recover its fuel and purchased power costs were addressed, except for Issues 1B and 1C. Both Issues 1B and 1C involved extensive claims of confidentiality with respect to the pre-filed testimony of DEF witness Jeffrey Swartz, OPC witness Richard Polich, and the proposed trial exhibits.

The Commission found that it was impracticable to conduct direct or cross-examination in an open hearing without extensive reference to

confidential material. Despite its apparent authority under section 366.093, Florida Statutes, to declare documents confidential, the Commission took the position that it lacked authority to close a public hearing to protect materials and topics it had previously determined to be confidential. The Commission therefore referred Issues 1B and 1C to DOAH for a closed evidentiary hearing and issuance of a Recommended Order.

On November 26, 2019, a telephonic status conference was held to set hearing dates, establish the procedures for handling confidential material, the need for discovery, the use of written testimony, and the use of the Comprehensive Exhibit List ("CEL") admitted into evidence at the Commission's November 5, 2019, hearing. At the status conference, the parties agreed to the hearing dates of February 4 and 5, 2020. The undersigned requested the parties to confer and file a motion setting forth proposed procedures for the handling of confidential material before, during, and after the hearing. The parties filed a Joint Motion on Confidentiality on December 6, 2019, which was adopted by Order issued December 9, 2019.

On December 23, 2019, the Commission's record was transmitted to DOAH on two CD-ROM discs. Disc One contained non-confidential information and Disc Two contained information held as confidential.

The final hearing was convened and completed as scheduled on February 4 and 5, 2020. At the outset of the hearing, the parties submitted an updated CEL from the November 2019 proceeding before the Commission. The revised CEL listed 114 exhibits. The revised CEL was numbered as Exhibit 114 and admitted by stipulation.

DEF presented the direct and rebuttal testimony of Jeffrey R. Swartz, its Vice President of Generation. DEF moved for the admission of Exhibits 80 through 82, which were admitted into the record.

OPC presented the testimony of Richard Polich, an engineer with expertise in the design of power generation systems, including steam turbines. OPC moved for the admission of Exhibits 68 through 75 and 101 through 109, which were admitted into the record. At the hearing, OPC Exhibits 115 through 117 were marked, moved, and admitted into the record.

The Commission moved for the admission of Exhibits 110 and 111, which were admitted into the record.

FIPUG moved for the admission of Exhibit 118, which was admitted into the record.

White Springs moved for the admission of Exhibits 112 and 113, which were admitted into the record.

The three-volume Transcript of the final hearing was filed with DOAH on February 24, 2020. Pursuant to an agreement approved by the undersigned, the parties timely filed their Proposed Recommended Orders on March 20, 2020. DEF and the Commission filed separate Proposed Recommended Orders. OPC, FIPUG, and White Springs submitted a joint Proposed Recommended Order (unless otherwise specified, references to OPC as to positions stated in its Proposed Recommended Order should be understood to include FIPUG and White Springs). All three Proposed Recommended Orders have been duly considered in the writing of this Recommended Order.

Unless otherwise indicated, statutory references are to the 2019 edition of the Florida Statutes.

FINDINGS OF FACT

Based on the evidence adduced at hearing, and the record as a whole, the following Findings of Fact are made:

THE PARTIES

1. The Commission is the state agency authorized to implement and enforce Chapter 366, Florida Statutes, which governs the regulation of every “public utility” as defined in section 366.02(1).

2. DEF is a public utility and is therefore subject to the Commission’s jurisdiction. DEF is a subsidiary of Duke Energy, one of the largest energy holding companies in the United States.

3. OPC is statutorily authorized to represent the citizens of the state of Florida in matters before the Commission, and to appear before other state agencies in connection with matters under the Commission’s jurisdiction. § 350.0611(1), (3), and (5), Fla. Stat.

4. FIPUG is an association comprising large commercial and industrial power users within Florida. A substantial number of FIPUG’s members are customers of DEF.

5. White Springs operates energy intensive phosphate mining and processing facilities in Hamilton County and is one of DEF’s largest industrial customers.

THE BARTOW PLANT

6. The Bartow Plant is a 4x1 combined cycle power plant composed of combustion turbine generators whose waste heat is used to produce steam that powers a steam turbine manufactured by Mitsubishi Hitachi Power Systems (“Mitsubishi”). “4x1” references the fact that there are four Siemens

180 megawatt ("MW") Type 501 F combustion turbines, each connected to one of four heat recovery steam generators ("HRSG"), all of which in turn are connected to one steam turbine.

7. A combined cycle power plant uses gas and steam turbines together to produce electricity. Combustion of natural gas in the combustion turbine turns a generator that produces electricity. The waste heat from the combustion turbine is routed to an HRSG. The HRSG produces steam that is then routed to the steam turbine which, in turn, generates extra power.

8. Combined cycle plants can be set up in multiple configurations, providing considerable operational flexibility and efficiency. It is not necessary for all four HRSGs to provide steam to the steam turbine at the same time. The Bartow Plant can operate on all possible configurations of 4x1, i.e., 1x1, 2x1, 3x1, or 4x1. It also has the ability to augment heat through the use of duct burners. The combustion turbines can operate in "simple cycle" mode to generate electricity when the steam turbine is off-line.

9. The steam turbine is made up of a high pressure ("HP")/intermediate pressure ("IP") section and a low-pressure ("LP") section. Each of these turbine sections has a series of blades. As the steam passes through the blades, the steam exerts its force to turn the blades which, in their turn, cause a rotor to spin. The rotor is connected to a generator, and the generator produces electricity.

10. Steam leaving the HRSGs is introduced to the steam turbine at a high-pressure inlet into the HP turbine. The steam is returned to the HRSG for reheating, then enters the IP turbine. Finally, steam exiting the IP turbine is directed into the LP turbine.

11. The LP section of the steam turbine is dual-flow. The steam is admitted in the middle and flows axially in opposite directions through two opposing mirror-image turbine sections, each of which contains four sets of blades. After passing through the LP section, the steam exhausts into a condenser.

12. The sets of blades increase in size from the front to the back of the LP section. The blades get longer as the steam flows through the turbine. The steam loses energy as it passes through the machine and thus more surface area of blade is needed for the weaker steam to produce the force needed to spin the rotor. The final stage of blades in the LP section consists of 40" L-0 blades, the longest blades in the steam turbine.

13. [REDACTED]

14. The Mitsubishi steam turbine was originally designed for Tenaska Power Equipment, LLC ("Tenaska"), to be used in a 3x1 combined cycle configuration with three M501 Type F combustion turbines connected to the steam turbine with a gross output of 420 MW of electricity. For reasons unexplored at the hearing, Tenaska never took delivery of the turbine. It was stored in a Mitsubishi warehouse under controlled conditions that kept it in like-new condition.

15. During the design and planning process for the Bartow Plant, DEF's employees responsible for obtaining company approval to build the plant, reported to senior executives that they had found this already-built steam turbine. The Business Analysis Package of DEF's project authorization documents stated that the Mitsubishi steam turbine "proved to be a very good fit for the 4 CT and 4 HRSG combinations."

16. Prior to purchasing the steam turbine, DEF contracted with Mitsubishi to evaluate the design conditions to ensure the steam turbine was compatible with the Bartow Plant's proposed 4x1 combined cycle configuration. [REDACTED]

[REDACTED]

17. A "heat balance" is an engineering calculation that predicts the performance and output of power plant equipment based on different variables of ambient conditions and operating parameters. Any change in a variable causes a distinct "heat balance" and calculation of the expected plant output and performance.

18. One such variable was "power factor," a measure of the efficiency of how current is converted to useful power. A power factor of 1.0 indicates "unity," i.e., the most efficient possible conversion of load current. [REDACTED]

[REDACTED]

[REDACTED]

19. Jeffrey R. Swartz, DEF's Vice President of Generation, testified that DEF in fact operates the Bartow Plant at a power factor number that falls between .97 and .995.

20. [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]

24. Mr. Swartz further asserted that, prior to completion of the Purchase Agreement, Mitsubishi understood that DEF intended to operate the steam turbine in a 4x1 configuration with a power factor exceeding [REDACTED] which would result in the generation of more than 420 MW of electrical output.

25. Section 3.2 of the Purchase Agreement, titled [REDACTED]
[REDACTED] states, in relevant part:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

26. The plain language of section 3.2.1 establishes [REDACTED]

[REDACTED]

² MPS stands for Mitsubishi Power Systems, Inc.

[REDACTED] It is unclear how Mr. Swartz translated this language into a [REDACTED]
[REDACTED]

27. In any event, the parties disagree as to the significance of the 420 MW maximum output designation. DEF and the Commission contend that the designated megawatt capacity of a steam turbine is not a control mechanism or a limit that the operator must stay below, but is the byproduct of operating the unit within the design parameters provided by the manufacturer at various combinations of such factors as steam flows, steam temperatures, steam pressures, exhaust pressures, ambient temperatures, and humidity.

28. DEF and the Commission contend that the numbers stated in the [REDACTED] are calculated estimates of the conditions that will achieve [REDACTED]
[REDACTED]

[REDACTED] output. If DEF was able in practice to operate the steam turbine within the design parameters and achieve output in excess of [REDACTED] then it was simply delivering maximum value to its ratepayers.

29. OPC asserts 420 MW is an operational limitation. [REDACTED]
[REDACTED]

[REDACTED] OPC points out that Mitsubishi conducted extensive [REDACTED] (from December 2014 until April 2016) that resulted in a document titled, [REDACTED]
[REDACTED] dated March 18, 2015 (the "Report"). The Report expressly stated that the [REDACTED]
[REDACTED] The Report also stated that the [REDACTED]
[REDACTED] These statements were supported by section 3.2.1.2 of the Purchase Agreement, which states that [REDACTED]
[REDACTED] of the steam turbine.

30. OPC points out that section 4.1 of the Purchase Agreement, titled [REDACTED] expressly states: [REDACTED]

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

31. OPC notes that [REDACTED] reached [REDACTED] of output using only [REDACTED]. OPC further notes that the Bartow Plant had a [REDACTED] meaning that it had the ability to produce [REDACTED] of output when compared to the [REDACTED] for which the steam turbine was originally designed.

32. The Mitsubishi steam turbine converts steam energy into rotational force (horsepower) that in turn drives an electric generator. The generator purchased by DEF for the Bartow Plant that was attached to the Mitsubishi steam turbine was manufactured by a different vendor and is rated at 468 MW. The generator thus was capable of reliably producing more electrical output than Mitsubishi stated its steam turbine was designed to supply.

33. The greater weight of the evidence establishes that the Mitsubishi steam turbine was designed to operate at 420 MW of output and that 420 MW was an operational limitation of the turbine.

OUTAGES AND BLADE FAILURES

34. DEF has classified the periods during which the Bartow Plant has been operational as: Period 1-- from June 2009 until March 2012; Period 2-- from April 2012 until August 2014; Period 3-- from December 2014 until April 2016; Period 4-- from May 2016 until October 2016; and Period 5-- from December 2016 until February 2017.

35. DEF placed the Bartow Plant into commercial service in June 2009. Later that year, DEF began operating the steam turbine above 420 MW

under varying system conditions. Mr. Swartz estimated that DEF operated the steam turbine above 420 MW about half the time between June 2009 and March 2012, the time span that has been designated as Period 1 of the five periods in question in this proceeding. The Bartow Plant operated for a total of 21,734 hours during Period 1.

36. In March 2012, while conducting a routine inspection of the steam turbine during a planned power outage, DEF found that [REDACTED]
[REDACTED]
[REDACTED] DEF consulted with Mitsubishi regarding the damage. Mitsubishi inspected the blades and recommended [REDACTED]
[REDACTED]

37. Mitsubishi concluded that the damage to the blades was caused by [REDACTED]
[REDACTED]
[REDACTED] Up to this point, Mitsubishi had [REDACTED]
[REDACTED] DEF and Mitsubishi had assumed that if [REDACTED]
[REDACTED] of the steam turbine, then the [REDACTED]
[REDACTED] would be acceptable. After discovery of the blade failure in March 2012, [REDACTED]
[REDACTED]
[REDACTED]³

38. Period 2 commenced in April 2012 and ended in August 2014, a period of 28 months. At the beginning of Period 2, DEF and Mitsubishi replaced all of the L-0 blades on the affected end of the LP turbine with [REDACTED]
[REDACTED]

39. During Period 2, DEF operated the steam turbine a total of 21,284 hours. For all but two hours of this period, DEF operated the steam turbine

³ [REDACTED]
[REDACTED]

at less than 420 MW and complied with Mitsubishi's [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

40. During a planned outage beginning in August 2014, Mitsubishi replaced the [REDACTED] used in Period 2 with [REDACTED] [REDACTED] thus beginning Period 3. During this planned outage, DEF and Mitsubishi conducted an inspection of the Period 2 [REDACTED] blades. The inspection revealed a [REDACTED] consistent with ordinary usage over the course of Period 2. There was no damage noted to [REDACTED]. There was some [REDACTED] described as [REDACTED].

41. Between Period 2 and Period 3, Mitsubishi and DEF installed [REDACTED] in the steam turbine to allow for [REDACTED] which they expected would help them to understand why the L-0 blades were experiencing damage and to [REDACTED] [REDACTED] protect the equipment.

42. It was undisputed that DEF's operation of the steam turbine was prudent at all times during Period 2.

43. Period 3 commenced in December 2014 and ended in April 2016. During Period 3, DEF operated the steam turbine a total of 10,286 hours. DEF never exceeded 420 MW of output, except for a [REDACTED]

[REDACTED]

[REDACTED]

44. During Period 3, Mitsubishi [REDACTED] on the steam turbine. The [REDACTED]

calculated that the Bartow steam turbine experienced approximately [REDACTED] and Mitsubishi's fleet experience had been [REDACTED] on last stage blades including the 40" L-0 blades. Mitsubishi was uncertain what impact the L-0 blades would experience at [REDACTED]

45. Mitsubishi concluded that [REDACTED]

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

46. It was undisputed that DEF's operation of the steam turbine was prudent at all times during Period 3.

47. Despite DEF's having [REDACTED]

[REDACTED] DEF and Mitsubishi's examination of the steam turbine at the end of Period 3 revealed that [REDACTED] of [REDACTED]

[REDACTED] DEF and Mitsubishi decided that [REDACTED]

[REDACTED] [REDACTED] were installed.

48. Period 4 commenced in June 2016 and ended five months later in October 2016. During Period 4, DEF operated the steam turbine a total of 2,942 hours. DEF did not exceed 420 MW of output during this period and

[REDACTED]
[REDACTED]

49. Just five months after the commencement of Period 4, DEF detected vibration changes in the LP turbine and stopped operation of the steam turbine to inspect the L-0 blades. During this inspection, DEF and Mitsubishi once again found several damaged L-0 blades. At the time of this blade damage, DEF was operating the steam turbine below 420 MW and observing the operating parameters established by Mitsubishi [REDACTED]

50. It was undisputed that DEF's operation of the steam turbine was prudent at all times during Period 4.

51. Period 5 began in December 2016 and ended two months later in February 2017.

52. At the beginning of Period 5, DEF and Mitsubishi [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] of 1,561 hours. DEF never exceeded 420 MW of output during this period and operated the steam turbine within the operating parameters established by Mitsubishi [REDACTED]

54. On February 9, 2017, the steam turbine was removed from service when DEF detected the presence of sodium in the steam water cycle. The cooling water used for the condenser is salt water from Tampa Bay. Mr. Swartz testified that any indication of sodium inside the condenser above minute amounts is alarming. During this shutdown, DEF performed an inspection of the steam turbine and discovered that a [REDACTED]

device known as a rupture disk had failed in the LP turbine and that the L-0 blades were damaged. DEF concluded that [REDACTED] the rupture disk. This forced outage lasted until April 8, 2017.

55. Based on the sequence of events, DEF was able to determine with certainty that the blade damage during Period 5 occurred on February 9, 2017. At that time, DEF was operating the steam turbine below 420 MW and within the operating parameters established by Mitsubishi [REDACTED]

56. It was undisputed that DEF's operation of the steam turbine was prudent at all times during Period 5.

57. During the February 2017 forced outage of the steam turbine, DEF continued to operate the Bartow Plant with the gas turbines running in simple cycle mode.

58. DEF took three primary actions in the wake of the Period 5 outage: a root cause analysis ("RCA") team, established after the first blade failure in Period 1, continued its mission to investigate and prepare an RCA; a restoration team was formed to bring the steam turbine back online; and a team was formed to evaluate a long-term solution for the steam turbine.

[REDACTED]
[REDACTED]
[REDACTED]

60. Instead, DEF and Mitsubishi installed pressure plates in place of the L-0 blades as an interim solution that would bring the steam turbine back into operation quickly and give Mitsubishi and DEF time to develop a permanent solution. A pressure plate is a non-rotating plate that has holes drilled into it. The pressure plate reduces the pressure of the steam passing through a steam turbine, keeping the steam from damaging the unit's condenser. A pressure plate does not use the steam passing through it to produce electricity and therefore decreases the efficiency of a steam turbine.

The pressure plate applied by DEF limited the output of the steam turbine to 380 MW.

61. The parties have agreed and the undersigned accepts that the period of the steam turbine's "de-rating" from 420 MW to 380 MW should be calculated as running from April 2017 through the end of September 2019.

THE MITSUBISHI AND DEF ROOT CAUSE ANALYSES

62. Mitsubishi's [REDACTED] during Period 3 [REDACTED]

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

[REDACTED] of its RCA in a 35-page "Bartow RCA Summary" ("Mitsubishi RCA"). The Mitsubishi RCA documented the [REDACTED]

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

64. The Mitsubishi RCA also stated that an [REDACTED]

65. After the discovery of the blade damage in March 2012, DEF formed an RCA team and began a years-long RCA process that ended with its own February 6, 2018, RCA report ("DEF RCA").

66. DEF's RCA [REDACTED]

67. [REDACTED]

team produced between 2012 and the final DEF RCA in February 2018. Mr. Swartz declined to call these documents "drafts" of the RCA, preferring to say they were "working papers" that provided snapshots of the RCA team's investigation at a given time. Mr. Swartz emphasized that only the February 2018 RCA report stated DEF's official position as to the cause of the blade failures.

69. The working papers indicate that as late as October 15, 2016, DEF [REDACTED]

70. The working papers show that as late as June 26, 2017, DEF maintained that one of "the most significant contributing factors toward root

cause of the history of Bartow Unit 4 L-0 events" was [REDACTED]
[REDACTED]

71. OPC accurately states that the DEF working documents demonstrate that during the RCA process, before and after the Period 5 event, DEF consistently identified excessive steam flow in the LP turbine as one of the "most significant contributing factors" toward blade failure over the history of the steam turbine, the [REDACTED].

72. Mr. Swartz attempted to minimize the significance of the working papers by stating that DEF was obliged to investigate the issue of excessive steam flow because [REDACTED]
[REDACTED]

73. DEF's final RCA did not include a statement that excessive steam flow was a significant contributing factor in the blade failures. The final DEF RCA instead noted that "excessive steam flow" had been a "potential" operational factor that DEF examined during the RCA process. The RCA states that DEF had been unable to find a correlation between [REDACTED] and the five failure periods. In particular, the RCA pointed out that [REDACTED]
[REDACTED]
[REDACTED]

74. OPC concludes that the final DEF RCA was DEF's self-serving attempt to exonerate its own overloading of the steam turbine and to shift responsibility onto Mitsubishi for [REDACTED] DEF contends that it simply followed the data throughout the RCA process and arrived at the only conclusion consistent with the findings of its engineers.

POST-RCA ACTIONS

75. As noted above, pressure plates were installed in place of the L-0 blades at the conclusion of Period 5. The pressure plates allowed DEF to keep the steam turbine running at a lower level of output while it sought a permanent solution to the blade damage problem.

76. In 2018, DEF solicited proposals to implement a long-term solution that would allow it to reliably operate the steam turbine to support 450 MW of electrical output from the generator. Three vendors responded. [REDACTED]

[REDACTED] DEF selected the Mitsubishi proposal.

77. In December 2019, Mitsubishi installed [REDACTED]

[REDACTED] As of the hearing date, DEF had operated the Bartow Plant with the [REDACTED] L-0 blades without incident on a 1x1, 2x1, and 3x1 configuration, but had yet to operate with all four combustion turbines.

78. OPC points out that in proposing its [REDACTED] blades, Mitsubishi did not waver from the conclusion of its RCA. Mitsubishi stated the following as the first three bullet points in the introduction to its paper describing the testing of the [REDACTED] blades:

[REDACTED]

[REDACTED]

[REDACTED]

REPLACEMENT POWER AND DE-RATING COSTS

79. The record evidence established that the replacement power costs stemming from the February 2017 outage are \$11.1 million.

80. Further, the record evidence established that DEF incurred replacement power costs from May 2017 through September 2019, the period of the “de-rating” of the steam turbine, i.e., the reduction in output from 420 MW to 380 MW while it operated with the pressure plate. Those costs, calculated by year, are \$1,675,561 (2017), \$2,215,648 (2018), and \$1,125,573 (2019), for a total of \$5,016,782.

81. Therefore, the total replacement power costs incurred as a result of DEF’s operation of the steam turbine are \$16,116,781, without considering interest.

DISCUSSION

82. As noted above, the parties have a fundamental disagreement as to the significance of the 420 MW maximum output designation that Mitsubishi placed on the steam turbine. The Energy Information Administration of the U.S. Department of Energy defines “generator nameplate capacity” as the “maximum rated output of a generator, prime mover, or other electric power production equipment under specific conditions designated by the manufacturer.” There was no dispute that 420 MW was the “nameplate capacity” of the Mitsubishi steam turbine. OPC argues that the nameplate capacity of 420 MW is by definition an operational limitation and that operation of the steam turbine beyond the maximum rated output of 420 MW threatened safe operation.

83. OPC points to the fact that there are 3 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] OPC notes that the DEF RCA report does not explain why a [REDACTED]

[REDACTED]
[REDACTED]

84. As to DEF's argument that [REDACTED]

[REDACTED]

[REDACTED] OPC replies that had DEF operated the turbine within its original operating limitations during Period 1, there is every reason to believe that the original L-0 blades would still be functioning, consistent with [REDACTED] In other words, there would have been no Periods 2, 3, 4, or 5 but for DEF's actions during Period 1.

85. OPC points out that neither DEF nor any other subsidiary of Duke Energy had experience running a 4x1 combined cycle plant prior to purchasing the Mitsubishi steam turbine and commencing operation of the Bartow Plant. Further, neither DEF nor Mitsubishi had any experience operating a steam turbine at the [REDACTED]

86. Given the lack of experience on either side, OPC contends that DEF should have consulted Mitsubishi before purchasing the steam turbine to ask whether Mitsubishi believed it was capable of an output in excess of its nameplate capacity of 420 MW. [REDACTED]

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

87. OPC's expert witness, Richard Polich, pointed out that Mitsubishi's consultant ran over [REDACTED]

88. Mr. Polich testified that the Mitsubishi steam turbine was an aftermarket unit designed for a [REDACTED]

[REDACTED] To support his opinion, Mr. Polich pointed out that when DEF finally did ask whether the turbine could run past 420 MW, [REDACTED]

89. DEF ran the unit beyond 420 MW without consulting Mitsubishi. Mr. Polich found it a tribute to the design of the [REDACTED] 40" L-0 blades that they did not suffer damage sooner than they did. The steam turbine operated from June 2009 until March 2012 before the blade damage was noted. It was impossible to state exactly when the blade damage occurred in Period 1, but Mr. Polich opined that the damage was most likely cumulative.⁴

90. Mr. Polich noted that the blade failure in Period 5 was the fastest of any period, though the [REDACTED] Mr. Polich further noted that the DEF RCA did not address why the blades lasted longer in Periods 1 and 2 than in the other three periods. Mr. Polich reasonably concluded that there had to be something about the blades' [REDACTED]

⁴ DEF made much of the fact that it could not be said precisely when during Period 1 the damage to the blades occurred, pointing out that there was a 50-50 chance that the blades were damaged when the turbine was operating below 420 MW. This argument fails to consider the cumulative wear caused by running the unit in excess of its capacity half of the time. The exact moment the damage occurred is beside the point.

that allowed them to last longer, and something in the [REDACTED]

[REDACTED] that caused them to fail quickly.

91. Mr. Polich believed that the [REDACTED]

[REDACTED] He noted that there were 28 months of operation below 420 MW during Period 2 and that there was basically no damage to the blades beyond the usual [REDACTED]

92. Mr. Polich thought that [REDACTED]

[REDACTED] Mr. Polich did not believe the five periods could be correlated, [REDACTED]

93. Mr. Polich testified that DEF would have acted prudently from both a warranty and a regulatory perspective by requesting written verification from Mitsubishi that the steam turbine could be safely operated above 420 MW of output.

94. Mr. Swartz countered that it would not be a "typical conversation" in the industry to ask Mitsubishi whether and how long the unit could be operated above 420 MW. He pointed out that pounds per hour per square foot of steam flow is not a parameter that can be measured during operation. It is a calculated number that DEF could not possibly have used to govern operation of the turbine.

95. Mr. Swartz testified that "420 MW" is the electrical output of the generator, which is coupled to the steam turbine. The steam turbine's operation is governed by parameters such as pressures, steam flows, and temperatures. Mr. Swartz stated that it is common in the industry to speak in terms of megawatts to get a feel for the size of the unit, but that generator output is dependent on many factors.

96. Mr. Swartz stated that when Mitsubishi criticized DEF for operations above 420 MW, it was using that term as a proxy for [REDACTED]. It was his opinion that 420 MW was not an operational limit on the steam turbine.

97. Mr. Swartz testified that the [REDACTED]. He stated that operation of the steam turbine above 420 MW could be correlated with [REDACTED] but many other factors are involved in determining what a generator can produce.

98. Mr. Swartz stated that the power factor was the key to DEF's ability to operate the steam turbine above 420 MW. Mitsubishi used [REDACTED] with a power factor of [REDACTED] to predict an output of 420 MW. Using the same operating factors, DEF was able to run the steam turbine at a power rating between .97 and .995. Mr. Swartz testified that this increased efficiency enabled the Bartow generator to operate above 420 MW.

99. Mr. Swartz conceded that the [REDACTED]
[REDACTED]
[REDACTED] at least from DEF's perspective. If DEF was able to obtain more, such was to the ultimate benefit of its ratepayers and was consistent with the operating limitations set forth in the Purchasing Agreement.

100. OPC responds that the record of this proceeding contains no indication that at any time during the five-year long, continuous, iterative RCA process did DEF's engineers suggest that the power factor of [REDACTED] in [REDACTED] an indication that the steam turbine output of 420 MW could be safely exceeded.

101. OPC points to several statements recorded during the RCA process indicating that DEF's engineers and Mitsubishi alike acknowledged that 420 MW was the design limit of the steam turbine: [REDACTED]
[REDACTED]

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

102. OPC's essential criticism was that DEF pushed the Mitsubishi steam turbine beyond its operational limits, whether the issue is framed in terms of megawatts of electrical output beyond the design point or in terms of steam flow [REDACTED]. The evidence was clear that Mitsubishi did not contemplate DEF's operation of the steam turbine beyond the [REDACTED]. The evidence was also clear that DEF made no effort before the fact to notify Mitsubishi of its intended intensity of operation or to ask Mitsubishi whether it could safely exceed the [REDACTED]. Mr. Swartz was unable to explain away this criticism and thus DEF failed to meet its burden of demonstrating that it prudently operated the Bartow Plant during the times relevant to this proceeding.

CONCLUSIONS OF LAW

103. DOAH has jurisdiction of the subject matter of and the parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat.

104. The Commission has the authority to regulate electric utilities in the State of Florida pursuant to the provisions of chapter 366, including sections 366.04, 366.05, and 366.06.

105. An "electric utility" is defined as "any municipal electric utility, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state." § 366.02(2), Fla. Stat.

106. DEF is an investor-owned electric utility operating within the State of Florida subject to the jurisdiction of the Commission pursuant to chapter 366.

107. OPC, FIPUG, and White Springs are parties to the Fuel Clause docket, which included the issues to be resolved here, and as such are entitled to participate as parties in this proceeding.

108. This is a de novo proceeding. § 120.57(1)(k), Fla. Stat. Petitioner, DEF, has the burden of proving, by a preponderance of the evidence, that it acted prudently in its actions and decisions leading up to and in restoring the unit to service after the February 2017 forced outage at the Bartow Plant. Additionally, DEF must prove by a preponderance of the evidence that no adjustment to replacement power costs should be made to account for the fact that after the installation of a pressure plate in March 2017, the Bartow Plant could no longer produce its rated nameplate capacity of 420 MW. *Dep't of Transp. v. J.W.C. Co.*, 396 So. 2d 778, 788 (Fla. 1st DCA 1981); § 120.57(1)(j), Fla. Stat.

109. The legal standard for determining whether replacement power costs are prudent is “what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or should [have] been known, at the time the decision was made.” *S. Alliance for Clean Energy v. Graham*, 113 So. 3d 742, 750 (Fla. 2013).

110. DEF failed to demonstrate by a preponderance of the evidence that its actions during Period 1 were prudent. DEF purchased an aftermarket steam turbine from Mitsubishi with the knowledge that it had been manufactured to the specifications of Tenaska with a design point of 420 MW of output. Mr. Swartz’s testimony regarding the irrelevance of the 420 MW limitation was unpersuasive in light of the documentation that after the initial blade failure, DEF itself accepted the limitation and worked with Mitsubishi to find a way to increase the output of the turbine to [REDACTED]

111. DEF’s RCA concluded that the blade failures were caused [REDACTED]

[REDACTED] This conclusion is belied by the fact that [REDACTED]

[REDACTED] Mitsubishi cannot be faulted for

[REDACTED] in a way that would allow an operator to run the turbine consistently beyond its capacity.

112. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

113. Mr. Polich persuasively argued that it would have been simple prudence for DEF to ask Mitsubishi about the ability of the turbine to operate continuously in excess of 420 MW output before actually operating it at those levels. DEF understood that the blades had been designed for the Tenaska 3x1 configuration and should have at least explored with Mitsubishi the wisdom of operating the steam turbine with steam flows in excess of those anticipated in the original design.

114. The record evidence demonstrated an [REDACTED] that vibrations associated with high energy loadings were the primary cause of the L-0 blade failures. DEF failed to satisfy its burden of showing its actions in operating the steam turbine in Period 1 did not cause or contribute significantly to the vibrations that repeatedly damaged the L-0 blades. To the contrary, the preponderance of the evidence pointed to DEF's operation of the steam turbine in Period 1 as the most plausible culprit.

115. DEF demonstrated by a preponderance of the evidence that its actions during Periods 2 through 5 were prudent.

116. DEF argues that even if it failed to exercise prudence during Period 1, those actions were so attenuated by DEF's subsequent actions during Periods 2 through 5 that the outage and de-rating that began in 2017 cannot be fairly attributed to DEF's failures from 2009 through March 2012. If the imprudent operation in Period 1 did not cause the Period 5 outage, then the imprudent operation cannot be a basis for disallowance of the replacement power costs at issue.

117. OPC argues that Periods 2 through 5 would not have been necessary had DEF operated the turbine within its original operating limitations during Period 1. OPC contends that, based on [REDACTED], there is every reason to believe that the original L-0 blades would still be functioning but for DEF's overstressing them in Period 1.

118. OPC states that the applicable standard for prudence review is how a prudent and reasonable utility manager would have operated a new steam turbine under the conditions and circumstances which were known, or reasonably should have been known, when decisions were made in 2008 through 2012. OPC argues that it was imprudent and unreasonable for DEF to regularly supply steam to the steam turbine at levels causing the steam turbine to operate above the design point of 420 MW, especially given the fact that the steam turbine was not designed for the Bartow Plant and was sold to DEF with an [REDACTED]

119. It is speculative to state that the original Period 1 L-0 blades would still be operating today had DEF observed the [REDACTED] of 420 MW. It is not speculative to state that the events of Periods 2 through 5 were precipitated by DEF's actions during Period 1. It is not possible to state what would have happened from 2012 to 2017 if the excessive loading had not occurred, but it is possible to state that events would not have been the same.

120. In his closing argument, counsel for White Springs summarized the equities of the situation very well:

You can drive a four-cylinder Ford Fiesta like a V8 Ferrari, but it's not quite the same thing. At 4,000 RPMs, in second gear, the Ferrari is already doing 60 and it's just warming up. The Ford Fiesta, however, will be moaning and begging you to slow down and shift gears. And that's kind of what we're talking about here.

It's conceded as fact that the root cause of the Bartow low pressure turbine problems is [REDACTED]

██████ caused repeatedly over time. The answer to the question is was this due to the way [DEF] ran the plant or is it due to a ██████ Well, the answer is both.

The fact is that [DEF] bought a steam turbine that was already built for a different configuration that was in storage, and then hooked it up to a configuration ... that it knew could produce much more steam than it needed. It had a generator that could produce more megawatts, so the limiting factor was the steam turbine.

On its own initiative, it decided to push more steam through the steam turbine to get more megawatts until it broke.

* * *

So from our perspective, [DEF] clearly was at fault for pushing excessive steam flow into the turbine in the first place. The repair which has been established ... may or may not work, but the early operation clearly impeded [DEF's] ability to simply claim that Mitsubishi was entirely at fault. And under those circumstances, it's not appropriate to assign the cost to the consumers.

121. The greater weight of the evidence supports the conclusion that DEF did not exercise reasonable care in operating the steam turbine in a configuration for which it was not designed and under circumstances which DEF knew, or should have known, that it should have proceeded with caution, seeking the cooperation of Mitsubishi to devise a means to operate the steam turbine above 420 MW.

122. Given DEF's failure to meet its burden, a refund of replacement power costs is warranted. At least \$11.1 million in replacement power was required during the Period 5 outage. This amount should be refunded to DEF's customers.

123. DEF failed to carry its burden to show that the Period 5 blade damage and the required replacement power costs were not consequences of DEF's imprudent operation of the steam turbine in Period 1.

124. The de-rating of the steam turbine that required the purchase of replacement power for the 40 MW loss caused by installation of the pressure plate was a consequence of DEF's failure to prudently operate the steam turbine during Period 1. Because it was ultimately responsible for the de-rating, DEF should refund replacement costs incurred from the point the steam turbine came back online in May 2017 until the start of the planned fall 2019 outage that allowed the replacement of the pressure plate with the [REDACTED] in December 2019. Based on the record evidence, the amount to be refunded due to the de-rating is \$5,016,782.

125. The total amount to be refunded to customers as a result of the imprudence of DEF's operation of the steam turbine in Period 1 is \$16,116,782, without interest.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Public Service Commission enter a final order finding that Duke Energy Florida, LLC, failed to demonstrate that it acted prudently in operating its Bartow Unit 4 plant and in restoring the unit to service after the February 2017 forced outage, and that Duke Energy Florida, LLC, therefore may not recover, and thus should refund, the \$16,116,782 for replacement power costs resulting from the steam turbine outages from April 2017 through September 2019.

DONE AND ENTERED this 27th day of April, 2020, in Tallahassee, Leon
County, Florida.

Lawrence P. Stevenson

LAWRENCE P. STEVENSON
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
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Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of April, 2020.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.

**DUKE ENERGY FLORIDA
Confidentiality Justification Matrix**

DOCUMENT/RESPONSES	PAGE/LINE	JUSTIFICATION
2020 Recommended Order from the State of Florida Division of Administrative Hearings	<p><u>Page 8:</u> The information after “blades in the steam turbine. 13.” and before “14. The Mitsubishi steam turbine” in its entirety</p> <p>The information at the end of the page, after “proposed 4xl combined cycle configuration.” to the end of the page in its entirety</p> <p><u>Page 9:</u> The information at the beginning of the page, before “17. A "heat balance" is” in its entirety</p> <p>The information after “conversion of load current.” And before “19. Jeffrey R. Swartz, DEF's” in its entirety</p> <p>The information after “20.” to the end of the page in its entirety</p> <p><u>Page 10:</u> The information at the beginning of the page, before “24. Mr. Swartz further asserted” in its entirety</p> <p>The information after “power factor exceeding” and before “which would result” in its entirety</p>	<p>§366.093(3)(c), F.S. The document in question contains confidential information, contractual information, or information provided by a third party that DEF is obligated to keep confidential, the disclosure of which would harm its competitive business interests</p>

	<p>The information after “Purchase Agreement, titled” and before “states, in relevant part:” in its entirety</p> <p>The information after “states, in relevant part:” and before “26. The plain language” in its entirety</p> <p>The information at the end of the page, after “section 3.2.1 establishes” in its entirety</p> <p><u>Page 11:</u></p> <p>The information at the beginning of the page, before “It is unclear” in its entirety</p> <p>The information after “language into a” and before “27. In any event” in its entirety</p> <p>The information after “numbers stated in the” and before “are calculated estimates” in its entirety</p> <p>The information after “conditions that will achieve” and before “output. If DEF was” in its entirety</p> <p>The information after “output in excess of” and before “then it was simply” in its entirety</p> <p>The information after “an operational limitation.” and before “OPC points out” in</p>	
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	<p>its entirety</p> <p>The information after “conducted extensive” and before “(from December 2014 until April 2016)” in its entirety</p> <p>The information after “a document titled” and before “dated March 18, 2015” in its entirety</p> <p>The information after “stated that the” and before “The Report also” in its entirety</p> <p>The information after “stated that the” and before “These statements were supported” in its entirety</p> <p>The information after “which states that” and before “of the steam turbine.” in its entirety</p> <p>The information after “Purchase Agreement, titled” and before “expressly states” in its entirety</p> <p>The information at the end of the page after “expressly states” in its entirety</p> <p><u>Page 12:</u></p> <p>The information at the beginning of the page before “31. OPC notes that” in its entirety</p> <p>The information after “31. OPC notes that” and before</p>	
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	<p>“reached” in its entirety</p> <p>The information after “reached” and before “of output using only” in its entirety</p> <p>The information after “of output using only” and before “OPC further notes” in its entirety</p> <p>The information after “Bartow Plant had a” and before “meaning that it had” in its entirety</p> <p>The information after “ability to produce” and before “of output when” in its entirety</p> <p>The information after “when compared to the” and before “for which the steam” in its entirety</p> <p><u>Page 13:</u></p> <p>The information after “DEF found that” and before “DEF consulted with” in its entirety</p> <p>The information after “blades and recommended” and before “37. Mitsubishi concluded” in its entirety</p> <p>The information after “blades was caused by” and before “Up to this point” in its entirety</p> <p>The information after “Mitsubishi had” and before “DEF and Mitsubishi had”</p>	
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	<p>in its entirety</p> <p>The information after “assumed that if” and before “of the steam turbine” in its entirety</p> <p>The information after “steam turbine, then the” and before “would be acceptable” in its entirety</p> <p>The information after “in March 2012” and before “38. Period 2 commenced” in its entirety</p> <p>The information after “LP Turbine with” and before “39. During Period 2” in its entirety</p> <p>The information located in the footnote “3” at the bottom of the page in its entirety</p> <p><u>Page 14:</u></p> <p>The information after “complied with Mitsubishi's” and before “40. During a planned” in its entirety</p> <p>The information after “Mitsubishi replaced the” and before “used in Period 2 with” in its entirety</p> <p>The information after “used in Period 2 with” and before “thus beginning Period 3.” in its entirety</p> <p>The information after “inspection of</p>	
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	<p>the Period 2” and before “blades. The inspection” in its entirety</p> <p>The information after “inspection revealed a” and before “consistent with ordinary” in its entirety</p> <p>The information after “no damage noted to” and before “There was some” in its entirety</p> <p>The information after “There was some” and before “described as” in its entirety</p> <p>The information after “described as” and before “41. Between Period 2” in its entirety</p> <p>The information after “Mitsubishi and DEF installed” and before “in the steam turbine” in its entirety</p> <p>The information after “turbine to allow for” and before “which they expected” in its entirety</p> <p>The information after “damage and to” and before “protect the equipment.” in its entirety</p> <p>The information after “output, except for a” and before “44. During Period 3” in its entirety</p> <p>The information after “Period 3, Mitsubishi” and</p>	
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	<p>before “steam turbine. The” in its entirety</p> <p><u>Page 15:</u></p> <p>The information after “turbine experienced approximately” and before “Mitsubishi's fleet” in its entirety</p> <p>The information after “experience had been” and before “on last stage blades” in its entirety</p> <p>The information after “would experience at” and before “45. Mitsubishi concluded that” in its entirety</p> <p>The information after “45. Mitsubishi concluded that” and before “46. It was undisputed” in its entirety</p> <p>The information after “Despite DEF's having” and before “DEF and Mitsubishi's examination” in its entirety</p> <p>The information after “Period 3 revealed that” and before “DEF and Mitsubishi decided that” in its entirety</p> <p>The information after “DEF and Mitsubishi decided that” and before “were installed.” in its entirety</p> <p>The information at the end of the page, after “during this period and” in its</p>	
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	<p>entirety</p> <p><u>Page 16:</u> The information after “established by Mitsubishi” and before “50. It was undisputed” in its entirety</p> <p>The information after “Period 5, DEF and Mitsubishi” and before “53. During Period 5,” in its entirety</p> <p>The information after “established by Mitsubishi” and before “54. On February 9, 2017” in its entirety</p> <p>The information at the end of the page, after “and discovered that a” in its entirety</p> <p><u>Page 17:</u> The information after “DEF concluded that” and before “the rupture disk.” in its entirety</p> <p>The information after “established by Mitsubishi” and before “56. It was undisputed” in its entirety</p> <p>The information after “solution for the steam turbine.” and before “60. Instead, DEF and Mitsubishi” in its entirety</p> <p><u>Page 18:</u> The information after “62. Mitsubishi's” and before “during Period 3” in its</p>	
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	<p>entirety</p> <p>The information after “during Period 3” and before “63. In September 2017” in its entirety</p> <p>The information at the end of the page, after “documented the” in its entirety</p> <p><u>Page 19:</u> The information after “also stated that an” and before “65. After the discovery” in its entirety</p> <p>The information after “66. DEF's RCA” and before “67.” in its entirety</p> <p>The information after “67.” and before “68. At the hearing” in its entirety</p> <p>The information after “October 15, 2016, DEF” and before “70. The working papers” in its entirety</p> <p><u>Page 20:</u> The information after “Unit 4 L-0 events” was” and before “71. OPC accurately states” in its entirety</p> <p>The information after “the steam turbine, the” and before “72. Mr. Swartz attempted” in its entirety</p> <p>The information after “steam flow because” and before “73. DEF's final</p>	
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	<p>RCA” in its entirety</p> <p>The information after “a correlation between” and before “and the five failure” in its entirety</p> <p>The information after “RCA pointed out that” and before “74. OPC concludes that” in its entirety</p> <p>The information after “onto Mitsubishi for” and before “DEF contends that” in its entirety</p> <p><u>Page 21:</u></p> <p>The information after “Three vendors responded.” and before “DEF selected the Mitsubishi proposal.” in its entirety</p> <p>The information after “Mitsubishi installed” and before “As of the hearing date” in its entirety</p> <p>The information after “Bartow Plant with the” and before “L-0 blades without incident” in its entirety</p> <p>The information after “that in proposing its” and before “blades, Mitsubishi did” in its entirety</p> <p>The information after “testing of the” and before “blades:” in its entirety</p> <p>The information at the end of the page after “blades:”</p>	
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	<p>in its entirety</p> <p><u>Page 22:</u> The information at the end of the page after “fact that there are” in its entirety</p> <p><u>Page 23:</u> The information at the beginning of the page before “OPC notes that the” in its entirety</p> <p>The information after “not explain why a” and before “84. As to DEF's argument” in its entirety</p> <p>The information after “84. As to DEF's argument that” and before “OPC replies that had” in its entirety</p> <p>The information after “functioning, consistent with” and before “In other words” in its entirety</p> <p>The information after “steam turbine at the” and before “86. Given the lack of experience” in its entirety</p> <p>The information at the end of the page before “nameplate capacity of 420 MW.” in its entirety</p> <p><u>Page 24:</u> The information after “consultant ran over” and before “88. Mr. Polich testified” in its entirety</p> <p>The information after “unit designed for a” and before</p>	
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	<p>“To support his opinion” in its entirety</p> <p>The information after “run past 420 MW,” and before “89. DEF ran the” in its entirety</p> <p>The information after “the design of the” and before “40" L-0 blades that” in its entirety</p> <p>The information after “period, though the” and before “Mr. Polich further” in its entirety</p> <p>The information at the end of the page after “something about the blades” in its entirety</p> <p><u>Page 25:</u></p> <p>The information after “something in the” and before “that caused them” in its entirety</p> <p>The information after “believed that the” and before “He noted that” in its entirety</p> <p>The information after “beyond the usual” and before “92. Mr. Polich thought that” in its entirety</p> <p>The information after “92. Mr. Polich thought that” and before “Mr. Polich did not” in its entirety</p> <p>The information after “could be correlated,” and</p>	
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	<p>before “93. Mr. Polich testified” in its entirety</p> <p><u>Page 26:</u></p> <p>The information after “term as a proxy for” and before “It was his opinion” in its entirety</p> <p>The information after “97. Mr. Swartz testified that the” and before “He stated that operation” in its entirety</p> <p>The information after “be correlated with” and before “but many other factors” in its entirety</p> <p>The information after “Mitsubishi used” and before “with a power factor of” in its entirety</p> <p>The information after “with a power factor of” and before “to predict an output” in its entirety</p> <p>The information after “99. Mr. Swartz conceded that the” and before “at least from DEF's perspective.” in its entirety</p> <p>The information after “the power factor of” and before “in” in its entirety</p> <p>The information after “in” and before “an indication that the” in its entirety</p> <p>The information at the end of the page, before “limit of</p>	
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	<p>the steam turbine:" in its entirety</p> <p><u>Page 27:</u> The information at the beginning of the page, before "102. OPC's essential criticism" in its entirety</p> <p>The information after "in terms of steam flow" and before "The evidence was clear" in its entirety</p> <p>The information after "turbine beyond the" and before "The evidence was also" in its entirety</p> <p>The information after "could safely exceed the" and before "Mr. Swartz was unable" in its entirety</p> <p><u>Page 28:</u> The information after "output of the turbine to" and before "111. DEF's RCA concluded" in its entirety</p> <p>The information after "failures were caused" and before "This conclusion is belied" in its entirety</p> <p>The information after "by the fact that" and before "Mitsubishi cannot be faulted" in its entirety</p> <p><u>Page 29:</u> The information at the beginning of the page, before "in a way that would</p>	
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	<p>allow” in its entirety</p> <p>The information after “112.” and before “113. Mr. Polich” in its entirety</p> <p>The information after “evidence demonstrated an” and before “that vibrations associated” in its entirety</p> <p><u>Page 30:</u> The information after “OPC contends that, based on” and before “there is every reason” in its entirety</p> <p>The information after “and was sold to DEF with an” and before “119. It is speculative” in its entirety</p> <p>The information after “had DEF observed the” and before “of 420 MW.” in its entirety</p> <p>The information at the end of the page before “turbine problems is” in its entirety</p> <p><u>Page 31:</u> The information at the beginning of the page before “caused repeatedly over” in its entirety</p> <p><u>Page 32:</u> The information after “pressure plate with the” and before “in December 2019.” in its entirety</p>	
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Exhibit D

AFFIDAVIT OF JEFFREY SWARTZ

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
Clause with generating performance incentive
Factor

Docket No. 20190001-EI

Filed:

**AFFIDAVIT OF JEFFREY SWARTZ IN SUPPORT OF
DUKE ENERGY FLORIDA'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

STATE OF FLORIDA

COUNTY OF PINELLAS

BEFORE ME, the undersigned authority duly authorized to administer oaths, personally appeared Jeffrey Swartz, who being first duly sworn, on oath deposes and says that:

1. My name is Jeffrey Swartz. I am over the age of 18 years old and I have been authorized by Duke Energy Florida (hereinafter "DEF" or the "Company") to give this affidavit in the above-styled proceeding on DEF's behalf and in support of DEF's Request for Confidential Classification (the "Request"). The facts attested to in my affidavit are based upon my personal knowledge.

2. I am the Vice President of Florida Generation. I am responsible for the overall leadership and strategic direction of DEF's power generation fleet. My major duties and responsibilities include strategic and tactical planning to operate and maintain DEF's non-nuclear generation fleet; generation fleet project and additions recommendations; major maintenance programs; outage and project management; retirement of generation facilities; asset allocation; workforce planning and staffing; organizational alignment and design; continuous

business improvements; retention and inclusion; succession planning; and oversight of hundreds of employees and hundreds of millions of dollars in assets and capital and operating budgets.

3. DEF is seeking confidential classification for certain information contained in the 2020 Recommended Order from the State of Florida Division of Administrative Hearings, where the final hearing was conducted on February 4-5, 2020. The confidential information at issue is contained in confidential Exhibit A to DEF's Request and is outlined in DEF's Justification Matrix that is attached to DEF's Request as Exhibit C. DEF is requesting confidential classification of this information because it contains confidential information, contractual information, or information provided by a third party that DEF is obligated to keep confidential, the disclosure of which would harm its competitive business interests.

4. In order to contract with third-party vendors and Original Equipment Manufacturers on favorable terms, DEF must keep contractual terms and third-party proprietary information confidential. The disclosure of which would be to the detriment of DEF and its customers. DEF takes affirmative steps to prevent the disclosure of this information to the public, as well as limits its dissemination within the Company to those employees with a need to access the information to provide their job responsibilities. Absent such measures, third-party vendors would run the risk that sensitive business information that they provided would be made available to the public and, as a result, end up in possession of potential competitors. Faced with that risk, persons or companies who would otherwise contract with DEF might decide not to do so if DEF did not keep specific information confidential. Without DEF's measures to maintain the confidentiality of sensitive terms in contracts, the Company's efforts to obtain competitive contracts could be undermined.

5. Additionally, the disclosure of confidential information provided by a third party could adversely impact DEF's competitive business interests. If such information was disclosed to DEF's competitors, DEF's efforts to obtain competitive contracts that add economic value to both DEF and its customers could be undermined.

6. Upon receipt of confidential information from third-party vendors, and with its own confidential information, strict procedures are established and followed to maintain the confidentiality of the terms of the documents and information provided, including restricting access to those persons who need the information to assist the Company. At no time since receiving the contracts and information in question has the Company publicly disclosed that information. The Company has treated and continues to treat the information and contracts at issue as confidential.

7. This concludes my affidavit.

Further affiant sayeth not.

Dated the _____ day of May, 2020.

(Signature)

Jeffrey Swartz

Vice President – Generation Florida

THE FOREGOING INSTRUMENT was sworn to and subscribed before me this ____ day of May, 2020 by Jeffrey Swartz. He is personally known to me or has produced his _____ driver's license, or his _____ as identification.

(Signature)

(Printed Name)

(AFFIX NOTARIAL SEAL)

NOTARY PUBLIC, STATE OF _____

(Commission Expiration Date)

(Serial Number, If Any)



Matthew R. Bernier
ASSOCIATE GENERAL COUNSEL

May 18, 2020

VIA OVERNIGHT MAIL

Adam J. Teitzman, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: *Fuel and purchased power cost recovery clause with generating performance
incentive Factor; Docket No. 20200001-EI*

Dear Mr. Teitzman:

On May 18, 2020, Duke Energy Florida, LLC ("DEF") electronically filed its Request for Confidential Classification in connection with certain information provided in the 2020 Recommended Order from the State of Florida Division of Administrative Hearings, where the final hearing was conducted on February 4-5, 2020, in the above-referenced matter. As referenced in the Request for Confidential Classification, enclosed with this cover letter is DEF's confidential Exhibit A (in a separate sealed envelope) that accompanies the above referenced filing.

Thank you for your assistance in this matter. Please feel free to call me at (850) 521-1428 should you have any questions concerning this filing.

Respectfully,

/s/ Matthew R. Bernier

Matthew R. Bernier

MRB/cmw
Enclosures

RECEIVED-FPSC
2020 MAY 18 PM 2:12
DUKE ENERGY
FLORIDA

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: May 20, 2020

TO: Division of Accounting and Finance, Office of Primary Responsibility

FROM: OFFICE OF COMMISSION CLERK

RE: CONFIDENTIALITY OF CERTAIN INFORMATION

DOCKET NOS: 20200001-EI DOCUMENT NO: 02633-2020

DESCRIPTION: Duke Energy (Bernier) - (CONFIDENTIAL) Certain information provided in the 2020 recommended order from DOAH, where the final hearing was conducted on 2/4/20 through 2/5/20, Exh A [to request for confidential classification (DN 02631-2020)].

SOURCE: Duke Energy Florida, LLC

The above confidential material was filed along with a request for extension of confidential classification. Please complete the following form by checking all applicable information and forward it to the attorney assigned to the docket, along with a brief memorandum supporting your recommendation.

- ☒ The document(s) is (are), in fact, what the utility asserts it (them) to be.
- ☒ The utility has provided enough details to perform a reasoned analysis of its request.
- ☐ The material has been received incident to an inquiry.
- ☒ The material is confidential business information because it includes:
- ☐ (a) Trade secrets;
 - ☐ (b) Internal auditing controls and reports of internal auditors;
 - ☐ (c) Security measures, systems, or procedures;
 - ☒ (d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms;
 - ☒ (e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of information;
 - ☐ (f) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities;
- ☒ The material appears to be confidential in nature and harm to the company or its ratepayers will result from public disclosure.
- ☐ The material appears not to be confidential in nature.
- ☐ The material is a periodic or recurring filing and each filing contains confidential information.

This response was prepared by /s/Devlin Higgins on 5.20.20, a copy of which has been sent to the Office of Commission Clerk and the Office of General Counsel.

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: May 20, 2020

TO: Suzanne S. Brownless, Special Counsel, Office of the General Counsel

FROM: Devlin Higgins, Public Utility Analyst IV, Division of Accounting & Finance

RE: CONFIDENTIALITY OF CERTAIN INFORMATION
DOCKET NO: 20200001-EI DOCUMENT Nos: 02633-2020
DESCRIPTION: Duke Energy (Bernier) - (CONFIDENTIAL) Certain information provided in the 2020 recommended order from DOAH, where the final hearing was conducted on 2/4/20 through 2/5/20, Exh A [to request for confidential classification (DN 02631-2020)].

SOURCE: Duke Energy Florida

Pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code, Duke Energy Florida (DEF or Company) requests confidential classification of certain information provided in order to compose the Recommended Order (RO) submitted by the Division of Administrative Hearings (DOAH). Due to concerns regarding the maintenance of confidentiality with respect to the information subject to this request, the Florida Public Service Commission by Order No. PSC-2019-0484-FOF-EI, and Document No. 10846-2019, sent this matter for hearing to the Florida Division of Administrative Hearings.¹ The information provided by DEF for the RO was available to the Office of Public Counsel, the Florida Industrial Power Users Group, White Springs agricultural Chemicals, Inc., d/b/a PCS Phosphate – White Springs, and Staff of the Florida Public Service Commission, collectively referred to as the “Parties” to the proceeding at DOAH concerning operations at Plant Bartow.

The Company is claiming confidentiality of its filing under Section 366.093(3)(d), F.S., and Section 366.093(3)(e), F.S. Per the Statute, propriety of confidential business information includes, but is not limited to: Subsection (d) “[i]nformation concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms,” and Subsection (e) “[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.”

¹Order No. PSC-2019-0484-FOF-EI, Issued November 18, 2019, Docket No. 20190001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.*

More specifically, the information at issue relates to claimed proprietary and confidential operating procedures, drawings, and technical information regarding a third-party's (to DEF) component/equipment design and operation parameters. DEF asserts that if it cannot demonstrate to its third-party partners that the Company has the ability to protect those third-parties' confidential and proprietary business information, it will be less likely that DEF can secure contracts that benefit its customers.

Staff has previously reviewed the subject information as well as the Company's confidentiality request. It is staff's opinion that the information subject to this request meets the criteria for confidentiality contained in Section 366.093(3)(d), F.S. and Section 366.093(3)(e), F.S.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased Power Cost
Recovery Clause and Generating
Performance Incentive Factor

Docket No. 20200001-EI
DOAH No. 19-6022

Filed: May 21, 2020

**DUKE ENERGY FLORIDA, LLC'S
NOTICE OF INTENT TO REQUEST CONFIDENTIAL CLASSIFICATION**

Duke Energy Florida, LLC (“DEF” or the “Company”), pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), submits this Notice of Intent to Request Confidential Classification regarding the Intervenor’s Joint Response to DEF’s Exceptions to the Division of Administrative Hearings’ (“DOAH”) Recommended Order where the final hearing was conducted on February 4-5, 2020. The Intervenor’s are the Office of Public Counsel (“OPC”), the Florida Industrial Power Users Group (“FIPUG”), and White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate – White Springs (“PCS Phosphate”) referred to as the “Parties” to the DOAH. The confidential documents will be filed with the clerk on or shortly after the date of this filing. The Intervenor’s Joint Response to DEF’s Exceptions to the DOAH Recommended Order contains confidential proprietary business information relating to competitive business information of both DEF and third-party companies and has not been publicly disclosed. The disclosure of this information to the public could adversely affect the Company’s competitive business interests and efforts to contract for goods or services on favorable terms. Furthermore, the release of this information could adversely impact the proprietary rights of third parties, therefore impacting the Company’s competitive interest and ultimately have a detrimental impact on DEF’s customers.

A highlighted copy of DEF's confidential documents labeled as Exhibit A, will be filed under a separate cover letter. Each Party will be filing their confidential documents separately under a separate cover letter but will reference and are subject to this NOI.

Pursuant to Rule 25-22.006(3)(a)(1), DEF will file its Request for Confidential Classification for the confidential information contained herein within twenty-one (21) days of filing this request.

RESPECTFULLY SUBMITTED this 21st day of May, 2020.

s/ Matthew R. Bernier

DIANNE M. TRIPLETT

Deputy General Counsel

Duke Energy Florida, LLC

299 First Avenue North

St. Petersburg, FL 33701

T: 727. 820.4692

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E: Dianne.Triplett@Duke-Energy.com

MATTHEW R. BERNIER

Associate General Counsel

Duke Energy Florida, LLC

106 E. College Avenue, Suite 800

Tallahassee, FL 32301

T: 850.521.1428

F: 727.820.5041

E: Matthew.Bernier@Duke-Energy.com

FLRegulatoryLegal@duke-energy.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail to the following this 21st day of May, 2020.

s/ Matthew R. Bernier

Attorney

<p>Suzanne Brownless Office of General Counsel FL Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 sbrownle@psc.state.fl.us</p> <p>J. Beasley / J. Wahlen / M. Means Ausley McMullen P.O. Box 391 Tallahassee, FL 32302 jbeasley@ausley.com jwahlen@ausley.com mmeans@ausley.com</p> <p>Russell A. Badders Gulf Power Company One Energy Place, Bin 100 Pensacola, FL 32520-0100 russell.badders@nexteraenergy.com</p> <p>Kenneth A. Hoffman Florida Power & Light Company 134 W. Jefferson Street Tallahassee, FL 32301-1713 ken_hoffman@fpl.com</p> <p>Jon C. Moyle, Jr. Moyle Law Firm, P.A. 118 North Gadsden Street Tallahassee, FL 32301 jmoyle@moylelaw.com mqualls@moylelaw.com</p>	<p>J.R. Kelly / T. David Office of Public Counsel 111 W. Madison St., Room 812 Tallahassee, FL 32399-1400 kelly.jr@leg.state.fl.us david.tad@leg.state.fl.us</p> <p>Paula K. Brown Regulatory Affairs Tampa Electric Company P.O. Box 111 Tampa, FL 33601-0111 regdept@tecoenergy.com</p> <p>Maria Moncada / David Lee Florida Power & Light Company 700 Universe Blvd. (LAW/JB) Juno Beach, FL 33408-0420 maria.moncada@fpl.com david.lee@fpl.com</p> <p>James Brew / Laura W. Baker Stone Law Firm 1025 Thomas Jefferson St., N.W. Suite 800 West Washington, DC 20007 jbrew@smxblaw.com lwb@smxblaw.com</p> <p>Mike Cassel Florida Public Utilities Company 208 Wildlight Avenue Yulee, FL 32097 mcassel@fpuc.com</p> <p>Beth Keating Gunster, Yoakley & Stewart, P.A. 215 South Monroe Street, Suite 601 Tallahassee, FL 32301 bkeating@gunster.com</p>
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BILL GALVANO
President of the Senate

J.R. KELLY
Public Counsel

**STATE OF FLORIDA
OFFICE OF PUBLIC COUNSEL**

c/o THE FLORIDA LEGISLATURE
111 WEST MADISON ST.
ROOM 812
TALLAHASSEE, FLORIDA 32399-1400
850-488-9330

EMAIL: OPC_WEBSITE@LEG.STATE.FL.US
WWW.FLORIDAOPC.GOV



JOSE R. OLIVA
*Speaker of the House of
Representatives*

May 21, 2020

CONFIDENTIAL DOCUMENT ATTACHED

Adam J. Teitzman, Commission Clerk
Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

RECEIVED-FPSC
2020 MAY 21 PM 4:54
COMMISSION
CLERK

Re: Docket No. 20190001-EI- Fuel and purchased power cost recovery clause with generating performance incentive factor; Office Of Public Counsel, PCS Phosphate – White Springs, and The Florida Industrial Power Users Group Joint Response To Duke Energy Florida, LLC's Exceptions to Recommended Order.

Dear Mr. Teitzman:

Enclosed for filing in this docket on behalf of the Office of Public Counsel ("OPC") is one (1) copy of the Office Of Public Counsel, PCS Phosphate – White Springs, and The Florida Industrial Power Users Group Joint Response To Duke Energy Florida, LLC's Exceptions to Recommended Order ("Response").

Duke Energy Florida, LLC ("DEF") has filed a timely Notice of Intent to Request Confidential Classification for the confidential portion of the Response in advance of this filing. Due to the claim of confidentiality related to the underlying Recommended Order, the Exceptions filed by DEF, and the record generally, DEF has asked that this filing be made as confidential in its entirety. It is the OPC's understanding that DEF will make the appropriate filing(s) to designate and justify its claim of confidentiality for the information contained in the Response. Once that filing is made with the Commission, this filing can be returned to the OPC and the highlighted and redacted copies of the same can be maintained on file by the Commission.

The Parties were served with the Response pursuant to the accompanying certificate of service. Service to the Commission General Counsel is effectuated by the filing of this copy with the Clerk pursuant to your procedures for handling confidential information.

Should you have any questions please do not hesitate to call Charles J. Rehwinkel at 850.488.9330

Sincerely,

/s/ Charles J. Rehwinkel

Charles J. Rehwinkel
Deputy Public Counsel

Enclosures

cc: Parties of Record

Staff copy served via this document filing with the Commission Clerk



Matthew R. Bernier
ASSOCIATE GENERAL COUNSEL

June 02, 2020

VIA OVERNIGHT MAIL

Adam J. Teitzman, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: *Fuel and purchased power cost recovery clause with generating performance
incentive factor; Docket No. 20200001-EI*

Dear Mr. Teitzman:

Please find enclosed for electronic filing on behalf of Duke Energy Florida, LLC ("DEF"), DEF's Request for Confidential Classification filed in connection with certain information provided in DEF's Exceptions to the Administrative Law Judge's ("ALJ") Recommended Order dated April 27, 2020, filed concurrently with DEF's Notice of Intent to Request Confidential Classification on May 12, 2020. The filing includes the following:

- DEF's Request for Confidential Classification
- Exhibit A (Slip Sheet for Confidential Documents)
- Exhibit B (Two Redacted Copies)
- Exhibit C (Justification Matrix), and
- Exhibit D (Affidavit of Jeffrey Swartz)

DEF's confidential Exhibit A that accompanies the above-referenced filing has been submitted under separate cover.

Thank you for your assistance in this matter. Please feel free to call me at (850) 521-1428 should you have any questions concerning this filing.

Respectfully,

/s/ Matthew R. Bernier

Matthew R. Bernier

MRB/cmw
Enclosures

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
Clause with generating performance incentive
Factor

Docket No. 20200001-EI

Filed: June 02, 2020

**DUKE ENERGY FLORIDA, LLC'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

Duke Energy Florida, LLC, (“DEF” or “Company”), pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), submits this Request for Confidential Classification for certain information provided in DEF’s Exceptions to the Administrative Law Judge’s (“ALJ”) Recommended Order dated April 27, 2020, filed concurrently with DEF’s Notice of Intent to Request Confidential Classification on May 12, 2020. This Request is timely. *See* Rule 25-22.006(3)(a)1, F.A.C. In support of this Request, DEF states:

DEF’s Exceptions to the 2020 Recommended Order from the State of Florida Division of Administrative Hearings contains “proprietary confidential business information” under § 366.093(3), Florida Statutes.

1. The following exhibits are included with this request:

(a) Sealed Composite Exhibit A is a package containing an unredacted copy of all the documents for which DEF seeks confidential treatment. Composite Exhibit A was submitted separately in a sealed envelope labeled “CONFIDENTIAL” on June 02, 2020. In the unredacted versions, the information asserted to be confidential is highlighted yellow.

(b) Composite Exhibit B is a package containing two copies of redacted versions of the documents for which the Company requests confidential classification, or slip-

sheets for documents which are confidential in their entirety. The specific information for which confidential treatment is requested has been blocked out by opaque marker or other means.

(c) Exhibit C is a table which identifies the information for which DEF seeks confidential classification and the specific statutory bases for seeking confidential treatment.

(d) Exhibit D is an affidavit attesting to the confidential nature of information identified in this request.

2. As indicated in Exhibit C, the information for which DEF requests confidential classification is “proprietary confidential business information” within the meaning of § 366.093(3), F.S. DEF is requesting confidential classification of this information because it contains contractual information or information provided by a third party that DEF is obligated to keep confidential, the disclosure of which would harm its competitive business interest and ability to contract for goods or services on favorable terms. *See* §§ 366.093(3)(d) & (e), F.S.; Affidavit of Jeffrey Swartz at ¶¶ 3, 4 and 5. Accordingly, such information constitutes “proprietary confidential business information” which is exempt from disclosure under the Public Records Act pursuant to § 366.093(1), F.S.

3. In order to contract with third-party vendors and Original Equipment Manufacturers on favorable terms, DEF must keep contractual terms and third-party proprietary information confidential. The disclosure of which would be to the detriment of DEF and its customers. Additionally, the disclosure of confidential information provided by a third party could adversely impact DEF’s competitive business interests. If such information was disclosed to DEF’s competitors, DEF’s efforts to obtain competitive contracts that add economic value to both DEF and its customers could be undermined. *See* Affidavit of Swartz at ¶¶ 4 and 5. *Id.*

4. The information identified as Exhibit “A” is intended to be and is treated as confidential by the Company. *See* Affidavit of Swartz at ¶¶ 4 and 6. The information has not been disclosed to the public, and the Company and third-party vendors have treated and continue to treat this information as confidential. *Id.*

5. DEF requests that the information identified in Exhibit A be classified as “proprietary confidential business information” within the meaning of § 366.093(3), F.S., that the information remains confidential for a period of at least 18 months as provided in § 366.093(4) F.S., and that the information be returned as soon as it is no longer necessary for the Commission to conduct its business.

WHEREFORE, for the foregoing reasons, DEF respectfully requests that this Request for Confidential Classification be granted.

RESPECTFULLY SUBMITTED this 2nd day of June, 2020.

/s/ Matthew R. Bernier

DIANNE M. TRIPLETT

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Duke Energy Florida, LLC
299 First Avenue North
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E: Matt.Bernier@Duke-Energy.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail to the following this 2nd day of June, 2020.

/s/ Matthew R. Bernier

Attorney

<p>Suzanne Brownless Office of General Counsel FL Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 sbrownle@psc.state.fl.us</p> <p>J. Beasley / J. Wahlen / M. Means Ausley McMullen P.O. Box 391 Tallahassee, FL 32302 jbeasley@ausley.com jwahlen@ausley.com mmeans@ausley.com</p> <p>Steven Griffin Beggs & Lane P.O. Box 12950 Pensacola, FL 32591 srg@beggslane.com</p> <p>Russell A. Badders Gulf Power Company One Energy Place Pensacola, FL 32520 russell.badders@nexteraenergy.com</p> <p>Holly Henderson Gulf Power Company 215 S. Monroe St., Ste. 618 Tallahassee, FL 32301 holly.henderson@nexteraenergy.com</p> <p>Kenneth A. Hoffman Florida Power & Light Company 134 W. Jefferson Street Tallahassee, FL 32301-1713 ken.hoffman@fpl.com</p> <p>Jon C. Moyle, Jr. Moyle Law Firm, P.A. 118 North Gadsden Street Tallahassee, FL 32301 jmoyle@moylelaw.com mqualls@moylelaw.com</p>	<p>J.R. Kelly / P. Christensen / T. David / S. Morse Office of Public Counsel 111 W. Madison St., Room 812 Tallahassee, FL 32399-1400 kelly.jr@leg.state.fl.us christensen.patty@leg.state.fl.us david.tad@leg.state.fl.us morse.stephanie@leg.state.fl.us</p> <p>Ms. Paula K. Brown Regulatory Affairs Tampa Electric Company P.O. Box 111 Tampa, FL 33601-0111 regdept@tecoenergy.com</p> <p>Maria Moncada / Joel Baker Florida Power & Light Company 700 Universe Blvd. (LAW/JB) Juno Beach, FL 33408-0420 maria.moncada@fpl.com joel.baker@fpl.com</p> <p>James Brew / Laura Wynn Stone Law Firm 1025 Thomas Jefferson St., N.W. Suite 800 West Washington, DC 20007 jbrew@smxblaw.com law@smxblaw.com</p> <p><u>Mike Cassel</u> Florida Public Utilities Company 1750 S. 14th Street, Suite 200 Fernandina Beach, FL 32034 mcassel@fpuc.com</p> <p>Beth Keating Gunster, Yoakley & Stewart, P.A. 215 South Monroe Street, Suite 601 Tallahassee, FL 32301 bkeating@gunster.com</p>
---	--

Exhibit A

CONFIDENTIAL

(Slip Sheet)

Exhibit B
(Two Copies)

REDACTED

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: FUEL AND PURCHASED POWER
COST RECOVERY CLAUSE WITH GENERATING
PERFORMANCE INCENTIVE FACTOR

Case No. 19-6022
PSC Docket No. 20190001-EI

DUKE ENERGY FLORIDA, LLC'S, EXCEPTIONS TO THE RECOMMENDED ORDER

Duke Energy Florida, LLC ("DEF"), pursuant to section 120.57(1)(k), Florida Statutes, and rule 28-106.217, Florida Administrative Code, hereby submits its exceptions to the Administrative Law Judge's ("ALJ") Recommended Order dated April 27, 2020 ("RO").¹

INTRODUCTION

When considering the RO, the Public Service Commission ("PSC") may reject or modify the conclusions of law recommended by the ALJ.² When rejecting or modifying a conclusion of law, the PSC must state with particularity its reasons for doing so and must make a finding that the PSC's substituted conclusion of law is as or more reasonable than that which was rejected or modified.³ To be clear, on issues of law, the PSC is not required to defer to the ALJ,⁴ and where the issue of law under review is infused with overriding policy considerations, the PSC, not the ALJ, should decide the issue of law.⁵

The PSC may also reject or modify a finding of fact contained in the RO if the PSC determines from a review of the entire record, and states with particularity in the final order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on

¹ The Hearing Transcript will be cited as "T. p.____." The Recommended Order will be cited as RO. ¶____. Joint exhibits will be cited as Jt. Ex. ____, p. _____. OPC's exhibits will be cited as "OPC Ex.____, p.____." FIPUG's exhibits will be cited as "FIPUG Ex.____, p.____." PCS Phosphate's exhibits will be cited as "PCS Phosphate Ex.____, p.____."

² Section 120.57(1)(l), Florida Statutes.

³ *Id.*

⁴ *State Contracting & Eng'g Corp. v. Dep't of Transp.*, 709 So. 2d 607, 609 (Fla. 1st DCA 1998).

⁵ *Pillsbury v. State, Dep't of Health & Rehabilitative Servs.*, 744 So. 2d 1040, 1042 (Fla. 2d DCA 1999) ("if the matter under review is susceptible of ordinary methods of proof, such as determining the credibility of witnesses or the weight to be given particular evidence, the matter should be determined by the hearing officer. If, however, the matter is infused with overriding policy considerations, the issue should be left to the discretion of the agency.") (citing *Bush v. Brogan*, 725 So. 2d 1237 (Fla. 2d DCA 1990)).

which the findings were based did not comply with essential requirements of law.⁶

As detailed in DEF's exceptions below, the ALJ has proposed several conclusions of law that should be rejected both because they are inconsistent with the PSC's overriding policy considerations regarding public utilities in Florida and because the ALJ has improperly interpreted the facts when making those conclusions of law. While DEF takes exception to multiple findings of fact, due to the standard of review discussed above, DEF will not relitigate those points here nor ask this Commission to reweigh evidence. As discussed below, even accepting the ALJ's findings of fact, this Commission should still reject the ALJ's legal and policy conclusions.

DEF'S EXCEPTIONS TO THE CONCLUSIONS OF LAW

Exception to RO ¶ 110

DEF takes exception to the ALJ's conclusion in paragraph 110 that DEF failed to demonstrate that its actions during Period 1 were prudent. First, it is helpful to re-state the standard this Commission routinely interprets and applies to determine whether a utility's actions are prudent. The ALJ correctly stated part of the test for prudence⁷, but he left out an important factor. Namely, that hindsight cannot form the basis of a prudence determination. *Fla. Power Corp. v. Public Service Com'n*, 456 So. 2d 451, 452 (Fla. 1984). As support for the ALJ's conclusion, the ALJ relies on evidence that the steam turbine ("ST") DEF purchased for installation at the Bartow Plant had a nameplate rating of 420 MW and that DEF [REDACTED] [REDACTED] after the initial blade failure.

⁶ Section 120.57(1)(l), Florida Statutes.

⁷ The standard for determining prudence is what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or should have been known, at the time the decision was made. *S. Alliance for Clean Energy v. Graham*, 113 So. 3d 742, 750 (Fla. 2013) (RO ¶ 109).

Before committing to purchase the ST, DEF contracted with Mitsubishi to assess whether the ST design conditions were compatible with the Bartow Plant's proposed 4x1 combined cycle design configuration. As part of this assessment, DEF informed Mitsubishi that DEF intended to operate the Bartow Plant and the ST in 4x1 configuration with a power factor exceeding [REDACTED] which would result in the generation of more than 420 MW. T. 42, 135-136, 147-148, 213-215, 234, 258, 278, 356. During Period 1, DEF operated the ST in accordance with the operating parameters specified by Mitsubishi for operation of the ST, which did not include a parameter that prohibited DEF from operating the ST in excess of 420 MW. T. 272, 284, 346, 377-378. It was only after the initial blade failure during Period 1 that [REDACTED]

[REDACTED] T. 260. DEF operated the ST in accordance with [REDACTED] but asked Mitsubishi to determine whether anything could be done [REDACTED]

[REDACTED] during Period 1. In response, Mitsubishi [REDACTED] [REDACTED] T. 152, 277. Mitsubishi did not determine it was necessary

[REDACTED]
[REDACTED]

Significantly, Mitsubishi did not conclude that DEF operated the ST during Period 1 in violation of the operating parameters it provided DEF for the ST. Instead, MHPS surmised that

[REDACTED]
[REDACTED]. T.

97, 386. Moreover, the fact that Mitsubishi [REDACTED] [REDACTED] makes plain that Mitsubishi believed the ST was capable of operating above 420 MW [REDACTED]

In the utility industry, the nameplate rating of a steam turbine is not regarded as an

“operating parameter” above which the steam turbine may not be operated. T. 140-143, 281-282, 284. Instead, the general standard followed in the utility industry is to operate steam turbines within operating parameters provided by the original equipment manufacturer while also striving to achieve the most efficiency for utility customers. T. 141. Operating parameters provided by Mitsubishi for the ST included steam pressures, operating temperatures and other parameters common to steam turbines. T. 346, 377-378. Nothing in DEF’s experience operating the Bartow Plant or in Mitsubishi’s analysis of whether the ST design conditions were compatible with the Bartow Plant indicated that DEF’s operation of the ST in accordance with the operating parameters established by Mitsubishi would result in damage to the L-0 blades. Based upon DEF’s and Mitsubishi’s combined prior knowledge, DEF had appropriate operating parameters in place, and DEF properly followed these parameters. Only an after-the-fact analysis determined the specific cause of the damage to the L-0 blades.

Indeed, the ALJ’s conclusion that the 420MW nameplate rating was an operating parameter is based, at least in part, on DEF’s alleged “acceptance” of the limitation. The ALJ states that DEF accepted the limit because it (1) [REDACTED]

[REDACTED] and (2) requested that Mitsubishi [REDACTED]

[REDACTED] This conclusion is nonsensical because it does not support that DEF accepted the 420 MW as a limitation. Rather, it shows that DEF was acting as a prudent utility would be expected to act in such a situation. As this Commission is well aware, a prudent utility operates its generating units to maximize output for the benefit of its customers. Working with the manufacturer to ensure that the unit can be operated as DEF always intended it to run is not an acceptance of a previous limitation; it is a sign that DEF was acting prudently to protect its investment. Taken to its logical conclusion, the ALJ would have preferred DEF to simply fix the blades and back down the operation to 420 MW and not make any efforts whatsoever to operate

the unit in the most beneficial manner for its customers. What DEF learned through subsequent periods, however, is that [REDACTED]

[REDACTED] the blades still suffered damage. In sum, even though it continued to follow all OEM provided guidance, DEF is still being subjected to “Monday-morning quarterbacking” and findings of imprudence.

A preponderance of the evidence adduced at the final hearing reflects, and the PSC should conclude, that DEF prudently operated the ST during Period 1 in accordance with each of the operating parameters provided by Mitsubishi. This conclusion is as or more reasonable than the conclusion reached by the ALJ, which relied upon hindsight and would arbitrarily limit a utility’s operation of a steam turbine to the turbine’s nameplate rating regardless of whether the steam turbine has the capacity to safely operate at greater efficiency. The conclusion would also inhibit a utility’s ability to maximize output for the benefit of its customers.

Exception to RO ¶ 111

DEF takes exception to the ALJ’s conclusion in paragraph 111 that DEF’s determination that the L-0 blade failures were the result of [REDACTED] is belied by the fact that [REDACTED]

[REDACTED] As reflected by Mitsubishi’s own root cause analysis, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] T. 97, 386. Despite the fact that DEF contracted with Mitsubishi to assess whether the ST design conditions were compatible with the Bartow Plant’s proposed design configuration, Mitsubishi did not identify [REDACTED] as a potential problem at the Bartow Plant. Under these circumstances, comparing the ST with other Mitsubishi facilities is not beneficial to the prudence analysis at hand.

It is more constructive to compare the blade failures that occurred at the ST during Period 1 (when the ST was operated above 420 MW) with the blade failures that occurred at the ST during Periods 2 through 5 (when the ST was operated below 420 MW). This comparison reveals that the L-0 blades may have failed when DEF was operating the ST above 420 MW but unequivocally suffered damage on four separate occasions when DEF was operating the ST below 420 MW. Indeed, the RO notes that it is not possible to determine when the damage occurred in period 1, and thus it is impossible to say how the unit was being operated at the time of damage; the RO mistakenly concludes that “the exact moment of damage is beside the point”⁸ because it fails to account for cumulative wear to the machine. As a matter of law and regulatory policy, the ALJ’s conclusion must be wrong – if the damage to the unit occurred prior to any alleged imprudence,⁹ DEF cannot be held responsible for the consequences of the damage. It is as or more reasonable to conclude, therefore, that DEF’s determination that the L-0 blade failures resulted from [REDACTED] [REDACTED] is supported by a preponderance of evidence that the blades failed during prudent operation of the ST.

DEF takes further exception to the ALJ’s conclusion in paragraph 111 that DEF operated the ST consistently beyond its capacity. As explained in DEF’s exception to paragraph 110 above, the operating parameters provided by Mitsubishi for the ST were parameters common to steam turbines, including steam pressures and operating temperatures. T. 346, 377-378. DEF complied with these operating parameters. T. 272, 284, 346, 377-378. Mitsubishi provided DEF with no other operating parameters or capacities for the ST. It is, thus, as or more reasonable to conclude

⁸ See RO, at fn. 11 (“DEF made much of the fact that it could not be said precisely when during Period 1 the damage to the blades occurred, point tout that there was a 50-50 chance that the blades were damaged when the turbine was operating below 420MW. This argument fails to consider the cumulative wear caused by running the unit in excess of its capacity half of the time. The exact moment the damage occurred is beside the point.”).

⁹ Again, DEF disputes that operation of a generation unit above nameplate capacity, but within all OEM provided operating parameters is imprudent or that the nameplate capacity is an operating parameter.

that DEF prudently operated the ST within each of the operating parameters provided by Mitsubishi.

Exception to RO ¶ 112

DEF takes exception to the ALJ's conclusion in paragraph 112 that Mitsubishi attributed the blade failure during Period 1 to [REDACTED]. In fact, in its root cause analysis ("RCA") dated September 22, 2017, Mitsubishi determined that [REDACTED]

[REDACTED] (underscoring added) Jt. Ex. 82, p. 12 of 35. It is undisputed that DEF operated the ST below 420 MW during Periods 2 through 5. Jt. Ex. 80, P. 5; T. 285, 347-350, 352, 380. Because DEF always operated the ST below 420 MW during Periods 2 through 5 and the L-0 blades, nevertheless, suffered damage during each of those periods, it is more reasonable to conclude that the [REDACTED] that ultimately damaged the L-0 blades during Period 1 was not the result of DEF's operation of the ST above 420 MW, but was instead caused by L-0 blades that were not [REDACTED]

[REDACTED] by the Bartow Plant. T. 97, 386; Jt. Ex. 83. If the ST's manufacturer was not able anticipate that damage to the L-0 blades would result from operating the ST in accordance with the manufacturer's operating parameters, it would be unreasonable and contrary to the established prudence standard to expect DEF to have anticipated this. It is, therefore, as or more reasonable to conclude that the damage to the L-0 blades that occurred during Period 1 was the combined result of [REDACTED]

Exception to RO ¶ 113

DEF takes exception to the ALJ's conclusion in paragraph 113 that it would have been prudent for DEF to consult with Mitsubishi about the ability of the ST to operate above 420 MW

and above steam flows anticipated in the original design for the ST. With respect to steam flows within the low pressure turbine where the L-0 blades are located, it is important to note that Mitsubishi provided DEF [REDACTED] T. 377-378. As such, it would be as or more reasonable to conclude that prudence did not require DEF to consult with Mitsubishi in connection with steam flow limits within the low-pressure turbine during Period 1 operation of the ST. As indicated above, the output of a steam turbine is not an “operating parameter” provided by a manufacturer; rather the output is a product that follows from operation within the manufacturer-provided parameters. T. 140-143, 281-282, 284. As also indicated above, Mitsubishi understood that DEF intended to operate the Bartow Plant in a configuration that would generate in excess of 420 MW. T. 42, 135-136, 147-148, 213-215, 234, 258, 278, 356. Due to this, it is as or more reasonable to conclude that prudence did not require DEF to consult with Mitsubishi before operating the ST within the operating parameters supplied by Mitsubishi.

Exception to RO ¶ 114

DEF takes exception to the ALJ’s conclusion in paragraph 114 that DEF failed to satisfy its burden of showing its actions in operating the ST during Period 1 did not cause or contribute significantly to the vibrations that repeatedly damaged the L-0 blades. DEF operated the ST during Periods 1 through 5 in accordance with the manufacturer’s operating parameters. T. 346, 377-378. DEF’s actions and decisions in operating the ST within Mitsubishi’s operating parameters were prudent. Consequently, it is as or more reasonable to conclude that DEF’s actions in operating the ST in Period 1 did not cause or contribute significantly to the L-0 blade damage that occurred during Periods 1 through 5. In addition, it appears that the ALJ, by stating that DEF failed its burden to show that its actions did NOT cause the damage, is imposing an impossible standard of proving a negative. A utility does not have the burden to prove that something did not occur; such a requirement would be nearly impossible to meet. Rather, DEF’s burden in this case was to show

that it acted as a reasonable utility manager would, given the facts known or reasonably knowable at the time, and without the benefit of hindsight review. Under that standard, even assuming that nameplate capacity was some sort of operational condition (which is not the case), the more appropriate interpretation of the facts determined in the case is that, because there was damage to the blades even when operating below 420 MW in later periods, DEF's actions in operating the unit such that the output was higher than 420 MW were prudent and not the cause of the damage.

Exception to RO ¶ 119

DEF takes exception to the ALJ's conclusion in paragraph 119 that it is not speculative to state that the events of Periods 2 through 5 were precipitated by DEF's actions during Period 1. It is undisputed that DEF prudently operated the ST during Periods 2 through 5. T. 347-350. It is also not disputed that there was no residual damage to any component within the ST following Period 1. T. 103-105. In fact, the only damage that resulted from Period 1 operation of the ST was to the L-0 blades, [REDACTED] at the conclusion of Period 1. Jt. Ex. 80, p. 5; T. 148, 150-151, 330. Consequently, there is no causal link between the Period 1 operation of the ST and the damage experienced by the L-0 blades during subsequent periods. Such a groundless contention cannot form the basis for denying a utility's fuel cost recovery. *In Re: Fuel & Purchased Power Cost Recovery Clause with Generation Performance Incentive Factor (Crystal River 3 1989 Outage)*, 91 FPSC 12:165, *12 (Dec. 9, 1991).

Since there is no dispute that DEF prudently operated the ST during Periods 2 through 5 and since it is also undisputed that there was no residual damage to the ST following Period 1 operation, it is as or more reasonable to conclude that the damage to the L-0 blades that occurred during Periods 2 through 5 was not precipitated by DEF's operation of the ST during Period 1.¹⁰

¹⁰ Even if one were to assume DEF's operation of the ST above 420 MW during Period 1 was imprudent, if such operation did not cause the Period 5 outage, then it makes no difference whether DEF was imprudent in its operation

To conclude, as the ALJ does, that DEF should be held responsible for the forced outage that occurred during Period 5 – despite any direct causal link between DEF’s operation of the ST during Period 1 and the Period 5 outage – would set a dangerous precedent that would discourage utility operators from continuing to operate a power plant that may have been imprudently operated at some point for fear that any subsequent forced outage experienced by the power plant could be attributed to the earlier imprudence, regardless of how remote in time that earlier imprudence may have been.

Exception to RO ¶ 120

DEF takes exception to the ALJ’s conclusion in paragraph 120 that it would not be appropriate to assign the cost of the February 2017 forced outage to the consumers. It is as or more reasonable to conclude that where, as here, a utility operates a power plant within the manufacturer’s express operating parameters and does not know, or have reason to know, that such operation could result in a forced outage of the power plant, the utility should not be forced to bear the resulting replacement power costs.

Exception to RO ¶ 121

For the reasons explained above in its exceptions to RO ¶ 110, 111 and 113, DEF takes exception to the ALJ’s conclusion in paragraph 121 that DEF did not exercise reasonable care in operating the ST and should have sought the cooperation of Mitsubishi prior to operating the ST above 420 MW. It is as or more reasonable to conclude that DEF was prudent in its decisions and actions leading up to, and in restoring the Bartow Plant to service after, the Bartow Plant’s February 2017 forced outage and was not required to consult with Mitsubishi prior to operating the ST above 420 MW. There is also no record evidence to demonstrate that consulting with Mitsubishi prior to

of the ST during portions of Period 1 because the replacement power costs at issue could not be said to be a result of the Company’s mismanagement. See *Fla. Power Corp. v. Cresse*, 413 So. 2d 1187, 1190-1191 (Fla. 1982).

operating the ST above 420 MW would have resulted in any change in events.

Exception to RO ¶ 122

DEF takes exception to the ALJ's conclusion in paragraph 122 that DEF must refund power costs to DEF's customers. For the reasons explained above, DEF was prudent in its decisions and actions leading up to, and in restoring the Bartow Plant to service after, the Bartow Plant's February 2017 forced outage. Consequently, it is as or more reasonable to conclude that DEF is not required to refund power costs to its customers.

Exception to RO ¶ 123

For the reasons set forth in its exception to the ALJ's conclusion in paragraph 110, DEF takes exception to the ALJ's conclusion in paragraph 123 that DEF failed to show that it operated the ST prudently during Period 1. It is as or more reasonable to conclude that DEF carried its burden to show that it prudently operated the ST during Period 1 within each of the operating parameters provided by Mitsubishi.

DEF takes further exception to the ALJ's conclusion in paragraph 123 that DEF failed to meet its burden of showing that the Period 5 blade damage and the resulting replacement power costs were not the consequence of DEF's operation of the ST during Period 1. Because DEF proved by a preponderance of evidence that its operation of the ST during Period 1 was prudent and because it is undisputed that DEF's operation of the ST during Periods 2 through 5 was also prudent, it is as or more reasonable to conclude that the Period 5 blade damage and resulting replacement power costs were not the consequence of DEF's operation of the ST during Period 1.

Exception to RO ¶ 124

DEF takes exception to the ALJ's conclusions in paragraph 124 that the purchase of replacement power for the 40 MW loss caused by installation of the pressure plate was a consequence of DEF's failure to prudently operate the ST during Period 1. Because DEF proved

by a preponderance of evidence that its operation of the ST during Period 1 was prudent and because it is undisputed that DEF's operation of the ST during Periods 2 through 5 was also prudent, it is as or more reasonable to conclude that the installation of the pressure plate was not the consequence of DEF's operation of the ST during Period 1.

DEF takes further exception to the ALJ's conclusion in paragraph 124 that DEF should be required to refund replacement power costs related to the installation of the pressure plate. For the reasons explained above, DEF was prudent in its decisions and actions leading up to, and in restoring the Bartow Plant to service after, the Bartow Plant's February 2017 forced outage. Consequently, it is as or more reasonable to conclude that DEF is not required to refund power costs to its customers.

Exception to RO ¶ 125

DEF takes exception to the ALJ's conclusions in paragraph 125 that DEF was imprudent in its operation of the ST during Period 1 and, consequently, should be required to refund \$16,116,782 to its customers. For the reasons discussed at length above, it is as or more reasonable to conclude that DEF operated the ST prudently at all times relevant to the replacement power costs and is, therefore, not required to refund any amount to its customers.

CONCLUSION

As detailed above, the above-referenced conclusions of law recommended by the Administrative Law Judge are inconsistent with the standard of prudence delineated in this Commission's precedent as well as the Commission's overriding policy considerations regarding public utilities in Florida. Adoption of the ALJ's conclusions would send negative operational signals to the state's utilities; specifically, adoption of the RO would signal that utilities should not

strive to maximize the efficient output of generating units, which, contrary to logic and economic principles, would result in limiting operations of the most efficient and economic sources of generation in favor of less efficient, less economic, and less environmentally friendly sources of generation (e.g., oil-fired peaker units). Moreover, it would send a signal to all utilities that, regardless of compliance with all industry-recognized operational parameters, they may still be found imprudent based on failure to comply with a later-established operational parameter (unrecognized at the time); this would upend the well-established prudence standard and subject all utilities to increased risk and increased costs which are eventually borne by customers. This Commission should reject these conclusions.

Respectfully submitted this 12th day of May 2020.

/s/ Matthew R. Bernier

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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: FUEL AND PURCHASED POWER
COST RECOVERY CLAUSE WITH GENERATING
PERFORMANCE INCENTIVE FACTOR

Case No. 19-6022
PSC Docket No. 20190001-EI

DUKE ENERGY FLORIDA, LLC'S, EXCEPTIONS TO THE RECOMMENDED ORDER

Duke Energy Florida, LLC ("DEF"), pursuant to section 120.57(1)(k), Florida Statutes, and rule 28-106.217, Florida Administrative Code, hereby submits its exceptions to the Administrative Law Judge's ("ALJ") Recommended Order dated April 27, 2020 ("RO").¹

INTRODUCTION

When considering the RO, the Public Service Commission ("PSC") may reject or modify the conclusions of law recommended by the ALJ.² When rejecting or modifying a conclusion of law, the PSC must state with particularity its reasons for doing so and must make a finding that the PSC's substituted conclusion of law is as or more reasonable than that which was rejected or modified.³ To be clear, on issues of law, the PSC is not required to defer to the ALJ,⁴ and where the issue of law under review is infused with overriding policy considerations, the PSC, not the ALJ, should decide the issue of law.⁵

The PSC may also reject or modify a finding of fact contained in the RO if the PSC determines from a review of the entire record, and states with particularity in the final order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on

¹ The Hearing Transcript will be cited as "T. p.____." The Recommended Order will be cited as RO. ¶____. Joint exhibits will be cited as Jt. Ex. ____, p. _____. OPC's exhibits will be cited as "OPC Ex.____, p.____." FIPUG's exhibits will be cited as "FIPUG Ex.____, p.____." PCS Phosphate's exhibits will be cited as "PCS Phosphate Ex.____, p.____."

² Section 120.57(1)(l), Florida Statutes.

³ *Id.*

⁴ *State Contracting & Eng'g Corp. v. Dep't of Transp.*, 709 So. 2d 607, 609 (Fla. 1st DCA 1998).

⁵ *Pillsbury v. State, Dep't of Health & Rehabilitative Servs.*, 744 So. 2d 1040, 1042 (Fla. 2d DCA 1999) ("if the matter under review is susceptible of ordinary methods of proof, such as determining the credibility of witnesses or the weight to be given particular evidence, the matter should be determined by the hearing officer. If, however, the matter is infused with overriding policy considerations, the issue should be left to the discretion of the agency.") (citing *Bush v. Brogan*, 725 So. 2d 1237 (Fla. 2d DCA 1990)).

which the findings were based did not comply with essential requirements of law.⁶

As detailed in DEF's exceptions below, the ALJ has proposed several conclusions of law that should be rejected both because they are inconsistent with the PSC's overriding policy considerations regarding public utilities in Florida and because the ALJ has improperly interpreted the facts when making those conclusions of law. While DEF takes exception to multiple findings of fact, due to the standard of review discussed above, DEF will not relitigate those points here nor ask this Commission to reweigh evidence. As discussed below, even accepting the ALJ's findings of fact, this Commission should still reject the ALJ's legal and policy conclusions.

DEF'S EXCEPTIONS TO THE CONCLUSIONS OF LAW

Exception to RO ¶ 110

DEF takes exception to the ALJ's conclusion in paragraph 110 that DEF failed to demonstrate that its actions during Period 1 were prudent. First, it is helpful to re-state the standard this Commission routinely interprets and applies to determine whether a utility's actions are prudent. The ALJ correctly stated part of the test for prudence⁷, but he left out an important factor. Namely, that hindsight cannot form the basis of a prudence determination. *Fla. Power Corp. v. Public Service Com'n*, 456 So. 2d 451, 452 (Fla. 1984). As support for the ALJ's conclusion, the ALJ relies on evidence that the steam turbine ("ST") DEF purchased for installation at the Bartow Plant had a nameplate rating of 420 MW and that DEF [REDACTED] [REDACTED] after the initial blade failure.

⁶ Section 120.57(1)(l), Florida Statutes.

⁷ The standard for determining prudence is what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or should have been known, at the time the decision was made. *S. Alliance for Clean Energy v. Graham*, 113 So. 3d 742, 750 (Fla. 2013) (RO ¶ 109).

Before committing to purchase the ST, DEF contracted with Mitsubishi to assess whether the ST design conditions were compatible with the Bartow Plant's proposed 4x1 combined cycle design configuration. As part of this assessment, DEF informed Mitsubishi that DEF intended to operate the Bartow Plant and the ST in 4x1 configuration with a power factor exceeding [REDACTED] which would result in the generation of more than 420 MW. T. 42, 135-136, 147-148, 213-215, 234, 258, 278, 356. During Period 1, DEF operated the ST in accordance with the operating parameters specified by Mitsubishi for operation of the ST, which did not include a parameter that prohibited DEF from operating the ST in excess of 420 MW. T. 272, 284, 346, 377-378. It was only after the initial blade failure during Period 1 that [REDACTED]

[REDACTED] T. 260. DEF operated the ST in accordance with [REDACTED] but asked Mitsubishi to determine whether anything could be done [REDACTED]

[REDACTED] during Period 1. In response, Mitsubishi [REDACTED] [REDACTED] T. 152, 277. Mitsubishi did not determine it was necessary

[REDACTED]
[REDACTED]

Significantly, Mitsubishi did not conclude that DEF operated the ST during Period 1 in violation of the operating parameters it provided DEF for the ST. Instead, MHPS surmised that

[REDACTED]
[REDACTED]. T.

97, 386. Moreover, the fact that Mitsubishi [REDACTED] [REDACTED] makes plain that Mitsubishi believed the ST was capable of operating above 420 MW [REDACTED]

In the utility industry, the nameplate rating of a steam turbine is not regarded as an

“operating parameter” above which the steam turbine may not be operated. T. 140-143, 281-282, 284. Instead, the general standard followed in the utility industry is to operate steam turbines within operating parameters provided by the original equipment manufacturer while also striving to achieve the most efficiency for utility customers. T. 141. Operating parameters provided by Mitsubishi for the ST included steam pressures, operating temperatures and other parameters common to steam turbines. T. 346, 377-378. Nothing in DEF’s experience operating the Bartow Plant or in Mitsubishi’s analysis of whether the ST design conditions were compatible with the Bartow Plant indicated that DEF’s operation of the ST in accordance with the operating parameters established by Mitsubishi would result in damage to the L-0 blades. Based upon DEF’s and Mitsubishi’s combined prior knowledge, DEF had appropriate operating parameters in place, and DEF properly followed these parameters. Only an after-the-fact analysis determined the specific cause of the damage to the L-0 blades.

Indeed, the ALJ’s conclusion that the 420MW nameplate rating was an operating parameter is based, at least in part, on DEF’s alleged “acceptance” of the limitation. The ALJ states that DEF accepted the limit because it (1) [REDACTED]

[REDACTED] and (2) requested that Mitsubishi [REDACTED]

[REDACTED] This conclusion is nonsensical because it does not support that DEF accepted the 420 MW as a limitation. Rather, it shows that DEF was acting as a prudent utility would be expected to act in such a situation. As this Commission is well aware, a prudent utility operates its generating units to maximize output for the benefit of its customers. Working with the manufacturer to ensure that the unit can be operated as DEF always intended it to run is not an acceptance of a previous limitation; it is a sign that DEF was acting prudently to protect its investment. Taken to its logical conclusion, the ALJ would have preferred DEF to simply fix the blades and back down the operation to 420 MW and not make any efforts whatsoever to operate

the unit in the most beneficial manner for its customers. What DEF learned through subsequent periods, however, is that [REDACTED] the blades still suffered damage. In sum, even though it continued to follow all OEM provided guidance, DEF is still being subjected to “Monday-morning quarterbacking” and findings of imprudence.

A preponderance of the evidence adduced at the final hearing reflects, and the PSC should conclude, that DEF prudently operated the ST during Period 1 in accordance with each of the operating parameters provided by Mitsubishi. This conclusion is as or more reasonable than the conclusion reached by the ALJ, which relied upon hindsight and would arbitrarily limit a utility’s operation of a steam turbine to the turbine’s nameplate rating regardless of whether the steam turbine has the capacity to safely operate at greater efficiency. The conclusion would also inhibit a utility’s ability to maximize output for the benefit of its customers.

Exception to RO ¶ 111

DEF takes exception to the ALJ’s conclusion in paragraph 111 that DEF’s determination that the L-0 blade failures were the result of [REDACTED] is belied by the fact that [REDACTED]

[REDACTED] As reflected by Mitsubishi’s own root cause analysis, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] T. 97, 386. Despite the fact that DEF contracted with Mitsubishi to assess whether the ST design conditions were compatible with the Bartow Plant’s proposed design configuration, Mitsubishi did not identify [REDACTED] as a potential problem at the Bartow Plant. Under these circumstances, comparing the ST with other Mitsubishi facilities is not beneficial to the prudence analysis at hand.

It is more constructive to compare the blade failures that occurred at the ST during Period 1 (when the ST was operated above 420 MW) with the blade failures that occurred at the ST during Periods 2 through 5 (when the ST was operated below 420 MW). This comparison reveals that the L-0 blades may have failed when DEF was operating the ST above 420 MW but unequivocally suffered damage on four separate occasions when DEF was operating the ST below 420 MW. Indeed, the RO notes that it is not possible to determine when the damage occurred in period 1, and thus it is impossible to say how the unit was being operated at the time of damage; the RO mistakenly concludes that “the exact moment of damage is beside the point”⁸ because it fails to account for cumulative wear to the machine. As a matter of law and regulatory policy, the ALJ’s conclusion must be wrong – if the damage to the unit occurred prior to any alleged imprudence,⁹ DEF cannot be held responsible for the consequences of the damage. It is as or more reasonable to conclude, therefore, that DEF’s determination that the L-0 blade failures resulted from [REDACTED] [REDACTED] is supported by a preponderance of evidence that the blades failed during prudent operation of the ST.

DEF takes further exception to the ALJ’s conclusion in paragraph 111 that DEF operated the ST consistently beyond its capacity. As explained in DEF’s exception to paragraph 110 above, the operating parameters provided by Mitsubishi for the ST were parameters common to steam turbines, including steam pressures and operating temperatures. T. 346, 377-378. DEF complied with these operating parameters. T. 272, 284, 346, 377-378. Mitsubishi provided DEF with no other operating parameters or capacities for the ST. It is, thus, as or more reasonable to conclude

⁸ See RO, at fn. 11 (“DEF made much of the fact that it could not be said precisely when during Period 1 the damage to the blades occurred, point tout that there was a 50-50 chance that the blades were damaged when the turbine was operating below 420MW. This argument fails to consider the cumulative wear caused by running the unit in excess of its capacity half of the time. The exact moment the damage occurred is beside the point.”).

⁹ Again, DEF disputes that operation of a generation unit above nameplate capacity, but within all OEM provided operating parameters is imprudent or that the nameplate capacity is an operating parameter.

that DEF prudently operated the ST within each of the operating parameters provided by Mitsubishi.

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DEF takes exception to the ALJ's conclusion in paragraph 112 that Mitsubishi attributed the blade failure during Period 1 to [REDACTED]. In fact, in its root cause analysis ("RCA") dated September 22, 2017, Mitsubishi determined that [REDACTED]

[REDACTED] (underscoring added) Jt. Ex. 82, p. 12 of 35. It is undisputed that DEF operated the ST below 420 MW during Periods 2 through 5. Jt. Ex. 80, P. 5; T. 285, 347-350, 352, 380. Because DEF always operated the ST below 420 MW during Periods 2 through 5 and the L-0 blades, nevertheless, suffered damage during each of those periods, it is more reasonable to conclude that the [REDACTED] that ultimately damaged the L-0 blades during Period 1 was not the result of DEF's operation of the ST above 420 MW, but was instead caused by L-0 blades that were not [REDACTED]

[REDACTED] by the Bartow Plant. T. 97, 386; Jt. Ex. 83. If the ST's manufacturer was not able anticipate that damage to the L-0 blades would result from operating the ST in accordance with the manufacturer's operating parameters, it would be unreasonable and contrary to the established prudence standard to expect DEF to have anticipated this. It is, therefore, as or more reasonable to conclude that the damage to the L-0 blades that occurred during Period 1 was the combined result of [REDACTED]

Exception to RO ¶ 113

DEF takes exception to the ALJ's conclusion in paragraph 113 that it would have been prudent for DEF to consult with Mitsubishi about the ability of the ST to operate above 420 MW

and above steam flows anticipated in the original design for the ST. With respect to steam flows within the low pressure turbine where the L-0 blades are located, it is important to note that Mitsubishi provided DEF [REDACTED] T. 377-378. As such, it would be as or more reasonable to conclude that prudence did not require DEF to consult with Mitsubishi in connection with steam flow limits within the low-pressure turbine during Period 1 operation of the ST. As indicated above, the output of a steam turbine is not an “operating parameter” provided by a manufacturer; rather the output is a product that follows from operation within the manufacturer-provided parameters. T. 140-143, 281-282, 284. As also indicated above, Mitsubishi understood that DEF intended to operate the Bartow Plant in a configuration that would generate in excess of 420 MW. T. 42, 135-136, 147-148, 213-215, 234, 258, 278, 356. Due to this, it is as or more reasonable to conclude that prudence did not require DEF to consult with Mitsubishi before operating the ST within the operating parameters supplied by Mitsubishi.

Exception to RO ¶ 114

DEF takes exception to the ALJ’s conclusion in paragraph 114 that DEF failed to satisfy its burden of showing its actions in operating the ST during Period 1 did not cause or contribute significantly to the vibrations that repeatedly damaged the L-0 blades. DEF operated the ST during Periods 1 through 5 in accordance with the manufacturer’s operating parameters. T. 346, 377-378. DEF’s actions and decisions in operating the ST within Mitsubishi’s operating parameters were prudent. Consequently, it is as or more reasonable to conclude that DEF’s actions in operating the ST in Period 1 did not cause or contribute significantly to the L-0 blade damage that occurred during Periods 1 through 5. In addition, it appears that the ALJ, by stating that DEF failed its burden to show that its actions did NOT cause the damage, is imposing an impossible standard of proving a negative. A utility does not have the burden to prove that something did not occur; such a requirement would be nearly impossible to meet. Rather, DEF’s burden in this case was to show

that it acted as a reasonable utility manager would, given the facts known or reasonably knowable at the time, and without the benefit of hindsight review. Under that standard, even assuming that nameplate capacity was some sort of operational condition (which is not the case), the more appropriate interpretation of the facts determined in the case is that, because there was damage to the blades even when operating below 420 MW in later periods, DEF's actions in operating the unit such that the output was higher than 420 MW were prudent and not the cause of the damage.

Exception to RO ¶ 119

DEF takes exception to the ALJ's conclusion in paragraph 119 that it is not speculative to state that the events of Periods 2 through 5 were precipitated by DEF's actions during Period 1. It is undisputed that DEF prudently operated the ST during Periods 2 through 5. T. 347-350. It is also not disputed that there was no residual damage to any component within the ST following Period 1. T. 103-105. In fact, the only damage that resulted from Period 1 operation of the ST was to the L-0 blades, [REDACTED] at the conclusion of Period 1. Jt. Ex. 80, p. 5; T. 148, 150-151, 330. Consequently, there is no causal link between the Period 1 operation of the ST and the damage experienced by the L-0 blades during subsequent periods. Such a groundless contention cannot form the basis for denying a utility's fuel cost recovery. *In Re: Fuel & Purchased Power Cost Recovery Clause with Generation Performance Incentive Factor (Crystal River 3 1989 Outage)*, 91 FPSC 12:165, *12 (Dec. 9, 1991).

Since there is no dispute that DEF prudently operated the ST during Periods 2 through 5 and since it is also undisputed that there was no residual damage to the ST following Period 1 operation, it is as or more reasonable to conclude that the damage to the L-0 blades that occurred during Periods 2 through 5 was not precipitated by DEF's operation of the ST during Period 1.¹⁰

¹⁰ Even if one were to assume DEF's operation of the ST above 420 MW during Period 1 was imprudent, if such operation did not cause the Period 5 outage, then it makes no difference whether DEF was imprudent in its operation

To conclude, as the ALJ does, that DEF should be held responsible for the forced outage that occurred during Period 5 – despite any direct causal link between DEF’s operation of the ST during Period 1 and the Period 5 outage – would set a dangerous precedent that would discourage utility operators from continuing to operate a power plant that may have been imprudently operated at some point for fear that any subsequent forced outage experienced by the power plant could be attributed to the earlier imprudence, regardless of how remote in time that earlier imprudence may have been.

Exception to RO ¶ 120

DEF takes exception to the ALJ’s conclusion in paragraph 120 that it would not be appropriate to assign the cost of the February 2017 forced outage to the consumers. It is as or more reasonable to conclude that where, as here, a utility operates a power plant within the manufacturer’s express operating parameters and does not know, or have reason to know, that such operation could result in a forced outage of the power plant, the utility should not be forced to bear the resulting replacement power costs.

Exception to RO ¶ 121

For the reasons explained above in its exceptions to RO ¶ 110, 111 and 113, DEF takes exception to the ALJ’s conclusion in paragraph 121 that DEF did not exercise reasonable care in operating the ST and should have sought the cooperation of Mitsubishi prior to operating the ST above 420 MW. It is as or more reasonable to conclude that DEF was prudent in its decisions and actions leading up to, and in restoring the Bartow Plant to service after, the Bartow Plant’s February 2017 forced outage and was not required to consult with Mitsubishi prior to operating the ST above 420 MW. There is also no record evidence to demonstrate that consulting with Mitsubishi prior to

of the ST during portions of Period 1 because the replacement power costs at issue could not be said to be a result of the Company’s mismanagement. See *Fla. Power Corp. v. Cresse*, 413 So. 2d 1187, 1190-1191 (Fla. 1982).

operating the ST above 420 MW would have resulted in any change in events.

Exception to RO ¶ 122

DEF takes exception to the ALJ's conclusion in paragraph 122 that DEF must refund power costs to DEF's customers. For the reasons explained above, DEF was prudent in its decisions and actions leading up to, and in restoring the Bartow Plant to service after, the Bartow Plant's February 2017 forced outage. Consequently, it is as or more reasonable to conclude that DEF is not required to refund power costs to its customers.

Exception to RO ¶ 123

For the reasons set forth in its exception to the ALJ's conclusion in paragraph 110, DEF takes exception to the ALJ's conclusion in paragraph 123 that DEF failed to show that it operated the ST prudently during Period 1. It is as or more reasonable to conclude that DEF carried its burden to show that it prudently operated the ST during Period 1 within each of the operating parameters provided by Mitsubishi.

DEF takes further exception to the ALJ's conclusion in paragraph 123 that DEF failed to meet its burden of showing that the Period 5 blade damage and the resulting replacement power costs were not the consequence of DEF's operation of the ST during Period 1. Because DEF proved by a preponderance of evidence that its operation of the ST during Period 1 was prudent and because it is undisputed that DEF's operation of the ST during Periods 2 through 5 was also prudent, it is as or more reasonable to conclude that the Period 5 blade damage and resulting replacement power costs were not the consequence of DEF's operation of the ST during Period 1.

Exception to RO ¶ 124

DEF takes exception to the ALJ's conclusions in paragraph 124 that the purchase of replacement power for the 40 MW loss caused by installation of the pressure plate was a consequence of DEF's failure to prudently operate the ST during Period 1. Because DEF proved

by a preponderance of evidence that its operation of the ST during Period 1 was prudent and because it is undisputed that DEF's operation of the ST during Periods 2 through 5 was also prudent, it is as or more reasonable to conclude that the installation of the pressure plate was not the consequence of DEF's operation of the ST during Period 1.

DEF takes further exception to the ALJ's conclusion in paragraph 124 that DEF should be required to refund replacement power costs related to the installation of the pressure plate. For the reasons explained above, DEF was prudent in its decisions and actions leading up to, and in restoring the Bartow Plant to service after, the Bartow Plant's February 2017 forced outage. Consequently, it is as or more reasonable to conclude that DEF is not required to refund power costs to its customers.

Exception to RO ¶ 125

DEF takes exception to the ALJ's conclusions in paragraph 125 that DEF was imprudent in its operation of the ST during Period 1 and, consequently, should be required to refund \$16,116,782 to its customers. For the reasons discussed at length above, it is as or more reasonable to conclude that DEF operated the ST prudently at all times relevant to the replacement power costs and is, therefore, not required to refund any amount to its customers.

CONCLUSION

As detailed above, the above-referenced conclusions of law recommended by the Administrative Law Judge are inconsistent with the standard of prudence delineated in this Commission's precedent as well as the Commission's overriding policy considerations regarding public utilities in Florida. Adoption of the ALJ's conclusions would send negative operational signals to the state's utilities; specifically, adoption of the RO would signal that utilities should not

strive to maximize the efficient output of generating units, which, contrary to logic and economic principles, would result in limiting operations of the most efficient and economic sources of generation in favor of less efficient, less economic, and less environmentally friendly sources of generation (e.g., oil-fired peaker units). Moreover, it would send a signal to all utilities that, regardless of compliance with all industry-recognized operational parameters, they may still be found imprudent based on failure to comply with a later-established operational parameter (unrecognized at the time); this would upend the well-established prudence standard and subject all utilities to increased risk and increased costs which are eventually borne by customers. This Commission should reject these conclusions.

Respectfully submitted this 12th day of May 2020.

/s/ Matthew R. Bernier

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DANIEL HERNANDEZ

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Exhibit C**DUKE ENERGY FLORIDA
Confidentiality Justification Matrix**

DOCUMENT/RESPONSES	PAGE/LINE	JUSTIFICATION
DEF'S Exceptions to the 2020 Recommended Order from the State of Florida Division of Administrative Hearings	<p><u>Exception to RO ¶ 110</u></p> <p><u>Page 2:</u> The information after “MW and that DEF” and before “after the initial blade failure” in its entirety</p> <p><u>Page 3:</u> The information after “a power factor exceeding” and before “which would result in” in its entirety</p> <p>The information after “failure during Period 1 that” and before “T. 260. DEF operated the ST” in its entirety</p> <p>The information after “in accordance with” and before “but asked Mitsubishi” in its entirety</p> <p>The information after “anything could be done” and before “during Period 1.” in its entirety</p> <p>The information after “In response, Mitsubishi” and before “T. 152, 277. Mitsubishi” in its entirety</p> <p>The information after “determine it was necessary” and before “Significantly, Mitsubishi did not” in its entirety</p>	<p>§366.093(3)(c), F.S.</p> <p>The document in question contains confidential information, contractual information, or information provided by a third party that DEF is obligated to keep confidential, the disclosure of which would harm its competitive business interests</p>

	<p>The information after “MHPS surmised that” and before “T. 97, 386.” in its entirety</p> <p>The information after “the fact that Mitsubishi” and before “makes plain that” in its entirety</p> <p>The information after “operating above 420 MW” and before “In the utility industry” in its entirety</p> <p><u>Page 4:</u> The information after “the limit because it (1)” and before “and (2) requested that” in its entirety</p> <p>The information after “requested that Mitsubishi” and before “This conclusion is nonsensical” in its entirety</p> <p><u>Page 5:</u> The information after “however, is that” and before “the blades still suffered” in its entirety</p> <p><u>Exception to RO ¶ 111</u> The information after “failures were the result of” and before “is belied by the fact” in its entirety</p> <p>The information after “by the fact that” and before “As reflected by</p>	
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	<p>Mitsubishi's own" in its entirety</p> <p>The information after "Mitsubishi's own root cause analysis" and before "T. 97, 386. Despite the fact that" in its entirety</p> <p>The information after "Mitsubishi did not identify" and before "as a potential problem" in its entirety</p> <p><u>Page 6:</u> The information after "L-0 blade failures resulted from" and before "is supported by a preponderance" in its entirety</p> <p><u>Exception to RO ¶ 112</u> The information after "failure during Period 1 to" and before "In fact, in its root cause analysis" in its entirety</p> <p>The information after "Mitsubishi determined that" and before "(underscoring added) It. Ex. 82, p. 12 of 35." in its entirety</p> <p>The information after "reasonable to conclude that the" and before "that ultimately damaged the" in its entirety</p> <p>The information after</p>	
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	<p>“instead caused by L-0 blades that were not” and before “by the Bartow Plant.” in its entirety</p> <p>The information after “Period 1 was the combined result of” and before “Exception to RO ¶ 113” in its entirety</p> <p><u>Exception to RO ¶ 113</u> <u>Page 8:</u> The information after “that Mitsubishi provided DEF” and before “T. 377-378. As such” in its entirety</p> <p><u>Exception to RO ¶ 119</u> <u>Page 9:</u> The information after “was to the L-0 blades” and before “at the conclusion of Period 1” in its entirety</p>	
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Exhibit D

AFFIDAVIT OF JEFFREY SWARTZ

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
Clause with generating performance incentive
Factor

Docket No. 20200001-EI

Filed: June 02, 2020

**AFFIDAVIT OF JEFFREY SWARTZ IN SUPPORT OF
DUKE ENERGY FLORIDA'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

STATE OF FLORIDA

COUNTY OF PINELLAS

BEFORE ME, the undersigned authority duly authorized to administer oaths, personally appeared Jeffrey Swartz, who being first duly sworn, on oath deposes and says that:

1. My name is Jeffrey Swartz. I am over the age of 18 years old and I have been authorized by Duke Energy Florida (hereinafter "DEF" or the "Company") to give this affidavit in the above-styled proceeding on DEF's behalf and in support of DEF's Request for Confidential Classification (the "Request"). The facts attested to in my affidavit are based upon my personal knowledge.

2. I am the Vice President of Florida Generation. I am responsible for the overall leadership and strategic direction of DEF's power generation fleet. My major duties and responsibilities include strategic and tactical planning to operate and maintain DEF's non-nuclear generation fleet; generation fleet project and additions recommendations; major maintenance programs; outage and project management; retirement of generation facilities; asset allocation; workforce planning and staffing; organizational alignment and design; continuous

business improvements; retention and inclusion; succession planning; and oversight of hundreds of employees and hundreds of millions of dollars in assets and capital and operating budgets.

3. DEF is seeking confidential classification for certain information provided in DEF's Exceptions to the Administrative Law Judge's ("ALJ") Recommended Order dated April 27, 2020. The confidential information at issue is contained in confidential Exhibit A to DEF's Request and is outlined in DEF's Justification Matrix that is attached to DEF's Request as Exhibit C. DEF is requesting confidential classification of this information because it contains confidential information, contractual information, or information provided by a third party that DEF is obligated to keep confidential, the disclosure of which would harm its competitive business interests.

4. In order to contract with third-party vendors and Original Equipment Manufacturers on favorable terms, DEF must keep contractual terms and third-party proprietary information confidential. The disclosure of which would be to the detriment of DEF and its customers. DEF takes affirmative steps to prevent the disclosure of this information to the public, as well as limits its dissemination within the Company to those employees with a need to access the information to provide their job responsibilities. Absent such measures, third-party vendors would run the risk that sensitive business information that they provided would be made available to the public and, as a result, end up in possession of potential competitors. Faced with that risk, persons or companies who would otherwise contract with DEF might decide not to do so if DEF did not keep specific information confidential. Without DEF's measures to maintain the confidentiality of sensitive terms in contracts, the Company's efforts to obtain competitive contracts could be undermined.

5. Additionally, the disclosure of confidential information provided by a third party could adversely impact DEF's competitive business interests. If such information was disclosed to DEF's competitors, DEF's efforts to obtain competitive contracts that add economic value to both DEF and its customers could be undermined.

6. Upon receipt of confidential information from third-party vendors, and with its own confidential information, strict procedures are established and followed to maintain the confidentiality of the terms of the documents and information provided, including restricting access to those persons who need the information to assist the Company. At no time since receiving the contracts and information in question has the Company publicly disclosed that information. The Company has treated and continues to treat the information and contracts at issue as confidential.

7. This concludes my affidavit.

Further affiant sayeth not.

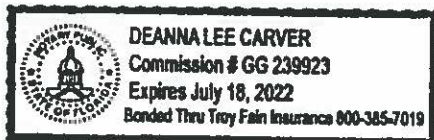
Dated the 28th day of May, 2020.

Jeffrey Swartz
(Signature)
Jeffrey Swartz
Vice President – Generation Florida

THE FOREGOING INSTRUMENT was sworn to and subscribed before me this ___ day of May, 2020 by Jeffrey Swartz. He is personally known to me or has produced his ___ driver's license, or his ___ as identification.

Deanna Lee Carver
(Signature)
Deanna Lee Carver
(Printed Name)

(AFFIX NOTARIAL SEAL)



NOTARY PUBLIC, STATE OF FL
July 18, 2022
(Commission Expiration Date)
(Serial Number, If Any)



Matthew R. Bernier
ASSOCIATE GENERAL COUNSEL

June 02, 2020

VIA OVERNIGHT MAIL

Adam J. Teitzman, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: *Fuel and purchased power cost recovery clause with generating performance
incentive Factor; Docket No. 20200001-EI*

Dear Mr. Teitzman:

On June 02, 2020, Duke Energy Florida, LLC ("DEF") electronically filed its Request for Confidential Classification in connection with certain information provided in DEF's Exceptions to the Administrative Law Judge's ("ALJ") Recommended Order dated April 27, 2020, filed in the above-referenced matter. As referenced in the Request for Confidential Classification, enclosed with this cover letter is DEF's confidential Exhibit A (in a separate sealed envelope) that accompanies the above referenced filing.

Thank you for your assistance in this matter. Please feel free to call me at (850) 521-1428 should you have any questions concerning this filing.

Respectfully,

/s/ Matthew R. Bernier

Matthew R. Bernier

MRB/cmw
Enclosures

RECEIVED-FPSC
2020 JUN -2 PM 12:17
COMMISSION
CLERK



Matthew R. Bernier
ASSOCIATE GENERAL COUNSEL

June 2, 2020

VIA ELECTRONIC FILING

Adam J. Teitzman, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: *Fuel and purchased power cost recovery clause with generating performance
incentive factor*; Docket No. 20200001-EI

Dear Mr. Teitzman:

Duke Energy Florida, LLC, ("DEF") hereby gives notice of serving the verified Declaration of Jeffrey Swartz in support of DEF's Request for Confidential Classification for certain information provided in the 2020 Recommended Order from the State of Florida Division of Administrative Hearings, where the final hearing was conducted on February 4-5, 2020 (Document No. 02631-2020), via electronic mail to the parties of record this 2nd day of June, 2020.

Respectfully,

/s/ Matthew R. Bernier

Matthew R. Bernier

MRB/cmw/cmk
Enclosure

cc: Parties of Record

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
Clause with generating performance incentive
Factor

Docket No. 20200001-EI

Filed: May 18, 2020

**AFFIDAVIT OF JEFFREY SWARTZ IN SUPPORT OF
DUKE ENERGY FLORIDA'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

STATE OF FLORIDA

COUNTY OF PINELLAS

BEFORE ME, the undersigned authority duly authorized to administer oaths, personally appeared Jeffrey Swartz, who being first duly sworn, on oath deposes and says that:

1. My name is Jeffrey Swartz. I am over the age of 18 years old and I have been authorized by Duke Energy Florida (hereinafter "DEF" or the "Company") to give this affidavit in the above-styled proceeding on DEF's behalf and in support of DEF's Request for Confidential Classification (the "Request"). The facts attested to in my affidavit are based upon my personal knowledge.

2. I am the Vice President of Florida Generation. I am responsible for the overall leadership and strategic direction of DEF's power generation fleet. My major duties and responsibilities include strategic and tactical planning to operate and maintain DEF's non-nuclear generation fleet; generation fleet project and additions recommendations; major maintenance programs; outage and project management; retirement of generation facilities; asset allocation; workforce planning and staffing; organizational alignment and design; continuous

business improvements; retention and inclusion; succession planning; and oversight of hundreds of employees and hundreds of millions of dollars in assets and capital and operating budgets.

3. DEF is seeking confidential classification for certain information contained in the 2020 Recommended Order from the State of Florida Division of Administrative Hearings, where the final hearing was conducted on February 4-5, 2020. The confidential information at issue is contained in confidential Exhibit A to DEF's Request and is outlined in DEF's Justification Matrix that is attached to DEF's Request as Exhibit C. DEF is requesting confidential classification of this information because it contains confidential information, contractual information, or information provided by a third party that DEF is obligated to keep confidential, the disclosure of which would harm its competitive business interests.

4. In order to contract with third-party vendors and Original Equipment Manufacturers on favorable terms, DEF must keep contractual terms and third-party proprietary information confidential. The disclosure of which would be to the detriment of DEF and its customers. DEF takes affirmative steps to prevent the disclosure of this information to the public, as well as limits its dissemination within the Company to those employees with a need to access the information to provide their job responsibilities. Absent such measures, third-party vendors would run the risk that sensitive business information that they provided would be made available to the public and, as a result, end up in possession of potential competitors. Faced with that risk, persons or companies who would otherwise contract with DEF might decide not to do so if DEF did not keep specific information confidential. Without DEF's measures to maintain the confidentiality of sensitive terms in contracts, the Company's efforts to obtain competitive contracts could be undermined.

5. Additionally, the disclosure of confidential information provided by a third party could adversely impact DEF's competitive business interests. If such information was disclosed to DEF's competitors, DEF's efforts to obtain competitive contracts that add economic value to both DEF and its customers could be undermined.

6. Upon receipt of confidential information from third-party vendors, and with its own confidential information, strict procedures are established and followed to maintain the confidentiality of the terms of the documents and information provided, including restricting access to those persons who need the information to assist the Company. At no time since receiving the contracts and information in question has the Company publicly disclosed that information. The Company has treated and continues to treat the information and contracts at issue as confidential.

7. This concludes my affidavit.

Further affiant sayeth not.

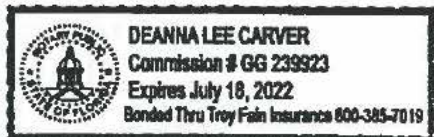
Dated the 28th day of May, 2020.

JD Swartz
(Signature)
Jeffrey Swartz
Vice President – Generation Florida

THE FOREGOING INSTRUMENT was sworn to and subscribed before me this 28th day of May, 2020 by Jeffrey Swartz. He is personally known to me or has produced his driver's license, or his as identification.

Deanna Lee Carver
(Signature)
Deanna Lee Carver
(Printed Name)
NOTARY PUBLIC, STATE OF FL
July 18, 2022
(Commission Expiration Date)
(Serial Number, If Any)

(AFFIX NOTARIAL SEAL)



State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: June 5, 2020

TO: Division of Accounting and Finance, Office of Primary Responsibility

FROM: OFFICE OF COMMISSION CLERK

RE: CONFIDENTIALITY OF CERTAIN INFORMATION

DOCKET NOS: 20200001-EI DOCUMENT NO: 02889-2020

DESCRIPTION: Duke Energy (Bernier) - (CONFIDENTIAL) Certain information provided in exceptions to Administrative Law Judge's Recommended Order dated 4/27/20, Exh A [to request for confidential classification (DN 02887-2020)].

SOURCE: Duke Energy Florida, LLC

The above confidential material was filed along with a request for extension of confidential classification. Please complete the following form by checking all applicable information and forward it to the attorney assigned to the docket, along with a brief memorandum supporting your recommendation.

- ☒ The document(s) is (are), in fact, what the utility asserts it (them) to be.
- ☒ The utility has provided enough details to perform a reasoned analysis of its request.
- ☐ The material has been received incident to an inquiry.
- ☒ The material is confidential business information because it includes:
- ☐ (a) Trade secrets;
 - ☐ (b) Internal auditing controls and reports of internal auditors;
 - ☐ (c) Security measures, systems, or procedures;
 - ☒ (d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms;
 - ☒ (e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of information;
 - ☐ (f) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities;
- ☒ The material appears to be confidential in nature and harm to the company or its ratepayers will result from public disclosure.
- ☐ The material appears not to be confidential in nature.
- ☐ The material is a periodic or recurring filing and each filing contains confidential information.

This response was prepared by /s/Devlin Higgins on 6.5.20, a copy of which has been sent to the Office of Commission Clerk and the Office of General Counsel.

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: June 5, 2020

TO: Suzanne S. Brownless, Special Counsel, Office of the General Counsel

FROM: Devlin Higgins, Public Utility Analyst IV, Division of Accounting & Finance

RE: CONFIDENTIALITY OF CERTAIN INFORMATION

DOCKET NO: 20200001-EI DOCUMENT Nos: 02889-2020

DESCRIPTION: Duke Energy (Bernier) - (CONFIDENTIAL) Certain information provided in exceptions to Administrative Law Judge's Recommended Order dated 4/27/20, Exh A [to request for confidential classification (DN 02887-2020)].

SOURCE: Duke Energy Florida

Pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code, Duke Energy Florida (DEF or Company) requests confidential classification of certain information provided in Exceptions to the Recommended Order (RO) of Administrative Law Judge with the Division of Administrative Hearings (DOAH).

Due to concerns regarding the maintenance of confidentiality with respect to the information subject to this request, the Florida Public Service Commission by Order No. PSC-2019-0484-FOF-EI, and Document No. 10846-2019, sent this matter for hearing to the Florida Division of Administrative Hearings.¹

The Company is claiming confidentiality of its filing under Section 366.093(3)(d), F.S., and Section 366.093(3)(e), F.S. Per the Statute, propriety of confidential business information includes, but is not limited to: Subsection (d) "[i]nformation concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms," and Subsection (e) "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information."

¹Order No. PSC-2019-0484-FOF-EI, Issued November 18, 2019, Docket No. 20190001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.*

More specifically, the information at issue relates to claimed proprietary and confidential information regarding a third-party's (to DEF) component/equipment design and operation parameters. DEF asserts that if it cannot demonstrate to its third-party partners that the Company has the ability to protect those third-parties' confidential and proprietary business information, it will be less likely that DEF can secure contracts that benefit its customers.

Staff has previously reviewed the subject information as well as the Company's confidentiality request. It is staff's opinion that the information subject to this request meets the criteria for confidentiality contained in Section 366.093(3)(d), F.S. and Section 366.093(3)(e), F.S.



Matthew R. Bernier
ASSOCIATE GENERAL COUNSEL

June 11, 2020

VIA OVERNIGHT MAIL

Adam J. Teitzman, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: *Fuel and purchased power cost recovery clause with generating performance
incentive Factor; Docket No. 20200001-EI*

Dear Mr. Teitzman:

On June 11, 2020, Duke Energy Florida, LLC ("DEF") electronically filed its Request for Confidential Classification in connection with certain information provided in the Office Of Public Counsel, PCS Phosphate – White Springs, and The Florida Industrial Power Users Group Joint Response To DEF's Exceptions to the Administrative Law Judge's ("ALJ") Recommended Order dated April 27, 2020, filed in the above-referenced matter. As referenced in the Request for Confidential Classification, enclosed with this cover letter is DEF's confidential Exhibit A (in a separate sealed envelope) that accompanies the above referenced filing.

Thank you for your assistance in this matter. Please feel free to call me at (850) 521-1428 should you have any questions concerning this filing.

Respectfully,

/s/ Matthew R. Bernier

Matthew R. Bernier

MRB/cmw
Enclosures

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COMMISSION
CLERK



Matthew R. Bernier
ASSOCIATE GENERAL COUNSEL

June 11, 2020

VIA ELECTRONIC FILING

Adam J. Teitzman, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: *Fuel and purchased power cost recovery clause with generating performance
incentive factor; Docket No. 20200001-EI*

Dear Mr. Teitzman:

Please find enclosed for electronic filing on behalf of Duke Energy Florida, LLC ("DEF"), DEF's Request for Confidential Classification filed in connection with certain information provided in the Office Of Public Counsel, PCS Phosphate – White Springs, and The Florida Industrial Power Users Group Joint Response To DEF's Exceptions to the Administrative Law Judge's ("ALJ") Recommended Order dated April 27, 2020. The filing includes the following:

- DEF's Request for Confidential Classification
- Exhibit A (Slip Sheet for Confidential Documents)
- Exhibit B (two redacted copies)
- Exhibit C (Justification Matrix), and
- Exhibit D (affidavit of Jeffrey Swartz)

DEF's confidential Exhibit A that accompanies the above-referenced filing has been submitted under separate cover.

Thank you for your assistance in this matter. Please feel free to call me at (850) 521-1428 should you have any questions concerning this filing.

Respectfully,

/s/ Matthew R. Bernier
Matthew R. Bernier

MRB/cmw
Enclosures

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
Clause with generating performance incentive
Factor

Docket No. 20200001-EI

Filed: June 11, 2020

**DUKE ENERGY FLORIDA, LLC'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

Duke Energy Florida, LLC, (“DEF” or “Company”), pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), submits this Request for Confidential Classification filed in connection with certain information provided in the Office Of Public Counsel, PCS Phosphate – White Springs, and The Florida Industrial Power Users Group Joint Response to DEF’s Exceptions to the Administrative Law Judge’s (“ALJ”) Recommended Order dated April 27, 2020. This Request is timely. *See* Rule 25-22.006(3)(a)1, F.A.C. In support of this Request, DEF states:

The Intervenor’s Joint Response to DEF’s Exceptions to the ALJ Recommended Order dated April 27, 2020 contains “proprietary confidential business information” under § 366.093(3), Florida Statutes.

1. The following exhibits are included with this request:

(a) Sealed Composite Exhibit A is a package containing an unredacted copy of all the documents for which DEF seeks confidential treatment. In the unredacted version, the information asserted to be confidential is highlighted in yellow.

(b) Composite Exhibit B is a package containing two copies of redacted versions of the documents for which the Company requests confidential classification, or slip-

sheets for documents which are confidential in their entirety. The specific information for which confidential treatment is requested has been blocked out by opaque marker or other means.

(c) Exhibit C is a table which identifies the information for which DEF seeks confidential classification and the specific statutory bases for seeking confidential treatment.

(d) Exhibit D is an affidavit attesting to the confidential nature of information identified in this request.

2. As indicated in Exhibit C, the information for which DEF requests confidential classification is “proprietary confidential business information” within the meaning of § 366.093(3), F.S. DEF is requesting confidential classification of this information because it contains contractual information or information provided by a third party that DEF is obligated to keep confidential, the disclosure of which would harm its competitive business interest and ability to contract for goods or services on favorable terms. *See* §§ 366.093(3)(d) & (e), F.S.; Affidavit of Jeffrey Swartz at ¶¶ 3, 4 and 5. Accordingly, such information constitutes “proprietary confidential business information” which is exempt from disclosure under the Public Records Act pursuant to § 366.093(1), F.S.

3. In order to contract with third-party vendors and Original Equipment Manufacturers on favorable terms, DEF must keep contractual terms and third-party proprietary information confidential. The disclosure of which would be to the detriment of DEF and its customers. Additionally, the disclosure of confidential information provided by a third party could adversely impact DEF’s competitive business interests. If such information was disclosed to DEF’s competitors, DEF’s efforts to obtain competitive contracts that add economic value to both DEF and its customers could be undermined. *See* Affidavit of Swartz at ¶¶ 4 and 5. *Id.*

4. The information identified as Exhibit “A” is intended to be and is treated as confidential by the Company. *See* Affidavit of Swartz at ¶¶ 4 and 6. The information has not been disclosed to the public, and the Company and third-party vendors have treated and continue to treat this information as confidential. *Id.*

5. DEF requests that the information identified in Exhibit A be classified as “proprietary confidential business information” within the meaning of § 366.093(3), F.S., that the information remains confidential for a period of at least 18 months as provided in § 366.093(4) F.S., and that the information be returned as soon as it is no longer necessary for the Commission to conduct its business.

WHEREFORE, for the foregoing reasons, DEF respectfully requests that this Request for Confidential Classification be granted.

RESPECTFULLY SUBMITTED this 18th day of May, 2020.

/s/ Matthew R. Bernier

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail to the following this 11th day of June, 2020.

/s/ Matthew R. Bernier

Attorney

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Exhibit A

CONFIDENTIAL

(Slip Sheet)

Exhibit B
(Two Copies)

REDACTED

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased Power
Cost Recovery Clause with Generating
Performance Incentive Factor

Docket No. PSC-20190001-EI
DOAH Case No. 19-6022

**OFFICE OF PUBLIC COUNSEL, PCS PHOSPHATE – WHITE SPRINGS, AND
THE FLORIDA INDUSTRIAL POWER USERS GROUP JOINT
RESPONSE TO DUKE ENERGY FLORIDA, LLC'S
EXCEPTIONS TO RECOMMENDED ORDER**

The Office of Public Counsel, PCS Phosphate – White Springs, and the Florida Industrial Power Users Group, pursuant to section 120.57(1)(k), Florida Statutes (2020), and Rule 28-106.217, Florida Administrative Code, jointly respond to the Exceptions submitted by Duke Energy Florida, LLC (“DEF”) to the Recommended Order in the above-styled matter. This Response is being submitted confidentially only because it is required due to a claim of confidentiality DEF has made to the Commission on behalf of the original equipment manufacturer.

OVERVIEW

The Public Service Commission ("PSC" or "Commission") forwarded this matter to the Division of Administrative Hearings on November 8, 2019, and requested that an Administrative Law Judge ("ALJ") conduct a formal evidentiary hearing on the following issues of disputed material fact:

ISSUE IB: Was DEF prudent in its actions and decisions leading up to and in restoring the unit to service after the February 2017 forced outage at the Bartow plant, and if not, what action should the Commission take with respect to replacement power costs?

ISSUE 1C: Has DEF made prudent adjustments, if any are needed, to account for replacement power costs associated with any impacts related to the de-rating of the Bartow plant? If adjustments are needed and have not been made, what adjustment(s) should be made?

The Division of Administrative Hearings assigned an ALJ who conducted a formal evidentiary hearing on February 4 and 5, 2020. The parties collectively presented the live testimony of two expert witnesses, submitted extensive additional pre-filed testimony and 34 exhibits into evidence including a voluminous composite exhibit and other records. The official transcript of the final hearing is contained in three volumes, not including exhibits and additional pre-filed testimony admitted into evidence.

At the conclusion of the evidentiary hearing all parties, including the Commission, submitted detailed proposed recommended orders containing proposed findings of fact and conclusions of law. After duly considering the entirety of the record, applicable law, and the proposed recommended orders, the ALJ issued a detailed Recommended Order containing numerous Findings of Fact and Conclusions of Law, and recommending that the Commission enter a Final Order finding that:

Duke Energy Florida, LLC, failed to demonstrate that it acted prudently in operating its Bartow Unit 4 plant and in restoring the unit to service after the February 2017 forced outage, and that Duke Energy Florida, LLC, therefore may not recover, and thus should refund, the \$16,116,782 for replacement power costs resulting from the steam turbine outages from April 2017 through September 2019.

DEF submitted twelve exceptions to the Recommended Order. In spite of stating that it would “not relitigate those [factual] points ... nor ask this Commission to reweigh evidence,” each of DEF’s exceptions asks the Commission to reject findings of fact that, as demonstrated below, are supported by competent substantial evidence. The exceptions also ask the Commission to invade the exclusive province of the ALJ and make new findings of fact, often without citing to any portion of the record, and based on such new findings to overturn the ALJ's ultimate determination. For the reasons stated below, the Commission should reject each of the DEF exceptions and adopt the findings of the Recommended Order.

THE COMMISSION'S SCOPE OF AUTHORITY WHEN RULING ON EXCEPTIONS

The Commission has limited authority to reject or modify the ALJ's findings of fact and conclusions of law. Pursuant to section 120.57(1)(I), Florida Statutes,¹ the Commission may not reject or modify the ALJ's findings of fact unless the Commission "first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence, or that the proceedings on which the findings were based did not comply with essential requirements of law."

If the ALJ's findings of fact are supported by competent substantial evidence, the Commission cannot reject or modify them even to make alternate findings that are also supported by competent substantial evidence. *Kanter Real Estate, LLC v. Dep't of Env'tl. Prot.*, 267 So. 3d 483, 487–88 (Fla. 1st DCA 2019), *reh'g denied* (Mar. 19, 2019), *review dismissed sub nom. City of Miramar v. Kanter Real Estate, LLC*, SC19-639, 2019 WL 2428577 (Fla. June 11, 2019), citing *Lantz v. Smith*, 106 So. 3d 518, 521 (Fla. 1st DCA 2013).

Moreover, the Commission may not "reject a finding that is substantially one of fact simply by treating it as a legal conclusion," regardless of whether the finding is labeled a conclusion of law. *Gross v. Dep't of Health*, 819 So. 2d 997, 1005 (Fla. 5th DCA 2002); *Gordon v. State Comm'n on Ethics*, 609 So.2d 125, 127 (Fla. 4th DCA 1992); *Kanter Real Estate*, 267 So. 3d at 487-88, citing *Abrams v. Seminole Cty. Sch. Bd.*, 73 So. 3d 285, 294 (Fla. 5th DCA 2011). Similarly, a finding that is both a factual and legal conclusion cannot be rejected when there is substantial competent evidence to support the factual conclusion, and where the legal conclusion necessarily

¹ All statutory and rule references are to the 2019 versions, unless otherwise indicated. The Transcript of the final hearing was filed on February 24, 2020. Citation to the Transcript herein will be the witness's last name followed by the abbreviation "Tr." followed by the citation to the page.

follows. *Berger v. Dep't of Prof. Reg.*, 653 So. 2d 479, 480 (Fla. 3d DCA 1995); *Strickland v. Florida A&M Univ.*, 799 So. 2d 276, 279 (Fla. 1st DCA 2001); *Dunham v. Highlands County Sch. Bd.*, 652 So. 2d 894, 897 (Fla. 2nd DCA 1995).

It is the sole prerogative of the ALJ to consider the evidence presented, to resolve conflicts in the evidence, to judge the credibility of witnesses, to draw permissible inferences from the evidence, and to reach ultimate findings of fact based on the competent substantial evidence of record. *Ft. Myers Real Estate Holdings, LLC v. Dep't of Bus. & Prof'l Regulation*, 146 So. 3d 1175 (Fla. 1st DCA 2014), citing *Heifetz v. Dep't. of Bus. Reg.*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985).

"Competent substantial evidence" is "such relevant evidence as a reasonable mind would accept as adequate to support a conclusion." *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957). The Commission may reject an ALJ's findings of fact only where there is no competent substantial evidence from which the findings can reasonably be inferred. *Heifetz v. Dep't. of Bus. Reg.*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985); *Belleau v. Dep't of Environmental Protection*, 695 So.2d 1305, 1306 (Fla. 1st DCA 1997); *Strickland v. Florida A&M Univ.*, 799 So.2d at 278. Absent such an express and detailed finding, the Commission is bound to accept the ALJ's findings of fact. *See Southpointe Pharmacy v. Dep't of Health & Rehab. Serv.*, 596 So. 2d 106, 109 (Fla. 1st DCA 1992).

The Commission is not authorized to substitute its judgment for that of the ALJ by taking a different view of, or placing greater weight on the same evidence, reweighing the evidence, judging the credibility of witnesses, or otherwise interpreting the evidence to fit its desired conclusion. *Prysi v. Dep't of Health*, 823 So. 2d 823, 825 (Fla. 1st DCA 2002); *Strickland*, 799 So.2d at 279; *Schrimsher v. Sch. Bd. of Palm Beach County*, 694 So. 2d 856, 860 (Fla. 4th DCA

1997); *Heifetz*, 475 So.2d at 1281; *Wash & Dry Vending Co. v. Dep't of Bus. Reg.*, 429 So. 2d 790, 792 (Fla. 3rd DCA 1983).

The Commission may reject or modify a conclusion of law over which it has substantive jurisdiction, but must state with particularity its reasons for rejecting or modifying such conclusion of law, and make a finding that its substituted conclusion of law is as or more reasonable than that which was rejected or modified. Section 120.57(1)(l), Fla. Stat.; *Prysi*, 823 So. 2d at 825. Rejection or modification of a conclusion of law may not form the basis for rejection or modification of a finding of fact. Section 120.57(1)(l), Fla. Stat.

RESPONSE TO DEF EXCEPTIONS

RESPONSE TO DEF EXCEPTION NO. 1.

DEF excepts to Paragraph 110 of the Recommended Order, which is set forth verbatim below:

110. DEF failed to demonstrate by a preponderance of the evidence that its actions during Period 1 were prudent. DEF purchased an aftermarket steam turbine from Mitsubishi with the knowledge that it had been manufactured to the specifications of Tenaska with a design point of 420 MW of output. Mr. Swartz's testimony regarding the irrelevance of the 420 MW limitation was unpersuasive in light of the documentation that after the initial blade failure, DEF itself accepted the limitation and worked with Mitsubishi to find a way to increase the output of the turbine to [REDACTED]

DEF acknowledges that the ALJ set forth the correct legal standard for determining prudence as established by the Florida Supreme Court. *See* DEF Exceptions, footnote 7. DEF nevertheless mistakenly argues that the ALJ applied the incorrect legal standard in determining that DEF failed to demonstrate that it acted prudently during the period leading up to and in restoring the unit to service after the February 2017 forced outage at the Bartow plant. DEF suggests, without basis or explanation, that the ALJ relied on "hindsight" in determining that DEF's actions were imprudent.

As evidenced by the Recommended Order, however, and consistent with the appropriate standard of legal review, the ALJ expressly assessed all evidence presented relating to the conditions and circumstances that were known, or should have been known, by DEF *at the time DEF made the decision and took action* to repeatedly and extensively operate the steam turbine ("ST") in excess of 420 MW and when DEF *failed to take the action* it should have taken to consult with Mitsubishi.

In Paragraph 109 of the Recommended Order, the ALJ expressly states the legal standard applied in the Recommended Order:

109. The legal standard for determining whether replacement power costs are prudent is “what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or should [have] been known, *at the time the decision was made.*” *S. Alliance for Clean Energy v. Graham*, 113 So. 3d 742, 750 (Fla. 2013).

(Emphasis added). Contrary to DEF's suggestion, and as evidenced by the entirety of the record, the ALJ thoroughly considered evidence of the conditions and circumstances known, or that should have been known, to DEF *at the time the decisions were made*. The ALJ found, based on a detailed, systematic review of the competent substantial evidence of record, that DEF knew, or should have known, that its actions (including the failure to act) "*during period 1*" were imprudent.

DEF fails to provide any valid factual or legal basis for DEF's assertion that the ALJ improperly used “hindsight,” or “Monday morning quarterbacking,” in determining that DEF acted imprudently during Period 1. The determination of “what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or should have been known, *at the time the decision was made*” necessarily involves a review of prior actions and contemporaneous materials reflecting the conditions and circumstances that existed at the time the decision in question was made.

DEF does not dispute that the ALJ's findings of fact set forth in Paragraph 110 are supported by competent substantial evidence. Instead, DEF simply recasts its preferred version of the facts, which were duly considered and rejected by the ALJ.

The ALJ's determination that DEF acted imprudently is supported by numerous uncontested findings of fact set forth in the Recommended Order, each of which are supported by competent substantial evidence, including but not limited to:

- The Mitsubishi steam turbine was originally designed for Tenaska Power Equipment, LLC (“Tenaska”), to be used in a 3x1 combined cycle configuration with three M501 Type F combustion turbines connected to the steam turbine with a gross output of 420 MW of electricity. (Recommended Order, ¶ 14) (Polich, Tr. 305, 325, 329; Swartz, Tr. 42, 163, 212, 255; Ex. 80 at 2, 3; Ex. 111).
- The greater weight of the evidence establishes that the Mitsubishi steam turbine was designed to operate at 420 MW of output and that 420 MW was an operational limitation of the turbine. (Recommended Order, ¶ 33) (Polich, Tr. 303, 305, 325, 329, 330; Ex. 80 at 2; Ex. 108 at 2437-2561; Ex. 109 at 12432, 12438; Ex. 116 at 4, 21; Swartz, Tr. 42, 82-83; 127-28, 130-31, 137, 163, 212, 255; Ex. 111; Ex. 80 at 3).
- Mitsubishi concluded that the damage to the blades was caused by

██
██

[REDACTED] (Recommended Order, ¶ 37) (Ex 82 at 5; Ex. 73 at 3; Ex. 116 at 4).

- The [DEF RCA] working papers indicate that as late as October 15, 2016, DEF agreed that the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Recommended Order, ¶ 69) (Swartz, Tr. 90, 161-162, 82-83; Ex. 115 at 19; Ex. 116 at 4, 21; Ex. 109 at Bates 12432).

- OPC accurately states that the DEF working documents demonstrate that during the RCA process, before and after the Period 5 event, DEF consistently identified excessive steam flow in the LP turbine as one of the “most significant contributing factors” toward blade failure over the history of the steam turbine, [REDACTED]

[REDACTED] (Recommended Order, ¶ 71) (Swartz, Tr. 86-88, 112; Ex. 73 at 3; Ex. 115 at 23, 29, 39, 59, 67, 75, 87, 97, 109, 123, 137, 151, and 165; Ex. 73 at 3; Ex. 116 at 4).

- The Energy Information Administration of the U.S. Department of Energy defines "generator nameplate capacity" as the "maximum rated output of a generator, prime mover, or other electric power production equipment under specific conditions designated by the manufacturer." There was no dispute that 420 MW was the

"nameplate capacity" of the Mitsubishi steam turbine. (Recommended Order, ¶ 82) (Swartz, Tr. 224, 209-210; Ex. 111; Ex. 118).

- Given the lack of experience on either side, OPC contends that DEF should have consulted Mitsubishi before purchasing the steam turbine to ask whether Mitsubishi believed it was capable of an output in excess of its nameplate capacity of 420 MW. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Recommended Order, ¶ 86) (Polich, Tr. 308-309, 320-321, 365-366; Ex. 109 at 12438; Ex. 108 at 2461; Ex. 104 at 44; Ex. 72; Ex. 80 at 5; Swartz, Tr. 73, 108, 137).

- The evidence was clear that Mitsubishi did not contemplate DEF's operation of the steam turbine beyond the [REDACTED]

[REDACTED] The evidence was also clear that

DEF made no effort before the fact to notify Mitsubishi of its intended intensity of operation or to ask Mitsubishi whether it could safely exceed the [REDACTED] Mr. Swartz was unable to explain away this criticism and thus DEF failed to meet its burden of demonstrating that it prudently operated the Bartow Plant during the times relevant to this proceeding. (Recommended Order, ¶ 102) (Polich, Tr. 308-309, 320-321, 365-366; Ex. 109 at 12438; Ex. 108 at 2461; Ex. 104 at 44; Swartz, Tr. 73, 108, 137; Ex. 72; Ex. 80 at 5).

- DEF purchased an aftermarket steam turbine from Mitsubishi with knowledge that it had been manufactured to the specifications of Tenaska with a design point of 420 MW of output. (Recommended Order, ¶ 110) (Polich, Tr. 305, 325; Swartz, Tr. 212, 255).

Contrary to DEF's suggestion, the ALJ stated and applied the correct legal standard to the evidence of record pertaining to the facts and circumstances that existed *at the time that DEF made the decision and took action* to operate the Bartow steam turbine repeatedly and extensively in excess of 420 MW. The ALJ found, based on the competent substantial evidence of record, that the operational limit of the Bartow steam turbine was "420 MW based on the Mitsubishi design point and the expected maximum electrical output," and that DEF's decision and action to operate the ST repeatedly and extensively in excess of 420 MW, based on information that DEF knew, or should have known, was imprudent. The ALJ found, based on competent substantial evidence of record, that DEF should have consulted with Mitsubishi before DEF operated the ST above the design point of 420 MW. (Recommended Order, ¶ 102) (Polich, Tr. 308-309, 320-321, 365-366;

Ex. 109 at 12438; Ex. 108 at 2461; Ex. 104 at 44; Swartz, Tr. 73, 108, 137; Ex. 72; Ex. 80 at 5). The ALJ found that DEF presented no evidence that DEF consulted with Mitsubishi prior to doing so, and further found that DEF's expert "was unable to explain away this criticism." *Ibid.* The ALJ's findings of fact and competent substantial evidence of record support the ALJ's ultimate determination set forth in Paragraph 110 of the Recommended Order that DEF failed to carry its burden of proof to demonstrate that DEF acted prudently during the period in question.

The case cited by DEF, *Fla. Power Corp. v. Public Service Com'n*, 456 So. 2d 451, 452 (Fla. 1984), relating to the application of "hindsight" is inapposite and readily distinguishable on its facts. In *Fla. Power Corp.*, the Florida Supreme Court held that the Commission could not retroactively, i.e., "in hindsight," re-designate "non-safety-related" repair work as "safety-related," and thus the Commission could not retroactively apply the higher standard of care applicable to "safety-related work" when determining whether the work at issue was prudently performed. *See Fla. Power Corp.* 456 So. 2d at 451 ("Our review of the record indicated that the extended repair work involved at the time was not per se safety-related," thus "a safety-related standard" that involved "a very different risk and a much higher standard of care," could not be retroactively applied.); *See also Fla. Power Corp. v. Public Service Com'n*, 424 So. 2d 745, 747 (Fla. 1982) ("Our independent review of the record discloses that the particular task which resulted in the accident was but a small part of the extended repairs to the fuel transfer mechanism. The record further indicates that the repair work, per se, was not safety-related, and this was, in part, why the use of the test weight was not recognized as being safety-related."). In essence, the Supreme Court held that the Commission could not change the standard of care "rules of the game," namely whether a task was or was not "safety-related" at the time it was performed, when the action in

question was later reviewed. Here, nothing supports the notion that any "rules of the game" were changed while the ALJ considered the disputed facts of the case.

DEF goes on to extensively reargue and rehash arguments that DEF previously presented to the ALJ and that the ALJ rejected. DEF improperly urges the Commission to make alternative findings that contradict the findings made by the ALJ, which the Commission may not do. DEF also urges the Commission to make new findings that, upon examination, are not supported by any evidence of record. DEF makes the following assertion on page 3 of its Exceptions:

Before committing to purchase the ST, DEF contracted with Mitsubishi to assess whether the ST design conditions were compatible with the Bartow Plant's proposed 4x1 combined cycle design configuration. As part of this assessment, DEF informed Mitsubishi that DEF intended to operate the Bartow Plant and the ST in 4x1 configuration with a power factor exceeding [REDACTED] which would result in the generation of more than 420 MW. T. 42, 135-136, 147-148, 213-215, 234, 258, 278, 356.

A careful review of each of the pages cited by DEF fails to reveal any evidence remotely indicating that Mitsubishi had been informed that DEF intended to operate the ST above 420 MW. DEF presented no evidence at the final hearing to contest Mr. Polich's testimony that DEF did not inform Mitsubishi of its intent to operate the ST above 420 MW, much less that DEF intended to operate it at [REDACTED] (Polich, Tr. 329-330.)

DEF attempts to re-argue that "Mitsubishi believed the ST was capable of operating above 420 MW [REDACTED] The ALJ, however, found DEF's argument unpersuasive. See Recommended Order, Paragraphs 111, 112, 113, 114, 118, 119 and 121.

DEF further attempts to re-argue that "[i]n the utility industry, the nameplate rating is not regarded as an 'operating parameter,'" and that "the general standard followed in the industry is to operate steam turbines within operating parameters provided by the original equipment manufacturer while also striving to achieve the most efficiency for utility customers." The ALJ,

based on the entirety of the record, found DEF's arguments "unpersuasive" with respect to the prudence of DEF's decisions and actions during the period leading up to and in restoring the unit to service after the February 2017 forced outage at the Bartow plant.²

DEF next reargues that "DEF had appropriate operating parameters in place, and DEF properly followed these parameters," throughout Periods 1-5, and that the ALJ erred by viewing DEF's [REDACTED] of Mitsubishi's 420 MW operating parameter in Periods 2 - 5 as a concession that it was a "previous limitation." The ALJ, based on competent substantial evidence of record, concluded that DEF's actions after the first blade failures acknowledged and confirmed that the design point and operating limitation of the steam turbine was 420 MW. The competent substantial evidence relied on by the ALJ includes the [REDACTED] [REDACTED] provided by Mitsubishi. (Swartz, Tr. 90, 161-162, 82-83; Ex. 115 at 19; Ex. 116 at 4, 21; Ex. 109 at Bates 12432). As evidenced by the Recommended Order, the then-contemporaneous evidence of the 420 MW design limitation that was available in 2006-2008 and DEF's consistent and ready acknowledgement of that operational limit in 2012 was more persuasive to the ALJ than the testimony and arguments presented by DEF at the final hearing. The ALJ expressly found the testimony of DEF's expert witness on this point "unpersuasive." (Recommended Order, Paragraph 110). It is the sole province of the ALJ to determine and weigh

² The ALJ found that the concept of "nameplate" is but one of many indicia of the intended operational limit of the ST and, as set forth in the ALJ's findings of fact, that Mitsubishi clearly informed DEF of the limit of the ST through [REDACTED] [REDACTED]. The ALJ further found, based on competent substantial evidence of record, that DEF's operation of the ST for approximately half of the total 21,734 hours at 420 MW or above, with 2,973 of those hours *above* 420 MW in Period 1, was not an incidental exceedance of a number on a nameplate label, but instead was a failure to exercise reasonable care in operating the steam turbine in a configuration for which it was not designed. (Recommended Order, ¶ 35) (Swartz, Tr. 285, 137, 127-129, 130-131, 76-77, 82-83, 159-162, 169; Polich, Tr. 302-305, 330, 332; Ex. 115 at 19, 24; Ex. 116 at 4, 21; Ex. 108 at 2437-2561; Ex. 109 at Bates 12432-12439).

the credibility of witness testimony, and the Commission may not substitute its view of the evidence for that of the ALJ.

Finally, DEF suggests that the Commission should reject the ALJ's ultimate determination that DEF acted imprudently in this case, because the ALJ's determination of DEF's imprudence in this case "would also inhibit a utility's ability to maximize output for the benefit of its customers." DEF's assertion lacks merit. The ALJ's determination in this case is based on the evidence of record and is consistent with applicable law. The Recommended Order contains no findings of fact or conclusions of law that would inhibit a utility's ability or incentive to prudently maximize output for the benefit of its customers. The only thing a final order adopting the Recommended Order would inhibit or discourage is imprudent utility power plant operation and management, not prudently optimizing output.

Paragraph 110 of the Recommended Order applies the correct legal standard, is based on factual findings supported by competent substantial evidence and cannot be disturbed. DEF's exception to Paragraph 110 must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 2.

DEF excepts to Paragraph 111 of the Recommended Order, which is set forth verbatim below:

111. DEF's RCA concluded that the blade failures were caused by [REDACTED]
[REDACTED] This conclusion is belied by the fact that [REDACTED]
[REDACTED]
Mitsubishi cannot be faulted for [REDACTED] in a way that would allow an operator to run the turbine consistently beyond its capacity.

This paragraph of the Recommended Order contains factual findings that support the ALJ's ultimate conclusions of law. The Commission may not reject the findings of fact in Paragraph 111

unless there is no competent substantial evidence to support them. Similarly, a finding that is both a factual and a legal conclusion cannot be rejected when there is substantial competent evidence to support the factual conclusion and the legal conclusion necessarily follows. *Berger*, 653 So. 2d at 480; *Strickland*, 799 So. 2d at 279; *Dunham*, 652 So. 2d at 897.

The ALJ's findings of fact set forth in Paragraph 111 are supported by competent, substantial evidence and cannot be disturbed. (Swartz, Tr. 179; Ex. 82 at 5; Ex. 103 at 55; Ex. 104 at 14; Ex. 115 at 180). The ALJ is solely authorized to weigh and balance the evidence, determine the credibility of witnesses, and draw reasonable inferences from the evidence. *See Heifetz v. Dep't. of Bus. Reg.*, 475 So. 2d at 1281-2. DEF does not suggest any error of law, does not dispute that the findings of fact are supported by competent substantial evidence, and does not contend that the proceedings failed to comply with essential requirements of law. Instead, DEF simply re-argues the evidence of record and makes new arguments. Pursuant to section 120.57(1)(l), Florida Statutes, the Commission may not reweigh the evidence, consider "evidence" not of record, nor modify or reject an ALJ's factual finding when the finding is supported by competent substantial evidence of record. This is true even when the record may contain conflicting evidence, and when the Commission may disagree with the ALJ's view of the evidence. As noted by the court in *Heifetz*:

If, as is often the case, the evidence presented supports two inconsistent findings, it is the hearing officer's role to decide the issue one way or the other. The agency may not reject the hearing officer's finding unless there is no competent, substantial evidence from which the finding could reasonably be inferred. The agency is not authorized to weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion.

Finally, in its second Exception, DEF again re-argues the issue of the timing of when the damage occurred in Period 1; however, this issue is not addressed in Paragraph 111 of the Recommended Order. The findings of fact in Paragraph 111 of the Recommended Order are supported by competent, substantial evidence of record and may not be disturbed. (Swartz Tr. 108; 179; Ex. 80 at 6; Ex 82 at 5; Ex. 103 at 55; Ex. 104 at 14; Ex. 115 at 180). DEF's exception to Paragraph 111 must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 3.

DEF excepts to Paragraph 112 of the Recommended Order, which is set forth verbatim below:

112. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Paragraph 112 of the Recommended Order contains findings of fact that support the ALJ's conclusions of law. The Commission may not reject the findings of fact unless there is no competent substantial evidence of record to support them. The ALJ's findings of fact in Paragraph 112 are supported by competent substantial evidence of record, including:

- Mitsubishi prepared a root cause assessment, dated September 2017, in which it determined that [REDACTED]
[REDACTED]
[REDACTED] (Swartz, Tr. 100; Ex. 82 at 5-6).
- Mitsubishi concluded that [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Swartz, Tr. 111-12, 86-88; Ex 82 at 5; Ex. 73 at 3;

Ex. 115 at 23, 29, 39, 59, 67, 75, 123, 137, 153, 165, and 179).

DEF does not dispute that the ALJ's findings of fact are supported by competent substantial evidence. DEF nevertheless re-argues its version of the evidence as to the "root cause" of the blade failures, and urges the Commission to find facts that contradict the facts found by the ALJ. The ALJ's findings of fact and conclusions in Paragraph 112 of the Recommended Order are supported by competent substantial evidence of record and cannot be disturbed. DEF's exception to Paragraph 112 must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 4.

DEF excepts to Paragraph 113 of the Recommended Order, which is set forth verbatim below:

113. Mr. Polich persuasively argued that it would have been simple prudence for DEF to ask Mitsubishi about the ability of the turbine to operate continuously in excess of 420 MW output before actually operating it at those levels. DEF understood that the blades had been designed for the Tenaska 3x1 configuration and should have at least explored with Mitsubishi the wisdom of operating the steam turbine with steam flows in excess of those anticipated in the original design.

This paragraph of the Recommended Order contains factual findings that support the ALJ's conclusions. The Commission may not reject these findings of fact unless there is no competent substantial evidence to support them. DEF does not dispute that the findings of fact are supported by competent substantial evidence, nor proffer or support a different legal analysis or conclusion in its exception. Instead, DEF rehashes the evidence and urges the Commission to make new findings that contradict the findings made by the ALJ, arguing that its proposed new findings are

"as or more reasonable" than the findings made by the ALJ. Pursuant to 120.57(1)(I), Florida Statutes, the Commission may not substitute new findings of fact for those made by the ALJ even if the Commission views the proposed new findings "as or more reasonable" than those made by the ALJ. The legal standard for rejecting or modifying an ALJ's finding of fact is whether the ALJ's finding is supported by competent substantial evidence of record. In Paragraph 113 of the Recommended Order, the ALJ expressly finds the expert testimony of Mr. Polich credible and persuasive, and the testimony presented by DEF unpersuasive, with respect to the issue of whether DEF acted as a reasonable utility manager would have done in light of the conditions and circumstances that were known, or should have been known, at the time the decision was made. As noted above, the credibility of witnesses is wholly a factual determination within the sole province of the ALJ. *Strickland*, 799 So. 2d at 278 ("the weighing of evidence and judging of the credibility of witnesses by the Administrative Law Judge are solely the prerogative of the Administrative Law Judge as finder of fact.").

The ALJ determined, based on the competent, substantial evidence of record, that DEF failed to carry its burden of proof that it acted prudently during the period in question. (Swartz, Tr. 82-83, 116, 127-129, 130-131, 137; Polich, Tr. 308-309, 320-321; Ex. 105 at Bates 6875; Ex. 108 at 2437-2561; Ex. 109 at Bates 12432-12439; and Ex. 116 at 4 and 21).

The ALJ's findings of fact in Paragraph 113 of the Recommended Order are supported by competent substantial evidence of record and cannot be disturbed. DEF's exception to Paragraph 113 must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 5.

DEF excepts to Paragraph 114 of the Recommended Order, which is set forth verbatim below:

114. The record evidence demonstrated an [REDACTED] that vibrations associated with high energy loadings were the primary cause of the L-0 blade failures. DEF failed to satisfy its burden of showing its actions in operating the steam turbine in Period 1 did not cause or contribute significantly to the vibrations that repeatedly damaged the L-0 blades. To the contrary, the preponderance of the evidence pointed to DEF's operation of the steam turbine in Period 1 as the most plausible culprit.

Paragraph 114 of the Recommended Order summarizes the findings of fact that support the ALJ's ultimate determination. The Commission may not reject these factual portions of the paragraph unless there is no competent substantial evidence supporting them. DEF does not dispute that the findings of fact and conclusions in Paragraph 114 of the Recommended Order are supported by competent, substantial evidence, nor does DEF proffer or support a different legal analysis or conclusion in its exception. Instead, DEF simply offers the conclusory statement that it would be "as or more reasonable to conclude that DEF actions did not cause or contribute significantly to the L-0 blade damage that occurred during Periods 1 through 5." The Commission's scope of review is whether the findings of fact are supported by competent substantial evidence of record. The ALJ's findings of fact in Paragraph 114 are supported by competent substantial evidence of record. (Swartz, Tr. 42, 73, 108, 163, 121-122, 126, 127, 132, 137; Polich, Tr. 303-306, 329-330; Ex. 72; Ex. 80 at 2, 3, and 5; Ex. 108 at Bates 2461; Ex. 109 at Bates 12432-12439; Ex. 115 at 23, 29, 39, 59, 67, 75, 123, 137, 153, 165, and 179 and Ex. 116 at 4 and 21).

In its exception DEF asserts that the ALJ's findings of fact and conclusions of law imposed an "impossible standard of proving a negative" on DEF, as the party with the burden of proof. DEF's argument does not fairly reflect the ALJ's findings of fact and conclusions of law. The ALJ

correctly determined, and DEF does not dispute, that the utility carries the burden of proof to demonstrate the prudence of DEF's decisions and actions during the period leading up to and in restoring the unit to service after the February 2017 forced outage at the Bartow plant. The ALJ determined, based on the competent substantial evidence of record that DEF failed to carry its burden of proof to demonstrate that it acted prudently during the period in question. The ALJ found, based on the competent substantial evidence of record that DEF acted imprudently, and further found that DEF failed to rebut the evidence of its imprudence. The Recommended Order reflects that DEF failed to establish a prima facie case that it acted prudently and failed to provide evidence to rebut the persuasive evidence of its imprudence. The ALJ applied the correct legal standards with respect to the burden of proof and the determination of prudence. The ALJ's findings of fact set forth in Paragraph 114 of the Recommended Order are based on competent substantial evidence of record and may not be disturbed. DEF's exception to Paragraph 114 of the Recommended Order must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 6.

DEF excepts to Paragraph 119 of the Recommended Order, which is set forth verbatim below:

119. It is speculative to state that the original Period 1 L-0 blades would still be operating today had DEF observed the [REDACTED] of 420 MW. It is not speculative to state that the events of Periods 2 through 5 were precipitated by DEF's actions during Period 1. It is not possible to state what would have happened from 2012 to 2017 if the excessive loading had not occurred, but it is possible to state that events would not have been the same.

In its exception, DEF re-argues that there was no [REDACTED] to the ST following Period 1, and urges the Commission to reject the ALJ's finding of fact that "[i]t is not speculative to state that the events of Periods 2 through 5 were precipitated by DEF's actions during Period 1." DEF

asks the Commission to substitute a new finding that "the damage to the L-0 blades that occurred during Periods 2 through 5 was not precipitated by DEF's operation of the ST during Period 1." (DEF Exceptions, p. 9).

The findings and conclusions in Paragraph 119 of the Recommended Order summarize the ALJ's findings of fact in Paragraphs 84 and 89 of the Recommended Order that "[t]here would have been no Periods 2, 3, 4, or 5 but for DEF's actions during Period 1" and rejecting DEF's argument that DEF's operation of the unit at [REDACTED] bears no relation to the ultimate failure of the ST in Period 5. Indeed, in Paragraph 89 of the Recommended Order, the ALJ finds that:

DEF ran the unit beyond 420 MW without consulting Mitsubishi. Mr. Polich found it a tribute to the design of the [REDACTED] 40" L-0 blades that they did not suffer damage sooner than they did. The steam turbine operated from June 2009 until March 2012 before the blade damage was noted. It was impossible to state exactly when the blade damage occurred in Period 1, but Mr. Polich opined that the damage was most likely cumulative.

In footnote 4 of the Recommended Order, the ALJ further finds that:

DEF made much of the fact that it could not be said precisely when during Period 1 the damage to the blades occurred, pointing out that there was a 50-50 chance that the blades were damaged when the turbine was operating below 420 MW. This argument fails to consider the cumulative wear caused by running the unit in excess of its capacity half of the time. The exact moment the damage occurred is beside the point.

The ALJ's findings of fact are supported by competent substantial evidence of record, including the credible expert testimony of Mr. Polich relating to the cumulative operational effects on the Bartow facility. Moreover, as the finder of fact in a formal administrative proceeding, the ALJ is permitted to draw reasonable inferences from the competent substantial evidence in the record. *Amador v. Sch. Bd. of Monroe County*, 225 So. 3d 853, 858 (Fla. 3d DCA 2017) ("[w]here

reasonable people can differ about the facts, however, an agency is bound by the hearing officer's reasonable inferences based on the conflicting inferences arising from the evidence"), citing *Greseth v. Dep't of Health & Rehab. Servs.*, 573 So. 2d 1004, 1006–1007 (Fla. 4th DCA 1991).

The ALJ's findings in Paragraphs 84, 89, and 119 of the Recommended Order are supported by competent substantial evidence of record, including:

- If DEF had operated the steam turbine at the Bartow Unit 4 in accordance with the design output of 420 MW or less, there is no engineering basis to conclude that the original L-0 blades would not still be in operation today. (Polich, Tr. 308-309, 320-321).
- [REDACTED]
[REDACTED]
[REDACTED] (Polich, T. 304-309, 334, 352; Swartz, Tr. 86-88, 112; Ex. 73 at 3; Ex. 115 at 23, 29, 39, 59, 67, 75, 87, 97, 109, 123, 137, 151, and 165; Ex. 73 at 3; Ex. 116 at 4).
- [REDACTED]
[REDACTED] (Swartz, T. 108, 179; Ex. 103 at 55; Ex.80 at 6; Ex. 104 at 14; Ex. 115 at 180).
- The installation of the pressure plate and associated de-rate were due to improper operation above 420 megawatts in Period 1. (Polich, Tr. 361).
- A prudent utility manager, from both a warranty and a regulatory perspective, would have requested written verification from

Mitsubishi that the steam turbine could be safely operated above 420

MW of output. (Polich, Tr. 361-362; 304-309).

The ALJ's findings of fact and conclusions in Paragraph 119 are supported by competent substantial evidence of record and the Commission is not free to substitute new or alternative findings urged by DEF. Moreover, DEF had the burden of proof to demonstrate that it acted prudently and that the costs incurred were not the result of DEF's imprudent actions or inactions. To the contrary, DEF failed to carry that burden and prove its actions in operating the plant were prudent and it failed to prove that the damages were the result of prudent operations and thus should be recovered from ratepayers. DEF's exception to Paragraph 119 of the Recommended Order must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 7.

DEF excepts to Paragraph 120 of the Recommended Order, which is set forth verbatim below:

120. In his closing argument, counsel for White Springs summarized the equities of the situation very well:

You can drive a four-cylinder Ford Fiesta like a V8 Ferrari, but it's not quite the same thing. At 4,000 RPMs, in second gear, the Ferrari is already doing 60 and it's just warming up. The Ford Fiesta, however, will be moaning and begging you to slow down and shift gears. And that's kind of what we're talking about here.

It's conceded as fact that the root cause of the Bartow low pressure turbine problems is [REDACTED] caused repeatedly over time. The answer to the question is was this due to the way [DEF] ran the plant or is it due to a [REDACTED]? Well, the answer is both.

The fact is that [DEF] bought a steam turbine that was already built for a different configuration that was in storage, and then hooked it up to a configuration ... that it knew could produce much more steam than it needed. It had a generator that could produce more megawatts, so the limiting factor was the steam turbine.

On its own initiative, it decided to push more steam through the steam turbine to get more megawatts until it broke.

* * *

So from our perspective, [DEF] clearly was at fault for pushing excessive steam flow into the turbine in the first place. The repair which has been established ... may or may not work, but the early operation clearly impeded [DEF's] ability to simply claim that Mitsubishi was entirely at fault. And under those circumstances, it's not appropriate to assign the cost to the consumers.

In Paragraph 120 of the Recommended Order, the ALJ expresses agreement with counsel's summation of the "equities of the situation." As discussed in detail in the responses to DEF's Exceptions 1 – 6 above, the ALJ's numerous factual findings supporting the ALJ's ultimate determination that DEF acted imprudently and should be required to bear the resulting replacement power costs are supported by competent substantial evidence. (Polich, Tr. 304-309, 361-362; Swartz, Tr. 86-88, 112; Ex. 73 at 3; Ex. 115 at 23, 29, 39, 59, 67, 75, 87, 97, 109, 123, 137, 151, and 165; Ex. 73 at 3; Ex. 116 at 4).

In its Exception to Paragraph 120 of the Recommended Order, DEF does not dispute that the ALJ's findings of fact and ultimate determination are supported by competent substantial evidence. Instead, DEF offers a conclusory argument and improperly urges the Commission to reject the ALJ's findings of fact and to substitute contradictory findings. As set forth in the responses to Exceptions 1 through 6 above, the ALJ's findings that DEF acted imprudently and determination that DEF should be required to bear the resulting replacement power costs are supported by competent substantial evidence of record and are consistent with applicable law. The Commission is not free to reject the ALJ's finding that DEF acted imprudently and to thereby modify the ALJ's ultimate determination that the costs of the forced outage should be borne by DEF. DEF's exception to Paragraph 120 is without merit and must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 8.

DEF excepts to Paragraph 121 of the Recommended Order, which is set forth verbatim below:

121. The greater weight of the evidence supports the conclusion that DEF did not exercise reasonable care in operating the steam turbine in a configuration for which it was not designed and under circumstances which DEF knew, or should have known, that it should have proceeded with caution, seeking the cooperation of Mitsubishi to devise a means to operate the steam turbine above 420 MW.

Paragraph 121 of the Recommended Order summarizes the ALJ's numerous findings relating to whether DEF acted imprudently. As reflected throughout the Recommended Order, and set forth in detail in the responses to Exceptions 1 - 6 above, the ALJ's ultimate determination that DEF did not exercise reasonable care in operating the steam turbine in a configuration for which it was not designed, is supported by competent substantial evidence. The Commission is not free to reject or modify findings of facts, or conclusions of law that logically flow from such findings, when the findings are supported by competent substantial evidence of record. DEF's exception to Paragraph 121 is without merit and should be DENIED.

RESPONSE TO DEF EXCEPTION NO. 9.

DEF excepts to Paragraph 122 of the Recommended Order, which is set forth verbatim below:

122. Given DEF's failure to meet its burden, a refund of replacement power costs is warranted. At least \$11.1 million in replacement power was required during the Period 5 outage. This amount should be refunded to DEF's customers.

Paragraph 122 of the Recommended Order summarizes the ALJ's numerous findings relating to whether DEF acted imprudently, and should be required to bear the resulting replacement power costs. As reflected throughout the Recommended Order, and set forth in detail in the responses to

Exceptions 1 - 6 above, the ALJ's ultimate determination that DEF did not exercise reasonable care in operating the steam turbine in a configuration for which it was not designed, and therefore should be required to bear the resulting replacement power costs, is supported by competent substantial evidence of record. Because the ALJ's findings of fact are supported by competent substantial evidence of record and the ALJ has applied the correct law to the facts, DEF's exception is without merit and must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 10.

DEF excepts to Paragraph 123 of the Recommended Order, which is set forth verbatim below:

123. DEF failed to carry its burden to show that the Period 5 blade damage and the required replacement power costs were not consequences of DEF's imprudent operation of the steam turbine in Period 1.

In its exception to Paragraph 123 of the Recommended Order, DEF does not dispute that the ALJ's conclusion in Paragraph 123 is supported by competent, substantial evidence and is consistent with applicable law. Instead, DEF improperly offers the conclusory argument that the Commission should reject the ALJ's findings, re-weigh the evidence, and substitute new and directly contrary findings that are favorable to DEF. As set forth in detail in the responses to DEF's Exceptions 1 - 6 above, the ALJ's findings of fact are supported by competent substantial evidence of record and the ALJ applied the correct legal standard to the evidence of record. DEF's exception is without merit and must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 11.

DEF excepts to Paragraph 124 of the Recommended Order, which is set forth verbatim below:

124. The de-rating of the steam turbine that required the purchase of replacement power for the 40 MW loss caused by installation of the pressure plate was a consequence of DEF's failure to prudently operate the steam turbine during Period 1. Because it was ultimately responsible for the de-rating, DEF should refund replacement costs incurred from the point the steam turbine came back online in May 2017 until the start of the planned fall 2019 outage that allowed the replacement of the pressure plate with the [REDACTED] in December 2019. Based on the record evidence, the amount to be refunded due to the de-rating is \$5,016,782.

The fundamental premise of DEF's exception to Paragraph 124 of the Recommended Order is DEF's conclusory re-argument that "DEF proved by a preponderance of the evidence that its operation of the ST during Period 1 was prudent." The ALJ found, based on the competent substantial evidence of record, that DEF's operation of the ST during Period 1 was *not* prudent.

DEF further excepts to the ALJ's conclusion that DEF should be required to refund replacement power costs related to the installation of the pressure plate. As set forth in detail in the Recommended Order, and in the responses to DEF's Exceptions 1 - 6 above, the ALJ's findings are supported by competent substantial evidence. The ALJ duly considered DEF's imprudent destruction of a portion of the full capability of the ST that required installation of the pressure plate. (Polich, Tr. 361). The basis for the ALJ's finding that ratepayers should be refunded replacement power costs is DEF's imprudence in operating the Bartow unit. The pressure plate bandage stopped the bleeding, resulting in a 40 MW de-rated output, but did not immunize DEF from the effects of its underlying imprudence.

Notably, DEF does not except to the ALJ's related findings and conclusions in Paragraph 108 of the Recommended Order, in which the ALJ sets forth DEF's burden of proof as it relates to any replacement power costs arising from installation of the pressure plate:

108. This is a de novo proceeding. § 120.57(1)(k), Fla. Stat. Petitioner, DEF, has the burden of proving, by a preponderance of the evidence, that it acted prudently in its actions and decisions leading up to and in restoring the unit to service after the February 2017 forced outage at the Bartow Plant. Additionally, DEF must prove by a preponderance of the evidence that no adjustment to replacement power costs should be made to account for the fact that after the installation of a pressure plate in March 2017, the Bartow Plant could no longer produce its rated nameplate capacity of 420 MW. *Dep't of Transp. v. J.W.C. Co.*, 396 So. 2d 778, 788 (Fla. 1st DCA 1981); § 120.57(1)(j), Fla. Stat.

DEF had the burden of proof to show that it acted prudently and that the costs incurred were not the result of DEF's imprudent actions. It did not carry that burden. To the contrary, DEF failed to prove its actions in operating the plant were prudent, and further failed to prove that the damages resulting from the de-rate were the result of prudent operations and thus should be recovered from ratepayers. Therefore, DEF should be required to refund the amounts determined in the Recommended Order. DEF's Exception to Paragraph 124 of the Recommended Order should be DENIED.

RESPONSE TO DEF EXCEPTION NO. 12.

DEF excepts to Paragraph 125 of the Recommended Order, which is set forth verbatim below:

125. The total amount to be refunded to customers as a result of the imprudence of DEF's operation of the steam turbine in Period 1 is \$16,116,782, without interest.

DEF's exception to Paragraph 125 of the Recommended Order is a conclusory restatement of DEF's re-argument that DEF "operated the ST prudently at all times relevant to the replacement

power costs and is, therefore, not required to refund any amount to its customers." As set forth in detail in the Recommended Order and in the responses to DEF's Exceptions 1 - 6 above, the ALJ found, based on the competent substantial evidence of record, that DEF failed to carry its burden of proof to demonstrate that DEF acted prudently during Period 1 and that no adjustment to replacement power costs should be made to account for the fact that, after the installation of a pressure plate in March 2017, the Bartow Plant could no longer produce its rated nameplate capacity of 420 MW. DEF does not contend that the finding of fact and conclusion set forth in Paragraph 125 of the Recommended Order is not supported by competent substantial evidence, but instead urges the Commission to re-weigh the evidence and substitute a new conclusion without even proffering an alternative legal analysis, which the Commission may not do.

CONCLUSION

The Commission referred this matter to the Division of Administrative Hearings to conduct a formal evidentiary hearing on two questions of disputed fact. The ALJ conducted the formal evidentiary hearing, heard and reviewed extensive testimony of expert witnesses, reviewed voluminous documentary evidence, made numerous findings of fact that are supported by competent substantial evidence, and applied the correct legal standard to determine that DEF did not meet its burden of proof to show that that it acted prudently in operating its Bartow Unit 4 plant and in restoring the unit to service after the February 2017 forced outage; and that DEF therefore may not recover, and thus should refund, \$16,116,782 to its customers for replacement power costs resulting from the steam turbine outages from April 2017 through September 2019. DEF's exceptions to the Recommended Order are without merit and should be denied, and the Commission should adopt the Recommended Order in full as the Final Order of the Commission.

DATED THIS 21st day of May 2020.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following parties as indicated below, on this 21st day of May 2020.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased Power
Cost Recovery Clause with Generating
Performance Incentive Factor

Docket No. PSC-20190001-EI
DOAH Case No. 19-6022

**OFFICE OF PUBLIC COUNSEL, PCS PHOSPHATE – WHITE SPRINGS, AND
THE FLORIDA INDUSTRIAL POWER USERS GROUP JOINT
RESPONSE TO DUKE ENERGY FLORIDA, LLC'S
EXCEPTIONS TO RECOMMENDED ORDER**

The Office of Public Counsel, PCS Phosphate – White Springs, and the Florida Industrial Power Users Group, pursuant to section 120.57(1)(k), Florida Statutes (2020), and Rule 28-106.217, Florida Administrative Code, jointly respond to the Exceptions submitted by Duke Energy Florida, LLC (“DEF”) to the Recommended Order in the above-styled matter. This Response is being submitted confidentially only because it is required due to a claim of confidentiality DEF has made to the Commission on behalf of the original equipment manufacturer.

OVERVIEW

The Public Service Commission ("PSC" or "Commission") forwarded this matter to the Division of Administrative Hearings on November 8, 2019, and requested that an Administrative Law Judge ("ALJ") conduct a formal evidentiary hearing on the following issues of disputed material fact:

ISSUE IB: Was DEF prudent in its actions and decisions leading up to and in restoring the unit to service after the February 2017 forced outage at the Bartow plant, and if not, what action should the Commission take with respect to replacement power costs?

ISSUE 1C: Has DEF made prudent adjustments, if any are needed, to account for replacement power costs associated with any impacts related to the de-rating of the Bartow plant? If adjustments are needed and have not been made, what adjustment(s) should be made?

The Division of Administrative Hearings assigned an ALJ who conducted a formal evidentiary hearing on February 4 and 5, 2020. The parties collectively presented the live testimony of two expert witnesses, submitted extensive additional pre-filed testimony and 34 exhibits into evidence including a voluminous composite exhibit and other records. The official transcript of the final hearing is contained in three volumes, not including exhibits and additional pre-filed testimony admitted into evidence.

At the conclusion of the evidentiary hearing all parties, including the Commission, submitted detailed proposed recommended orders containing proposed findings of fact and conclusions of law. After duly considering the entirety of the record, applicable law, and the proposed recommended orders, the ALJ issued a detailed Recommended Order containing numerous Findings of Fact and Conclusions of Law, and recommending that the Commission enter a Final Order finding that:

Duke Energy Florida, LLC, failed to demonstrate that it acted prudently in operating its Bartow Unit 4 plant and in restoring the unit to service after the February 2017 forced outage, and that Duke Energy Florida, LLC, therefore may not recover, and thus should refund, the \$16,116,782 for replacement power costs resulting from the steam turbine outages from April 2017 through September 2019.

DEF submitted twelve exceptions to the Recommended Order. In spite of stating that it would “not relitigate those [factual] points ... nor ask this Commission to reweigh evidence,” each of DEF’s exceptions asks the Commission to reject findings of fact that, as demonstrated below, are supported by competent substantial evidence. The exceptions also ask the Commission to invade the exclusive province of the ALJ and make new findings of fact, often without citing to any portion of the record, and based on such new findings to overturn the ALJ's ultimate determination. For the reasons stated below, the Commission should reject each of the DEF exceptions and adopt the findings of the Recommended Order.

THE COMMISSION'S SCOPE OF AUTHORITY WHEN RULING ON EXCEPTIONS

The Commission has limited authority to reject or modify the ALJ's findings of fact and conclusions of law. Pursuant to section 120.57(1)(I), Florida Statutes,¹ the Commission may not reject or modify the ALJ's findings of fact unless the Commission "first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence, or that the proceedings on which the findings were based did not comply with essential requirements of law."

If the ALJ's findings of fact are supported by competent substantial evidence, the Commission cannot reject or modify them even to make alternate findings that are also supported by competent substantial evidence. *Kanter Real Estate, LLC v. Dep't of Env'tl. Prot.*, 267 So. 3d 483, 487–88 (Fla. 1st DCA 2019), *reh'g denied* (Mar. 19, 2019), *review dismissed sub nom. City of Miramar v. Kanter Real Estate, LLC*, SC19-639, 2019 WL 2428577 (Fla. June 11, 2019), citing *Lantz v. Smith*, 106 So. 3d 518, 521 (Fla. 1st DCA 2013).

Moreover, the Commission may not "reject a finding that is substantially one of fact simply by treating it as a legal conclusion," regardless of whether the finding is labeled a conclusion of law. *Gross v. Dep't of Health*, 819 So. 2d 997, 1005 (Fla. 5th DCA 2002); *Gordon v. State Comm'n on Ethics*, 609 So.2d 125, 127 (Fla. 4th DCA 1992); *Kanter Real Estate*, 267 So. 3d at 487-88, citing *Abrams v. Seminole Cty. Sch. Bd.*, 73 So. 3d 285, 294 (Fla. 5th DCA 2011). Similarly, a finding that is both a factual and legal conclusion cannot be rejected when there is substantial competent evidence to support the factual conclusion, and where the legal conclusion necessarily

¹ All statutory and rule references are to the 2019 versions, unless otherwise indicated. The Transcript of the final hearing was filed on February 24, 2020. Citation to the Transcript herein will be the witness's last name followed by the abbreviation "Tr." followed by the citation to the page.

follows. *Berger v. Dep't of Prof. Reg.*, 653 So. 2d 479, 480 (Fla. 3d DCA 1995); *Strickland v. Florida A&M Univ.*, 799 So. 2d 276, 279 (Fla. 1st DCA 2001); *Dunham v. Highlands County Sch. Bd.*, 652 So. 2d 894, 897 (Fla. 2nd DCA 1995).

It is the sole prerogative of the ALJ to consider the evidence presented, to resolve conflicts in the evidence, to judge the credibility of witnesses, to draw permissible inferences from the evidence, and to reach ultimate findings of fact based on the competent substantial evidence of record. *Ft. Myers Real Estate Holdings, LLC v. Dep't of Bus. & Prof'l Regulation*, 146 So. 3d 1175 (Fla. 1st DCA 2014), citing *Heifetz v. Dep't. of Bus. Reg.*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985).

"Competent substantial evidence" is "such relevant evidence as a reasonable mind would accept as adequate to support a conclusion." *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957). The Commission may reject an ALJ's findings of fact only where there is no competent substantial evidence from which the findings can reasonably be inferred. *Heifetz v. Dep't. of Bus. Reg.*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985); *Belleau v. Dep't of Environmental Protection*, 695 So.2d 1305, 1306 (Fla. 1st DCA 1997); *Strickland v. Florida A&M Univ.*, 799 So.2d at 278. Absent such an express and detailed finding, the Commission is bound to accept the ALJ's findings of fact. *See Southpointe Pharmacy v. Dep't of Health & Rehab. Serv.*, 596 So. 2d 106, 109 (Fla. 1st DCA 1992).

The Commission is not authorized to substitute its judgment for that of the ALJ by taking a different view of, or placing greater weight on the same evidence, reweighing the evidence, judging the credibility of witnesses, or otherwise interpreting the evidence to fit its desired conclusion. *Prysi v. Dep't of Health*, 823 So. 2d 823, 825 (Fla. 1st DCA 2002); *Strickland*, 799 So.2d at 279; *Schrimsher v. Sch. Bd. of Palm Beach County*, 694 So. 2d 856, 860 (Fla. 4th DCA

1997); *Heifetz*, 475 So.2d at 1281; *Wash & Dry Vending Co. v. Dep't of Bus. Reg.*, 429 So. 2d 790, 792 (Fla. 3rd DCA 1983).

The Commission may reject or modify a conclusion of law over which it has substantive jurisdiction, but must state with particularity its reasons for rejecting or modifying such conclusion of law, and make a finding that its substituted conclusion of law is as or more reasonable than that which was rejected or modified. Section 120.57(1)(l), Fla. Stat.; *Prysi*, 823 So. 2d at 825. Rejection or modification of a conclusion of law may not form the basis for rejection or modification of a finding of fact. Section 120.57(1)(l), Fla. Stat.

RESPONSE TO DEF EXCEPTIONS

RESPONSE TO DEF EXCEPTION NO. 1.

DEF excepts to Paragraph 110 of the Recommended Order, which is set forth verbatim below:

110. DEF failed to demonstrate by a preponderance of the evidence that its actions during Period 1 were prudent. DEF purchased an aftermarket steam turbine from Mitsubishi with the knowledge that it had been manufactured to the specifications of Tenaska with a design point of 420 MW of output. Mr. Swartz's testimony regarding the irrelevance of the 420 MW limitation was unpersuasive in light of the documentation that after the initial blade failure, DEF itself accepted the limitation and worked with Mitsubishi to find a way to increase the output of the turbine to [REDACTED]

DEF acknowledges that the ALJ set forth the correct legal standard for determining prudence as established by the Florida Supreme Court. *See* DEF Exceptions, footnote 7. DEF nevertheless mistakenly argues that the ALJ applied the incorrect legal standard in determining that DEF failed to demonstrate that it acted prudently during the period leading up to and in restoring the unit to service after the February 2017 forced outage at the Bartow plant. DEF suggests, without basis or explanation, that the ALJ relied on "hindsight" in determining that DEF's actions were imprudent.

As evidenced by the Recommended Order, however, and consistent with the appropriate standard of legal review, the ALJ expressly assessed all evidence presented relating to the conditions and circumstances that were known, or should have been known, by DEF *at the time DEF made the decision and took action* to repeatedly and extensively operate the steam turbine ("ST") in excess of 420 MW and when DEF *failed to take the action* it should have taken to consult with Mitsubishi.

In Paragraph 109 of the Recommended Order, the ALJ expressly states the legal standard applied in the Recommended Order:

109. The legal standard for determining whether replacement power costs are prudent is “what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or should [have] been known, *at the time the decision was made.*” *S. Alliance for Clean Energy v. Graham*, 113 So. 3d 742, 750 (Fla. 2013).

(Emphasis added). Contrary to DEF's suggestion, and as evidenced by the entirety of the record, the ALJ thoroughly considered evidence of the conditions and circumstances known, or that should have been known, to DEF *at the time the decisions were made*. The ALJ found, based on a detailed, systematic review of the competent substantial evidence of record, that DEF knew, or should have known, that its actions (including the failure to act) "*during period 1*" were imprudent.

DEF fails to provide any valid factual or legal basis for DEF's assertion that the ALJ improperly used “hindsight,” or “Monday morning quarterbacking,” in determining that DEF acted imprudently during Period 1. The determination of “what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or should have been known, *at the time the decision was made*” necessarily involves a review of prior actions and contemporaneous materials reflecting the conditions and circumstances that existed at the time the decision in question was made.

DEF does not dispute that the ALJ's findings of fact set forth in Paragraph 110 are supported by competent substantial evidence. Instead, DEF simply recasts its preferred version of the facts, which were duly considered and rejected by the ALJ.

The ALJ's determination that DEF acted imprudently is supported by numerous uncontested findings of fact set forth in the Recommended Order, each of which are supported by competent substantial evidence, including but not limited to:

- The Mitsubishi steam turbine was originally designed for Tenaska Power Equipment, LLC (“Tenaska”), to be used in a 3x1 combined cycle configuration with three M501 Type F combustion turbines connected to the steam turbine with a gross output of 420 MW of electricity. (Recommended Order, ¶ 14) (Polich, Tr. 305, 325, 329; Swartz, Tr. 42, 163, 212, 255; Ex. 80 at 2, 3; Ex. 111).
- The greater weight of the evidence establishes that the Mitsubishi steam turbine was designed to operate at 420 MW of output and that 420 MW was an operational limitation of the turbine. (Recommended Order, ¶ 33) (Polich, Tr. 303, 305, 325, 329, 330; Ex. 80 at 2; Ex. 108 at 2437-2561; Ex. 109 at 12432, 12438; Ex. 116 at 4, 21; Swartz, Tr. 42, 82-83; 127-28, 130-31, 137, 163, 212, 255; Ex. 111; Ex. 80 at 3).
- Mitsubishi concluded that the damage to the blades was caused by

██
██

[REDACTED] (Recommended Order, ¶ 37) (Ex 82 at 5; Ex. 73 at 3; Ex. 116 at 4).

- The [DEF RCA] working papers indicate that as late as October 15, 2016, DEF agreed that the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Recommended Order, ¶ 69) (Swartz, Tr. 90, 161-162, 82-83; Ex. 115 at 19; Ex. 116 at 4, 21; Ex. 109 at Bates 12432).

- OPC accurately states that the DEF working documents demonstrate that during the RCA process, before and after the Period 5 event, DEF consistently identified excessive steam flow in the LP turbine as one of the “most significant contributing factors” toward blade failure over the history of the steam turbine, [REDACTED]

[REDACTED] (Recommended Order, ¶ 71) (Swartz, Tr. 86-88, 112; Ex. 73 at 3; Ex. 115 at 23, 29, 39, 59, 67, 75, 87, 97, 109, 123, 137, 151, and 165; Ex. 73 at 3; Ex. 116 at 4).

- The Energy Information Administration of the U.S. Department of Energy defines "generator nameplate capacity" as the "maximum rated output of a generator, prime mover, or other electric power production equipment under specific conditions designated by the manufacturer." There was no dispute that 420 MW was the

"nameplate capacity" of the Mitsubishi steam turbine. (Recommended Order, ¶ 82) (Swartz, Tr. 224, 209-210; Ex. 111; Ex. 118).

- Given the lack of experience on either side, OPC contends that DEF should have consulted Mitsubishi before purchasing the steam turbine to ask whether Mitsubishi believed it was capable of an output in excess of its nameplate capacity of 420 MW. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Recommended Order, ¶ 86) (Polich, Tr. 308-309, 320-321, 365-366; Ex. 109 at 12438; Ex. 108 at 2461; Ex. 104 at 44; Ex. 72; Ex. 80 at 5; Swartz, Tr. 73, 108, 137).

- The evidence was clear that Mitsubishi did not contemplate DEF's operation of the steam turbine beyond the [REDACTED]

[REDACTED] The evidence was also clear that

DEF made no effort before the fact to notify Mitsubishi of its intended intensity of operation or to ask Mitsubishi whether it could safely exceed the [REDACTED] Mr. Swartz was unable to explain away this criticism and thus DEF failed to meet its burden of demonstrating that it prudently operated the Bartow Plant during the times relevant to this proceeding. (Recommended Order, ¶ 102) (Polich, Tr. 308-309, 320-321, 365-366; Ex. 109 at 12438; Ex. 108 at 2461; Ex. 104 at 44; Swartz, Tr. 73, 108, 137; Ex. 72; Ex. 80 at 5).

- DEF purchased an aftermarket steam turbine from Mitsubishi with knowledge that it had been manufactured to the specifications of Tenaska with a design point of 420 MW of output. (Recommended Order, ¶ 110) (Polich, Tr. 305, 325; Swartz, Tr. 212, 255).

Contrary to DEF's suggestion, the ALJ stated and applied the correct legal standard to the evidence of record pertaining to the facts and circumstances that existed *at the time that DEF made the decision and took action* to operate the Bartow steam turbine repeatedly and extensively in excess of 420 MW. The ALJ found, based on the competent substantial evidence of record, that the operational limit of the Bartow steam turbine was "420 MW based on the Mitsubishi design point and the expected maximum electrical output," and that DEF's decision and action to operate the ST repeatedly and extensively in excess of 420 MW, based on information that DEF knew, or should have known, was imprudent. The ALJ found, based on competent substantial evidence of record, that DEF should have consulted with Mitsubishi before DEF operated the ST above the design point of 420 MW. (Recommended Order, ¶ 102) (Polich, Tr. 308-309, 320-321, 365-366;

Ex. 109 at 12438; Ex. 108 at 2461; Ex. 104 at 44; Swartz, Tr. 73, 108, 137; Ex. 72; Ex. 80 at 5). The ALJ found that DEF presented no evidence that DEF consulted with Mitsubishi prior to doing so, and further found that DEF's expert "was unable to explain away this criticism." *Ibid.* The ALJ's findings of fact and competent substantial evidence of record support the ALJ's ultimate determination set forth in Paragraph 110 of the Recommended Order that DEF failed to carry its burden of proof to demonstrate that DEF acted prudently during the period in question.

The case cited by DEF, *Fla. Power Corp. v. Public Service Com'n*, 456 So. 2d 451, 452 (Fla. 1984), relating to the application of "hindsight" is inapposite and readily distinguishable on its facts. In *Fla. Power Corp.*, the Florida Supreme Court held that the Commission could not retroactively, i.e., "in hindsight," re-designate "non-safety-related" repair work as "safety-related," and thus the Commission could not retroactively apply the higher standard of care applicable to "safety-related work" when determining whether the work at issue was prudently performed. *See Fla. Power Corp.* 456 So. 2d at 451 ("Our review of the record indicated that the extended repair work involved at the time was not per se safety-related," thus "a safety-related standard" that involved "a very different risk and a much higher standard of care," could not be retroactively applied.); *See also Fla. Power Corp. v. Public Service Com'n*, 424 So. 2d 745, 747 (Fla. 1982) ("Our independent review of the record discloses that the particular task which resulted in the accident was but a small part of the extended repairs to the fuel transfer mechanism. The record further indicates that the repair work, per se, was not safety-related, and this was, in part, why the use of the test weight was not recognized as being safety-related."). In essence, the Supreme Court held that the Commission could not change the standard of care "rules of the game," namely whether a task was or was not "safety-related" at the time it was performed, when the action in

question was later reviewed. Here, nothing supports the notion that any "rules of the game" were changed while the ALJ considered the disputed facts of the case.

DEF goes on to extensively reargue and rehash arguments that DEF previously presented to the ALJ and that the ALJ rejected. DEF improperly urges the Commission to make alternative findings that contradict the findings made by the ALJ, which the Commission may not do. DEF also urges the Commission to make new findings that, upon examination, are not supported by any evidence of record. DEF makes the following assertion on page 3 of its Exceptions:

Before committing to purchase the ST, DEF contracted with Mitsubishi to assess whether the ST design conditions were compatible with the Bartow Plant's proposed 4x1 combined cycle design configuration. As part of this assessment, DEF informed Mitsubishi that DEF intended to operate the Bartow Plant and the ST in 4x1 configuration with a power factor exceeding [REDACTED] which would result in the generation of more than 420 MW. T. 42, 135-136, 147-148, 213-215, 234, 258, 278, 356.

A careful review of each of the pages cited by DEF fails to reveal any evidence remotely indicating that Mitsubishi had been informed that DEF intended to operate the ST above 420 MW. DEF presented no evidence at the final hearing to contest Mr. Polich's testimony that DEF did not inform Mitsubishi of its intent to operate the ST above 420 MW, much less that DEF intended to operate it at [REDACTED] (Polich, Tr. 329-330.)

DEF attempts to re-argue that "Mitsubishi believed the ST was capable of operating above 420 MW [REDACTED] The ALJ, however, found DEF's argument unpersuasive. See Recommended Order, Paragraphs 111, 112, 113, 114, 118, 119 and 121.

DEF further attempts to re-argue that "[i]n the utility industry, the nameplate rating is not regarded as an 'operating parameter,'" and that "the general standard followed in the industry is to operate steam turbines within operating parameters provided by the original equipment manufacturer while also striving to achieve the most efficiency for utility customers." The ALJ,

based on the entirety of the record, found DEF's arguments "unpersuasive" with respect to the prudence of DEF's decisions and actions during the period leading up to and in restoring the unit to service after the February 2017 forced outage at the Bartow plant.²

DEF next reargues that "DEF had appropriate operating parameters in place, and DEF properly followed these parameters," throughout Periods 1-5, and that the ALJ erred by viewing DEF's [REDACTED] of Mitsubishi's 420 MW operating parameter in Periods 2 - 5 as a concession that it was a "previous limitation." The ALJ, based on competent substantial evidence of record, concluded that DEF's actions after the first blade failures acknowledged and confirmed that the design point and operating limitation of the steam turbine was 420 MW. The competent substantial evidence relied on by the ALJ includes the [REDACTED] [REDACTED] provided by Mitsubishi. (Swartz, Tr. 90, 161-162, 82-83; Ex. 115 at 19; Ex. 116 at 4, 21; Ex. 109 at Bates 12432). As evidenced by the Recommended Order, the then-contemporaneous evidence of the 420 MW design limitation that was available in 2006-2008 and DEF's consistent and ready acknowledgement of that operational limit in 2012 was more persuasive to the ALJ than the testimony and arguments presented by DEF at the final hearing. The ALJ expressly found the testimony of DEF's expert witness on this point "unpersuasive." (Recommended Order, Paragraph 110). It is the sole province of the ALJ to determine and weigh

² The ALJ found that the concept of "nameplate" is but one of many indicia of the intended operational limit of the ST and, as set forth in the ALJ's findings of fact, that Mitsubishi clearly informed DEF of the limit of the ST through [REDACTED] [REDACTED]. The ALJ further found, based on competent substantial evidence of record, that DEF's operation of the ST for approximately half of the total 21,734 hours at 420 MW or above, with 2,973 of those hours *above* 420 MW in Period 1, was not an incidental exceedance of a number on a nameplate label, but instead was a failure to exercise reasonable care in operating the steam turbine in a configuration for which it was not designed. (Recommended Order, ¶ 35) (Swartz, Tr. 285, 137, 127-129, 130-131, 76-77, 82-83, 159-162, 169; Polich, Tr. 302-305, 330, 332; Ex. 115 at 19, 24; Ex. 116 at 4, 21; Ex. 108 at 2437-2561; Ex. 109 at Bates 12432-12439).

the credibility of witness testimony, and the Commission may not substitute its view of the evidence for that of the ALJ.

Finally, DEF suggests that the Commission should reject the ALJ's ultimate determination that DEF acted imprudently in this case, because the ALJ's determination of DEF's imprudence in this case "would also inhibit a utility's ability to maximize output for the benefit of its customers." DEF's assertion lacks merit. The ALJ's determination in this case is based on the evidence of record and is consistent with applicable law. The Recommended Order contains no findings of fact or conclusions of law that would inhibit a utility's ability or incentive to prudently maximize output for the benefit of its customers. The only thing a final order adopting the Recommended Order would inhibit or discourage is imprudent utility power plant operation and management, not prudently optimizing output.

Paragraph 110 of the Recommended Order applies the correct legal standard, is based on factual findings supported by competent substantial evidence and cannot be disturbed. DEF's exception to Paragraph 110 must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 2.

DEF excepts to Paragraph 111 of the Recommended Order, which is set forth verbatim below:

111. DEF's RCA concluded that the blade failures were caused by [REDACTED]
[REDACTED] This conclusion is belied by the fact that [REDACTED]
[REDACTED]
Mitsubishi cannot be faulted for [REDACTED] in a way
that would allow an operator to run the turbine consistently beyond
its capacity.

This paragraph of the Recommended Order contains factual findings that support the ALJ's ultimate conclusions of law. The Commission may not reject the findings of fact in Paragraph 111

unless there is no competent substantial evidence to support them. Similarly, a finding that is both a factual and a legal conclusion cannot be rejected when there is substantial competent evidence to support the factual conclusion and the legal conclusion necessarily follows. *Berger*, 653 So. 2d at 480; *Strickland*, 799 So. 2d at 279; *Dunham*, 652 So. 2d at 897.

The ALJ's findings of fact set forth in Paragraph 111 are supported by competent, substantial evidence and cannot be disturbed. (Swartz, Tr. 179; Ex. 82 at 5; Ex. 103 at 55; Ex. 104 at 14; Ex. 115 at 180). The ALJ is solely authorized to weigh and balance the evidence, determine the credibility of witnesses, and draw reasonable inferences from the evidence. *See Heifetz v. Dep't. of Bus. Reg.*, 475 So. 2d at 1281-2. DEF does not suggest any error of law, does not dispute that the findings of fact are supported by competent substantial evidence, and does not contend that the proceedings failed to comply with essential requirements of law. Instead, DEF simply re-argues the evidence of record and makes new arguments. Pursuant to section 120.57(1)(l), Florida Statutes, the Commission may not reweigh the evidence, consider "evidence" not of record, nor modify or reject an ALJ's factual finding when the finding is supported by competent substantial evidence of record. This is true even when the record may contain conflicting evidence, and when the Commission may disagree with the ALJ's view of the evidence. As noted by the court in *Heifetz*:

If, as is often the case, the evidence presented supports two inconsistent findings, it is the hearing officer's role to decide the issue one way or the other. The agency may not reject the hearing officer's finding unless there is no competent, substantial evidence from which the finding could reasonably be inferred. The agency is not authorized to weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion.

Finally, in its second Exception, DEF again re-argues the issue of the timing of when the damage occurred in Period 1; however, this issue is not addressed in Paragraph 111 of the Recommended Order. The findings of fact in Paragraph 111 of the Recommended Order are supported by competent, substantial evidence of record and may not be disturbed. (Swartz Tr. 108; 179; Ex. 80 at 6; Ex 82 at 5; Ex. 103 at 55; Ex. 104 at 14; Ex. 115 at 180). DEF's exception to Paragraph 111 must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 3.

DEF excepts to Paragraph 112 of the Recommended Order, which is set forth verbatim below:

112. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Paragraph 112 of the Recommended Order contains findings of fact that support the ALJ's conclusions of law. The Commission may not reject the findings of fact unless there is no competent substantial evidence of record to support them. The ALJ's findings of fact in Paragraph 112 are supported by competent substantial evidence of record, including:

- Mitsubishi prepared a root cause assessment, dated September 2017, in which it determined that [REDACTED]
[REDACTED]
[REDACTED] (Swartz, Tr. 100; Ex. 82 at 5-6).
- Mitsubishi concluded that [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Swartz, Tr. 111-12, 86-88; Ex 82 at 5; Ex. 73 at 3;

Ex. 115 at 23, 29, 39, 59, 67, 75, 123, 137, 153, 165, and 179).

DEF does not dispute that the ALJ's findings of fact are supported by competent substantial evidence. DEF nevertheless re-argues its version of the evidence as to the "root cause" of the blade failures, and urges the Commission to find facts that contradict the facts found by the ALJ. The ALJ's findings of fact and conclusions in Paragraph 112 of the Recommended Order are supported by competent substantial evidence of record and cannot be disturbed. DEF's exception to Paragraph 112 must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 4.

DEF excepts to Paragraph 113 of the Recommended Order, which is set forth verbatim below:

113. Mr. Polich persuasively argued that it would have been simple prudence for DEF to ask Mitsubishi about the ability of the turbine to operate continuously in excess of 420 MW output before actually operating it at those levels. DEF understood that the blades had been designed for the Tenaska 3x1 configuration and should have at least explored with Mitsubishi the wisdom of operating the steam turbine with steam flows in excess of those anticipated in the original design.

This paragraph of the Recommended Order contains factual findings that support the ALJ's conclusions. The Commission may not reject these findings of fact unless there is no competent substantial evidence to support them. DEF does not dispute that the findings of fact are supported by competent substantial evidence, nor proffer or support a different legal analysis or conclusion in its exception. Instead, DEF rehashes the evidence and urges the Commission to make new findings that contradict the findings made by the ALJ, arguing that its proposed new findings are

"as or more reasonable" than the findings made by the ALJ. Pursuant to 120.57(1)(I), Florida Statutes, the Commission may not substitute new findings of fact for those made by the ALJ even if the Commission views the proposed new findings "as or more reasonable" than those made by the ALJ. The legal standard for rejecting or modifying an ALJ's finding of fact is whether the ALJ's finding is supported by competent substantial evidence of record. In Paragraph 113 of the Recommended Order, the ALJ expressly finds the expert testimony of Mr. Polich credible and persuasive, and the testimony presented by DEF unpersuasive, with respect to the issue of whether DEF acted as a reasonable utility manager would have done in light of the conditions and circumstances that were known, or should have been known, at the time the decision was made. As noted above, the credibility of witnesses is wholly a factual determination within the sole province of the ALJ. *Strickland*, 799 So. 2d at 278 ("the weighing of evidence and judging of the credibility of witnesses by the Administrative Law Judge are solely the prerogative of the Administrative Law Judge as finder of fact.").

The ALJ determined, based on the competent, substantial evidence of record, that DEF failed to carry its burden of proof that it acted prudently during the period in question. (Swartz, Tr. 82-83, 116, 127-129, 130-131, 137; Polich, Tr. 308-309, 320-321; Ex. 105 at Bates 6875; Ex. 108 at 2437-2561; Ex. 109 at Bates 12432-12439; and Ex. 116 at 4 and 21).

The ALJ's findings of fact in Paragraph 113 of the Recommended Order are supported by competent substantial evidence of record and cannot be disturbed. DEF's exception to Paragraph 113 must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 5.

DEF excepts to Paragraph 114 of the Recommended Order, which is set forth verbatim below:

114. The record evidence demonstrated an [REDACTED] that vibrations associated with high energy loadings were the primary cause of the L-0 blade failures. DEF failed to satisfy its burden of showing its actions in operating the steam turbine in Period 1 did not cause or contribute significantly to the vibrations that repeatedly damaged the L-0 blades. To the contrary, the preponderance of the evidence pointed to DEF's operation of the steam turbine in Period 1 as the most plausible culprit.

Paragraph 114 of the Recommended Order summarizes the findings of fact that support the ALJ's ultimate determination. The Commission may not reject these factual portions of the paragraph unless there is no competent substantial evidence supporting them. DEF does not dispute that the findings of fact and conclusions in Paragraph 114 of the Recommended Order are supported by competent, substantial evidence, nor does DEF proffer or support a different legal analysis or conclusion in its exception. Instead, DEF simply offers the conclusory statement that it would be "as or more reasonable to conclude that DEF actions did not cause or contribute significantly to the L-0 blade damage that occurred during Periods 1 through 5." The Commission's scope of review is whether the findings of fact are supported by competent substantial evidence of record. The ALJ's findings of fact in Paragraph 114 are supported by competent substantial evidence of record. (Swartz, Tr. 42, 73, 108, 163, 121-122, 126, 127, 132, 137; Polich, Tr. 303-306, 329-330; Ex. 72; Ex. 80 at 2, 3, and 5; Ex. 108 at Bates 2461; Ex. 109 at Bates 12432-12439; Ex. 115 at 23, 29, 39, 59, 67, 75, 123, 137, 153, 165, and 179 and Ex. 116 at 4 and 21).

In its exception DEF asserts that the ALJ's findings of fact and conclusions of law imposed an "impossible standard of proving a negative" on DEF, as the party with the burden of proof. DEF's argument does not fairly reflect the ALJ's findings of fact and conclusions of law. The ALJ

correctly determined, and DEF does not dispute, that the utility carries the burden of proof to demonstrate the prudence of DEF's decisions and actions during the period leading up to and in restoring the unit to service after the February 2017 forced outage at the Bartow plant. The ALJ determined, based on the competent substantial evidence of record that DEF failed to carry its burden of proof to demonstrate that it acted prudently during the period in question. The ALJ found, based on the competent substantial evidence of record that DEF acted imprudently, and further found that DEF failed to rebut the evidence of its imprudence. The Recommended Order reflects that DEF failed to establish a prima facie case that it acted prudently and failed to provide evidence to rebut the persuasive evidence of its imprudence. The ALJ applied the correct legal standards with respect to the burden of proof and the determination of prudence. The ALJ's findings of fact set forth in Paragraph 114 of the Recommended Order are based on competent substantial evidence of record and may not be disturbed. DEF's exception to Paragraph 114 of the Recommended Order must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 6.

DEF excepts to Paragraph 119 of the Recommended Order, which is set forth verbatim below:

119. It is speculative to state that the original Period 1 L-0 blades would still be operating today had DEF observed the [REDACTED] of 420 MW. It is not speculative to state that the events of Periods 2 through 5 were precipitated by DEF's actions during Period 1. It is not possible to state what would have happened from 2012 to 2017 if the excessive loading had not occurred, but it is possible to state that events would not have been the same.

In its exception, DEF re-argues that there was no [REDACTED] to the ST following Period 1, and urges the Commission to reject the ALJ's finding of fact that "[i]t is not speculative to state that the events of Periods 2 through 5 were precipitated by DEF's actions during Period 1." DEF

asks the Commission to substitute a new finding that "the damage to the L-0 blades that occurred during Periods 2 through 5 was not precipitated by DEF's operation of the ST during Period 1." (DEF Exceptions, p. 9).

The findings and conclusions in Paragraph 119 of the Recommended Order summarize the ALJ's findings of fact in Paragraphs 84 and 89 of the Recommended Order that "[t]here would have been no Periods 2, 3, 4, or 5 but for DEF's actions during Period 1" and rejecting DEF's argument that DEF's operation of the unit at [REDACTED] bears no relation to the ultimate failure of the ST in Period 5. Indeed, in Paragraph 89 of the Recommended Order, the ALJ finds that:

DEF ran the unit beyond 420 MW without consulting Mitsubishi. Mr. Polich found it a tribute to the design of the [REDACTED] 40" L-0 blades that they did not suffer damage sooner than they did. The steam turbine operated from June 2009 until March 2012 before the blade damage was noted. It was impossible to state exactly when the blade damage occurred in Period 1, but Mr. Polich opined that the damage was most likely cumulative.

In footnote 4 of the Recommended Order, the ALJ further finds that:

DEF made much of the fact that it could not be said precisely when during Period 1 the damage to the blades occurred, pointing out that there was a 50-50 chance that the blades were damaged when the turbine was operating below 420 MW. This argument fails to consider the cumulative wear caused by running the unit in excess of its capacity half of the time. The exact moment the damage occurred is beside the point.

The ALJ's findings of fact are supported by competent substantial evidence of record, including the credible expert testimony of Mr. Polich relating to the cumulative operational effects on the Bartow facility. Moreover, as the finder of fact in a formal administrative proceeding, the ALJ is permitted to draw reasonable inferences from the competent substantial evidence in the record. *Amador v. Sch. Bd. of Monroe County*, 225 So. 3d 853, 858 (Fla. 3d DCA 2017) ("[w]here

reasonable people can differ about the facts, however, an agency is bound by the hearing officer's reasonable inferences based on the conflicting inferences arising from the evidence"), citing *Greseth v. Dep't of Health & Rehab. Servs.*, 573 So. 2d 1004, 1006–1007 (Fla. 4th DCA 1991).

The ALJ's findings in Paragraphs 84, 89, and 119 of the Recommended Order are supported by competent substantial evidence of record, including:

- If DEF had operated the steam turbine at the Bartow Unit 4 in accordance with the design output of 420 MW or less, there is no engineering basis to conclude that the original L-0 blades would not still be in operation today. (Polich, Tr. 308-309, 320-321).
- [REDACTED]
[REDACTED]
[REDACTED] (Polich, T. 304-309, 334, 352; Swartz, Tr. 86-88, 112; Ex. 73 at 3; Ex. 115 at 23, 29, 39, 59, 67, 75, 87, 97, 109, 123, 137, 151, and 165; Ex. 73 at 3; Ex. 116 at 4).
- [REDACTED]
[REDACTED] (Swartz, T. 108, 179; Ex. 103 at 55; Ex.80 at 6; Ex. 104 at 14; Ex. 115 at 180).
- The installation of the pressure plate and associated de-rate were due to improper operation above 420 megawatts in Period 1. (Polich, Tr. 361).
- A prudent utility manager, from both a warranty and a regulatory perspective, would have requested written verification from

Mitsubishi that the steam turbine could be safely operated above 420 MW of output. (Polich, Tr. 361-362; 304-309).

The ALJ's findings of fact and conclusions in Paragraph 119 are supported by competent substantial evidence of record and the Commission is not free to substitute new or alternative findings urged by DEF. Moreover, DEF had the burden of proof to demonstrate that it acted prudently and that the costs incurred were not the result of DEF's imprudent actions or inactions. To the contrary, DEF failed to carry that burden and prove its actions in operating the plant were prudent and it failed to prove that the damages were the result of prudent operations and thus should be recovered from ratepayers. DEF's exception to Paragraph 119 of the Recommended Order must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 7.

DEF excepts to Paragraph 120 of the Recommended Order, which is set forth verbatim below:

120. In his closing argument, counsel for White Springs summarized the equities of the situation very well:

You can drive a four-cylinder Ford Fiesta like a V8 Ferrari, but it's not quite the same thing. At 4,000 RPMs, in second gear, the Ferrari is already doing 60 and it's just warming up. The Ford Fiesta, however, will be moaning and begging you to slow down and shift gears. And that's kind of what we're talking about here.

It's conceded as fact that the root cause of the Bartow low pressure turbine problems is [REDACTED] caused repeatedly over time. The answer to the question is was this due to the way [DEF] ran the plant or is it due to a [REDACTED]? Well, the answer is both.

The fact is that [DEF] bought a steam turbine that was already built for a different configuration that was in storage, and then hooked it up to a configuration ... that it knew could produce much more steam than it needed. It had a generator that could produce more megawatts, so the limiting factor was the steam turbine.

On its own initiative, it decided to push more steam through the steam turbine to get more megawatts until it broke.

* * *

So from our perspective, [DEF] clearly was at fault for pushing excessive steam flow into the turbine in the first place. The repair which has been established ... may or may not work, but the early operation clearly impeded [DEF's] ability to simply claim that Mitsubishi was entirely at fault. And under those circumstances, it's not appropriate to assign the cost to the consumers.

In Paragraph 120 of the Recommended Order, the ALJ expresses agreement with counsel's summation of the "equities of the situation." As discussed in detail in the responses to DEF's Exceptions 1 – 6 above, the ALJ's numerous factual findings supporting the ALJ's ultimate determination that DEF acted imprudently and should be required to bear the resulting replacement power costs are supported by competent substantial evidence. (Polich, Tr. 304-309, 361-362; Swartz, Tr. 86-88, 112; Ex. 73 at 3; Ex. 115 at 23, 29, 39, 59, 67, 75, 87, 97, 109, 123, 137, 151, and 165; Ex. 73 at 3; Ex. 116 at 4).

In its Exception to Paragraph 120 of the Recommended Order, DEF does not dispute that the ALJ's findings of fact and ultimate determination are supported by competent substantial evidence. Instead, DEF offers a conclusory argument and improperly urges the Commission to reject the ALJ's findings of fact and to substitute contradictory findings. As set forth in the responses to Exceptions 1 through 6 above, the ALJ's findings that DEF acted imprudently and determination that DEF should be required to bear the resulting replacement power costs are supported by competent substantial evidence of record and are consistent with applicable law. The Commission is not free to reject the ALJ's finding that DEF acted imprudently and to thereby modify the ALJ's ultimate determination that the costs of the forced outage should be borne by DEF. DEF's exception to Paragraph 120 is without merit and must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 8.

DEF excepts to Paragraph 121 of the Recommended Order, which is set forth verbatim below:

121. The greater weight of the evidence supports the conclusion that DEF did not exercise reasonable care in operating the steam turbine in a configuration for which it was not designed and under circumstances which DEF knew, or should have known, that it should have proceeded with caution, seeking the cooperation of Mitsubishi to devise a means to operate the steam turbine above 420 MW.

Paragraph 121 of the Recommended Order summarizes the ALJ's numerous findings relating to whether DEF acted imprudently. As reflected throughout the Recommended Order, and set forth in detail in the responses to Exceptions 1 - 6 above, the ALJ's ultimate determination that DEF did not exercise reasonable care in operating the steam turbine in a configuration for which it was not designed, is supported by competent substantial evidence. The Commission is not free to reject or modify findings of facts, or conclusions of law that logically flow from such findings, when the findings are supported by competent substantial evidence of record. DEF's exception to Paragraph 121 is without merit and should be DENIED.

RESPONSE TO DEF EXCEPTION NO. 9.

DEF excepts to Paragraph 122 of the Recommended Order, which is set forth verbatim below:

122. Given DEF's failure to meet its burden, a refund of replacement power costs is warranted. At least \$11.1 million in replacement power was required during the Period 5 outage. This amount should be refunded to DEF's customers.

Paragraph 122 of the Recommended Order summarizes the ALJ's numerous findings relating to whether DEF acted imprudently, and should be required to bear the resulting replacement power costs. As reflected throughout the Recommended Order, and set forth in detail in the responses to

Exceptions 1 - 6 above, the ALJ's ultimate determination that DEF did not exercise reasonable care in operating the steam turbine in a configuration for which it was not designed, and therefore should be required to bear the resulting replacement power costs, is supported by competent substantial evidence of record. Because the ALJ's findings of fact are supported by competent substantial evidence of record and the ALJ has applied the correct law to the facts, DEF's exception is without merit and must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 10.

DEF excepts to Paragraph 123 of the Recommended Order, which is set forth verbatim below:

123. DEF failed to carry its burden to show that the Period 5 blade damage and the required replacement power costs were not consequences of DEF's imprudent operation of the steam turbine in Period 1.

In its exception to Paragraph 123 of the Recommended Order, DEF does not dispute that the ALJ's conclusion in Paragraph 123 is supported by competent, substantial evidence and is consistent with applicable law. Instead, DEF improperly offers the conclusory argument that the Commission should reject the ALJ's findings, re-weigh the evidence, and substitute new and directly contrary findings that are favorable to DEF. As set forth in detail in the responses to DEF's Exceptions 1 - 6 above, the ALJ's findings of fact are supported by competent substantial evidence of record and the ALJ applied the correct legal standard to the evidence of record. DEF's exception is without merit and must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 11.

DEF excepts to Paragraph 124 of the Recommended Order, which is set forth verbatim below:

124. The de-rating of the steam turbine that required the purchase of replacement power for the 40 MW loss caused by installation of the pressure plate was a consequence of DEF's failure to prudently operate the steam turbine during Period 1. Because it was ultimately responsible for the de-rating, DEF should refund replacement costs incurred from the point the steam turbine came back online in May 2017 until the start of the planned fall 2019 outage that allowed the replacement of the pressure plate with the [REDACTED] in December 2019. Based on the record evidence, the amount to be refunded due to the de-rating is \$5,016,782.

The fundamental premise of DEF's exception to Paragraph 124 of the Recommended Order is DEF's conclusory re-argument that "DEF proved by a preponderance of the evidence that its operation of the ST during Period 1 was prudent." The ALJ found, based on the competent substantial evidence of record, that DEF's operation of the ST during Period 1 was *not* prudent.

DEF further excepts to the ALJ's conclusion that DEF should be required to refund replacement power costs related to the installation of the pressure plate. As set forth in detail in the Recommended Order, and in the responses to DEF's Exceptions 1 - 6 above, the ALJ's findings are supported by competent substantial evidence. The ALJ duly considered DEF's imprudent destruction of a portion of the full capability of the ST that required installation of the pressure plate. (Polich, Tr. 361). The basis for the ALJ's finding that ratepayers should be refunded replacement power costs is DEF's imprudence in operating the Bartow unit. The pressure plate bandage stopped the bleeding, resulting in a 40 MW de-rated output, but did not immunize DEF from the effects of its underlying imprudence.

Notably, DEF does not except to the ALJ's related findings and conclusions in Paragraph 108 of the Recommended Order, in which the ALJ sets forth DEF's burden of proof as it relates to any replacement power costs arising from installation of the pressure plate:

108. This is a de novo proceeding. § 120.57(1)(k), Fla. Stat. Petitioner, DEF, has the burden of proving, by a preponderance of the evidence, that it acted prudently in its actions and decisions leading up to and in restoring the unit to service after the February 2017 forced outage at the Bartow Plant. Additionally, DEF must prove by a preponderance of the evidence that no adjustment to replacement power costs should be made to account for the fact that after the installation of a pressure plate in March 2017, the Bartow Plant could no longer produce its rated nameplate capacity of 420 MW. *Dep't of Transp. v. J.W.C. Co.*, 396 So. 2d 778, 788 (Fla. 1st DCA 1981); § 120.57(1)(j), Fla. Stat.

DEF had the burden of proof to show that it acted prudently and that the costs incurred were not the result of DEF's imprudent actions. It did not carry that burden. To the contrary, DEF failed to prove its actions in operating the plant were prudent, and further failed to prove that the damages resulting from the de-rate were the result of prudent operations and thus should be recovered from ratepayers. Therefore, DEF should be required to refund the amounts determined in the Recommended Order. DEF's Exception to Paragraph 124 of the Recommended Order should be DENIED.

RESPONSE TO DEF EXCEPTION NO. 12.

DEF excepts to Paragraph 125 of the Recommended Order, which is set forth verbatim below:

125. The total amount to be refunded to customers as a result of the imprudence of DEF's operation of the steam turbine in Period 1 is \$16,116,782, without interest.

DEF's exception to Paragraph 125 of the Recommended Order is a conclusory restatement of DEF's re-argument that DEF "operated the ST prudently at all times relevant to the replacement

power costs and is, therefore, not required to refund any amount to its customers." As set forth in detail in the Recommended Order and in the responses to DEF's Exceptions 1 - 6 above, the ALJ found, based on the competent substantial evidence of record, that DEF failed to carry its burden of proof to demonstrate that DEF acted prudently during Period 1 and that no adjustment to replacement power costs should be made to account for the fact that, after the installation of a pressure plate in March 2017, the Bartow Plant could no longer produce its rated nameplate capacity of 420 MW. DEF does not contend that the finding of fact and conclusion set forth in Paragraph 125 of the Recommended Order is not supported by competent substantial evidence, but instead urges the Commission to re-weigh the evidence and substitute a new conclusion without even proffering an alternative legal analysis, which the Commission may not do.

CONCLUSION

The Commission referred this matter to the Division of Administrative Hearings to conduct a formal evidentiary hearing on two questions of disputed fact. The ALJ conducted the formal evidentiary hearing, heard and reviewed extensive testimony of expert witnesses, reviewed voluminous documentary evidence, made numerous findings of fact that are supported by competent substantial evidence, and applied the correct legal standard to determine that DEF did not meet its burden of proof to show that that it acted prudently in operating its Bartow Unit 4 plant and in restoring the unit to service after the February 2017 forced outage; and that DEF therefore may not recover, and thus should refund, \$16,116,782 to its customers for replacement power costs resulting from the steam turbine outages from April 2017 through September 2019. DEF's exceptions to the Recommended Order are without merit and should be denied, and the Commission should adopt the Recommended Order in full as the Final Order of the Commission.

DATED THIS 21st day of May 2020.

RESPECTFULLY SUBMITTED,

J.R. Kelly
Public Counsel

/s/ Charles J. Rehwinkel
Charles J. Rehwinkel
Deputy Public Counsel
rehwinkel.charles@leg.state.fl.us

Thomas A. (Tad) David
Associate Public Counsel

Office of Public Counsel
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Attorneys for Florida Industrial Power Users Group

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following parties as indicated below, on this 21st day of May 2020.

Florida Public Service Commission **
Office of General Counsel
2540 Shumard Oak Blvd.
Tallahassee, FL32399

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/s/ Charles J. Rehwinkel
Charles J. Rehwinkel
Deputy Public Counsel
Office of Public Counsel

**Hand Filing with PSC Clerk

†Overnight delivery or electronic delivery

**DUKE ENERGY FLORIDA
Confidentiality Justification Matrix**

DOCUMENT/RESPONSES	PAGE/LINE	JUSTIFICATION
The Intervenor's Joint Response to DEF's Exceptions to the ALJ Recommended Order dated April 27, 2020	<p><u>Page 5:</u> The information after "output of the turbine to" and before "DEF acknowledges that" in its entirety</p> <p><u>Page 7:</u> The information after "blades was caused by" to the end of the page in its entirety</p> <p><u>Page 8:</u> The information at the beginning of the page and before "(Recommended Order, ¶ 37)" in its entirety</p> <p>The information after "DEF agreed that the" and before "(Recommended Order, ¶ 69)" in its entirety</p> <p>The information after "history of the steam turbine," and before "(Recommended Order, ¶ 71)" in its entirety</p> <p><u>Page 9:</u> The information after "capacity of 420 MW." and before "(Recommended Order, ¶ 86)" in its entirety</p> <p>The information after "steam turbine beyond the" and before "The evidence was" in its entirety</p>	<p>§366.093(3)(c), F.S.</p> <p>The document in question contains confidential information, contractual information, or information provided by a third party that DEF is obligated to keep confidential, the disclosure of which would harm its competitive business interests</p>

	<p><u>Page 10:</u> The information after “could safely exceed the” and before “Mr. Swartz was unable” in its entirety</p> <p><u>Page 12:</u> The information after “power factor exceeding” and before “which would result” in its entirety</p> <p>The information after “intended to operate it at” and before “Polich, Tr. 329-330.)” in its entirety</p> <p>The information after “above 420 MW” and before “The ALJ, however, found” in its entirety</p> <p><u>Page 13:</u> The information after “erred by viewing DEF's” and before “of Mitsubishi's 420 MW” in its entirety</p> <p>The information after “the ALJ includes the” and before “provided by Mitsubishi.” in its entirety</p> <p>The information in the footnote after “limit of the ST through” and before “The ALJ further found” in its entirety</p> <p><u>Page 14:</u> The information after “failures were caused by” and before “This conclusion is” in its entirety</p>	
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	<p>The information after “the fact that” and before “Mitsubishi cannot be” in its entirety</p> <p>The information after “cannot be faulted for” and before “in a way that would” in its entirety</p> <p><u>Page 16:</u> The information after “112.” and before “Paragraph 112 of the” in its entirety</p> <p>The information after “it determined that” and before “(Swartz, Tr. 100; Ex. 82 at 5-6).” in its entirety</p> <p>The information after “Mitsubishi concluded that” to the end of the page in its entirety</p> <p><u>Page 17:</u> The information at the beginning of the page and before “(Swartz, Tr. 111-12,” in its entirety</p> <p><u>Page 19:</u> The information after “evidence demonstrated an” and before “that vibrations associated” in its entirety</p> <p><u>Page 20:</u> The information after “DEF observed the” and before “of 420 MW.” in its entirety</p> <p>The information after “that there was no” and before “to the ST following” in its</p>	
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	<p>entirety</p> <p><u>Page 21:</u> The information after “operation of the unit at” and before “bears no relation” in its entirety</p> <p>The information after “the design of the” and before “40" L-0 blades” in its entirety</p> <p><u>Page 22:</u> The information at the beginning of the second bullet point and before “Polich, T. 304- 309,” in its entirety</p> <p>The information at the beginning of the third bullet point and before “(Swartz, T. 108, 179;” in its entirety</p> <p><u>Page 23:</u> The information after “turbine problems is” and before “caused repeatedly over time.” in its entirety</p> <p>The information after “is it due to a” and before “Well, the answer” in its entirety</p> <p><u>Page 27:</u> The information after “pressure plate with the” and before “in December 2019.” in its entirety</p>	
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Exhibit D

AFFIDAVIT OF JEFFREY SWARTZ

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
Clause with generating performance incentive
Factor

Docket No. 20200001-EI

Filed: June 11, 2020

**AFFIDAVIT OF JEFFREY SWARTZ IN SUPPORT OF
DUKE ENERGY FLORIDA'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

STATE OF FLORIDA

COUNTY OF PINELLAS

BEFORE ME, the undersigned authority duly authorized to administer oaths, personally appeared Jeffrey Swartz, who being first duly sworn, on oath deposes and says that:

1. My name is Jeffrey Swartz. I am over the age of 18 years old and I have been authorized by Duke Energy Florida (hereinafter "DEF" or the "Company") to give this affidavit in the above-styled proceeding on DEF's behalf and in support of DEF's Request for Confidential Classification (the "Request"). The facts attested to in my affidavit are based upon my personal knowledge.

2. I am the Vice President of Florida Generation. I am responsible for the overall leadership and strategic direction of DEF's power generation fleet. My major duties and responsibilities include strategic and tactical planning to operate and maintain DEF's non-nuclear generation fleet; generation fleet project and additions recommendations; major maintenance programs; outage and project management; retirement of generation facilities; asset allocation; workforce planning and staffing; organizational alignment and design; continuous

business improvements; retention and inclusion; succession planning; and oversight of hundreds of employees and hundreds of millions of dollars in assets and capital and operating budgets.

3. DEF is seeking confidential classification for certain information contained in the Office Of Public Counsel, PCS Phosphate – White Springs, and The Florida Industrial Power Users Group Joint Response to DEF’s Exceptions to the Administrative Law Judge’s (“ALJ”) Recommended Order dated April 27, 2020. The confidential information at issue is contained in confidential Exhibit A to DEF’s Request and is outlined in DEF’s Justification Matrix that is attached to DEF’s Request as Exhibit C. DEF is requesting confidential classification of this information because it contains confidential information, contractual information, or information provided by a third party that DEF is obligated to keep confidential, the disclosure of which would harm its competitive business interests.

4. In order to contract with third-party vendors and Original Equipment Manufacturers on favorable terms, DEF must keep contractual terms and third-party proprietary information confidential. The disclosure of which would be to the detriment of DEF and its customers. DEF takes affirmative steps to prevent the disclosure of this information to the public, as well as limits its dissemination within the Company to those employees with a need to access the information to provide their job responsibilities. Absent such measures, third-party vendors would run the risk that sensitive business information that they provided would be made available to the public and, as a result, end up in possession of potential competitors. Faced with that risk, persons or companies who would otherwise contract with DEF might decide not to do so if DEF did not keep specific information confidential. Without DEF’s measures to maintain the confidentiality of sensitive terms in contracts, the Company’s efforts to obtain competitive contracts could be undermined.

5. Additionally, the disclosure of confidential information provided by a third party could adversely impact DEF's competitive business interests. If such information was disclosed to DEF's competitors, DEF's efforts to obtain competitive contracts that add economic value to both DEF and its customers could be undermined.

6. Upon receipt of confidential information from third-party vendors, and with its own confidential information, strict procedures are established and followed to maintain the confidentiality of the terms of the documents and information provided, including restricting access to those persons who need the information to assist the Company. At no time since receiving the contracts and information in question has the Company publicly disclosed that information. The Company has treated and continues to treat the information and contracts at issue as confidential.

7. This concludes my affidavit.

Further affiant sayeth not.

Dated the _____ day of June, 2020.

(Signature)

Jeffrey Swartz

Vice President – Generation Florida

THE FOREGOING INSTRUMENT was sworn to and subscribed before me this ____ day of June, 2020 by Jeffrey Swartz. He is personally known to me or has produced his _____ driver's license, or his _____ as identification.

(Signature)

(Printed Name)

(AFFIX NOTARIAL SEAL)

NOTARY PUBLIC, STATE OF _____

(Commission Expiration Date)

(Serial Number, If Any)

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: June 12, 2020

TO: Collin Roehner, Commission Deputy Clerk II, Office of Commission Clerk

FROM: Dale N. Mailhot, Director, Office of Auditing and Performance Analysis *DM*

RE: Inventory of Confidential Documents

Attached is the list of confidential documents which can be destroyed after June 30, 2020.

DM/hv

Cc: Kandis May (with attachment)

RECEIVED-FPSC
2020 JUN 17 PM 3:25
COMMISSION
CLERK

Docket Number	Document Number	
20120002-EG	04617-2012	Original Workpapers - Destroy

Docket Number	Document Number	
20120015-EI	04387-2012	Original Workpapers - Destroy

Docket Number	Document Number	
20120001-EI	06450-2012	Original Workpapers - Destroy

Docket Number	Document Number	
20120001-EI	06419-2012	Original Workpapers - Destroy

Docket Number	Document Number	
20120001-EI	06402-2012	Original Workpapers - Destroy

Docket Number	Document Number	
20130007-EI	03139-2013	Original Workpapers - Destroy

Docket Number	Document Number	
20130001-EI	02346-2013	Original Workpapers - Destroy

Docket Number	Document Number	
20130001-EI	02344-2013	Original Workpapers - Destroy

Docket Number	Document Number	
20130001-EI	02303-2013	Original Workpapers - Destroy

Docket Number	Document Number	
20130001-EI	02342-2013	Original Workpapers - Destroy

Docket Number	Document Number	
20130001-EI	02442-2013	Original Workpapers - Destroy
20130001-EI	02443-2013	Original Workpapers - Destroy

Docket Number	Document Number	
20130001-EI	02305-2013	Original Workpapers - Destroy

Docket Number	Document Number	
20130009-EI	02697-2013	Original Workpapers - Destroy

Docket Number	Document Number	
20130009-EI	03188-2013	Original Workpapers - Destroy
20130009-EI	03189-2013	Original Workpapers - Destroy
20130009-EI	03190-2013	Original Workpapers - Destroy

Docket Number	Document Number	
20130009-EI	03186-2013	Original Workpapers - Destroy

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: June 12, 2020

TO: Collin Roehner, Commission Deputy Clerk II, Office of Commission Clerk

FROM: Dale N. Mailhot, Director, Office of Auditing and Performance Analysis *DM*

RE: Inventory of Confidential Documents

Attached is the list of confidential documents which can be returned to the companies.

DM/hv

Cc: Kandis May (with attachment)

RECEIVED-FPSC
2020 JUN 17 PM 3:25
COMMISSION
CLERK

Docket Number	Document Number	
20120002-EG	05085-2012	Highlighted Copy – Return to the Company
20120002-EG	05738-2012	Highlighted Copy – Return to the Company

Docket Number	Document Number	
20120015-EI	00740-2014	Highlighted Copy – Return to the Company

Docket Number	Document Number	
20120001-EI	07019-2012	Highlighted Copy – Return to the Company

Docket Number	Document Number	
20120001-EI	06836-2012	Highlighted Copy – Return to the Company

Docket Number	Document Number	
20120001-EI	06941-2012	Highlighted Copy – Return to the Company

Docket Number	Document Number	
20150007-EI	02071-2015	Highlighted Copy – Return to the Company

Docket Number	Document Number	
20130001-EI	02792-2013	Highlighted Copy – Return to the Company

Docket Number	Document Number	
20130001-EI	02794-2013	Highlighted Copy – Return to the Company

Docket Number	Document Number	
20130001-EI	02553-2013	Highlighted Copy – Return to the Company

Docket Number	Document Number	
20130001-EI	02766-2013	Highlighted Copy – Return to the Company

Docket Number	Document Number	
20180001-EI	06437-2018	Highlighted Copy – Return to the Company

Docket Number	Document Number	
20150001-EI	01431-2015	Highlighted Copy – Return to the Company

Docket Number	Document Number	
20130009-EI	02896-2013	Highlighted Copy – Return to the Company Request that the company maintain this document until 12-31-2026.

Docket Number	Document Number	
20130009-EI	03678-2013	Highlighted Copy – Return to the Company Request that the company maintain this document until 12-31-2026.

Docket Number	Document Number	
20130009-EI	03580-2013	Highlighted Copy – Return to the Company Request that the company maintain this document until 12-31-2026.

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: June 26, 2020

TO: Division of Accounting and Finance, Office of Primary Responsibility

FROM: OFFICE OF COMMISSION CLERK

RE: CONFIDENTIALITY OF CERTAIN INFORMATION

DOCKET NOS: 20200001-EI DOCUMENT NO: 03051-2020

DESCRIPTION: Duke Energy (Bernier) - (CONFIDENTIAL) Certain information provided in OPC, White Springs, and FIPUG's response (DN 02707-2020) to exceptions to Administrative Law Judge's Recommended Order dated 4/27/20, Exh A [to request for confidential classification (DN 03055-2020)].

SOURCE: Duke Energy Florida, LLC

The above confidential material was filed along with a request of confidential classification. Please complete the following form by checking all applicable information and forward it to the attorney assigned to the docket, along with a brief memorandum supporting your recommendation.

- ☒ The document(s) is (are), in fact, what the utility asserts it (them) to be.
- ☒ The utility has provided enough details to perform a reasoned analysis of its request.
- ☐ The material has been received incident to an inquiry.
- ☒ The material is confidential business information because it includes:
- ☐ (a) Trade secrets;
 - ☐ (b) Internal auditing controls and reports of internal auditors;
 - ☐ (c) Security measures, systems, or procedures;
 - ☒ (d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms;
 - ☒ (e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of information;
 - ☐ (f) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities;
- ☒ The material appears to be confidential in nature and harm to the company or its ratepayers will result from public disclosure.
- ☐ The material appears not to be confidential in nature.
- ☐ The material is a periodic or recurring filing and each filing contains confidential information.

This response was prepared by /s/Devlin Higgins on 6.26.20, a copy of which has been sent to the Office of Commission Clerk and the Office of General Counsel.

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: June 26, 2020

TO: Suzanne S. Brownless, Special Counsel, Office of the General Counsel

FROM: Devlin Higgins, Public Utility Analyst IV, Division of Accounting & Finance

RE: CONFIDENTIALITY OF CERTAIN INFORMATION

DOCKET NO: 20200001-EI DOCUMENT No: 03051-2020

DESCRIPTION: Duke Energy (Bernier) - (CONFIDENTIAL) Certain information provided in OPC, White Springs, and FIPUG's response (DN 02707-2020) to exceptions to Administrative Law Judge's Recommended Order dated 4/27/20, Exh A [to request for confidential classification (DN 03055-2020)].

SOURCE: Duke Energy Florida

Pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code, Duke Energy Florida (DEF or Company) requests confidential classification of certain information filed in connection with certain information provided to/in the Office of Public Counsel, PCS Phosphate – White Springs, and The Florida Industrial Power Users Group’s “Joint Response To DEF’s Exceptions” to the Division of Administrative Hearings (DOAH) Law Judge’s Recommended Order.

Due to concerns regarding the maintenance of confidentiality with respect to the information subject to this request, the Florida Public Service Commission by Order No. PSC-2019-0484-FOF-EI, and Document No. 10846-2019, sent this matter for hearing to the DOAH.¹

The Company is claiming confidentiality of its filing under Section 366.093(3)(d), F.S., and Section 366.093(3)(e), F.S. Per the Statute, propriety of confidential business information includes, but is not limited to: Subsection (d) “[i]nformation concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms,” and Subsection (e) “[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.”

¹Order No. PSC-2019-0484-FOF-EI, Issued November 18, 2019, Docket No. 20190001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*.

More specifically, the information at issue relates to claimed proprietary and confidential information regarding a third-party's (to DEF) component/equipment design and operation parameters. DEF asserts that if it cannot demonstrate to its third-party partners that the Company has the ability to protect those third-parties' confidential and proprietary business information, it will be less likely that DEF can secure contracts that benefit its customers.

Staff has previously reviewed the subject information as well as the Company's confidentiality request. It is staff's opinion that the information subject to this request meets the criteria for confidentiality contained in Section 366.093(3)(d), F.S. and Section 366.093(3)(e), F.S.

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: August 6, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Crawford, Stiller)
Division of Accounting and Finance (Cicchetti)
Division of Engineering (Ballinger)

RE: Docket No. 20200001-EI – Fuel and purchased power cost recovery clause with generating performance incentive factor.

AGENDA: August 18, 2020 – Regular Agenda – Post-Hearing Decision – Participation is Limited to Commissioners and Staff

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Fay

CRITICAL DATES: 90 days from the date of delivery of Recommended Order. Section 120.569(1)(l)2, F.S.

SPECIAL INSTRUCTIONS: None

Case Background

The Commission opened Docket No. 20190001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*, referred to as the Fuel Clause, on January 2, 2019. The Fuel Clause is a perennial docket closed, reopened, and renumbered every year in which the Commission processes all petitions filed by investor-owned electric utilities seeking to recover the cost of fuel and fuel-related activities needed to generate electricity.

Duke Energy Florida, LLC (DEF) is an investor-owned electric utility operating in the State of Florida. DEF reaffirmed its party status in Docket No. 20190001-EI on January 3, 2019. Likewise, the Office of Public Counsel (OPC), authorized by Section 350.0611, Florida Statutes (F.S.), to provide legal representation to Florida electric utility customers before the

Commission, reaffirmed its party status in Docket No. 20190001-EI on January 4, 2019. The Florida Industrial Power Users Group (FIPUG), an association of utility customers who consume large amounts of electricity, and White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate – White Springs (PCS Phosphate), a fertilizer company, reaffirmed their party status on January 4, 2019 and January 15, 2019, respectively.

The Commission issued Order No. PSC-2019-0059-PCO-EI on February 13, 2019, establishing the procedures to be followed. On March 1, 2019, DEF filed its Petition for approval of fuel cost recovery and capacity cost recovery with generating performance incentive factor actual true-ups for the period ending December 2018. At that time DEF also filed the direct testimony of Jeffrey Swartz which incorporated Exhibit JS-1, filed in the 2018 Fuel Clause. On September 13, 2019, OPC filed the direct testimony and exhibits of Richard A. Polich, non-confidential Exhibits RAP-1 through RAP-2, and confidential Exhibits RAP-3 through RAP-9. On September 26, 2019, DEF filed the rebuttal testimony of Jeffrey Swartz with confidential Exhibits JS-2 through JS-4.

A Prehearing Conference was held on October 22, 2019, and Prehearing Order No. PSC-2019-0466-PHO-EI was issued on October 31, 2019. At that time two issues associated with the testimony of witnesses Swartz and Polich were identified: Issues 1B and 1C. Issue 1B and 1C state as follows:

Issue 1B: Was DEF prudent in its actions and decisions leading up to and in restoring the unit to service after the February 2017 forced outage at the Bartow plant, and if not, what action should the Commission take with respect to replacement power costs?

Issue 1C: Has DEF made prudent adjustments, if any are needed, to account for replacement power costs associated with any impacts related to the de-rating of the Bartow Plant? If adjustments are needed and have not been made, what adjustment(s) should be made?

It became readily apparent that large portions of the testimony and exhibits of both witnesses Swartz and Polich associated with these issues, as well as the Commission staff's proposed trial exhibits, were highly confidential in nature. This fact made it impossible to conduct meaningful direct or cross examination without reference to, and discussion of, confidential material. The only way to conduct a hearing based substantially on confidential material would be to close the hearing to the public. Because the Commission must conduct all of its proceedings in the sunshine under the law¹ the Commission does not have the ability to close a hearing, even one which deals extensively with confidential materials and testimony. Therefore, in order to maintain the confidentiality of these materials, DEF Bartow Unit 4 Issues 1B and 1C were referred by the Commission to the Division of Administrative Hearings (DOAH) on November 8, 2019.

¹ Section 286.011, F.S.

Administrative law judge (ALJ) Lawrence P. Stevenson conducted a closed final evidentiary hearing on February 4-5, 2020. At the hearing, DEF presented the confidential testimony of Jeffrey Swartz, with his prefiled direct and rebuttal testimony inserted into the record as though read. DEF's Exhibit Nos. 80-82 were admitted into evidence. OPC presented the confidential testimony of Richard A. Polich, with his prefiled testimony inserted into the record as though read. OPC's Exhibit Nos. 68-75, 101-109, and 115-117 were admitted into evidence. Commission staff Exhibit Nos. 110 and 111 were admitted into evidence. FIPUG's Exhibit No. 118 and PCS Phosphate's Exhibit Nos. 112 and 113 were also admitted into evidence. The revised Comprehensive Exhibit List (CEL) was admitted into evidence by stipulation as Exhibit No. 114.

A three-volume transcript of the final hearing was filed with the Commission Clerk on February 18, 2020, and was provided to the DOAH Clerk on February 24, 2020. DEF, Commission staff, and OPC, jointly with PCS Phosphate and FIPUG, timely filed confidential proposed recommended orders on March 20, 2020. The ALJ issued his Recommended Order² on April 27, 2020. A redacted version of the Recommended Order is found in Attachment A to this recommendation.

On May 12, 2020, DEF submitted exceptions to the Recommended Order. A redacted version of DEF's exceptions is found in Attachment B to this recommendation. OPC, jointly with PCS Phosphate and FIPUG (collectively, the Intervenor), filed a Response to DEF's Exceptions, a redacted version of which is found in Attachment C to this recommendation.

Overview of the Recommended Order

This case involves the operation of DEF's Bartow Unit 4 combined cycle natural gas plant and whether DEF operated the plant prudently from the time it was brought on line in June 2009 until February 2017. Bartow Unit 4 is comprised of a steam turbine manufactured by Mitsubishi Hitachi Power Systems (Mitsubishi) with a gross output of 420 MW connected to four M501 Type F combustion turbines. The steam turbine is an "after-market" unit which was originally designed for Tenaska Power Equipment, LLC (Tenaska) to be used in a 3x1 configuration with three M501 Type F combustion turbines with a gross output of 420 MW. Prior to purchasing the steam turbine, DEF's predecessor, Progress Energy Florida, LLC contracted with Mitsubishi to evaluate the steam turbine design conditions and to update the [REDACTED] for a 4x1 configuration. As required by its contract, [REDACTED]

The Bartow plant has experienced five outages since it was brought on line in June 2009: March 2012 (planned), August 2014 (planned), April 2016 (planned), October 2016 (forced), and February 2017 (forced).

In March 2012 during a scheduled outage, DEF discovered that the [REDACTED] L-0 blades in the low pressure section of the steam turbine were damaged. The [REDACTED] L-0 blades were replaced with [REDACTED]

² "Recommended Order" is defined in Section 120.52(15), F.S., as the official recommendation of the ALJ assigned by DOAH or of any other duly authorized presiding officer, other than the agency head or member thereof.

Date: August 6, 2020

_____ and the plant was operated until August 2014 when the plant was taken out of service to _____. The plant came back on line in December 2014 and ran until April 2016 when it was taken off line for routine valve work and L-0 blade inspection. The plant was placed back in service in May 2016 with a _____ and operated until October 2016, when DEF shut the plant down due to excessive vibration and loss of _____. In December 2016 the plant was put back in service with the _____, and was taken out of service in February of 2017 due to a _____. DEF brought the plant back on line in April 2017 with a pressure plate installed in the low pressure section of the steam turbine, which effectively decreased the output of the plant from 420 to 380 MW. DEF continued to operate the plant with the pressure plates until September 28, 2019.

There are two amounts that are associated with the initial prudence question: 1) replacement power costs for the February 2017 outage in the amount of \$11.1 million, and 2) May 2017 through September 2019 unit derating³ costs in the amount of \$5,016,782 million.

Petitioner, DEF, has the burden of proving by a preponderance of the evidence, that it acted prudently in the operation of Bartow Unit 4 up to and restoring the unit to service after the February 2017 forced outage. Additionally, DEF must prove by a preponderance of the evidence that no adjustment to replacement power costs should be made to account for the fact that after March 2017, and the installation of a pressure plate, Bartow Unit 4 could no longer produce its rated nameplate capacity of 420 MW. The standard for determining whether replacement power costs are prudent is "what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or should [have] been known at the time the decision was made."⁴

In his Recommended Order, the ALJ detailed the relevant facts and legal standards required to determine whether DEF acted prudently in its operation of Bartow Unit 4 from June 2009 until February 2017. In his conclusion, the ALJ recommended that the Commission find that DEF failed to demonstrate that it acted prudently in the operation of its Bartow Unit 4 plant and in restoring the unit to service after the February 2017 forced outage, and that DEF should refund a total of \$16,116,782 to its customers.

Legal standards for review of recommended orders

Section 120.57(1)(l), F.S., establishes the standards an agency must apply in reviewing a Recommended Order following a formal administrative proceeding. The statute provides that the agency may adopt the Recommended Order as the Final Order of the agency or may modify or reject the Recommended Order. An agency may only reject or modify an ALJ's findings of fact if, after a review of the entire record, the agency determines and states with particularity that the findings of fact were not based on competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law.⁵

³ "Derating" is the reduction in MW output due to installing pressure plates in place of the L-0 blades in the low pressure section of the steam turbine.

⁴ *Southern Alliance for Clean Energy v. Graham*, 113 So. 3d 742, 750 (Fla. 2013).

⁵ Section 120.57(1)(l), F.S.

Section 120.57(1)(l), F.S., also states that an agency in its final order may reject or modify conclusions of law over which it has substantive jurisdiction and interpretations of administrative rules over which it has substantive jurisdiction. When rejecting or modifying a conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying the conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact.⁶

In regard to parties' exceptions to the ALJ's Recommended Order, Section 120.57(1)(k), F.S., provides that the Commission does not have to rule on exceptions that fail to clearly identify the disputed portion of the Recommended Order by specific page numbers or paragraphs or that do not identify the legal basis for the exception, or those that lack appropriate and specific citations to the record.⁷ Section 120.57(1)(l), F.S., requires the Commission's final order to include an explicit ruling on each exception and sets a high bar for rejecting an ALJ's findings.

This recommendation, which is based upon a review of the entire record of the hearing and post-hearing submissions, addresses whether the Commission should adopt the ALJ's Recommended Order as filed, make any changes to the order, or act on any of the matters raised in DEF's exceptions to the Recommended Order. Issue 1 addresses the post-hearing submissions by DEF and Issue 2 addresses the adoption of the ALJ's Recommended Order. The Commission has jurisdiction over this matter pursuant to Sections 120.57, 366.04, 366.05, and 366.06, F.S., and substantive jurisdiction over the conclusions of law discussed below.

⁶ *Id.*

⁷ Section 120.57(1)(k), F.S.

Discussion of Issues

Issue 1: Should the Commission accept any of the exceptions to conclusions of law filed by DEF?

Recommendation: No. DEF has not presented any legally sufficient basis for rejecting or modifying any portion of the Recommended Order. Therefore, staff recommends that the Commission should deny DEF's exceptions to Conclusions of Law 110-114 and 119-125. (Crawford, Stiller)

Staff Analysis: DEF filed exceptions to the ALJ's Conclusions of Law 110-114 and 119-125.

DEF Exception to Conclusion of Law 110

DEF takes exception with the ALJ's Conclusion of Law 110, which states:

110. DEF failed to demonstrate by a preponderance of the evidence that its actions during Period 1 were prudent. DEF purchased an aftermarket steam turbine from Mitsubishi with the knowledge that it had been manufactured to the specifications of Tenaska with a design point of 420 MW of output. Mr. Swartz's testimony regarding the irrelevance of the 420 MW limitation was unpersuasive in light of the documentation that after the initial blade failure, DEF itself accepted the limitation and worked with Mitsubishi to find a way to increase the output of the turbine to [REDACTED]

First, as a general criticism, DEF argues that when weighing the facts presented at hearing, although stating the correct legal standard of review - what a reasonable utility manager should have done based on what he knew or should have known at the time - the ALJ did not apply that standard but instead evaluated DEF's actions from the perspective of what is currently known. DEF states that this type of "hindsight" and "Monday-morning quarterbacking" prudence analysis has been found to be inappropriate under *Florida Power Corporation v. Public Service Comm. (Florida Power)*, 456 So. 2d 451, 452 (Fla. 1984).

Second, DEF disagrees with the ALJ's conclusion that the 420 MW design point was a limitation on the steam turbine. DEF argues that the record supports the conclusion that the 420 MW design point is a fall out number based on various combinations of operating parameters provided by Mitsubishi. DEF argues that operating within the parameters given by Mitsubishi was prudent given what DEF knew or should have known during Period 1. At that time, DEF contends that there was no reason to believe that increasing the output above 420 MW would damage the unit as long as the operating parameters were complied with. Thus, DEF concludes that the fact that the [REDACTED] [REDACTED] [REDACTED] in February 2017 does not mean that the plant operator reasonably should have known that would happen in June 2009.

Third, DEF argues that DEF's compliance with lower than 420 MW output after Period 1 and its [REDACTED] to operate the unit at [REDACTED] [REDACTED] do not logically support the conclusion that DEF agreed the unit originally could not be operated above 420 MW. These actions, according to DEF, allowed the unit to continue to be operated to produce the most power

possible while research into the cause of the Period 1 outage was conducted. DEF argues that getting the unit back on line producing as much power as possible is implementation of long standing Commission policy that utilities operate generating units for maximum efficiency. DEF asserts that these actions are not evidence of DEF's acceptance of 420 MW as a limitation on the output of the unit.

Intervenors' Response

Intervenors contend that DEF, while conceding that the ALJ referenced the correct legal standard for prudence review, never explains or demonstrates exactly how the ALJ applied "Monday-morning quarterbacking" to reach any of the conclusions in Conclusions of Law 110. In the determination of what a utility knew or should have known at any past point in time, Intervenors state that there is necessarily a review of contemporaneous prior actions and documents. They contend that that review was done here. Intervenors note that DEF has not argued that there is no competent substantial evidence supporting the ALJ's conclusions in Conclusions of Law 110 and cites nine separate parts of the record that do logically support the ALJ's conclusion that DEF did not act prudently in running the unit above 420 MW in Period 1.

Intervenors further argue that the *Florida Power* case relied upon by DEF is not applicable here for several reasons. In *Florida Power*, the Commission classified "non-safety related" repair work as "safety-related" repair work and then applied the higher standard of care for "safety-related" repair work to determine if Florida Power had conducted the repairs prudently. Finding that the record indicated that the extensive repair work was not *per se* safety-related, the Court found that the Commission could not apply the higher standard of care. *Florida Power*, 456 So. 2d at 451. Intervenors argue that in this case, the facts upon which the ALJ relied regarding the repair of the unit are supported by competent substantial evidence and are not in dispute, nor does DEF argue that the inferences drawn from the facts by the ALJ are unreasonable. Intervenors state that DEF would simply draw different conclusions from the same set of facts, i.e., would have the Commission weigh the evidence differently, an action prohibited by Chapter 120, F.S.

Staff Analysis and Conclusion:

Here DEF is asking the Commission to modify a conclusion of law. When rejecting or modifying a conclusion of law, the Commission must state with particularity its reasons for doing so, and must make a finding that the substituted conclusion of law is as or more reasonable than the one rejected or modified.⁸ Rejection or modification of a conclusion of law may not form the basis for rejection or modification of a finding of fact.⁹ With respect to DEF's exception to Conclusion of Law 110, staff recommends that DEF has failed to provide an adequate basis for rejecting or modifying the Conclusion of Law, and DEF's exception should therefore be denied.

⁸ Section 120.57(1)(l), F.S.; *Prysi v. Department of Health*, 823 So. 2d 823, 825 (Fla. 1st DCA 2002)

⁹ Section 120.57(1)(l), F.S.

Further, DEF has not raised exceptions to any of the 102 factual findings made by the ALJ in his Recommended Order. As its rationale for not doing so, DEF cites the high standard that must be met to set aside an ALJ's finding of fact.¹⁰ The failure to file exceptions to findings of fact constitutes a waiver of the right to object to those facts on appeal. *Mehl v. Office of Financial Regulation*, 859 So. 2d 1260 (Fla. 1st DCA 2003); *Environmental Coalition of Florida v. Broward County*, 586 So. 2d 1212 (Fla. 1st DCA 1991). Nor has DEF argued that the proceedings conducted by the ALJ that produced those facts did not comply with the essential requirements of law. Thus, for all practical purposes, DEF has accepted all of the ALJ's 102 factual findings.

If the ALJ's findings of fact are supported by competent substantial evidence, the agency may not reject or modify them even to make alternative findings that are also supported by competent substantial evidence. *Kanter Real Estate, LLC v. Department of Environmental Protection (Kanter)*, 267 So. 3d 483, 487-88 (Fla. 1st DCA 2019), *reh'g denied* (Mar. 19, 2019), *review dismissed sub nom. City of Miramar v. Kanter Real Estate, LLC*, SC19-636, 2019 WL 2428577 (Fla. June 11, 2019)(citing *Lanz v. Smith*, 106 So. 3d 518, 521 (Fla. 1st DCA 2013)).

Finally, an agency is not authorized to substitute its judgment for that of the ALJ by taking a different view of, or placing greater weight on, the same evidence, reweighing the evidence, judging the credibility of witnesses, or otherwise interpreting the evidence to fit its desired conclusion. *Prysi v. Department of Health*, 823 So. 2d 823, 825 (Fla. 1st DCA 2002); *Heifetz v. Department of Business Regulation*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985).

Staff agrees with DEF and the Intervenor that the standard for determining whether replacement power costs are prudent is "what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or should [have] been known at the time the decision was made."¹¹ However, in reaching the conclusion of law that DEF failed to show by a preponderance of the evidence that it acted prudently in Period 1, DEF contends that the ALJ did not follow this standard but instead evaluated DEF's actions in light of present knowledge. However, DEF never specifically identifies the facts it could not have known which were relied upon by the ALJ in reaching his conclusion of imprudence. Without identifying the facts upon which the ALJ improperly relied, it is impossible to evaluate this contention and it must be rejected.

The ALJ bases his conclusion that a preponderance of the evidence established the actions of DEF in Period 1 were imprudent on three facts. First, the Mitsubishi aftermarket steam turbine was manufactured with a design point of 420 MW of output. Second, witness Swartz's testimony that the 420 MW was not an operational limitation was unpersuasive. Third, DEF accepted this limitation in Periods 2-5 and worked with [REDACTED]

With regard to the first point, DEF does not contest that the steam turbine was aftermarket manufactured with a design point of 420 MW. This conclusion is supported by Findings of Fact Nos. 14-26. With regard to the second point, the ALJ extensively discusses the arguments

¹⁰ DEF Exceptions at 2.

¹¹ *Southern Alliance for Clean Energy v. Graham*, 113 So. 3d 742, 750 (Fla. 2013).

presented by DEF witness Swartz that the 420 MW is not an operational limitation for this steam turbine in Findings of Fact Nos. 16-32 which culminate in Finding of Fact No. 33. Finding of Fact No. 33, a finding that DEF did not contest, states: "The greater weight of the evidence establishes that the Mitsubishi steam turbine was designed to operate at 420 MW of output and that 420 MW was an operational limitation of the turbine." Since DEF did not take exception to the identical statement in Finding of Fact No. 33, DEF has waived its ability to contest Conclusion of Law 110 on the grounds that the design point did not act as an operational limitation. However, even if DEF had taken exception to Finding of Fact 33, it is clear that the ALJ considered and rejected witness Swartz's arguments that DEF did not act imprudently by operating the steam turbine for extended periods of time at more than 420 MW.

With regard to the third point, DEF does not dispute that in Periods 2-5 it complied with the [REDACTED] placed on it by Mitsubishi and worked with Mitsubishi to [REDACTED] DEF disputes the significance of having done so. DEF argues that by working with Mitsubishi in Periods 2-5 it was acting to maximize the steam turbine's output for the benefit of its customers. As a general matter, DEF has argued that if a conclusion of law is "infused with overriding policy considerations," the agency, not the ALJ, should decide that issue.¹² Although not specifically identified, apparently, DEF believes that "maximization of output" is such an "overriding policy consideration" which should be given agency deference when determining operational prudence. However, DEF has not identified any statute, rule or Commission order that identifies "maximization of output" as a Commission policy. Additionally, the idea of agency deference, even in the interpretation of an agency's own rules and statutes, is now highly questionable given the passage of Amendment 6 to the Florida Constitution.¹³

Additionally, staff does not find the *Florida Power* decision cited by DEF on the issue of hindsight to be relevant. In *Florida Power*, the Commission made a finding of fact that was not supported by the record - that "non- safety related" repair work was "safety-related" repair work - and then improperly applied the higher standard of care for "safety-related" repair work. The crux of the problem in *Florida Power* was this unsupported finding of fact. Here DEF is not contesting any of the ALJ's 102 findings of fact as being unsupported by competent substantial evidence. Nor is DEF arguing that the legal conclusions the ALJ has drawn from these uncontested facts are unreasonable. Here there is no mistake of fact triggering the misapplication of a legal standard. In this case all parties agree on the standard to be applied, DEF simply does not like the result reached by the ALJ.

Because DEF has failed to establish that its exception to Conclusion of Law 110 is as or more reasonable than that of the ALJ, staff recommends that DEF's Exception to Conclusion of Law 110 be denied.

¹² *Pillsbury v. State, Department of Health & Rehabilitative Services*, 744 So. 2d 1040, 1042 (Fla. 2d DCA 1999).

¹³ "Section 21. Judicial interpretation of statutes and rules. - In interpreting a state statute or rule, a state court or an officer hearing an administrative action pursuant to general law may not defer to an agency's interpretation of such statute or rule, and must instead interpret such statute or rule de novo."

DEF Exception to Conclusion of Law 111

DEF takes exception with the ALJ's Conclusion of Law 111, which states:

111. DEF's RCA [Root Cause Analysis] concluded that the blade failures were caused [REDACTED]

[REDACTED] This conclusion is belied by the fact that [REDACTED] Mitsubishi cannot be faulted for [REDACTED] in a way that would allow an operator to run the turbine consistently beyond its capacity.

DEF takes exception to the conclusion that the L-0 blade failures were not caused by [REDACTED] on the L-0 blades and that the turbine was consistently run above its capacity. DEF argues that Mitsubishi was contracted specifically to assess whether this particular steam turbine could handle the proposed 4x1 steam configuration. DEF states that Mitsubishi did not originally identify [REDACTED] and it was reasonable for DEF in Period 1 to rely upon Mitsubishi's assessment. The better comparison, according to DEF, is not with other [REDACTED], but with blade failures in Periods 2-5 when the unit was run at less than 420 MW. Finally, DEF notes that the exact time that the L-0 blades were damaged in Period 1 cannot be established. DEF states that the damage could have occurred during the half of the time in Period 1 when the steam turbine was operated at less than 420 MW.

Intervenors' Response

Intervenors respond that the conclusions of law in Paragraph 111 are supported by competent substantial evidence of record. Further, to the extent that a finding is both a factual and legal conclusion, Intervenors state that it cannot be rejected when there is competent substantial evidence to support the conclusion and the legal conclusion necessarily follows. *Berger*, 653 So. 2d at 480; *Strickland*, 799 So. 2d at 279; *Dunham*, 652 So. 2d at 897. Additionally, Intervenors contend that it is the ALJ, not the Commission, who is authorized to interpret the evidence presented and to decide between two contrary positions supported by conflicting evidence. *Heifetz v. Dept. of Business Regulation*, 475 So. 2d 1277, 1281-2 (Fla. 1st DCA 1985). With regard to DEF's reliance on the fact that it is impossible to tell when the L-0 blades were damaged in Period 1, Intervenors find this to be irrelevant since the ALJ does not address that fact in Paragraph 111.

Staff Analysis and Conclusion:

This conclusion of law constitutes the ALJ's rejection of DEF's Root Cause Analysis (RCA) conclusion that [REDACTED]

[REDACTED] The ALJ cites the fact that in [REDACTED] steam turbines with a [REDACTED] of the same [REDACTED] only Bartow Unit 4 has had [REDACTED] Further, Bartow Unit 4 had the [REDACTED] loading in [REDACTED]

¹⁴ Finding of Fact No. 67.

the entire fleet, in [REDACTED] [REDACTED] for the rest of the fleet.¹⁵ Additionally, the ALJ found that as late as June 2017 DEF agreed with [REDACTED] [REDACTED] was one of "the most significant contributing factors" toward the L-0 blade failure.¹⁶ Given these facts, none of which are disputed by DEF, the ALJ found DEF's exclusion of [REDACTED] from its final RCA to be troubling, as does staff.

The ALJ's Conclusion of Law was adequately supported by the relevant findings of fact. DEF has failed to demonstrate that its conclusion is as or more reasonable than that of the ALJ. For this reason, staff recommends that DEF's Exception to Conclusion of Law 111 be denied.

DEF Exception to Conclusion of Law 112

DEF takes exception with the ALJ's Conclusion of Law 112, which states:

112. [REDACTED]

DEF states that Mitsubishi did not ultimately attribute the blade failure in Period 1 to operation in excess of 420 MW but found in September 22, 2017, that [REDACTED]

[REDACTED] DEF argues that given the fact that the turbine was not operated above 420 MW in Periods 2 through 5, it is more reasonable to conclude that the damage to the blades in Period 1 was the result of [REDACTED]

Intervenors' Response

Intervenors contend that DEF does not contest that there are findings of fact supported by competent substantial evidence in the record to support the ALJ's conclusion of law. Thus, Intervenors conclude that the Commission, under those circumstances, can't reject the ALJ's conclusion of law or substitute its own judgment for that of the ALJ.

Staff Analysis and Conclusion:

This conclusion of law constitutes the ALJ's acceptance of Mitsubishi's RCA which concluded [REDACTED]

[REDACTED] After [REDACTED] on the steam turbine in December 2014, Mitsubishi concluded that the damage to the L-0 blades in all

¹⁵ Finding of Fact No. 83.

¹⁶ Finding of Fact No. 70.

five Periods was attributable to [REDACTED] [REDACTED] [REDACTED] [REDACTED]¹⁷ Mitsubishi published its RCA findings in September of 2017. As late as June 2017 DEF agreed with Mitsubishi that [REDACTED] was one of “the most significant contributing factors” toward the L-0 blade failure.¹⁸ Finally, Mitsubishi has stayed with its assessment that the blade damage was created by [REDACTED] [REDACTED] [REDACTED] [REDACTED] which did not allow the [REDACTED] [REDACTED] [REDACTED] [REDACTED]

DEF is simply rearguing its case that its RCA should be substituted for that of Mitsubishi. DEF has not contested the facts upon which Conclusion of Law 112 is based. Conclusion of Law 112 is the companion to Conclusion of Law 111 and staff recommends that it should be upheld for the same reasons – that there is competent substantial evidence to support this conclusion and the conclusion is reasonable given the facts proven by a preponderance of the evidence presented. DEF has failed to demonstrate that its conclusion is as or more reasonable than that of the ALJ. Thus, staff recommends that DEF's Exception to Conclusion of Law 112 be denied.

DEF Exception to Conclusion of Law 113

DEF takes exception with the ALJ's Conclusion of Law 113, which states:

113. Mr. Polich persuasively argued that it would have been simple prudence for DEF to ask Mitsubishi about the ability of the turbine to operate continuously in excess of 420 MW output before actually operating it at those levels. DEF understood that the blades had been designed for the Tenaska 3x1 configuration and should have at least explored with Mitsubishi the wisdom of operating the steam turbine with steam flows in excess of those anticipated in the original design.

DEF defends not contacting Mitsubishi by citing the following evidence in the record: 1) [REDACTED]

2) the MW output of a steam turbine is not an “operating parameter”; and 3) Mitsubishi knew DEF would operate the plant in excess of 420 MW. For these reasons, DEF argues that it is “as or more reasonable” to conclude that DEF did not need to contact Mitsubishi.

Intervenors' Response

Intervenors argue that DEF is simply rehashing the evidence presented and urging the Commission to make new findings that are “as or more reasonable” than the findings made by the ALJ. The ALJ states that he found OPC's expert persuasive on this point and it is the exclusive prerogative of the ALJ, not the Commission, to evaluate the credibility of a witness and the weight to be given to his/her testimony. Intervenors contend that since there is competent substantial evidence supporting the conclusion that DEF should have called Mitsubishi, this conclusion cannot be modified.

¹⁷ Finding of Fact Nos. 37, 63.

¹⁸ Finding of Fact No. 70.

¹⁹ Finding of Fact No. 78.

Staff Analysis and Conclusion

When viewed as a whole, the ALJ has based his analysis of this case by focusing on several areas. First, the nature of the after-market steam turbine and what limitations, if any, were inherent in its original 3x1 design. Second, the type and meaning of guarantees given by Mitsubishi for its current use in a 4x1 configuration. Third, the cause of the damage to the low pressure L-0 40" blades. Analysis of these three areas results in a finding regarding whether DEF acted prudently in the operation of the steam turbine which in turn drives the decision of whether replacement power costs for the April 2017 outage should be recovered or denied.

The ALJ's findings of fact establish that the steam turbine was originally designed to be used in a 3x1 configuration with a design point maximum of 420 MW. The 3x1 configuration used three M501 Type F combustion turbines connected to the steam turbine.²⁰ The 4x1 design configuration used by DEF used four M501 Type F combustion turbines connected to the same steam turbine.²¹

[REDACTED] with a [REDACTED].²² These guaranteed outputs were based on [REDACTED] calculated using only three combustion turbines and heat recovery steam generators with duct firing. Of the [REDACTED] run by [REDACTED] to predict how the steam turbine would operate, not one showed it producing more than 420 MW.²⁴

Under these circumstances it is reasonable to believe that Mitsubishi would have instructed its consultant to run [REDACTED] [REDACTED] if it thought the steam turbine could handle it.²⁵ This is especially true since DEF was proposing the use of an additional 501 Type F combustion turbine and heat recovery steam generator, giving DEF's proposed configuration the ability to produce far more steam than needed to generate 420 MW of output when compared to the original 3x1 application for which the steam turbine was designed.²⁶ Additionally, neither DEF nor Mitsubishi had any experience running a 4x1 combined cycle plant prior to commencing operation of Bartow Unit 4.²⁷ In sum, for these reasons the ALJ found that Mitsubishi did not contemplate DEF's operation of the steam turbine beyond the [REDACTED] scenarios set out in the Purchase Agreement.²⁸

Given these extremely unique circumstances, the ALJ concluded that DEF's failure to contact Mitsubishi before pushing output beyond 420 MW was not prudent. Contacting Mitsubishi would have allowed DEF to receive written verification from Mitsubishi that the steam turbine could be safely operated above 420 MW and would have effectively [REDACTED] [REDACTED] [REDACTED] to

²⁰ Finding of Fact No. 14.

²¹ Finding of Fact No. 6.

²² Entitled the [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] executed between Florida Progress and Mitsubishi.

²³ Finding of Fact No. 26.

²⁴ Finding of Fact No. 87.

²⁵ Finding of Fact No. 87.

²⁶ Finding of Fact No. 31.

²⁷ Finding of Fact No. 85.

²⁸ Finding of Fact No. 102.

reflect the higher MW output.²⁹ The ALJ's conclusion of law is supported by competent substantial evidence of record. Because DEF has failed to demonstrate that its conclusion of law is as or more reasonable than the ALJ's, staff recommends that DEF's Exception to Conclusion of Law 113 be denied.

DEF Exception to Conclusion of Law 114

DEF takes exception with the ALJ's Conclusion of Law 114, which states:

114. The record evidence demonstrated an [REDACTED] that [REDACTED] associated with [REDACTED] DEF failed to satisfy its burden of showing its actions in operating the steam turbine in Period 1 did not cause or [REDACTED] [REDACTED] To the contrary, the preponderance of the evidence pointed to DEF's operation of the steam turbine in Period 1 as the most plausible culprit.

DEF argues that it is "as or more reasonable" to conclude from the evidence presented that DEF's actions did not cause or contribute significantly to the vibrations that damaged the L-0 blades. DEF contends this is true because the L-0 blades were damaged in Periods 2-5 when the unit was not run above 420 MW as well as Period 1 when it was. DEF further states that the ALJ is imposing the impossible standard of proving a negative. DEF argues that it does not have the burden to prove that damage did not occur as a result of its actions. Rather, DEF states that it is only required to show that it acted as a reasonable utility manager would have done given the facts known or reasonably knowable at the time without the benefit of hindsight review.

Intervenors' Response

Intervenors argue that Conclusion of Law 114 summarizes the findings of fact that support the ALJ's ultimate determination. Intervenors state that these findings of fact are supported by competent substantial evidence and the Commission may not reject them. With regard to the contention that the ALJ required DEF to prove a negative, Intervenors argue that DEF has the burden of proof to demonstrate that it acted prudently in the operation of Bartow Unit 4 which requires it to establish a *prima facie* case that it did act prudently and to rebut evidence of its imprudence. The Intervenors assert that DEF did neither here and the ALJ's conclusion may not be disturbed.

Staff Analysis and Conclusion

As discussed in staff's analysis of Conclusions of Law 110-113 above, the ALJ found that a preponderance of the evidence supported the finding that the L-0 blade damage was caused by [REDACTED] Further, the ALJ found that the weight of the evidence supported the conclusion that the [REDACTED] was the result of excessive steam flow through the low pressure section of the steam turbine caused by

²⁹ Factual Finding No. 93.

operating the steam turbine above 420 MW. DEF does not contest that these findings of fact are supported by competent substantial evidence of record.

Commission staff agrees with the ALJ that DEF has the burden of proving that it acted prudently in the operation of its steam turbine, i.e., the burden to make a *prima facie* case supported by competent substantial evidence that it acted prudently. The burden of proof also requires DEF to rebut evidence produced that it acted imprudently. Here under the unique circumstances of this case, DEF has failed to prove it acted prudently in light of the information that was available to it at the time as found by the ALJ in Conclusion of Law 110. DEF's exception to Conclusion of Law 114 reargues DEF's factual position and fails to demonstrate that its conclusion is as or more reasonable than the ALJ's. For these reasons, staff recommends that DEF's Exception to Conclusion of Law 114 be denied.

DEF Exception to Conclusion of Law 119

DEF takes exception with the ALJ's Conclusion of Law 119, which states:

119. It is speculative to state that the original Period L-0 blades would still be operating today had DEF observed the [REDACTED] of 420 MW. It is not speculative to state that the events of Periods 2 through 5 were precipitated by DEF's actions during Period 1. It is not possible to state what would have happened from 2012 to 2017 if the excessive loading had not occurred, but it is possible to state that events would not have been the same.

Specifically, DEF disputes the ALJ's conclusion that it is not speculative to state that the events of Periods 2 through 5 were precipitated by DEF's actions during Period 1. DEF argues that there is no causal link between the operation of the unit in Period 1 and the forced outage that occurred in Period 5. DEF contends that the lack of a causal link is proven by the fact that there was no residual damage done to the steam turbine itself in Period 1 and all parties agreed that DEF's operation of the plant subsequent to Period 1 was prudent.

Intervenors' Response

Intervenors state that the conclusions in Paragraph 119 are based on the ALJ's findings of fact in Paragraphs 84 and 89 which are supported by competent substantial evidence and OPC's expert's credible testimony. Intervenors argue that to the extent that this conclusion is an inference from the ALJ's factual findings, the ALJ is permitted to draw reasonable inferences from competent substantial evidence in the record. *Amador v. School Board of Monroe County*, 225 So. 3d 853, 858 (Fla. 3d DCA 2017). Further, Intervenors state that the fact that more than one reasonable inference can be drawn from the same evidence of record is not grounds for setting aside the ALJ's conclusion. *Id.*

Staff Analysis and Conclusion

This conclusion of law is in response to OPC witness Polich's testimony that the low pressure L-0 blades would still have been in use but for the operation of the steam turbine in excess of 420

MW.³⁰ While the ALJ rejected that conclusion as too speculative, he did accept witness Polich's testimony that the damage to the blades was most likely cumulative during Period 1, making it irrelevant exactly when during the operation of the unit in Period 1 the damage occurred.³¹ DEF's witness Swartz testified that the damage to the blades could have occurred in Period 1 during the 50% of the time that the steam turbine was operated under 420 MW, i.e., when by Intervenor's standards, the unit was being operated prudently. Where reasonable people can differ about the facts, an agency is bound by the hearing officer's reasonable inferences based on the conflicting inferences arising from the evidence. *Amador v. School Board of Monroe County*, 225 So. 3d 853, 857-8 (Fla. 3d DCA 2017). Additionally, the hearing officer is entitled to rely on the testimony of a single witness even if the testimony contradicts the testimony of a number of other witnesses. *Stinson v. Winn*, 938 So. 2d 554, 555 (Fla. 1st DCA 2006).

DEF's exception to Conclusion of Law 119 reargues DEF's factual position and fails to demonstrate that its conclusion is as or more reasonable than the ALJ's. For these reasons staff recommends that DEF's Exception to Conclusion of Law 119 be denied.

DEF Exception to Conclusion of Law 120

DEF takes exception with the ALJ's Conclusion of Law 120, which states:

120. In his closing argument, counsel for White Springs summarized the equities of the situation very well:

You can drive a four-cylinder Ford Fiesta like a V8 Ferrari, but it's not quite the same thing. At 4,000 RPMs, in second gear, the Ferrari is already doing 60 and it's just warming up. The Ford Fiesta, however, will be moaning and begging you to slow down and shift gears. And that's kind of what we're talking about here.

It's conceded as fact that the root cause of the Bartow low pressure turbine problems is [REDACTED] caused repeatedly over time. The answer to the question is was this due to the way [DEF] ran the plant or is it due to a [REDACTED] Well, the answer is both.

The fact is that [DEF] bought a steam turbine that was already built for a different configuration that was in storage, and then hooked it up to a configuration . . . that it knew could produce much more steam than it needed. It had a generator that could produce more megawatts, so the limiting factor was the steam turbine.

On its own initiative, it decided to push more steam through the steam turbine to get more megawatts until it broke.

³⁰ Finding of Fact No. 84.

³¹ Finding of Fact No. 89; Footnote 4.

* * *

So from our perspective, [DEF] clearly was at fault for pushing excessive steam flow into the turbine in the first place. The repair which has been established . . . may or may not work, but the early operation clearly impeded [DEF's] ability to simply claim that Mitsubishi was entirely at fault. And under those circumstances, it's not appropriate to assign the cost to the consumers.

DEF argues that Conclusion of Law 120 is a slightly edited, verbatim recitation of PCS Phosphate counsel's final argument which the ALJ adopts, characterizing it as summarizing "the equities of the situation very well." DEF takes exception to that portion of the final argument stating that under the circumstances presented in this case, it is not appropriate to assign the cost of the February 2017 forced outage to DEF's customers. DEF argues that it is as or more reasonable to conclude that here, where DEF consistently acted prudently, DEF should not be forced to bear replacement power costs.

Intervenors' Response

As demonstrated in its response to Paragraphs 110-114 above, Intervenors argue that there is more than adequate competent substantial evidence to support the ALJ's ultimate determination that DEF did not act prudently and should bear replacement power costs. Intervenors state that DEF is simply rearguing the case it presented to the ALJ which the ALJ found to be unpersuasive.

Staff Analysis and Conclusion

As noted above, this conclusion of law is an edited version of PCS Phosphate counsel's final argument which the ALJ agrees has summarized the "equities of the situation very well." The ALJ agrees that excessive vibrations over time caused the steam turbine problems. Further, whether the vibration was due to the way the plant was run or due to a [REDACTED] [REDACTED] is that both are true. The ALJ concludes that DEF was at fault for pushing excessive steam flow into the turbine. The ALJ further agrees that by operating the unit above 420 MW, without contacting Mitsubishi, DEF impeded its ability to claim that Mitsubishi was entirely at fault. Under these circumstances, PCS Phosphate's counsel, and the ALJ, conclude that consumers should not bear replacement power costs.

Upon review of this material, it is clear that it is a summary of Conclusions of Law 110-114 above. These conclusions are supported by competent substantial evidence of record and staff has recommended that they be accepted. Again, DEF reargues the factual underpinnings of the ALJ's Conclusion of Law without adequately demonstrating that DEF's conclusion is as or more reasonable. Therefore, DEF's Exception to Conclusion of Law 120 should be denied.

DEF Exception to Conclusion of Law 121

DEF takes exception with the ALJ's Conclusion of Law 121, which states:

121. The greater weight of the evidence supports the conclusion that DEF did not exercise reasonable care in operating the steam turbine in a configuration for which it was not designed and under circumstances which DEF knew, or should have known, that it should have proceeded with caution, seeking the cooperation of Mitsubishi to devise a means to operate the steam turbine above 420 MW.

Specifically, DEF takes exception with the ALJ's conclusion that it did not exercise reasonable care in operating the steam turbine and should have sought the cooperation of Mitsubishi prior to operating the steam turbine above 420 MW. DEF again argues that it is as or more reasonable to conclude that operation within the express parameters given by Mitsubishi was prudent and did not require further consultation with the manufacturer.

Intervenors' Response

As demonstrated in their response to Paragraphs 110-114 above, Intervenors argue that there is more than adequate competent substantial evidence to support the ALJ's ultimate determination that DEF did not exercise reasonable care operating the plant in excess of 420 MW without consulting Mitsubishi first. Intervenors assert that the Commission is not free to reject or modify conclusions of law that are supported by competent substantial evidence and logically flow from that evidence.

Staff Analysis and Conclusion

This conclusion is a statement of the ALJ's ultimate conclusion that DEF did not exercise reasonable care in the operation of the steam turbine given its configuration and design without consulting Mitsubishi. This ultimate conclusion is supported by competent substantial evidence as discussed in Conclusions of Law 110-114 above. Because DEF has failed to demonstrate that its conclusion is as or more reasonable than the ALJ's, staff recommends that DEF's Exception to Conclusion of Law 121 be denied.

DEF Exception to Conclusion of Law 122

DEF takes exception with the ALJ's Conclusion of Law 122, which states:

122. Given DEF's failure to meet its burden, a refund of replacement power costs is warranted. At least \$11.1 million in replacement power was required during the Period 5 outage. This amount should be refunded to DEF's customers.

DEF takes exception to the ALJ's conclusion that DEF should refund replacement power costs to its customers. Citing the arguments made in its exceptions to Paragraphs 110-114 and 119, DEF states that DEF did act prudently in the operation of its Bartow Unit 4 plant and, therefore, it is as or more reasonable to conclude that no replacement power costs should be refunded to customers.

Intervenors' Response

Intervenors argue that the ALJ's conclusion is supported by competent substantial evidence of record and is consistent with applicable law. Therefore, the Intervenors conclude that the Commission cannot, under these circumstances, reject the ALJ's conclusion of law by reweighing the evidence and substituting new and directly contrary findings that are favorable to DEF.

Staff Analysis and Conclusion

This conclusion of law is based on the ALJ's Conclusions of Law 110-114, supported by competent substantial evidence of record, that DEF acted imprudently in its operation of the steam turbine in Period 1. Since DEF disagrees that it acted imprudently in incurring the replacement power costs, it argues that the \$11.1 million should not be refunded to customers. The amount of the refund is not contested. The findings of fact underlying Conclusion of Law 122 are not in dispute. Ultimately, the conclusion is supported by competent substantial evidence. Because DEF has failed to demonstrate that DEF's conclusion was as or more reasonable than the ALJ's, staff recommends that DEF's Exception to Conclusion of Law 122 be denied.

DEF Exception to Conclusion of Law 123

DEF takes exception with the ALJ's Conclusion of Law 123, which states:

123. DEF failed to carry its burden to show that the Period 5 blade damage and the required replacement power costs were not consequences of DEF's imprudent operation of the steam turbine in Period 1.

For the reasons stated in its exception to Paragraph 110, DEF argues that it did demonstrate by a preponderance of the evidence that it operated the steam turbine prudently in Period 1. Thus, DEF contends that it is as or more reasonable to conclude that DEF carried its burden of proof that the steam turbine was operated prudently in Period 1.

Intervenors' Response

Intervenors contend that the ALJ's conclusion is supported by competent substantial evidence of record as detailed in Intervenors' responses to DEF's exceptions to Paragraphs 110-114 and 119, and is consistent with applicable law. Therefore, Intervenors argue that the Commission cannot, under these circumstances, reject the ALJ's conclusion of law by reweighing the evidence and substituting new and directly contrary findings that are favorable to DEF.

Staff Analysis and Conclusion

A review of DEF's exception reveals that it is simply re-argument of its position taken in Conclusion of Law No. 110 discussed above. For the reasons stated therein, staff recommends

that DEF's Exception to Conclusion of Law be denied because DEF has failed to demonstrate that its conclusion is as or more reasonable than the ALJ's.

DEF Exception to Conclusion of Law 124

DEF takes exception with the ALJ's Conclusion of Law 124, which states:

124. The de-rating of the steam turbine that required the purchase of replacement power for the 40 MW loss caused by the installation of the pressure plate was a consequence of DEF's failure to prudently operate the steam turbine during Period 1. Because it was ultimately responsible for the de-rating, DEF should refund replacement costs incurred from the point the steam turbine came back on line in May 2017 until the start of the planned fall 2019 outage that allowed the replacement of the pressure plate with the [REDACTED] [REDACTED] [REDACTED] in December 2019. Based on the record evidence, the amount to be refunded due to the de-rating is \$5,016,782.

DEF argues that the operation of the steam turbine in Period 1 was proven by DEF by a preponderance of the evidence to be prudent. DEF contends that this fact, coupled with the undisputed evidence that DEF also operated the steam turbine prudently in Periods 2-5, demonstrates that it is as or more reasonable to conclude that the Period 5 blade damage and resulting replacement power costs were not a consequence of DEF's operation of the steam turbine during Period 1.

Intervenors' Response

Intervenors argue that the ALJ's conclusion is supported by competent substantial evidence of record as detailed in Intervenors' responses to DEF's exceptions to Conclusions of Law 110-114 and 119. Intervenors contend that DEF's is simply rearguing its case that its operation of the steam turbine was prudent, and therefore no refunds associated with the installation of the pressure plate are required. Intervenors assert that the basis for the ALJ's conclusion that derating costs of \$5,016,782 should be refunded to customers is his finding of DEF's imprudence in operation of the steam turbine in Period 1. For these reasons, Intervenors conclude that there is no basis to set aside that finding or to set aside this conclusion of law.

Staff Analysis and Conclusion

There is no question that installation of the pressure plate caused the derating of the steam turbine from 420 to 380 MW.³² Likewise, the parties have agreed that the period of time associated with the derating is April 2017 through the end of September 2019.³³ Nor do the parties disagree that the amount associated with the derating is \$5,016,782.³⁴ DEF is simply rearguing its position that its operation of the steam turbine was not responsible for blade damage in Period 5, a position considered and rejected by the ALJ.³⁵ As discussed in

³² Finding of Fact No. 60.

³³ Finding of Fact No. 61.

³⁴ Finding of Fact No. 80.

³⁵ Finding of Fact No. 119.

Conclusions of Law 110-114 and 119 above, there is competent substantial evidence to support the ALJ's conclusion that DEF's imprudent actions in Period 1 resulted in the derating. That being the case, staff recommends that DEF's Exception to Conclusion of Law 124 be denied because DEF has failed to demonstrate that its conclusion is as or more reasonable than that of the ALJ.

DEF Exception to Conclusion of Law 125

DEF takes exception with the ALJ's Conclusion of Law 125, which states:

125. The total amount to be refunded to customers as a result of the imprudence of DEF's operation of the steam turbine in Period 1 is \$16,116,782, without interest.

DEF takes exception to this conclusion on the grounds that DEF did prove by a preponderance of the evidence that it acted prudently in the operation of the steam turbine in Period 1. That being the case, DEF contends that it is as or more reasonable to conclude that no refund to its customers of any amount is required.

Intervenors' Response

Intervenor's argue that the ALJ's conclusion is supported by competent substantial evidence of record as detailed in Intervenors' responses to DEF's exceptions to Conclusions of Law 110-114 and 119. Intervenors state that DEF is simply rearguing its case that its operation of the steam turbine was prudent and therefore no refunds are required. Intervenors assert that the Commission cannot, under these circumstances, reject the ALJ's conclusion of law by reweighing the evidence and substituting new and directly contrary findings that are favorable to DEF.

Staff Analysis and Conclusion

This is a fall-out conclusion based upon Conclusions of Law 110-114 and 119 discussed above, which results in the ultimate conclusion of law that DEF acted imprudently. Conclusions of Law 110-114 and 119 are based on competent substantial evidence of record. For that reason, staff recommends that DEF's Exception to Conclusion of Law 125 should be denied, because DEF has failed to demonstrate that its conclusion is as or more reasonable than that of the ALJ.

Conclusion

DEF has failed to show that the ALJ's conclusions are not reasonable or that the facts from which his conclusions are drawn are not based on competent substantial evidence of record. Further, DEF has not argued that the proceeding did not comport with the essential requirements of law. Finally, DEF has not specifically stated how the ALJ's conclusions of law are contrary to prior Commission policy statements for utility operation. For these reasons, staff recommends that the Commission deny DEF's exceptions to Conclusions of Law 110-114 and 119-125 since

DEF has failed to demonstrate that its proposed modifications to those conclusions are as or more reasonable than that of the ALJ.

Issue 2: Should the Commission approve the Recommended Order submitted by the Administrative Law Judge?

Recommendation: Yes. The Commission should approve the attached Recommended Order (Attachment A) as the Final Order in this docket. (Crawford, Stiller)

Staff Analysis: Upon review of the entire record in this case, staff has recommended that DEF has failed to demonstrate that its exceptions to the ALJ's conclusions of law are as or more reasonable than the ALJ's. The conclusions of law to which DEF has filed exceptions are based upon competent substantial evidence of record and the proceedings held before the ALJ comported with the essential requirements of law. Further, DEF has not filed exceptions to any of the factual findings in this case. That being the case, under the provisions of Section 120.57(1)(l), F.S., the ALJ's Recommended Order should not be modified.

That being said, it is important to note that this case is highly fact specific and for that reason will have limited precedential value. There is literally no other plant in DEF's system that has four combustion turbines connected to one steam turbine nor any other plant in DEF's system that uses an after-market steam turbine designed for a 3x1 configuration in a 4x1 configuration. The ALJ was persuaded by OPC witness Polich's testimony that because Bartow Unit 4 was operated to produce more than 420 MW, too much steam was forced into the low pressure section of the steam turbine damaging the L-O blades. Adoption of the Recommended Order with this conclusion of law should not translate into a general policy decision by the Commission that under any set of circumstances it is imprudent to run a unit above its nameplate capacity.

Based on the foregoing, staff recommends that the Commission adopt the ALJ's Recommended Order, found in Attachment A, as its Final Order, regarding this petition. Accordingly, DEF should be required to refund \$11.1 million in replacement power associated with its April 2017 Bartow Unit 4 outage and \$5,016,782 for the de-rating of the unit from May 2017 until December of 2019, for a total refund of \$16,116,782.

Issue 3: Should this docket be closed?

Recommendation: No. While the Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor docket is assigned a separate docket number each year for administrative convenience, it is a continuing docket and should remain open. (Crawford, Stiller)

Staff Analysis: While the Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor docket is assigned a separate docket number each year for administrative convenience, it is a continuing docket and should remain open.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: FUEL AND PURCHASED POWER
COST RECOVERY CLAUSE WITH
GENERATING PERFORMANCE INCENTIVE
FACTOR,

Case No. 19-6022

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on February 4 and 5, 2020, in Tallahassee, Florida, before Lawrence P. Stevenson, a duly-designated Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH").

APPEARANCES

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¹ References to DEF include Progress Energy, DEF's predecessor in interest in the Bartow power plant that is the subject of this proceeding. DEF purchased Progress Energy in 2011.

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White Springs ("White Springs"):**

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STATEMENT OF THE ISSUES

**Two issues have been referred by the Commission to DOAH for a
disputed-fact hearing:**

**ISSUE 1B: Was DEF prudent in its actions and decisions leading up to
and in restoring the unit to service after the February 2017 forced outage at**

the Bartow plant and, if not, what action should the Commission take with respect to replacement power costs?

ISSUE 1C: Has DEF made prudent adjustments, if any are needed, to account for replacement power costs associated with any impacts related to the de-rating of the Bartow plant? If adjustments are needed and have not been made, what adjustment(s) should be made?

PRELIMINARY STATEMENT

On January 2, 2019, the Commission opened Docket No. 20190001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*, commonly referred to as the "Fuel Clause" docket. The Fuel Clause docket is a recurring, annual docket to which all investor-owned electric utilities serving customers in Florida are parties. Through the Fuel Clause docket, utilities are permitted to recover reasonably and prudently incurred costs of the fuel and fuel-related activities needed to generate electricity. Among the issues raised in the 2019 Fuel Clause docket was DEF's request to recover the replacement power costs incurred in connection with an unplanned outage to the steam turbine at DEF's Bartow Unit 4 combined cycle power plant (the "Bartow Plant") in February 2017. Issues 1B and 1C were raised as part of the 2019 Fuel Clause docket.

On November 5, 2019, the Commission held a final hearing in the 2019 Fuel Clause docket. All issues related to DEF's request to recover its fuel and purchased power costs were addressed, except for Issues 1B and 1C. Both Issues 1B and 1C involved extensive claims of confidentiality with respect to the pre-filed testimony of DEF witness Jeffrey Swartz, OPC witness Richard Polich, and the proposed trial exhibits.

The Commission found that it was impracticable to conduct direct or cross-examination in an open hearing without extensive reference to

confidential material. Despite its apparent authority under section 366.093, Florida Statutes, to declare documents confidential, the Commission took the position that it lacked authority to close a public hearing to protect materials and topics it had previously determined to be confidential. The Commission therefore referred Issues 1B and 1C to DOAH for a closed evidentiary hearing and issuance of a Recommended Order.

On November 26, 2019, a telephonic status conference was held to set hearing dates, establish the procedures for handling confidential material, the need for discovery, the use of written testimony, and the use of the Comprehensive Exhibit List ("CEL") admitted into evidence at the Commission's November 5, 2019, hearing. At the status conference, the parties agreed to the hearing dates of February 4 and 5, 2020. The undersigned requested the parties to confer and file a motion setting forth proposed procedures for the handling of confidential material before, during, and after the hearing. The parties filed a Joint Motion on Confidentiality on December 6, 2019, which was adopted by Order issued December 9, 2019.

On December 23, 2019, the Commission's record was transmitted to DOAH on two CD-ROM discs. Disc One contained non-confidential information and Disc Two contained information held as confidential.

The final hearing was convened and completed as scheduled on February 4 and 5, 2020. At the outset of the hearing, the parties submitted an updated CEL from the November 2019 proceeding before the Commission. The revised CEL listed 114 exhibits. The revised CEL was numbered as Exhibit 114 and admitted by stipulation.

DEF presented the direct and rebuttal testimony of Jeffrey R. Swartz, its Vice President of Generation. DEF moved for the admission of Exhibits 80 through 82, which were admitted into the record.

OPC presented the testimony of Richard Polich, an engineer with expertise in the design of power generation systems, including steam turbines. OPC moved for the admission of Exhibits 68 through 75 and 101 through 109, which were admitted into the record. At the hearing, OPC Exhibits 115 through 117 were marked, moved, and admitted into the record.

The Commission moved for the admission of Exhibits 110 and 111, which were admitted into the record.

FIPUG moved for the admission of Exhibit 118, which was admitted into the record.

White Springs moved for the admission of Exhibits 112 and 113, which were admitted into the record.

The three-volume Transcript of the final hearing was filed with DOAH on February 24, 2020. Pursuant to an agreement approved by the undersigned, the parties timely filed their Proposed Recommended Orders on March 20, 2020. DEF and the Commission filed separate Proposed Recommended Orders. OPC, FIPUG, and White Springs submitted a joint Proposed Recommended Order (unless otherwise specified, references to OPC as to positions stated in its Proposed Recommended Order should be understood to include FIPUG and White Springs). All three Proposed Recommended Orders have been duly considered in the writing of this Recommended Order.

Unless otherwise indicated, statutory references are to the 2019 edition of the Florida Statutes.

FINDINGS OF FACT

Based on the evidence adduced at hearing, and the record as a whole, the following Findings of Fact are made:

THE PARTIES

1. The Commission is the state agency authorized to implement and enforce Chapter 366, Florida Statutes, which governs the regulation of every “public utility” as defined in section 366.02(1).

2. DEF is a public utility and is therefore subject to the Commission’s jurisdiction. DEF is a subsidiary of Duke Energy, one of the largest energy holding companies in the United States.

3. OPC is statutorily authorized to represent the citizens of the state of Florida in matters before the Commission, and to appear before other state agencies in connection with matters under the Commission’s jurisdiction. § 350.0611(1), (3), and (5), Fla. Stat.

4. FIPUG is an association comprising large commercial and industrial power users within Florida. A substantial number of FIPUG’s members are customers of DEF.

5. White Springs operates energy intensive phosphate mining and processing facilities in Hamilton County and is one of DEF’s largest industrial customers.

THE BARTOW PLANT

6. The Bartow Plant is a 4x1 combined cycle power plant composed of combustion turbine generators whose waste heat is used to produce steam that powers a steam turbine manufactured by Mitsubishi Hitachi Power Systems (“Mitsubishi”). “4x1” references the fact that there are four Siemens

180 megawatt ("MW") Type 501 F combustion turbines, each connected to one of four heat recovery steam generators ("HRSG"), all of which in turn are connected to one steam turbine.

7. A combined cycle power plant uses gas and steam turbines together to produce electricity. Combustion of natural gas in the combustion turbine turns a generator that produces electricity. The waste heat from the combustion turbine is routed to an HRSG. The HRSG produces steam that is then routed to the steam turbine which, in turn, generates extra power.

8. Combined cycle plants can be set up in multiple configurations, providing considerable operational flexibility and efficiency. It is not necessary for all four HRSGs to provide steam to the steam turbine at the same time. The Bartow Plant can operate on all possible configurations of 4x1, i.e., 1x1, 2x1, 3x1, or 4x1. It also has the ability to augment heat through the use of duct burners. The combustion turbines can operate in "simple cycle" mode to generate electricity when the steam turbine is off-line.

9. The steam turbine is made up of a high pressure ("HP")/intermediate pressure ("IP") section and a low-pressure ("LP") section. Each of these turbine sections has a series of blades. As the steam passes through the blades, the steam exerts its force to turn the blades which, in their turn, cause a rotor to spin. The rotor is connected to a generator, and the generator produces electricity.

10. Steam leaving the HRSGs is introduced to the steam turbine at a high-pressure inlet into the HP turbine. The steam is returned to the HRSG for reheating, then enters the IP turbine. Finally, steam exiting the IP turbine is directed into the LP turbine.

11. The LP section of the steam turbine is dual-flow. The steam is admitted in the middle and flows axially in opposite directions through two opposing mirror-image turbine sections, each of which contains four sets of blades. After passing through the LP section, the steam exhausts into a condenser.

12. The sets of blades increase in size from the front to the back of the LP section. The blades get longer as the steam flows through the turbine. The steam loses energy as it passes through the machine and thus more surface area of blade is needed for the weaker steam to produce the force needed to spin the rotor. The final stage of blades in the LP section consists of 40" L-0 blades, the longest blades in the steam turbine.

13. [REDACTED]

14. The Mitsubishi steam turbine was originally designed for Tenaska Power Equipment, LLC ("Tenaska"), to be used in a 3x1 combined cycle configuration with three M501 Type F combustion turbines connected to the steam turbine with a gross output of 420 MW of electricity. For reasons unexplored at the hearing, Tenaska never took delivery of the turbine. It was stored in a Mitsubishi warehouse under controlled conditions that kept it in like-new condition.

15. During the design and planning process for the Bartow Plant, DEF's employees responsible for obtaining company approval to build the plant, reported to senior executives that they had found this already-built steam turbine. The Business Analysis Package of DEF's project authorization documents stated that the Mitsubishi steam turbine "proved to be a very good fit for the 4 CT and 4 HRSG combinations."

16. Prior to purchasing the steam turbine, DEF contracted with Mitsubishi to evaluate the design conditions to ensure the steam turbine was compatible with the Bartow Plant's proposed 4x1 combined cycle configuration. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

24. Mr. Swartz further asserted that, prior to completion of the Purchase Agreement, Mitsubishi understood that DEF intended to operate the steam turbine in a 4x1 configuration with a power factor exceeding [REDACTED] which would result in the generation of more than 420 MW of electrical output.

25. Section 3.2 of the Purchase Agreement, titled [REDACTED] states, in relevant part:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

26. The plain language of section 3.2.1 establishes [REDACTED]

[REDACTED]

² MPS stands for Mitsubishi Power Systems, Inc.

[REDACTED] It is unclear how Mr. Swartz translated this language into a [REDACTED]

27. In any event, the parties disagree as to the significance of the 420 MW maximum output designation. DEF and the Commission contend that the designated megawatt capacity of a steam turbine is not a control mechanism or a limit that the operator must stay below, but is the byproduct of operating the unit within the design parameters provided by the manufacturer at various combinations of such factors as steam flows, steam temperatures, steam pressures, exhaust pressures, ambient temperatures, and humidity.

28. DEF and the Commission contend that the numbers stated in the [REDACTED] are calculated estimates of the conditions that will achieve [REDACTED]

[REDACTED] output. If DEF was able in practice to operate the steam turbine within the design parameters and achieve output in excess of [REDACTED] then it was simply delivering maximum value to its ratepayers.

29. OPC asserts 420 MW is an operational limitation. [REDACTED]
[REDACTED] OPC points out that Mitsubishi conducted extensive [REDACTED] (from December 2014 until April 2016) that resulted in a document titled, [REDACTED] dated March 18, 2015 (the "Report"). The Report expressly stated that the [REDACTED]
[REDACTED] The Report also stated that the [REDACTED]
[REDACTED] These statements were supported by section 3.2.1.2 of the Purchase Agreement, which states that [REDACTED]
[REDACTED] of the steam turbine.

30. OPC points out that section 4.1 of the Purchase Agreement, titled [REDACTED] expressly states: [REDACTED]

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

31. OPC notes that [REDACTED] reached [REDACTED] of output using only [REDACTED]. OPC further notes that the Bartow Plant had a [REDACTED] meaning that it had the ability to produce [REDACTED] of output when compared to the [REDACTED] for which the steam turbine was originally designed.

32. The Mitsubishi steam turbine converts steam energy into rotational force (horsepower) that in turn drives an electric generator. The generator purchased by DEF for the Bartow Plant that was attached to the Mitsubishi steam turbine was manufactured by a different vendor and is rated at 468 MW. The generator thus was capable of reliably producing more electrical output than Mitsubishi stated its steam turbine was designed to supply.

33. The greater weight of the evidence establishes that the Mitsubishi steam turbine was designed to operate at 420 MW of output and that 420 MW was an operational limitation of the turbine.

OUTAGES AND BLADE FAILURES

34. DEF has classified the periods during which the Bartow Plant has been operational as: Period 1-- from June 2009 until March 2012; Period 2-- from April 2012 until August 2014; Period 3-- from December 2014 until April 2016; Period 4-- from May 2016 until October 2016; and Period 5-- from December 2016 until February 2017.

35. DEF placed the Bartow Plant into commercial service in June 2009. Later that year, DEF began operating the steam turbine above 420 MW

under varying system conditions. Mr. Swartz estimated that DEF operated the steam turbine above 420 MW about half the time between June 2009 and March 2012, the time span that has been designated as Period 1 of the five periods in question in this proceeding. The Bartow Plant operated for a total of 21,734 hours during Period 1.

36. In March 2012, while conducting a routine inspection of the steam turbine during a planned power outage, DEF found that [REDACTED]
[REDACTED]
[REDACTED] DEF consulted with Mitsubishi regarding the damage. Mitsubishi inspected the blades and recommended [REDACTED]
[REDACTED]

37. Mitsubishi concluded that the damage to the blades was caused by [REDACTED]
[REDACTED]
[REDACTED] Up to this point, Mitsubishi had [REDACTED]
[REDACTED] DEF and Mitsubishi had assumed that if [REDACTED]
[REDACTED] of the steam turbine, then the [REDACTED]
[REDACTED] would be acceptable. After discovery of the blade failure in March 2012, [REDACTED]
[REDACTED]
[REDACTED]³

38. Period 2 commenced in April 2012 and ended in August 2014, a period of 28 months. At the beginning of Period 2, DEF and Mitsubishi replaced all of the L-0 blades on the affected end of the LP turbine with [REDACTED]
[REDACTED]

39. During Period 2, DEF operated the steam turbine a total of 21,284 hours. For all but two hours of this period, DEF operated the steam turbine

³ [REDACTED]

at less than 420 MW and complied with Mitsubishi's [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

40. During a planned outage beginning in August 2014, Mitsubishi replaced the [REDACTED] used in Period 2 with [REDACTED] [REDACTED] thus beginning Period 3. During this planned outage, DEF and Mitsubishi conducted an inspection of the Period 2 [REDACTED] blades. The inspection revealed a [REDACTED] consistent with ordinary usage over the course of Period 2. There was no damage noted to [REDACTED]. There was some [REDACTED] described as [REDACTED]

41. Between Period 2 and Period 3, Mitsubishi and DEF installed [REDACTED] in the steam turbine to allow for [REDACTED] which they expected would help them to understand why the L-0 blades were experiencing damage and to [REDACTED] [REDACTED] protect the equipment.

42. It was undisputed that DEF's operation of the steam turbine was prudent at all times during Period 2.

43. Period 3 commenced in December 2014 and ended in April 2016. During Period 3, DEF operated the steam turbine a total of 10,286 hours. DEF never exceeded 420 MW of output, except for a [REDACTED]

[REDACTED]

[REDACTED]

44. During Period 3, Mitsubishi [REDACTED] on the steam turbine. The [REDACTED]

calculated that the Bartow steam turbine experienced approximately [REDACTED] and [REDACTED] Mitsubishi's fleet experience had been [REDACTED] on last stage blades including the 40" L-0 blades. Mitsubishi was uncertain what impact the L-0 blades would experience at [REDACTED]

45. Mitsubishi concluded that [REDACTED]

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

46. It was undisputed that DEF's operation of the steam turbine was prudent at all times during Period 3.

47. Despite DEF's having [REDACTED]

[REDACTED] DEF and Mitsubishi's examination of the steam turbine at the end of Period 3 revealed that [REDACTED] of [REDACTED] DEF and Mitsubishi decided that [REDACTED] [REDACTED] [REDACTED] were installed.

48. Period 4 commenced in June 2016 and ended five months later in October 2016. During Period 4, DEF operated the steam turbine a total of 2,942 hours. DEF did not exceed 420 MW of output during this period and [REDACTED]
[REDACTED]

49. Just five months after the commencement of Period 4, DEF detected vibration changes in the LP turbine and stopped operation of the steam turbine to inspect the L-0 blades. During this inspection, DEF and Mitsubishi once again found several damaged L-0 blades. At the time of this blade damage, DEF was operating the steam turbine below 420 MW and observing the operating parameters established by Mitsubishi [REDACTED]

50. It was undisputed that DEF's operation of the steam turbine was prudent at all times during Period 4.

51. Period 5 began in December 2016 and ended two months later in February 2017.

52. At the beginning of Period 5, DEF and Mitsubishi [REDACTED]

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

[REDACTED] of 1,561 hours. DEF never exceeded 420 MW of output during this period and operated the steam turbine within the operating parameters established by Mitsubishi [REDACTED]

54. On February 9, 2017, the steam turbine was removed from service when DEF detected the presence of sodium in the steam water cycle. The cooling water used for the condenser is salt water from Tampa Bay. Mr. Swartz testified that any indication of sodium inside the condenser above minute amounts is alarming. During this shutdown, DEF performed an inspection of the steam turbine and discovered that a [REDACTED]

device known as a rupture disk had failed in the LP turbine and that the L-0 blades were damaged. DEF concluded that [REDACTED] the rupture disk. This forced outage lasted until April 8, 2017.

55. Based on the sequence of events, DEF was able to determine with certainty that the blade damage during Period 5 occurred on February 9, 2017. At that time, DEF was operating the steam turbine below 420 MW and within the operating parameters established by Mitsubishi [REDACTED]

56. It was undisputed that DEF's operation of the steam turbine was prudent at all times during Period 5.

57. During the February 2017 forced outage of the steam turbine, DEF continued to operate the Bartow Plant with the gas turbines running in simple cycle mode.

58. DEF took three primary actions in the wake of the Period 5 outage: a root cause analysis ("RCA") team, established after the first blade failure in Period 1, continued its mission to investigate and prepare an RCA; a restoration team was formed to bring the steam turbine back online; and a team was formed to evaluate a long-term solution for the steam turbine.

[REDACTED]

[REDACTED]

[REDACTED]

60. Instead, DEF and Mitsubishi installed pressure plates in place of the L-0 blades as an interim solution that would bring the steam turbine back into operation quickly and give Mitsubishi and DEF time to develop a permanent solution. A pressure plate is a non-rotating plate that has holes drilled into it. The pressure plate reduces the pressure of the steam passing through a steam turbine, keeping the steam from damaging the unit's condenser. A pressure plate does not use the steam passing through it to produce electricity and therefore decreases the efficiency of a steam turbine.

The pressure plate applied by DEF limited the output of the steam turbine to 380 MW.

61. The parties have agreed and the undersigned accepts that the period of the steam turbine's "de-rating" from 420 MW to 380 MW should be calculated as running from April 2017 through the end of September 2019.

THE MITSUBISHI AND DEF ROOT CAUSE ANALYSES

62. Mitsubishi's [REDACTED] during Period 3 [REDACTED]

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

[REDACTED] of its RCA in a 35-page "Bartow RCA Summary" ("Mitsubishi RCA"). The Mitsubishi RCA documented the [REDACTED]

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

64. The Mitsubishi RCA also stated that an [REDACTED]

65. After the discovery of the blade damage in March 2012, DEF formed an RCA team and began a years-long RCA process that ended with its own February 6, 2018, RCA report ("DEF RCA").

66. DEF's RCA [REDACTED]

67. [REDACTED]

team produced between 2012 and the final DEF RCA in February 2018. Mr. Swartz declined to call these documents "drafts" of the RCA, preferring to say they were "working papers" that provided snapshots of the RCA team's investigation at a given time. Mr. Swartz emphasized that only the February 2018 RCA report stated DEF's official position as to the cause of the blade failures.

69. The working papers indicate that as late as October 15, 2016, DEF [REDACTED]

70. The working papers show that as late as June 26, 2017, DEF maintained that one of "the most significant contributing factors toward root

cause of the history of Bartow Unit 4 L-0 events" was [REDACTED]
[REDACTED]

71. OPC accurately states that the DEF working documents demonstrate that during the RCA process, before and after the Period 5 event, DEF consistently identified excessive steam flow in the LP turbine as one of the "most significant contributing factors" toward blade failure over the history of the steam turbine, the [REDACTED].

72. Mr. Swartz attempted to minimize the significance of the working papers by stating that DEF was obliged to investigate the issue of excessive steam flow because [REDACTED]
[REDACTED]

73. DEF's final RCA did not include a statement that excessive steam flow was a significant contributing factor in the blade failures. The final DEF RCA instead noted that "excessive steam flow" had been a "potential" operational factor that DEF examined during the RCA process. The RCA states that DEF had been unable to find a correlation between [REDACTED] and the five failure periods. In particular, the RCA pointed out that [REDACTED]
[REDACTED]
[REDACTED]

74. OPC concludes that the final DEF RCA was DEF's self-serving attempt to exonerate its own overloading of the steam turbine and to shift responsibility onto Mitsubishi for [REDACTED] DEF contends that it simply followed the data throughout the RCA process and arrived at the only conclusion consistent with the findings of its engineers.

POST-RCA ACTIONS

75. As noted above, pressure plates were installed in place of the L-0 blades at the conclusion of Period 5. The pressure plates allowed DEF to keep the steam turbine running at a lower level of output while it sought a permanent solution to the blade damage problem.

76. In 2018, DEF solicited proposals to implement a long-term solution that would allow it to reliably operate the steam turbine to support 450 MW of electrical output from the generator. Three vendors responded. [REDACTED]

[REDACTED] DEF selected the Mitsubishi proposal.

77. In December 2019, Mitsubishi installed [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] As of the hearing date, DEF had operated the Bartow Plant with the [REDACTED] L-0 blades without incident on a 1x1, 2x1, and 3x1 configuration, but had yet to operate with all four combustion turbines.

78. OPC points out that in proposing its [REDACTED] blades, Mitsubishi did not waver from the conclusion of its RCA. Mitsubishi stated the following as the first three bullet points in the introduction to its paper describing the testing of the [REDACTED] blades:

[REDACTED]

[REDACTED]

[REDACTED]

REPLACEMENT POWER AND DE-RATING COSTS

79. The record evidence established that the replacement power costs stemming from the February 2017 outage are \$11.1 million.

80. Further, the record evidence established that DEF incurred replacement power costs from May 2017 through September 2019, the period of the “de-rating” of the steam turbine, i.e., the reduction in output from 420 MW to 380 MW while it operated with the pressure plate. Those costs, calculated by year, are \$1,675,561 (2017), \$2,215,648 (2018), and \$1,125,573 (2019), for a total of \$5,016,782.

81. Therefore, the total replacement power costs incurred as a result of DEF’s operation of the steam turbine are \$16,116,781, without considering interest.

DISCUSSION

82. As noted above, the parties have a fundamental disagreement as to the significance of the 420 MW maximum output designation that Mitsubishi placed on the steam turbine. The Energy Information Administration of the U.S. Department of Energy defines “generator nameplate capacity” as the “maximum rated output of a generator, prime mover, or other electric power production equipment under specific conditions designated by the manufacturer.” There was no dispute that 420 MW was the “nameplate capacity” of the Mitsubishi steam turbine. OPC argues that the nameplate capacity of 420 MW is by definition an operational limitation and that operation of the steam turbine beyond the maximum rated output of 420 MW threatened safe operation.

83. OPC points to the fact that there are 3 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] OPC notes that the DEF RCA report does not explain why a [REDACTED]

[REDACTED]
[REDACTED]

84. As to DEF's argument that [REDACTED]
[REDACTED]

[REDACTED] OPC replies that had DEF operated the turbine within its original operating limitations during Period 1, there is every reason to believe that the original L-0 blades would still be functioning, consistent with [REDACTED] In other words, there would have been no Periods 2, 3, 4, or 5 but for DEF's actions during Period 1.

85. OPC points out that neither DEF nor any other subsidiary of Duke Energy had experience running a 4x1 combined cycle plant prior to purchasing the Mitsubishi steam turbine and commencing operation of the Bartow Plant. Further, neither DEF nor Mitsubishi had any experience operating a steam turbine at the [REDACTED]

86. Given the lack of experience on either side, OPC contends that DEF should have consulted Mitsubishi before purchasing the steam turbine to ask whether Mitsubishi believed it was capable of an output in excess of its nameplate capacity of 420 MW. [REDACTED]

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

87. OPC's expert witness, Richard Polich, pointed out that Mitsubishi's consultant ran over [REDACTED]

88. Mr. Polich testified that the Mitsubishi steam turbine was an aftermarket unit designed for a [REDACTED]. To support his opinion, Mr. Polich pointed out that when DEF finally did ask whether the turbine could run past 420 MW, [REDACTED]

89. DEF ran the unit beyond 420 MW without consulting Mitsubishi. Mr. Polich found it a tribute to the design of the [REDACTED] 40" L-0 blades that they did not suffer damage sooner than they did. The steam turbine operated from June 2009 until March 2012 before the blade damage was noted. It was impossible to state exactly when the blade damage occurred in Period 1, but Mr. Polich opined that the damage was most likely cumulative.⁴

90. Mr. Polich noted that the blade failure in Period 5 was the fastest of any period, though the [REDACTED]. Mr. Polich further noted that the DEF RCA did not address why the blades lasted longer in Periods 1 and 2 than in the other three periods. Mr. Polich reasonably concluded that there had to be something about the blades' [REDACTED]

⁴ DEF made much of the fact that it could not be said precisely when during Period 1 the damage to the blades occurred, pointing out that there was a 50-50 chance that the blades were damaged when the turbine was operating below 420 MW. This argument fails to consider the cumulative wear caused by running the unit in excess of its capacity half of the time. The exact moment the damage occurred is beside the point.

that allowed them to last longer, and something in the [REDACTED] that caused them to fail quickly.

91. Mr. Polich believed that the [REDACTED] He noted that there were 28 months of operation below 420 MW during Period 2 and that there was basically no damage to the blades beyond the usual [REDACTED]

92. Mr. Polich thought that [REDACTED] Mr. Polich did not believe the five periods could be correlated, [REDACTED]

93. Mr. Polich testified that DEF would have acted prudently from both a warranty and a regulatory perspective by requesting written verification from Mitsubishi that the steam turbine could be safely operated above 420 MW of output.

94. Mr. Swartz countered that it would not be a "typical conversation" in the industry to ask Mitsubishi whether and how long the unit could be operated above 420 MW. He pointed out that pounds per hour per square foot of steam flow is not a parameter that can be measured during operation. It is a calculated number that DEF could not possibly have used to govern operation of the turbine.

95. Mr. Swartz testified that "420 MW" is the electrical output of the generator, which is coupled to the steam turbine. The steam turbine's operation is governed by parameters such as pressures, steam flows, and temperatures. Mr. Swartz stated that it is common in the industry to speak in terms of megawatts to get a feel for the size of the unit, but that generator output is dependent on many factors.

96. Mr. Swartz stated that when Mitsubishi criticized DEF for operations above 420 MW, it was using that term as a proxy for [REDACTED]. It was his opinion that 420 MW was not an operational limit on the steam turbine.

97. Mr. Swartz testified that the [REDACTED]. He stated that operation of the steam turbine above 420 MW could be correlated with [REDACTED] but many other factors are involved in determining what a generator can produce.

98. Mr. Swartz stated that the power factor was the key to DEF's ability to operate the steam turbine above 420 MW. Mitsubishi used [REDACTED] with a power factor of [REDACTED] to predict an output of 420 MW. Using the same operating factors, DEF was able to run the steam turbine at a power rating between .97 and .995. Mr. Swartz testified that this increased efficiency enabled the Bartow generator to operate above 420 MW.

99. Mr. Swartz conceded that the [REDACTED]
[REDACTED]
[REDACTED] at least from DEF's perspective. If DEF was able to obtain more, such was to the ultimate benefit of its ratepayers and was consistent with the operating limitations set forth in the Purchasing Agreement.

100. OPC responds that the record of this proceeding contains no indication that at any time during the five-year long, continuous, iterative RCA process did DEF's engineers suggest that the power factor of [REDACTED] in [REDACTED] an indication that the steam turbine output of 420 MW could be safely exceeded.

101. OPC points to several statements recorded during the RCA process indicating that DEF's engineers and Mitsubishi alike acknowledged that 420 MW was the design limit of the steam turbine: [REDACTED]
[REDACTED]

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

102. OPC's essential criticism was that DEF pushed the Mitsubishi steam turbine beyond its operational limits, whether the issue is framed in terms of megawatts of electrical output beyond the design point or in terms of steam flow [REDACTED]. The evidence was clear that Mitsubishi did not contemplate DEF's operation of the steam turbine beyond the [REDACTED]. The evidence was also clear that DEF made no effort before the fact to notify Mitsubishi of its intended intensity of operation or to ask Mitsubishi whether it could safely exceed the [REDACTED]. Mr. Swartz was unable to explain away this criticism and thus DEF failed to meet its burden of demonstrating that it prudently operated the Bartow Plant during the times relevant to this proceeding.

CONCLUSIONS OF LAW

103. DOAH has jurisdiction of the subject matter of and the parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat.

104. The Commission has the authority to regulate electric utilities in the State of Florida pursuant to the provisions of chapter 366, including sections 366.04, 366.05, and 366.06.

105. An "electric utility" is defined as "any municipal electric utility, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state." § 366.02(2), Fla. Stat.

106. DEF is an investor-owned electric utility operating within the State of Florida subject to the jurisdiction of the Commission pursuant to chapter 366.

107. OPC, FIPUG, and White Springs are parties to the Fuel Clause docket, which included the issues to be resolved here, and as such are entitled to participate as parties in this proceeding.

108. This is a de novo proceeding. § 120.57(1)(k), Fla. Stat. Petitioner, DEF, has the burden of proving, by a preponderance of the evidence, that it acted prudently in its actions and decisions leading up to and in restoring the unit to service after the February 2017 forced outage at the Bartow Plant. Additionally, DEF must prove by a preponderance of the evidence that no adjustment to replacement power costs should be made to account for the fact that after the installation of a pressure plate in March 2017, the Bartow Plant could no longer produce its rated nameplate capacity of 420 MW. *Dep't of Transp. v. J.W.C. Co.*, 396 So. 2d 778, 788 (Fla. 1st DCA 1981); § 120.57(1)(j), Fla. Stat.

109. The legal standard for determining whether replacement power costs are prudent is "what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or should [have] been known, at the time the decision was made." *S. Alliance for Clean Energy v. Graham*, 113 So. 3d 742, 750 (Fla. 2013).

110. DEF failed to demonstrate by a preponderance of the evidence that its actions during Period 1 were prudent. DEF purchased an aftermarket steam turbine from Mitsubishi with the knowledge that it had been manufactured to the specifications of Tenaska with a design point of 420 MW of output. Mr. Swartz's testimony regarding the irrelevance of the 420 MW limitation was unpersuasive in light of the documentation that after the initial blade failure, DEF itself accepted the limitation and worked with Mitsubishi to find a way to increase the output of the turbine to [REDACTED]

111. DEF's RCA concluded that the blade failures were caused [REDACTED]

[REDACTED] This conclusion is belied by the fact that [REDACTED]
[REDACTED] Mitsubishi cannot be faulted for

[REDACTED] in a way that would allow an operator to run the turbine consistently beyond its capacity.

112. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

113. Mr. Polich persuasively argued that it would have been simple prudence for DEF to ask Mitsubishi about the ability of the turbine to operate continuously in excess of 420 MW output before actually operating it at those levels. DEF understood that the blades had been designed for the Tenaska 3x1 configuration and should have at least explored with Mitsubishi the wisdom of operating the steam turbine with steam flows in excess of those anticipated in the original design.

114. The record evidence demonstrated an [REDACTED] that vibrations associated with high energy loadings were the primary cause of the L-0 blade failures. DEF failed to satisfy its burden of showing its actions in operating the steam turbine in Period 1 did not cause or contribute significantly to the vibrations that repeatedly damaged the L-0 blades. To the contrary, the preponderance of the evidence pointed to DEF's operation of the steam turbine in Period 1 as the most plausible culprit.

115. DEF demonstrated by a preponderance of the evidence that its actions during Periods 2 through 5 were prudent.

116. DEF argues that even if it failed to exercise prudence during Period 1, those actions were so attenuated by DEF's subsequent actions during Periods 2 through 5 that the outage and de-rating that began in 2017 cannot be fairly attributed to DEF's failures from 2009 through March 2012. If the imprudent operation in Period 1 did not cause the Period 5 outage, then the imprudent operation cannot be a basis for disallowance of the replacement power costs at issue.

117. OPC argues that Periods 2 through 5 would not have been necessary had DEF operated the turbine within its original operating limitations during Period 1. OPC contends that, based on [REDACTED], there is every reason to believe that the original L-0 blades would still be functioning but for DEF's overstressing them in Period 1.

118. OPC states that the applicable standard for prudence review is how a prudent and reasonable utility manager would have operated a new steam turbine under the conditions and circumstances which were known, or reasonably should have been known, when decisions were made in 2008 through 2012. OPC argues that it was imprudent and unreasonable for DEF to regularly supply steam to the steam turbine at levels causing the steam turbine to operate above the design point of 420 MW, especially given the fact that the steam turbine was not designed for the Bartow Plant and was sold to DEF with an [REDACTED]

119. It is speculative to state that the original Period 1 L-0 blades would still be operating today had DEF observed the [REDACTED] of 420 MW. It is not speculative to state that the events of Periods 2 through 5 were precipitated by DEF's actions during Period 1. It is not possible to state what would have happened from 2012 to 2017 if the excessive loading had not occurred, but it is possible to state that events would not have been the same.

120. In his closing argument, counsel for White Springs summarized the equities of the situation very well:

You can drive a four-cylinder Ford Fiesta like a V8 Ferrari, but it's not quite the same thing. At 4,000 RPMs, in second gear, the Ferrari is already doing 60 and it's just warming up. The Ford Fiesta, however, will be moaning and begging you to slow down and shift gears. And that's kind of what we're talking about here.

It's conceded as fact that the root cause of the Bartow low pressure turbine problems is [REDACTED]

caused repeatedly over time. The answer to the question is was this due to the way [DEF] ran the plant or is it due to a Well, the answer is both.

The fact is that [DEF] bought a steam turbine that was already built for a different configuration that was in storage, and then hooked it up to a configuration ... that it knew could produce much more steam than it needed. It had a generator that could produce more megawatts, so the limiting factor was the steam turbine.

On its own initiative, it decided to push more steam through the steam turbine to get more megawatts until it broke.

* * *

So from our perspective, [DEF] clearly was at fault for pushing excessive steam flow into the turbine in the first place. The repair which has been established ... may or may not work, but the early operation clearly impeded [DEF's] ability to simply claim that Mitsubishi was entirely at fault. And under those circumstances, it's not appropriate to assign the cost to the consumers.

121. The greater weight of the evidence supports the conclusion that DEF did not exercise reasonable care in operating the steam turbine in a configuration for which it was not designed and under circumstances which DEF knew, or should have known, that it should have proceeded with caution, seeking the cooperation of Mitsubishi to devise a means to operate the steam turbine above 420 MW.

122. Given DEF's failure to meet its burden, a refund of replacement power costs is warranted. At least \$11.1 million in replacement power was required during the Period 5 outage. This amount should be refunded to DEF's customers.

123. DEF failed to carry its burden to show that the Period 5 blade damage and the required replacement power costs were not consequences of DEF's imprudent operation of the steam turbine in Period 1.

124. The de-rating of the steam turbine that required the purchase of replacement power for the 40 MW loss caused by installation of the pressure plate was a consequence of DEF's failure to prudently operate the steam turbine during Period 1. Because it was ultimately responsible for the de-rating, DEF should refund replacement costs incurred from the point the steam turbine came back online in May 2017 until the start of the planned fall 2019 outage that allowed the replacement of the pressure plate with the [REDACTED] in December 2019. Based on the record evidence, the amount to be refunded due to the de-rating is \$5,016,782.

125. The total amount to be refunded to customers as a result of the imprudence of DEF's operation of the steam turbine in Period 1 is \$16,116,782, without interest.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Public Service Commission enter a final order finding that Duke Energy Florida, LLC, failed to demonstrate that it acted prudently in operating its Bartow Unit 4 plant and in restoring the unit to service after the February 2017 forced outage, and that Duke Energy Florida, LLC, therefore may not recover, and thus should refund, the \$16,116,782 for replacement power costs resulting from the steam turbine outages from April 2017 through September 2019.

DONE AND ENTERED this 27th day of April, 2020, in Tallahassee, Leon
County, Florida.

Lawrence P. Stevenson

LAWRENCE P. STEVENSON
Administrative Law Judge
Division of Administrative Hearings
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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: FUEL AND PURCHASED POWER
COST RECOVERY CLAUSE WITH GENERATING
PERFORMANCE INCENTIVE FACTOR

Case No. 19-6022

PSC Docket No. 20190001-EI

DUKE ENERGY FLORIDA, LLC'S, EXCEPTIONS TO THE RECOMMENDED ORDER

Duke Energy Florida, LLC ("DEF"), pursuant to section 120.57(1)(k), Florida Statutes, and rule 28-106.217, Florida Administrative Code, hereby submits its exceptions to the Administrative Law Judge's ("ALJ") Recommended Order dated April 27, 2020 ("RO").¹

INTRODUCTION

When considering the RO, the Public Service Commission ("PSC") may reject or modify the conclusions of law recommended by the ALJ.² When rejecting or modifying a conclusion of law, the PSC must state with particularity its reasons for doing so and must make a finding that the PSC's substituted conclusion of law is as or more reasonable than that which was rejected or modified.³ To be clear, on issues of law, the PSC is not required to defer to the ALJ,⁴ and where the issue of law under review is infused with overriding policy considerations, the PSC, not the ALJ, should decide the issue of law.⁵

The PSC may also reject or modify a finding of fact contained in the RO if the PSC determines from a review of the entire record, and states with particularity in the final order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on

¹ The Hearing Transcript will be cited as "T. p. ____." The Recommended Order will be cited as RO. ¶ _____. Joint exhibits will be cited as Jt. Ex. ____, p. _____. OPC's exhibits will be cited as "OPC Ex. ____, p. ____." FIPUG's exhibits will be cited as "FIPUG Ex. ____, p. ____." PCS Phosphate's exhibits will be cited as "PCS Phosphate Ex. ____, p. ____."

² Section 120.57(1)(l), Florida Statutes.

³ *Id.*

⁴ *State Contracting & Eng'g Corp. v. Dep't of Transp.*, 709 So. 2d 607, 609 (Fla. 1st DCA 1998).

⁵ *Pillsbury v. State, Dep't of Health & Rehabilitative Servs.*, 744 So. 2d 1040, 1042 (Fla. 2d DCA 1999) ("if the matter under review is susceptible of ordinary methods of proof, such as determining the credibility of witnesses or the weight to be given particular evidence, the matter should be determined by the hearing officer. If, however, the matter is infused with overriding policy considerations, the issue should be left to the discretion of the agency.") (citing *Bush v. Brogan*, 725 So. 2d 1237 (Fla. 2d DCA 1990)).

which the findings were based did not comply with essential requirements of law.⁶

As detailed in DEF's exceptions below, the ALJ has proposed several conclusions of law that should be rejected both because they are inconsistent with the PSC's overriding policy considerations regarding public utilities in Florida and because the ALJ has improperly interpreted the facts when making those conclusions of law. While DEF takes exception to multiple findings of fact, due to the standard of review discussed above, DEF will not relitigate those points here nor ask this Commission to reweigh evidence. As discussed below, even accepting the ALJ's findings of fact, this Commission should still reject the ALJ's legal and policy conclusions.

DEF'S EXCEPTIONS TO THE CONCLUSIONS OF LAW

Exception to RO ¶ 110

DEF takes exception to the ALJ's conclusion in paragraph 110 that DEF failed to demonstrate that its actions during Period 1 were prudent. First, it is helpful to re-state the standard this Commission routinely interprets and applies to determine whether a utility's actions are prudent. The ALJ correctly stated part of the test for prudence⁷, but he left out an important factor. Namely, that hindsight cannot form the basis of a prudence determination. *Fla. Power Corp. v. Public Service Com'n*, 456 So. 2d 451, 452 (Fla. 1984). As support for the ALJ's conclusion, the ALJ relies on evidence that the steam turbine ("ST") DEF purchased for installation at the Bartow Plant had a nameplate rating of 420 MW and that DEF [REDACTED] [REDACTED] after the initial blade failure.

⁶ Section 120.57(1)(l), Florida Statutes.

⁷ The standard for determining prudence is what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or should have been known, at the time the decision was made. *S. Alliance for Clean Energy v. Graham*, 113 So. 3d 742, 750 (Fla. 2013) (RO ¶ 109).

Before committing to purchase the ST, DEF contracted with Mitsubishi to assess whether the ST design conditions were compatible with the Bartow Plant's proposed 4x1 combined cycle design configuration. As part of this assessment, DEF informed Mitsubishi that DEF intended to operate the Bartow Plant and the ST in 4x1 configuration with a power factor exceeding [REDACTED] which would result in the generation of more than 420 MW. T. 42, 135-136, 147-148, 213-215, 234, 258, 278, 356. During Period 1, DEF operated the ST in accordance with the operating parameters specified by Mitsubishi for operation of the ST, which did not include a parameter that prohibited DEF from operating the ST in excess of 420 MW. T. 272, 284, 346, 377-378. It was only after the initial blade failure during Period 1 that [REDACTED]

[REDACTED] T. 260. DEF operated the ST in accordance with [REDACTED] but asked Mitsubishi to determine whether anything could be done [REDACTED] during Period 1. In response, Mitsubishi [REDACTED] T. 152, 277. Mitsubishi did not determine it was necessary [REDACTED]

Significantly, Mitsubishi did not conclude that DEF operated the ST during Period 1 in violation of the operating parameters it provided DEF for the ST. Instead, MHPS surmised that [REDACTED]

[REDACTED] T. 97, 386. Moreover, the fact that Mitsubishi [REDACTED] makes plain that Mitsubishi believed the ST was capable of operating above 420 MW [REDACTED]

In the utility industry, the nameplate rating of a steam turbine is not regarded as an

“operating parameter” above which the steam turbine may not be operated. T. 140-143, 281-282, 284. Instead, the general standard followed in the utility industry is to operate steam turbines within operating parameters provided by the original equipment manufacturer while also striving to achieve the most efficiency for utility customers. T. 141. Operating parameters provided by Mitsubishi for the ST included steam pressures, operating temperatures and other parameters common to steam turbines. T. 346, 377-378. Nothing in DEF’s experience operating the Bartow Plant or in Mitsubishi’s analysis of whether the ST design conditions were compatible with the Bartow Plant indicated that DEF’s operation of the ST in accordance with the operating parameters established by Mitsubishi would result in damage to the L-0 blades. Based upon DEF’s and Mitsubishi’s combined prior knowledge, DEF had appropriate operating parameters in place, and DEF properly followed these parameters. Only an after-the-fact analysis determined the specific cause of the damage to the L-0 blades.

Indeed, the ALJ’s conclusion that the 420MW nameplate rating was an operating parameter is based, at least in part, on DEF’s alleged “acceptance” of the limitation. The ALJ states that DEF accepted the limit because it (1) [REDACTED]

[REDACTED] and (2) requested that Mitsubishi [REDACTED]

[REDACTED] This conclusion is nonsensical because it does not support that DEF accepted the 420 MW as a limitation. Rather, it shows that DEF was acting as a prudent utility would be expected to act in such a situation. As this Commission is well aware, a prudent utility operates its generating units to maximize output for the benefit of its customers. Working with the manufacturer to ensure that the unit can be operated as DEF always intended it to run is not an acceptance of a previous limitation; it is a sign that DEF was acting prudently to protect its investment. Taken to its logical conclusion, the ALJ would have preferred DEF to simply fix the blades and back down the operation to 420 MW and not make any efforts whatsoever to operate

the unit in the most beneficial manner for its customers. What DEF learned through subsequent periods, however, is that [REDACTED] the blades still suffered damage. In sum, even though it continued to follow all OEM provided guidance, DEF is still being subjected to “Monday-morning quarterbacking” and findings of imprudence.

A preponderance of the evidence adduced at the final hearing reflects, and the PSC should conclude, that DEF prudently operated the ST during Period 1 in accordance with each of the operating parameters provided by Mitsubishi. This conclusion is as or more reasonable than the conclusion reached by the ALJ, which relied upon hindsight and would arbitrarily limit a utility’s operation of a steam turbine to the turbine’s nameplate rating regardless of whether the steam turbine has the capacity to safely operate at greater efficiency. The conclusion would also inhibit a utility’s ability to maximize output for the benefit of its customers.

Exception to RO ¶ 111

DEF takes exception to the ALJ’s conclusion in paragraph 111 that DEF’s determination that the L-0 blade failures were the result of [REDACTED] is belied by the fact that [REDACTED]

[REDACTED] As reflected by Mitsubishi’s own root cause analysis, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] T. 97, 386. Despite the fact that DEF contracted with Mitsubishi to assess whether the ST design conditions were compatible with the Bartow Plant’s proposed design configuration, Mitsubishi did not identify [REDACTED] as a potential problem at the Bartow Plant. Under these circumstances, comparing the ST with other Mitsubishi facilities is not beneficial to the prudence analysis at hand.

It is more constructive to compare the blade failures that occurred at the ST during Period 1 (when the ST was operated above 420 MW) with the blade failures that occurred at the ST during Periods 2 through 5 (when the ST was operated below 420 MW). This comparison reveals that the L-0 blades may have failed when DEF was operating the ST above 420 MW but unequivocally suffered damage on four separate occasions when DEF was operating the ST below 420 MW. Indeed, the RO notes that it is not possible to determine when the damage occurred in period 1, and thus it is impossible to say how the unit was being operated at the time of damage; the RO mistakenly concludes that “the exact moment of damage is beside the point”⁸ because it fails to account for cumulative wear to the machine. As a matter of law and regulatory policy, the ALJ’s conclusion must be wrong – if the damage to the unit occurred prior to any alleged imprudence,⁹ DEF cannot be held responsible for the consequences of the damage. It is as or more reasonable to conclude, therefore, that DEF’s determination that the L-0 blade failures resulted from [REDACTED] [REDACTED] is supported by a preponderance of evidence that the blades failed during prudent operation of the ST.

DEF takes further exception to the ALJ’s conclusion in paragraph 111 that DEF operated the ST consistently beyond its capacity. As explained in DEF’s exception to paragraph 110 above, the operating parameters provided by Mitsubishi for the ST were parameters common to steam turbines, including steam pressures and operating temperatures. T. 346, 377-378. DEF complied with these operating parameters. T. 272, 284, 346, 377-378. Mitsubishi provided DEF with no other operating parameters or capacities for the ST. It is, thus, as or more reasonable to conclude

⁸ See RO, at fn. 11 (“DEF made much of the fact that it could not be said precisely when during Period 1 the damage to the blades occurred, point tout that there was a 50-50 chance that the blades were damaged when the turbine was operating below 420MW. This argument fails to consider the cumulative wear caused by running the unit in excess of its capacity half of the time. The exact moment the damage occurred is beside the point.”).

⁹ Again, DEF disputes that operation of a generation unit above nameplate capacity, but within all OEM provided operating parameters is imprudent or that the nameplate capacity is an operating parameter.

that DEF prudently operated the ST within each of the operating parameters provided by Mitsubishi.

Exception to RO ¶ 112

DEF takes exception to the ALJ's conclusion in paragraph 112 that Mitsubishi attributed the blade failure during Period 1 to [REDACTED]. In fact, in its root cause analysis ("RCA") dated September 22, 2017, Mitsubishi determined that [REDACTED]

[REDACTED] (underscoring added) Jt. Ex. 82, p. 12 of 35. It is undisputed that DEF operated the ST below 420 MW during Periods 2 through 5. Jt. Ex. 80, P. 5; T. 285, 347-350, 352, 380. Because DEF always operated the ST below 420 MW during Periods 2 through 5 and the L-0 blades, nevertheless, suffered damage during each of those periods, it is more reasonable to conclude that the [REDACTED] that ultimately damaged the L-0 blades during Period 1 was not the result of DEF's operation of the ST above 420 MW, but was instead caused by L-0 blades that were not [REDACTED]

[REDACTED] by the Bartow Plant. T. 97, 386; Jt. Ex. 83. If the ST's manufacturer was not able anticipate that damage to the L-0 blades would result from operating the ST in accordance with the manufacturer's operating parameters, it would be unreasonable and contrary to the established prudence standard to expect DEF to have anticipated this. It is, therefore, as or more reasonable to conclude that the damage to the L-0 blades that occurred during Period 1 was the combined result of [REDACTED]

Exception to RO ¶ 113

DEF takes exception to the ALJ's conclusion in paragraph 113 that it would have been prudent for DEF to consult with Mitsubishi about the ability of the ST to operate above 420 MW

and above steam flows anticipated in the original design for the ST. With respect to steam flows within the low pressure turbine where the L-0 blades are located, it is important to note that Mitsubishi provided DEF [REDACTED] T. 377-378. As such, it would be as or more reasonable to conclude that prudence did not require DEF to consult with Mitsubishi in connection with steam flow limits within the low-pressure turbine during Period 1 operation of the ST. As indicated above, the output of a steam turbine is not an “operating parameter” provided by a manufacturer; rather the output is a product that follows from operation within the manufacturer-provided parameters. T. 140-143, 281-282, 284. As also indicated above, Mitsubishi understood that DEF intended to operate the Bartow Plant in a configuration that would generate in excess of 420 MW. T. 42, 135-136, 147-148, 213-215, 234, 258, 278, 356. Due to this, it is as or more reasonable to conclude that prudence did not require DEF to consult with Mitsubishi before operating the ST within the operating parameters supplied by Mitsubishi.

Exception to RO ¶ 114

DEF takes exception to the ALJ’s conclusion in paragraph 114 that DEF failed to satisfy its burden of showing its actions in operating the ST during Period 1 did not cause or contribute significantly to the vibrations that repeatedly damaged the L-0 blades. DEF operated the ST during Periods 1 through 5 in accordance with the manufacturer’s operating parameters. T. 346, 377-378. DEF’s actions and decisions in operating the ST within Mitsubishi’s operating parameters were prudent. Consequently, it is as or more reasonable to conclude that DEF’s actions in operating the ST in Period 1 did not cause or contribute significantly to the L-0 blade damage that occurred during Periods 1 through 5. In addition, it appears that the ALJ, by stating that DEF failed its burden to show that its actions did NOT cause the damage, is imposing an impossible standard of proving a negative. A utility does not have the burden to prove that something did not occur; such a requirement would be nearly impossible to meet. Rather, DEF’s burden in this case was to show

that it acted as a reasonable utility manager would, given the facts known or reasonably knowable at the time, and without the benefit of hindsight review. Under that standard, even assuming that nameplate capacity was some sort of operational condition (which is not the case), the more appropriate interpretation of the facts determined in the case is that, because there was damage to the blades even when operating below 420 MW in later periods, DEF's actions in operating the unit such that the output was higher than 420 MW were prudent and not the cause of the damage.

Exception to RO ¶ 119

DEF takes exception to the ALJ's conclusion in paragraph 119 that it is not speculative to state that the events of Periods 2 through 5 were precipitated by DEF's actions during Period 1. It is undisputed that DEF prudently operated the ST during Periods 2 through 5. T. 347-350. It is also not disputed that there was no residual damage to any component within the ST following Period 1. T. 103-105. In fact, the only damage that resulted from Period 1 operation of the ST was to the L-0 blades, [REDACTED] at the conclusion of Period 1. Jt. Ex. 80, p. 5; T. 148, 150-151, 330. Consequently, there is no causal link between the Period 1 operation of the ST and the damage experienced by the L-0 blades during subsequent periods. Such a groundless contention cannot form the basis for denying a utility's fuel cost recovery. *In Re: Fuel & Purchased Power Cost Recovery Clause with Generation Performance Incentive Factor (Crystal River 3 1989 Outage)*, 91 FPSC 12:165, *12 (Dec. 9, 1991).

Since there is no dispute that DEF prudently operated the ST during Periods 2 through 5 and since it is also undisputed that there was no residual damage to the ST following Period 1 operation, it is as or more reasonable to conclude that the damage to the L-0 blades that occurred during Periods 2 through 5 was not precipitated by DEF's operation of the ST during Period 1.¹⁰

¹⁰ Even if one were to assume DEF's operation of the ST above 420 MW during Period 1 was imprudent, if such operation did not cause the Period 5 outage, then it makes no difference whether DEF was imprudent in its operation

To conclude, as the ALJ does, that DEF should be held responsible for the forced outage that occurred during Period 5 -- despite any direct causal link between DEF's operation of the ST during Period 1 and the Period 5 outage -- would set a dangerous precedent that would discourage utility operators from continuing to operate a power plant that may have been imprudently operated at some point for fear that any subsequent forced outage experienced by the power plant could be attributed to the earlier imprudence, regardless of how remote in time that earlier imprudence may have been.

Exception to RO ¶ 120

DEF takes exception to the ALJ's conclusion in paragraph 120 that it would not be appropriate to assign the cost of the February 2017 forced outage to the consumers. It is as or more reasonable to conclude that where, as here, a utility operates a power plant within the manufacturer's express operating parameters and does not know, or have reason to know, that such operation could result in a forced outage of the power plant, the utility should not be forced to bear the resulting replacement power costs.

Exception to RO ¶ 121

For the reasons explained above in its exceptions to RO ¶ 110, 111 and 113, DEF takes exception to the ALJ's conclusion in paragraph 121 that DEF did not exercise reasonable care in operating the ST and should have sought the cooperation of Mitsubishi prior to operating the ST above 420 MW. It is as or more reasonable to conclude that DEF was prudent in its decisions and actions leading up to, and in restoring the Bartow Plant to service after, the Bartow Plant's February 2017 forced outage and was not required to consult with Mitsubishi prior to operating the ST above 420 MW. There is also no record evidence to demonstrate that consulting with Mitsubishi prior to

of the ST during portions of Period 1 because the replacement power costs at issue could not be said to be a result of the Company's mismanagement. See *Fla. Power Corp. v. Cresse*, 413 So. 2d 1187, 1190-1191 (Fla. 1982).

operating the ST above 420 MW would have resulted in any change in events.

Exception to RO ¶ 122

DEF takes exception to the ALJ's conclusion in paragraph 122 that DEF must refund power costs to DEF's customers. For the reasons explained above, DEF was prudent in its decisions and actions leading up to, and in restoring the Bartow Plant to service after, the Bartow Plant's February 2017 forced outage. Consequently, it is as or more reasonable to conclude that DEF is not required to refund power costs to its customers.

Exception to RO ¶ 123

For the reasons set forth in its exception to the ALJ's conclusion in paragraph 110, DEF takes exception to the ALJ's conclusion in paragraph 123 that DEF failed to show that it operated the ST prudently during Period 1. It is as or more reasonable to conclude that DEF carried its burden to show that it prudently operated the ST during Period 1 within each of the operating parameters provided by Mitsubishi.

DEF takes further exception to the ALJ's conclusion in paragraph 123 that DEF failed to meet its burden of showing that the Period 5 blade damage and the resulting replacement power costs were not the consequence of DEF's operation of the ST during Period 1. Because DEF proved by a preponderance of evidence that its operation of the ST during Period 1 was prudent and because it is undisputed that DEF's operation of the ST during Periods 2 through 5 was also prudent, it is as or more reasonable to conclude that the Period 5 blade damage and resulting replacement power costs were not the consequence of DEF's operation of the ST during Period 1.

Exception to RO ¶ 124

DEF takes exception to the ALJ's conclusions in paragraph 124 that the purchase of replacement power for the 40 MW loss caused by installation of the pressure plate was a consequence of DEF's failure to prudently operate the ST during Period 1. Because DEF proved

by a preponderance of evidence that its operation of the ST during Period 1 was prudent and because it is undisputed that DEF's operation of the ST during Periods 2 through 5 was also prudent, it is as or more reasonable to conclude that the installation of the pressure plate was not the consequence of DEF's operation of the ST during Period 1.

DEF takes further exception to the ALJ's conclusion in paragraph 124 that DEF should be required to refund replacement power costs related to the installation of the pressure plate. For the reasons explained above, DEF was prudent in its decisions and actions leading up to, and in restoring the Bartow Plant to service after, the Bartow Plant's February 2017 forced outage. Consequently, it is as or more reasonable to conclude that DEF is not required to refund power costs to its customers.

Exception to RO ¶ 125

DEF takes exception to the ALJ's conclusions in paragraph 125 that DEF was imprudent in its operation of the ST during Period 1 and, consequently, should be required to refund \$16,116,782 to its customers. For the reasons discussed at length above, it is as or more reasonable to conclude that DEF operated the ST prudently at all times relevant to the replacement power costs and is, therefore, not required to refund any amount to its customers.

CONCLUSION

As detailed above, the above-referenced conclusions of law recommended by the Administrative Law Judge are inconsistent with the standard of prudence delineated in this Commission's precedent as well as the Commission's overriding policy considerations regarding public utilities in Florida. Adoption of the ALJ's conclusions would send negative operational signals to the state's utilities; specifically, adoption of the RO would signal that utilities should not

strive to maximize the efficient output of generating units, which, contrary to logic and economic principles, would result in limiting operations of the most efficient and economic sources of generation in favor of less efficient, less economic, and less environmentally friendly sources of generation (e.g., oil-fired peaker units). Moreover, it would send a signal to all utilities that, regardless of compliance with all industry-recognized operational parameters, they may still be found imprudent based on failure to comply with a later-established operational parameter (unrecognized at the time); this would upend the well-established prudence standard and subject all utilities to increased risk and increased costs which are eventually borne by customers. This Commission should reject these conclusions.

Respectfully submitted this 12th day of May 2020.

/s/ Matthew R. Bernier

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased Power
Cost Recovery Clause with Generating
Performance Incentive Factor

Docket No. PSC-20190001-EI
DOAH Case No. 19-6022

**OFFICE OF PUBLIC COUNSEL, PCS PHOSPHATE – WHITE SPRINGS, AND
THE FLORIDA INDUSTRIAL POWER USERS GROUP JOINT
RESPONSE TO DUKE ENERGY FLORIDA, LLC'S
EXCEPTIONS TO RECOMMENDED ORDER**

The Office of Public Counsel, PCS Phosphate – White Springs, and the Florida Industrial Power Users Group, pursuant to section 120.57(1)(k), Florida Statutes (2020), and Rule 28-106.217, Florida Administrative Code, jointly respond to the Exceptions submitted by Duke Energy Florida, LLC (“DEF”) to the Recommended Order in the above-styled matter. This Response is being submitted confidentially only because it is required due to a claim of confidentiality DEF has made to the Commission on behalf of the original equipment manufacturer.

OVERVIEW

The Public Service Commission (“PSC” or “Commission”) forwarded this matter to the Division of Administrative Hearings on November 8, 2019, and requested that an Administrative Law Judge (“ALJ”) conduct a formal evidentiary hearing on the following issues of disputed material fact:

ISSUE 1B: Was DEF prudent in its actions and decisions leading up to and in restoring the unit to service after the February 2017 forced outage at the Bartow plant, and if not, what action should the Commission take with respect to replacement power costs?

ISSUE 1C: Has DEF made prudent adjustments, if any are needed, to account for replacement power costs associated with any impacts related to the de-rating of the Bartow plant? If adjustments are needed and have not been made, what adjustment(s) should be made?

The Division of Administrative Hearings assigned an ALJ who conducted a formal evidentiary hearing on February 4 and 5, 2020. The parties collectively presented the live testimony of two expert witnesses, submitted extensive additional pre-filed testimony and 34 exhibits into evidence including a voluminous composite exhibit and other records. The official transcript of the final hearing is contained in three volumes, not including exhibits and additional pre-filed testimony admitted into evidence.

At the conclusion of the evidentiary hearing all parties, including the Commission, submitted detailed proposed recommended orders containing proposed findings of fact and conclusions of law. After duly considering the entirety of the record, applicable law, and the proposed recommended orders, the ALJ issued a detailed Recommended Order containing numerous Findings of Fact and Conclusions of Law, and recommending that the Commission enter a Final Order finding that:

Duke Energy Florida, LLC, failed to demonstrate that it acted prudently in operating its Bartow Unit 4 plant and in restoring the unit to service after the February 2017 forced outage, and that Duke Energy Florida, LLC, therefore may not recover, and thus should refund, the \$16,116,782 for replacement power costs resulting from the steam turbine outages from April 2017 through September 2019.

DEF submitted twelve exceptions to the Recommended Order. In spite of stating that it would “not relitigate those [factual] points ... nor ask this Commission to reweigh evidence,” each of DEF’s exceptions asks the Commission to reject findings of fact that, as demonstrated below, are supported by competent substantial evidence. The exceptions also ask the Commission to invade the exclusive province of the ALJ and make new findings of fact, often without citing to any portion of the record, and based on such new findings to overturn the ALJ's ultimate determination. For the reasons stated below, the Commission should reject each of the DEF exceptions and adopt the findings of the Recommended Order.

THE COMMISSION'S SCOPE OF AUTHORITY WHEN RULING ON EXCEPTIONS

The Commission has limited authority to reject or modify the ALJ's findings of fact and conclusions of law. Pursuant to section 120.57(1)(f), Florida Statutes,¹ the Commission may not reject or modify the ALJ's findings of fact unless the Commission "first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence, or that the proceedings on which the findings were based did not comply with essential requirements of law."

If the ALJ's findings of fact are supported by competent substantial evidence, the Commission cannot reject or modify them even to make alternate findings that are also supported by competent substantial evidence. *Kanter Real Estate, LLC v. Dep't of Envtl. Prot.*, 267 So. 3d 483, 487–88 (Fla. 1st DCA 2019), *reh'g denied* (Mar. 19, 2019), *review dismissed sub nom. City of Miramar v. Kanter Real Estate, LLC*, SC19-639, 2019 WL 2428577 (Fla. June 11, 2019), citing *Lantz v. Smith*, 106 So. 3d 518, 521 (Fla. 1st DCA 2013).

Moreover, the Commission may not "reject a finding that is substantially one of fact simply by treating it as a legal conclusion," regardless of whether the finding is labeled a conclusion of law. *Gross v. Dep't of Health*, 819 So. 2d 997, 1005 (Fla. 5th DCA 2002); *Gordon v. State Comm'n on Ethics*, 609 So.2d 125, 127 (Fla. 4th DCA 1992); *Kanter Real Estate*, 267 So. 3d at 487-88, citing *Abrams v. Seminole Cty. Sch. Bd.*, 73 So. 3d 285, 294 (Fla. 5th DCA 2011). Similarly, a finding that is both a factual and legal conclusion cannot be rejected when there is substantial competent evidence to support the factual conclusion, and where the legal conclusion necessarily

¹ All statutory and rule references are to the 2019 versions, unless otherwise indicated. The Transcript of the final hearing was filed on February 24, 2020. Citation to the Transcript herein will be the witness's last name followed by the abbreviation "Tr." followed by the citation to the page.

follows. *Berger v. Dep't of Prof. Reg.*, 653 So. 2d 479, 480 (Fla. 3d DCA 1995); *Strickland v. Florida A&M Univ.*, 799 So. 2d 276, 279 (Fla. 1st DCA 2001); *Dunham v. Highlands County Sch. Bd.*, 652 So. 2d 894, 897 (Fla. 2nd DCA 1995).

It is the sole prerogative of the ALJ to consider the evidence presented, to resolve conflicts in the evidence, to judge the credibility of witnesses, to draw permissible inferences from the evidence, and to reach ultimate findings of fact based on the competent substantial evidence of record. *Ft. Myers Real Estate Holdings, LLC v. Dep't of Bus. & Prof'l Regulation*, 146 So. 3d 1175 (Fla. 1st DCA 2014), citing *Heifetz v. Dep't. of Bus. Reg.*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985).

"Competent substantial evidence" is "such relevant evidence as a reasonable mind would accept as adequate to support a conclusion." *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957). The Commission may reject an ALJ's findings of fact only where there is no competent substantial evidence from which the findings can reasonably be inferred. *Heifetz v. Dep't. of Bus. Reg.*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985); *Belleau v. Dep't of Environmental Protection*, 695 So.2d 1305, 1306 (Fla. 1st DCA 1997); *Strickland v. Florida A&M Univ.*, 799 So.2d at 278. Absent such an express and detailed finding, the Commission is bound to accept the ALJ's findings of fact. *See Southpointe Pharmacy v. Dep't of Health & Rehab. Serv.*, 596 So. 2d 106, 109 (Fla. 1st DCA 1992).

The Commission is not authorized to substitute its judgment for that of the ALJ by taking a different view of, or placing greater weight on the same evidence, reweighing the evidence, judging the credibility of witnesses, or otherwise interpreting the evidence to fit its desired conclusion. *Prysi v. Dep't of Health*, 823 So. 2d 823, 825 (Fla. 1st DCA 2002); *Strickland*, 799 So.2d at 279; *Schrimsher v. Sch. Bd. of Palm Beach County*, 694 So. 2d 856, 860 (Fla. 4th DCA

1997); *Heifetz*, 475 So.2d at 1281; *Wash & Dry Vending Co. v. Dep't of Bus. Reg.*, 429 So. 2d 790, 792 (Fla. 3rd DCA 1983).

The Commission may reject or modify a conclusion of law over which it has substantive jurisdiction, but must state with particularity its reasons for rejecting or modifying such conclusion of law, and make a finding that its substituted conclusion of law is as or more reasonable than that which was rejected or modified. Section 120.57(1)(f), Fla. Stat.; *Prysi*, 823 So. 2d at 825. Rejection or modification of a conclusion of law may not form the basis for rejection or modification of a finding of fact. Section 120.57(1)(f), Fla. Stat.

RESPONSE TO DEF EXCEPTIONS

RESPONSE TO DEF EXCEPTION NO. 1.

DEF excepts to Paragraph 110 of the Recommended Order, which is set forth verbatim below:

110. DEF failed to demonstrate by a preponderance of the evidence that its actions during Period 1 were prudent. DEF purchased an aftermarket steam turbine from Mitsubishi with the knowledge that it had been manufactured to the specifications of Tenaska with a design point of 420 MW of output. Mr. Swartz's testimony regarding the irrelevance of the 420 MW limitation was unpersuasive in light of the documentation that after the initial blade failure, DEF itself accepted the limitation and worked with Mitsubishi to find a way to increase the output of the turbine to [REDACTED]

DEF acknowledges that the ALJ set forth the correct legal standard for determining prudence as established by the Florida Supreme Court. *See* DEF Exceptions, footnote 7. DEF nevertheless mistakenly argues that the ALJ applied the incorrect legal standard in determining that DEF failed to demonstrate that it acted prudently during the period leading up to and in restoring the unit to service after the February 2017 forced outage at the Bartow plant. DEF suggests, without basis or explanation, that the ALJ relied on "hindsight" in determining that DEF's actions were imprudent.

As evidenced by the Recommended Order, however, and consistent with the appropriate standard of legal review, the ALJ expressly assessed all evidence presented relating to the conditions and circumstances that were known, or should have been known, by DEF *at the time DEF made the decision and took action* to repeatedly and extensively operate the steam turbine ("ST") in excess of 420 MW and when DEF *failed to take the action* it should have taken to consult with Mitsubishi.

In Paragraph 109 of the Recommended Order, the ALJ expressly states the legal standard applied in the Recommended Order:

109. The legal standard for determining whether replacement power costs are prudent is "what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or should [have] been known, *at the time the decision was made.*" *S. Alliance for Clean Energy v. Graham*, 113 So. 3d 742, 750 (Fla. 2013).

(Emphasis added). Contrary to DEF's suggestion, and as evidenced by the entirety of the record, the ALJ thoroughly considered evidence of the conditions and circumstances known, or that should have been known, to DEF *at the time the decisions were made*. The ALJ found, based on a detailed, systematic review of the competent substantial evidence of record, that DEF knew, or should have known, that its actions (including the failure to act) "*during period 1*" were imprudent.

DEF fails to provide any valid factual or legal basis for DEF's assertion that the ALJ improperly used "hindsight," or "Monday morning quarterbacking," in determining that DEF acted imprudently during Period 1. The determination of "what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or should have been known, *at the time the decision was made*" necessarily involves a review of prior actions and contemporaneous materials reflecting the conditions and circumstances that existed at the time the decision in question was made.

DEF does not dispute that the ALJ's findings of fact set forth in Paragraph 110 are supported by competent substantial evidence. Instead, DEF simply recasts its preferred version of the facts, which were duly considered and rejected by the ALJ.

The ALJ's determination that DEF acted imprudently is supported by numerous uncontested findings of fact set forth in the Recommended Order, each of which are supported by competent substantial evidence, including but not limited to:

- The Mitsubishi steam turbine was originally designed for Tenaska Power Equipment, LLC ("Tenaska"), to be used in a 3x1 combined cycle configuration with three M501 Type F combustion turbines connected to the steam turbine with a gross output of 420 MW of electricity. (Recommended Order, ¶ 14) (Polich, Tr. 305, 325, 329; Swartz, Tr. 42, 163, 212, 255; Ex. 80 at 2, 3; Ex. 111).
- The greater weight of the evidence establishes that the Mitsubishi steam turbine was designed to operate at 420 MW of output and that 420 MW was an operational limitation of the turbine. (Recommended Order, ¶ 33) (Polich, Tr. 303, 305, 325, 329, 330; Ex. 80 at 2; Ex. 108 at 2437-2561; Ex. 109 at 12432, 12438; Ex. 116 at 4, 21; Swartz, Tr. 42, 82-83; 127-28, 130-31, 137, 163, 212, 255; Ex. 111; Ex. 80 at 3).
- Mitsubishi concluded that the damage to the blades was caused by

██
██

[REDACTED] (Recommended Order, ¶ 37) (Ex 82 at 5; Ex. 73 at 3; Ex. 116 at 4).

- The [DEF RCA] working papers indicate that as late as October 15, 2016, DEF agreed that the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Recommended Order, ¶ 69) (Swartz, Tr. 90, 161-162, 82-83; Ex. 115 at 19; Ex. 116 at 4, 21; Ex. 109 at Bates 12432).

- OPC accurately states that the DEF working documents demonstrate that during the RCA process, before and after the Period 5 event, DEF consistently identified excessive steam flow in the LP turbine as one of the "most significant contributing factors" toward blade failure over the history of the steam turbine, [REDACTED]

[REDACTED] (Recommended Order, ¶ 71) (Swartz, Tr. 86-88, 112; Ex. 73 at 3; Ex. 115 at 23, 29, 39, 59, 67, 75, 87, 97, 109, 123, 137, 151, and 165; Ex. 73 at 3; Ex. 116 at 4).

- The Energy Information Administration of the U.S. Department of Energy defines "generator nameplate capacity" as the "maximum rated output of a generator, prime mover, or other electric power production equipment under specific conditions designated by the manufacturer." There was no dispute that 420 MW was the

"nameplate capacity" of the Mitsubishi steam turbine. (Recommended Order, ¶ 82) (Swartz, Tr. 224, 209-210; Ex. 111; Ex. 118).

- Given the lack of experience on either side, OPC contends that DEF should have consulted Mitsubishi before purchasing the steam turbine to ask whether Mitsubishi believed it was capable of an output in excess of its nameplate capacity of 420 MW. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Recommended Order, ¶ 86) (Polich, Tr. 308-309, 320-321, 365-366; Ex. 109 at 12438; Ex. 108 at 2461; Ex. 104 at 44; Ex. 72; Ex. 80 at 5; Swartz, Tr. 73, 108, 137).

- The evidence was clear that Mitsubishi did not contemplate DEF's operation of the steam turbine beyond the [REDACTED]

[REDACTED] The evidence was also clear that

DEF made no effort before the fact to notify Mitsubishi of its intended intensity of operation or to ask Mitsubishi whether it could safely exceed the [REDACTED] Mr. Swartz was unable to explain away this criticism and thus DEF failed to meet its burden of demonstrating that it prudently operated the Bartow Plant during the times relevant to this proceeding. (Recommended Order, ¶ 102) (Polich, Tr. 308-309, 320-321, 365-366; Ex. 109 at 12438; Ex. 108 at 2461; Ex. 104 at 44; Swartz, Tr. 73, 108, 137; Ex. 72; Ex. 80 at 5).

- DEF purchased an aftermarket steam turbine from Mitsubishi with knowledge that it had been manufactured to the specifications of Tenaska with a design point of 420 MW of output. (Recommended Order, ¶ 110) (Polich, Tr. 305, 325; Swartz, Tr. 212, 255).

Contrary to DEF's suggestion, the ALJ stated and applied the correct legal standard to the evidence of record pertaining to the facts and circumstances that existed *at the time that DEF made the decision and took action* to operate the Bartow steam turbine repeatedly and extensively in excess of 420 MW. The ALJ found, based on the competent substantial evidence of record, that the operational limit of the Bartow steam turbine was "420 MW based on the Mitsubishi design point and the expected maximum electrical output," and that DEF's decision and action to operate the ST repeatedly and extensively in excess of 420 MW, based on information that DEF knew, or should have known, was imprudent. The ALJ found, based on competent substantial evidence of record, that DEF should have consulted with Mitsubishi before DEF operated the ST above the design point of 420 MW. (Recommended Order, ¶ 102) (Polich, Tr. 308-309, 320-321, 365-366;

Ex. 109 at 12438; Ex. 108 at 2461; Ex. 104 at 44; Swartz, Tr. 73, 108, 137; Ex. 72; Ex. 80 at 5). The ALJ found that DEF presented no evidence that DEF consulted with Mitsubishi prior to doing so, and further found that DEF's expert "was unable to explain away this criticism." *Ibid.* The ALJ's findings of fact and competent substantial evidence of record support the ALJ's ultimate determination set forth in Paragraph 110 of the Recommended Order that DEF failed to carry its burden of proof to demonstrate that DEF acted prudently during the period in question.

The case cited by DEF, *Fla. Power Corp. v. Public Service Com'n*, 456 So. 2d 451, 452 (Fla. 1984), relating to the application of "hindsight" is inapposite and readily distinguishable on its facts. In *Fla. Power Corp.*, the Florida Supreme Court held that the Commission could not retroactively, i.e., "in hindsight," re-designate "non-safety-related" repair work as "safety-related," and thus the Commission could not retroactively apply the higher standard of care applicable to "safety-related work" when determining whether the work at issue was prudently performed. *See Fla. Power Corp.* 456 So. 2d at 451 ("Our review of the record indicated that the extended repair work involved at the time was not per se safety-related," thus "a safety-related standard" that involved "a very different risk and a much higher standard of care," could not be retroactively applied.); *See also Fla. Power Corp. v. Public Service Com'n*, 424 So. 2d 745, 747 (Fla. 1982) ("Our independent review of the record discloses that the particular task which resulted in the accident was but a small part of the extended repairs to the fuel transfer mechanism. The record further indicates that the repair work, per se, was not safety-related, and this was, in part, why the use of the test weight was not recognized as being safety-related."). In essence, the Supreme Court held that the Commission could not change the standard of care "rules of the game," namely whether a task was or was not "safety-related" at the time it was performed, when the action in

question was later reviewed. Here, nothing supports the notion that any "rules of the game" were changed while the ALJ considered the disputed facts of the case.

DEF goes on to extensively reargue and rehash arguments that DEF previously presented to the ALJ and that the ALJ rejected. DEF improperly urges the Commission to make alternative findings that contradict the findings made by the ALJ, which the Commission may not do. DEF also urges the Commission to make new findings that, upon examination, are not supported by any evidence of record. DEF makes the following assertion on page 3 of its Exceptions:

Before committing to purchase the ST, DEF contracted with Mitsubishi to assess whether the ST design conditions were compatible with the Bartow Plant's proposed 4x1 combined cycle design configuration. As part of this assessment, DEF informed Mitsubishi that DEF intended to operate the Bartow Plant and the ST in 4x1 configuration with a power factor exceeding [REDACTED] which would result in the generation of more than 420 MW. T. 42, 135-136, 147-148, 213-215, 234, 258, 278, 356.

A careful review of each of the pages cited by DEF fails to reveal any evidence remotely indicating that Mitsubishi had been informed that DEF intended to operate the ST above 420 MW. DEF presented no evidence at the final hearing to contest Mr. Polich's testimony that DEF did not inform Mitsubishi of its intent to operate the ST above 420 MW, much less that DEF intended to operate it at [REDACTED] (Polich, Tr. 329-330.)

DEF attempts to re-argue that "Mitsubishi believed the ST was capable of operating above 420 MW [REDACTED] The ALJ, however, found DEF's argument unpersuasive. See Recommended Order, Paragraphs 111, 112, 113, 114, 118, 119 and 121.

DEF further attempts to re-argue that "[i]n the utility industry, the nameplate rating is not regarded as an 'operating parameter,'" and that "the general standard followed in the industry is to operate steam turbines within operating parameters provided by the original equipment manufacturer while also striving to achieve the most efficiency for utility customers." The ALJ,

based on the entirety of the record, found DEF's arguments "unpersuasive" with respect to the prudence of DEF's decisions and actions during the period leading up to and in restoring the unit to service after the February 2017 forced outage at the Bartow plant.²

DEF next reargues that "DEF had appropriate operating parameters in place, and DEF properly followed these parameters," throughout Periods 1-5, and that the ALJ erred by viewing DEF's [REDACTED] of Mitsubishi's 420 MW operating parameter in Periods 2 - 5 as a concession that it was a "previous limitation." The ALJ, based on competent substantial evidence of record, concluded that DEF's actions after the first blade failures acknowledged and confirmed that the design point and operating limitation of the steam turbine was 420 MW. The competent substantial evidence relied on by the ALJ includes the [REDACTED] [REDACTED] provided by Mitsubishi. (Swartz, Tr. 90, 161-162, 82-83; Ex. 115 at 19; Ex. 116 at 4, 21; Ex. 109 at Bates 12432). As evidenced by the Recommended Order, the then-contemporaneous evidence of the 420 MW design limitation that was available in 2006-2008 and DEF's consistent and ready acknowledgement of that operational limit in 2012 was more persuasive to the ALJ than the testimony and arguments presented by DEF at the final hearing. The ALJ expressly found the testimony of DEF's expert witness on this point "unpersuasive." (Recommended Order, Paragraph 110). It is the sole province of the ALJ to determine and weigh

² The ALJ found that the concept of "nameplate" is but one of many indicia of the intended operational limit of the ST and, as set forth in the ALJ's findings of fact, that Mitsubishi clearly informed DEF of the limit of the ST through [REDACTED]. The ALJ further found, based on competent substantial evidence of record, that DEF's operation of the ST for approximately half of the total 21,734 hours at 420 MW or above, with 2,973 of those hours *above* 420 MW in Period 1, was not an incidental exceedance of a number on a nameplate label, but instead was a failure to exercise reasonable care in operating the steam turbine in a configuration for which it was not designed. (Recommended Order, ¶ 35) (Swartz, Tr. 285, 137, 127-129, 130-131, 76-77, 82-83, 159-162, 169; Polich, Tr. 302-305, 330, 332; Ex. 115 at 19, 24; Ex. 116 at 4, 21; Ex. 108 at 2437-2561; Ex. 109 at Bates 12432-12439).

the credibility of witness testimony, and the Commission may not substitute its view of the evidence for that of the ALJ.

Finally, DEF suggests that the Commission should reject the ALJ's ultimate determination that DEF acted imprudently in this case, because the ALJ's determination of DEF's imprudence in this case "would also inhibit a utility's ability to maximize output for the benefit of its customers." DEF's assertion lacks merit. The ALJ's determination in this case is based on the evidence of record and is consistent with applicable law. The Recommended Order contains no findings of fact or conclusions of law that would inhibit a utility's ability or incentive to prudently maximize output for the benefit of its customers. The only thing a final order adopting the Recommended Order would inhibit or discourage is imprudent utility power plant operation and management, not prudently optimizing output.

Paragraph 110 of the Recommended Order applies the correct legal standard, is based on factual findings supported by competent substantial evidence and cannot be disturbed. DEF's exception to Paragraph 110 must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 2.

DEF excepts to Paragraph 111 of the Recommended Order, which is set forth verbatim below:

111. DEF's RCA concluded that the blade failures were caused by [REDACTED]
[REDACTED] This conclusion is belied by the fact that [REDACTED]
[REDACTED] Mitsubishi cannot be faulted for [REDACTED] in a way
that would allow an operator to run the turbine consistently beyond
its capacity.

This paragraph of the Recommended Order contains factual findings that support the ALJ's ultimate conclusions of law. The Commission may not reject the findings of fact in Paragraph 111

unless there is no competent substantial evidence to support them. Similarly, a finding that is both a factual and a legal conclusion cannot be rejected when there is substantial competent evidence to support the factual conclusion and the legal conclusion necessarily follows. *Berger*, 653 So. 2d at 480; *Strickland*, 799 So. 2d at 279; *Dunham*, 652 So. 2d at 897.

The ALJ's findings of fact set forth in Paragraph 111 are supported by competent, substantial evidence and cannot be disturbed. (Swartz, Tr. 179; Ex. 82 at 5; Ex. 103 at 55; Ex. 104 at 14; Ex. 115 at 180). The ALJ is solely authorized to weigh and balance the evidence, determine the credibility of witnesses, and draw reasonable inferences from the evidence. *See Heifetz v. Dep't. of Bus. Reg.*, 475 So. 2d at 1281-2. DEF does not suggest any error of law, does not dispute that the findings of fact are supported by competent substantial evidence, and does not contend that the proceedings failed to comply with essential requirements of law. Instead, DEF simply re-argues the evidence of record and makes new arguments. Pursuant to section 120.57(1)(I), Florida Statutes, the Commission may not reweigh the evidence, consider "evidence" not of record, nor modify or reject an ALJ's factual finding when the finding is supported by competent substantial evidence of record. This is true even when the record may contain conflicting evidence, and when the Commission may disagree with the ALJ's view of the evidence. As noted by the court in *Heifetz*:

If, as is often the case, the evidence presented supports two inconsistent findings, it is the hearing officer's role to decide the issue one way or the other. The agency may not reject the hearing officer's finding unless there is no competent, substantial evidence from which the finding could reasonably be inferred. The agency is not authorized to weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion.

Finally, in its second Exception, DEF again re-argues the issue of the timing of when the damage occurred in Period 1; however, this issue is not addressed in Paragraph 111 of the Recommended Order. The findings of fact in Paragraph 111 of the Recommended Order are supported by competent, substantial evidence of record and may not be disturbed. (Swartz Tr. 108; 179; Ex. 80 at 6; Ex 82 at 5; Ex. 103 at 55; Ex. 104 at 14; Ex. 115 at 180). DEF's exception to Paragraph 111 must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 3.

DEF excepts to Paragraph 112 of the Recommended Order, which is set forth verbatim below:

112. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Paragraph 112 of the Recommended Order contains findings of fact that support the ALJ's conclusions of law. The Commission may not reject the findings of fact unless there is no competent substantial evidence of record to support them. The ALJ's findings of fact in Paragraph 112 are supported by competent substantial evidence of record, including:

- Mitsubishi prepared a root cause assessment, dated September 2017, in which it determined that [REDACTED]
[REDACTED]
[REDACTED] (Swartz, Tr. 100; Ex. 82 at 5-6).
- Mitsubishi concluded that [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Swartz, Tr. 111-12, 86-88; Ex 82 at 5; Ex. 73 at 3;

Ex. 115 at 23, 29, 39, 59, 67, 75, 123, 137, 153, 165, and 179).

DEF does not dispute that the ALJ's findings of fact are supported by competent substantial evidence. DEF nevertheless re-argues its version of the evidence as to the "root cause" of the blade failures, and urges the Commission to find facts that contradict the facts found by the ALJ. The ALJ's findings of fact and conclusions in Paragraph 112 of the Recommended Order are supported by competent substantial evidence of record and cannot be disturbed. DEF's exception to Paragraph 112 must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 4.

DEF excepts to Paragraph 113 of the Recommended Order, which is set forth verbatim below:

113. Mr. Polich persuasively argued that it would have been simple prudence for DEF to ask Mitsubishi about the ability of the turbine to operate continuously in excess of 420 MW output before actually operating it at those levels. DEF understood that the blades had been designed for the Tenaska 3x1 configuration and should have at least explored with Mitsubishi the wisdom of operating the steam turbine with steam flows in excess of those anticipated in the original design.

This paragraph of the Recommended Order contains factual findings that support the ALJ's conclusions. The Commission may not reject these findings of fact unless there is no competent substantial evidence to support them. DEF does not dispute that the findings of fact are supported by competent substantial evidence, nor proffer or support a different legal analysis or conclusion in its exception. Instead, DEF rehashes the evidence and urges the Commission to make new findings that contradict the findings made by the ALJ, arguing that its proposed new findings are

"as or more reasonable" than the findings made by the ALJ. Pursuant to 120.57(1)(I), Florida Statutes, the Commission may not substitute new findings of fact for those made by the ALJ even if the Commission views the proposed new findings "as or more reasonable" than those made by the ALJ. The legal standard for rejecting or modifying an ALJ's finding of fact is whether the ALJ's finding is supported by competent substantial evidence of record. In Paragraph 113 of the Recommended Order, the ALJ expressly finds the expert testimony of Mr. Polich credible and persuasive, and the testimony presented by DEF unpersuasive, with respect to the issue of whether DEF acted as a reasonable utility manager would have done in light of the conditions and circumstances that were known, or should have been known, at the time the decision was made. As noted above, the credibility of witnesses is wholly a factual determination within the sole province of the ALJ. *Strickland*, 799 So. 2d at 278 ("the weighing of evidence and judging of the credibility of witnesses by the Administrative Law Judge are solely the prerogative of the Administrative Law Judge as finder of fact.").

The ALJ determined, based on the competent, substantial evidence of record, that DEF failed to carry its burden of proof that it acted prudently during the period in question. (Swartz, Tr. 82-83, 116, 127-129, 130-131, 137; Polich, Tr. 308-309, 320-321; Ex. 105 at Bates 6875; Ex. 108 at 2437-2561; Ex. 109 at Bates 12432-12439; and Ex. 116 at 4 and 21).

The ALJ's findings of fact in Paragraph 113 of the Recommended Order are supported by competent substantial evidence of record and cannot be disturbed. DEF's exception to Paragraph 113 must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 5.

DEF excepts to Paragraph 114 of the Recommended Order, which is set forth verbatim below:

114. The record evidence demonstrated an [REDACTED] that vibrations associated with high energy loadings were the primary cause of the L-0 blade failures. DEF failed to satisfy its burden of showing its actions in operating the steam turbine in Period 1 did not cause or contribute significantly to the vibrations that repeatedly damaged the L-0 blades. To the contrary, the preponderance of the evidence pointed to DEF's operation of the steam turbine in Period 1 as the most plausible culprit.

Paragraph 114 of the Recommended Order summarizes the findings of fact that support the ALJ's ultimate determination. The Commission may not reject these factual portions of the paragraph unless there is no competent substantial evidence supporting them. DEF does not dispute that the findings of fact and conclusions in Paragraph 114 of the Recommended Order are supported by competent, substantial evidence, nor does DEF proffer or support a different legal analysis or conclusion in its exception. Instead, DEF simply offers the conclusory statement that it would be "as or more reasonable to conclude that DEF actions did not cause or contribute significantly to the L-0 blade damage that occurred during Periods 1 through 5." The Commission's scope of review is whether the findings of fact are supported by competent substantial evidence of record. The ALJ's findings of fact in Paragraph 114 are supported by competent substantial evidence of record. (Swartz, Tr. 42, 73, 108, 163, 121-122, 126, 127, 132, 137; Polich, Tr. 303-306, 329-330; Ex. 72; Ex. 80 at 2, 3, and 5; Ex. 108 at Bates 2461; Ex. 109 at Bates 12432-12439; Ex. 115 at 23, 29, 39, 59, 67, 75, 123, 137, 153, 165, and 179 and Ex. 116 at 4 and 21).

In its exception DEF asserts that the ALJ's findings of fact and conclusions of law imposed an "impossible standard of proving a negative" on DEF, as the party with the burden of proof. DEF's argument does not fairly reflect the ALJ's findings of fact and conclusions of law. The ALJ

correctly determined, and DEF does not dispute, that the utility carries the burden of proof to demonstrate the prudence of DEF's decisions and actions during the period leading up to and in restoring the unit to service after the February 2017 forced outage at the Bartow plant. The ALJ determined, based on the competent substantial evidence of record that DEF failed to carry its burden of proof to demonstrate that it acted prudently during the period in question. The ALJ found, based on the competent substantial evidence of record that DEF acted imprudently, and further found that DEF failed to rebut the evidence of its imprudence. The Recommended Order reflects that DEF failed to establish a prima facie case that it acted prudently and failed to provide evidence to rebut the persuasive evidence of its imprudence. The ALJ applied the correct legal standards with respect to the burden of proof and the determination of prudence. The ALJ's findings of fact set forth in Paragraph 114 of the Recommended Order are based on competent substantial evidence of record and may not be disturbed. DEF's exception to Paragraph 114 of the Recommended Order must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 6.

DEF excepts to Paragraph 119 of the Recommended Order, which is set forth verbatim below:

119. It is speculative to state that the original Period 1 L-0 blades would still be operating today had DEF observed the [REDACTED] of 420 MW. It is not speculative to state that the events of Periods 2 through 5 were precipitated by DEF's actions during Period 1. It is not possible to state what would have happened from 2012 to 2017 if the excessive loading had not occurred, but it is possible to state that events would not have been the same.

In its exception, DEF re-argues that there was no [REDACTED] to the ST following Period 1, and urges the Commission to reject the ALJ's finding of fact that "[i]t is not speculative to state that the events of Periods 2 through 5 were precipitated by DEF's actions during Period 1." DEF

asks the Commission to substitute a new finding that "the damage to the L-0 blades that occurred during Periods 2 through 5 was not precipitated by DEF's operation of the ST during Period 1." (DEF Exceptions, p. 9).

The findings and conclusions in Paragraph 119 of the Recommended Order summarize the ALJ's findings of fact in Paragraphs 84 and 89 of the Recommended Order that "[t]here would have been no Periods 2, 3, 4, or 5 but for DEF's actions during Period 1" and rejecting DEF's argument that DEF's operation of the unit at [REDACTED] bears no relation to the ultimate failure of the ST in Period 5. Indeed, in Paragraph 89 of the Recommended Order, the ALJ finds that:

DEF ran the unit beyond 420 MW without consulting Mitsubishi. Mr. Polich found it a tribute to the design of the [REDACTED] 40" L-0 blades that they did not suffer damage sooner than they did. The steam turbine operated from June 2009 until March 2012 before the blade damage was noted. It was impossible to state exactly when the blade damage occurred in Period 1, but Mr. Polich opined that the damage was most likely cumulative.

In footnote 4 of the Recommended Order, the ALJ further finds that:

DEF made much of the fact that it could not be said precisely when during Period 1 the damage to the blades occurred, pointing out that there was a 50-50 chance that the blades were damaged when the turbine was operating below 420 MW. This argument fails to consider the cumulative wear caused by running the unit in excess of its capacity half of the time. The exact moment the damage occurred is beside the point.

The ALJ's findings of fact are supported by competent substantial evidence of record, including the credible expert testimony of Mr. Polich relating to the cumulative operational effects on the Bartow facility. Moreover, as the finder of fact in a formal administrative proceeding, the ALJ is permitted to draw reasonable inferences from the competent substantial evidence in the record. *Amador v. Sch. Bd. of Monroe County*, 225 So. 3d 853, 858 (Fla. 3d DCA 2017) ("[w]here

reasonable people can differ about the facts. however, an agency is bound by the hearing officer's reasonable inferences based on the conflicting inferences arising from the evidence"), citing *Greseth v. Dep't of Health & Rehab. Servs.*, 573 So. 2d 1004, 1006–1007 (Fla. 4th DCA 1991).

The ALJ's findings in Paragraphs 84, 89, and 119 of the Recommended Order are supported by competent substantial evidence of record, including:

- If DEF had operated the steam turbine at the Bartow Unit 4 in accordance with the design output of 420 MW or less, there is no engineering basis to conclude that the original L-0 blades would not still be in operation today. (Polich, Tr. 308-309, 320-321).
- [REDACTED]
[REDACTED]
[REDACTED] (Polich, T. 304-309, 334, 352; Swartz, Tr. 86-88, 112; Ex. 73 at 3; Ex. 115 at 23, 29, 39, 59, 67, 75, 87, 97, 109, 123, 137, 151, and 165; Ex. 73 at 3; Ex. 116 at 4).
- [REDACTED]
[REDACTED] (Swartz, T. 108, 179; Ex. 103 at 55; Ex.80 at 6; Ex. 104 at 14; Ex. 115 at 180).
- The installation of the pressure plate and associated de-rate were due to improper operation above 420 megawatts in Period I. (Polich, Tr. 361).
- A prudent utility manager, from both a warranty and a regulatory perspective, would have requested written verification from

Mitsubishi that the steam turbine could be safely operated above 420 MW of output. (Polich, Tr. 361-362; 304-309).

The ALJ's findings of fact and conclusions in Paragraph 119 are supported by competent substantial evidence of record and the Commission is not free to substitute new or alternative findings urged by DEF. Moreover, DEF had the burden of proof to demonstrate that it acted prudently and that the costs incurred were not the result of DEF's imprudent actions or inactions. To the contrary, DEF failed to carry that burden and prove its actions in operating the plant were prudent and it failed to prove that the damages were the result of prudent operations and thus should be recovered from ratepayers. DEF's exception to Paragraph 119 of the Recommended Order must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 7.

DEF excepts to Paragraph 120 of the Recommended Order, which is set forth verbatim below:

120. In his closing argument, counsel for White Springs summarized the equities of the situation very well:

You can drive a four-cylinder Ford Fiesta like a V8 Ferrari, but it's not quite the same thing. At 4,000 RPMs, in second gear, the Ferrari is already doing 60 and it's just warming up. The Ford Fiesta, however, will be moaning and begging you to slow down and shift gears. And that's kind of what we're talking about here.

It's conceded as fact that the root cause of the Bartow low pressure turbine problems is [REDACTED] caused repeatedly over time. The answer to the question is was this due to the way [DEF] ran the plant or is it due to a [REDACTED]? Well, the answer is both.

The fact is that [DEF] bought a steam turbine that was already built for a different configuration that was in storage, and then hooked it up to a configuration ... that it knew could produce much more steam than it needed. It had a generator that could produce more megawatts, so the limiting factor was the steam turbine.

On its own initiative, it decided to push more steam through the steam turbine to get more megawatts until it broke.

* * *

So from our perspective, [DEF] clearly was at fault for pushing excessive steam flow into the turbine in the first place. The repair which has been established ... may or may not work, but the early operation clearly impeded [DEF's] ability to simply claim that Mitsubishi was entirely at fault. And under those circumstances, it's not appropriate to assign the cost to the consumers.

In Paragraph 120 of the Recommended Order, the ALJ expresses agreement with counsel's summation of the "equities of the situation." As discussed in detail in the responses to DEF's Exceptions 1 – 6 above, the ALJ's numerous factual findings supporting the ALJ's ultimate determination that DEF acted imprudently and should be required to bear the resulting replacement power costs are supported by competent substantial evidence. (Polich, Tr. 304-309, 361-362; Swartz, Tr. 86-88, 112; Ex. 73 at 3; Ex. 115 at 23, 29, 39, 59, 67, 75, 87, 97, 109, 123, 137, 151, and 165; Ex. 73 at 3; Ex. 116 at 4).

In its Exception to Paragraph 120 of the Recommended Order, DEF does not dispute that the ALJ's findings of fact and ultimate determination are supported by competent substantial evidence. Instead, DEF offers a conclusory argument and improperly urges the Commission to reject the ALJ's findings of fact and to substitute contradictory findings. As set forth in the responses to Exceptions 1 through 6 above, the ALJ's findings that DEF acted imprudently and determination that DEF should be required to bear the resulting replacement power costs are supported by competent substantial evidence of record and are consistent with applicable law. The Commission is not free to reject the ALJ's finding that DEF acted imprudently and to thereby modify the ALJ's ultimate determination that the costs of the forced outage should be borne by DEF. DEF's exception to Paragraph 120 is without merit and must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 8.

DEF excepts to Paragraph 121 of the Recommended Order, which is set forth verbatim below:

121. The greater weight of the evidence supports the conclusion that DEF did not exercise reasonable care in operating the steam turbine in a configuration for which it was not designed and under circumstances which DEF knew, or should have known, that it should have proceeded with caution, seeking the cooperation of Mitsubishi to devise a means to operate the steam turbine above 420 MW.

Paragraph 121 of the Recommended Order summarizes the ALJ's numerous findings relating to whether DEF acted imprudently. As reflected throughout the Recommended Order, and set forth in detail in the responses to Exceptions 1 - 6 above, the ALJ's ultimate determination that DEF did not exercise reasonable care in operating the steam turbine in a configuration for which it was not designed, is supported by competent substantial evidence. The Commission is not free to reject or modify findings of facts, or conclusions of law that logically flow from such findings, when the findings are supported by competent substantial evidence of record. DEF's exception to Paragraph 121 is without merit and should be DENIED.

RESPONSE TO DEF EXCEPTION NO. 9.

DEF excepts to Paragraph 122 of the Recommended Order, which is set forth verbatim below:

122. Given DEF's failure to meet its burden, a refund of replacement power costs is warranted. At least \$11.1 million in replacement power was required during the Period 5 outage. This amount should be refunded to DEF's customers.

Paragraph 122 of the Recommended Order summarizes the ALJ's numerous findings relating to whether DEF acted imprudently, and should be required to bear the resulting replacement power costs. As reflected throughout the Recommended Order, and set forth in detail in the responses to

Exceptions 1 - 6 above, the ALJ's ultimate determination that DEF did not exercise reasonable care in operating the steam turbine in a configuration for which it was not designed, and therefore should be required to bear the resulting replacement power costs, is supported by competent substantial evidence of record. Because the ALJ's findings of fact are supported by competent substantial evidence of record and the ALJ has applied the correct law to the facts, DEF's exception is without merit and must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 10.

DEF excepts to Paragraph 123 of the Recommended Order, which is set forth verbatim below:

123. DEF failed to carry its burden to show that the Period 5 blade damage and the required replacement power costs were not consequences of DEF's imprudent operation of the steam turbine in Period 1.

In its exception to Paragraph 123 of the Recommended Order, DEF does not dispute that the ALJ's conclusion in Paragraph 123 is supported by competent, substantial evidence and is consistent with applicable law. Instead, DEF improperly offers the conclusory argument that the Commission should reject the ALJ's findings, re-weigh the evidence, and substitute new and directly contrary findings that are favorable to DEF. As set forth in detail in the responses to DEF's Exceptions 1 - 6 above, the ALJ's findings of fact are supported by competent substantial evidence of record and the ALJ applied the correct legal standard to the evidence of record. DEF's exception is without merit and must be DENIED.

RESPONSE TO DEF EXCEPTION NO. 11.

DEF excepts to Paragraph 124 of the Recommended Order, which is set forth verbatim below:

124. The de-rating of the steam turbine that required the purchase of replacement power for the 40 MW loss caused by installation of the pressure plate was a consequence of DEF's failure to prudently operate the steam turbine during Period 1. Because it was ultimately responsible for the de-rating, DEF should refund replacement costs incurred from the point the steam turbine came back online in May 2017 until the start of the planned fall 2019 outage that allowed the replacement of the pressure plate with the [REDACTED] in December 2019. Based on the record evidence, the amount to be refunded due to the de-rating is \$5,016,782.

The fundamental premise of DEF's exception to Paragraph 124 of the Recommended Order is DEF's conclusory re-argument that "DEF proved by a preponderance of the evidence that its operation of the ST during Period 1 was prudent." The ALJ found, based on the competent substantial evidence of record, that DEF's operation of the ST during Period 1 was *not* prudent.

DEF further excepts to the ALJ's conclusion that DEF should be required to refund replacement power costs related to the installation of the pressure plate. As set forth in detail in the Recommended Order, and in the responses to DEF's Exceptions 1 - 6 above, the ALJ's findings are supported by competent substantial evidence. The ALJ duly considered DEF's imprudent destruction of a portion of the full capability of the ST that required installation of the pressure plate. (Polich, Tr. 361). The basis for the ALJ's finding that ratepayers should be refunded replacement power costs is DEF's imprudence in operating the Bartow unit. The pressure plate bandage stopped the bleeding, resulting in a 40 MW de-rated output, but did not immunize DEF from the effects of its underlying imprudence.

Notably, DEF does not except to the ALJ's related findings and conclusions in Paragraph 108 of the Recommended Order, in which the ALJ sets forth DEF's burden of proof as it relates to any replacement power costs arising from installation of the pressure plate:

108. This is a de novo proceeding. § 120.57(1)(k), Fla. Stat. Petitioner, DEF, has the burden of proving, by a preponderance of the evidence, that it acted prudently in its actions and decisions leading up to and in restoring the unit to service after the February 2017 forced outage at the Bartow Plant. Additionally, DEF must prove by a preponderance of the evidence that no adjustment to replacement power costs should be made to account for the fact that after the installation of a pressure plate in March 2017, the Bartow Plant could no longer produce its rated nameplate capacity of 420 MW. *Dep't of Transp. v. J.W.C. Co.*, 396 So. 2d 778, 788 (Fla. 1st DCA 1981); § 120.57(1)(j), Fla. Stat.

DEF had the burden of proof to show that it acted prudently and that the costs incurred were not the result of DEF's imprudent actions. It did not carry that burden. To the contrary, DEF failed to prove its actions in operating the plant were prudent, and further failed to prove that the damages resulting from the de-rate were the result of prudent operations and thus should be recovered from ratepayers. Therefore, DEF should be required to refund the amounts determined in the Recommended Order. DEF's Exception to Paragraph 124 of the Recommended Order should be DENIED.

RESPONSE TO DEF EXCEPTION NO. 12.

DEF excepts to Paragraph 125 of the Recommended Order, which is set forth verbatim below:

125. The total amount to be refunded to customers as a result of the imprudence of DEF's operation of the steam turbine in Period 1 is \$16,116,782. without interest.

DEF's exception to Paragraph 125 of the Recommended Order is a conclusory restatement of DEF's re-argument that DEF "operated the ST prudently at all times relevant to the replacement

power costs and is, therefore, not required to refund any amount to its customers." As set forth in detail in the Recommended Order and in the responses to DEF's Exceptions 1 - 6 above, the ALJ found, based on the competent substantial evidence of record, that DEF failed to carry its burden of proof to demonstrate that DEF acted prudently during Period 1 and that no adjustment to replacement power costs should be made to account for the fact that, after the installation of a pressure plate in March 2017, the Bartow Plant could no longer produce its rated nameplate capacity of 420 MW. DEF does not contend that the finding of fact and conclusion set forth in Paragraph 125 of the Recommended Order is not supported by competent substantial evidence, but instead urges the Commission to re-weigh the evidence and substitute a new conclusion without even proffering an alternative legal analysis, which the Commission may not do.

CONCLUSION

The Commission referred this matter to the Division of Administrative Hearings to conduct a formal evidentiary hearing on two questions of disputed fact. The ALJ conducted the formal evidentiary hearing, heard and reviewed extensive testimony of expert witnesses, reviewed voluminous documentary evidence, made numerous findings of fact that are supported by competent substantial evidence, and applied the correct legal standard to determine that DEF did not meet its burden of proof to show that that it acted prudently in operating its Bartow Unit 4 plant and in restoring the unit to service after the February 2017 forced outage; and that DEF therefore may not recover, and thus should refund, \$16,116,782 to its customers for replacement power costs resulting from the steam turbine outages from April 2017 through September 2019. DEF's exceptions to the Recommended Order are without merit and should be denied, and the Commission should adopt the Recommended Order in full as the Final Order of the Commission.

DATED THIS 21st day of May 2020.

RESPECTFULLY SUBMITTED,

J.R. Kelly
Public Counsel

/s/ Charles J. Rehwinkel
Charles J. Rehwinkel
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Attorneys for Florida Industrial Power Users Group

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following parties as indicated below, on this 21st day of May 2020.

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**Hand Filing with PSC Clerk

†Overnight delivery or electronic delivery



Matthew R. Bernier
Associate General Counsel
Duke Energy Florida, LLC.

August 14, 2020

VIA OVERNIGHT MAIL

Adam Teitzman, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: *Fuel and purchased power cost recovery clause with generating performance
incentive factor; Docket No. 20200001-EI/DOAH Case No. 19-6022*

Dear Mr. Teitzman:

On August 14, 2020, Duke Energy Florida, LLC ("DEF") electronically filed its Request for Confidential Classification concerning the confidential information provided in Staff's Recommended Order regarding the Hearing held on February 4 and 5, 2020 at the State of Florida Division of Administrative Hearings (DOAH) in the above-referenced matter.

As referenced in the Request for Confidential Classification, enclosed with this cover letter is DEF's confidential Exhibit A (in a separate sealed envelope) that accompanies the above-referenced filing.

Thank you for your assistance in this matter. Please feel free to call me at (850) 521-1428 should you have any questions concerning this filing.

Respectfully,

s/ Matthew R. Bernier
Matthew R. Bernier

MRB/mw
Enclosure

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2020 AUG 14 AM 11:02

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail this 14th day of August, 2020, to all parties of record as indicated below.

s/Matthew R. Bernier

Attorney

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Matthew R. Bernier

Associate General Counsel
Duke Energy Florida, LLC.

August 14, 2020

VIA ELECTRONIC FILING

Adam Teitzman, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: *Fuel and purchased power cost recovery clause with generating performance incentive factor; Docket No. 20200001-EI*

Dear Mr. Teitzman:

Please find enclosed for electronic filing on behalf of Duke Energy Florida, LLC ("DEF"), DEF's Request for Confidential Classification for certain information contained in Staff of the Florida Public Service Commission's Recommended Order. The filing includes the following:

- DEF's Request for Confidential Classification
- Slip-sheet for confidential Exhibit A
- Redacted Exhibit B (two copies)
- Exhibit C (justification matrix), and
- Exhibit D (affidavit of Jeffrey Swartz-unverified)

The confidential Exhibit A that accompanies the above-referenced filing has been submitted under separate cover.

Thank you for your assistance in this matter. Please feel free to call me at (850) 521-1428 should you have any questions concerning this filing.

Respectfully,

s/Matthew R. Bernier

Matthew R. Bernier

MRB/mw
Enclosures

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost
recovery clause with generating performance
incentive factor.

Docket No. 20200001-EI

Dated: August 14, 2020

**DUKE ENERGY FLORIDA LLC'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

Duke Energy Florida, LLC (“DEF” or “Company”), pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), submits this Request for Confidential Classification for certain information provided in the Staff (“Staff”) of the Florida Public Service Commission’s (“FPSC”) Recommended Order for the final hearing held on February 4 and 5, 2020. In support of this Request, DEF states:

1. Staff’s Recommended Order contains “proprietary confidential business information” under § 366.093(3), Florida Statutes.

2. The following exhibits are included with this request:

(a) Sealed Composite Exhibit A is a package containing unredacted copies of all the documents for which DEF seeks confidential treatment. Composite Exhibit A has been submitted separately in a sealed envelope labeled “CONFIDENTIAL”. In the unredacted version, the information asserted to be confidential is highlighted in yellow.

(b) Composite Exhibit B is a package containing two copies of redacted versions of the documents for which the Company requests confidential classification. The

specific information for which confidential treatment is requested has been blocked out by opaque marker or other means.

(c) Exhibit C is a table which identifies by page and line the information for which DEF seeks confidential classification and the specific statutory bases for seeking confidential treatment.

(d) Exhibit D is an affidavit attesting to the confidential nature of information identified in this request.

3. As indicated in Exhibit C, the information for which DEF requests confidential classification is “proprietary confidential business information” within the meaning of Section 366.093(3), F.S. Specifically, the information at issue includes proprietary and confidential third-party owned and contractual information, the disclosure of which would impair the third-party’s competitive business interests, and if disclosed, the Company’s competitive business interests and efforts to contract for goods and services on favorable terms. *See* § 366.093(3)(d) & (e), F.S.; Affidavit of Jeffrey Swartz at ¶¶ 4, 5 and 6. Accordingly, such information constitutes “proprietary confidential business information” which is exempt from disclosure under the Public Records Act pursuant to Section 366.093(1), F.S.

4. In order to contract with third-party vendors and Original Equipment Manufacturers on favorable terms, DEF must keep contractual terms and third-party proprietary information confidential. If DEF cannot demonstrate to its third-party OEM, and others that may enter into contracts with DEF in the future, that DEF has the ability to protect those third-parties’ confidential and proprietary business information, third-parties will be less likely to provide that information to DEF – harming DEF’s ability to prudently operate its business. *See* § 366.093(3)(d) & (e), F.S.; Affidavit of Jeffrey Swartz at ¶¶ 4, 5 and 6. Furthermore, disclosure of

the information could detrimentally impact DEF's ability to negotiate favorable contracts as third-parties may begin to demand a "premium" to do business with DEF to account for the risk that its proprietary information will become a matter of public record, thereby harming DEF's competitive interests and ultimately its customers' financial interests. *See* § 366.093(3)(e), F.S.; Affidavit of Jeffrey Swartz at ¶ 6. If such information was disclosed to DEF's competitors, DEF's efforts to obtain competitive contracts that add economic value to both DEF and its customers could be undermined. *See* Affidavit of Swartz at ¶¶ 4 and 5. *Id.* Accordingly, such information constitutes "proprietary confidential business information" which is exempt from disclosure under the Public Records Act pursuant to Section 366.093(1), F.S.

5. The information identified as Exhibit "A" is intended to be and is treated as confidential by the Company. *See* Affidavit of Jeffrey Swartz at ¶ 7. The information has not been disclosed to the public, and the Company has treated and continues to treat the information and contracts at issue as confidential. *See* Affidavit of Jeffrey Swartz at ¶ 7.

6. DEF requests that the information identified in Exhibit A be classified as "proprietary confidential business information" within the meaning of section 366.093(3), F.S., that the information remain confidential for a period of at least 18 months as provided in section 366.093(4) F.S., and that the information be returned as soon as it is no longer necessary for the Commission to conduct its business.

WHEREFORE, for the foregoing reasons, DEF respectfully requests that this Request for Confidential Classification be granted.

RESPECTFULLY SUBMITTED this 14th day of August, 2020.

s/Matthew R. Bernier

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CERTIFICATE OF SERVICE

Docket No. 20200001-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via email this 14th day of August, 2020, to all parties of record as indicated below.

s/Matthew R. Bernier

Attorney

<p>Suzanne Brownless Office of General Counsel FL Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 sbrownle@psc.state.fl.us</p> <p>J. Beasley / J. Wahlen / M. Means Ausley McMullen P.O. Box 391 Tallahassee, FL 32302 jbeasley@ausley.com jwahlen@ausley.com mmeans@ausley.com</p> <p>Russell A. Badders Gulf Power Company One Energy Place, Bin 100 Pensacola, FL 32520-0100 russell.badders@nexteraenergy.com</p> <p>Kenneth A. Hoffman Florida Power & Light Company 134 W. Jefferson Street Tallahassee, FL 32301-1713 ken.hoffman@fpl.com</p> <p>Jon C. Moyle, Jr. Moyle Law Firm, P.A. 118 North Gadsden Street Tallahassee, FL 32301 jmoyle@moylelaw.com mqualls@moylelaw.com</p>	<p>J.R. Kelly / T. David Office of Public Counsel 111 W. Madison St., Room 812 Tallahassee, FL 32399-1400 kelly.jr@leg.state.fl.us david.tad@leg.state.fl.us</p> <p>Paula K. Brown Regulatory Affairs Tampa Electric Company P.O. Box 111 Tampa, FL 33601-0111 regdept@tecoenergy.com</p> <p>Maria Moncada / David Lee Florida Power & Light Company 700 Universe Blvd. (LAW/JB) Juno Beach, FL 33408-0420 maria.moncada@fpl.com david.lee@fpl.com</p> <p>James Brew / Laura W. Baker Stone Law Firm 1025 Thomas Jefferson St., N.W. Suite 800 West Washington, DC 20007 jbrew@smxblaw.com lwb@smxblaw.com</p> <p>Mike Cassel Florida Public Utilities Company 208 Wildlight Avenue Yulee, FL 32097 mcassel@fpuc.com</p> <p>Beth Keating Gunster, Yoakley & Stewart, P.A. 215 South Monroe Street, Suite 601 Tallahassee, FL 32301 bkeating@gunster.com</p>
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Exhibit A

“CONFIDENTIAL”

(submitted under separate cover)

Exhibit B

REDACTED
(Copy one)

Date: August 6, 2020

Administrative law judge (ALJ) Lawrence P. Stevenson conducted a closed final evidentiary hearing on February 4-5, 2020. At the hearing, DEF presented the confidential testimony of Jeffrey Swartz, with his prefiled direct and rebuttal testimony inserted into the record as though read. DEF's Exhibit Nos. 80-82 were admitted into evidence. OPC presented the confidential testimony of Richard A. Polich, with his prefiled testimony inserted into the record as though read. OPC's Exhibit Nos. 68-75, 101-109, and 115-117 were admitted into evidence. Commission staff Exhibit Nos. 110 and 111 were admitted into evidence. FIPUG's Exhibit No. 118 and PCS Phosphate's Exhibit Nos. 112 and 113 were also admitted into evidence. The revised Comprehensive Exhibit List (CEL) was admitted into evidence by stipulation as Exhibit No. 114.

A three-volume transcript of the final hearing was filed with the Commission Clerk on February 18, 2020, and was provided to the DOAH Clerk on February 24, 2020. DEF, Commission staff, and OPC, jointly with PCS Phosphate and FIPUG, timely filed confidential proposed recommended orders on March 20, 2020. The ALJ issued his Recommended Order² on April 27, 2020. A redacted version of the Recommended Order is found in Attachment A to this recommendation.

On May 12, 2020, DEF submitted exceptions to the Recommended Order. A redacted version of DEF's exceptions is found in Attachment B to this recommendation. OPC, jointly with PCS Phosphate and FIPUG (collectively, the Intervenor), filed a Response to DEF's Exceptions, a redacted version of which is found in Attachment C to this recommendation.

Overview of the Recommended Order

This case involves the operation of DEF's Bartow Unit 4 combined cycle natural gas plant and whether DEF operated the plant prudently from the time it was brought on line in June 2009 until February 2017. Bartow Unit 4 is comprised of a steam turbine manufactured by Mitsubishi Hitachi Power Systems (Mitsubishi) with a gross output of 420 MW connected to four M501 Type F combustion turbines. The steam turbine is an "after-market" unit which was originally designed for Tenaska Power Equipment, LLC (Tenaska) to be used in a 3x1 configuration with three M501 Type F combustion turbines with a gross output of 420 MW. Prior to purchasing the steam turbine, DEF's predecessor, Progress Energy Florida, LLC contracted with Mitsubishi to evaluate the steam turbine design conditions and to update the [REDACTED] for a 4x1 configuration. As required by its contract, [REDACTED]

The Bartow plant has experienced five outages since it was brought on line in June 2009: March 2012 (planned), August 2014 (planned), April 2016 (planned), October 2016 (forced), and February 2017 (forced).

In March 2012 during a scheduled outage, DEF discovered that the [REDACTED] L-0 blades in the low pressure section of the steam turbine were damaged. The [REDACTED] L-0 blades were replaced with [REDACTED]

² "Recommended Order" is defined in Section 120.52(15), F.S., as the official recommendation of the ALJ assigned by DOAH or of any other duly authorized presiding officer, other than the agency head or member thereof.

_____ and the plant was operated until August 2014 when the plant was taken out of service to _____. The plant came back on line in December 2014 and ran until April 2016 when it was taken off line for routine valve work and L-0 blade inspection. The plant was placed back in service in May 2016 with a _____ and operated until October 2016, when DEF shut the plant down due to excessive vibration and loss of _____. In December 2016 the plant was put back in service with the _____, and was taken out of service in February of 2017 due to a _____. DEF brought the plant back on line in April 2017 with a pressure plate installed in the low pressure section of the steam turbine, which effectively decreased the output of the plant from 420 to 380 MW. DEF continued to operate the plant with the pressure plates until September 28, 2019.

There are two amounts that are associated with the initial prudence question: 1) replacement power costs for the February 2017 outage in the amount of \$11.1 million, and 2) May 2017 through September 2019 unit derating³ costs in the amount of \$5,016,782 million.

Petitioner, DEF, has the burden of proving by a preponderance of the evidence, that it acted prudently in the operation of Bartow Unit 4 up to and restoring the unit to service after the February 2017 forced outage. Additionally, DEF must prove by a preponderance of the evidence that no adjustment to replacement power costs should be made to account for the fact that after March 2017, and the installation of a pressure plate, Bartow Unit 4 could no longer produce its rated nameplate capacity of 420 MW. The standard for determining whether replacement power costs are prudent is “what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or should [have] been known at the time the decision was made.”⁴

In his Recommended Order, the ALJ detailed the relevant facts and legal standards required to determine whether DEF acted prudently in its operation of Bartow Unit 4 from June 2009 until February 2017. In his conclusion, the ALJ recommended that the Commission find that DEF failed to demonstrate that it acted prudently in the operation of its Bartow Unit 4 plant and in restoring the unit to service after the February 2017 forced outage, and that DEF should refund a total of \$16,116,782 to its customers.

Legal standards for review of recommended orders

Section 120.57(1)(l), F.S., establishes the standards an agency must apply in reviewing a Recommended Order following a formal administrative proceeding. The statute provides that the agency may adopt the Recommended Order as the Final Order of the agency or may modify or reject the Recommended Order. An agency may only reject or modify an ALJ’s findings of fact if, after a review of the entire record, the agency determines and states with particularity that the findings of fact were not based on competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law.⁵

³ “Derating” is the reduction in MW output due to installing pressure plates in place of the L-0 blades in the low pressure section of the steam turbine.

⁴ *Southern Alliance for Clean Energy v. Graham*, 113 So. 3d 742, 750 (Fla. 2013).

⁵ Section 120.57(1)(l), F.S.

Discussion of Issues

Issue 1: Should the Commission accept any of the exceptions to conclusions of law filed by DEF?

Recommendation: No. DEF has not presented any legally sufficient basis for rejecting or modifying any portion of the Recommended Order. Therefore, staff recommends that the Commission should deny DEF's exceptions to Conclusions of Law 110-114 and 119-125. (Crawford, Stiller)

Staff Analysis: DEF filed exceptions to the ALJ's Conclusions of Law 110-114 and 119-125.

DEF Exception to Conclusion of Law 110

DEF takes exception with the ALJ's Conclusion of Law 110, which states:

110. DEF failed to demonstrate by a preponderance of the evidence that its actions during Period 1 were prudent. DEF purchased an aftermarket steam turbine from Mitsubishi with the knowledge that it had been manufactured to the specifications of Tenaska with a design point of 420 MW of output. Mr. Swartz's testimony regarding the irrelevance of the 420 MW limitation was unpersuasive in light of the documentation that after the initial blade failure, DEF itself accepted the limitation and worked with Mitsubishi to find a way to increase the output of the turbine to [REDACTED]

First, as a general criticism, DEF argues that when weighing the facts presented at hearing, although stating the correct legal standard of review - what a reasonable utility manager should have done based on what he knew or should have known at the time - the ALJ did not apply that standard but instead evaluated DEF's actions from the perspective of what is currently known. DEF states that this type of "hindsight" and "Monday-morning quarterbacking" prudence analysis has been found to be inappropriate under *Florida Power Corporation v. Public Service Comm. (Florida Power)*, 456 So. 2d 451, 452 (Fla. 1984).

Second, DEF disagrees with the ALJ's conclusion that the 420 MW design point was a limitation on the steam turbine. DEF argues that the record supports the conclusion that the 420 MW design point is a fall out number based on various combinations of operating parameters provided by Mitsubishi. DEF argues that operating within the parameters given by Mitsubishi was prudent given what DEF knew or should have known during Period 1. At that time, DEF contends that there was no reason to believe that increasing the output above 420 MW would damage the unit as long as the operating parameters were complied with. Thus, DEF concludes that the fact that the [REDACTED] in February 2017 does not mean that the plant operator reasonably should have known that would happen in June 2009.

Third, DEF argues that DEF's compliance with lower than 420 MW output after Period 1 and its [REDACTED] to operate the unit at [REDACTED] do not logically support the conclusion that DEF agreed the unit originally could not be operated above 420 MW. These actions, according to DEF, allowed the unit to continue to be operated to produce the most power

Further, DEF has not raised exceptions to any of the 102 factual findings made by the ALJ in his Recommended Order. As its rationale for not doing so, DEF cites the high standard that must be met to set aside an ALJ's finding of fact.¹⁰ The failure to file exceptions to findings of fact constitutes a waiver of the right to object to those facts on appeal. *Mehl v. Office of Financial Regulation*, 859 So. 2d 1260 (Fla. 1st DCA 2003); *Environmental Coalition of Florida v. Broward County*, 586 So. 2d 1212 (Fla. 1st DCA 1991). Nor has DEF argued that the proceedings conducted by the ALJ that produced those facts did not comply with the essential requirements of law. Thus, for all practical purposes, DEF has accepted all of the ALJ's 102 factual findings.

If the ALJ's findings of fact are supported by competent substantial evidence, the agency may not reject or modify them even to make alternative findings that are also supported by competent substantial evidence. *Kanter Real Estate, LLC v. Department of Environmental Protection (Kanter)*, 267 So. 3d 483, 487-88 (Fla. 1st DCA 2019), *reh'g denied* (Mar. 19, 2019), *review dismissed sub nom. City of Miramar v. Kanter Real Estate, LLC*, SC19-636, 2019 WL 2428577 (Fla. June 11, 2019)(citing *Lanz v. Smith*, 106 So. 3d 518, 521 (Fla. 1st DCA 2013)).

Finally, an agency is not authorized to substitute its judgment for that of the ALJ by taking a different view of, or placing greater weight on, the same evidence, reweighing the evidence, judging the credibility of witnesses, or otherwise interpreting the evidence to fit its desired conclusion. *Prysi v. Department of Health*, 823 So. 2d 823, 825 (Fla. 1st DCA 2002); *Heifetz v. Department of Business Regulation*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985).

Staff agrees with DEF and the Intervenors that the standard for determining whether replacement power costs are prudent is "what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or should [have] been known at the time the decision was made."¹¹ However, in reaching the conclusion of law that DEF failed to show by a preponderance of the evidence that it acted prudently in Period 1, DEF contends that the ALJ did not follow this standard but instead evaluated DEF's actions in light of present knowledge. However, DEF never specifically identifies the facts it could not have known which were relied upon by the ALJ in reaching his conclusion of imprudence. Without identifying the facts upon which the ALJ improperly relied, it is impossible to evaluate this contention and it must be rejected.

The ALJ bases his conclusion that a preponderance of the evidence established the actions of DEF in Period 1 were imprudent on three facts. First, the Mitsubishi aftermarket steam turbine was manufactured with a design point of 420 MW of output. Second, witness Swartz's testimony that the 420 MW was not an operational limitation was unpersuasive. Third, DEF accepted this limitation in Periods 2-5 and worked with [REDACTED]

With regard to the first point, DEF does not contest that the steam turbine was aftermarket manufactured with a design point of 420 MW. This conclusion is supported by Findings of Fact Nos. 14-26. With regard to the second point, the ALJ extensively discusses the arguments

¹⁰ DEF Exceptions at 2.

¹¹ *Southern Alliance for Clean Energy v. Graham*, 113 So. 3d 742, 750 (Fla. 2013).

presented by DEF witness Swartz that the 420 MW is not an operational limitation for this steam turbine in Findings of Fact Nos. 16-32 which culminate in Finding of Fact No. 33. Finding of Fact No. 33, a finding that DEF did not contest, states: "The greater weight of the evidence establishes that the Mitsubishi steam turbine was designed to operate at 420 MW of output and that 420 MW was an operational limitation of the turbine." Since DEF did not take exception to the identical statement in Finding of Fact No. 33, DEF has waived its ability to contest Conclusion of Law 110 on the grounds that the design point did not act as an operational limitation. However, even if DEF had taken exception to Finding of Fact 33, it is clear that the ALJ considered and rejected witness Swartz's arguments that DEF did not act imprudently by operating the steam turbine for extended periods of time at more than 420 MW.

With regard to the third point, DEF does not dispute that in Periods 2-5 it complied with the [REDACTED] placed on it by Mitsubishi and worked with Mitsubishi to [REDACTED] DEF disputes the significance of having done so. DEF argues that by working with Mitsubishi in Periods 2-5 it was acting to maximize the steam turbine's output for the benefit of its customers. As a general matter, DEF has argued that if a conclusion of law is "infused with overriding policy considerations," the agency, not the ALJ, should decide that issue.¹² Although not specifically identified, apparently, DEF believes that "maximization of output" is such an "overriding policy consideration" which should be given agency deference when determining operational prudence. However, DEF has not identified any statute, rule or Commission order that identifies "maximization of output" as a Commission policy. Additionally, the idea of agency deference, even in the interpretation of an agency's own rules and statutes, is now highly questionable given the passage of Amendment 6 to the Florida Constitution.¹³

Additionally, staff does not find the *Florida Power* decision cited by DEF on the issue of hindsight to be relevant. In *Florida Power*, the Commission made a finding of fact that was not supported by the record - that "non- safety related" repair work was "safety-related" repair work - and then improperly applied the higher standard of care for "safety-related" repair work. The crux of the problem in *Florida Power* was this unsupported finding of fact. Here DEF is not contesting any of the ALJ's 102 findings of fact as being unsupported by competent substantial evidence. Nor is DEF arguing that the legal conclusions the ALJ has drawn from these uncontested facts are unreasonable. Here there is no mistake of fact triggering the misapplication of a legal standard. In this case all parties agree on the standard to be applied, DEF simply does not like the result reached by the ALJ.

Because DEF has failed to establish that its exception to Conclusion of Law 110 is as or more reasonable than that of the ALJ, staff recommends that DEF's Exception to Conclusion of Law 110 be denied.

¹² *Pillsbury v. State, Department of Health & Rehabilitative Services*, 744 So. 2d 1040, 1042 (Fla. 2d DCA 1999).

¹³ "Section 21. Judicial interpretation of statutes and rules. - In interpreting a state statute or rule, a state court or an officer hearing an administrative action pursuant to general law may not defer to an agency's interpretation of such statute or rule, and must instead interpret such statute or rule de novo."

DEF Exception to Conclusion of Law 111

DEF takes exception with the ALJ's Conclusion of Law 111, which states:

111. DEF's RCA [Root Cause Analysis] concluded that the blade failures were caused by [REDACTED]

[REDACTED] This conclusion is belied by the fact that [REDACTED] Mitsubishi cannot be faulted for [REDACTED] in a way that would allow an operator to run the turbine consistently beyond its capacity.

DEF takes exception to the conclusion that the L-0 blade failures were not caused by [REDACTED] on the L-0 blades and that the turbine was consistently run above its capacity. DEF argues that Mitsubishi was contracted specifically to assess whether this particular steam turbine could handle the proposed 4x1 steam configuration. DEF states that Mitsubishi did not originally identify [REDACTED] and it was reasonable for DEF in Period 1 to rely upon Mitsubishi's assessment. The better comparison, according to DEF, is not with other [REDACTED], but with blade failures in Periods 2-5 when the unit was run at less than 420 MW. Finally, DEF notes that the exact time that the L-0 blades were damaged in Period 1 cannot be established. DEF states that the damage could have occurred during the half of the time in Period 1 when the steam turbine was operated at less than 420 MW.

Intervenors' Response

Intervenors respond that the conclusions of law in Paragraph 111 are supported by competent substantial evidence of record. Further, to the extent that a finding is both a factual and legal conclusion, Intervenors state that it cannot be rejected when there is competent substantial evidence to support the conclusion and the legal conclusion necessarily follows. *Berger*, 653 So. 2d at 480; *Strickland*, 799 So. 2d at 279; *Dunham*, 652 So. 2d at 897. Additionally, Intervenors contend that it is the ALJ, not the Commission, who is authorized to interpret the evidence presented and to decide between two contrary positions supported by conflicting evidence. *Heifetz v. Dept. of Business Regulation*, 475 So. 2d 1277, 1281-2 (Fla. 1st DCA 1985). With regard to DEF's reliance on the fact that it is impossible to tell when the L-0 blades were damaged in Period 1, Intervenors find this to be irrelevant since the ALJ does not address that fact in Paragraph 111.

Staff Analysis and Conclusion:

This conclusion of law constitutes the ALJ's rejection of DEF's Root Cause Analysis (RCA) conclusion that [REDACTED]

[REDACTED] The ALJ cites the fact that in [REDACTED] steam turbines with a [REDACTED] of the same [REDACTED] only Bartow Unit 4 has had [REDACTED] Further, Bartow Unit 4 had the [REDACTED] loading in [REDACTED]

¹⁴ Finding of Fact No. 67.

the entire fleet, in [REDACTED] [REDACTED] for the rest of the fleet.¹⁵ Additionally, the ALJ found that as late as June 2017 DEF agreed with [REDACTED] [REDACTED] was one of “the most significant contributing factors” toward the L-0 blade failure.¹⁶ Given these facts, none of which are disputed by DEF, the ALJ found DEF’s exclusion of [REDACTED] [REDACTED] from its final RCA to be troubling, as does staff.

The ALJ’s Conclusion of Law was adequately supported by the relevant findings of fact. DEF has failed to demonstrate that its conclusion is as or more reasonable than that of the ALJ. For this reason, staff recommends that DEF’s Exception to Conclusion of Law 111 be denied.

DEF Exception to Conclusion of Law 112

DEF takes exception with the ALJ’s Conclusion of Law 112, which states:

112. [REDACTED]

DEF states that Mitsubishi did not ultimately attribute the blade failure in Period 1 to operation in excess of 420 MW but found in September 22, 2017, that [REDACTED]

[REDACTED] DEF argues that given the fact that the turbine was not operated above 420 MW in Periods 2 through 5, it is more reasonable to conclude that the damage to the blades in Period 1 was the result of [REDACTED]

Intervenors’ Response

Intervenors contend that DEF does not contest that there are findings of fact supported by competent substantial evidence in the record to support the ALJ’s conclusion of law. Thus, Intervenors conclude that the Commission, under those circumstances, can’t reject the ALJ’s conclusion of law or substitute its own judgment for that of the ALJ.

Staff Analysis and Conclusion:

This conclusion of law constitutes the ALJ’s acceptance of Mitsubishi’s RCA which concluded [REDACTED]

[REDACTED] After [REDACTED] on the steam turbine in December 2014, Mitsubishi concluded that the damage to the L-0 blades in all

¹⁵ Finding of Fact No. 83.

¹⁶ Finding of Fact No. 70.

five Periods was attributable to [REDACTED] [REDACTED] [REDACTED] [REDACTED]¹⁷ Mitsubishi published its RCA findings in September of 2017. As late as June 2017 DEF agreed with Mitsubishi that [REDACTED] was one of “the most significant contributing factors” toward the L-0 blade failure.¹⁸ Finally, Mitsubishi has stayed with its assessment that the blade damage was created by [REDACTED] [REDACTED] [REDACTED] [REDACTED] which did not allow the [REDACTED] [REDACTED] [REDACTED] [REDACTED]

DEF is simply rearguing its case that its RCA should be substituted for that of Mitsubishi. DEF has not contested the facts upon which Conclusion of Law 112 is based. Conclusion of Law 112 is the companion to Conclusion of Law 111 and staff recommends that it should be upheld for the same reasons – that there is competent substantial evidence to support this conclusion and the conclusion is reasonable given the facts proven by a preponderance of the evidence presented. DEF has failed to demonstrate that its conclusion is as or more reasonable than that of the ALJ. Thus, staff recommends that DEF's Exception to Conclusion of Law 112 be denied.

DEF Exception to Conclusion of Law 113

DEF takes exception with the ALJ's Conclusion of Law 113, which states:

113. Mr. Polich persuasively argued that it would have been simple prudence for DEF to ask Mitsubishi about the ability of the turbine to operate continuously in excess of 420 MW output before actually operating it at those levels. DEF understood that the blades had been designed for the Tenaska 3x1 configuration and should have at least explored with Mitsubishi the wisdom of operating the steam turbine with steam flows in excess of those anticipated in the original design.

DEF defends not contacting Mitsubishi by citing the following evidence in the record: 1) [REDACTED]

2) the MW output of a steam turbine is not an “operating parameter”; and 3) Mitsubishi knew DEF would operate the plant in excess of 420 MW. For these reasons, DEF argues that it is “as or more reasonable” to conclude that DEF did not need to contact Mitsubishi.

Intervenors' Response

Intervenors argue that DEF is simply rehashing the evidence presented and urging the Commission to make new findings that are “as or more reasonable” than the findings made by the ALJ. The ALJ states that he found OPC's expert persuasive on this point and it is the exclusive prerogative of the ALJ, not the Commission, to evaluate the credibility of a witness and the weight to be given to his/her testimony. Intervenors contend that since there is competent substantial evidence supporting the conclusion that DEF should have called Mitsubishi, this conclusion cannot be modified.

¹⁷ Finding of Fact Nos. 37, 63.

¹⁸ Finding of Fact No. 70.

¹⁹ Finding of Fact No. 78.

Staff Analysis and Conclusion

When viewed as a whole, the ALJ has based his analysis of this case by focusing on several areas. First, the nature of the after-market steam turbine and what limitations, if any, were inherent in its original 3x1 design. Second, the type and meaning of guarantees given by Mitsubishi for its current use in a 4x1 configuration. Third, the cause of the damage to the low pressure L-0 40" blades. Analysis of these three areas results in a finding regarding whether DEF acted prudently in the operation of the steam turbine which in turn drives the decision of whether replacement power costs for the April 2017 outage should be recovered or denied.

The ALJ's findings of fact establish that the steam turbine was originally designed to be used in a 3x1 configuration with a design point maximum of 420 MW. The 3x1 configuration used three M501 Type F combustion turbines connected to the steam turbine.²⁰ The 4x1 design configuration used by DEF used four M501 Type F combustion turbines connected to the same steam turbine.²¹

[REDACTED] with a [REDACTED].²³ These guaranteed outputs were based on [REDACTED] calculated using only three combustion turbines and heat recovery steam generators with duct firing. Of the [REDACTED] run by [REDACTED] to predict how the steam turbine would operate, not one showed it producing more than 420 MW.²⁴

Under these circumstances it is reasonable to believe that Mitsubishi would have instructed its consultant to run [REDACTED] [REDACTED] if it thought the steam turbine could handle it.²⁵ This is especially true since DEF was proposing the use of an additional 501 Type F combustion turbine and heat recovery steam generator, giving DEF's proposed configuration the ability to produce far more steam than needed to generate 420 MW of output when compared to the original 3x1 application for which the steam turbine was designed.²⁶ Additionally, neither DEF nor Mitsubishi had any experience running a 4x1 combined cycle plant prior to commencing operation of Bartow Unit 4.²⁷ In sum, for these reasons the ALJ found that Mitsubishi did not contemplate DEF's operation of the steam turbine beyond the [REDACTED] scenarios set out in the Purchase Agreement.²⁸

Given these extremely unique circumstances, the ALJ concluded that DEF's failure to contact Mitsubishi before pushing output beyond 420 MW was not prudent. Contacting Mitsubishi would have allowed DEF to receive written verification from Mitsubishi that the steam turbine could be safely operated above 420 MW and would have effectively [REDACTED] [REDACTED] [REDACTED] to

²⁰ Finding of Fact No. 14.

²¹ Finding of Fact No. 6.

²² Entitled the [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] executed between Florida Progress and Mitsubishi.

²³ Finding of Fact No. 26.

²⁴ Finding of Fact No. 87.

²⁵ Finding of Fact No. 87.

²⁶ Finding of Fact No. 31.

²⁷ Finding of Fact No. 85.

²⁸ Finding of Fact No. 102.

reflect the higher MW output.²⁹ The ALJ's conclusion of law is supported by competent substantial evidence of record. Because DEF has failed to demonstrate that its conclusion of law is as or more reasonable than the ALJ's, staff recommends that DEF's Exception to Conclusion of Law 113 be denied.

DEF Exception to Conclusion of Law 114

DEF takes exception with the ALJ's Conclusion of Law 114, which states:

114. The record evidence demonstrated an [REDACTED] that [REDACTED] associated with [REDACTED] DEF failed to satisfy its burden of showing its actions in operating the steam turbine in Period 1 did not cause or [REDACTED] [REDACTED] To the contrary, the preponderance of the evidence pointed to DEF's operation of the steam turbine in Period 1 as the most plausible culprit.

DEF argues that it is "as or more reasonable" to conclude from the evidence presented that DEF's actions did not cause or contribute significantly to the vibrations that damaged the L-0 blades. DEF contends this is true because the L-0 blades were damaged in Periods 2-5 when the unit was not run above 420 MW as well as Period 1 when it was. DEF further states that the ALJ is imposing the impossible standard of proving a negative. DEF argues that it does not have the burden to prove that damage did not occur as a result of its actions. Rather, DEF states that it is only required to show that it acted as a reasonable utility manager would have done given the facts known or reasonably knowable at the time without the benefit of hindsight review.

Intervenors' Response

Intervenors argue that Conclusion of Law 114 summarizes the findings of fact that support the ALJ's ultimate determination. Intervenors state that these findings of fact are supported by competent substantial evidence and the Commission may not reject them. With regard to the contention that the ALJ required DEF to prove a negative, Intervenors argue that DEF has the burden of proof to demonstrate that it acted prudently in the operation of Bartow Unit 4 which requires it to establish a *prima facie* case that it did act prudently and to rebut evidence of its imprudence. The Intervenors assert that DEF did neither here and the ALJ's conclusion may not be disturbed.

Staff Analysis and Conclusion

As discussed in staff's analysis of Conclusions of Law 110-113 above, the ALJ found that a preponderance of the evidence supported the finding that the L-0 blade damage was caused by [REDACTED] Further, the ALJ found that the weight of the evidence supported the conclusion that the [REDACTED] was the result of excessive steam flow through the low pressure section of the steam turbine caused by

²⁹ Factual Finding No. 93.

operating the steam turbine above 420 MW. DEF does not contest that these findings of fact are supported by competent substantial evidence of record.

Commission staff agrees with the ALJ that DEF has the burden of proving that it acted prudently in the operation of its steam turbine, i.e., the burden to make a *prima facie* case supported by competent substantial evidence that it acted prudently. The burden of proof also requires DEF to rebut evidence produced that it acted imprudently. Here under the unique circumstances of this case, DEF has failed to prove it acted prudently in light of the information that was available to it at the time as found by the ALJ in Conclusion of Law 110. DEF's exception to Conclusion of Law 114 reargues DEF's factual position and fails to demonstrate that its conclusion is as or more reasonable than the ALJ's. For these reasons, staff recommends that DEF's Exception to Conclusion of Law 114 be denied.

DEF Exception to Conclusion of Law 119

DEF takes exception with the ALJ's Conclusion of Law 119, which states:

119. It is speculative to state that the original Period L-0 blades would still be operating today had DEF observed the [REDACTED] of 420 MW. It is not speculative to state that the events of Periods 2 through 5 were precipitated by DEF's actions during Period 1. It is not possible to state what would have happened from 2012 to 2017 if the excessive loading had not occurred, but it is possible to state that events would not have been the same.

Specifically, DEF disputes the ALJ's conclusion that it is not speculative to state that the events of Periods 2 through 5 were precipitated by DEF's actions during Period 1. DEF argues that there is no causal link between the operation of the unit in Period 1 and the forced outage that occurred in Period 5. DEF contends that the lack of a causal link is proven by the fact that there was no residual damage done to the steam turbine itself in Period 1 and all parties agreed that DEF's operation of the plant subsequent to Period 1 was prudent.

Intervenors' Response

Intervenors state that the conclusions in Paragraph 119 are based on the ALJ's findings of fact in Paragraphs 84 and 89 which are supported by competent substantial evidence and OPC's expert's credible testimony. Intervenors argue that to the extent that this conclusion is an inference from the ALJ's factual findings, the ALJ is permitted to draw reasonable inferences from competent substantial evidence in the record. *Amador v. School Board of Monroe County*, 225 So. 3d 853, 858 (Fla. 3d DCA 2017). Further, Intervenors state that the fact that more than one reasonable inference can be drawn from the same evidence of record is not grounds for setting aside the ALJ's conclusion. *Id.*

Staff Analysis and Conclusion

This conclusion of law is in response to OPC witness Polich's testimony that the low pressure L-0 blades would still have been in use but for the operation of the steam turbine in excess of 420

MW.³⁰ While the ALJ rejected that conclusion as too speculative, he did accept witness Polich's testimony that the damage to the blades was most likely cumulative during Period 1, making it irrelevant exactly when during the operation of the unit in Period 1 the damage occurred.³¹ DEF's witness Swartz testified that the damage to the blades could have occurred in Period 1 during the 50% of the time that the steam turbine was operated under 420 MW, i.e., when by Intervenor's standards, the unit was being operated prudently. Where reasonable people can differ about the facts, an agency is bound by the hearing officer's reasonable inferences based on the conflicting inferences arising from the evidence. *Amador v. School Board of Monroe County*, 225 So. 3d 853, 857-8 (Fla. 3d DCA 2017). Additionally, the hearing officer is entitled to rely on the testimony of a single witness even if the testimony contradicts the testimony of a number of other witnesses. *Stinson v. Winn*, 938 So. 2d 554, 555 (Fla. 1st DCA 2006).

DEF's exception to Conclusion of Law 119 reargues DEF's factual position and fails to demonstrate that its conclusion is as or more reasonable than the ALJ's. For these reasons staff recommends that DEF's Exception to Conclusion of Law 119 be denied.

DEF Exception to Conclusion of Law 120

DEF takes exception with the ALJ's Conclusion of Law 120, which states:

120. In his closing argument, counsel for White Springs summarized the equities of the situation very well:

You can drive a four-cylinder Ford Fiesta like a V8 Ferrari, but it's not quite the same thing. At 4,000 RPMs, in second gear, the Ferrari is already doing 60 and it's just warming up. The Ford Fiesta, however, will be moaning and begging you to slow down and shift gears. And that's kind of what we're talking about here.

It's conceded as fact that the root cause of the Bartow low pressure turbine problems is [REDACTED] caused repeatedly over time. The answer to the question is was this due to the way [DEF] ran the plant or is it due to a [REDACTED] Well, the answer is both.

The fact is that [DEF] bought a steam turbine that was already built for a different configuration that was in storage, and then hooked it up to a configuration . . . that it knew could produce much more steam than it needed. It had a generator that could produce more megawatts, so the limiting factor was the steam turbine.

On its own initiative, it decided to push more steam through the steam turbine to get more megawatts until it broke.

³⁰ Finding of Fact No. 84.

³¹ Finding of Fact No. 89; Footnote 4.

* * *

So from our perspective, [DEF] clearly was at fault for pushing excessive steam flow into the turbine in the first place. The repair which has been established . . . may or may not work, but the early operation clearly impeded [DEF's] ability to simply claim that Mitsubishi was entirely at fault. And under those circumstances, it's not appropriate to assign the cost to the consumers.

DEF argues that Conclusion of Law 120 is a slightly edited, verbatim recitation of PCS Phosphate counsel's final argument which the ALJ adopts, characterizing it as summarizing "the equities of the situation very well." DEF takes exception to that portion of the final argument stating that under the circumstances presented in this case, it is not appropriate to assign the cost of the February 2017 forced outage to DEF's customers. DEF argues that it is as or more reasonable to conclude that here, where DEF consistently acted prudently, DEF should not be forced to bear replacement power costs.

Intervenors' Response

As demonstrated in its response to Paragraphs 110-114 above, Intervenors argue that there is more than adequate competent substantial evidence to support the ALJ's ultimate determination that DEF did not act prudently and should bear replacement power costs. Intervenors state that DEF is simply rearguing the case it presented to the ALJ which the ALJ found to be unpersuasive.

Staff Analysis and Conclusion

As noted above, this conclusion of law is an edited version of PCS Phosphate counsel's final argument which the ALJ agrees has summarized the "equities of the situation very well." The ALJ agrees that excessive vibrations over time caused the steam turbine problems. Further, whether the vibration was due to the way the plant was run or due to a [REDACTED] [REDACTED] is that both are true. The ALJ concludes that DEF was at fault for pushing excessive steam flow into the turbine. The ALJ further agrees that by operating the unit above 420 MW, without contacting Mitsubishi, DEF impeded its ability to claim that Mitsubishi was entirely at fault. Under these circumstances, PCS Phosphate's counsel, and the ALJ, conclude that consumers should not bear replacement power costs.

Upon review of this material, it is clear that it is a summary of Conclusions of Law 110-114 above. These conclusions are supported by competent substantial evidence of record and staff has recommended that they be accepted. Again, DEF reargues the factual underpinnings of the ALJ's Conclusion of Law without adequately demonstrating that DEF's conclusion is as or more reasonable. Therefore, DEF's Exception to Conclusion of Law 120 should be denied.

DEF Exception to Conclusion of Law 121

DEF takes exception with the ALJ's Conclusion of Law 121, which states:

that DEF's Exception to Conclusion of Law be denied because DEF has failed to demonstrate that its conclusion is as or more reasonable than the ALJ's.

DEF Exception to Conclusion of Law 124

DEF takes exception with the ALJ's Conclusion of Law 124, which states:

124. The de-rating of the steam turbine that required the purchase of replacement power for the 40 MW loss caused by the installation of the pressure plate was a consequence of DEF's failure to prudently operate the steam turbine during Period 1. Because it was ultimately responsible for the de-rating, DEF should refund replacement costs incurred from the point the steam turbine came back on line in May 2017 until the start of the planned fall 2019 outage that allowed the replacement of the pressure plate with the [REDACTED] [REDACTED] [REDACTED] in December 2019. Based on the record evidence, the amount to be refunded due to the de-rating is \$5,016,782.

DEF argues that the operation of the steam turbine in Period 1 was proven by DEF by a preponderance of the evidence to be prudent. DEF contends that this fact, coupled with the undisputed evidence that DEF also operated the steam turbine prudently in Periods 2-5, demonstrates that it is as or more reasonable to conclude that the Period 5 blade damage and resulting replacement power costs were not a consequence of DEF's operation of the steam turbine during Period 1.

Intervenors' Response

Intervenors argue that the ALJ's conclusion is supported by competent substantial evidence of record as detailed in Intervenors' responses to DEF's exceptions to Conclusions of Law 110-114 and 119. Intervenors contend that DEF's is simply rearguing its case that its operation of the steam turbine was prudent, and therefore no refunds associated with the installation of the pressure plate are required. Intervenors assert that the basis for the ALJ's conclusion that derating costs of \$5,016,782 should be refunded to customers is his finding of DEF's imprudence in operation of the steam turbine in Period 1. For these reasons, Intervenors conclude that there is no basis to set aside that finding or to set aside this conclusion of law.

Staff Analysis and Conclusion

There is no question that installation of the pressure plate caused the derating of the steam turbine from 420 to 380 MW.³² Likewise, the parties have agreed that the period of time associated with the derating is April 2017 through the end of September 2019.³³ Nor do the parties disagree that the amount associated with the derating is \$5,016,782.³⁴ DEF is simply rearguing its position that its operation of the steam turbine was not responsible for blade damage in Period 5, a position considered and rejected by the ALJ.³⁵ As discussed in

³² Finding of Fact No. 60.

³³ Finding of Fact No. 61.

³⁴ Finding of Fact No. 80.

³⁵ Finding of Fact No. 119.

Exhibit B

REDACTED
(Copy two)

Administrative law judge (ALJ) Lawrence P. Stevenson conducted a closed final evidentiary hearing on February 4-5, 2020. At the hearing, DEF presented the confidential testimony of Jeffrey Swartz, with his prefiled direct and rebuttal testimony inserted into the record as though read. DEF's Exhibit Nos. 80-82 were admitted into evidence. OPC presented the confidential testimony of Richard A. Polich, with his prefiled testimony inserted into the record as though read. OPC's Exhibit Nos. 68-75, 101-109, and 115-117 were admitted into evidence. Commission staff Exhibit Nos. 110 and 111 were admitted into evidence. FIPUG's Exhibit No. 118 and PCS Phosphate's Exhibit Nos. 112 and 113 were also admitted into evidence. The revised Comprehensive Exhibit List (CEL) was admitted into evidence by stipulation as Exhibit No. 114.

A three-volume transcript of the final hearing was filed with the Commission Clerk on February 18, 2020, and was provided to the DOAH Clerk on February 24, 2020. DEF, Commission staff, and OPC, jointly with PCS Phosphate and FIPUG, timely filed confidential proposed recommended orders on March 20, 2020. The ALJ issued his Recommended Order² on April 27, 2020. A redacted version of the Recommended Order is found in Attachment A to this recommendation.

On May 12, 2020, DEF submitted exceptions to the Recommended Order. A redacted version of DEF's exceptions is found in Attachment B to this recommendation. OPC, jointly with PCS Phosphate and FIPUG (collectively, the Intervenor), filed a Response to DEF's Exceptions, a redacted version of which is found in Attachment C to this recommendation.

Overview of the Recommended Order

This case involves the operation of DEF's Bartow Unit 4 combined cycle natural gas plant and whether DEF operated the plant prudently from the time it was brought on line in June 2009 until February 2017. Bartow Unit 4 is comprised of a steam turbine manufactured by Mitsubishi Hitachi Power Systems (Mitsubishi) with a gross output of 420 MW connected to four M501 Type F combustion turbines. The steam turbine is an "after-market" unit which was originally designed for Tenaska Power Equipment, LLC (Tenaska) to be used in a 3x1 configuration with three M501 Type F combustion turbines with a gross output of 420 MW. Prior to purchasing the steam turbine, DEF's predecessor, Progress Energy Florida, LLC contracted with Mitsubishi to evaluate the steam turbine design conditions and to update the [REDACTED] for a 4x1 configuration. As required by its contract, [REDACTED]

The Bartow plant has experienced five outages since it was brought on line in June 2009: March 2012 (planned), August 2014 (planned), April 2016 (planned), October 2016 (forced), and February 2017 (forced).

In March 2012 during a scheduled outage, DEF discovered that the [REDACTED] L-0 blades in the low pressure section of the steam turbine were damaged. The [REDACTED] L-0 blades were replaced with [REDACTED]

² "Recommended Order" is defined in Section 120.52(15), F.S., as the official recommendation of the ALJ assigned by DOAH or of any other duly authorized presiding officer, other than the agency head or member thereof.

_____ and the plant was operated until August 2014 when the plant was taken out of service to _____. The plant came back on line in December 2014 and ran until April 2016 when it was taken off line for routine valve work and L-0 blade inspection. The plant was placed back in service in May 2016 with a _____ and operated until October 2016, when DEF shut the plant down due to excessive vibration and loss of _____. In December 2016 the plant was put back in service with the _____, and was taken out of service in February of 2017 due to a _____. DEF brought the plant back on line in April 2017 with a pressure plate installed in the low pressure section of the steam turbine, which effectively decreased the output of the plant from 420 to 380 MW. DEF continued to operate the plant with the pressure plates until September 28, 2019.

There are two amounts that are associated with the initial prudence question: 1) replacement power costs for the February 2017 outage in the amount of \$11.1 million, and 2) May 2017 through September 2019 unit derating³ costs in the amount of \$5,016,782 million.

Petitioner, DEF, has the burden of proving by a preponderance of the evidence, that it acted prudently in the operation of Bartow Unit 4 up to and restoring the unit to service after the February 2017 forced outage. Additionally, DEF must prove by a preponderance of the evidence that no adjustment to replacement power costs should be made to account for the fact that after March 2017, and the installation of a pressure plate, Bartow Unit 4 could no longer produce its rated nameplate capacity of 420 MW. The standard for determining whether replacement power costs are prudent is “what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or should [have] been known at the time the decision was made.”⁴

In his Recommended Order, the ALJ detailed the relevant facts and legal standards required to determine whether DEF acted prudently in its operation of Bartow Unit 4 from June 2009 until February 2017. In his conclusion, the ALJ recommended that the Commission find that DEF failed to demonstrate that it acted prudently in the operation of its Bartow Unit 4 plant and in restoring the unit to service after the February 2017 forced outage, and that DEF should refund a total of \$16,116,782 to its customers.

Legal standards for review of recommended orders

Section 120.57(1)(l), F.S., establishes the standards an agency must apply in reviewing a Recommended Order following a formal administrative proceeding. The statute provides that the agency may adopt the Recommended Order as the Final Order of the agency or may modify or reject the Recommended Order. An agency may only reject or modify an ALJ’s findings of fact if, after a review of the entire record, the agency determines and states with particularity that the findings of fact were not based on competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law.⁵

³ “Derating” is the reduction in MW output due to installing pressure plates in place of the L-0 blades in the low pressure section of the steam turbine.

⁴ *Southern Alliance for Clean Energy v. Graham*, 113 So. 3d 742, 750 (Fla. 2013).

⁵ Section 120.57(1)(l), F.S.

Discussion of Issues

Issue 1: Should the Commission accept any of the exceptions to conclusions of law filed by DEF?

Recommendation: No. DEF has not presented any legally sufficient basis for rejecting or modifying any portion of the Recommended Order. Therefore, staff recommends that the Commission should deny DEF's exceptions to Conclusions of Law 110-114 and 119-125. (Crawford, Stiller)

Staff Analysis: DEF filed exceptions to the ALJ's Conclusions of Law 110-114 and 119-125.

DEF Exception to Conclusion of Law 110

DEF takes exception with the ALJ's Conclusion of Law 110, which states:

110. DEF failed to demonstrate by a preponderance of the evidence that its actions during Period 1 were prudent. DEF purchased an aftermarket steam turbine from Mitsubishi with the knowledge that it had been manufactured to the specifications of Tenaska with a design point of 420 MW of output. Mr. Swartz's testimony regarding the irrelevance of the 420 MW limitation was unpersuasive in light of the documentation that after the initial blade failure, DEF itself accepted the limitation and worked with Mitsubishi to find a way to increase the output of the turbine to [REDACTED]

First, as a general criticism, DEF argues that when weighing the facts presented at hearing, although stating the correct legal standard of review - what a reasonable utility manager should have done based on what he knew or should have known at the time - the ALJ did not apply that standard but instead evaluated DEF's actions from the perspective of what is currently known. DEF states that this type of "hindsight" and "Monday-morning quarterbacking" prudence analysis has been found to be inappropriate under *Florida Power Corporation v. Public Service Comm. (Florida Power)*, 456 So. 2d 451, 452 (Fla. 1984).

Second, DEF disagrees with the ALJ's conclusion that the 420 MW design point was a limitation on the steam turbine. DEF argues that the record supports the conclusion that the 420 MW design point is a fall out number based on various combinations of operating parameters provided by Mitsubishi. DEF argues that operating within the parameters given by Mitsubishi was prudent given what DEF knew or should have known during Period 1. At that time, DEF contends that there was no reason to believe that increasing the output above 420 MW would damage the unit as long as the operating parameters were complied with. Thus, DEF concludes that the fact that the [REDACTED] [REDACTED] [REDACTED] in February 2017 does not mean that the plant operator reasonably should have known that would happen in June 2009.

Third, DEF argues that DEF's compliance with lower than 420 MW output after Period 1 and its [REDACTED] to operate the unit at [REDACTED] [REDACTED] do not logically support the conclusion that DEF agreed the unit originally could not be operated above 420 MW. These actions, according to DEF, allowed the unit to continue to be operated to produce the most power

Further, DEF has not raised exceptions to any of the 102 factual findings made by the ALJ in his Recommended Order. As its rationale for not doing so, DEF cites the high standard that must be met to set aside an ALJ's finding of fact.¹⁰ The failure to file exceptions to findings of fact constitutes a waiver of the right to object to those facts on appeal. *Mehl v. Office of Financial Regulation*, 859 So. 2d 1260 (Fla. 1st DCA 2003); *Environmental Coalition of Florida v. Broward County*, 586 So. 2d 1212 (Fla. 1st DCA 1991). Nor has DEF argued that the proceedings conducted by the ALJ that produced those facts did not comply with the essential requirements of law. Thus, for all practical purposes, DEF has accepted all of the ALJ's 102 factual findings.

If the ALJ's findings of fact are supported by competent substantial evidence, the agency may not reject or modify them even to make alternative findings that are also supported by competent substantial evidence. *Kanter Real Estate, LLC v. Department of Environmental Protection (Kanter)*, 267 So. 3d 483, 487-88 (Fla. 1st DCA 2019), *reh'g denied* (Mar. 19, 2019), *review dismissed sub nom. City of Miramar v. Kanter Real Estate, LLC*, SC19-636, 2019 WL 2428577 (Fla. June 11, 2019)(citing *Lanz v. Smith*, 106 So. 3d 518, 521 (Fla. 1st DCA 2013)).

Finally, an agency is not authorized to substitute its judgment for that of the ALJ by taking a different view of, or placing greater weight on, the same evidence, reweighing the evidence, judging the credibility of witnesses, or otherwise interpreting the evidence to fit its desired conclusion. *Prysi v. Department of Health*, 823 So. 2d 823, 825 (Fla. 1st DCA 2002); *Heifetz v. Department of Business Regulation*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985).

Staff agrees with DEF and the Intervenors that the standard for determining whether replacement power costs are prudent is "what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or should [have] been known at the time the decision was made."¹¹ However, in reaching the conclusion of law that DEF failed to show by a preponderance of the evidence that it acted prudently in Period 1, DEF contends that the ALJ did not follow this standard but instead evaluated DEF's actions in light of present knowledge. However, DEF never specifically identifies the facts it could not have known which were relied upon by the ALJ in reaching his conclusion of imprudence. Without identifying the facts upon which the ALJ improperly relied, it is impossible to evaluate this contention and it must be rejected.

The ALJ bases his conclusion that a preponderance of the evidence established the actions of DEF in Period 1 were imprudent on three facts. First, the Mitsubishi aftermarket steam turbine was manufactured with a design point of 420 MW of output. Second, witness Swartz's testimony that the 420 MW was not an operational limitation was unpersuasive. Third, DEF accepted this limitation in Periods 2-5 and worked with [REDACTED]

With regard to the first point, DEF does not contest that the steam turbine was aftermarket manufactured with a design point of 420 MW. This conclusion is supported by Findings of Fact Nos. 14-26. With regard to the second point, the ALJ extensively discusses the arguments

¹⁰ DEF Exceptions at 2.

¹¹ *Southern Alliance for Clean Energy v. Graham*, 113 So. 3d 742, 750 (Fla. 2013).

presented by DEF witness Swartz that the 420 MW is not an operational limitation for this steam turbine in Findings of Fact Nos. 16-32 which culminate in Finding of Fact No. 33. Finding of Fact No. 33, a finding that DEF did not contest, states: "The greater weight of the evidence establishes that the Mitsubishi steam turbine was designed to operate at 420 MW of output and that 420 MW was an operational limitation of the turbine." Since DEF did not take exception to the identical statement in Finding of Fact No. 33, DEF has waived its ability to contest Conclusion of Law 110 on the grounds that the design point did not act as an operational limitation. However, even if DEF had taken exception to Finding of Fact 33, it is clear that the ALJ considered and rejected witness Swartz's arguments that DEF did not act imprudently by operating the steam turbine for extended periods of time at more than 420 MW.

With regard to the third point, DEF does not dispute that in Periods 2-5 it complied with the [REDACTED] placed on it by Mitsubishi and worked with Mitsubishi to [REDACTED] DEF disputes the significance of having done so. DEF argues that by working with Mitsubishi in Periods 2-5 it was acting to maximize the steam turbine's output for the benefit of its customers. As a general matter, DEF has argued that if a conclusion of law is "infused with overriding policy considerations," the agency, not the ALJ, should decide that issue.¹² Although not specifically identified, apparently, DEF believes that "maximization of output" is such an "overriding policy consideration" which should be given agency deference when determining operational prudence. However, DEF has not identified any statute, rule or Commission order that identifies "maximization of output" as a Commission policy. Additionally, the idea of agency deference, even in the interpretation of an agency's own rules and statutes, is now highly questionable given the passage of Amendment 6 to the Florida Constitution.¹³

Additionally, staff does not find the *Florida Power* decision cited by DEF on the issue of hindsight to be relevant. In *Florida Power*, the Commission made a finding of fact that was not supported by the record - that "non- safety related" repair work was "safety-related" repair work - and then improperly applied the higher standard of care for "safety-related" repair work. The crux of the problem in *Florida Power* was this unsupported finding of fact. Here DEF is not contesting any of the ALJ's 102 findings of fact as being unsupported by competent substantial evidence. Nor is DEF arguing that the legal conclusions the ALJ has drawn from these uncontested facts are unreasonable. Here there is no mistake of fact triggering the misapplication of a legal standard. In this case all parties agree on the standard to be applied, DEF simply does not like the result reached by the ALJ.

Because DEF has failed to establish that its exception to Conclusion of Law 110 is as or more reasonable than that of the ALJ, staff recommends that DEF's Exception to Conclusion of Law 110 be denied.

¹² *Pillsbury v. State, Department of Health & Rehabilitative Services*, 744 So. 2d 1040, 1042 (Fla. 2d DCA 1999).

¹³ "Section 21. Judicial interpretation of statutes and rules. - In interpreting a state statute or rule, a state court or an officer hearing an administrative action pursuant to general law may not defer to an agency's interpretation of such statute or rule, and must instead interpret such statute or rule de novo."

DEF Exception to Conclusion of Law 111

DEF takes exception with the ALJ's Conclusion of Law 111, which states:

111. DEF's RCA [Root Cause Analysis] concluded that the blade failures were caused by [REDACTED]

[REDACTED] This conclusion is belied by the fact that [REDACTED] Mitsubishi cannot be faulted for [REDACTED] in a way that would allow an operator to run the turbine consistently beyond its capacity.

DEF takes exception to the conclusion that the L-0 blade failures were not caused by [REDACTED] on the L-0 blades and that the turbine was consistently run above its capacity. DEF argues that Mitsubishi was contracted specifically to assess whether this particular steam turbine could handle the proposed 4x1 steam configuration. DEF states that Mitsubishi did not originally identify [REDACTED] and it was reasonable for DEF in Period 1 to rely upon Mitsubishi's assessment. The better comparison, according to DEF, is not with other [REDACTED], but with blade failures in Periods 2-5 when the unit was run at less than 420 MW. Finally, DEF notes that the exact time that the L-0 blades were damaged in Period 1 cannot be established. DEF states that the damage could have occurred during the half of the time in Period 1 when the steam turbine was operated at less than 420 MW.

Intervenors' Response

Intervenors respond that the conclusions of law in Paragraph 111 are supported by competent substantial evidence of record. Further, to the extent that a finding is both a factual and legal conclusion, Intervenors state that it cannot be rejected when there is competent substantial evidence to support the conclusion and the legal conclusion necessarily follows. *Berger*, 653 So. 2d at 480; *Strickland*, 799 So. 2d at 279; *Dunham*, 652 So. 2d at 897. Additionally, Intervenors contend that it is the ALJ, not the Commission, who is authorized to interpret the evidence presented and to decide between two contrary positions supported by conflicting evidence. *Heifetz v. Dept. of Business Regulation*, 475 So. 2d 1277, 1281-2 (Fla. 1st DCA 1985). With regard to DEF's reliance on the fact that it is impossible to tell when the L-0 blades were damaged in Period 1, Intervenors find this to be irrelevant since the ALJ does not address that fact in Paragraph 111.

Staff Analysis and Conclusion:

This conclusion of law constitutes the ALJ's rejection of DEF's Root Cause Analysis (RCA) conclusion that [REDACTED]

[REDACTED] The ALJ cites the fact that in [REDACTED] steam turbines with a [REDACTED] of the same [REDACTED] only Bartow Unit 4 has had [REDACTED] Further, Bartow Unit 4 had the [REDACTED] loading in [REDACTED]

¹⁴ Finding of Fact No. 67.

the entire fleet, in [REDACTED] [REDACTED] for the rest of the fleet.¹⁵ Additionally, the ALJ found that as late as June 2017 DEF agreed with [REDACTED] [REDACTED] [REDACTED] was one of “the most significant contributing factors” toward the L-0 blade failure.¹⁶ Given these facts, none of which are disputed by DEF, the ALJ found DEF’s exclusion of [REDACTED] [REDACTED] from its final RCA to be troubling, as does staff.

The ALJ’s Conclusion of Law was adequately supported by the relevant findings of fact. DEF has failed to demonstrate that its conclusion is as or more reasonable than that of the ALJ. For this reason, staff recommends that DEF’s Exception to Conclusion of Law 111 be denied.

DEF Exception to Conclusion of Law 112

DEF takes exception with the ALJ’s Conclusion of Law 112, which states:

112. [REDACTED]

DEF states that Mitsubishi did not ultimately attribute the blade failure in Period 1 to operation in excess of 420 MW but found in September 22, 2017, that [REDACTED]

[REDACTED] DEF argues that given the fact that the turbine was not operated above 420 MW in Periods 2 through 5, it is more reasonable to conclude that the damage to the blades in Period 1 was the result of [REDACTED]

Intervenors’ Response

Intervenors contend that DEF does not contest that there are findings of fact supported by competent substantial evidence in the record to support the ALJ’s conclusion of law. Thus, Intervenors conclude that the Commission, under those circumstances, can’t reject the ALJ’s conclusion of law or substitute its own judgment for that of the ALJ.

Staff Analysis and Conclusion:

This conclusion of law constitutes the ALJ’s acceptance of Mitsubishi’s RCA which concluded [REDACTED]

[REDACTED] After [REDACTED] on the steam turbine in December 2014, Mitsubishi concluded that the damage to the L-0 blades in all

¹⁵ Finding of Fact No. 83.

¹⁶ Finding of Fact No. 70.

five Periods was attributable to [REDACTED] [REDACTED] [REDACTED] [REDACTED]¹⁷ Mitsubishi published its RCA findings in September of 2017. As late as June 2017 DEF agreed with Mitsubishi that [REDACTED] was one of “the most significant contributing factors” toward the L-0 blade failure.¹⁸ Finally, Mitsubishi has stayed with its assessment that the blade damage was created by [REDACTED] [REDACTED] [REDACTED] [REDACTED] which did not allow the [REDACTED] [REDACTED] [REDACTED] [REDACTED]

DEF is simply rearguing its case that its RCA should be substituted for that of Mitsubishi. DEF has not contested the facts upon which Conclusion of Law 112 is based. Conclusion of Law 112 is the companion to Conclusion of Law 111 and staff recommends that it should be upheld for the same reasons – that there is competent substantial evidence to support this conclusion and the conclusion is reasonable given the facts proven by a preponderance of the evidence presented. DEF has failed to demonstrate that its conclusion is as or more reasonable than that of the ALJ. Thus, staff recommends that DEF's Exception to Conclusion of Law 112 be denied.

DEF Exception to Conclusion of Law 113

DEF takes exception with the ALJ's Conclusion of Law 113, which states:

113. Mr. Polich persuasively argued that it would have been simple prudence for DEF to ask Mitsubishi about the ability of the turbine to operate continuously in excess of 420 MW output before actually operating it at those levels. DEF understood that the blades had been designed for the Tenaska 3x1 configuration and should have at least explored with Mitsubishi the wisdom of operating the steam turbine with steam flows in excess of those anticipated in the original design.

DEF defends not contacting Mitsubishi by citing the following evidence in the record: 1) [REDACTED]

2) the MW output of a steam turbine is not an “operating parameter”; and 3) Mitsubishi knew DEF would operate the plant in excess of 420 MW. For these reasons, DEF argues that it is “as or more reasonable” to conclude that DEF did not need to contact Mitsubishi.

Intervenors' Response

Intervenors argue that DEF is simply rehashing the evidence presented and urging the Commission to make new findings that are “as or more reasonable” than the findings made by the ALJ. The ALJ states that he found OPC's expert persuasive on this point and it is the exclusive prerogative of the ALJ, not the Commission, to evaluate the credibility of a witness and the weight to be given to his/her testimony. Intervenors contend that since there is competent substantial evidence supporting the conclusion that DEF should have called Mitsubishi, this conclusion cannot be modified.

¹⁷ Finding of Fact Nos. 37, 63.

¹⁸ Finding of Fact No. 70.

¹⁹ Finding of Fact No. 78.

Staff Analysis and Conclusion

When viewed as a whole, the ALJ has based his analysis of this case by focusing on several areas. First, the nature of the after-market steam turbine and what limitations, if any, were inherent in its original 3x1 design. Second, the type and meaning of guarantees given by Mitsubishi for its current use in a 4x1 configuration. Third, the cause of the damage to the low pressure L-0 40" blades. Analysis of these three areas results in a finding regarding whether DEF acted prudently in the operation of the steam turbine which in turn drives the decision of whether replacement power costs for the April 2017 outage should be recovered or denied.

The ALJ's findings of fact establish that the steam turbine was originally designed to be used in a 3x1 configuration with a design point maximum of 420 MW. The 3x1 configuration used three M501 Type F combustion turbines connected to the steam turbine.²⁰ The 4x1 design configuration used by DEF used four M501 Type F combustion turbines connected to the same steam turbine.²¹

[REDACTED] with a [REDACTED].²³ These guaranteed outputs were based on [REDACTED] calculated using only three combustion turbines and heat recovery steam generators with duct firing. Of the [REDACTED] run by [REDACTED] to predict how the steam turbine would operate, not one showed it producing more than 420 MW.²⁴

Under these circumstances it is reasonable to believe that Mitsubishi would have instructed its consultant to run [REDACTED] [REDACTED] if it thought the steam turbine could handle it.²⁵ This is especially true since DEF was proposing the use of an additional 501 Type F combustion turbine and heat recovery steam generator, giving DEF's proposed configuration the ability to produce far more steam than needed to generate 420 MW of output when compared to the original 3x1 application for which the steam turbine was designed.²⁶ Additionally, neither DEF nor Mitsubishi had any experience running a 4x1 combined cycle plant prior to commencing operation of Bartow Unit 4.²⁷ In sum, for these reasons the ALJ found that Mitsubishi did not contemplate DEF's operation of the steam turbine beyond the [REDACTED] scenarios set out in the Purchase Agreement.²⁸

Given these extremely unique circumstances, the ALJ concluded that DEF's failure to contact Mitsubishi before pushing output beyond 420 MW was not prudent. Contacting Mitsubishi would have allowed DEF to receive written verification from Mitsubishi that the steam turbine could be safely operated above 420 MW and would have effectively [REDACTED] [REDACTED] to [REDACTED]

²⁰ Finding of Fact No. 14.

²¹ Finding of Fact No. 6.

²² Entitled the [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] executed between Florida Progress and Mitsubishi.

²³ Finding of Fact No. 26.

²⁴ Finding of Fact No. 87.

²⁵ Finding of Fact No. 87.

²⁶ Finding of Fact No. 31.

²⁷ Finding of Fact No. 85.

²⁸ Finding of Fact No. 102.

reflect the higher MW output.²⁹ The ALJ's conclusion of law is supported by competent substantial evidence of record. Because DEF has failed to demonstrate that its conclusion of law is as or more reasonable than the ALJ's, staff recommends that DEF's Exception to Conclusion of Law 113 be denied.

DEF Exception to Conclusion of Law 114

DEF takes exception with the ALJ's Conclusion of Law 114, which states:

114. The record evidence demonstrated an [REDACTED] that [REDACTED] associated with [REDACTED] DEF failed to satisfy its burden of showing its actions in operating the steam turbine in Period 1 did not cause or [REDACTED] [REDACTED] To the contrary, the preponderance of the evidence pointed to DEF's operation of the steam turbine in Period 1 as the most plausible culprit.

DEF argues that it is "as or more reasonable" to conclude from the evidence presented that DEF's actions did not cause or contribute significantly to the vibrations that damaged the L-0 blades. DEF contends this is true because the L-0 blades were damaged in Periods 2-5 when the unit was not run above 420 MW as well as Period 1 when it was. DEF further states that the ALJ is imposing the impossible standard of proving a negative. DEF argues that it does not have the burden to prove that damage did not occur as a result of its actions. Rather, DEF states that it is only required to show that it acted as a reasonable utility manager would have done given the facts known or reasonably knowable at the time without the benefit of hindsight review.

Intervenors' Response

Intervenors argue that Conclusion of Law 114 summarizes the findings of fact that support the ALJ's ultimate determination. Intervenors state that these findings of fact are supported by competent substantial evidence and the Commission may not reject them. With regard to the contention that the ALJ required DEF to prove a negative, Intervenors argue that DEF has the burden of proof to demonstrate that it acted prudently in the operation of Bartow Unit 4 which requires it to establish a *prima facie* case that it did act prudently and to rebut evidence of its imprudence. The Intervenors assert that DEF did neither here and the ALJ's conclusion may not be disturbed.

Staff Analysis and Conclusion

As discussed in staff's analysis of Conclusions of Law 110-113 above, the ALJ found that a preponderance of the evidence supported the finding that the L-0 blade damage was caused by [REDACTED] Further, the ALJ found that the weight of the evidence supported the conclusion that the [REDACTED] was the result of excessive steam flow through the low pressure section of the steam turbine caused by

²⁹ Factual Finding No. 93.

operating the steam turbine above 420 MW. DEF does not contest that these findings of fact are supported by competent substantial evidence of record.

Commission staff agrees with the ALJ that DEF has the burden of proving that it acted prudently in the operation of its steam turbine, i.e., the burden to make a *prima facie* case supported by competent substantial evidence that it acted prudently. The burden of proof also requires DEF to rebut evidence produced that it acted imprudently. Here under the unique circumstances of this case, DEF has failed to prove it acted prudently in light of the information that was available to it at the time as found by the ALJ in Conclusion of Law 110. DEF's exception to Conclusion of Law 114 reargues DEF's factual position and fails to demonstrate that its conclusion is as or more reasonable than the ALJ's. For these reasons, staff recommends that DEF's Exception to Conclusion of Law 114 be denied.

DEF Exception to Conclusion of Law 119

DEF takes exception with the ALJ's Conclusion of Law 119, which states:

119. It is speculative to state that the original Period L-0 blades would still be operating today had DEF observed the [REDACTED] of 420 MW. It is not speculative to state that the events of Periods 2 through 5 were precipitated by DEF's actions during Period 1. It is not possible to state what would have happened from 2012 to 2017 if the excessive loading had not occurred, but it is possible to state that events would not have been the same.

Specifically, DEF disputes the ALJ's conclusion that it is not speculative to state that the events of Periods 2 through 5 were precipitated by DEF's actions during Period 1. DEF argues that there is no causal link between the operation of the unit in Period 1 and the forced outage that occurred in Period 5. DEF contends that the lack of a causal link is proven by the fact that there was no residual damage done to the steam turbine itself in Period 1 and all parties agreed that DEF's operation of the plant subsequent to Period 1 was prudent.

Intervenors' Response

Intervenors state that the conclusions in Paragraph 119 are based on the ALJ's findings of fact in Paragraphs 84 and 89 which are supported by competent substantial evidence and OPC's expert's credible testimony. Intervenors argue that to the extent that this conclusion is an inference from the ALJ's factual findings, the ALJ is permitted to draw reasonable inferences from competent substantial evidence in the record. *Amador v. School Board of Monroe County*, 225 So. 3d 853, 858 (Fla. 3d DCA 2017). Further, Intervenors state that the fact that more than one reasonable inference can be drawn from the same evidence of record is not grounds for setting aside the ALJ's conclusion. *Id.*

Staff Analysis and Conclusion

This conclusion of law is in response to OPC witness Polich's testimony that the low pressure L-0 blades would still have been in use but for the operation of the steam turbine in excess of 420

MW.³⁰ While the ALJ rejected that conclusion as too speculative, he did accept witness Polich's testimony that the damage to the blades was most likely cumulative during Period 1, making it irrelevant exactly when during the operation of the unit in Period 1 the damage occurred.³¹ DEF's witness Swartz testified that the damage to the blades could have occurred in Period 1 during the 50% of the time that the steam turbine was operated under 420 MW, i.e., when by Intervenor's standards, the unit was being operated prudently. Where reasonable people can differ about the facts, an agency is bound by the hearing officer's reasonable inferences based on the conflicting inferences arising from the evidence. *Amador v. School Board of Monroe County*, 225 So. 3d 853, 857-8 (Fla. 3d DCA 2017). Additionally, the hearing officer is entitled to rely on the testimony of a single witness even if the testimony contradicts the testimony of a number of other witnesses. *Stinson v. Winn*, 938 So. 2d 554, 555 (Fla. 1st DCA 2006).

DEF's exception to Conclusion of Law 119 reargues DEF's factual position and fails to demonstrate that its conclusion is as or more reasonable than the ALJ's. For these reasons staff recommends that DEF's Exception to Conclusion of Law 119 be denied.

DEF Exception to Conclusion of Law 120

DEF takes exception with the ALJ's Conclusion of Law 120, which states:

120. In his closing argument, counsel for White Springs summarized the equities of the situation very well:

You can drive a four-cylinder Ford Fiesta like a V8 Ferrari, but it's not quite the same thing. At 4,000 RPMs, in second gear, the Ferrari is already doing 60 and it's just warming up. The Ford Fiesta, however, will be moaning and begging you to slow down and shift gears. And that's kind of what we're talking about here.

It's conceded as fact that the root cause of the Bartow low pressure turbine problems is [REDACTED] caused repeatedly over time. The answer to the question is was this due to the way [DEF] ran the plant or is it due to a [REDACTED] Well, the answer is both.

The fact is that [DEF] bought a steam turbine that was already built for a different configuration that was in storage, and then hooked it up to a configuration . . . that it knew could produce much more steam than it needed. It had a generator that could produce more megawatts, so the limiting factor was the steam turbine.

On its own initiative, it decided to push more steam through the steam turbine to get more megawatts until it broke.

³⁰ Finding of Fact No. 84.

³¹ Finding of Fact No. 89; Footnote 4.

* * *

So from our perspective, [DEF] clearly was at fault for pushing excessive steam flow into the turbine in the first place. The repair which has been established . . . may or may not work, but the early operation clearly impeded [DEF's] ability to simply claim that Mitsubishi was entirely at fault. And under those circumstances, it's not appropriate to assign the cost to the consumers.

DEF argues that Conclusion of Law 120 is a slightly edited, verbatim recitation of PCS Phosphate counsel's final argument which the ALJ adopts, characterizing it as summarizing "the equities of the situation very well." DEF takes exception to that portion of the final argument stating that under the circumstances presented in this case, it is not appropriate to assign the cost of the February 2017 forced outage to DEF's customers. DEF argues that it is as or more reasonable to conclude that here, where DEF consistently acted prudently, DEF should not be forced to bear replacement power costs.

Intervenors' Response

As demonstrated in its response to Paragraphs 110-114 above, Intervenors argue that there is more than adequate competent substantial evidence to support the ALJ's ultimate determination that DEF did not act prudently and should bear replacement power costs. Intervenors state that DEF is simply rearguing the case it presented to the ALJ which the ALJ found to be unpersuasive.

Staff Analysis and Conclusion

As noted above, this conclusion of law is an edited version of PCS Phosphate counsel's final argument which the ALJ agrees has summarized the "equities of the situation very well." The ALJ agrees that excessive vibrations over time caused the steam turbine problems. Further, whether the vibration was due to the way the plant was run or due to a [REDACTED] [REDACTED] is that both are true. The ALJ concludes that DEF was at fault for pushing excessive steam flow into the turbine. The ALJ further agrees that by operating the unit above 420 MW, without contacting Mitsubishi, DEF impeded its ability to claim that Mitsubishi was entirely at fault. Under these circumstances, PCS Phosphate's counsel, and the ALJ, conclude that consumers should not bear replacement power costs.

Upon review of this material, it is clear that it is a summary of Conclusions of Law 110-114 above. These conclusions are supported by competent substantial evidence of record and staff has recommended that they be accepted. Again, DEF reargues the factual underpinnings of the ALJ's Conclusion of Law without adequately demonstrating that DEF's conclusion is as or more reasonable. Therefore, DEF's Exception to Conclusion of Law 120 should be denied.

DEF Exception to Conclusion of Law 121

DEF takes exception with the ALJ's Conclusion of Law 121, which states:

that DEF's Exception to Conclusion of Law be denied because DEF has failed to demonstrate that its conclusion is as or more reasonable than the ALJ's.

DEF Exception to Conclusion of Law 124

DEF takes exception with the ALJ's Conclusion of Law 124, which states:

124. The de-rating of the steam turbine that required the purchase of replacement power for the 40 MW loss caused by the installation of the pressure plate was a consequence of DEF's failure to prudently operate the steam turbine during Period 1. Because it was ultimately responsible for the de-rating, DEF should refund replacement costs incurred from the point the steam turbine came back on line in May 2017 until the start of the planned fall 2019 outage that allowed the replacement of the pressure plate with the [REDACTED] [REDACTED] [REDACTED] in December 2019. Based on the record evidence, the amount to be refunded due to the de-rating is \$5,016,782.

DEF argues that the operation of the steam turbine in Period 1 was proven by DEF by a preponderance of the evidence to be prudent. DEF contends that this fact, coupled with the undisputed evidence that DEF also operated the steam turbine prudently in Periods 2-5, demonstrates that it is as or more reasonable to conclude that the Period 5 blade damage and resulting replacement power costs were not a consequence of DEF's operation of the steam turbine during Period 1.

Intervenors' Response

Intervenors argue that the ALJ's conclusion is supported by competent substantial evidence of record as detailed in Intervenors' responses to DEF's exceptions to Conclusions of Law 110-114 and 119. Intervenors contend that DEF's is simply rearguing its case that its operation of the steam turbine was prudent, and therefore no refunds associated with the installation of the pressure plate are required. Intervenors assert that the basis for the ALJ's conclusion that derating costs of \$5,016,782 should be refunded to customers is his finding of DEF's imprudence in operation of the steam turbine in Period 1. For these reasons, Intervenors conclude that there is no basis to set aside that finding or to set aside this conclusion of law.

Staff Analysis and Conclusion

There is no question that installation of the pressure plate caused the derating of the steam turbine from 420 to 380 MW.³² Likewise, the parties have agreed that the period of time associated with the derating is April 2017 through the end of September 2019.³³ Nor do the parties disagree that the amount associated with the derating is \$5,016,782.³⁴ DEF is simply rearguing its position that its operation of the steam turbine was not responsible for blade damage in Period 5, a position considered and rejected by the ALJ.³⁵ As discussed in

³² Finding of Fact No. 60.

³³ Finding of Fact No. 61.

³⁴ Finding of Fact No. 80.

³⁵ Finding of Fact No. 119.

Exhibit C

DUKE ENERGY FLORIDA Confidentiality Justification Matrix

DOCUMENT/RESPONSES	PAGE/LINE	JUSTIFICATION
Staff's Recommended Order	<p>Page 3: Information in the first paragraph titled "Overview of Recommended Order" after "update the" and before "for a" and the remaining information in the paragraph after "required by its contract," information in the third paragraph titled "Overview of Recommended Order" after "that the" and before "L-0 blades" and after "damaged. The" and before "L-0 blades" is confidential.</p> <p>Page 4: First paragraph, the first sentence through the "and plant", before "service to" and after "The plant". Third sentence after "with a" and before "blade", after "loss of" and before "In December". Fourth sentence after " with the" and before "and was" and after "due to a" and before DEF brought" is confidential.</p> <p>Page 6: The Paragraph titled "DEF's Exception to Conclusion of Law 110, the remaining information after " turbine to" and before "First" and the information in paragraph beginning, "Second", after "fact that</p>	<p>§366.093(3)(d), F.S. The document in question contains confidential information, the disclosure of which would impair DEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), F.S. The document in question contains confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>

	<p>the” and before “in February” and the paragraph beginning “Third”, the information after “and its” and before “to operate” and after “unit at” and before “do not” is confidential.</p> <p>Page 8: The remaining information in the fifth paragraph after “worked with” is confidential.</p> <p>Page 9: The information in the second paragraph after “with the” and before placed on” and after “Mitsubishi to” and before “DEF disputes” is confidential.</p> <p>Page 10: The information in the section titled “DEF Exception to Conclusion of Law 111 after “caused by” and before “This conclusion”, after “fact that” and before “Mitsubishi”, in the paragraph beginning, “DEF takes” after “caused by” and before “on the”, after “identify” and before “and it was” and after “with other” and before “but with” and the information in the paragraph titled “Staff Analysis and Conclusion”, the information after “conclusion that” and before “The ALJ”, after “fact that in” and before “steam turbines”, after “with a” and before “of the” and after “the same” and</p>	
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	<p>before “only Bartow”, after “has had” and before “Further” and after “had the” and before “loading in” is confidential.</p> <p>Page 11: the information in the first sentence after “fleet, in” and before “for the rest”, information in the second sentence after “agreed with” and before “was one” and the information in the third sentence after “exclusion of” and before “from its”, the information in paragraph titled “DEF Exception to Conclusion of Law 112, all information after “112” and before “DEF”, the information after “2017, that” and before “DEF argues”, remaining sentence after “the result of” and before “Intervenor’s”, the information in the Staff’s Analysis and Conclusion after “which concluded” and before “After”, the information after “After” and before “on the” is confidential.</p> <p>Page 12: information after “attributable to” and before “Mitsubishi published”, after “Mitsubishi that” and before “was one”, after “created by” and before “which did”, after “allow the” and before “DEF is”, the paragraph that begins, “DEF defends” after “1)”</p>	
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	<p>and before “2)” is confidential.</p> <p>Page 13: the information in the second paragraph after “steam turbine” and before “with a”, after “with a” and before “These guaranteed”, after “based on” and before “calculated”, after “Of the” and before “run by”, after “run by” and before “to predict”, in the third paragraph after “to run” and before “if it”, after “beyond the” and before “scenarios”, in the fourth paragraph after “effectively” and before “to and in the footnote after “Entitled the” and before “executed” is confidential.</p> <p>Page 14: In the paragraph titled “DEF’s Exception to Conclusion of Law 114 after “demonstrated an” and before “that”, after “that” and before “DEF”, after “cause or” and before “To the”, in the paragraph titled “Staff Analysis and Conclusion”, the information after “caused by” and before “Further”, after “that the” and before “was the” is confidential.</p> <p>Page 15: the information in DEF Exception to Conclusion of Law 119, after “observed the” and before “of 420 MW” is confidential.</p> <p>Page 16: Information in</p>	
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	<p>DEF's Exception to Conclusion of Law 120, after "problems is" and before "caused repeatedly", information after "due to a" and before "Well" is confidential.</p> <p>Page 17: In the paragraph titled "Staff Analysis and Conclusion", the information after "due to a" and before "is that both" is confidential.</p> <p>Page 20: In the paragraph titled "DEF Exception to Conclusion of Law 124, information after "with the" and before "in December" is confidential.</p>	
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Exhibit D

AFFIDAVIT OF JEFFREY SWARTZ

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost
recovery clause with generating
performance incentive factor.

Docket No. 20200001-EI

Dated: August 14, 2020

**AFFIDAVIT OF JEFFREY SWARTZ IN SUPPORT OF
DUKE ENERGY FLORIDA'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

STATE OF FLORIDA

COUNTY OF PINELLAS

BEFORE ME, the undersigned authority duly authorized to administer oaths, personally appeared Jeffrey Swartz, who being first duly sworn, on oath deposes and says that:

1. My name is Jeffrey Swartz. I am over the age of 18 years old and I have been authorized by Duke Energy Florida (hereinafter "DEF" or the "Company") to give this affidavit in the above-styled proceeding on DEF's behalf and in support of DEF's Request for Confidential Classification (the "Request"). The facts attested to in my affidavit are based upon my personal knowledge.

2. I am the Vice President of Florida Generation in the Fossil Hydro Operations Department. This section is responsible for overall leadership and strategic direction of DEF's power generation fleet.

3. As the Vice President of Florida Generation, I am responsible, along with the other members of the section, for strategic and tactical planning to operate and maintain DEF's non-nuclear generation fleet, generation fleet project and additions

recommendations, major maintenance programs, outage and project management, and retirement of generation facilities.

4. DEF is seeking confidential classification for information contained in the Staff (“Staff”) of the Florida Public Service Commission’s (“FPSC”) Recommended Order to the Division of Administrative Hearings (“DOAH”) held on February 4 and 5, 2020. The confidential information at issue is contained in confidential Exhibit A to DEF’s Request and is outlined in DEF’s Justification Matrix that is attached to DEF’s Request as Exhibit C. DEF is requesting confidential classification of this information because it contains sensitive business information, the disclosure of which would impair the Company’s competitive business interests and ability to contract for goods and services on favorable terms.

5. The confidential information at issue relates to proprietary and confidential third-party operating procedures and technical information regarding the third-party’s proprietary component design and operation parameters, the disclosure of which would impair third-party’s competitive business interests, and if disclosed, the Company’s competitive business interests and efforts to contact for goods or services on favorable terms.

6. Further, if DEF cannot demonstrate to its third-party OEM, and others that may enter contracts with DEF in the future, that DEF has the ability to protect those third-parties’ confidential and proprietary business information, third-parties will be less likely to provide that information to DEF – harming DEF’s ability to prudently operate its business. DEF has not publicly disclosed the information. Without DEF’s measures to maintain the confidentiality of this sensitive business information, DEF’s ability to

contract with third-parties could detrimentally impact DEF's ability to negotiate favorable contracts, as third-parties may begin to demand a "premium" to do business with DEF to account for the risk that its proprietary information will become a matter of public record, thereby harming DEF's competitive interests and ultimately its customers' financial interests.

7. Upon receipt of its own confidential information, strict procedures are established and followed to maintain the confidentiality of the terms of the documents and information provided, including restricting access to those persons who need the information to assist the Company, and restricting the number of, and access to the information and contracts. At no time since receiving the information in question has the Company publicly disclosed that information. The Company has treated and continues to treat the information at issue as confidential.

8. This concludes my affidavit.

Further affiant sayeth not.

Dated the _____ day of _____, 2020.

(Signature)

Jeffrey Swartz
Vice President Florida Generation
Duke Energy Florida, LLC
Florida Regional Headquarters
St. Petersburg, FL

THE FOREGOING INSTRUMENT was sworn to and subscribed before me this
____ day of _____, 2020 by Jeffrey Swartz. He is personally known to me or has
produced his _____ driver's license, or his _____
as identification.

(Signature)

(Printed Name)

NOTARY PUBLIC, STATE OF _____

(Commission Expiration Date)

(Serial Number, If Any)

(AFFIX NOTARIAL SEAL)

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: August 18, 2020

TO: Division of Accounting and Finance, Office of Primary Responsibility

FROM: OFFICE OF COMMISSION CLERK

RE: CONFIDENTIALITY OF CERTAIN INFORMATION

DOCKET NOS: 20200001-EI DOCUMENT NO: 04446-2020

DESCRIPTION: Duke Energy (Bernier) - (CONFIDENTIAL) Information
provided in staff's recommended order regarding the hearing held on 2/4 and
2/5/20 at DOAH.

SOURCE: Duke Energy Florida, LLC

The above confidential material was filed along with a request for confidential classification. Please complete the following form by checking all applicable information and forward it to the attorney assigned to the docket, along with a brief memorandum supporting your recommendation.

- ☒ The document(s) is (are), in fact, what the utility asserts it (them) to be.
- ☒ The utility has provided enough details to perform a reasoned analysis of its request.
- ☐ The material has been received incident to an inquiry.
- ☒ The material is confidential business information because it includes:
- ☐ (a) Trade secrets;
 - ☐ (b) Internal auditing controls and reports of internal auditors;
 - ☐ (c) Security measures, systems, or procedures;
 - ☒ (d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms;
 - ☒ (e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of information;
 - ☐ (f) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities;
- ☒ The material appears to be confidential in nature and harm to the company or its ratepayers will result from public disclosure.
- ☐ The material appears not to be confidential in nature.
- ☐ The material is a periodic or recurring filing and each filing contains confidential information.

This response was prepared by /s/Devlin Higgins on 8.18.20, a copy of which has been sent to the Office of Commission Clerk and the Office of General Counsel.

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: August 18, 2020

TO: Suzanne S. Brownless, Special Counsel, Office of the General Counsel

FROM: Devlin Higgins, Public Utility Analyst IV, Division of Accounting & Finance

RE: CONFIDENTIALITY OF CERTAIN INFORMATION
DOCKET NO: 20200001-EI DOCUMENT Nos: 04446-2020
DESCRIPTION: Duke Energy (Bernier) - (CONFIDENTIAL) Information provided in staff's recommended order regarding the hearing held on 2/4 and 2/5/20 at DOAH.

SOURCE: Duke Energy Florida

Pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code, Duke Energy Florida (DEF or Company) requests confidential classification of certain information provided in order to compose the Staff Recommended Order (SRO). Due to concerns regarding the maintenance of confidentiality with respect to the information subject to this request, the Florida Public Service Commission by Order No. PSC-2019-0484-FOF-EI, and Document No. 10846-2019, sent this matter for hearing to the Florida Division of Administrative Hearings.¹ The information provided by DEF for the SRO was available to the Office of Public Counsel, the Florida Industrial Power Users Group, White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate – White Springs, and Staff of the Florida Public Service Commission, collectively referred to as the “Parties” to the proceeding at DOAH concerning operations at Plant Bartow.

The Company is claiming confidentiality of its filing under Section 366.093(3)(d), F.S., and Section 366.093(3)(e), F.S. Per the Statute, propriety of confidential business information includes, but is not limited to: Subsection (d) “[i]nformation concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms,” and Subsection (e) “[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.”

More specifically, the information at issue relates to claimed proprietary and confidential operating technical information regarding a third-party’s (to DEF) component/equipment design

¹Order No. PSC-2019-0484-FOF-EI, Issued November 18, 2019, Docket No. 20190001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.*

and operation parameters. DEF asserts that if it cannot demonstrate to its third-party partners that the Company has the ability to protect those third-parties' confidential and proprietary business information, it will be less likely that DEF can secure contracts that benefit its customers.

Staff has previously reviewed the subject information as well as the Company's confidentiality request. It is staff's opinion that the information subject to this request meets the criteria for confidentiality contained in Section 366.093(3)(d), F.S. and Section 366.093(3)(e), F.S.

FLORIDA PUBLIC SERVICE COMMISSION

Item 3

VOTE SHEET

August 18, 2020

FILED 8/18/2020
DOCUMENT NO. 04708-2020
FPSC - COMMISSION CLERK

Docket No. 20200001-EI – Fuel and purchased power cost recovery clause with generating performance incentive factor.

Issue 1: Should the Commission accept any of the exceptions to conclusions of law filed by DEF?

Recommendation: No. DEF has not presented any legally sufficient basis for rejecting or modifying any portion of the Recommended Order. Therefore, staff recommends that the Commission should deny DEF's exceptions to Conclusions of Law 110-114 and 119-125.

DEFERRED

Issue 2: Should the Commission approve the Recommended Order submitted by the Administrative Law Judge?

Recommendation: Yes. The Commission should approve the Recommended Order attached to staff's recommendation dated August 6, 2020, as the Final Order in this docket.

COMMISSIONERS ASSIGNED: All Commissioners

COMMISSIONERS' SIGNATURES

MAJORITY

DISSENTING

REMARKS/DISSENTING COMMENTS:

Docket No. 20200001-EI – Fuel and purchased power cost recovery clause with generating performance incentive factor.

(Continued from previous page)

Issue 3: Should this docket be closed?

Recommendation: No. While the Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor docket is assigned a separate docket number each year for administrative convenience, it is a continuing docket and should remain open


State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: August 21, 2020
TO: Docket No. 20200001-EI
FROM: Adam J. Teitzman, Commission Clerk, Office of Commission Clerk 
RE: Rescheduled Commission Conference Agenda Item

Staff's redacted memorandum assigned DN 04425-2020 was filed on August 14, 2020, for the August 18, 2020 Commission Conference. As the vote sheet reflects, this item was deferred. This item has been placed on the September 1, 2020 Commission Conference Agenda.

/ajt



Shipment Receipt

Address Information

Ship to:

Ms. Dianne Triplett
Duke Energy Florida

299 1ST AVE N

SAINT PETERSBURG, FL 33701-3308
US
727-820-4692

Ship from:

Hong Wang
FL Public Service
Commission
2540 Shumard Oak Blvd

Tallahassee, FL 32399
US
8504136762

Shipment Information:

Tracking no.: 771155807236

Ship date: 08/03/2020

Estimated shipping charges: 4.79 USD

Package Information

Pricing option: FedEx Standard Rate

Service type: FedEx Ground

Package type: Your Packaging

Number of packages: 1

Total weight: 9 LBS

Declared Value: 0.00 USD

Special Services:

Pickup/Drop-off: Contact FedEx for courier pickup

Billing Information:

Bill transportation to: EDS-938

Your reference: CLK-Return of Documents

P.O. no.:

Invoice no.:

Department no.:

Thank you for shipping online with FedEx ShipManager at fedex.com.

Please Note

FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1000, e.g., jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits; Consult the applicable FedEx Service Guide for details.

The estimated shipping charge may be different than the actual charges for your shipment. Differences may occur based on actual weight, dimensions, and other factors. Consult the applicable [FedEx Service Guide](#) or the FedEx Rate Sheets for details on how shipping charges are calculated.

07019-2012 (20120001-EI)
02553-2013 > (20130001-EI)
02697-2013

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2020 AUG 21 AM 11:58
COMMISSION
CLERK

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20200001-EI

Fuel and purchased power
cost recovery clause with
generating performance
incentive factor.

_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 3

COMMISSIONERS
PARTICIPATING: CHAIRMAN GARY F. CLARK
COMMISSIONER ART GRAHAM
COMMISSIONER JULIE I. BROWN
COMMISSIONER DONALD J. POLMANN
COMMISSIONER ANDREW GILES FAY

DATE: Tuesday, August 18, 2020

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

REPORTED BY: DEBRA R. KRICK
Court Reporter and
Notary Public in and for
the State of Florida at Large

PREMIER REPORTING
114 W. 5TH AVENUE
TALLAHASSEE, FLORIDA
(850) 894-0828

1 P R O C E E D I N G S

2 CHAIRMAN CLARK: Good morning. I would like
3 to welcome everyone to this Tuesday, August 18th,
4 Agenda Conference, and also a Special Agenda
5 Conference that will be held immediately following
6 this one.

7 And at this time, before we begin our meeting,
8 I am going to ask Commissioner Graham, if he would,
9 to give our invocation this morning, and I will
10 lead us in the Pledge of Allegiance.

11 Commissioner Graham.

12 (Invocation and Pledge of Allegiance.)

13 CHAIRMAN CLARK: Thank you. You may be
14 seated.

15 All right. We will call this meeting to
16 order. Items No. 1, 5, 6 and 7 are on the move
17 staff list. Staff has also informed me that, at
18 Commissioner Polmann's request, we are going to
19 defer Item No. 3, if that's in agreement with
20 everyone, which leaves us Items No. 2 and 4 that
21 will be moved to the end for discussion.

22 (Agenda item concluded.)

23

24

25

1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA)
3 COUNTY OF LEON)
4

5 I, DEBRA KRICK, Court Reporter, do hereby
6 certify that the foregoing proceeding was heard at the
7 time and place herein stated.

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

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

18 DATED this 26th day of August, 2020.
19

20

21

22

23

24

25



DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #HH31926
EXPIRES AUGUST 13, 2024

FLORIDA PUBLIC SERVICE COMMISSION

Item 4A

VOTE SHEET

September 1, 2020

FILED 9/3/2020
DOCUMENT NO. 05875-2020
FPSC - COMMISSION CLERK

Docket No. 20200001-EI – Fuel and purchased power cost recovery clause with generating performance incentive factor.

Issue 1: Should the Commission accept any of the exceptions to conclusions of law filed by DEF?

Recommendation: No. DEF has not presented any legally sufficient basis for rejecting or modifying any portion of the Recommended Order. Therefore, staff recommends that the Commission should deny DEF's exceptions to Conclusions of Law 110-114 and 119-125.

APPROVED

COMMISSIONERS ASSIGNED: All Commissioners

COMMISSIONERS' SIGNATURES

MAJORITY

DISSENTING

Donald J. Polmann

AK

OK

Julie

Ala

REMARKS/DISSENTING COMMENTS:

Docket No. 20200001-EI – Fuel and purchased power cost recovery clause with generating performance incentive factor.

(Continued from previous page)

Issue 2: Should the Commission approve the Recommended Order submitted by the Administrative Law Judge?

Recommendation: Yes. The Commission should approve the Recommended Order attached to staff's recommendation dated August 6, 2020, as the Final Order in this docket.

APPROVED

Commission's Final Order should include second paragraph of staff's analysis in Issue 2 of staff's memorandum dated August 6, 2020.

Issue 3: Should this docket be closed?

Recommendation: No. While the Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor docket is assigned a separate docket number each year for administrative convenience, it is a continuing docket and should remain open.

APPROVED

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20200001-EI

Fuel and purchased power
cost recovery clause with
generating performance
incentive factor.

_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 4A

COMMISSIONERS
PARTICIPATING: CHAIRMAN GARY F. CLARK
COMMISSIONER ART GRAHAM
COMMISSIONER JULIE I. BROWN
COMMISSIONER DONALD J. POLMANN
COMMISSIONER ANDREW GILES FAY

DATE: Tuesday, September 1, 2020

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

REPORTED BY: DEBRA R. KRICK
Court Reporter and
Notary Public in and for
the State of Florida at Large

PREMIER REPORTING
114 W. 5TH AVENUE
TALLAHASSEE, FLORIDA
(850) 894-0828

1 P R O C E E D I N G S

2 CHAIRMAN CLARK: All right. Next item is Item
3 No. 4A.

4 Before we ask Mr. Stiller to introduce the
5 item, just a couple of reminders before we begin
6 discussion.

7 No. 1, this is limited to Commissioners and
8 staff only for discussion.

9 I would like to also remind everyone of the
10 confidential nature of this particular item in the
11 docket. I am going to ask Ms. Helton if she would
12 carefully monitor the conversation if we move into
13 an area, there is an extensive or exhaustive list
14 of items that cannot be discussed, so I am going to
15 ask Ms. Helton, if she would, to monitor those
16 items and if we hear any discussion going in those
17 areas, please let me know so that we can redirect
18 and -- and start over on that particular item.

19 Okay. With that in mind, Mr. Stiller, would
20 you introduce the item, please?

21 MR. STILLER: Good morning, Chair and
22 Commissioners. This is Shaw Stiller of the Office
23 of General Counsel.

24 Agenda Item 4A is Commission consideration of
25 a recommended order issued by an Administrative Law

1 Judge of the Division of Administrative Hearings
2 following a formal evidentiary hearing in Docket
3 No. 20200001-EI. This docket is commonly referred
4 to as the Fuel Clause, and the specific matter
5 before this Commission involves a petition for cost
6 recovery filed by Duke Energy Florida.

7 In the petition, Duke requested recovery for
8 replacement power costs following a February 2017
9 forced outage at its Bartow Plant and the
10 subsequent derating of that plant.

11 The Office of Public Counsel, Florida
12 Industrial Power Users Group and White Springs
13 Agricultural Chemicals intervened in the docket.

14 Virtually all of the testimony and exhibits
15 filed by Duke and OPC regarding cost recovery for
16 the Bartow Plant outage and derating are
17 confidential. Recognizing that it cannot keep
18 these materials confidential and conduct a hearing
19 in the Sunshine, as required by law, this
20 Commission referred these two issues to the
21 Division of Administrative Hearings for assignment
22 of an Administrative Law Judge to conduct a closed
23 evidentiary hearing. The closed hearing was
24 conducted February 4th and 5th before
25 Administrative Law Judge Stevenson.

1 On April 27, 2020, the Administrative Law
2 Judge entered a recommended order recommending that
3 this Commission determine that the Bartow Plant
4 replacement power costs are not recoverable. The
5 judge made extensive findings of fact in support of
6 the ultimate conclusion that Duke did not prove by
7 a preponderance of the evidence that it acted as a
8 reasonable utility manner -- manager would have in
9 light of the conditions and circumstances that were
10 known or should have been known at the time in the
11 operation of its Bartow Unit 4, which resulted in
12 the unit's failure and the need for replacement
13 power.

14 Duke timely filed exceptions to certain
15 conclusions of law in the recommended order. Duke
16 did not file any exceptions to the findings of
17 fact.

18 This Commission may grant Duke's exceptions
19 and reject the subject conclusions of law if those
20 conclusions are within the substantive jurisdiction
21 of the Commission, and a different conclusion would
22 be as or more reasonable.

23 Staff has reviewed the exceptions filed by
24 Duke and does not believe that the company has met
25 the high burden for this Commission to grant them

1 and reverse the Administrative Law Judge.

2 Staff notes that Commission consideration of
3 the recommended order is affected by Duke's
4 decision to not contest any findings of fact.

5 By not filing exceptions to any of the 102
6 findings of fact in the recommended order, Duke has
7 accepted that these facts are supported by
8 competent, substantial evidence in the record.

9 Staff further notes that the conclusions of
10 law to which Duke takes exceptions are based on
11 those unchallenged findings.

12 In these circumstances, and on this record,
13 staff recommends that all exceptions be denied and
14 the recommended order be adopted.

15 Staff is available for questions.

16 CHAIRMAN CLARK: Thank you very much, Mr.
17 Stiller.

18 Commissioners, any questions for staff?

19 Commissioner Polmann.

20 COMMISSIONER POLMANN: Thank you, Mr.
21 Chairman.

22 I would like to make some comments, and we
23 will see if that leads into a question for staff.

24 I -- I am a little bit uncertain on a -- on a
25 particular point, but I would like to make some

1 introductory remarks, if I may, and I am prepared
2 to -- to move forward with the motion, but I would
3 like to get some guidance after I make some
4 introductory remarks, if I may proceed, Mr.
5 Chairman.

6 CHAIRMAN CLARK: Yes, sir.

7 COMMISSIONER POLMANN: Thank you. Thank you,
8 Mr. Chairman.

9 First, I want to thank the Commission for
10 allowing the extra time that I had requested to
11 review the information in this docket. It -- it
12 certainly is substantial, and it is complex. And I
13 believe of paramount importance here is our
14 deliberate care of this case.

15 Commissioners, I will preface my comments with
16 acknowledgment that certain aspects of the agenda
17 item before us engender strong positions and
18 perhaps emotions. So to be -- to be very clear, my
19 evaluation on this matter, my remarks on the record
20 derive from my focus on the record evidence, the
21 substance of the recommended order, and what I will
22 describe as an opportunity for this Commission to
23 fully discharge its duty. Simply saying, I see
24 our -- our duty here to accept, reject or modify
25 the ALJ recommended order. And as staff has noted,

1 the standard against reverting is finding of
2 conclusions that are more reasonable than, or as
3 reasonable as those provided in the recommended
4 order.

5 So, Mr. Chairman, at this time, I am -- I am
6 prepared to proceed on Issue 1, including a motion
7 supported on the basis, or we can run through the
8 basis or my rationale first, follow that up with a
9 motion. So whatever your pleasure is, we -- we can
10 kind of have a discussion or go right into a
11 motion. I will leave that to your pleasure, sir.

12 CHAIRMAN CLARK: Thank you -- thank you,
13 Commissioner Polmann.

14 Let's have -- let's have some discussion on
15 the item. And -- and I would just -- I had a
16 discussion with our General Counsel this morning
17 in -- in terms of if there are alternate
18 recommendations away from staff recommendation,
19 there are some considerations, I think, that the
20 staff and Commission would probably want in a final
21 order, and those things would certainly need to be
22 taken into consideration.

23 So I would like to -- if there is a motion
24 that is different from staff recommendation from
25 any of the Commissioners, I would like to take a

1 couple of minutes recess prior to that motion, give
2 our General Counsel some time to -- to work with us
3 on making sure that we get the things in the record
4 that are necessary, what the -- what the Commission
5 feels is necessary, what staff feels is necessary
6 to support our decision.

7 Mr. Hetrick, is that a fair statement?

8 MR. HETRICK: That's correct, Mr. Chair.

9 CHAIRMAN CLARK: Okay. Thank you.

10 Okay. Commissioners, other comments, and then
11 we will come back to Mr. Poulmann -- Commissioner
12 Polmann for a motion.

13 Commissioner Fay.

14 COMMISSIONER FAY: Thank you, Mr. Chairman.
15 My -- my comments will be brief.

16 I -- I agreed with Judge Stevenson and the
17 staff recommendation. I think Commissioner Polmann
18 was mentioning that, from his perspective, he might
19 be splitting out Issue 1 and Issue 2, which --
20 which may be appropriate. I just -- the one thing
21 I would like to add as it relates to Issue 2 is I
22 think the -- I mean, this is, as stated, an
23 extremely fact intensive case that was litigated
24 before Judge Stevenson, and a recommended order was
25 provided. It doesn't -- that order doesn't absolve

1 or extend liability beyond the facts that we have
2 in front of us here. So if something else were to
3 come up, it would likely go through the same
4 process. And due to the confidentiality of this
5 case, I will be mindful to speaking to any of the
6 specifics.

7 But I do think the language that has been
8 provided in the recommendation for Issue 2,
9 specifically the second paragraph in the staff
10 analysis, is important to -- to be recognized from
11 the order, and if approved -- if -- if that
12 position is approved, I would just want to make
13 sure that our legal folks recognize that in the
14 final order.

15 So those are my comments, Mr. Chair. Thank
16 you.

17 CHAIRMAN CLARK: Thank you, Commissioner Fay.
18 Any other Commissioners?

19 All right. Commissioner Polmann.

20 COMMISSIONER POLMANN: Thank you, Mr.
21 Chairman.

22 I would like to ask first for a clarification.
23 I believe Mr. Stiller introduced a particular
24 point, and I -- I note numerous references in the
25 material that's in this package to competence --

1 the phrase is something to the effect of competent,
2 substantial evidence in the record. And the
3 comments -- or the introductory remarks that I
4 heard speak to the findings of fact and -- and the
5 conclusions of law.

6 And I need to be absolutely clear here. I
7 recognize that the utility took no exceptions to
8 the findings of fact, and I need clarification on
9 whether this Commission has opportunity to take
10 into account the full evidentiary record, because I
11 see that phrase used numerous times in the
12 materials that is in this agenda package.

13 And are we to -- to avail ourselves of the
14 full evidentiary record, or are we to read this
15 agenda item on these pages only? And are we to --
16 to take action only on the hundred odd findings of
17 fact or -- or the conclusions of law, whatever the
18 number is, are we constrained by simply those
19 enumerated items, or are we examining all of the
20 material?

21 And I -- and I recognize the restrictions that
22 that we -- we have no opportunity to reweigh
23 evidence, or anything like that. I recognize that.
24 But what is it exactly that we are to avail
25 ourselves of? Can I get clarification on that,

1 please?

2 CHAIRMAN CLARK: Yes, Commissioner Polmann.

3 Mr. Stiller, would you -- would you address
4 that, please?

5 MR. STILLER: Yes, Mr. Chair.

6 Thank you, Commissioner.

7 The -- I want to give a general answer, and
8 then I will try to -- to get a little bit more
9 specific, Commissioner.

10 The general answer is the Commission does look
11 at the entire record. If looking at the entire
12 record, the specific finding of fact is unsupported
13 by any competent, substantial evidence anywhere in
14 that record, the action the Commission would then
15 take would be to reject that finding of fact.
16 Keeping in mind the Commission cannot replace it,
17 modify it or add another finding of fact. It would
18 just reject that finding of fact.

19 So that would be an examination of the entire
20 record on that for the competent, substantial
21 evidence. And on the conclusion of law which
22 stated the standard, that is the as or more
23 reasonable than the conclusion of law. But if the
24 findings of fact are not disturbed, and the
25 Commission is not rejecting them, then the factual

1 decision made today is based on those 102 findings.

2 CHAIRMAN CLARK: Okay. Thank you, Mr.
3 Stiller.

4 Commissioner Polmann.

5 COMMISSIONER POLMANN: Okay. I appreciate
6 that clarification.

7 I -- I do have, in fact, a series of comments
8 that -- that build to my position, and, in fact, I
9 do have an alternative recommendation -- a
10 recommendation that is an alternative to the staff
11 recommendation that -- that leads to a motion on --
12 on the issues, and I will take your direction, and
13 I -- and I -- I did hear that you would like to
14 take a brief recess. I am standing aside, Mr.
15 Chairman, waiting for your direction.

16 CHAIRMAN CLARK: Okay. Mr. Hetrick.

17 MR. HETRICK: Mr. Chairman, I think right now
18 we -- I need to understand, we need to understand
19 what Commissioner Polmann wants to do before we can
20 break, and -- and I think you need to entertain the
21 motion, perhaps let him explain what his rationale
22 is for the motion, as long as we stay within the
23 guidelines, and we can't discuss confidential
24 information. And at that point, if a motion is
25 made, I think you have to wait to see whether or

1 not if there is a second to it. If there is no
2 second to it, then it would not move forward. So
3 at that point, if there is a second I think that's
4 the appropriate time to break.

5 That's my advice.

6 CHAIRMAN CLARK: Okay. Commissioner Polmann.
7 That's a good starting point. If you want to throw
8 a couple of the items out, or a couple for
9 consideration what you would be interested in
10 doing, see if there is any Commissioners have
11 questions regarding it. If it looks like it has
12 merit, proceed with the motion; if not, your call.

13 COMMISSIONER POLMANN: Thank you, sir.

14 Fundamentally, my -- my intention is -- is to
15 deal with the entirety of Duke's exceptions, so --
16 so I will approach it in that fashion.

17 It is not my intention in -- in any sense
18 to -- to discuss the individual aspects, to go into
19 any detail, to speak to any of the confidential
20 matters at -- at a particular high level to try to
21 navigate a way through the confidential material.

22 So my question on the record evidence, and so
23 forth, has been addressed, and I will simply lay
24 out, to the best of my ability, a rationale as to
25 how I come to my position.

1 And, Mr. Chairman and Commissioners, I
2 appreciate your indulgence here, and I will -- I
3 will do the best I can hear to be brief.

4 Given the amount of confidential information,
5 and the fact that we are limited to what we can
6 talk about, I will express that there is a great
7 deal here behind my expressions. And as I said, I
8 will try to stay at the highest level, but please
9 recognize that silence in any particular regard is
10 not -- is not meant to imply that -- that I concur
11 any particular matter.

12 So what we have here is the recommended order.
13 And as I indicated, all the material that's in --
14 in the package before us, the inter-- the response
15 from the intervenors, material from the utility,
16 the recommendation from staff, I have familiarized
17 myself with all of that. And as indicated earlier,
18 I am -- I am looking at this -- our standard is
19 different conclusions of law, if -- if that is
20 something that we are pursuing, the standard being
21 as or more reasonable. My focus is on something
22 that is as reasonable. So that is the predicate I
23 am coming from.

24 The issue for me is a focus on the
25 confidential Attachment B to the recommendation,

1 and my -- my approach to this is an examination of
2 whether or not confidential Attachment B provides
3 the Commission with the necessary information to
4 reach a finding of whether the utility presents
5 adequate evidence or -- or adequate argument for
6 this Commission to -- to come to the point of
7 conclusions that are as reasonable.

8 So following review of the exceptions that
9 Duke has provided and the relevant materials
10 available to me, I will assert that Duke has, in
11 fact, provided sufficient information to come to
12 positions that are as reasonable as the recommended
13 order. Given the evidentiary record in full
14 consideration of foundational principles and
15 practices of sound utility industry standards, the
16 conclusion that finds in favor of Duke's exceptions
17 is as reasonable as accepting the recommended order
18 without modification.

19 So therefore, it is my position that the
20 exceptions to the conclusions of law that were put
21 forth and supported by the utility, providing
22 adequate basis for modifying the specific
23 conclusions of law 110 through 114 and 119 through
24 125, and that those are as reasonable as the ALJ's
25 conclusions of law, and therefore, I am prepared to

1 make a motion on that basis, Mr. Chairman, and I
2 can do so at this point --

3 CHAIRMAN CLARK: Okay. Based on that, Mr.
4 Hetrick, would there be any.

5 COMMISSIONER POLMANN: -- I can proceed.

6 CHAIRMAN CLARK: Based on -- on Commissioner
7 Polmann's analysis, what would you need? Would you
8 need anything specific?

9 MR. HETRICK: I think I understand clearly
10 what he would like to move, and I think we could
11 fashion that and send it around to the
12 Commissioners in a complete and thorough manner,
13 but again, first, I think the motion should be
14 made.

15 CHAIRMAN CLARK: Right. Understand. But I am
16 just making sure that we are -- we are clear you
17 can craft the argument.

18 MR. HETRICK: Yes, sir.

19 CHAIRMAN CLARK: Okay. All right. Other
20 Commissioner comments prior to Commissioner
21 Polmann's motion?

22 Commissioner Fay.

23 COMMISSIONER FAY: Thank you, Mr. Chairman. I
24 will -- I will be brief again.

25 Just in response to Commissioner Polmann's

1 comments and his motion, I -- I do think that a lot
2 of language in there from different parties about
3 not relitigating this, and essentially not making a
4 decision that has already been made. However, I do
5 agree with Commissioner Polmann. I think the legal
6 standard is clear for a conclusion of law, and I
7 think it states that it can be as or more
8 reasonable to base that decision on.

9 And so I just want to make sure, from my
10 perspective, that I am clear that acceptance of a
11 proposed order of the DOAH judge does not in itself
12 essentially mean that the Commission does not have
13 authority to make a determination that they deem as
14 reasonable for a conclusion of law. I actually
15 think it's the opposite. It's very clear that we
16 do have that authority to make that decision.

17 So with that, Mr. Chairman, those are my
18 comments on Commissioner Polmann's motion.

19 Thank you.

20 CHAIRMAN CLARK: Thank you, Commissioner Fay.

21 Okay. Commissioner Polmann, if you are ready
22 to make a motion, we will entertain it.

23 COMMISSIONER POLMANN: Thank you, Mr.
24 Chairman.

25 I believe I have laid out the basis for my

1 position. Hopefully my comments were clear on the
2 record, and with that, my motion, Mr. Chairman and
3 Commissioners, I move that this Commission find
4 that the information Duke Energy has provided in
5 Attachment B is sufficient to accept the position
6 that is as reasonable as the ALJ and, therefore,
7 approve DEF's exceptions to conclusions of law 110
8 through 114 and 119 through 125.

9 That's my motion.

10 CHAIRMAN CLARK: One second.

11 COMMISSIONER GRAHAM: I will second that
12 motion.

13 CHAIRMAN CLARK: Okay. I have a motion to
14 approve the --

15 COMMISSIONER POLMANN: I can repeat that.

16 CHAIRMAN CLARK: -- I have a motion and a
17 second to approve the exceptions that DEF laid out
18 in items 110 through 114 and 119 through 125.

19 Discussion on the motion?

20 Commissioner Brown.

21 COMMISSIONER BROWN: And I apologize. I am
22 having some spot -- spotty internet right now, so
23 my apologies. But, Commissioner Polmann, can you
24 kind of explain what the effect would therefore be
25 based on your motion?

1 COMMISSIONER POLMANN: Commissioner Brown --

2 COMMISSIONER BROWN: Yes.

3 COMMISSIONER POLMANN: -- I simply -- I simply
4 accept that DEF has provided sufficient information
5 in their material, and that I take in toto that all
6 of that material and all of their exceptions. I
7 believe we have that authority. I will leave it to
8 our legal staff to explain the effect.

9 I -- I am not taking a position on the effect.
10 I simply accept the entirety of -- of their
11 argument as presented in Attachment B as -- as
12 being sufficient that this Commission can -- can
13 take a position that the alternative conclusions
14 are as reasonable as the ALJ's recommended order.
15 I -- I am not going to opine on the consequence,
16 other than to say that I believe, as I stated.

17 COMMISSIONER BROWN: Shaw?

18 CHAIRMAN CLARK: Mr. Stiller.

19 MR. STILLER: Yes -- yes, Mr. Chair, this is
20 Shaw Stiller again.

21 If the Commission is to -- chooses to reject
22 conclusions of law, Chapter 120 requires that there
23 be substituted conclusions of law that are as or
24 more reasonable. The effect of this motion I
25 suggest would be defined by what those substituted

1 conclusions are.

2 CHAIRMAN CLARK: So, Mr. Stiller, you are --

3 COMMISSIONER BROWN: Thank you. I just wanted
4 that clarification for the record.

5 CHAIRMAN CLARK: So you are saying that if we
6 accept Commissioner Polmann's motion, we are going
7 to have to go back and apply new conclusions of
8 law?

9 MR. STILLER: That is -- Mr. Chair, that is
10 correct. The conclusions of law in the recommended
11 order would be stricken. There would be
12 substituted conclusions of law, and there would be
13 specific findings as to why those substituted
14 conclusions are as or more reasonable.

15 CHAIRMAN CLARK: And by default, are we then
16 denying the recommended order by the ALJ?

17 MR. HETRICK: Yes.

18 MR. STILLER: Thank you, Mr. Chair. If I
19 understand correctly, the cost that would be -- the
20 costs would be recoverable, and the petition would
21 be granted.

22 CHAIRMAN CLARK: Okay. So by accepting the
23 motion by, it, by default, rejects the ALJ order
24 and allows for the recovery. Okay, I just wanted
25 to make sure is that was clarified.

1 Commissioner Polmann.

2 COMMISSIONER POLMANN: Mr. Chairman, I -- I
3 believe Issue 2 deals with additional subject
4 matter. I think Issue 1 speaks, in the staff
5 layout of this agenda item, deals with the
6 exceptions to the conclusions of law. There is
7 another issue before us. So I appreciate Mr.
8 Stiller's comments, but I think there are separate
9 issues here. I don't -- that's just my comment,
10 sir.

11 CHAIRMAN CLARK: Right. So my question to Mr.
12 Hetrick is could you adopt Commissioner Polmann's
13 motion and, at the same time, approve the
14 recommended order? They are two separate things,
15 and in fact, it is automatically denying the
16 recommended order; is that correct?

17 MR. HETRICK: That's correct. I don't know
18 how you split the two apart. I mean --

19 CHAIRMAN CLARK: So we would have to, at that
20 point in time, craft a new order to adopt, and that
21 would basically push the decision out. If we
22 accept Issue 1, Commissioner Polmann's
23 recommendation, we can't make a decision today on
24 the final recommended order; is that correct?

25 MR. HETRICK: No. I think you can make the

1 decision on the recommended order, just as you can
2 reverse staff's recommendation on Issue 1, you can
3 reverse staff's recommendation on Issue 2, but
4 Issue 2 is intricately tied to Issue 1. So it's
5 one of those situations where once you decide to
6 overrule all the exceptions, you have effectively
7 overruled the recommended order. So there is no
8 other option with respect to Issue 2, and I want to
9 be clear about that.

10 CHAIRMAN CLARK: So at that point, staff would
11 draft a final order for the Commission to approve,
12 but -- I guess I am concerned or confused about
13 what that final order would look like and --

14 MR. HETRICK: So that -- I think that's part
15 of what, Mr. Chair, we said we would craft. Now
16 that we have a second, we -- we have something that
17 we are prepared to offer up to the Commission to
18 sort of -- to completely reflect, I think, what
19 Commissioner Polmann's intent is. And I can read
20 it to you and then we can take a break and email it
21 to all the Commissioners if you would like, have
22 them look at it so that they have it before them,
23 so they can decide whether or not they want to --
24 what their vote will be on this.

25 CHAIRMAN CLARK: Okay. Great point.

1 Commissioner Polmann.

2 COMMISSIONER POLMANN: Thank you, Mr.

3 Chairman.

4 As I understood it, our duty was to accept, or
5 reject, or modify. And what -- what is being
6 discussed here, based on my motion on Issue 1, is a
7 rejection of the order. And I have a motion on
8 Issue 2, which is to modify the order. And -- and
9 I thought that was the question before us, is -- is
10 accept, reject or modify.

11 CHAIRMAN CLARK: That is correct.

12 COMMISSIONER POLMANN: I will leave it --
13 leave it to the General Counsel's Office as to what
14 they do with the order. I am not writing our
15 order. And -- and I understood that to be the case
16 during the entire term of my sitting in this chair,
17 but I am -- I am happy to take all of the issues in
18 this agenda item all together and -- and I am
19 prepared to make a motion on Issue 2 to clarify the
20 discussion that is -- that is now -- (inaudible) --
21 here.

22 CHAIRMAN CLARK: I think -- I think we are on
23 the same page in terms of the discussion --
24 somebody needs to mute their phone, please.

25 COMMISSIONER POLMANN: Maybe -- maybe that has

1 something to do, but pardon -- pardon me, sir.

2 CHAIRMAN CLARK: So -- so I think we are on
3 the same page there, and it is my -- you are -- you
4 would be modifying the final order. We would have
5 to come back, if this is accepted, and have an
6 additional motion.

7 But I think the point, Commissioner Polmann,
8 is that we don't write the final order, but the
9 motion that we make has a lot of impact on what
10 that final order looks like. And I think legal
11 staff has requested that if we are going to do a
12 modification, that they would want some very
13 specific language from the Commission in the motion
14 in order to craft a final order that they feel
15 comfortable with. So I just -- I just want to make
16 certain that we are --

17 COMMISSIONER POLMANN: Of course.

18 CHAIRMAN CLARK: -- getting all the things in
19 a row. It's no -- no reflection on what you are
20 trying to do, just procedural more than anything.

21 Commissioner Brown, you are recognized.

22 COMMISSIONER BROWN: Thank you.

23 And again, this is a question for Keith or
24 Shaw. The conclusions of law are based on the
25 conclusions -- the findings of fact, Commissioner

1 Polmann, right?

2 MR. HETRICK: Correct.

3 COMMISSIONER BROWN: Which -- which Duke did
4 not take exception to the findings of fact. So I
5 just have some consternation with the concept,
6 Commissioner Polmann, that you are proposing, quite
7 frankly.

8 CHAIRMAN CLARK: Okay. Other discussion or
9 questions?

10 Okay. Are we ready to vote on Commissioner
11 Polmann's motion?

12 All those in favor, please say aye.

13 COMMISSIONER GRAHAM: Aye.

14 COMMISSIONER POLMANN: Aye.

15 CHAIRMAN CLARK: All those opposed, nay?

16 COMMISSIONER BROWN: Nay.

17 COMMISSIONER FAY: Nay.

18 CHAIRMAN CLARK: Nay.

19 The motion fails 3 to 2.

20 The floor is open for a new motion.

21 Commissioner Fay.

22 COMMISSIONER FAY: Mr. Chairman, yeah, I would
23 move staff recommendation on all issues, and direct
24 legal to incorporate the language that is placed in
25 staff analysis paragraph two under Issue 2 into

1 the -- the final order.

2 COMMISSIONER BROWN: Second.

3 CHAIRMAN CLARK: I have a motion and a second.

4 Now discussion. Any discussion?

5 On the motion, all in favor say aye.

6 COMMISSIONER BROWN: Aye.

7 COMMISSIONER FAY: Aye.

8 CHAIRMAN CLARK: Opposed?

9 COMMISSIONER POLMANN: No.

10 CHAIRMAN CLARK: Commissioner Graham?

11 COMMISSIONER GRAHAM: I was affirmative.

12 CHAIRMAN CLARK: Affirmative, okay.

13 Motion passes on a 4 to 1 vote.

14 All right. Thank you very much.

15 (Agenda item concluded.)

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1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA)
3 COUNTY OF LEON)
45 I, DEBRA KRICK, Court Reporter, do hereby
6 certify that the foregoing proceeding was heard at the
7 time and place herein stated.8 IT IS FURTHER CERTIFIED that I
9 stenographically reported the said proceedings; that the
10 same has been transcribed under my direct supervision;
11 and that this transcript constitutes a true
12 transcription of my notes of said proceedings.13 I FURTHER CERTIFY that I am not a relative,
14 employee, attorney or counsel of any of the parties, nor
15 am I a relative or employee of any of the parties'
16 attorney or counsel connected with the action, nor am I
17 financially interested in the action.18 DATED this 11th day of September, 2020.
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2122
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24 DEBRA R. KRICK
25 NOTARY PUBLIC
COMMISSION #HH31926
EXPIRES AUGUST 13, 2024

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.	DOCKET NO. 20200001-EI
	DATED: October 6, 2020

DUKE ENERGY FLORIDA, LLC'S PREHEARING STATEMENT

Duke Energy Florida, LLC ("DEF") hereby submits its Prehearing Statement with respect to its levelized fuel and capacity cost recovery factors and its Generating Performance Incentive Factor (GPIF) for the period of January 2021 through December 2021:

1. **Known Witnesses** - DEF intends to offer the testimony of:

Direct		
Witness	Subject Matter	Issues#
Christopher A. Menendez	Fuel Cost Recovery True-Up (2019); Capacity Cost Recovery True-Up (2019); Actual / Estimated and Projection Schedules; Other Matters	6-11, 18-23(A-D) and 27-36
Mary Ingle Lewter	Calculation of GPIF Reward for (2019); GPIF Targets/Ranges (2021)	16 and 17

2. **Known Exhibits** - DEF intends to offer the following exhibits:

Witness	Proffered By	Exhibit #	Description
Direct			
Christopher Menendez	DEF	(CAM-1T)	Fuel Cost Recovery True-Up (Jan – Dec. 2019)
Christopher Menendez	DEF	(CAM-2T)	Capacity Cost Recovery True- Up (Jan – Dec. 2019)

Christopher Menendez	DEF	(CAM-3T)	Schedules A1 through A3, A6 and A12 for Dec 2019
Christopher Menendez	DEF	(CAM-4T)	2019 Capital Structure and Cost Rates Applied to Capital Projects
Christopher Menendez	DEF	(CAM-2)	Actual/Estimated True-up Schedules for period January – December 2020
Christopher Menendez	DEF	(CAM-3)	Projection Factors for January - December 2021
James McClay	DEF		Hedging True-Up August - December 2019-
James McClay	DEF		Cover Letter re: Supplemental Hedging Activity Report (January – July 2020) –
Mary Ingle Lewter	DEF	(MIL-1P)	Calculation of GPIF Reward for January - December 2019
Mary Ingle Lewter	DEF	(MIL-1P)	GPIF Targets/Ranges Schedules for January – December 2021

DEF reserves the right to identify additional exhibits for the purpose of cross-examination or rebuttal.

3. **Statement of Basic Position** - Not applicable. DEF's positions on specific issues are listed below.
4. **Statement of Facts**

FUEL ISSUES

COMPANY SPECIFIC FUEL ADJUSTMENT ISSUES

Duke Energy Florida, LLC

Contested Issue A listed below will be placed here if included in the docket by the prehearing officer.

Florida Power & Light, Co.

ISSUE 2A: What is the appropriate revised SoBRA factor for the 2018 projects to reflect actual construction costs that are less than the projected costs used to develop the initial SoBRA factor?

DEF: No position.

ISSUE 2B: What was the total gain under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL may recover for the period January 2019 through December 2019, and how should that gain to be shared between FPL and customers?

DEF: No position.

ISSUE 2C: What is the appropriate amount of Incremental Optimization Costs under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL should be allowed to recover through the fuel clause for Personnel, Software, and Hardware costs for the period January 2019 through December 2019?

DEF: No position.

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DEF: No position.

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DEF: No position.

ISSUE 2F: Has FPL made reasonable and prudent adjustments, if any are needed, to account for replacement power costs associated with the April 2019 forced outage at St. Lucie Nuclear Power Plant, Unit No. 1?

DEF: No position.

ISSUE 2G: Has FPL made reasonable and prudent adjustments, if any are needed, to account for replacement power costs associated with the March 2020 return-to-service delay at St. Lucie Nuclear Power Plant, Unit No. 2?

DEF: No position.

ISSUE 2H: What is the appropriate subscription credit associated with FPL's Solar Together Program, approved by Order No. PSC-2020-0084-S-EI, to be included for recovery in 2021?

DEF: No position.

Florida Public Utilities Company

ISSUE 3A: Should the Commission approve FPUC's revised Fuel and Purchased Power Cost Recovery factors filed in accordance with the Stipulation and Settlement approved in Docket No. 20190156-EI, which reflect the flow-through of interim rate over-recovery calculated based on 9 months actual and 1 month estimated revenues?

DEF: No position.

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ISSUE 4A: Should the Commission approve as prudent Gulf's actions to mitigate the volatility of natural gas, residual oil, and purchased power prices, as reported in Gulf's April 2020 hedging report?

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ISSUE 5A: What was the total gain under TECO's Optimization Mechanism approved by Order No. PSC-2017-0456-S-EI that TECO may recover for the period January 2019 through December 2019, and how should that gain to be shared between TECO and customers?

DEF: No position.

GENERIC FUEL ADJUSTMENT ISSUES

ISSUE 6: What are the appropriate actual benchmark levels for calendar year 2020 for gains on non-separated wholesale energy sales eligible for a shareholder incentive?

DEF: \$1,602,141. (Menendez)

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Duke Energy Florida, LLC

No company-specific GPIF issues for Duke Energy Florida, LLC have been identified at this time. If such issues are identified, they shall be numbered 12A, 12B, 12C, and so forth, as appropriate.

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DEF: For DEF, the appropriate targets and ranges are shown on Page 4 of Exhibit MIL-1P filed on September 3, 2020 with the Direct Testimony of Mary Ingle Lewter. (Lewter)

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DEF: \$1,223,244,961 (Menendez)

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<u>Group</u>	<u>Delivery Voltage Level</u>	<u>Line Loss Multiplier</u>
A	Transmission	0.9800
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D	Lighting Service	1.0000
(Menendez)		

ISSUE 22: What are the appropriate fuel cost recovery factors for each rate class/delivery voltage level class adjusted for line losses?

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Fuel Cost Factors (cents/kWh)						
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II. CAPACITY ISSUES

COMPANY-SPECIFIC CAPACITY COST RECOVERY FACTOR ISSUES

Duke Energy Florida, LLC

ISSUE 23A: What is the appropriate net book value of retired Plant Crystal River South (Units 1 and 2) assets to be recovered over a one-year period as approved by Order No. PSC-2017-0451-AS-EU?

DEF: The estimated CR1&2 net book value of retired assets recovered over a one-year period in 2021 is \$80,592,431; the final CR1&2 net book value will be included in DEF's 2020 Final True-Up filing. (Menendez)

ISSUE 23B: What is the appropriate amount of costs for the Independent Spent Fuel Storage Installation ("ISFSI") that DEF should be allowed to recover through the capacity cost recovery clause pursuant to DEFs 2017 Settlement?

DEF: \$6,879,837 (Menendez)

ISSUE 23C: Should the Commission approve the Third Implementation Stipulation and, if approved, what is the amount state income tax savings that should be refunded to customers through the capacity clause in 2021?

DEF: Yes, the Commission should approve the Third Implementation Stipulation and \$8,379,919 of income tax savings refunded to customers through the capacity clause in 2021. (Menendez)

ISSUE 23D: What adjustment amounts should the Commission approve to be refunded through the capacity clause in 2021 for the Columbia SoBRA I project approved in Docket No. 20180149-EI and the DeBary, Lake Placid, and Trenton SoBRA II projects approved in Docket No. 20190072-EI?

DEF: \$1,023,015 (Menendez)

Florida Power & Light Company

ISSUE 24A: What is the appropriate true-up adjustment amount associated with the 2018 SOBRA projects approved by Order No. PSC-2018-0028-FOF-EI to be refunded through the capacity clause in 2021?

DEF: No position.

ISSUE 24B: What are the appropriate Indiantown non-fuel base revenue requirements to be recovered through the Capacity Clause pursuant to the Commission's approval

of the Indiantown transaction in Docket No. 160154-EI (Order No. PSC-16-0506-FOF-EI) for 2021?

Gulf Power Company

No company-specific capacity cost recovery factor issues for Gulf Power Company have been identified at this time. If such issues are identified, they shall be numbered 25A, 25B, 25C, and so forth, as appropriate.

Tampa Electric Company

No company-specific capacity cost recovery factor issues for Tampa Electric Company have been identified at this time. If such issues are identified, they shall be numbered 26A, 26B, 26C, and so forth, as appropriate.

GENERIC CAPACITY COST RECOVERY FACTOR ISSUES

ISSUE 27: What are the appropriate final capacity cost recovery true-up amounts for the period January 2019 through December 2019?

DEF: \$797,779 under-recovery (Menendez)

ISSUE 28: What are the appropriate capacity cost recovery actual/estimated true-up amounts for the period January 2020 through December 2020?

DEF: \$334,694 over-recovery (Menendez)

ISSUE 29: What are the appropriate total capacity cost recovery true-up amounts to be collected/refunded during the period January 2021 through December 2021?

DEF: \$463,084 under-recovery (Menendez)

ISSUE 30: What are the appropriate projected total capacity cost recovery amounts for the period January 2021 through December 2021?

DEF: \$479,983,370 (Menendez)

ISSUE 31: What are the appropriate projected net purchased power capacity cost recovery amounts to be included in the recovery factor for the period January 2021 through December 2021?

DEF: \$487,677,167 (Menendez)

ISSUE 32: What are the appropriate jurisdictional separation factors for capacity revenues and costs to be included in the recovery factor for the period January 2021 through December 2021?

DEF: Base – 92.885%, Intermediate – 72.703%, Peaking – 95.924%, consistent with the 2017 Settlement approved in Order No. PSC-2017-0451-AS-EI. (Menendez)

ISSUE 33: What are the appropriate capacity cost recovery factors for the period January 2021 through December 2021?

DEF:	<u>Rate Class</u>	<u>CCR Factor</u>
	Residential	1.405 cents/kWh
	General Service Non-Demand	1.342 cents/kWh
	@ Primary Voltage	1.329 cents/kWh
	@ Transmission Voltage	1.315 cents/kWh
	General Service 100% Load Factor	0.808 cents/kWh
	General Service Demand	4.20 \$/kW-month
	@ Primary Voltage	4.16 \$/kW-month
	@ Transmission Voltage	4.12 \$/kW-month
	Curtable	1.22 \$/kW-month
	@ Primary Voltage	1.21 \$/kW-month
	@ Transmission Voltage	1.20 \$/kW-month
	Interruptible	3.50 \$/kW-month
	@ Primary Voltage	3.47 \$/kW-month
	@ Transmission Voltage	3.43 \$/kW-month
	Standby Monthly	0.404 \$/kW-month
	@ Primary Voltage	0.400 \$/kW-month
	@ Transmission Voltage	0.396 \$/kW-month
	Standby Daily	0.192 \$/kW-month
	@ Primary Voltage	0.190 \$/kW-month
	@ Transmission Voltage	0.188 \$/kW-month
	Lighting	0.172 cents/kWh
		(Menendez)

III. EFFECTIVE DATE

ISSUE 34: What should be the effective date of the fuel adjustment factors and capacity cost recovery factors for billing purposes?

DEF: The new factors should be effective beginning with the first billing cycle for January 2021 through the last billing cycle for December 2021. The first billing cycle may start before January 1, 2021, and the last billing cycle may end after December 31, 2021, so

long as each customer is billed for twelve months regardless of when the factors became effective. (Menendez)

ISSUE 35: Should the Commission approve revised tariffs reflecting the fuel adjustment factors and capacity cost recovery factors determined to be appropriate in this proceeding?

DEF: Yes. The Commission should approve revised tariffs reflecting the fuel adjustment factors and capacity cost recovery factors determined to be appropriate in this proceeding. The Commission should direct Staff to verify that the revised tariffs are consistent with the Commission decision. (Menendez)

MISCELLANEOUS ISSUES

ISSUE 36: Should this docket be closed?

DEF: Yes (Menendez)

CONTESTED ISSUES

ISSUE A: What action should be taken in response to the Commission's September 1, 2020 vote to approve, without modification, Judge Stevenson's Recommended Order dated April 27, 2020, regarding the Bartow Unit 4 February 2017 outage?

DEF: [REDACTED]

5. **Stipulated Issues** - None at this time.

6. **Pending Motions** - None at this time.

7. **Requests for Confidentiality**

DEF has the following pending requests for confidential classification:

- January 30, 2020 – DEF's Request for Confidential Classification of late-filed exhibits to deposition of Messrs, Swartz, Toms and Salvarezza, held on August 30, 2019; specifically, late-filed Exh 6, bearing Bates Nos. DEF-19FL-FUEL-013796 through DEF-19FL-FUEL-013817, and late-filed Exh 7, bearing Bates Nos. DEF-19FL-FUEL-013517 through DEF-19FL-FUEL-013551 (DN 00223-2020), previously provided to staff pursuant to notice of intent. (DN 00672-2020).
- February 17, 2020 – DEF's Request for Confidential Classification for certain information provided to Staff for DEF's Response to OPC's Fourth Request to Produce

(Nos. 34-39), specifically question 36 (DN 00928-2020).

- February 19, 2020 – DEF’s First request for extension of confidential classification of [DN 05233-2018] Duke Energy's supplemental hedging report for the period 1/18-7/18 to the direct testimony of James McClay (DN 00998-2020).
- April 9, 2020 – DEF’s Request for Confidential Classification for certain information contained in DEF, OPC, FIPUG, PCS Phosphate and Staff’s Proposed Recommended Orders (DN 01877-2020).
- April 15, 2020 – DEF’s Request for extension of confidential classification [of DN 06152-2018, certain information contained in staff’s audit work papers pertaining to 2018 hedging activities audit workpapers (Audit Control No. 2018-058-2-1)] (DN 01988-2020).
- May 18, 2020 – DEF’s Request for Confidential Classification filed in connection with certain information provided in the 2020 Recommended Order from the State of Florida Division of Administrative Hearings, where the final hearing was conducted on February 4-5, 2020 (DN 02631-2020).
- June 2, 2020 – DEF’s Request for Confidential Classification filed in connection with certain information provided in DEF’s Exceptions to the Administrative Law Judge’s (“ALJ”) Recommended Order dated April 27, 2020 (DN 02887-2020).
- June 11, 2020 – DEF’s Request for Confidential Classification filed in connection with certain information provided in the Office Of Public Counsel, PCS Phosphate – White Springs, and The Florida Industrial Power Users Group Joint Response To DEF’s Exceptions to the Administrative Law Judge’s (“ALJ”) Recommended Order dated April 27, 2020 (DN 03055-2020).
- June 19, 2020 – DEF’s Request for Extension of Confidential Classification concerning certain information contained in its response to OPC's Second Set of Interrogatories (Nos. 11-14) (DN - 03185-2020).
- August 14, 2020 – DEF’s Request for Confidential Classification of certain information provided in the Staff of the Florida Public Service Commission’s Recommended Order for the final hearing held on February 4 and 5, 2020 (DN 04447-2020).

8. **Objections to Qualifications** - DEF has no objection to the qualifications of any expert witnesses in this proceeding at this time, subject to further discovery in this matter.
9. **Sequestration of Witnesses** - DEF has not identified any witnesses for sequestration at this time.
10. **Requirements of Order** - At this time, DEF is unaware of any requirements of the Order Establishing Procedure of which it will be unable to comply.

RESPECTFULLY SUBMITTED this 6th day of October, 2020.

s/Matthew R. Bernier

DIANNE M. TRIPLETT

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F: 727.820.5041

E: Matthew.Bernier@duke-energy.com

CERTIFICATE OF SERVICE

Docket No. 20200001-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via email this 6th day of October, 2020 to all parties of record as indicated below.

s/Matthew R. Bernier

Attorney

<p>Suzanne Brownless Office of General Counsel FL Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 sbrownle@psc.state.fl.us</p> <p>J. Beasley / J. Wahlen / M. Means Ausley McMullen P.O. Box 391 Tallahassee, FL 32302 jbeasley@ausley.com jwahlen@ausley.com mmeans@ausley.com</p> <p>Steven Griffin Beggs & Lane P.O. Box 12950 Pensacola, FL 32591 srg@beggslane.com</p> <p>Russell A. Badders Gulf Power Company One Energy Place Pensacola, FL 32520 russell.badders@nexteraenergy.com</p> <p>Holly Henderson Gulf Power Company 215 S. Monroe St., Ste. 618 Tallahassee, FL 32301 holly.henderson@nexteraenergy.com</p> <p>Kenneth A. Hoffman Florida Power & Light Company 134 W. Jefferson Street Tallahassee, FL 32301-1713 ken.hoffman@fpl.com</p> <p>Jon C. Moyle, Jr. Moyle Law Firm, P.A. 118 North Gadsden Street Tallahassee, FL 32301 jmoyle@moylelaw.com mqualls@moylelaw.com</p>	<p>J.R. Kelly / P. Christensen / T. David / S. Morse Office of Public Counsel 111 W. Madison St., Room 812 Tallahassee, FL 32399-1400 kelly.jr@leg.state.fl.us christensen.patty@leg.state.fl.us david.tad@leg.state.fl.us morse.stephanie@leg.state.fl.us</p> <p>Ms. Paula K. Brown Regulatory Affairs Tampa Electric Company P.O. Box 111 Tampa, FL 33601-0111 regdept@tecoenergy.com</p> <p>Maria Moncada / Joel Baker Florida Power & Light Company 700 Universe Blvd. (LAW/JB) Juno Beach, FL 33408-0420 maria.moncada@fpl.com joel.baker@fpl.com</p> <p>James Brew / Laura Wynn Stone Law Firm 1025 Thomas Jefferson St., N.W. Suite 800 West Washington, DC 20007 jbrew@smxblaw.com law@smxblaw.com</p> <p>Mike Cassel Florida Public Utilities Company 1750 S. 14th Street, Suite 200 Fernandina Beach, FL 32034 mcassel@fpuc.com</p> <p>Beth Keating Gunster, Yoakley & Stewart, P.A. 215 South Monroe Street, Suite 601 Tallahassee, FL 32301 bkeating@gunster.com</p>
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BEFORE THE PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.	DOCKET NO. 20200001-EI
	DATED: October 6, 2020

**DUKE ENERGY FLORIDA, LLC'S
CORRECTED PREHEARING STATEMENT**

Duke Energy Florida, LLC (“DEF”) hereby submits its Corrected Prehearing Statement with respect to its levelized fuel and capacity cost recovery factors and its Generating Performance Incentive Factor (GPIF) for the period of January 2021 through December 2021:

1. **Known Witnesses** - DEF intends to offer the testimony of:

Direct		
Witness	Subject Matter	Issues#
Christopher A. Menendez	Fuel Cost Recovery True-Up (2019); Capacity Cost Recovery True-Up (2019); Actual / Estimated and Projection Schedules; Other Matters	6-11, 18-23(A-D), and 27-36
Mary Ingle Lewter	Calculation of GPIF Reward for (2019); GPIF Targets/Ranges (2021)	16 and 17

2. **Known Exhibits** - DEF intends to offer the following exhibits:

Witness	Proffered By	Exhibit #	Description
Direct			
Christopher Menendez	DEF	(CAM-1T)	Fuel Cost Recovery True-Up (Jan – Dec. 2019)

Christopher Menendez	DEF	(CAM-2T)	Capacity Cost Recovery True-Up (Jan – Dec. 2019)
Christopher Menendez	DEF	(CAM-3T)	Schedules A1 through A3, A6 and A12 for Dec 2019
Christopher Menendez	DEF	(CAM-4T)	2019 Capital Structure and Cost Rates Applied to Capital Projects
Christopher Menendez	DEF	(CAM-2)	Actual/Estimated True-up Schedules for period January – December 2020
Christopher Menendez	DEF	(CAM-3)	Projection Factors for January - December 2021
James McClay	DEF		Hedging True-Up August - December 2019-
James McClay	DEF		Cover Letter re: Supplemental Hedging Activity Report (January – July 2020) –
Mary Ingle Lewter	DEF	(MIL-1P)	Calculation of GPIF Reward for January - December 2019
Mary Ingle Lewter	DEF	(MIL-1P)	GPIF Targets/Ranges Schedules for January – December 2021

DEF reserves the right to identify additional exhibits for the purpose of cross-examination or rebuttal.

3. **Statement of Basic Position** - Not applicable. DEF's positions on specific issues are listed below.
4. **Statement of Facts**

FUEL ISSUES

COMPANY SPECIFIC FUEL ADJUSTMENT ISSUES

Duke Energy Florida, LLC

Contested Issue A listed below will be placed here if included in the docket by the prehearing officer.

Florida Power & Light, Co.

ISSUE 2A: What is the appropriate revised SoBRA factor for the 2018 projects to reflect actual construction costs that are less than the projected costs used to develop the initial SoBRA factor?

DEF: No position.

ISSUE 2B: What was the total gain under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL may recover for the period January 2019 through December 2019, and how should that gain to be shared between FPL and customers?

DEF: No position.

ISSUE 2C: What is the appropriate amount of Incremental Optimization Costs under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL should be allowed to recover through the fuel clause for Personnel, Software, and Hardware costs for the period January 2019 through December 2019?

DEF: No position.

ISSUE 2D: What is the appropriate amount of Variable Power Plant O&M Attributable to Off-System Sales under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL should be allowed to recover through the fuel clause for the period January 2019 through December 2019?

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DEF: No position.

ISSUE 2G: Has FPL made reasonable and prudent adjustments, if any are needed, to account for replacement power costs associated with the March 2020 return-to-service delay at St. Lucie Nuclear Power Plant, Unit No. 2?

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ISSUE 23B: What is the appropriate amount of costs for the Independent Spent Fuel Storage Installation ("ISFSI") that DEF should be allowed to recover through the capacity cost recovery clause pursuant to DEFs 2017 Settlement?

DEF: \$6,879,837 (Menendez)

ISSUE 23C: Should the Commission approve the Third Implementation Stipulation and, if approved, what is the amount state income tax savings that should be refunded to customers through the capacity clause in 2021?

DEF: Yes, the Commission should approve the Third Implementation Stipulation and \$8,379,919 of income tax savings refunded to customers through the capacity clause in 2021. (Menendez)

ISSUE 23D: What adjustment amounts should the Commission approve to be refunded through the capacity clause in 2021 for the Columbia SoBRA I project approved in Docket No. 20180149-EI and the DeBary, Lake Placid, and Trenton SoBRA II projects approved in Docket No. 20190072-EI?

DEF: \$1,023,015 (Menendez)

Florida Power & Light Company

ISSUE 24A: What is the appropriate true-up adjustment amount associated with the 2018 SOBRA projects approved by Order No. PSC-2018-0028-FOF-EI to be refunded through the capacity clause in 2021?

DEF: No position.

ISSUE 24B: What are the appropriate Indiantown non-fuel base revenue requirements to be recovered through the Capacity Clause pursuant to the Commission's approval of the Indiantown transaction in Docket No. 160154-EI (Order No. PSC-16-0506-FOF-EI) for 2021?

Gulf Power Company

No company-specific capacity cost recovery factor issues for Gulf Power Company have been identified at this time. If such issues are identified, they shall be numbered 25A, 25B, 25C, and so forth, as appropriate.

Tampa Electric Company

No company-specific capacity cost recovery factor issues for Tampa Electric Company have been identified at this time. If such issues are identified, they shall be numbered 26A, 26B, 26C, and so forth, as appropriate.

GENERIC CAPACITY COST RECOVERY FACTOR ISSUES

ISSUE 27: What are the appropriate final capacity cost recovery true-up amounts for the period January 2019 through December 2019?

DEF: \$797,779 under-recovery (Menendez)

ISSUE 28: What are the appropriate capacity cost recovery actual/estimated true-up amounts for the period January 2020 through December 2020?

DEF: \$334,694 over-recovery (Menendez)

ISSUE 29: What are the appropriate total capacity cost recovery true-up amounts to be collected/refunded during the period January 2021 through December 2021?

DEF: \$463,084 under-recovery (Menendez)

ISSUE 30: What are the appropriate projected total capacity cost recovery amounts for the period January 2021 through December 2021?

DEF: \$479,983,370 (Menendez)

ISSUE 31: What are the appropriate projected net purchased power capacity cost recovery amounts to be included in the recovery factor for the period January 2021 through December 2021?

DEF: \$487,677,167 (Menendez)

ISSUE 32: What are the appropriate jurisdictional separation factors for capacity revenues and costs to be included in the recovery factor for the period January 2021 through December 2021?

DEF: Base – 92.885%, Intermediate – 72.703%, Peaking – 95.924%, consistent with the 2017 Settlement approved in Order No. PSC-2017-0451-AS-EI. (Menendez)

ISSUE 33: What are the appropriate capacity cost recovery factors for the period January 2021 through December 2021?

DEF:	<u>Rate Class</u>	<u>CCR Factor</u>
	Residential	1.405 cents/kWh
	General Service Non-Demand	1.342 cents/kWh
	@ Primary Voltage	1.329 cents/kWh
	@ Transmission Voltage	1.315 cents/kWh
	General Service 100% Load Factor	0.808 cents/kWh
	General Service Demand	4.20 \$/kW-month
	@ Primary Voltage	4.16 \$/kW-month
	@ Transmission Voltage	4.12 \$/kW-month
	Curtailable	1.22 \$/kW-month
	@ Primary Voltage	1.21 \$/kW-month
	@ Transmission Voltage	1.20 \$/kW-month
	Interruptible	3.50 \$/kW-month
	@ Primary Voltage	3.47 \$/kW-month
	@ Transmission Voltage	3.43 \$/kW-month
	Standby Monthly	0.404 \$/kW-month
	@ Primary Voltage	0.400 \$/kW-month
	@ Transmission Voltage	0.396 \$/kW-month
	Standby Daily	0.192 \$/kW-month
	@ Primary Voltage	0.190 \$/kW-month
	@ Transmission Voltage	0.188 \$/kW-month
	Lighting	0.172 cents/kWh
		(Menendez)

III. EFFECTIVE DATE

ISSUE 34: What should be the effective date of the fuel adjustment factors and capacity cost recovery factors for billing purposes?

DEF: The new factors should be effective beginning with the first billing cycle for January 2021 through the last billing cycle for December 2021. The first billing cycle may start before January 1, 2021, and the last billing cycle may end after December 31, 2021, so

long as each customer is billed for twelve months regardless of when the factors became effective. (Menendez)

ISSUE 35: Should the Commission approve revised tariffs reflecting the fuel adjustment factors and capacity cost recovery factors determined to be appropriate in this proceeding?

DEF: Yes. The Commission should approve revised tariffs reflecting the fuel adjustment factors and capacity cost recovery factors determined to be appropriate in this proceeding. The Commission should direct Staff to verify that the revised tariffs are consistent with the Commission decision. (Menendez)

MISCELLANEOUS ISSUES

ISSUE 36: Should this docket be closed?

DEF: Yes (Menendez)

CONTESTED ISSUES

ISSUE A: What action should be taken in response to the Commission's September 1, 2020 vote to approve, without modification, Judge Stevenson's Recommended Order dated April 27, 2020, regarding the Bartow Unit 4 February 2017 outage?

DEF: DEF reserves the right to provide a position on this contested issue if inclusion is deemed appropriate by the Prehearing Officer after the Prehearing Conference.

5. **Stipulated Issues** - None at this time.

6. **Pending Motions** - None at this time.

7. **Requests for Confidentiality**

DEF has the following pending requests for confidential classification:

- January 30, 2020 – DEF's Request for Confidential Classification of late-filed exhibits to deposition of Messrs, Swartz, Toms and Salvarezza, held on August 30, 2019; specifically, late-filed Exh 6, bearing Bates Nos. DEF-19FL-FUEL-013796 through DEF-19FL-FUEL-013817, and late-filed Exh 7, bearing Bates Nos. DEF-19FL-FUEL-013517 through DEF-19FL-FUEL-013551 (DN 00223-2020), previously provided to staff pursuant to notice of intent. (DN 00672-2020).
- February 17, 2020 – DEF's Request for Confidential Classification for certain

information provided to Staff for DEF's Response to OPC's Fourth Request to Produce (Nos. 34-39), specifically question 36 (DN 00928-2020).

- February 19, 2020 – DEF's First request for extension of confidential classification of [DN 05233-2018] Duke Energy's supplemental hedging report for the period 1/18-7/18 to the direct testimony of James McClay (DN 00998-2020).
- April 9, 2020 – DEF's Request for Confidential Classification for certain information contained in DEF, OPC, FIPUG, PCS Phosphate and Staff's Proposed Recommended Orders (DN 01877-2020).
- April 15, 2020 – DEF's Request for extension of confidential classification [of DN 06152-2018, certain information contained in staff's audit work papers pertaining to 2018 hedging activities audit workpapers (Audit Control No. 2018-058-2-1)] (DN 01988-2020).
- May 18, 2020 – DEF's Request for Confidential Classification filed in connection with certain information provided in the 2020 Recommended Order from the State of Florida Division of Administrative Hearings, where the final hearing was conducted on February 4-5, 2020 (DN 02631-2020).
- June 2, 2020 – DEF's Request for Confidential Classification filed in connection with certain information provided in DEF's Exceptions to the Administrative Law Judge's ("ALJ") Recommended Order dated April 27, 2020 (DN 02887-2020).
- June 11, 2020 – DEF's Request for Confidential Classification filed in connection with certain information provided in the Office Of Public Counsel, PCS Phosphate – White Springs, and The Florida Industrial Power Users Group Joint Response To DEF's Exceptions to the Administrative Law Judge's ("ALJ") Recommended Order dated April 27, 2020 (DN 03055-2020).
- June 19, 2020 – DEF's Request for Extension of Confidential Classification concerning certain information contained in its response to OPC's Second Set of Interrogatories (Nos. 11-14) (DN - 03185-2020).
- August 14, 2020 – DEF's Request for Confidential Classification of certain information provided in the Staff of the Florida Public Service Commission's Recommended Order for the final hearing held on February 4 and 5, 2020 (DN 04447-2020).

8. **Objections to Qualifications** - DEF has no objection to the qualifications of any expert witnesses in this proceeding at this time, subject to further discovery in this matter.
9. **Sequestration of Witnesses** - DEF has not identified any witnesses for sequestration at this time.
10. **Requirements of Order** - At this time, DEF is unaware of any requirements of the Order Establishing Procedure of which it will be unable to comply.

RESPECTFULLY SUBMITTED this 6th day of October, 2020.

s/Matthew R. Bernier

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CERTIFICATE OF SERVICE

Docket No. 20200001-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via email this 6th day of October, 2020 to all parties of record as indicated below.

s/Matthew R. Bernier

Attorney

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.

DOCKET NO. 20200001-EI

DATED: October 6, 2020

COMMISSION STAFF'S PREHEARING STATEMENT

Pursuant to Order No. PSC-2020-0041-PCO-EII, filed January 31, 2020, as amended by Order No. PSC-2020-0123-PCO-PU, filed April 23, 2020, the Staff of the Florida Public Service Commission files its Prehearing Statement.

1. All Known Witnesses

Witness	Subject Matter	Issues #
Direct		
Debra M. Dobiac	Commission Staff Auditor's Report Gulf Power Company	4A

2. All Known Exhibits

Witness	Proffered By	Exhibit No.	Description	Issues #
Direct				
Debra M. Dobiac	Commission staff	DMD-1	Auditor's Report-Hedging Activities	4A

3. Staff's Statement of Basic Position

Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions stated herein.

4. Staff's Position on the Issues

COMPANY SPECIFIC ISSUES

Duke Energy Florida, LLC.

Contested Issue A listed below will be placed here if included in the docket by the Prehearing Officer.

Florida Power & Light

ISSUE 2A: What is the appropriate revised SoBRA factor for the 2018 projects to reflect actual construction costs that are less than the projected costs used to develop the initial SoBRA factor?

POSITION: Staff has no position at this time.

ISSUE 2B: What is the total gain under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL may recover for the period January 2019 through December 2019, and how should that gain be shared between FPL and customers?

POSITION: Staff has no position at this time.

ISSUE 2C: What is the appropriate amount of Incremental Optimization Costs under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL should be allowed to recover through the fuel clause for Personnel, Software, and Hardware costs for the period January 2019 through December 2019?

POSITION: Staff has no position at this time.

ISSUE 2D: What is the appropriate amount of Variable Power Plant O&M Attributable to Off-System Sales under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL should be allowed to recover through the fuel clause for the period January 2019 through December 2019?

POSITION: Staff has no position at this time.

ISSUE 2E: What is the appropriate amount of Variable Power Plant O&M Avoided due to Economy Purchases under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL should be allowed to recover through the fuel clause for the period January 2019 through December 2019?

POSITION: Staff has no position at this time.

ISSUE 2F: Has FPL made reasonable and prudent adjustments, if any are needed, to account for replacement power costs associated with the April 2019 forced outage at St. Lucie Nuclear Power Plant, Unit No. 1?

POSITION: Staff has no position at this time.

ISSUE 2G: Has FPL made reasonable and prudent adjustments, if any are needed, to account for replacement power costs associated with the March 2020 return-to-service delay at St. Lucie Nuclear Power Plant, Unit No. 2?

POSITION: Staff has no position at this time.

ISSUE 2H: What is the appropriate subscription credit associated with FPL's Solar Together Program, approved by Order No. PSC-2020-0084-S-EI, to be included for recovery in 2021?

POSITION: Staff has no position at this time.

Florida Public Utilities Company

ISSUE 3A: Should the Commission approve FPUC's revised Fuel and Purchased Power Cost Recovery factors filed in accordance with the Stipulation and Settlement approved in Docket No. 20190156-EI, which reflect the flow-through of interim rate over-recovery calculated based on 9 months actual and 1 month estimated revenues?

POSITION: Staff has no position at this time.

Gulf Power Company

ISSUE 4A: Should the Commission approve as prudent Gulf's actions to mitigate the volatility of natural gas, residual oil, and purchased power prices, as reported in Gulf's April 2020 hedging report?

POSITION: Staff has no position at this time.

Tampa Electric Company

ISSUE 5A: What was the total gain under TECO's Optimization Mechanism approved by Order No. PSC-2017-0456-S-EI that TECO may recover for the period January 2019 through December 2019, and how should that gain to be shared between TECO and customers?

POSITION: Staff has no position at this time.

GENERIC FUEL ADJUSTMENT ISSUES

ISSUE 6: What are the appropriate actual benchmark levels for calendar year 2020 for gains on non-separated wholesale energy sales eligible for a shareholder incentive?

POSITION: Staff has no position at this time.

ISSUE 7: What are the appropriate estimated benchmark levels for calendar year 2021 for gains on non-separated wholesale energy sales eligible for a shareholder incentive?

POSITION: Staff has no position at this time.

ISSUE 8: What are the appropriate final fuel adjustment true-up amounts for the period January 2019 through December 2019?

POSITION: Staff has no position at this time.

ISSUE 9: What are the appropriate fuel adjustment actual/estimated true-up amounts for the period January 2020 through December 2020?

POSITION: Staff has no position at this time.

ISSUE 10: What are the appropriate total fuel adjustment true-up amounts to be collected/refunded from January 2021 through December 2021?

POSITION: Staff has no position at this time.

ISSUE 11: What are the appropriate projected total fuel and purchased power cost recovery amounts for the period January 2021 through December 2021?

POSITION: Staff has no position at this time.

COMPANY-SPECIFIC GENERATING PERFORMANCE INCENTIVE FACTOR ISSUES

Duke Energy Florida, LLC.

No company-specific GPIF issues for Duke Energy Florida, LLC. have been identified at this time. If such issues are identified, they shall be numbered 12A, 12B, 12C, and so forth, as appropriate.

Florida Power & Light Company

No company-specific GPIF issues for Florida Power and Light Company have been identified at this time. If such issues are identified, they shall be numbered 13A, 13B, 13C, and so forth, as appropriate.

Gulf Power Company

No company-specific GPIF issues for Gulf Power Company have been identified at this time. If such issues are identified, they shall be numbered 14A, 14B, 14C, and so forth, as appropriate.

Tampa Electric Company

No company-specific GPIF issues for Tampa Electric Company have been identified at this time. If such issues are identified, they shall be numbered 15A, 15B, 15C, and so forth, as appropriate.

GENERIC GPIF ISSUES

ISSUE 16: What is the appropriate GPIF reward or penalty for performance achieved during the period January 2019 through December 2019 for each investor-owned electric utility subject to the GPIF?

POSITION: Staff has no position at this time.

ISSUE 17: What should the GPIF targets/ranges be for the period January 2021 through December 2021 for each investor-owned electric utility subject to the GPIF?

POSITION: Staff has no position at this time.

FUEL FACTOR CALCULATION ISSUES

ISSUE 18: What are the appropriate projected net fuel and purchased power cost recovery and Generating Performance Incentive amounts to be included in the recovery factor for the period January 2021 through December 2021?

POSITION: Staff has no position at this time.

ISSUE 19: What is the appropriate revenue tax factor to be applied in calculating each investor-owned electric utility's levelized fuel factor for the projection period January 2021 through December 2021?

POSITION: Staff has no position at this time.

ISSUE 20: What are the appropriate levelized fuel cost recovery factors for the period January 2021 through December 2021?

POSITION: Staff has no position at this time.

ISSUE 21: What are the appropriate fuel recovery line loss multipliers to be used in calculating the fuel cost recovery factors charged to each rate class/delivery voltage level class?

POSITION: Staff has no position at this time.

ISSUE 22: What are the appropriate fuel cost recovery factors for each rate class/delivery voltage level class adjusted for line losses?

POSITION: Staff has no position at this time.

II. CAPACITY ISSUES

COMPANY-SPECIFIC CAPACITY COST RECOVERY FACTOR ISSUES

Duke Energy Florida, LLC.

ISSUE 23A: What is the appropriate net book value of retired Plant Crystal River South (Units 1 and 2) assets to be recovered over a one-year period as approved by Order No. PSC-2017-0451-AS-EU?

POSITION: Staff has no position at this time.

ISSUE 23B: What is the appropriate amount of costs for the Independent Spent Fuel Storage Installation (ISFSI) that DEF should be allowed to recover through the capacity cost recovery clause pursuant to DEF's 2017 Settlement?

POSITION: Staff has no position at this time.

ISSUE 23C: Should the Commission approve the Third Implementation Stipulation and, if approved, what is the amount of state corporate income tax savings that should be refunded to customers through the capacity clause in 2021?

POSITION: Staff has no position at this time.

ISSUE 23D: What adjustment amounts should the Commission approve to be refunded through the capacity clause in 2021 for the Columbia SoBRA I project approved in Docket No. 20180149-EI and the DeBary, Lake Placid, and Trenton SoBRA II projects approved in Docket No. 20190072-EI?

POSITION: Staff has no position at this time.

Florida Power & Light Company

ISSUE 24A: What is the appropriate true-up adjustment amount associated with the 2018 SOBRA projects approved by Order No. PSC-2018-0028-FOF-EI to be refunded through the capacity clause in 2021?

POSITION: Staff has no position at this time.

ISSUE 24B: What are the appropriate Indiantown non-fuel base revenue requirements to be recovered through the Capacity Clause pursuant to the Commission's approval of the Indiantown transaction in Docket No. 160154-EI (Order No. PSC-16-0506-FOF-EI) for 2021?

POSITION: Staff has no position at this time.

Gulf Power Company

No company-specific capacity cost recovery factor issues for Gulf Power Company have been identified at this time. If such issues are identified, they will be numbered 25A, 25B, 25C, and so forth as appropriate.

Tampa Electric Company

No company-specific capacity cost recovery factor issues for Tampa Electric Company have been identified at this time. If such issues are identified, they will be numbered 26A, 26B, 26C, and so forth as appropriate.

GENERIC CAPACITY COST RECOVERY FACTOR ISSUES

ISSUE 27: What are the appropriate final capacity cost recovery true-up amounts for the period January 2019 through December 2019?

POSITION: Staff has no position at this time.

ISSUE 28: What are the appropriate capacity cost recovery actual/estimated true-up amounts for the period January 2020 through December 2020?

POSITION: Staff has no position at this time.

ISSUE 29: What are the appropriate total capacity cost recovery true-up amounts to be collected/refunded during the period January 2021 through December 2021?

POSITION: Staff has no position at this time.

ISSUE 30: What are the appropriate projected total capacity cost recovery amounts for the period January 2021 through December 2021?

POSITION: Staff has no position at this time.

ISSUE 31: What are the appropriate projected net purchased power capacity cost recovery amounts to be included in the recovery factor for the period January 2021 through December 2021?

POSITION: Staff has no position at this time.

ISSUE 32: What are the appropriate jurisdictional separation factors for capacity revenues and costs to be included in the recovery factor for the period January 2021 through December 2021?

POSITION: Staff has no position at this time.

ISSUE 33: What are the appropriate capacity cost recovery factors for the period January 2021 through December 2021?

POSITION: Staff has no position at this time.

III. EFFECTIVE DATE

ISSUE 34: What should be the effective date of the fuel adjustment factors and capacity cost recovery factors for billing purposes?

POSITION: Staff has no position at this time.

ISSUE 35: Should the Commission approve revised tariffs reflecting the fuel adjustment factors and capacity cost recovery factors determined to be appropriate in this proceeding?

POSITION: Staff has no position at this time.

ISSUE 36: Should this docket be closed?

POSITION: Staff has no position at this time.

CONTESTED ISSUES

ISSUE A: What action should be taken in response to the Commission's September 1, 2020 vote to approve, without modification, Judge Stevenson's Recommended Order dated April 27, 2020, regarding the Bartow Unit 4 February 2017 outage?

POSITION: Staff has no position at this time.

5. Stipulated Issues

There are no stipulated issues at this time.

6. Pending Motions

There are no pending motions at this time.

7. Pending Confidentiality Claims or Requests

Commission staff has no pending confidentiality claims or requests at this time.

8. Objections to Witness Qualifications as an Expert

Commission staff has no objections to witness qualifications at this time.

9. Request for sequestration of witnesses

Commission staff has no request for the sequestration of any witness at this time.

10. Compliance with Order Nos. PSC-2020-0041-PCO-EI and PSC-2020-0123-PCO-PU

Staff has complied with all requirements of the Orders Establishing Procedure entered in this docket.

Respectfully submitted this 6th day of October, 2020.

/s/ Suzanne S. Brownless

SUZANNE S. BROWNLESS

STAFF COUNSEL

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
clause with generating performance incentive
factor.

DOCKET NO. 20200001-EI

DATED: October 6, 2020

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that STAFF'S PREHEARING STATEMENT has been filed with
the Office of Commission Clerk and that a true copy has been furnished to the following by
electronic mail this 6th day of October, 2020:

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**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

Fuel and purchased power cost recovery clause)	Docket No. 20200001-EI
with generating performance incentive factor.)	Filed: October 6, 2020
_____)	

**PREHEARING STATEMENT OF
WHITE SPRINGS AGRICULTURAL CHEMICALS, INC.
d/b/a PCS PHOSPHATE – WHITE SPRINGS**

Pursuant to the Florida Public Service Commission’s *Order Establishing Procedure*, Order No. PSC-2020-0041-PCO-EI, issued January 31, 2020, as modified by *First Order Modifying Orders Establishing Procedure*, Order No. PSC-2020-0123-PCO-PU, issued April 23, 2020, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (“PCS Phosphate”), through its undersigned attorneys, files its Prehearing Statement in the above matter.

A. APPEARANCES

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B. WITNESSES

PCS Phosphate does not plan to call any witnesses at this time.

C. EXHIBITS

PCS Phosphate does not plan to offer any exhibits at this time, but may introduce exhibits during the course of cross-examination.

D. STATEMENT OF BASIC POSITION

Only costs prudently incurred and legally authorized should be recovered through the fuel clause. Florida electric utilities, including in particular Duke Energy Florida, LLC (“DEF”), must satisfy the burden of proving the reasonableness of any expenditures for which recovery or other relief is sought in this proceeding.

At its agenda conference held on September 1, 2020, the Commission voted to adopt, without modifications, the findings and recommendations (“Recommended Order”) of the Department of Administrative Hearings (“DOAH”) which concluded that DEF should not be permitted to recover in consumer rates the replacement power costs associated with the 2017 DEF Bartow Unit 4 outage and subsequent de-rating. The disputed costs had previously been included in fuel clause charges pending that Commission determination. In its recommendation memorandum, Public Service Commission Staff stated that DEF “should be required to refund \$11.1 million in replacement power associated with its April 2017 Bartow Unit 4 outage and \$5,016,782 for the de-rating of the unit from May 2017 until December of 2019, for a total refund of \$16,116,782.”¹ Based on the Commission’s final vote on September 1, 2020, DEF should credit a refund of those costs in the determination of its fuel clause factor to be collected in 2021.

E. STATEMENT ON SPECIFIC ISSUES

COMPANY SPECIFIC ISSUES

Duke Energy Florida, LLC.

Contested Issue A listed below will be placed here if included in the docket by the prehearing officer.

Florida Power & Light

¹ Docket No. 20200001, Fuel and purchased power cost recovery clause with generating performance incentive factor, *Memorandum from Public Service Commission Staff* at 23 (Aug. 6, 2020).

ISSUE 2A: What is the appropriate revised SoBRA factor for the 2018 projects to reflect actual construction costs that are less than the projected costs used to develop the initial SoBRA factor?

PCS Phosphate: No position.

ISSUE 2B: What is the total gain under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL may recover for the period January 2019 through December 2019, and how should that gain to be shared between FPL and customers?

PCS Phosphate: No position.

ISSUE 2C: What is the appropriate amount of Incremental Optimization Costs under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL should be allowed to recover through the fuel clause for Personnel, Software, and Hardware costs for the period January 2019 through December 2019?

PCS Phosphate: No position.

ISSUE 2D: What is the appropriate amount of Variable Power Plant O&M Attributable to Off-System Sales under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL should be allowed to recover through the fuel clause for the period January 2019 through December 2019?

PCS Phosphate: No position.

ISSUE 2E: What is the appropriate amount of Variable Power Plant O&M Avoided due to Economy Purchases under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL should be allowed to recover through the fuel clause for the period January 2019 through December 2019?

PCS Phosphate: No position.

ISSUE 2F: Has FPL made reasonable and prudent adjustments, if any are needed, to account for replacement power costs associated with the April 2019 forced outage at St. Lucie Nuclear Power Plant, Unit No. 1?

PCS Phosphate: No position.

ISSUE 2G: Has FPL made reasonable and prudent adjustments, if any are needed, to account for replacement power costs associated with the March 2020 return-to-service delay at St. Lucie Nuclear Power Plant, Unit No. 2?

PCS Phosphate: No position.

ISSUE 2H: What is the appropriate subscription credit associated with FPL's Solar Together Program, approved by Order No. PSC-2020-0084-S-EI, to be included for recovery in 2021?

PCS Phosphate: No position.

Florida Public Utilities Company

ISSUE 3A: Should the Commission approve FPUC's revised Fuel and Purchased Power Cost Recovery factors filed in accordance with the Stipulation and Settlement approved in Docket No. 20190156-EI, which reflect the flow-through of interim rate over-recovery calculated based on 9 months actual and 1 month estimated revenues?

PCS Phosphate: No position.

Gulf Power Company

ISSUE 4A: Should the Commission approve as prudent Gulf's actions to mitigate the volatility of natural gas, residual oil, and purchased power prices, as reported in Gulf's April 2020 hedging report?

PCS Phosphate: No position.

Tampa Electric Company

ISSUE 5A: What was the total gain under TECO's Optimization Mechanism approved by Order No. PSC-2017-0456-S-EI that TECO may recover for the period January 2019 through December 2019, and how should that gain to be shared between TECO and customers?

PCS Phosphate: No position.

GENERIC FUEL ADJUSTMENT ISSUES

ISSUE 6: What are the appropriate actual benchmark levels for calendar year 2020 for gains on non-separated wholesale energy sales eligible for a shareholder incentive?

PCS Phosphate: Agree with OPC.

ISSUE 7: What are the appropriate estimated benchmark levels for calendar year 2021 for gains on non-separated wholesale energy sales eligible for a shareholder incentive?

PCS Phosphate: Agree with OPC.

ISSUE 8: What are the appropriate final fuel adjustment true-up amounts for the period January 2019 through December 2019?

PCS Phosphate: Agree with OPC.

ISSUE 9: What are the appropriate fuel adjustment actual/estimated true-up amounts for the period January 2020 through December 2020?

PCS Phosphate: Agree with OPC.

ISSUE 10: What are the appropriate total fuel adjustment true-up amounts to be collected/refunded from January 2021 through December 2021?

PCS Phosphate: Agree with OPC.

ISSUE 11: What are the appropriate projected total fuel and purchased power cost recovery amounts for the period January 2021 through December 2021?

PCS Phosphate: Pursuant to the Commission's vote on September 1, 2020, approving the Recommended Order submitted by the Administrative Law Judge, DEF's cost recovery amounts for January 2021 through December 2021 should be reduced by \$16.1 million, plus interest, to refund costs relating to the replacement power and de-rating costs due to the outage of Bartow Unit 4 in April 2017. These costs should be returned in the manner in which they were collected.

COMPANY-SPECIFIC GENERATING PERFORMANCE INCENTIVE FACTOR ISSUES

Duke Energy Florida, LLC.

No company-specific GPIF issues for Duke Energy Florida, LLC. have been identified at this time. If such issues are identified, they shall be numbered 12A, 12B, 12C, and so forth, as appropriate.

Florida Power & Light Company

No company-specific GPIF issues for Florida Power and Light Company have been identified at this time. If such issues are identified, they shall be numbered 13A, 13B, 13C, and so forth, as appropriate.

Gulf Power Company

No company-specific GPIF issues for Gulf Power Company have been identified at this time. If such issues are identified, they shall be numbered 14A, 14B, 14C, and so forth, as appropriate.

Tampa Electric Company

No company-specific GPIF issues for Tampa Electric Company have been identified at this time. If such issues are identified, they shall be numbered 15A, 15B, 15C, and so forth, as appropriate.

GENERIC GPIF ISSUES

ISSUE 16: What is the appropriate GPIF reward or penalty for performance achieved during the period January 2019 through December 2019 for each investor-owned electric utility subject to the GPIF?

PCS Phosphate: Agree with OPC.

ISSUE 17: What should the GPIF targets/ranges be for the period January 2021 through December 2021 for each investor-owned electric utility subject to the GPIF?

PCS Phosphate: Agree with OPC.

FUEL FACTOR CALCULATION ISSUES

ISSUE 18: What are the appropriate projected net fuel and purchased power cost recovery and Generating Performance Incentive amounts to be included in the recovery factor for the period January 2021 through December 2021?

PCS Phosphate: Agree with OPC.

ISSUE 19: What is the appropriate revenue tax factor to be applied in calculating each investor-owned electric utility's levelized fuel factor for the projection period January 2021 through December 2021?

PCS Phosphate: Agree with OPC.

ISSUE 20: What are the appropriate levelized fuel cost recovery factors for the period January 2021 through December 2021?

PCS Phosphate: Pursuant to the Commission's vote on September 1, 2020, approving the Recommended Order submitted by the Administrative Law Judge, DEF's cost recovery amounts for January 2021 through December 2021 should be reduced by \$16.1 million, plus interest, to refund costs relating to the replacement power and de-rating costs due to the outage of Bartow Unit 4 in April 2017. To the extent this reduction in allowed cost recovery reduces the fuel cost recovery factors for DEF, the levelized factors should be adjusted in a conforming manner.

ISSUE 21: What are the appropriate fuel recovery line loss multipliers to be used in calculating the fuel cost recovery factors charged to each rate class/delivery voltage level class?

PCS Phosphate: Agree with OPC.

ISSUE 22: What are the appropriate fuel cost recovery factors for each rate class/delivery voltage level class adjusted for line losses?

PCS Phosphate: Pursuant to the Commission's vote on September 1, 2020, approving the Recommended Order submitted by the Administrative Law Judge, DEF's cost recovery amounts for January 2021 through December 2021 should be reduced by \$16.1 million to refund costs relating to the replacement power and de-rating costs due to the outage of Bartow Unit 4 in April 2017. To the extent that this reduction in allowed cost recovery reduces the fuel cost recovery factors for DEF, those factors should be adjusted.

II. CAPACITY ISSUES

COMPANY-SPECIFIC CAPACITY COST RECOVERY FACTOR ISSUES

Duke Energy Florida, LLC.

ISSUE 23A: What is the appropriate net book value of retired Plant Crystal River South (Units 1 and 2) assets to be recovered over a one-year period as approved by Order No. PSC-2017-0451-AS-EU?

PCS Phosphate: Agree with OPC.

ISSUE 23B: What is the appropriate amount of costs for the Independent Spent Fuel Storage Installation (ISFSI) that DEF should be allowed to recover through the capacity cost recovery clause pursuant to DEF's 2017 Settlement?

PCS Phosphate: Agree with OPC.

ISSUE 23C: Should the Commission approve the Third Implementation Stipulation and, if approved, what is the amount of state corporate income tax savings that should be refunded to customers through the capacity clause in 2021?

PCS Phosphate: Yes, the Commission should approve the Third Implementation Stipulation filed in this docket on July 27, 2020. PCS Phosphate was a signatory to that agreement.

ISSUE 23D: What adjustment amounts should the Commission approve to be refunded through the capacity clause in 2021 for the Columbia SoBRA I project approved in Docket No. 20180149-EI and the DeBary, Lake Placid, and Trenton SoBRA II projects approved in Docket No. 20190072-EI?

PCS Phosphate: Agree with OPC.

Florida Power & Light Company

ISSUE 24A: What is the appropriate true-up adjustment amount associated with the 2018 SOBRA projects approved by Order No. PSC-2018-0028-FOF-EI to be refunded through the capacity clause in 2021?

PCS Phosphate: No position.

ISSUE 24B: What are the appropriate Indiantown non-fuel base revenue requirements to be recovered through the Capacity Clause pursuant to the Commission's approval of the Indiantown transaction in Docket No. 160154-EI (Order No. PSC-16-0506-FOF-EI) for 2021?

PCS Phosphate: No position.

Gulf Power Company

No company-specific capacity cost recovery factor issues for Gulf Power Company have been identified at this time. If such issues are identified, they will be numbered 25A, 25B, 25C, and so forth as appropriate.

Tampa Electric Company

No company-specific capacity cost recovery factor issues for Tampa Electric Company have been identified at this time. If such issues are identified, they will be numbered 26A, 26B, 26C, and so forth as appropriate.

GENERIC CAPACITY COST RECOVERY FACTOR ISSUES

ISSUE 27: What are the appropriate final capacity cost recovery true-up amounts for the period January 2019 through December 2019?

PCS Phosphate: Agree with OPC.

ISSUE 28: What are the appropriate capacity cost recovery actual/estimated true-up amounts for the period January 2020 through December 2020?

PCS Phosphate: Agree with OPC.

ISSUE 29: What are the appropriate total capacity cost recovery true-up amounts to be collected/refunded during the period January 2021 through December 2021?

PCS Phosphate: Agree with OPC.

ISSUE 30: What are the appropriate projected total capacity cost recovery amounts for the period January 2021 through December 2021?

PCS Phosphate: Agree with OPC.

ISSUE 31: What are the appropriate projected net purchased power capacity cost recovery amounts to be included in the recovery factor for the period January 2021 through December 2021?

PCS Phosphate: Agree with OPC.

ISSUE 32: What are the appropriate jurisdictional separation factors for capacity revenues and costs to be included in the recovery factor for the period January 2021 through December 2021?

PCS Phosphate: Agree with OPC.

ISSUE 33: What are the appropriate capacity cost recovery factors for the period January 2021 through December 2021?

PCS Phosphate: Agree with OPC.

III. EFFECTIVE DATE

ISSUE 34: What should be the effective date of the fuel adjustment factors and capacity cost recovery factors for billing purposes?

PCS Phosphate: No position.

ISSUE 35: Should the Commission approve revised tariffs reflecting the fuel adjustment factors and capacity cost recovery factors determined to be appropriate in this proceeding?

PCS Phosphate: No position.

ISSUE 36: Should this docket be closed?

PCS Phosphate: No position.

CONTESTED ISSUES

ISSUE A: What action should be taken in response to the Commission's September 1, 2020 vote to approve, without modification, Judge Stevenson's Recommended Order dated April 27, 2020, regarding the Bartow Unit 4 February 2017 outage?

PCS Phosphate: The Commission should issue its order consistent with the September 1, 2020 final vote on this issue, but no further independent action is required. Based on the final vote, the Commission should direct DEF to reduce its proposed cost recovery amounts for January 2021 through December 2021 by \$16.1 million, plus interest, to refund costs relating to the replacement power and de-rating costs due to the outage of Bartow Unit 4 in April 2017. To the extent that this reduction in allowed cost recovery reduces the fuel cost recovery factors for DEF, corresponding adjustments should be made to those proposed.

F. PENDING MOTIONS

None.

G. PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY

None.

H. OBJECTIONS TO QUALIFICATIONS OF WITNESS AS EXPERT

None at this time.

I. REQUIREMENTS OF ORDER ESTABLISHING PROCEDURE

There are no requirements of the Procedural Orders with which PCS Phosphate cannot comply.

Respectfully submitted,

STONE MATTHEIS XENOPOULOS & BREW, PC

/s/ James W. Brew

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Attorneys for White Springs Agricultural Chemicals, Inc.

d/b/a PCS Phosphate – White Springs

Dated: October 6, 2020

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Prehearing Statement of PCS Phosphate has been furnished by electronic mail this 6th of October 2020, to the following:

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/s/ Laura Wynn Baker



GUNSTER
FLORIDA'S LAW FIRM FOR BUSINESS

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FPSC - COMMISSION CLERK

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October 6, 2020

BY E-PORTAL

Mr. Adam Teitzman, Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

**Re: Docket No. 20200001-EI: Fuel and Purchased Power Cost Recovery Clause with
Generating Performance Incentive Factor**

Dear Mr. Teitzman:

Attached for filing in the above-referenced docket, please find the Prehearing Statement of Florida Public Utilities Company.

Thank you for your assistance with this filing. As always, please don't hesitate to let me know if you have any questions whatsoever.

Sincerely,

Beth Keating
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 601
Tallahassee, FL 32301
(850) 521-1706

MEK

cc:/(Certificate of Service)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
clause with generating performance incentive
factor.

DOCKET NO. 20200001-EI

DATED: October 6, 2020

**FLORIDA PUBLIC UTILITIES COMPANY'S
PREHEARING STATEMENT**

In accordance with the Order Establishing Procedure for this Docket, Order No. PSC-2020-0041-PCO-EI, issued January 31, 2020, Florida Public Utilities Company ("FPUC," or "Company") hereby files its Prehearing Statement.

A. APPEARANCES

Beth Keating
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 601
Tallahassee, FL 32301
(850) 521-1706
On behalf of Florida Public Utilities Company

B. WITNESSES AND EXHIBITS

i. All Known Witnesses

<u>Witness</u>	<u>Subject</u>	<u>Issue</u>
Curtis D. Young	Final True Up 2019	8
Curtis D. Young	Estimated/Actual 2020	3A, 9
Curtis D. Young	Projection for 2021	10, 11, 18, 19, 20, 21, 22, 34, 35, 36
P. Mark Cutshaw	Special Projects	10, 11

ii. All Known Exhibits

<u>Witness</u>	<u>Exhibit</u>	<u>Title</u>	<u>Issue</u>
Young	CDY-1	Final True Up Schedules (Schedules A, C1 and E1-B for FPUC's Divisions)	8
Young	CDY-2	Estimated/Actual (Schedules E1-A, E1-B, and E1-B1)	3A, 9
Young	CDY-3	Revised Monthly True-Up for January through June 2020	3A
Young	CDY-4	Schedules E1, E1A, E2, E7, E8, E10 and Schedule A	10, 11, 18, 19, 20, 21, 22, 34, 35, 36

C. STATEMENT OF BASIC POSITION

FPUC's Statement of Basic Position

FPUC: The Commission should approve Florida Public Utilities Company's final net true-up for the period January through December 2019, the estimated true-up for the period January through December, 2020, and the purchase power cost recovery factors for the period January through December, 2021.

D. FPUC's POSITION ON THE ISSUES

I. FUEL ISSUES

COMPANY-SPECIFIC FUEL ADJUSTMENT ISSUES

Duke Energy Florida, LLC.

No company-specific fuel clause issues for Duke Energy Florida, LLC have been identified at this time. If such issues are identified, they shall be numbered 1A, 1B, 1C, and so forth, as appropriate.

Florida Power & Light Company

ISSUE 2A: What is the appropriate revised SoBRA factor for the 2018 projects to reflect actual construction costs that are less than the projected costs used to develop the initial SoBRA factor?

FPUC's Position: No position.

ISSUE 2B: What was the total gain under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL may recover for the period January 2019 through December 2019, and how should that gain be shared between FPL and customers?

FPUC's Position: No position.

ISSUE 2C: What is the appropriate amount of Incremental Optimization Costs under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL should be allowed to recover through the fuel clause for Personnel, Software, and Hardware costs for the period January 2019 through December 2019?

FPUC's Position: No position.

ISSUE 2D: What is the appropriate amount of Variable Power Plant O&M Attributable to Off-System Sales under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL should be allowed to recover through the fuel clause for the period January 2019 through December 2019?

FPUC's Position: No position.

ISSUE 2E: What is the appropriate amount of Variable Power Plant O&M Avoided due to Economy Purchases under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL should be allowed to recover through the fuel clause for the period January 2019 through December 2019?

FPUC's Position: No position.

ISSUE 2F: Has FPL made reasonable and prudent adjustments, if any are needed, to account for replacement power costs associated with the April 2019 forced outage at St. Lucie Nuclear Power Plant, Unit No. 1?

FPUC's Position: No position.

ISSUE 2G: Has FPL made reasonable and prudent adjustments, if any are needed, to account for replacement power costs associated with the March 2020 return-to-service delay at St. Lucie Nuclear Power Plant, Unit No. 2?

FPUC's Position: No position.

ISSUE 2H: What is the appropriate subscription credit associated with FPL's Solar Together Program, approved by Order No. PSC-2020-0084-S-EI, to be included for recovery in 2021?

FPUC's Position: No position.

Florida Public Utilities Company

ISSUE 3A: Should the Commission approve FPUC's revised Fuel and Purchased Power Cost Recovery Factors filed in accordance with the Stipulation and Settlement approved in Docket No. 20190156-EI, which reflect the flow-through of interim rate over-recovery calculated based on 9 months actual and 1 month estimated revenues?

FPUC's Position: Yes. Consistent with the Commission's decision in consolidated Docket No. 20190156-EI, the Commission should approve FPUC's revised Fuel and Purchased Power Cost Recovery Factors, which are to be filed prior to hearing based upon 9 months actual and 1 month estimated revenues.

Gulf Power Company

ISSUE 4A: Should the Commission approve as prudent Gulf's actions to mitigate the volatility of natural gas, residual oil, and purchased power prices, as reported in Gulf's April 2020 hedging report?

FPUC's Position: No position.

Tampa Electric Company

ISSUE 5A: What was the total gain under TECO's Optimization Mechanism approved by Order No. PSC-2017-0456-S-EI that TECO may recover for the period January 2019 through December 2019, and how should that gain to be shared between TECO and customers?

FPUC's Position: No position.

GENERIC FUEL ADJUSTMENT ISSUES

ISSUE 6: What are the appropriate actual benchmark levels for calendar year 2020 for gains on non-separated wholesale energy sales eligible for a shareholder incentive?

FPUC's Position: No position.

ISSUE 7: What are the appropriate estimated benchmark levels for calendar year 2021 for gains on non-separated wholesale energy sales eligible for a shareholder incentive?

FPUC's Position: No position.

ISSUE 8: What are the appropriate final fuel adjustment true-up amounts for the period January 2019 through December 2019?

FPUC's Position: \$2,017,896 (Under-recovery) (*Young*)

ISSUE 9: What are the appropriate fuel adjustment actual/estimated true-up amounts for the period January 2020 through December 2020?

FPUC's Position: \$1,252,729 (Over-recovery) (*Young*)

ISSUE 10: What are the appropriate total fuel adjustment true-up amounts to be collected/refunded from January 2021 through December 2021?

FPUC's Position: \$765,167 (Under-recovery) (*Young, Cutshaw*)

ISSUE 11: What are the appropriate projected total fuel and purchased power cost recovery amounts for the period January 2021 through December 2021?

FPUC's Position: The appropriate projected total fuel and purchased power cost recovery amount for the period January 2021 through December 2021 is \$44,407,969. (*Young, Cutshaw*)

COMPANY-SPECIFIC GENERATING PERFORMANCE INCENTIVE FACTOR (GPIF) ISSUES

Duke Energy Florida, LLC.

No company-specific GPIF issues for Duke Energy Florida, LLC have been identified at this time. If such issues are identified, they shall be numbered 12A, 12B, 12C, and so forth, as appropriate.

Florida Power & Light Company

No company-specific GPIF issues for Florida Power and Light Company have been identified at this time. If such issues are identified, they shall be numbered 13A, 13B, 13C, and so forth, as appropriate.

Gulf Power Company

No company-specific GPIF issues for Gulf Power Company have been identified at this time. If such issues are identified, they shall be numbered 14A, 14B, 14C, and so forth, as appropriate.

Tampa Electric Company

No company-specific GPIF issues for Tampa Electric Company have been identified at this time. If such issues are identified, they shall be numbered 15A, 15B, 15C, and so forth, as appropriate.

GENERIC GPIF ISSUES

ISSUE 16: What is the appropriate generation performance incentive factor (GPIF) reward or penalty for performance achieved during the period January 2019 through December 2019 for each investor-owned electric utility subject to the GPIF?

FPUC's Position: No position.

ISSUE 17: What should the GPIF targets/ranges be for the period January 2021 through December 2021 for each investor-owned electric utility subject to the GPIF?

FPUC's Position: No position.

FUEL FACTOR CALCULATION ISSUES

ISSUE 18: What are the appropriate projected net fuel and purchased power cost recovery and Generating Performance Incentive amounts to be included in the recovery factor for the period January 2021 through December 2021?

FPUC's Position: The appropriate projected net fuel and purchased power cost recovery and Generating Performance Incentive amounts to be included in the recovery factor for the period January 2021 through December 2021 is \$45,173,136, which includes prior period true-ups. *(Young)*

ISSUE 19: What is the appropriate revenue tax factor to be applied in calculating each investor-owned electric utility's levelized fuel factor for the projection period January 2021 through December 2021?

FPUC's Position: The appropriate tax revenue factor is 1.00072. *(Young)*

ISSUE 20: What are the appropriate levelized fuel cost recovery factors for the period January 2021 through December 2021?

FPUC's Position: The appropriate factor is 4.714¢ per kWh. *(Young)*

ISSUE 21: What are the appropriate fuel recovery line loss multipliers to be used in calculating the fuel cost recovery factors charged to each rate class/delivery voltage level class?

FPUC's Position: The appropriate line loss multiplier is 1.0000. *(Young)*

ISSUE 22: What are the appropriate fuel cost recovery factors for each rate class/delivery voltage level class adjusted for line losses?

¹**FPUC's Position:** The appropriate levelized fuel adjustment and purchased power cost recovery factors for the period January 2021 through December 2021 for the Consolidated Electric Division, adjusted for line loss multipliers and including taxes, are as follows:

<i>Rate Schedule</i>	<i>Adjustment</i>
RS	\$0.07443
GS	\$0.07208
GSD	\$0.06893
GSLD	\$0.06669
LS	\$0.05426

¹ Factors to be revised consistent with Commission-approved Stipulation and Settlement in consolidated Docket No. 20190156-EI based on 9 months actual and 1 month estimated revenue data. Revisions will be filed prior to the prehearing conference in this Docket.

<u>Step rate for RS</u>	
RS Sales	\$0.07443
RS with less than 1,000 kWh/month	\$0.07135
RS with more than 1,000 kWh/month	\$0.08385

Consistent with the fuel projections for the 2021 period, the appropriate adjusted Time of Use (TOU) and Interruptible rates for the Northwest Division for 2021 period are:

Time of Use/Interruptible

<i>Rate Schedule</i>	<i>Adjustment On Peak</i>	<i>Adjustment Off Peak</i>
RS	\$0.15535	\$0.03235
GS	\$0.11208	\$0.02208
GSD	\$0.10893	\$0.03643
GSLD	\$0.12669	\$0.03669
Interruptible	\$0.05169	\$0.06669

(Young)

II. CAPACITY ISSUES

COMPANY-SPECIFIC CAPACITY COST RECOVERY FACTOR ISSUES

Duke Energy Florida, LLC.

ISSUE 23A: What is the appropriate net book value of retired Plant Crystal River South (Units 1 and 2) assets to be recovered over a one-year period as approved by Order No. PSC-2017-0451-AS-EU?

FPUC's Position: No position.

ISSUE 23B: What is the appropriate amount of costs for the Independent Spent Fuel Storage Installation ("ISFSI") that DEF should be allowed to recover through the capacity cost recovery clause pursuant to DEFs 2017 Settlement?

FPUC's Position: No position.

ISSUE 23C: Should the Commission approve the Third Implementation Stipulation and, if approved, what is the amount state income tax savings that should be refunded to customers through the capacity clause in 2021?

FPUC's Position: No position.

ISSUE 23D: What adjustment amounts should the Commission approve to be refunded through the capacity clause in 2021 for the Columbia SoBRA I project approved in Docket No. 20180149-EI and the DeBary, Lake Placid, and Trenton SoBRA II projects approved in Docket No. 20190072-EI?

FPUC's Position: No position.

Florida Power & Light Company

ISSUE 24A: What is the appropriate true-up adjustment amount associated with the 2018 SOBRA projects approved by Order No. PSC-2018-0028-FOF-EI to be refunded through the capacity clause in 2021?

FPUC's Position: No position.

ISSUE 24B: What are the appropriate Indiantown non-fuel base revenue requirements to be recovered through the Capacity Clause pursuant to the Commission's approval of the Indiantown transaction in Docket No. 160154-EI (Order No. PSC-16-0506-FOF-EI) for 2021?

FPUC's Position: No position.

Gulf Power Company

No company-specific capacity cost recovery factor issues for Gulf Power Company have been identified at this time. If such issues are identified, they shall be numbered 25A, 25B, 25C, and so forth, as appropriate.

Tampa Electric Company

No company-specific capacity cost recovery factor issues for Tampa Electric Company have been identified at this time. If such issues are identified, they shall be numbered 26A, 26B, 26C, and so forth, as appropriate.

GENERIC CAPACITY COST RECOVERY FACTOR ISSUES

ISSUE 27: What are the appropriate final capacity cost recovery true-up amounts for the period January 2019 through December 2019?

FPUC's Position: No position.

ISSUE 28: What are the appropriate capacity cost recovery actual/estimated true-up amounts for the period January 2020 through December 2020?

FPUC's Position: No position.

ISSUE 29: What are the appropriate total capacity cost recovery true-up amounts to be collected/refunded during the period January 2021 through December 2021?

FPUC's Position: No position.

ISSUE 30: What are the appropriate projected total capacity cost recovery amounts for the period January 2021 through December 2021?

FPUC's Position: No position.

ISSUE 31: What are the appropriate projected net purchased power capacity cost recovery amounts to be included in the recovery factor for the period January 2021 through December 2021?

FPUC's Position: No position.

ISSUE 32: What are the appropriate jurisdictional separation factors for capacity revenues and costs to be included in the recovery factor for the period January 2021 through December 2021?

FPUC's Position: No position.

ISSUE 33: What are the appropriate capacity cost recovery factors for the period January 2021 through December 2021?

FPUC's Position: No position.

III. EFFECTIVE DATE

ISSUE 34: What should be the effective date of the fuel adjustment factors and capacity cost recovery factors for billing purposes?

FPUC's Position: The effective date for FPUC's cost recovery factors should be the first billing cycle for January 1, 2021, which could include some consumption from the prior month. Thereafter, customers should be billed the approved factors for a full 12 months, unless the factors are otherwise modified by the Commission. (Young)

ISSUE 35: Should the Commission approve revised tariffs reflecting the fuel adjustment factors and capacity cost recovery factors determined to be appropriate in this proceeding?

FPUC's Position: Yes. The Commission should approve revised tariffs reflecting the fuel adjustment factors and capacity cost recovery factors determined to be appropriate in this proceeding. The Commission should direct staff to verify that the revised tariffs are consistent with the Commission's decision. (Young)

IV. MISCELLANEOUS ISSUES

ISSUE 36: Should this docket be closed?

FPUC's Position: Yes.

V. CONTESTED ISSUES

ISSUE A: What action should be taken in response to the Commission's September 1, 2020 vote to approve, without modification, Judge Stevenson's Recommended Order dated April 27, 2020, regarding the Bartow Unit 4 February 2017 outage?

FPUC's Position: No position.

e. Stipulated Issues

While not a party to stipulations at this time, the FPUC believes that it should be possible to reach a stipulation on each of the issues as they pertain to FPUC.

f. Pending Motions

FPUC has no pending motions at this time.

g. Pending Confidentiality Claims or Requests

FPUC has no pending requests for confidential classification.

h. Objections to Witness Qualifications as an Expert

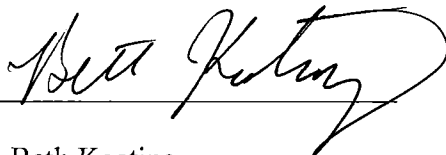
FPUC has no objections to any witnesses' qualifications at this time.

i. Compliance with Order No. PSC-2020-0041-PCO-EI

FPUC has complied with all requirements of the Order Establishing Procedure entered in this docket, as well as the subsequent orders issued modifying that Order.

RESPECTFULLY SUBMITTED this 6th day of October, 2020.

BY: _____



Beth Keating
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 601
Tallahassee, FL 32301
(850) 521-1706

Attorneys for Florida Public Utilities Company


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Electronic Mail to the following parties of record this 6th day of October, 2020:

Suzanne Brownless Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850 sbrownle@psc.state.fl.us	James D. Beasley/J. Jeffry Wahlen/Malcolm Means Ausley Law Firm Post Office Box 391 Tallahassee, FL 32302 jbeasley@ausley.com jwahlen@ausley.com mmeans@ausley.com
Steven Griffin Beggs & Lane P.O. Box 12950 Pensacola, FL 32591-2950 srg@beggslane.com	James W. Brew/Laura Baker Stone Matheis Xenopoulos & Brew, PC Eighth Floor, West Tower 1025 Thomas Jefferson Street, NW Washington, DC 20007 jbrew@smxblaw.com lwb@smxblaw.com
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Ms. Paula K. Brown Tampa Electric Company Regulatory Affairs P.O. Box 111 Tampa, FL 33601-0111 Regdept@tecoenergy.com	Florida Industrial Users Power Group Jon C. Moyle, Jr. Moyle Law Firm 118 North Gadsden Street Tallahassee, FL 32301 jmoyle@moylelaw.com
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<p>Russell A. Badders Shane Boyett Gulf Power Company One Energy Place Pensacola, FL 32520-0780 Russell.Badders@nexteraenergy.com Charles.Boyett@nexteraenergy.com</p>	<p>J.R. Kelly/P. Christensen/S. Morse/T. David Office of Public Counsel c/o The Florida Legislature 111 W. Madison Street, Room 812 Tallahassee, FL 32399-1400 Kelly.JR@leg.state.fl.us Christensen.patty@leg.state.fl.us Morse.stephanie@leg.state.fl.us David.Tad@leg.state.fl.us</p>
<p>Matthew Bernier Duke Energy 106 East College Avenue, Suite 800 Tallahassee, FL 32301 Matthew.Bernier@duke-energy.com</p>	<p>Dianne M. Triplett Duke Energy 299 First Avenue North St. Petersburg, FL 33701 Dianne.Triplett@duke-energy.com</p>

By:


Beth Keating
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(850) 521-1706

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power
cost recovery clause and generating
performance incentive factor.

Docket No. 20200001-EI
Filed: October 6, 2020

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
PREHEARING STATEMENT**

The Florida Industrial Power Users Group (FIPUG), pursuant to Order No. PSC-2020-0041-PCO-EI, files its Prehearing Statement.

A. APPEARANCES:

Jon C. Moyle, Jr.
Karen Putnal
Moyle Law Firm, P.A.
118 North Gadsden Street
Tallahassee, FL 32312

Attorneys for the Florida Industrial Power Users Group

B. WITNESSES AND EXHIBITS:

FIPUG reserves the right to call witnesses listed by other parties in this docket.

C. STATEMENT OF BASIC POSITION:

Only reasonable and prudent costs legally authorized and reviewed for prudence should be recovered through the fuel clause. FIPUG maintains that the respective utilities must satisfy their burden of proof for any and all monies or other relief sought in this proceeding.

D. STATEMENT OF ISSUES AND POSITIONS:

I. FUEL ISSUES

Duke Energy Florida, LLC.

Florida Power & Light Company

ISSUE 2A: What is the appropriate revised SoBRA factor for the 2018 projects to reflect actual construction costs that are less than the projected costs used to develop the initial SoBRA factor?

FIPUG: Adopt position of OPC.

ISSUE 2B: What is the total gain under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL may recover for the period January 2019 through December 2019, and how should that gain to be shared between FPL and customers?

FIPUG: Adopt position of OPC.

ISSUE 2C: What is the appropriate amount of Incremental Optimization Costs under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL should be allowed to recover through the fuel clause for Personnel, Software, and Hardware costs for the period January 2019 through December 2019?

FIPUG: Adopt position of OPC.

ISSUE 2D: What is the appropriate amount of Variable Power Plant O&M Attributable to Off-System Sales under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL should be allowed to recover through the fuel clause for the period January 2019 through December 2019?

FIPUG: Adopt position of OPC.

ISSUE 2E: What is the appropriate amount of Variable Power Plant O&M Avoided due to Economy Purchases under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL should be allowed to recover through the fuel clause for the period January 2019 through December 2019?

FIPUG: Adopt position of OPC.

ISSUE 2F: Has FPL made reasonable and prudent adjustments, if any are needed, to account for replacement power costs associated with the April 2019 forced outage at St. Lucie Nuclear Power Plant, Unit No. 1?

FIPUG: Adopt position of OPC.

ISSUE 2G: Has FPL made reasonable and prudent adjustments, if any are needed, to account for replacement power costs associated with the March 2020 return-to-service delay at St. Lucie Nuclear Power Plant, Unit No. 2?

FIPUG: Adopt position of OPC.

ISSUE 2H: What is the appropriate subscription credit associated with FPL's Solar Together Program, approved by Order No. PSC-2020-0084-S-EI, to be included for recovery in 2021?

FIPUG: Adopt position of OPC.

Florida Public Utilities Company

ISSUE 3A: Should the Commission approve FPUC's revised Fuel and Purchased Power Cost Recovery factors filed in accordance with the Stipulation and Settlement approved in Docket No. 20190156-EI, which reflect the flow-through of interim rate over-recovery calculated based on 9 months actual and 1 month estimated revenues?

FIPUG: Adopt position of OPC.

Gulf Power Company

ISSUE 4A: Should the Commission approve as prudent Gulf's actions to mitigate the volatility of natural gas, residual oil, and purchased power prices, as reported in Gulf's April 2020 hedging report?

FIPUG: No position at this time.

Tampa Electric Company

ISSUE 5A: What was the total gain under TECO's Optimization Mechanism approved by Order No. PSC-2017-0456-S-EI that TECO may recover for the period January 2019 through December 2019, and how should that gain to be shared between TECO and customers?

FIPUG: Adopt position of OPC.

GENERIC FUEL ADJUSTMENT ISSUES

ISSUE 6: What are the appropriate actual benchmark levels for calendar year 2020 for gains on non-separated wholesale energy sales eligible for a shareholder incentive?

FIPUG: Adopt position of OPC.

ISSUE 7: What are the appropriate estimated benchmark levels for calendar year 2021 for gains on non-separated wholesale energy sales eligible for a shareholder incentive?

FIPUG: Adopt position of OPC.

ISSUE 8: What are the appropriate final fuel adjustment true-up amounts for the period January 2019 through December 2019?

FIPUG: Adopt position of OPC.

ISSUE 9: What are the appropriate fuel adjustment actual/estimated true-up amounts for the period January 2020 through December 2020?

FIPUG: Adopt position of OPC.

ISSUE 10: What are the appropriate total fuel adjustment true-up amounts to be collected/refunded from January 2021 through December 2021?

FIPUG: Adopt position of OPC.

ISSUE 11: What are the appropriate projected total fuel and purchased power cost recovery amounts for the period January 2021 through December 2021?

FIPUG: Adopt position of OPC.

COMPANY-SPECIFIC GENERATING PERFORMANCE INCENTIVE FACTOR ISSUES

Duke Energy Florida, LLC.

No company-specific GPIF issues for Duke Energy Florida, LLC. have been identified at this time. If such issues are identified, they shall be numbered 12A, 12B, 12C, and so forth, as appropriate.

Florida Power & Light Company

No company-specific GPIF issues for Florida Power and Light Company have been identified at this time. If such issues are identified, they shall be numbered 13A, 13B, 13C, and so forth, as appropriate.

Gulf Power Company

No company-specific GPIF issues for Gulf Power Company have been identified at this time. If such issues are identified, they shall be numbered 14A, 14B, 14C, and so forth, as appropriate.

Tampa Electric Company

No company-specific GPIF issues for Tampa Electric Company have been identified at this time. If such issues are identified, they shall be numbered 15A, 15B, 15C, and so forth, as appropriate.

GENERIC GPIF ISSUES

ISSUE 16: What is the appropriate GPIF reward or penalty for performance achieved during the period January 2019 through December 2019 for each investor-owned electric utility subject to the GPIF?

FIPUG: Adopt position of OPC.

ISSUE 17: What should the GPIF targets/ranges be for the period January 2021 through December 2021 for each investor-owned electric utility subject to the GPIF?

FIPUG: Adopt position of OPC.

FUEL FACTOR CALCULATION ISSUES

ISSUE 18: What are the appropriate projected net fuel and purchased power cost recovery and Generating Performance Incentive amounts to be included in the recovery factor for the period January 2021 through December 2021?

FIPUG: Adopt position of OPC.

ISSUE 19: What is the appropriate revenue tax factor to be applied in calculating each investor-owned electric utility's levelized fuel factor for the projection period January 2021 through December 2021?

FIPUG: Adopt position of OPC.

ISSUE 20: What are the appropriate levelized fuel cost recovery factors for the period January 2021 through December 2021?

FIPUG: Adopt position of OPC.

ISSUE 21: What are the appropriate fuel recovery line loss multipliers to be used in calculating the fuel cost recovery factors charged to each rate class/delivery voltage level class?

FIPUG: Adopt position of OPC.

ISSUE 22: What are the appropriate fuel cost recovery factors for each rate class/delivery voltage level class adjusted for line losses?

FIPUG: Adopt position of OPC.

II. CAPACITY ISSUES

COMPANY-SPECIFIC CAPACITY COST RECOVERY FACTOR ISSUES

Duke Energy Florida, LLC.

ISSUE 23A: What is the appropriate net book value of retired Plant Crystal River South (Units 1 and 2) assets to be recovered over a one-year period as approved by Order No. PSC-2017-0451-AS-EU?

FIPUG: Adopt position of OPC.

ISSUE 23B: What is the appropriate amount of costs for the Independent Spent Fuel Storage Installation (ISFSI) that DEF should be allowed to recover through the capacity cost recovery clause pursuant to DEF's 2017 Settlement?

FIPUG: Adopt position of OPC.

ISSUE 23C: Should the Commission approve the Third Implementation Stipulation and, if approved, what is the amount of state corporate income tax savings that should be refunded to customers through the capacity clause in 2021?

FIPUG: Adopt position of OPC.

ISSUE 23D: What adjustment amounts should the Commission approve to be refunded through the capacity clause in 2021 for the Columbia SoBRA I project approved in Docket No. 20180149-EI and the DeBary, Lake Placid, and Trenton SoBRA II projects approved in Docket No. 20190072-EI?

FIPUG: Adopt position of OPC.

Florida Power & Light Company

ISSUE 24A: What is the appropriate true-up adjustment amount associated with the 2018 SOBRA projects approved by Order No. PSC-2018-0028-FOF-EI to be refunded through the capacity clause in 2021?

FIPUG: Adopt position of OPC.

ISSUE 24B: What are the appropriate Indiantown non-fuel base revenue requirements to be recovered through the Capacity Clause pursuant to the Commission's approval of the Indiantown transaction in Docket No. 160154-EI (Order No. PSC-16-0506-FOF-EI) for 2021?

FIPUG: Adopt position of OPC.

Gulf Power Company

No company-specific capacity cost recovery factor issues for Gulf Power Company have been identified at this time. If such issues are identified, they will be numbered 25A, 25B, 25C, and so forth as appropriate.

Tampa Electric Company

No company-specific capacity cost recovery factor issues for Tampa Electric Company have been identified at this time. If such issues are identified, they will be numbered 26A, 26B, 26C, and so forth as appropriate.

GENERIC CAPACITY COST RECOVERY FACTOR ISSUES

ISSUE 27: What are the appropriate final capacity cost recovery true-up amounts for the period January 2019 through December 2019?

FIPUG: Adopt position of OPC.

ISSUE 28: What are the appropriate capacity cost recovery actual/estimated true-up amounts for the period January 2020 through December 2020?

FIPUG: Adopt position of OPC.

ISSUE 29: What are the appropriate total capacity cost recovery true-up amounts to be collected/refunded during the period January 2021 through December 2021?

FIPUG: Adopt position of OPC.

ISSUE 30: What are the appropriate projected total capacity cost recovery amounts for the period January 2021 through December 2021?

FIPUG: Adopt position of OPC.

ISSUE 31: What are the appropriate projected net purchased power capacity cost recovery amounts to be included in the recovery factor for the period January 2021 through December 2021?

FIPUG: Adopt position of OPC.

ISSUE 32: What are the appropriate jurisdictional separation factors for capacity revenues and costs to be included in the recovery factor for the period January 2021 through December 2021?

FIPUG: Adopt position of OPC.

ISSUE 33: What are the appropriate capacity cost recovery factors for the period January 2021 through December 2021?

FIPUG: Adopt position of OPC.

III. EFFECTIVE DATE

ISSUE 34: What should be the effective date of the fuel adjustment factors and capacity cost recovery factors for billing purposes?

FIPUG: Adopt position of OPC.

ISSUE 35: Should the Commission approve revised tariffs reflecting the fuel adjustment factors and capacity cost recovery factors determined to be appropriate in this proceeding?

FIPUG: Adopt position of OPC.

ISSUE 36: Should this docket be closed?

FIPUG: Adopt position of OPC.

CONTESTED ISSUES

ISSUE A: What action should be taken in response to the Commission's September 1, 2020 vote to approve, without modification, Judge Stevenson's Recommended Order dated April 27, 2020, regarding the Bartow Unit 4 February 2017 outage?

FIPUG: Adopt position of OPC.

E. STIPULATED ISSUES:

None at this time.

F. PENDING MOTIONS:

None at this time.

G. STATEMENT OF PARTY'S PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY:

None.

H. OBJECTIONS TO QUALIFICATION OF WITNESSES AS AN EXPERT:

None.

**I. STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING
PROCEDURE:**

There are no requirements of the Order Establishing Procedure with which the Florida Industrial Power Users Group cannot comply at this time.

/s/ Jon. C. Moyle

Jon C. Moyle, Jr.

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jmoyle@moylelaw.com

Attorneys for Florida Industrial Power Users Group

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing response was furnished to the following by Electronic Mail, on this 6th day of October, 2020:

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/s/ Jon C. Moyle

Jon C. Moyle
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ATTORNEYS AND COUNSELORS AT LAW

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TALLAHASSEE, FLORIDA 32301
(850) 224-9115 FAX (850) 222-7560

October 6, 2020

VIA: ELECTRONIC FILING

Mr. Adam J. Teitzman
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

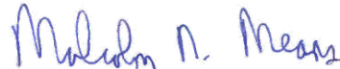
Re: Fuel and Purchased Power Cost Recovery Clause with Generating
Performance Incentive Factor; FPSC Docket No. 20200001-EI

Dear Mr. Teitzman:

Attached for filing in the above docket is Tampa Electric Company's Prehearing Statement.

Thank you for your assistance in connection with this matter.

Sincerely,



Malcolm N. Means

MNM/bmp
Attachment

cc: All Parties of Record (w/attachment)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased)
Power Cost Recovery Clause)
And Generating Performance)
Incentive Factor.)
_____)

DOCKET NO. 20200001-EI

FILED: October 6, 2020

**TAMPA ELECTRIC COMPANY'S
PREHEARING STATEMENT**

A. APPEARANCES:

JAMES D. BEASLEY
J. JEFFRY WAHLEN
MALCOLM N. MEANS
Ausley McMullen
Post Office Box 391
Tallahassee, Florida 32302

On behalf of Tampa Electric Company

B. WITNESSES:

<u>Witness</u>	<u>Subject Matter</u>	<u>Issues</u>
<u>(Direct)</u>		
1. M. Ashley Sizemore (TECO)	Generic Fuel Adjustment Issues Adjustment Factors	6, 7, 8, 9, 10, 11
	Fuel Factor Calculation Issues	18, 19, 20, 21, 22
	Generic Capacity Cost Recovery Factor Issues	27, 28, 29, 30, 31, 32 33
	Effective Date	34, 35
2. Jeremy B. Cain (TECO)	Generic Generating Performance Incentive Factor Issues	16, 17
	Fuel Factor Calculation Issues	18

4.	Benjamin F. Smith (TECO)	Fuel Factor Calculation Issues	18
		Generic Capacity Cost Recovery Factor Issues	31
5.	John C. Heisey (TECO)	Fuel Factor Calculation Issues	5A, 18

C. EXHIBITS:

<u>Exhibit</u>	<u>Witness</u>	<u>Description</u>
<u> </u> (MAS-1)	Sizemore	Final True-up Capacity Cost Recovery January 2019 – December 2019
<u> </u> (MAS-1)	Sizemore	Final True-up Fuel Cost Recovery January 2019 – December 2019
<u> </u> (MAS-1)	Sizemore	Actual Fuel True-up Compared to Original Estimates January 2019 – December 2019
<u> </u> (MAS-1)	Sizemore	Schedules A-1, A-2, A-6 through A-9, and A-12 January 2019 – December 2019
<u> </u> (MAS-1)	Sizemore	Capital Projects Approved for Fuel Clause Recovery January 2019 – December 2019
<u> </u> (MAS-2)	Sizemore	Actual/Estimated True-Up Fuel Cost Recovery January 2020 – December 2020
<u> </u> (MAS-2)	Sizemore	Actual/Estimated True-Up Capacity Cost Recovery January 2020 – December 2020
<u> </u> (MAS-2)	Sizemore	Capital Projects Approved for Fuel Clause Recovery January 2020 – December 2020
<u> </u> (MAS-2)	Sizemore	Lake Hancock Stipulated Issue Fuel Savings January 2019 – December 2019
<u> </u> (MAS-3)	Sizemore	Projected Capacity Cost Recovery January 2021 – December 2021

<u> </u> (MAS-3)	Sizemore	Projected Fuel Cost Recovery January 2021 – December 2021
<u> </u> (MAS-3)	Sizemore	Levelized and Tiered Fuel Rate January 2021 – December 2021
<u> </u> (JC-1)	Cain	Final True-Up Generating Performance Incentive Factor January 2019 – December 2019
<u> </u> (JC-1)	Cain	Actual Unit Performance Data January 2019 – December 2019
<u> </u> (JC-2)	Cain	Generating Performance Incentive Factor January 2021 – December 2021
<u> </u> (JC-2)	Cain	Summary of Generating Performance Incentive Factor Targets January 2021 – December 2021
<u> </u> (JCH-1)	Heisey	Optimization Mechanism Results January 2019 – December 2019

D. STATEMENT OF BASIC POSITION

Tampa Electric Company's Statement of Basic Position:

The Commission should approve Tampa Electric's calculation of its fuel adjustment, capacity cost recovery, and GPIF true-up and projection calculations, including the proposed fuel adjustment factor of 3.167 cents per kWh before any application of time of use multipliers for on-peak or off-peak usage; the company's proposed capacity factor for the period January through December 2021; a GPIF reward of \$2,858,056 for performance during 2019 and the company's proposed GPIF targets and ranges for 2021.

E. STATEMENT OF ISSUES AND POSITIONS

I. FUEL ISSUES

COMPANY-SPECIFIC FUEL ADJUSTMENT ISSUES

Tampa Electric Company

ISSUE 5A: What was the total gain under TECO's Optimization Mechanism approved by Order No. PSC-2017-0456-S-EI that TECO may recover for the period January 2019 through December 2019, and how should that gain be shared between TECO and customers?

TECO: The total gain for the period January 2019 through December 2019 under the Optimization Mechanism approved by Order No. PSC-2017-0456-S-EI is \$6,468,033. Customers should receive \$5,287,213, and Tampa Electric should receive \$1,180,820. (Witness: Heisey)

GENERIC FUEL ADJUSTMENT ISSUES

ISSUE 6: What are the appropriate actual benchmark levels for calendar year 2020 for gains on non-separated wholesale energy sales eligible for a shareholder incentive?

TECO: The company did not set an actual benchmark level for calendar year 2020. Pursuant to Tampa Electric's amended and restated settlement agreement approved by Order No. PSC-2017-0456-S-EI, the company's Optimization Mechanism replaces the non-separated wholesale energy sales incentive. (Witness: Sizemore)

ISSUE 7: What are the appropriate estimated benchmark levels for calendar year 2021 for gains on non-separated wholesale energy sales eligible for a shareholder incentive?

TECO: The company did not set an estimated benchmark level for calendar year 2021. Pursuant to Tampa Electric's amended and restated settlement agreement approved by Order No. PSC-2017-0456-S-EI, the company's Optimization Mechanism replaces the non-separated wholesale energy sales incentive. (Witness: Sizemore)

ISSUE 8: What are the appropriate final fuel adjustment true-up amounts for the period January 2019 through December 2019?

TECO: \$35,821,098 over-recovery. (Witness: Sizemore)

ISSUE 9: What are the appropriate fuel adjustment actual/estimated true-up amounts for the period January 2020 through December 2020?

TECO: \$61,300,153 under-recovery. (Witness: Sizemore)

ISSUE 10: What are the appropriate total fuel adjustment true-up amounts to be collected/refunded from January 2021 through December 2021?

TECO: \$25,479,055 under-recovery. (Witness: Sizemore)

ISSUE 11: What are the appropriate projected total fuel and purchased power cost recovery amounts for the period January 2021 through December 2021?

TECO: The total recoverable fuel and purchased power recovery amount to be collected, adjusted by the jurisdictional separation factor, excluding GPIF and the revenue tax factor, but including the true-up amount and optimization mechanism, is \$614,803,221. (Witness: Sizemore)

GENERIC GENERATING PERFORMANCE INCENTIVE FACTOR ISSUES

ISSUE 16: What is the appropriate generation performance incentive factor (GPIF) reward or penalty for performance achieved during the period January 2019 through December 2019 for each investor-owned electric utility subject to the GPIF?

TECO: A reward in the amount of \$2,858,056 for January 2019 through December 2019 performance to be applied to the January 2021 through December 2021 period.
(Witness: Cain)

ISSUE 17: What should the GPIF targets/ranges be for the period January 2021 through December 2021 for each investor-owned electric utility subject to the GPIF?

TECO: The appropriate targets and ranges are shown in Exhibit No. ____ (JC-1) to the prefiled testimony of Mr. Jeremy B. Cain. Targets and ranges should be set

according to the prescribed GPIF methodology established in 1981 by Commission Order No. 9558 in Docket No. 800400-CI and modified in 2006 by Commission Order No. PSC-2006-1057-FOF-EI in Docket No. 20060001-EI. (Witness: Cain)

FUEL FACTOR CALCULATION ISSUES

ISSUE 18: What are the appropriate projected net fuel and purchased power cost recovery and Generating Performance Incentive amounts to be included in the recovery factor for the period January 2021 through December 2021?

TECO: The projected net fuel and purchased power cost recovery amount to be included in the recovery factor for the period January 2021 through December 2021, adjusted by the jurisdictional separation factor, is \$588,143,346. The total recoverable fuel and purchased power cost recovery amount to be collected, including the true-up, optimization mechanism, and GPIF, adjusted for the revenue tax factor, is \$618,103,935. (Witness: Sizemore, Heisey, Cain, Smith)

ISSUE 19: What is the appropriate revenue tax factor to be applied in calculating each investor-owned electric utility's levelized fuel factor for the projection period January 2021 through December 2021?

TECO: The appropriate revenue tax factor is 1.00072. (Witness: Sizemore)

ISSUE 20: What are the appropriate levelized fuel cost recovery factors for the period January 2021 through December 2021?

TECO: The appropriate factor is 3.162 cents per kWh before any application of time of use multipliers for on-peak or off-peak usage. (Witness: Sizemore)

ISSUE 21: What are the appropriate fuel recovery line loss multipliers to be used in calculating the fuel cost recovery factors charged to each rate class/delivery voltage level class?

TECO: The appropriate fuel recovery line loss multipliers are as follows:

<u>Metering Voltage Schedule</u>	<u>Line Loss Multiplier</u>
Distribution Secondary	1.0000
Distribution Primary	0.9900
Transmission	0.9800
Lighting Service	1.0000
(Witness: Sizemore)	

ISSUE 22: What are the appropriate fuel cost recovery factors for each rate class/delivery voltage level class adjusted for line losses?

TECO: The appropriate factors are as follows:

<u>Metering Voltage Level</u>	<u>Fuel Charge Factor (cents per kWh)</u>	
Secondary	3.167	
RS Tier I (Up to 1,000 kWh)	2.856	
RS Tier II (Over 1,000 kWh)	3.856	
Distribution Primary	3.135	
Transmission	3.104	
Lighting Service	3.136	
Distribution Secondary	3.335	(on-peak)
	3.095	(off-peak)
Distribution Primary	3.302	(on-peak)
	3.064	(off-peak)
Transmission	3.268	(on-peak)
	3.033	(off-peak)
(Witness: Sizemore)		

II. CAPACITY ISSUES

GENERIC CAPACITY COST RECOVERY FACTOR ISSUES

ISSUE 27: What are the appropriate final capacity cost recovery true-up amounts for the period January 2019 through December 2019?

TECO: \$111,228 over-recovery. (Witness: Sizemore)

ISSUE 28: What are the appropriate capacity cost recovery actual/estimated true-up amounts for the period January 2020 through December 2020?

TECO: \$1,660,252 over-recovery. (Witness: Sizemore)

ISSUE 29: What are the appropriate total capacity cost recovery true-up amounts to be collected/refunded during the period January 2021 through December 2021?

TECO: \$1,771,480 over-recovery. (Witness: Sizemore)

ISSUE 30: What are the appropriate projected total capacity cost recovery amounts for the period January 2021 through December 2021?

TECO: The projected total capacity cost recovery amount for the period January 2021 through December 2021 is \$2,125,115. (Witness: Sizemore)

ISSUE 31: What are the appropriate projected net purchased power capacity cost recovery amounts to be included in the recovery factor for the period January 2021 through December 2021?

TECO: The total recoverable capacity cost recovery amount to be collected, including the true-up amount, adjusted for the revenue tax factor, is \$353,890. (Witness: Sizemore, Smith)

ISSUE 32: What are the appropriate jurisdictional separation factors for capacity revenues and costs to be included in the recovery factor for the period January 2021 through December 2021?

TECO: The appropriate jurisdictional separation factor is 1.0000000. (Witness: Sizemore)

ISSUE 33: What are the appropriate capacity cost recovery factors for the period January 2021 through December 2021?

TECO: The appropriate factors for January 2021 through December 2021 are as follows:

<u>Rate Class and Metering Voltage</u>	<u>Capacity Cost Recovery Factor</u>	
	<u>Cents per kWh</u>	<u>\$ per kW</u>
RS Secondary	0.002	
GS and CS Secondary	0.002	
GSD, SBF Standard		
Secondary		0.01
Primary		0.01

Transmission		0.01
GSD Optional		
Secondary	0.002	
Primary	0.002	
Transmission	0.002	
IS, SBI		
Primary		0.00
Transmission		0.00
LS1 Secondary	0.000	

(Witness: Sizemore)

III. EFFECTIVE DATE

ISSUE 34: What should be the effective date of the fuel adjustment factors and capacity cost recovery factors for billing purposes?

TECO: The new factors should be effective beginning with the first billing cycle for January 2021 through the last billing cycle for December 2021. The first billing cycle may start before January 1, 2021, and the last cycle may be read after December 31, 2021, so that each customer is billed for twelve months regardless of when the recovery factors became effective. The new factors shall continue in effect until modified by this Commission. (Witness: Sizemore)

ISSUE 35: Should the Commission approve revised tariffs reflecting the fuel adjustment factors and capacity cost recovery factors determined to be reasonable in this proceeding?

TECO: Yes. (Witness: Sizemore)

IV. MISCELLANEOUS ISSUES

ISSUE 36: Should this docket be closed?

TECO: Yes.

F. STIPULATED ISSUES

TECO: None at this time.

G. MOTIONS

TECO: None at this time.

H. PENDING REQUEST OR CLAIMS FOR CONFIDENTIALITY

TECO: None at this time.

I. OBJECTIONS TO A WITNESS'S QUALIFICATION AS AN EXPERT

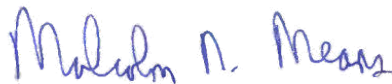
TECO: None at this time.

J. OTHER MATTERS

TECO: None at this time.

DATED this 6th day of October 2020.

Respectfully submitted,



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ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Prehearing Statement, filed on behalf of Tampa Electric Company, has been served by electronic mail on this 6th day of October, 2020 to the following:

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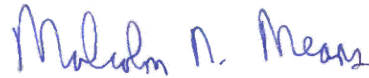
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ATTORNEY



October 6, 2020

Mr. Adam Teitzman, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 20200001-EI

Dear Mr. Teitzman:

Attached is the Prehearing Statement of Gulf Power Company to be filed in the above-referenced docket. Pursuant to the Order Establishing Procedure, a copy of this Prehearing Statement prepared using Microsoft Word is being provided to Commission staff and all parties.

Sincerely,

S/Richard Hume

Richard Hume
Regulatory Issues Manager

md

Attachments

cc: Gulf Power Company
Russell Badders, Esq., VP & Associate General Counsel

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Fuel and Purchased Power Cost)
Recovery Clauses and Generating)
Performance Incentive Factor)

Docket No. 20200001-EI
Date Filed: October 6, 2020

PREHEARING STATEMENT OF GULF POWER COMPANY

Gulf Power Company, (“Gulf Power”, “Gulf”, or “the Company”), by and through its undersigned attorneys, and pursuant to Order No. PSC-2020-0041-PCO-EI issued January 31, 2020, establishing the prehearing procedure in this docket, files this prehearing statement, saying:

A. APPEARANCES

RUSSELL A. BADDERS, Esquire, Vice President & Associate General
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0100

MARIA J. MONCADA, Esquire, Senior Attorney of Florida Power & Light
Company, 700 Universe Boulevard, Juno Beach, FL 33408

B. ALL KNOWN WITNESSES

All witnesses known at this time, who may be called by Gulf Power Company, along with the subject matter and issue numbers which will be covered by the witness' testimony, are as follows:

<u>Witness</u>	<u>Subject Matter</u>	<u>Issues #</u>
(<u>Direct</u>)		
Hume (Gulf)	Fuel Adjustment, true-up and projections; Capacity, true-up and projections	4A, 6-11, 18-22, 27-36
Rote ¹ (Gulf)	GPIF reward/penalty and targets and ranges	16, 17

¹ Witness Charles Rote adopts the 2019 GPIF Results testimony and exhibit of Jarvis Van Norman, filed on behalf of Gulf on March 16, 2020.

C. ALL KNOWN EXHIBITS

<u>Witness</u>	<u>Proffered by</u>	<u>Exhibit #</u>	<u>Description</u>	<u>Issues #</u>
(<u>Direct</u>)				
Hume	Gulf Power Company	RLH-1	Calculation of Final True-Up January 2019 – December 2019	8, 27
Hume	Gulf Power Company	RLH-2	A-Schedules December 2019	8
Hume	Gulf Power Company	RLH-3	Estimated Fuel True-Up January 2020 – December 2020	6, 9,
Hume	Gulf Power Company	RLH-4	Estimated Capacity True-up January 2020 – December 2020	28
Hume	Gulf Power Company	RLH-5	Projection January 2021 – December 2021	7, 10, 11, 18-22, 29-33
Hume	Gulf Power Company	RLH-6	Hedging Information Report August 2019 – December 2019	4A
Hume	Gulf Power Company	RLH-7	Hedging Information Report January 2020– March 2020	4A
Hume	Gulf Power Company	RLH-8	Calculation of the stratified separation factors	32
Rote	Gulf Power Company	JVN-1	Gulf Power Company GPIF Results January 2019 – December 2019	16
Rote	Gulf Power Company	CR-1	Gulf Power Company GPIF Targets and Ranges January 2021 – December 2021	17

D. STATEMENT OF BASIC POSITION

Gulf Power Company's Statement of Basic Position:

It is the basic position of Gulf Power Company that the fuel and capacity cost recovery factors proposed by the Company present the best estimate of Gulf's fuel and capacity expense for the period January 2021 through December 2021 including the true-up calculations, GPIF and other adjustments allowed by the Commission.

E. STATEMENT OF ISSUES AND POSITIONS

I. FUEL ISSUES

COMPANY-SPECIFIC FUEL ADJUSTMENT ISSUES

ISSUE 4A: Should the Commission approve as prudent Gulf's actions to mitigate the volatility of natural gas, residual oil, and purchased power prices, as reported in Gulf's April 2020 and August 2020 hedging reports?

GULF: Yes, the Commission should approve Gulf's actions to mitigate fuel price volatility because those activities were taken pursuant to, and were consistent with, previously approved risk management plans. Pursuant to the 2017 Stipulation and Settlement Agreement, Gulf has agreed not to enter into any additional hedges during the term of the Agreement, however the hedges at issue in this docket were entered prior to the hedging moratorium. Gulf's hedging activities for the period August 1, 2019 through March 31, 2020, are reported in April 2020 and August 2020 filings in Docket No. 20200001-EI and resulted in hedging net cost of \$8,783,490. Upon review of these filings, Gulf has complied with its Risk Management Plan as approved by this Commission and, therefore, its actions are found to be reasonable and prudent. (Hume)

GENERIC FUEL ADJUSTMENT ISSUES

ISSUE 6: What are the appropriate actual benchmark levels for calendar year 2020 for gains on non-separated wholesale energy sales eligible for a shareholder incentive?

GULF: \$912,580. (Hume)

ISSUE 7: What are the appropriate estimated benchmark levels for calendar year 2021 for gains on non-separated wholesale energy sales eligible for a shareholder incentive?

GULF: \$274,562. (Hume)

ISSUE 8: What are the appropriate final fuel adjustment true-up amounts for the period January 2019 through December 2019?

GULF: \$8,868,596 over-recovery. (Hume)

ISSUE 9: What are the appropriate fuel adjustment actual/estimated true-up amounts for the period January 2020 through December 2020?

GULF: \$9,968,285 under-recovery. (Hume)

ISSUE 10: What are the appropriate total fuel adjustment true-up amounts to be collected/refunded from January 2021 through December 2021?

GULF: \$1,099,690 under-recovery. (Hume)

ISSUE 11: What are the appropriate projected total fuel and purchased power cost recovery amounts for the period January 2021 through December 2021

GULF: \$326,225,315, excluding prior period true-up amounts, revenue taxes and GPIF. (Hume)

COMPANY-SPECIFIC GENERATING PERFORMANCE INCENTIVE FACTOR (GPIF) ISSUES

NONE RAISED BY GULF POWER COMPANY

GENERIC GPIF ISSUES

ISSUE 16: What is the appropriate GPIF reward or penalty for performance achieved during the period January 2019 through December 2019 for each investor-owned electric utility subject to the GPIF?

GULF: \$62,232 reward. (Rote)

ISSUE 17: What should the GPIF targets/ranges be for the period January 2021 through December 2021 for each investor-owned electric utility subject to the GPIF?

GULF: See table below: (Rote)

Unit	EAF	Heat Rate
Crist 7	89.0	10,882
Daniel 1	93.9	10,650
Daniel 2	93.4	10,334
Scherer 3	95.3	11,339
Smith 3	91.2	6,913
EAF = Equivalent Availability Factor (%)		

FUEL FACTOR CALCULATION ISSUES

ISSUE 18: What are the appropriate projected net fuel and purchased power cost recovery and Generating Performance Incentive amounts to be included in the recovery factor for the period January 2021 through December 2021?

GULF: \$327,622,911 including prior period true-up amounts, revenue taxes and GPIF. (Hume)

ISSUE 19: What is the appropriate revenue tax factor to be applied in calculating each investor-owned electric utility's levelized fuel factor for the projection period January 2021 through December 2021?

GULF: 1.00072. (Hume)

ISSUE 20: What are the appropriate levelized fuel cost recovery factors for the period January 2021 through December 2021?

GULF: 3.053 cents per kWh. (Hume)

ISSUE 21: What are the appropriate fuel recovery line loss multipliers to be used in calculating the fuel cost recovery factors charged to each rate class/delivery voltage level class?

GULF: The appropriate fuel cost recovery line loss multipliers are provided in Gulf Power's response on Issue 22. (Hume)

ISSUE 22: What are the appropriate fuel cost recovery factors for each rate class/delivery voltage level class adjusted for line losses?

GULF: See tables below: (Hume)

Group	Standard Rate Schedules	Line Loss Multipliers	Fuel Cost Factors ¢/kWh
A	RS, RSVP, RSTOU, GS, GSD, GSTOU, OS-III	1.00555	3.070
B	LP	0.99188	3.028
C	PX, RTP	0.97668	2.982
D	OS-I/II	1.00560	3.045

Group	Time-of-Use Rate Schedules*	Line Loss Multipliers	Fuel Cost Factors	
			On-Peak ¢/kWh	Off-Peak ¢/kWh
A	GSDT, SBS	1.00555	3.539	2.879
B	LPT, SBS	0.99188	3.490	2.840
C	PXT, SBS	0.97668	3.437	2.796

*The recovery factor applicable to customers taking service under Rate Schedule SBS is determined as follows: customers with a Contract Demand in the range of 100 to 499 kW will use the recovery factor applicable to Rate Schedule GSD; customers with a Contract Demand in the range of 500 to 7,499 kW will use the recovery factor applicable to Rate Schedule LP; and customers with a Contract Demand over 7,499 kW will use the recovery factor applicable to Rate Schedule PX.

II. CAPACITY ISSUES

COMPANY-SPECIFIC CAPACITY COST RECOVERY FACTOR ISSUES

Gulf Power Company

NONE RAISED BY GULF POWER COMPANY

GENERIC CAPACITY COST RECOVERY FACTOR ISSUES

ISSUE 27: What are the appropriate final capacity cost recovery true-up amounts for the period January 2019 through December 2019?

GULF: \$452,844 over-recovery. (Hume)

ISSUE 28: What are the appropriate capacity cost recovery actual/estimated true-up amounts for the period January 2020 through December 2020?

GULF: \$2,700,587 under-recovery. (Hume)

ISSUE 29: What are the appropriate total capacity cost recovery true-up amounts to be collected/refunded during the period January 2021 through December 2021?

GULF: \$2,247,743 under-recovery. (Hume)

ISSUE 30: What are the appropriate projected total capacity cost recovery amounts for the period January 2021 through December 2021?

GULF: \$83,552,876. (Hume)

ISSUE 31: What are the appropriate projected net purchased power capacity cost recovery amounts to be included in the recovery factor for the period January 2021 through December 2021?

GULF: \$85,862,394 including prior period true-up amounts and revenue taxes. (Hume)

ISSUE 32: What are the appropriate jurisdictional separation factors for capacity revenues and costs to be included in the recovery factor for the period January 2021 through December 2021?

GULF:

Retail Energy Jurisdictional Factor – Base	100.0000%
Retail Energy Jurisdictional Factor - Intermediate	97.5922%
Retail Energy Jurisdictional Factor - Peaking	76.0860%
Retail Demand Jurisdictional Factor - Transmission	97.2343%
Retail Demand Jurisdictional Factor - Base	100.0000%
Retail Demand Jurisdictional Factor - Intermediate	97.5922%
Retail Demand Jurisdictional Factor - Peaking	76.0860%
Retail Demand Jurisdictional Factor - General Plant	96.9888%
Retail Demand Jurisdictional Factor - Distribution	98.1419%
	(Hume)

ISSUE 33: What are the appropriate capacity cost recovery factors for the period January 2021 through December 2021?

GULF: See table below: (Hume)

RATE CLASS	CAPACITY COST RECOVERY FACTORS	
	¢/kWh	\$ per kW
RS, RSVP, RSTOU	0.915	
GS	0.931	
GSD, GSDT, GSTOU	0.733	
LP, LPT		2.86
PX, PXT, RTP, SBS	0.623	
OS-I/II	0.127	
OS-III	0.566	

III. EFFECTIVE DATE

ISSUE 34: What should be the effective date of the fuel adjustment factors and capacity cost recovery factors for billing purposes?

GULF: The factors should be effective for meter readings commencing January 1, 2021. These charges should continue in effect until modified by subsequent order of this Commission. (Hume)

ISSUE 35: Should the Commission approve revised tariffs reflecting the fuel adjustment factors and capacity cost recovery factors determined to be appropriate in this proceeding?

GULF: Yes. The Commission should approve revised tariffs reflecting the fuel adjustment factors and capacity cost recovery factors determined to be reasonable in this proceeding. The Commission should direct staff to verify that the revised tariffs are consistent with the Commission's decision. (Hume)

IV. MISCELLANEOUS ISSUES

ISSUE 36: Should this docket be closed?

GULF: No. While a separate docket number is assigned each year for administrative convenience, this is a continuing docket and should remain open. (Hume)

F. STIPULATED ISSUES

GULF: Yet to be determined. Gulf is willing to stipulate that the testimony of all witnesses whom no one wishes to cross examine be inserted into the record as though read, cross examination be waived, and the witness's attendance at the hearing be excused.

G. PENDING MOTIONS

NONE

H. PENDING CONFIDENTIALITY REQUESTS

1. Request for extended confidentiality filed on January 22, 2020 pertaining to certain documents produced in connection with the review of 2017 fuel and purchased power transactions. (DN 03751-2018); 2020 pertaining certain documents produced in connection with the review of 2017 fuel and purchased power transactions. (DN 03343-2018).

2. Request for extended confidentiality filed on January 28, 2020, pertaining to certain information contained in Form 423 fuel reports for January – March 2018. (DN 03329-2018).
3. Request for confidentiality filed on January 31, 2020, pertaining to Form 423 Fuel Report for October through December 2019 (DN 00730-2020).
4. Request for extended confidentiality filed on February 10, 2020, pertaining certain documents produced in connection with the review of 2015 capacity expenditures (DN 03029-2016); pertaining certain documents produced in connection with the review of 2015 fuel and purchased power transactions. (DN 03027-2016).
5. Request for confidentiality filed on March 02, 2020, pertaining to Schedule CCA-4 of RLH-1 to the Direct Testimony of Richard L. Hume (DN 01195-2020).
6. Request for confidentiality filed on April 03, 2020, pertaining to portions of August-December 2019 Hedging Activity Report (DN 01856-2020).
7. Request for confidentiality filed on April 30, 2020, pertaining to Form 423 Fuel Report for January through March 2020 (DN 02316-2020).
8. Request for confidentiality filed on May 27, 2020, pertaining to documents produced in connection with a review of 2019 fuel and purchased power transactions (DN 02774-2020).
9. Request for extended confidentiality filed on June 17, 2020, pertaining to portions of documents produced in connection with a review of 2014 capacity expenditures (DN 03151-2015); pertaining to certain documents produced by Staff and GPC related to the review of 2018 hedging settlements (DN 06149-2018).
10. Request for confidentiality filed on June 23, 2020, pertaining to revision to page 53 of 65 related to discovered scrivener's error subsequent to the original filing. (DN 02776-2020).
11. Request for confidentiality filed on July 27, 2020, pertaining to Schedule CCE-4 of RLH-3 to the Direct Testimony of Richard L. Hume (DN 04054-2020).
12. Request for confidentiality filed on July 31, 2020, pertaining to Form 423 Fuel Report for April through June 2020 (DN 04158-2020).
13. Request for confidentiality filed on August 10, 2020, pertaining to portion of January-July 2020 Hedging Activity Report (DN 04309-2020).
14. Request for confidentiality filed on September 3, 2020, pertaining to Schedule CCE-1 and CCE-4 of RLH-5 to the Direct Testimony of C. Richard Hume (DN 05949-2020).
15. Request for confidentiality filed on September 21, 2020, pertaining to certain information contained in 2020 hedging settlements. (DN 08253-2020).

I. OTHER MATTERS

GULF: To the best knowledge of counsel, Gulf has complied with all requirements set forth in the orders on procedure and/or the Commission rules governing this prehearing statement. If other issues are raised for determination at the hearings set for November 3-5, 2020, Gulf respectfully requests an opportunity to submit additional statements of position and, if necessary, file additional testimony.

Dated this 6th day of October 2020.

Respectfully submitted,



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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: **Fuel and Purchased Power Cost**)
Recovery Clause with Generating)
Performance Incentive Factor)

Docket No.: **20200001-EI**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished by electronic mail this 6th day of October, 2020 to the following:

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power
Cost Recovery Clause with
Generating Performance Incentive
Factor

DOCKET NO. 20200001-EI

FILED: October 06, 2020

PREHEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to the Orders Establishing Procedure in this docket, Order No. PSC-2020-0041-PCO-EI, issued January 31, 2020, submit this Prehearing Statement.

APPEARANCES:

PATRICIA A. CHRISTENSEN, Esquire
Associate Public Counsel
STEPHANIE MORSE, Esquire
Associate Public Counsel
THOMAS A. (TAD) DAVID, Esquire
Associate Public Counsel
A. MIREILLE FALL-FRY, Esquire
Associate Public Counsel
CHARLES REHWINKEL, Esquire
Deputy Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida.

1. **WITNESSES:**

None.

2. **KNOWN EXHIBITS:**

None

3. STATEMENT OF BASIC POSITION

The utilities have the burden of proof to justify and support the recovery of costs and their proposal(s) seeking the Commission's adoption of policy statements (whether new or changed) or other affirmative relief sought, regardless of whether the Interveners provide evidence to the contrary. Regardless of whether the Commission has previously approved a program as meeting the Commission's requirements, the utilities must still meet their burden of demonstrating that the costs submitted for final recovery meet the statutory test(s) and are reasonable in amount and prudently incurred.

4. STATEMENT OF FACTUAL ISSUES AND POSITIONS

I. FUEL ISSUES

COMPANY SPECIFIC ISSUES

Duke Energy Florida, LLC.

Contested Issue A listed below will be placed here if included in the docket by the prehearing officer.

Florida Power & Light

ISSUE 2A: What is the appropriate revised SoBRA factor for the 2018 projects to reflect actual construction costs that are less than the projected costs used to develop the initial SoBRA factor?

OPC: No position at this time.

ISSUE 2B: What is the total gain under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL may recover for the period January 2019 through December 2019, and how should that gain to be shared between FPL and customers?

OPC: No position at this time.

ISSUE 2C: What is the appropriate amount of Incremental Optimization Costs under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL

should be allowed to recover through the fuel clause for Personnel, Software, and Hardware costs for the period January 2019 through December 2019?

OPC: No position at this time.

ISSUE 2D: What is the appropriate amount of Variable Power Plant O&M Attributable to Off-System Sales under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL should be allowed to recover through the fuel clause for the period January 2019 through December 2019?

OPC: No position at this time.

ISSUE 2E: What is the appropriate amount of Variable Power Plant O&M Avoided due to Economy Purchases under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL should be allowed to recover through the fuel clause for the period January 2019 through December 2019?

OPC: No position at this time.

ISSUE 2F: Has FPL made reasonable and prudent adjustments, if any are needed, to account for replacement power costs associated with the April 2019 forced outage at St. Lucie Nuclear Power Plant, Unit No. 1?

OPC: No. At this time FPL has not demonstrated that its actions related to the outage attributed to the magnetic termite were prudent and that replacement power costs should be borne by customers. Likewise, FPL has not demonstrated that its overall stewardship of the nuclear program activities at the St. Lucie and Turkey Point sites are reasonable and prudent.

ISSUE 2G: Has FPL made reasonable and prudent adjustments, if any are needed, to account for replacement power costs associated with the March 2020 return-to-service delay at St. Lucie Nuclear Power Plant, Unit No. 2?

OPC: No. At this time FPL has not demonstrated that its actions related to the outage were prudent and that replacement power costs should be borne by customers. Likewise, FPL has not demonstrated that its overall stewardship of the nuclear program activities at the St. Lucie and Turkey Point sites are reasonable and prudent.

ISSUE 2H: What is the appropriate subscription credit associated with FPL's Solar Together Program, approved by Order No. PSC-2020-0084-S-EI, to be included for recovery in 2021?

OPC: No position at this time.

Florida Public Utilities Company

ISSUE 3A: Should the Commission approve FPUC's revised Fuel and Purchased Power Cost Recovery factors filed in accordance with the Stipulation and Settlement approved in Docket No. 20190156-EI, which reflect the flow-through of interim rate over-recovery calculated based on 9 months actual and 1 month estimated revenues?

OPC: Yes, consistent with the settlement agreement should the Commission approve it.

Gulf Power Company

ISSUE 4A: Should the Commission approve as prudent Gulf's actions to mitigate the volatility of natural gas, residual oil, and purchased power prices, as reported in Gulf's April 2020 hedging report?

OPC: No position.

Tampa Electric Company

ISSUE 5A: What was the total gain under TECO's Optimization Mechanism approved by Order No. PSC-2017-0456-S-EI that TECO may recover for the period January 2019 through December 2019, and how should that gain to be shared between TECO and customers?

OPC: No position at this time.

GENERIC FUEL ADJUSTMENT ISSUES

ISSUE 6: What are the appropriate actual benchmark levels for calendar year 2020 for gains on non-separated wholesale energy sales eligible for a shareholder incentive?

OPC: No position at this time.

ISSUE 7: What are the appropriate estimated benchmark levels for calendar year 2021 for gains on non-separated wholesale energy sales eligible for a shareholder incentive?

OPC: No position at this time.

ISSUE 8: What are the appropriate final fuel adjustment true-up amounts for the period January 2019 through December 2019?

OPC: No position at this time.

ISSUE 9: What are the appropriate fuel adjustment actual/estimated true-up amounts for the period January 2020 through December 2020?

OPC: No position at this time on this fallout issue.

ISSUE 10: What are the appropriate total fuel adjustment true-up amounts to be collected/refunded from January 2021 through December 2021?

OPC: No position at this time on this fallout issue.

ISSUE 11: What are the appropriate projected total fuel and purchased power cost recovery amounts for the period January 2021 through December 2021?

OPC: No position at this time on this fallout issue.

COMPANY-SPECIFIC GENERATING PERFORMANCE INCENTIVE FACTOR ISSUES

Duke Energy Florida, LLC.

No company-specific GPIF issues for Duke Energy Florida, LLC. have been identified at this time. If such issues are identified, they shall be numbered 12A, 12B, 12C, and so forth, as appropriate.

Florida Power & Light Company

No company-specific GPIF issues for Florida Power and Light Company have been identified at this time. If such issues are identified, they shall be numbered 13A, 13B, 13C, and so forth, as appropriate.

Gulf Power Company

No company-specific GPIF issues for Gulf Power Company have been identified at this time. If such issues are identified, they shall be numbered 14A, 14B, 14C, and so forth, as appropriate.

Tampa Electric Company

No company-specific GPIF issues for Tampa Electric Company have been identified at this time. If such issues are identified, they shall be numbered 15A, 15B, 15C, and so forth, as appropriate.

GENERIC GPIF ISSUES

ISSUE 16: What is the appropriate GPIF reward or penalty for performance achieved during the period January 2019 through December 2019 for each investor-owned electric utility subject to the GPIF?

OPC: No position at this time.

ISSUE 17: What should the GPIF targets/ranges be for the period January 2021 through December 2021 for each investor-owned electric utility subject to the GPIF?

OPC: No position at this time.

FUEL FACTOR CALCULATION ISSUES

ISSUE 18: What are the appropriate projected net fuel and purchased power cost recovery and Generating Performance Incentive amounts to be included in the recovery factor for the period January 2021 through December 2021?

OPC: No position at this time.

ISSUE 19: What is the appropriate revenue tax factor to be applied in calculating each investor-owned electric utility's levelized fuel factor for the projection period January 2021 through December 2021?

OPC: No position at this time.

ISSUE 20: What are the appropriate levelized fuel cost recovery factors for the period January 2021 through December 2021?

OPC: No position at this time on this fallout issue.

ISSUE 21: What are the appropriate fuel recovery line loss multipliers to be used in calculating the fuel cost recovery factors charged to each rate class/delivery voltage level class?

OPC: No position at this time on this fallout issue.

ISSUE 22: What are the appropriate fuel cost recovery factors for each rate class/delivery voltage level class adjusted for line losses?

OPC: No position at this time on this fallout issue.

II. CAPACITY ISSUES

COMPANY-SPECIFIC CAPACITY COST RECOVERY FACTOR ISSUES

Duke Energy Florida, LLC.

ISSUE 23A: What is the appropriate net book value of retired Plant Crystal River South (Units 1 and 2) assets to be recovered over a one-year period as approved by Order No. PSC-2017-0451-AS-EU?

OPC: No position at this time but the amount recovered must be consistent with the requirements of the Second RRSSA.

ISSUE 23B: What is the appropriate amount of costs for the Independent Spent Fuel Storage Installation (ISFSI) that DEF should be allowed to recover through the capacity cost recovery clause pursuant to DEF's 2017 Settlement?

OPC: No position at this time but the amount recovered must be consistent with the requirements of the Second RRSSA.

ISSUE 23C: Should the Commission approve the Third Implementation Stipulation and, if approved, what is the amount of state corporate income tax savings that should be refunded to customers through the capacity clause in 2021?

OPC: No position at this time.

ISSUE 23D: What adjustment amounts should the Commission approve to be refunded through the capacity clause in 2021 for the Columbia SoBRA I project approved in Docket No. 20180149-EI and the DeBary, Lake Placid, and Trenton SoBRA II projects approved in Docket No. 20190072-EI?

OPC: No position at this time.

Florida Power & Light Company

ISSUE 24A: What is the appropriate true-up adjustment amount associated with the 2018 SOBRA projects approved by Order No. PSC-2018-0028-FOF-EI to be refunded through the capacity clause in 2021?

OPC: No position at this time.

ISSUE 24B: What are the appropriate Indiantown non-fuel base revenue requirements to be recovered through the Capacity Clause pursuant to the Commission's approval of the Indiantown transaction in Docket No. 160154-EI (Order No. PSC-16-0506-FOF-EI) for 2021?

OPC: No position at this time.

Gulf Power Company

No company-specific capacity cost recovery factor issues for Gulf Power Company have been identified at this time. If such issues are identified, they will be numbered 25A, 25B, 25C, and so forth as appropriate.

Tampa Electric Company

No company-specific capacity cost recovery factor issues for Tampa Electric Company have been identified at this time. If such issues are identified, they will be numbered 26A, 26B, 26C, and so forth as appropriate.

GENERIC CAPACITY COST RECOVERY FACTOR ISSUES

ISSUE 27: What are the appropriate final capacity cost recovery true-up amounts for the period January 2019 through December 2019?

OPC: No position at this time.

ISSUE 28: What are the appropriate capacity cost recovery actual/estimated true-up amounts for the period January 2020 through December 2020?

OPC: No position at this time.

ISSUE 29: What are the appropriate total capacity cost recovery true-up amounts to be collected/refunded during the period January 2021 through December 2021?

OPC: No position at this time.

ISSUE 30: What are the appropriate projected total capacity cost recovery amounts for the period January 2021 through December 2021?

OPC: No position at this time.

ISSUE 31: What are the appropriate projected net purchased power capacity cost recovery amounts to be included in the recovery factor for the period January 2021 through December 2021?

OPC: No position at this time.

ISSUE 32: What are the appropriate jurisdictional separation factors for capacity revenues and costs to be included in the recovery factor for the period January 2021 through December 2021?

OPC: No position at this time.

ISSUE 33: What are the appropriate capacity cost recovery factors for the period January 2021 through December 2021?

OPC: No position at this time.

III. EFFECTIVE DATE

ISSUE 34: What should be the effective date of the fuel adjustment factors and capacity cost recovery factors for billing purposes?

OPC: No position at this time.

ISSUE 35: Should the Commission approve revised tariffs reflecting the fuel adjustment factors and capacity cost recovery factors determined to be appropriate in this proceeding?

OPC: No position at this time.

ISSUE 36: Should this docket be closed?

OPC: No position at this time.

CONTESTED ISSUES

ISSUE A: What action should be taken in response to the Commission's September 1, 2020 vote to approve, without modification, Judge Stevenson's Recommended Order dated April 27, 2020, regarding the Bartow Unit 4 February 2017 outage?

OPC: The Commission voted to approve and adopt Judge Stevenson's Recommended Order dated April 27, 2020, as filed. Pursuant to section 120.57(1)(l), Florida Statutes, an order consistent with that vote should be issued. Any other action would be a nullity.

5. **STIPULATED ISSUES:**

None.

6. **PENDING MOTIONS:**

OPC has no pending motions.

7. **STATEMENT OF PARTY'S PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY:**

OPC has no pending requests or claims for confidentiality.

8. **OBJECTIONS TO QUALIFICATION OF WITNESSES AS AN EXPERT:**

OPC has no objection to qualifications of witnesses.

9. **STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE:**

There are no requirements of the Order Establishing Procedure with which the Office of Public Counsel cannot comply.

Dated this 6th day of October, 2020

Respectfully submitted,

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Public Counsel

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Attorney for the Citizens
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Prehearing Statement has been furnished by electronic mail on this 6st day of October, 2020, to the following:

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Patricia A. Christensen

Patricia A. Christensen
Associate Public Counsel

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

NOTICE OF COMMISSION HEARING AND PREHEARING

TO

ALL INVESTOR-OWNED ELECTRIC AND GAS UTILITIES

AND

ALL OTHER INTERESTED PERSONS

DOCKET NO. 20200001-EI

FUEL AND PURCHASED POWER COST RECOVERY CLAUSE WITH GENERATING
PERFORMANCE INCENTIVE FACTOR.

DOCKET NO. 20200002-EG

ENERGY CONSERVATION COST RECOVERY CLAUSE.

DOCKET NO. 20200003-GU

PURCHASED GAS ADJUSTMENT (PGA) TRUE-UP.

DOCKET NO. 20200004-GU

NATURAL GAS CONSERVATION COST RECOVERY.

DOCKET NO. 20200007-EI

ENVIRONMENTAL COST RECOVERY CLAUSE.

ISSUED: October 7, 2020

NOTICE is hereby given that the Florida Public Service Commission will hold a public prehearing conference and hearing in the above referenced dockets at the following place and times:

NOTICE OF COMMISSION HEARING AND PREHEARING
DOCKET NOS. 20200001-EI, 20200002-EG, 20200003-GU, 20200004-GU, 20200007-EI
PAGE 2

PREHEARING CONFERENCE

A prehearing conference will be held at the following time and place:

Monday, October 26, 2020 at 1:30 p.m. (EST)
Room 148, Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida

The purpose of this prehearing conference is to: (1) simplify the issues; (2) identify the positions of the parties on the issues; (3) consider the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof; (4) identify exhibits; (5) establish an order of witnesses; and (6) consider such other matters as may aid in the disposition of the action.

HEARING

Tuesday, November 3, 2020, immediately following the Commission's Agenda Conference
Hearing Room 148, Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida

November 4, 2020, and November 5, 2020, have also been reserved for continuation of the hearing if needed. The starting time of the next day's session will be announced at the conclusion of the prior day. The hearing may be adjourned early if all testimony is concluded.

PURPOSE AND PROCEDURE:

The purpose of this hearing shall be to receive testimony and exhibits relative to issues and subjects, including but not limited to, the following:

1. Determination of the Projected Levelized Fuel Adjustment Factors for all investor-owned electric utilities for the period January 2021 through December 2021;
2. Determination of the Estimated Fuel Adjustment True-Up Amounts for all investor-owned electric utilities for the period January 2020 through December 2020;

3. Determination of the Final Fuel Adjustment True-Up Amounts for all investor-owned electric utilities for the period January 2019 through December 2019, which are to be based on actual data for that period;
4. Determination of Generating Performance Incentive Factor Targets and Ranges for the period January 2021 through December 2021;
5. Determination of Generating Performance Incentive Factor Rewards and Penalties for the period January 2019 through December 2019;
6. Determination of the Projected Capacity Cost Recovery Factors for the period January 2021 through December 2021, including nuclear costs;
7. Determination of the Estimated Capacity Cost Recovery True-Up Amounts for the period January 2020 through December 2020, including nuclear costs;
8. Determination of the Final Capacity Cost Recovery True-Up Amounts for the period January 2019 through December 2019, which are to be based on actual data for that period, including nuclear costs;
9. Determination of the Projected Conservation Cost Recovery Factors for certain investor-owned electric and gas utilities for the period January 2021 through December 2021;
10. Determination of Conservation Actual/Estimated True-Up Amounts for certain investor-owned electric and gas utilities for the period January 2020 through December 2020;
11. Determination of the Final Conservation True-Up Amounts for the period January 2019 through December 2019 for certain investor-owned electric and gas utilities, which are to be based on actual data for that period;
12. Determination of the projected Purchased Gas Adjustment Cost Recovery Factors for the period January 2021 through December 2021;
13. Determination of Actual/Estimated Purchased Gas True-Up Amounts for the period January 2020 through December 2020;

14. Determination of the Final Purchased Gas True-Up Amounts for the period January 2019 through December 2019, which are to be based on actual data for that period;

15. Determination of the Projected Environmental Cost Recovery Factors for the period January 2021 through December 2021;

16. Determination of the Actual/Estimated Environmental Cost Recovery True-Up Amounts for the period January 2020 through December 2020; and

17. Determination of the Final Environmental Cost Recovery True-Up Amounts for the period January 2019 through December 2019, which are to be based on actual data for that period.

The purpose of this hearing is also to consider any motions or other matters that may be pending at the time of the hearing. The Commission may rule on any such motions from the bench or may take the matters under advisement.

At the hearing, all parties shall be given the opportunity to present testimony and other evidence on the issues identified by the parties at the Prehearing Conference, held on Monday, October 26, 2020. All witnesses shall be subject to cross-examination at the conclusion of their testimony.

Interested persons may also request to be listed as an interested person for these dockets, in which case they will receive notices and orders published and issued in these dockets. Such requests should be made to: Florida Public Service Commission, Office of the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850, (850) 413-6770.

State buildings are currently closed to the public and other restrictions on gathering remain in place due to COVID-19. Accordingly, the hearing will be conducted remotely, and all parties and witnesses shall be prepared to present argument and testimony by communications media technology. The Public Service Commission shall act as the host of the hearing and will use a combination of technologies to ensure full participation. The Commission will employ GoToMeeting as an audio and video platform for the hearing, which will include a telephone number for audio-only participation.

A GoToMeeting invitation shall be provided to counsel for each party. It shall be the responsibility of counsel to provide their clients, client representatives, and witnesses with the

invitation, which will allow them to access the hearing. Counsel for each party will also be provided the call-in number for audio participation.

Any member of the public who wants to observe or listen to the proceedings may do so by accessing the live video broadcast the day of the hearing, which is available from the FPSC website. Upon completion of the hearing, the archived video will also be available.

JURISDICTION

This Commission is vested with jurisdiction over the subject matter of this proceeding by the provisions of Sections 366.04, 366.05, 366.06, and 366.07, Florida Statutes. Jurisdiction to consider recovery of environmental costs is established by the provisions in Section 366.8255, Florida Statutes. Jurisdiction to include costs associated with nuclear power plants through the capacity clause is established by Section 366.93, Florida Statutes. This proceeding will be governed by Chapter 366, in addition to Chapter 120, Florida Statutes, and Chapters 25-22, 28-106, and 28-109, Florida Administrative Code.

SPECIAL COVID -19 CONSIDERATIONS

Because the Governor of the State of Florida has declared a state of emergency due to the COVID-19 Pandemic, the Commission must limit the manner in which the public may participate or view the the prehearing and hearing. As always, the public may view a live stream of the prehearing and hearing online using the link available at <http://www.floridapsc.com/Conferences/AudioVideoEventCoverage>. Due to these extraordinary circumstances, however, no member of the public may attend in person.

AMERICANS WITH DISABILITIES ACT

In accordance with the Americans with Disabilities Act, persons needing a special accommodation to participate at this proceeding should contact the Office of Commission Clerk no later than five days prior to the hearing at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850 or 850-413-6770 (Florida Relay Service, 1-800-955-8770 Voice or 1-800-955-8771 TDD).

EMERGENCY CANCELLATION OF PROCEEDINGS

If settlement of the case or a named storm or other disaster requires cancellation of the proceedings, Commission staff will attempt to give timely direct notice to the parties. Notice of cancellation will also be provided on the Commission's website (<http://www.floridapsc.com>)

NOTICE OF COMMISSION HEARING AND PREHEARING
DOCKET NOS. 20200001-EI, 20200002-EG, 20200003-GU, 20200004-GU, 20200007-EI
PAGE 6

under the Hot Topics link found on the home page. Cancellation can also be confirmed by calling the Office of the General Counsel at 850-413-6199.

By DIRECTION of the Florida Public Service Commission this 7th day of October,
2020.



ADAM J. TEITZMAN
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

AJW

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: October 15, 2020

TO: Adam J. Teitzman, Commission Clerk, Office of Commission Clerk

FROM: Shaw Stiller, Senior Attorney, Office of the General Counsel *SPS*

RE: Docket No. 20200001-EI - Fuel and purchased power cost recovery clause with generating performance incentive factor.

The attached final order contains confidential information. Duke Energy Florida, LLC, will file a request for confidentiality for the final order shortly.

RECEIVED-FPSC
2020 OCT 15 PM 12:22
COMMISSION
CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
clause with generating performance incentive
factor.

DOCKET NO. 20200001-EI
ORDER NO. PSC-2020-0372-CFO-EI
ISSUED: October 15, 2020

ORDER GRANTING REQUEST FOR CONFIDENTIAL
CLASSIFICATION (DOCUMENT NO. 00223-2020)

On January 30, 2020, pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), Duke Energy Florida, LLC (DEF) filed a Request for Confidential Classification (Request) of portions of late-filed Exhibit Nos. 6 and 7 to the deposition of Messrs. Swartz, Toms, and Salvarezza held on August 30, 2019 (Document No. 00223-2020).

Request for Confidential Classification

DEF contends that the information contained in late-filed Exhibit Nos. 6 and 7, more specifically described in Exhibit C to its Requests, constitutes proprietary confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C. DEF asserts that this information is intended to be and is treated by DEF as private and has not been publicly disclosed.

The information contained late-filed Exhibit No. 6 consists of a power point presentation entitled "Duke Energy Bartow ST 40" Upgrade Blade Test in Takasago Validation Rigor at MHPS." Late-filed Exhibit No. 7 is a power point presentation dated September 22, 2017, entitled "Bartow RCA Summary." These exhibits contain third-party proprietary technical information regarding diagrams, design, and operation parameters for the Bartow Unit 4 steam turbine and its L0 blades. Disclosure of these materials would reveal proprietary third-party owned information regarding component design and operation parameters which, if disclosed, would damage the third-party's competitiveness and could impair DEF's ability to contract for goods and services on favorable terms in the future as vendors would charge a premium if DEF could not protect their information. For these reasons DEF argues that this information is protected by Subsections 366.093(3)(d) and (e), F.S.

Ruling

Subsection 366.093(1), F.S., provides that records the Florida Public Service Commission (Commission) has found to contain proprietary business information shall be kept confidential and shall be exempt from Chapter 119, F.S. Subsection 366.093(3), F.S., defines proprietary confidential business information as information that is intended to be and is treated by the company as private, in that disclosure of the information would cause harm to the company's ratepayers or business operations, and has not been voluntarily disclosed to the public. Subsection 366.093(3), F.S., provides that proprietary confidential business information includes, but is not limited to:

(d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms.

(e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

Upon review, it appears the information and data provided in this request satisfies the criteria set forth in Subsection 366.093(3), F.S., for classification as proprietary confidential business information. The information related to the operational parameters appear to be “information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms” and “information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.” Thus the information identified in Document No. 00223-2020 shall be granted confidential classification.

Pursuant to Subsection 366.093(4), F.S., the information for which confidential classification is granted herein shall remain protected from disclosure for a period of up to 18 months from the date of issuance of this Order. At the conclusion of the 18-month period, the confidential information will no longer be exempt from Subsection 119.07(1), F.S., unless DEF or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information.

Based on the foregoing, it is hereby

ORDERED by Commissioner Andrew Giles Fay, as Prehearing Officer, that Duke Energy Florida, LLC’s Request for Confidential Classification of Document No. 00223-2020, is granted, as set forth herein. It is further

ORDERED that the information in Document No. 00223-2020, for which confidential classification has been granted, shall remain protected from disclosure for a period of up to 18 months from the date of issuance of this Order. It is further

ORDERED that this Order shall be the only notification by the Commission to the parties of the date of declassification of the materials discussed herein.

By ORDER of Commissioner Andrew Giles Fay, as Prehearing Officer, this 15th day of October, 2020.



ANDREW GILES FAY
Commissioner and Prehearing Officer
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SBr

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
clause with generating performance incentive
factor.

DOCKET NO. 20200001-EI
ORDER NO. PSC-2020-0375-CFO-EI
ISSUED: October 16, 2020

ORDER GRANTING REQUEST FOR CONFIDENTIAL
CLASSIFICATION (DOCUMENT NO. 00571-2020)

On February 17, 2020, pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), Duke Energy Florida, LLC (DEF) filed a Request for Confidential Classification (Request) of its response to the Office of Public Counsel's (OPC) Fourth Production of Documents Request No. 36, Bates Stamp Numbers 19FL-Fuel-006986-007016 (Document No. 00571-2020).

Request for Confidential Classification

DEF contends that the information contained in OPC's Fourth Production of Documents Request No. 36, more specifically described in Exhibit C to its Requests, constitutes proprietary confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C. DEF asserts that this information is intended to be and is treated by DEF as private and has not been publicly disclosed.

The information contained in OPC's Fourth Production of Documents Request No. 36 consists of operating procedures for the Steam Turbine Portion of Bartow Unit 4 dated August 11, 2006, prepared by Mitubishi Heavy Industries, Ltd. (Mitsubishi). Disclosure of these materials would reveal proprietary information regarding component design and operation parameters which, if disclosed, would damage Mitsubishi's competitiveness and could impair DEF's ability to contract for goods and services on favorable terms in the future as vendors would charge a premium if DEF could not protect their information. For these reasons DEF argues that this information is protected by Subsections 366.093(3)(d) and (e), F.S.

Ruling

Subsection 366.093(1), F.S., provides that records the Florida Public Service Commission (Commission) has found to contain proprietary business information shall be kept confidential and shall be exempt from Chapter 119, F.S. Subsection 366.093(3), F.S., defines proprietary confidential business information as information that is intended to be and is treated by the company as private, in that disclosure of the information would cause harm to the company's ratepayers or business operations, and has not been voluntarily disclosed to the public. Subsection 366.093(3), F.S., provides that proprietary confidential business information includes, but is not limited to:

(d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to

contract for goods or services on favorable terms.

(e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

Upon review, it appears the information and data provided in this request satisfies the criteria set forth in Subsection 366.093(3), F.S., for classification as proprietary confidential business information. The information relating to the operating parameters appear to be “information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms” and “information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.” Thus the information identified in Document No. 00571-2020 shall be granted confidential classification.

Pursuant to Subsection 366.093(4), F.S., the information for which confidential classification is granted herein shall remain protected from disclosure for a period of up to 18 months from the date of issuance of this Order. At the conclusion of the 18-month period, the confidential information will no longer be exempt from Subsection 119.07(1), F.S., unless DEF or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information.

Based on the foregoing, it is hereby

ORDERED by Commissioner Andrew Giles Fay, as Prehearing Officer, that Duke Energy Florida, LLC’s Request for Confidential Classification of Document No. 00571-2020, is granted, as set forth herein. It is further

ORDERED that the information in Document No. 00571-2020, for which confidential classification has been granted, shall remain protected from disclosure for a period of up to 18 months from the date of issuance of this Order. It is further

ORDERED that this Order shall be the only notification by the Commission to the parties of the date of declassification of the materials discussed herein.

By ORDER of Commissioner Andrew Giles Fay, as Prehearing Officer, this 16th day of October, 2020.



ANDREW GILES FAY
Commissioner and Prehearing Officer
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

SBr

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
clause with generating performance incentive
factor.

DOCKET NO. 20200001-EI
ORDER NO. PSC-2020-0376-CFO-EI
ISSUED: October 16, 2020

ORDER GRANTING REQUEST FOR CONFIDENTIAL CLASSIFICATION
(DOCUMENT NOS. 01544-2020, 01546-2020 and 02089-2020)

On April 9, 2020, pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), Duke Energy Florida, LLC (DEF) filed a Request for Confidential Classification (Request) of the Proposed Recommended Orders (PROs) filed by Commission staff, the Office of Public Counsel (jointly with the Florida Industrial Power Users Group and PCS Phosphate-White Springs), and DEF (Document Nos. 01544-2020, 01546-2020 and 02089-2020).

Request for Confidential Classification

DEF contends that the information contained in these PROs, more specifically described in Exhibit C to its Request, constitutes proprietary confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C. DEF asserts that this information is intended to be and is treated by DEF as private and has not been publicly disclosed.

The information contained in these PROs consists of operational, design, and cost information associated with the Mitsubishi steam turbine connected to DEF's Bartow Unit 4 power plant which is proprietary to Mitsubishi. Disclosure of the PROs would reveal this proprietary third-party owned information resulting in competitive harm to Mitsubishi and potentially impairing DEF's ability to contract for goods and services on favorable terms in the future as vendors would charge a premium if DEF could not protect their information. DEF argues that this information is protected by Subsection 366.093(3)(d) and (e), F.S.

Ruling

Subsection 366.093(1), F.S., provides that records the Florida Public Service Commission (Commission) has found to contain proprietary business information shall be kept confidential and shall be exempt from Chapter 119, F.S. Subsection 366.093(3), F.S., defines proprietary confidential business information as information that is intended to be and is treated by the company as private, in that disclosure of the information would cause harm to the company's ratepayers or business operations, and has not been voluntarily disclosed to the public. Subsection 366.093(3), F.S., provides that proprietary confidential business information includes, but is not limited to:

(d) Information concerning bids or other contractual data, the disclosure of

which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms.

(e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

Upon review, it appears the information and data provided in this request satisfies the criteria set forth in Subsection 366.093(3), F.S., for classification as proprietary confidential business information. The pricing terms in vendor and 3rd party contracts appear to be “information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms” and “information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.” Thus the information identified in Document Nos. 01544-2020, 01546-2020, and 02089-2020 shall be granted confidential classification.

Pursuant to Subsection 366.093(4), F.S., the information for which confidential classification is granted herein shall remain protected from disclosure for a period of up to 18 months from the date of issuance of this Order. At the conclusion of the 18-month period, the confidential information will no longer be exempt from Section 119.07(1), F.S., unless DEF or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information.

Based on the foregoing, it is hereby

ORDERED by Commissioner Andrew Giles Fay, as Prehearing Officer, that Duke Energy Florida, LLC's Request for Confidential Classification of Document Nos. 01544-2020, 01546-2020 and 02089-2020, is granted, as set forth herein. It is further

ORDERED that the information in Document Nos. 01544-2020, 01546-2020 and 02089-2020, for which confidential classification has been granted, shall remain protected from disclosure for a period of up to 18 months from the date of issuance of this Order. It is further

ORDERED that this Order shall be the only notification by the Commission to the parties of the date of declassification of the materials discussed herein.

By ORDER of Commissioner Andrew Giles Fay, as Prehearing Officer, this 16th day of October, 2020.



ANDREW GILES FAY
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SBr

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
clause with generating performance incentive
factor.

DOCKET NO. 20200001-EI
ORDER NO. PSC-2020-0377-CFO-EI
ISSUED: October 16, 2020

ORDER GRANTING REQUEST FOR CONFIDENTIAL CLASSIFICATION
(DOCUMENT NO. 02633-2020, X-REF. 02251-2020)

On May 18, 2020, pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), Duke Energy Florida, LLC (DEF) filed a Request for Confidential Classification (Request) of the Recommended Order (RO) of the Division of Administrative Hearings for the final hearing conducted on February 4-5, 2020 (Document No. 02633-2020, x-ref., 02251-2020).

Request for Confidential Classification

DEF contends that the information contained in this RO, more specifically described in Exhibit C to its Request, constitutes proprietary confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C. DEF asserts that this information is intended to be and is treated by DEF as private and has not been publicly disclosed.

The information contained in this RO consists of operational, design, and cost information associated with the Mitsubishi steam turbine connected to DEF's Bartow Unit 4 power plant which is proprietary to Mitsubishi. Disclosure of the RO would reveal this proprietary third-party owned information resulting in competitive harm to Mitsubishi and potentially impairing DEF's ability to contract for goods and services on favorable terms in the future as vendors would charge a premium if DEF could not protect their information. DEF argues that this information is protected by Subsection 366.093(3)(d) and (e), F.S.

Ruling

Subsection 366.093(1), F.S., provides that records the Florida Public Service Commission (Commission) has found to contain proprietary business information shall be kept confidential and shall be exempt from Chapter 119, F.S. Subsection 366.093(3), F.S., defines proprietary confidential business information as information that is intended to be and is treated by the company as private, in that disclosure of the information would cause harm to the company's ratepayers or business operations, and has not been voluntarily disclosed to the public. Subsection 366.093(3), F.S., provides that proprietary confidential business information includes, but is not limited to:

- (d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to

contract for goods or services on favorable terms.

(e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

Upon review, it appears the information and data provided in this request satisfies the criteria set forth in Subsection 366.093(3), F.S., for classification as proprietary confidential business information. The pricing terms in vendor and 3rd party contracts appear to be “information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms” and “information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.” Thus the information identified in Document No. 02633-2020, x-ref. 02251-2020, shall be granted confidential classification.

Pursuant to Subsection 366.093(4), F.S., the information for which confidential classification is granted herein shall remain protected from disclosure for a period of up to 18 months from the date of issuance of this Order. At the conclusion of the 18-month period, the confidential information will no longer be exempt from Section 119.07(1), F.S., unless DEF or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information.

Based on the foregoing, it is hereby

ORDERED by Commissioner Andrew Giles Fay, as Prehearing Officer, that Duke Energy Florida, LLC's Request for Confidential Classification of Document No. 02633-2020, x-ref., 02251-2020, is granted, as set forth herein. It is further

ORDERED that the information in Document No. 02633-2020, x-ref., 02251-2020, for which confidential classification has been granted, shall remain protected from disclosure for a period of up to 18 months from the date of issuance of this Order. It is further

ORDERED that this Order shall be the only notification by the Commission to the parties of the date of declassification of the materials discussed herein.

By ORDER of Commissioner Andrew Giles Fay, as Prehearing Officer, this 16th day of October, 2020.



ANDREW GILES FAY
Commissioner and Prehearing Officer
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SBr

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
clause with generating performance incentive
factor.

DOCKET NO. 20200001-EI
ORDER NO. PSC-2020-0378-CFO-EI
ISSUED: October 16, 2020

ORDER GRANTING REQUEST FOR CONFIDENTIAL
CLASSIFICATION (DOCUMENT NO. 02889-2020)

On June 2, 2020, pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), Duke Energy Florida, LLC (DEF) filed a Request for Confidential Classification (Request) of DEF's Exceptions to the Administrative Law Judge's Recommended Order dated April 27, 2020 (Exceptions) (Document No. 02889-2020).

Request for Confidential Classification

DEF contends that the information contained in the Exceptions, more specifically described in Exhibit C to its Request, constitutes proprietary confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C. DEF asserts that this information is intended to be and is treated by DEF as private and has not been publicly disclosed.

The information contained in the Exceptions consists of operational, design, and cost information associated with the Mitsubishi steam turbine connected to DEF's Bartow Unit 4 power plant which is proprietary to Mitsubishi. Disclosure of the Exceptions would reveal this proprietary third-party owned information resulting in competitive harm to Mitsubishi and potentially impairing DEF's ability to contract for goods and services on favorable terms in the future as vendors would charge a premium if DEF could not protect their information. DEF argues that this information is protected by Subsection 366.093(3)(d) and (e), F.S.

Ruling

Subsection 366.093(1), F.S., provides that records the Florida Public Service Commission (Commission) has found to contain proprietary business information shall be kept confidential and shall be exempt from Chapter 119, F.S. Subsection 366.093(3), F.S., defines proprietary confidential business information as information that is intended to be and is treated by the company as private, in that disclosure of the information would cause harm to the company's ratepayers or business operations, and has not been voluntarily disclosed to the public. Subsection 366.093(3), F.S., provides that proprietary confidential business information includes, but is not limited to:

(d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to

contract for goods or services on favorable terms.

Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

Upon review, it appears the information and data provided in this request satisfies the criteria set forth in Subsection 366.093(3), F.S., for classification as proprietary confidential business information. The pricing terms in vendor and 3rd party contracts appear to be “information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms” and “information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.” Thus the information identified in Document No. 02889-2020 shall be granted confidential classification.

Pursuant to Subsection 366.093(4), F.S., the information for which confidential classification is granted herein shall remain protected from disclosure for a period of up to 18 months from the date of issuance of this Order. At the conclusion of the 18-month period, the confidential information will no longer be exempt from Subsection 119.07(1), F.S., unless DEF or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information.

Based on the foregoing, it is hereby

ORDERED by Commissioner Andrew Giles Fay, as Prehearing Officer, that Duke Energy Florida, LLC's Request for Confidential Classification of Document No. 02889-2020, is granted, as set forth herein. It is further

ORDERED that the information in Document No. 02889-2020, for which confidential classification has been granted, shall remain protected from disclosure for a period of up to 18 months from the date of issuance of this Order. It is further

ORDERED that this Order shall be the only notification by the Commission to the parties of the date of declassification of the materials discussed herein.

By ORDER of Commissioner Andrew Giles Fay, as Prehearing Officer, this 16th day of October, 2020.



ANDREW GILES FAY
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SBr

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
clause with generating performance incentive
factor.

DOCKET NO. 20200001-EI
ORDER NO. PSC-2020-0379-CFO-EI
ISSUED: October 16, 2020

ORDER GRANTING REQUEST FOR CONFIDENTIAL
CLASSIFICATION (DOCUMENT NO. 04446-2020)

On August 14, 2020, pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), Duke Energy Florida, LLC (DEF) filed a Request for Confidential Classification (Request) of Commission staff's Recommendation dated August 6, 2020 (Document No. 04446-2020).

Request for Confidential Classification

DEF contends that the information contained in Commission staff's Recommendation dated August 6, 2020, more specifically described in Exhibit C to its Request, constitutes proprietary confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C. DEF asserts that this information is intended to be and is treated by DEF as private and has not been publicly disclosed.

The information contained in Commission staff's Recommendation dated August 6, 2020, consists of operational, design, and cost information associated with the Mitsubishi steam turbine connected to DEF's Bartow Unit 4 power plant which is proprietary to Mitsubishi. Disclosure of the Commission staff's Recommendation dated August 6, 2020, would reveal this proprietary third-party owned information resulting in competitive harm to Mitsubishi and potentially impairing DEF's ability to contract for goods and services on favorable terms in the future as vendors would charge a premium if DEF could not protect their information. DEF argues that this information is protected by Subsection 366.093(3)(d) and (e), F.S.

Ruling

Subsection 366.093(1), F.S., provides that records the Florida Public Service Commission (Commission) has found to contain proprietary business information shall be kept confidential and shall be exempt from Chapter 119, F.S. Subsection 366.093(3), F.S., defines proprietary confidential business information as information that is intended to be and is treated by the company as private, in that disclosure of the information would cause harm to the company's ratepayers or business operations, and has not been voluntarily disclosed to the public. Subsection 366.093(3), F.S., provides that proprietary confidential business information includes, but is not limited to:

- (d) Information concerning bids or other contractual data, the disclosure of

which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms.

Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

Upon review, it appears the information and data provided in this request satisfies the criteria set forth in Subsection 366.093(3), F.S., for classification as proprietary confidential business information. The pricing terms in vendor and 3rd party contracts appear to be “information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms” and “information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.” Thus the information identified in Document No. 04446-2020 shall be granted confidential classification.

Pursuant to Subsection 366.093(4), F.S., the information for which confidential classification is granted herein shall remain protected from disclosure for a period of up to 18 months from the date of issuance of this Order. At the conclusion of the 18-month period, the confidential information will no longer be exempt from Subsection 119.07(1), F.S., unless DEF or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information.

Based on the foregoing, it is hereby

ORDERED by Commissioner Andrew Giles Fay, as Prehearing Officer, that Duke Energy Florida, LLC's Request for Confidential Classification of Document No. 04446-2020, is granted, as set forth herein. It is further

ORDERED that the information in Document No. 04446-2020, for which confidential classification has been granted, shall remain protected from disclosure for a period of up to 18 months from the date of issuance of this Order. It is further

ORDERED that this Order shall be the only notification by the Commission to the parties of the date of declassification of the materials discussed herein.

By ORDER of Commissioner Andrew Giles Fay, as Prehearing Officer, this 16th day of October, 2020.]



ANDREW GILES FAY
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SBr

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
clause with generating performance incentive
factor.

DOCKET NO. 20200001-EI
ORDER NO. PSC-2020-0374-CFO-EI
ISSUED: October 16, 2020

ORDER GRANTING REQUEST FOR CONFIDENTIAL CLASSIFICATION
(DOCUMENT NOS. 00962-2020, 00963-2020, 00964-2020, 00967-2020 to 00979-2020
AND 00981-2020 to 00983-2020)

On March 10, 2020, pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), Duke Energy Florida, LLC (DEF) filed a Request for Confidential Classification (Request) of the transcripts of a hearing before the Florida Division of Administrative Hearings (DOAH) conducted on February 4 and 5, 2020, as well as Exhibits 101-113, 115 and 117 admitted into evidence at that hearing. (Document Nos. 00962-2020, 00963-2020, 00964-2020, 00967-2020 to 00979-2020, and 00981-2020 to 00983-2020). This material was submitted on February 18, 2020, along with a Notice of Intent to Request Confidential Classification (Document No. 00961-2020).

Request for Confidential Classification

DEF contends that the information contained in transcripts of a hearing before the Florida Division of Administrative Hearings (DOAH) conducted on February 4 and 5, 2020, as well as Exhibits 101-113, 115 and 117, more specifically described in Exhibit C to its Request, constitutes proprietary confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C. DEF asserts that this information is intended to be and is treated by DEF as private and has not been publicly disclosed.

The information contained the transcripts of a hearing before the Florida Division of Administrative Hearings (DOAH) conducted on February 4 and 5, 2020, as well as Exhibits 101-113, 115 and 117, contain diagrams and technical information regarding the design and operational parameters of a Mitsubishi steam turbine connected to DEF's Bartow Unit 4 power plant which are proprietary to Mitsubishi. Disclosure of the transcripts and exhibits would reveal this proprietary third-party owned information which could potentially impair DEF's ability to contract for goods and services on favorable terms in the future as vendors would charge a premium if DEF could not protect their information. DEF argues that this information is protected by Subsection 366.093(3)(d) and (e), F.S.

Ruling

Subsection 366.093(1), F.S., provides that records the Florida Public Service Commission (Commission) has found to contain proprietary business information shall be kept confidential and shall be exempt from Chapter 119, F.S. Subsection 366.093(3), F.S., defines proprietary

confidential business information as information that is intended to be and is treated by the company as private, in that disclosure of the information would cause harm to the company's ratepayers or business operations, and has not been voluntarily disclosed to the public. Subsection 366.093(3), F.S., provides that proprietary confidential business information includes, but is not limited to:

(d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms.

(e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

Upon review, it appears the above-referenced information satisfies the criteria set forth in Subsection 366.093(3), F.S., for classification as proprietary confidential business information. The pricing terms in vendor and 3rd party contracts appear to be “information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms” and “information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.” Thus, the information identified in Document Nos. 00962-2020, 00963-2020, 00964-2020, 00967-2020 to 00979-2020, and 00981-2020 to 00983-2020, as well as Exhibits 101-113, 115 and 117, shall be granted confidential classification.

Pursuant to Subsection 366.093(4), F.S., the information for which confidential classification is granted herein shall remain protected from disclosure for a period of up to 18 months from the date of issuance of this Order. At the conclusion of the 18-month period, the confidential information will no longer be exempt from Section 119.07(1), F.S., unless DEF or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information.

Based on the foregoing, it is hereby

ORDERED by Commissioner Andrew Giles Fay, as Prehearing Officer, that Duke Energy Florida, LLC's Request for Confidential Classification of Document Nos. 00962-2020, 00963-2020, 00964-2020, 00967-2020 to 00979-2020, and 00981-2020 to 00983-2020, as well as Exhibits 101-113, 115 and 117, is granted, as set forth herein. It is further

ORDERED that the information in Document Nos. 00962-2020, 00963-2020, 00964-2020, 00967-2020 to 00979-2020, and 00981-2020 to 00983-2020, as well as Exhibits 101-113, 115 and 117, for which confidential classification has been granted, shall remain protected from disclosure for a period of up to 18 months from the date of issuance of this

Order. It is further

ORDERED that this Order shall be the only notification by the Commission to the parties of the date of declassification of the materials discussed herein.

By ORDER of Commissioner Andrew Giles Fay, as Prehearing Officer, this 16th day of October, 2020.



ANDREW GILES FAY
Commissioner and Prehearing Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

SBr

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the

ORDER NO. PSC-2020-0374-CFO-EI

DOCKET NO. 20200001-EI

PAGE 4

appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
clause with generating performance incentive
factor.

DOCKET NO. 20200001-EI
ORDER NO. PSC-2020-0380-CFO-EI
ISSUED: October 16, 2020

ORDER GRANTING REQUEST FOR CONFIDENTIAL CLASSIFICATION
(DOCUMENT NO. 03051-2020, X-REF. 02707-2020)

On June 11, 2020, pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), Duke Energy Florida, LLC (DEF) filed a Request for Confidential Classification (Request) of the Joint Response to DEF's Exceptions to the Administrative Law Judge's Recommended Order (Joint Response) dated April 27, 2020 (Document No. 03051-2020, x-ref., 02707-2020).

Request for Confidential Classification

DEF contends that the information contained in this Joint Response, more specifically described in Exhibit C to its Request, constitutes proprietary confidential business information entitled to protection under Section 366.093, F.S., and Rule 25-22.006, F.A.C. DEF asserts that this information is intended to be and is treated by DEF as private and has not been publicly disclosed.

The information contained in this Joint Response consists of operational, design, and cost information associated with the Mitsubishi steam turbine connected to DEF's Bartow Unit 4 power plant which is proprietary to Mitsubishi. Disclosure of the Joint Response would reveal this proprietary third-party owned information resulting in competitive harm to Mitsubishi and potentially impairing DEF's ability to contract for goods and services on favorable terms in the future as vendors would charge a premium if DEF could not protect their information. DEF argues that this information is protected by Subsection 366.093(3)(d) and (e), F.S.

Ruling

Subsection 366.093(1), F.S., provides that records the Florida Public Service Commission (Commission) has found to contain proprietary business information shall be kept confidential and shall be exempt from Chapter 119, F.S. Subsection 366.093(3), F.S., defines proprietary confidential business information as information that is intended to be and is treated by the company as private, in that disclosure of the information would cause harm to the company's ratepayers or business operations, and has not been voluntarily disclosed to the public. Subsection 366.093(3), F.S., provides that proprietary confidential business information includes, but is not limited to:

- (d) Information concerning bids or other contractual data, the disclosure of

which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms.

Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

Upon review, it appears the information and data provided in this request satisfies the criteria set forth in Subsection 366.093(3), F.S., for classification as proprietary confidential business information. The pricing terms in vendor and 3rd party contracts appear to be “information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms” and “information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.” Thus the information identified in Document No. 03051-2020, x-ref. 02707-2020, shall be granted confidential classification.

Pursuant to Subsection 366.093(4), F.S., the information for which confidential classification is granted herein shall remain protected from disclosure for a period of up to 18 months from the date of issuance of this Order. At the conclusion of the 18-month period, the confidential information will no longer be exempt from Subsection 119.07(1), F.S., unless DEF or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information.

Based on the foregoing, it is hereby

ORDERED by Commissioner Andrew Giles Fay, as Prehearing Officer, that Duke Energy Florida, LLC's Request for Confidential Classification of Document No. 03051-2020, x-ref., 02707-2020, is granted, as set forth herein. It is further

ORDERED that the information in Document No. 03051-2020, x-ref., 02707-2020, for which confidential classification has been granted, shall remain protected from disclosure for a period of up to 18 months from the date of issuance of this Order. It is further

ORDERED that this Order shall be the only notification by the Commission to the parties of the date of declassification of the materials discussed herein.

By ORDER of Commissioner Andrew Giles Fay, as Prehearing Officer, this 16th day of October, 2020.



ANDREW GILES FAY
Commissioner and Prehearing Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

SBr

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.



Matthew R. Bernier
ASSOCIATE GENERAL COUNSEL

October 16, 2020

VIA ELECTRONIC FILING

Adam J. Teitzman, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: *Fuel and Purchased Power Cost Recovery Clause with Generating
Performance Incentive Factor*; Docket No. 20200001-EI

Dear Mr. Teitzman:

Attached for electronic filing in the above-referenced Docket is Duke Energy Florida, LLC's acknowledgment of receipt of the Confidential Final Order Establishing Fuel Cost Recovery for Duke Energy Florida, LLC.

Thank you for your assistance in this matter. Please feel free to call me at (850) 521-1428 should you have any questions concerning this filing.

Sincerely,

/s/ Matthew R. Bernier

Matthew R. Bernier

MRB/cmk
Attachment

CERTIFICATE OF SERVICE

Docket No. 20200001-EI

I HEREBY CERTIFY that a true copy of the above-mentioned document has been furnished to the following individuals via e-mail on this 16th day of August, 2020.

/s/ Matthew R. Bernier

Attorney

<p>Suzanne Brownless Office of General Counsel FL Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 sbrownle@psc.state.fl.us</p> <p>J. Beasley / J. Wahlen / M. Means Ausley McMullen P.O. Box 391 Tallahassee, FL 32302 jbeasley@ausley.com jwahlen@ausley.com mmeans@ausley.com</p> <p>Russell A. Badders Gulf Power Company One Energy Place Pensacola, FL 32520 russell.badders@nexteraenergy.com</p> <p>Kenneth A. Hoffman Florida Power & Light Company 134 W. Jefferson Street Tallahassee, FL 32301-1713 ken_hoffman@fpl.com</p> <p>Jon C. Moyle, Jr. Moyle Law Firm, P.A. 118 North Gadsden Street Tallahassee, FL 32301 jmoyle@moylelaw.com mqualls@moylelaw.com</p>	<p>J.R. Kelly / T. David Office of Public Counsel 111 W. Madison St., Room 812 Tallahassee, FL 32399-1400 kelly.jr@leg.state.fl.us david.tad@leg.state.fl.us</p> <p>Paula K. Brown Regulatory Affairs Tampa Electric Company P.O. Box 111 Tampa, FL 33601-0111 regdept@tecoenergy.com</p> <p>Maria Moncada / David Lee Florida Power & Light Company 700 Universe Blvd. (LAW/JB) Juno Beach, FL 33408-0420 maria.moncada@fpl.com david.lee@fpl.com</p> <p>James Brew / Laura W. Baker Stone Law Firm 1025 Thomas Jefferson St., N.W. Suite 800 West Washington, DC 20007 jbrew@smxblaw.com lwb@smxblaw.com</p> <p>Mike Cassel Florida Public Utilities Company 208 Wildlight Avenue Yulee, FL 32097 mcassel@fpuc.com</p> <p>Beth Keating Gunster, Yoakley & Stewart, P.A. 215 South Monroe Street, Suite 601 Tallahassee, FL 32301 bkeating@gunster.com</p>
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Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: October 16, 2020

TO: Keith Hetrick, General Counsel, Office of General Counsel

FROM: Adam J Teitzman, Commission Clerk, Office of Commission Clerk *AJ*

RE: Docket 20200001-EI - Fuel and purchased power cost recovery clause with generating performance incentive factor.

Duke Energy Florida, LLC d/b/a Duke Energy has requested access to the confidential document listed below. Permission is requested, pursuant to APM 11.04 C.6.d.(3), to grant access to this confidential document for Duke Energy.

DN 11211-2020 - (CONFIDENTIAL) Final Order PSC-2020-0368-FOF-EI establishing fuel cost recovery for Duke Energy.

Approved: *Keith Hetrick*

Disapproved: _____

AJT: cdr

cc: Docket file

Devlin Higgins, Division of Accounting and Finance
Suzanne Brownless, Office of the General Counsel

Received by: /s/ Matthew R. Bernier

Date: 10/16/20

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: October 28, 2020

TO: Adam J. Teitzman, Commission Clerk, Office of Commission Clerk

FROM: Shaw Stiller, Senior Attorney, Office of the General Counsel *SPS*

RE: Docket No. 20200001-EI - Fuel and purchased power cost recovery clause with generating performance incentive factor.

Attached is an Amended Final Order in Docket No. 20200001-EI. Order No. PSC-2020-0368-FOF-EI issued on October 15, 2020, referenced but did not include an Attachment A. This Amended Order includes Attachment A. Other than correcting this one scrivener's error, the Amended Final Order does not differ from Order No. PSC-2020-0368-FOF-EI.

This Amended Final Order is confidential. Duke Energy Florida, LLC, will be filing a request for confidentiality shortly.

RECEIVED-FPSC
2020 OCT 29 PM 12:03
COMMISSION
CLERK



Matthew R. Bernier
ASSOCIATE GENERAL COUNSEL

October 29, 2020

VIA OVERNIGHT DELIVERY

Adam J. Teitzman, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: *Fuel and purchased power cost recovery clause with generating performance
incentive Factor; Docket No. 20200001-EI*

Dear Mr. Teitzman:

On October 29, 2020, Duke Energy Florida, LLC ("DEF") electronically filed its Request for Confidential Classification in connection with certain information provided in the Florida Public Service Commission's Final Order No. PSC-2020-0368-FOF-EI, in the above-referenced matter. As referenced in the Request for Confidential Classification, enclosed with this cover letter is DEF's Confidential Exhibit A (in a separate sealed envelope) that accompanies the above referenced filing.

Thank you for your assistance in this matter. Please feel free to call me at (850) 521-1428 should you have any questions concerning this filing.

Respectfully,

/s/ Matthew R. Bernier

Matthew R. Bernier

MRB/cmw
Enclosures

RECEIVED-FPSC
2020 OCT 29 PM 12:23
COMMISSION
CLERK

CERTIFICATE OF SERVICE

Docket No. 20200001-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail to the following this 29th day of October, 2020.

/s/ Matthew R. Bernier

Attorney

Suzanne Brownless
Office of General Counsel
FL Public Service Commission
2540 Shumard Oak Blvd.
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Tallahassee, FL 32301
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Matthew R. Bernier
ASSOCIATE GENERAL COUNSEL

October 29, 2020

VIA ELECTRONIC FILING

Adam J. Teitzman, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: *Fuel and purchased power cost recovery clause with generating performance
incentive factor; Docket No. 20200001-EI*

Dear Mr. Teitzman:

Please find enclosed for electronic filing on behalf of Duke Energy Florida, LLC ("DEF"), DEF's Request for Confidential Classification filed in connection with certain information provided in the Florida Public Service Commission's Final Order No. PSC-2020-0368-FOF-EI. The filing includes the following:

- DEF's Request for Confidential Classification
- Exhibit A (Slip Sheet for Confidential Documents)
- Exhibit B (two redacted copies)
- Exhibit C (Justification Matrix), and
- Exhibit D (affidavit of Jeffrey Swartz)

DEF's confidential Exhibit A that accompanies the above-referenced filing has been submitted under separate cover.

Thank you for your assistance in this matter. Please feel free to call me at (850) 521-1428 should you have any questions concerning this filing.

Respectfully,

/s/ Matthew R. Bernier

Matthew R. Bernier

MRB/cmw
Enclosures

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
Clause with generating performance incentive
Factor

Docket No. 20200001-EI

Filed: October 29, 2020

**DUKE ENERGY FLORIDA, LLC'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

Duke Energy Florida, LLC, (“DEF” or “Company”), pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), submits this Request for Confidential Classification for certain information provided in the Florida Public Service Commission’s (FPSC) Final Order No. PSC-2020-0368-FOF-EI. This Request is timely. *See* Rule 25-22.006(3)(a)1, F.A.C. In support of this Request, DEF states:

The FPSC’s Final Order No. PSC-2020-0368-FOF-EI, contains “proprietary confidential business information” under § 366.093(3), Florida Statutes.

1. The following exhibits are included with this request:

(a) Sealed Composite Exhibit A is a package containing an unredacted copy of all the documents for which DEF seeks confidential treatment. In the unredacted version, the information asserted to be confidential is highlighted in yellow.

(b) Composite Exhibit B is a package containing two copies of redacted versions of the documents for which the Company requests confidential classification, or slip-sheets for documents which are confidential in their entirety. The specific information for which confidential treatment is requested has been blocked out by opaque marker or other means.

(c) Exhibit C is a table which identifies the information for which DEF seeks confidential classification and the specific statutory bases for seeking confidential treatment.

(d) Exhibit D is an affidavit attesting to the confidential nature of information identified in this request.

2. As indicated in Exhibit C, the information for which DEF requests confidential classification is “proprietary confidential business information” within the meaning of § 366.093(3), F.S. DEF is requesting confidential classification of this information because it contains contractual information or information provided by a third party that DEF is obligated to keep confidential, the disclosure of which would harm its competitive business interest and ability to contract for goods or services on favorable terms. *See* §§ 366.093(3)(d) & (e), F.S.; Affidavit of Jeffrey Swartz at ¶¶ 3, 4 and 5. Accordingly, such information constitutes “proprietary confidential business information” which is exempt from disclosure under the Public Records Act pursuant to § 366.093(1), F.S.

3. In order to contract with third-party vendors and Original Equipment Manufacturers on favorable terms, DEF must keep contractual terms and third-party proprietary information confidential. The disclosure of which would be to the detriment of DEF and its customers. Additionally, the disclosure of confidential information provided by a third party could adversely impact DEF’s competitive business interests. If such information was disclosed to DEF’s competitors, DEF’s efforts to obtain competitive contracts that add economic value to both DEF and its customers could be undermined. *See* Affidavit of Swartz at ¶¶ 4 and 5. *Id.*

4. The information identified as Exhibit “A” is intended to be and is treated as confidential by the Company. *See* Affidavit of Swartz at ¶¶ 4 and 6. The information has not been disclosed to the public, and the Company and third-party vendors have treated and continue to treat this information as confidential. *Id.*

5. DEF requests that the information identified in Exhibit A be classified as “proprietary confidential business information” within the meaning of § 366.093(3), F.S., that the information remains confidential for a period of at least 18 months as provided in § 366.093(4) F.S., and that the information be returned as soon as it is no longer necessary for the Commission to conduct its business.

WHEREFORE, for the foregoing reasons, DEF respectfully requests that this Request for Confidential Classification be granted.

RESPECTFULLY SUBMITTED this 29th day of October, 2020.

/s/ Matthew R. Bernier

DIANNE M. TRIPLETT

Deputy General Counsel
Duke Energy Florida, LLC
299 First Avenue North
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MATTHEW R. BERNIER

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E: Matthew.Bernier@duke-energy.com
FLRegulatoryLegal@duke-energy.com

CERTIFICATE OF SERVICE

Docket No. 20200001-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail to the following this 29th day of October, 2020.

/s/ Matthew R. Bernier

Attorney

<p>Suzanne Brownless Office of General Counsel FL Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 sbrownle@psc.state.fl.us</p> <p>J. Beasley / J. Wahlen / M. Means Ausley McMullen P.O. Box 391 Tallahassee, FL 32302 jbeasley@ausley.com jwahlen@ausley.com mmeans@ausley.com</p> <p>Russell A. Badders Gulf Power Company One Energy Place, Bin 100 Pensacola, FL 32520-0100 russell.badders@nexteraenergy.com</p> <p>Kenneth A. Hoffman Florida Power & Light Company 134 W. Jefferson Street Tallahassee, FL 32301-1713 ken_hoffman@fpl.com</p> <p>Jon C. Moyle, Jr. Moyle Law Firm, P.A. 118 North Gadsden Street Tallahassee, FL 32301 jmoyle@moylelaw.com mqualls@moylelaw.com</p>	<p>J.R. Kelly / T. David Office of Public Counsel 111 W. Madison St., Room 812 Tallahassee, FL 32399-1400 kelly.jr@leg.state.fl.us david.tad@leg.state.fl.us</p> <p>Paula K. Brown Regulatory Affairs Tampa Electric Company P.O. Box 111 Tampa, FL 33601-0111 regdept@tecoenergy.com</p> <p>Maria Moncada / David Lee Florida Power & Light Company 700 Universe Blvd. (LAW/JB) Juno Beach, FL 33408-0420 maria.moncada@fpl.com david.lee@fpl.com</p> <p>James Brew / Laura W. Baker Stone Law Firm 1025 Thomas Jefferson St., N.W. Suite 800 West Washington, DC 20007 jbrew@smxblaw.com lwb@smxblaw.com</p> <p>Mike Cassel Florida Public Utilities Company 208 Wildlight Avenue Yulee, FL 32097 mcassel@fpuc.com</p> <p>Beth Keating Gunster, Yoakley & Stewart, P.A. 215 South Monroe Street, Suite 601 Tallahassee, FL 32301 bkeating@gunster.com</p>
---	--

Exhibit A

CONFIDENTIAL

**(Slip Sheet- The Confidential Documents have been provided under
separate cover.)**

Exhibit B
(Two Copies)

REDACTED

FILED 10/15/2020
DOCUMENT NO. 11211-2020
FPSC - COMMISSION CLERK

**FLORIDA PUBLIC SERVICE COMMISSION
OFFICE OF COMMISSION CLERK**



DOCUMENT NUMBER ASSIGNMENT*

FILED DATE: 10/15/2020

DOCKET NO.: 20200001-EI

DOCUMENT NO.: 11211-2020

DOCUMENT DESCRIPTION:

(CONFIDENTIAL) Final Order PSC-2020-0368-FOF-EI establishing fuel cost recovery for Duke Energy.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.

DOCKET NO. 20200001-EI
ORDER NO.
ISSUED:

CONFIDENTIAL

The following Commissioners participated in the disposition of this matter:

GARY F. CLARK, Chairman
ART GRAHAM
JULIE I. BROWN
DONALD J. POLMANN
ANDREW GILES FAY

FINAL ORDER ESTABLISHING FUEL COST RECOVERY
FOR DUKE ENERGY FLORIDA, LLC.

BY THE COMMISSION:

I. BACKGROUND

Docket No. 20190001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*, referred to as the Fuel Clause, was opened on January 2, 2019. The Fuel Clause is a perennial docket closed, reopened, and renumbered every year in which the Commission processes all petitions filed by investor-owned electric utilities seeking to recover the cost of fuel and fuel-related activities needed to generate electricity.

A. Prehearing proceedings before the Commission

Duke Energy Florida, LLC (DEF) is an investor-owned electric utility operating in the State of Florida. DEF reaffirmed its party status in Docket No. 20190001-EI on January 3, 2019. Likewise, the Office of Public Counsel (OPC), authorized by Section 350.0611, Florida Statutes (F.S.), to provide legal representation to Florida electric utility customers before the Commission, reaffirmed its party status in Docket No. 20190001-EI on January 4, 2019. The Florida Industrial Power Users Group (FIPUG), an association of utility customers who consume large amounts of electricity, and White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate – White Springs (PCS Phosphate), a fertilizer company, reaffirmed their party status on January 4, 2019 and January 15, 2019, respectively.

We issued Order No. PSC-2019-0059-PCO-EI on February 13, 2019, establishing the procedures to be followed. On March 1, 2019, DEF filed its Petition for approval of fuel cost recovery and capacity cost recovery with generating performance incentive factor actual true-ups for the period ending December 2018. At that time DEF also filed the direct testimony of Jeffrey

Swartz which incorporated Exhibit JS-1, filed in the 2018 Fuel Clause. On September 13, 2019, OPC filed the direct testimony and exhibits of Richard A. Polich, non-confidential Exhibits RAP-1 through RAP-2, and confidential Exhibits RAP-3 through RAP-9. On September 26, 2019, DEF filed the rebuttal testimony of Jeffrey Swartz with confidential Exhibits JS-2 through JS-4.

A Prehearing Conference was held on October 22, 2019, and Prehearing Order No. PSC-2019-0466-PHO-EI was issued on October 31, 2019. At that time two issues associated with the testimony of witnesses Swartz and Polich were identified: Issues 1B and 1C. Issue 1B and 1C state as follows:

Issue 1B: Was DEF prudent in its actions and decisions leading up to and in restoring the unit to service after the February 2017 forced outage at the Bartow plant, and if not, what action should the Commission take with respect to replacement power costs?

Issue 1C: Has DEF made prudent adjustments, if any are needed, to account for replacement power costs associated with any impacts related to the de-rating of the Bartow Plant? If adjustments are needed and have not been made, what adjustment(s) should be made?

B. Evidentiary proceedings before the Division of Administrative Hearings

It became readily apparent that large portions of the testimony and exhibits of both witnesses Swartz and Polich associated with these issues, as well as the Commission staff's proposed trial exhibits, were highly confidential in nature. This fact made it impossible to conduct meaningful direct or cross examination without reference to, and discussion of, confidential material. The only way to conduct a hearing based substantially on confidential material would be to close the hearing to the public. Because we must conduct all proceedings in the sunshine under the law,¹ we do not have the ability to close a hearing, even one which deals extensively with confidential materials and testimony. Therefore, in order to maintain the confidentiality of these materials, we referred DEF Bartow Unit 4 Issues 1B and 1C to the Division of Administrative Hearings (DOAH) on November 8, 2019.

Administrative law judge (ALJ) Lawrence P. Stevenson conducted a closed final evidentiary hearing on February 4-5, 2020. At the hearing, DEF presented the confidential testimony of Jeffrey Swartz, with his prefiled direct and rebuttal testimony inserted into the record as though read. DEF's Exhibit Nos. 80-82 were admitted into evidence. OPC presented the confidential testimony of Richard A. Polich, with his prefiled testimony inserted into the record as though read. OPC's Exhibit Nos. 68-75, 101-109, and 115-117 were admitted into evidence. Commission staff Exhibit Nos. 110 and 111 were admitted into evidence. FIPUG's Exhibit No. 118 and PCS Phosphate's Exhibit Nos. 112 and 113 were also admitted into

¹ Section 286.011, F.S.

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evidence. The revised Comprehensive Exhibit List (CEL) was admitted into evidence by stipulation as Exhibit No. 114.

A three-volume transcript of the final hearing was filed with the Commission Clerk on February 18, 2020, and was provided to the DOAH Clerk on February 24, 2020. DEF, Commission staff, and OPC, jointly with PCS Phosphate and FIPUG, timely filed confidential proposed recommended orders on March 20, 2020. The ALJ issued his Recommended Order² on April 27, 2020. A redacted version of the Recommended Order is found in Attachment A to this Final Order.

C. Overview of the Recommended Order

This case involves the operation of DEF's Bartow Unit 4 combined cycle natural gas plant and whether DEF operated the plant prudently from the time it was brought on line in June 2009 until February 2017. Bartow Unit 4 is comprised of a steam turbine manufactured by Mitsubishi Hitachi Power Systems (Mitsubishi) with a gross output of 420 MW connected to four M501 Type F combustion turbines. The steam turbine is an "after-market" unit which was originally designed for Tenaska Power Equipment, LLC (Tenaska) to be used in a 3x1 configuration with three M501 Type F combustion turbines with a gross output of 420 MW. Prior to purchasing the steam turbine, DEF's predecessor, Progress Energy Florida, LLC contracted with Mitsubishi to [REDACTED]

As required by its contract, [REDACTED]

The Bartow plant has experienced five outages since it was brought on line in June 2009: March 2012 (planned), August 2014 (planned), April 2016 (planned), October 2016 (forced), and February 2017 (forced).

In March 2012 during a scheduled outage, DEF discovered that the [REDACTED] in the low pressure section of the steam turbine were damaged. The [REDACTED] were replaced with [REDACTED] and the plant was operated until August 2014 when the plant was taken out of service to [REDACTED] the [REDACTED]. The plant came back on line in December 2014 and ran until April 2016 when it was taken off line for routine valve work and [REDACTED] inspection. The plant was placed back in service in May 2016 with a [REDACTED] and operated until October 2016, when DEF shut the plant down due to excessive vibration and loss of [REDACTED] material. In December 2016 the plant was put back in service with the [REDACTED], and was taken out of service in February of 2017 due to a [REDACTED] projectile that traveled through the low pressure turbine rupture disk diaphragm. DEF brought the plant back on line in April 2017 with a pressure plate installed in the low pressure section of the steam turbine, which effectively decreased the output of the plant from 420 to 380 MW. DEF continued to operate the plant with the pressure plates until September 28, 2019.

² "Recommended Order" is defined in Section 120.52(15), F.S., as the official recommendation of the ALJ assigned by DOAH or of any other duly authorized presiding officer, other than the agency head or member thereof.

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There are two amounts that are associated with the initial prudence question: 1) replacement power costs for the February 2017 outage in the amount of \$11.1 million, and 2) May 2017 through September 2019 unit derating³ costs in the amount of \$5,016,782 million.

Petitioner, DEF, has the burden of proving by a preponderance of the evidence, that it acted prudently in the operation of Bartow Unit 4 up to and restoring the unit to service after the February 2017 forced outage. Additionally, DEF must prove by a preponderance of the evidence that no adjustment to replacement power costs should be made to account for the fact that after March 2017, and the installation of a pressure plate, Bartow Unit 4 could no longer produce its rated nameplate capacity of 420 MW. The standard for determining whether replacement power costs are prudent is "what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or should [have] been known at the time the decision was made."⁴

In his Recommended Order, the ALJ detailed the relevant facts and legal standards required to determine whether DEF acted prudently in its operation of Bartow Unit 4 from June 2009 until February 2017. In his conclusion, the ALJ recommended that this Commission find that DEF failed to demonstrate that it acted prudently in the operation of its Bartow Unit 4 plant and in restoring the unit to service after the February 2017 forced outage, and that DEF should refund a total of \$16,116,782 to its customers.

D. Post-Hearing proceedings before the Commission

On May 12, 2020, DEF submitted exceptions to the Recommended Order. OPC, jointly with PCS Phosphate and FIPUG (collectively, the Intervenor), filed a Response to DEF's Exceptions.

We have Jurisdiction over this matter under Sections 120.57, 366.04, 366.05, and 366.06, F.S. As discussed in more detail below, we deny DEF's Exceptions to the Recommended Order and adopt the Administrative Law Judge's Recommended Order as the Final Order.

II. RULINGS ON EXCEPTIONS

A. Standard of Review of Recommended Order and Exceptions

Section 120.57(1)(l), F.S., establishes the standards an agency must apply in reviewing a Recommended Order following a formal administrative proceeding. The statute provides that the agency may adopt the Recommended Order as the Final Order of the agency or may modify or reject the Recommended Order. An agency may only reject or modify an ALJ's findings of fact if, after a review of the entire record, the agency determines and states with particularity that the

³ "Derating" is the reduction in MW output due to installing pressure plates in place of the [REDACTED] in the low pressure section of the steam turbine.

⁴ *Southern Alliance for Clean Energy v. Graham*, 113 So. 3d 742, 750 (Fla. 2013).

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findings of fact were not based on competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law.⁵

Section 120.57(1)(l), F.S., also states that an agency in its final order may reject or modify conclusions of law over which it has substantive jurisdiction and interpretations of administrative rules over which it has substantive jurisdiction. When rejecting or modifying a conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying the conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact.⁶

In regard to parties' exceptions to the ALJ's Recommended Order, Section 120.57(1)(k), F.S., provides that the Commission does not have to rule on exceptions that fail to clearly identify the disputed portion of the Recommended Order by specific page numbers or paragraphs or that do not identify the legal basis for the exception, or those that lack appropriate and specific citations to the record.⁷ Section 120.57(1)(l), F.S., requires our final order to include an explicit ruling on each exception and sets a high bar for rejecting an ALJ's findings.

B. Rulings on Exceptions to the Recommended Order

DEF Exception to Conclusion of Law 110

DEF takes exception with the ALJ's Conclusion of Law 110, which states:

110. DEF failed to demonstrate by a preponderance of the evidence that its actions during Period 1 were prudent. DEF purchased an aftermarket steam turbine from Mitsubishi with the knowledge that it had been manufactured to the specifications of Tenaska with a design point of 420 MW of output. Mr. Swartz's testimony regarding the irrelevance of the 420 MW limitation was unpersuasive in light of the documentation that after the initial blade failure, DEF itself accepted the limitation and worked with Mitsubishi to find a way to increase the output of the turbine to [REDACTED]

First, as a general criticism, DEF argues that when weighing the facts presented at hearing, although stating the correct legal standard of review - what a reasonable utility manager should have done based on what he knew or should have known at the time - the ALJ did not apply that standard but instead evaluated DEF's actions from the perspective of what is currently known. DEF states that this type of "hindsight" and "Monday-morning quarterbacking" prudence analysis has been found to be inappropriate under *Florida Power Corporation v. Public Service Comm. (Florida Power)*, 456 So. 2d 451, 452 (Fla. 1984).

⁵ Section 120.57(1)(l), F.S.

⁶ *Id.*

⁷ Section 120.57(1)(k), F.S.

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Second, DEF disagrees with the ALJ's conclusion that the 420 MW design point was a limitation on the steam turbine. DEF argues that the record supports the conclusion that the 420 MW design point is a fall out number based on various combinations of operating parameters provided by Mitsubishi. DEF argues that operating within the [REDACTED] was prudent given what DEF knew or should have known during Period 1. At that time, DEF contends that there was no reason to believe that increasing the output above 420 MW would damage the unit [REDACTED]. Thus, DEF concludes that the fact that the [REDACTED] failed in February 2017 does not mean that the plant operator reasonably should have known that would happen in June 2009.

Third, DEF argues that DEF's compliance with lower than 420 MW output after Period 1 and its request to Mitsubishi for modifications to operate the unit at [REDACTED] do not logically support the conclusion that DEF agreed the unit originally could not be operated above 420 MW. These actions, according to DEF, allowed the unit to continue to be operated to produce the most power possible while research into the cause of the Period 1 outage was conducted. DEF argues that getting the unit back on line producing as much power as possible is implementation of long standing Commission policy that utilities operate generating units for maximum efficiency. DEF asserts that these actions are not evidence of DEF's acceptance of 420 MW as a limitation on the output of the unit.

Intervenors' Response

Intervenors contend that DEF, while conceding that the ALJ referenced the correct legal standard for prudence review, never explains or demonstrates exactly how the ALJ applied "Monday-morning quarterbacking" to reach any of the conclusions in Conclusions of Law 110. In the determination of what a utility knew or should have known at any past point in time, Intervenors state that there is necessarily a review of contemporaneous prior actions and documents. They contend that that review was done here. Intervenors note that DEF has not argued that there is no competent substantial evidence supporting the ALJ's conclusions in Conclusions of Law 110 and cites nine separate parts of the record that do logically support the ALJ's conclusion that DEF did not act prudently in running the unit above 420 MW in Period 1.

Intervenors further argue that the *Florida Power* case relied upon by DEF is not applicable here for several reasons. In *Florida Power*, the Commission classified "non-safety related" repair work as "safety-related" repair work and then applied the higher standard of care for "safety-related" repair work to determine if Florida Power had conducted the repairs prudently. Finding that the record indicated that the extensive repair work was not *per se* safety-related, the Court found that the Commission could not apply the higher standard of care. *Florida Power*, 456 So. 2d at 451. Intervenors argue that in this case, the facts upon which the ALJ relied regarding the repair of the unit are supported by competent substantial evidence and are not in dispute, nor does DEF argue that the inferences drawn from the facts by the ALJ are unreasonable. Intervenors state that DEF would simply draw different conclusions from the same set of facts, i.e., would have us weigh the evidence differently, an action prohibited by Chapter 120, F.S.

Ruling

DEF is asking us to modify a conclusion of law. When rejecting or modifying a conclusion of law, we must state with particularity our reasons for doing so, and must make a finding that the substituted conclusion of law is as or more reasonable than the one rejected or modified.⁸ Rejection or modification of a conclusion of law may not form the basis for rejection or modification of a finding of fact.⁹ With respect to DEF's exception to Conclusion of Law 110, DEF has failed to provide an adequate basis for rejecting or modifying the Conclusion of Law, and DEF's exception is therefore denied.

Further, DEF has not raised exceptions to any of the 102 factual findings made by the ALJ in his Recommended Order. As its rationale for not doing so, DEF cites the high standard that must be met to set aside an ALJ's finding of fact.¹⁰ The failure to file exceptions to findings of fact constitutes a waiver of the right to object to those facts on appeal. *Mehl v. Office of Financial Regulation*, 859 So. 2d 1260 (Fla. 1st DCA 2003); *Environmental Coalition of Florida v. Broward County*, 586 So. 2d 1212 (Fla. 1st DCA 1991). Nor has DEF argued that the proceedings conducted by the ALJ that produced those facts did not comply with the essential requirements of law. Thus, for all practical purposes, DEF has accepted all of the ALJ's 102 factual findings.

If the ALJ's findings of fact are supported by competent substantial evidence, the agency may not reject or modify them even to make alternative findings that are also supported by competent substantial evidence. *Kanter Real Estate, LLC v. Department of Environmental Protection (Kanter)*, 267 So. 3d 483, 487-88 (Fla. 1st DCA 2019), *reh'g denied* (Mar. 19, 2019), *review dismissed sub nom. City of Miramar v. Kanter Real Estate, LLC*, SC19-636, 2019 WL 2428577 (Fla. June 11, 2019)(citing *Lanz v. Smith*, 106 So. 3d 518, 521 (Fla. 1st DCA 2013)).

Finally, an agency is not authorized to substitute its judgment for that of the ALJ by taking a different view of, or placing greater weight on, the same evidence, reweighing the evidence, judging the credibility of witnesses, or otherwise interpreting the evidence to fit its desired conclusion. *Prysi v. Department of Health*, 823 So. 2d 823, 825 (Fla. 1st DCA 2002); *Heifetz v. Department of Business Regulation*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985).

We agree with DEF and the Intervenors that the standard for determining whether replacement power costs are prudent is "what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or should [have] been known at the time the decision was made."¹¹ However, in reaching the conclusion of law that DEF failed to show by a preponderance of the evidence that it acted prudently in Period 1, DEF contends that the ALJ did not follow this standard but instead evaluated DEF's actions in light of present knowledge. However, DEF never specifically identifies the facts it could not have known which

⁸ Section 120.57(1)(I), F.S.; *Prysi v. Department of Health*, 823 So. 2d 823, 825 (Fla. 1st DCA 2002)

⁹ Section 120.57(1)(I), F.S.

¹⁰ DEF Exceptions at 2.

¹¹ *Southern Alliance for Clean Energy v. Graham*, 113 So. 3d 742, 750 (Fla. 2013).

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were relied upon by the ALJ in reaching his conclusion of imprudence. Without identifying the facts upon which the ALJ improperly relied, it is impossible to evaluate this contention and it is rejected.

The ALJ bases his conclusion that a preponderance of the evidence established the actions of DEF in Period 1 were imprudent on three facts. First, the Mitsubishi aftermarket steam turbine was manufactured with a design point of 420 MW of output. Second, witness Swartz's testimony that the 420 MW was not an operational limitation was unpersuasive. Third, DEF accepted this limitation in Periods 2-5 and [REDACTED]

With regard to the first point, DEF does not contest that the steam turbine was aftermarket manufactured with a design point of 420 MW. This conclusion is supported by Findings of Fact Nos. 14-26. With regard to the second point, the ALJ extensively discusses the arguments presented by DEF witness Swartz that the 420 MW is not an operational limitation for this steam turbine in Findings of Fact Nos. 16-32 which culminate in Finding of Fact No. 33. Finding of Fact No. 33, a finding that DEF did not contest, states: "The greater weight of the evidence establishes that the Mitsubishi steam turbine was designed to operate at 420 MW of output and that 420 MW was an operational limitation of the turbine." Since DEF did not take exception to the identical statement in Finding of Fact No. 33, DEF has waived its ability to contest Conclusion of Law 110 on the grounds that the design point did not act as an operational limitation. However, even if DEF had taken exception to Finding of Fact 33, it is clear that the ALJ considered and rejected witness Swartz's arguments that DEF did not act imprudently by operating the steam turbine for extended periods of time at more than 420 MW.

With regard to the third point, DEF does not dispute that in Periods 2-5 it complied with the lower operating limitations placed on it by Mitsubishi and worked with Mitsubishi to increase the steam turbine's output to [REDACTED]. DEF disputes the significance of having done so. DEF argues that by [REDACTED] in Periods 2-5 it was acting to maximize the steam turbine's output for the benefit of its customers. As a general matter, DEF has argued that if a conclusion of law is "infused with overriding policy considerations," the agency, not the ALJ, should decide that issue.¹² Although not specifically identified, apparently, DEF believes that "maximization of output" is such an "overriding policy consideration" which should be given agency deference when determining operational prudence. However, DEF has not identified any statute, rule or Commission order that identifies "maximization of output" as a Commission policy. Additionally, the idea of agency deference, even in the interpretation of an agency's own rules and statutes, is now highly questionable given the passage of Amendment 6 to the Florida Constitution.¹³

¹² *Pillsbury v. State, Department of Health & Rehabilitative Services*, 744 So. 2d 1040, 1042 (Fla. 2d DCA 1999).

¹³ "Section 21. Judicial interpretation of statutes and rules. – In interpreting a state statute or rule, a state court or an officer hearing an administrative action pursuant to general law may not defer to an agency's interpretation of such statute or rule, and must instead interpret such statute or rule de novo."

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Additionally, we do not find the *Florida Power* decision cited by DEF on the issue of hindsight to be relevant. In *Florida Power*, the Commission made a finding of fact that was not supported by the record - that "non- safety related" repair work was "safety-related" repair work - and then improperly applied the higher standard of care for "safety-related" repair work. The crux of the problem in *Florida Power* was this unsupported finding of fact. Here DEF is not contesting any of the ALJ's 102 findings of fact as being unsupported by competent substantial evidence. Nor is DEF arguing that the legal conclusions the ALJ has drawn from these uncontested facts are unreasonable. Here there is no mistake of fact triggering the misapplication of a legal standard. In this case all parties agree on the standard to be applied, DEF simply does not like the result reached by the ALJ.

Because DEF has failed to establish that its exception to Conclusion of Law 110 is as or more reasonable than that of the ALJ, DEF's Exception to Conclusion of Law 110 is denied.

DEF Exception to Conclusion of Law 111

DEF takes exception with the ALJ's Conclusion of Law 111, which states:

111. DEF's RCA [Root Cause Analysis] concluded that the blade failures were caused [REDACTED]

[REDACTED] This conclusion is belied by the fact that [REDACTED] Mitsubishi cannot be faulted for [REDACTED] in a way that would allow an operator to run the turbine consistently beyond its capacity.

DEF takes exception to the conclusion that the [REDACTED] were not caused by [REDACTED]

[REDACTED] DEF argues that Mitsubishi was contracted specifically to assess whether this particular steam turbine could handle the proposed 4x1 steam configuration. DEF states that Mitsubishi did not originally identify [REDACTED] as a potential problem and it was reasonable for DEF in Period 1 to rely upon Mitsubishi's assessment. The better comparison, according to DEF, is not with other Mitsubishi facilities, but with blade failures in Periods 2-5 when the unit was run at less than 420 MW. Finally, DEF notes that the exact time that the [REDACTED] were damaged in Period 1 cannot be established. DEF states that the damage could have occurred during the half of the time in Period 1 when the steam turbine was operated at less than 420 MW.

Intervenors' Response

Intervenors respond that the conclusions of law in Paragraph 111 are supported by competent substantial evidence of record. Further, to the extent that a finding is both a factual and legal conclusion, Intervenors state that it cannot be rejected when there is competent substantial evidence to support the conclusion and the legal conclusion necessarily follows. *Berger*, 653 So. 2d at 480; *Strickland*, 799 So. 2d at 279; *Dunham*, 652 So. 2d at 897. Additionally, Intervenors contend that it is the ALJ, not the Commission, who is authorized to interpret the evidence presented and to decide between two contrary positions supported by

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conflicting evidence. *Heifetz v. Dept. of Business Regulation*, 475 So. 2d 1277, 1281-2 (Fla. 1st DCA 1985). With regard to DEF's reliance on the fact that it is impossible to tell when the [REDACTED] were damaged in Period 1, Intervenor's find this to be irrelevant since the ALJ does not address that fact in Paragraph 111.

Ruling

This conclusion of law constitutes the ALJ's rejection of DEF's Root Cause Analysis (RCA) conclusion that the low pressure steam turbine 40" [REDACTED]

[REDACTED]¹⁴
[REDACTED]¹⁵
[REDACTED]¹⁶ Given these facts, none of which are disputed by DEF, the ALJ found DEF's exclusion of [REDACTED] from its final RCA to be troubling, as does this Commission.

The ALJ's Conclusion of Law was adequately supported by the relevant findings of fact. DEF has failed to demonstrate that its conclusion is as or more reasonable than that of the ALJ. For this reason, DEF's Exception to Conclusion of Law 111 is denied.

DEF Exception to Conclusion of Law 112

DEF takes exception with the ALJ's Conclusion of Law 112, which states:

112. [REDACTED]

DEF states that Mitsubishi did not ultimately attribute the [REDACTED]

[REDACTED] DEF argues that given the fact that the turbine was not operated above 420 MW in Periods 2 through 5, it is more reasonable to conclude that the damage to the [REDACTED] in Period 1 was the result of [REDACTED]

¹⁴ Finding of Fact No. 67.

¹⁵ Finding of Fact No. 83.

¹⁶ Finding of Fact No. 70.

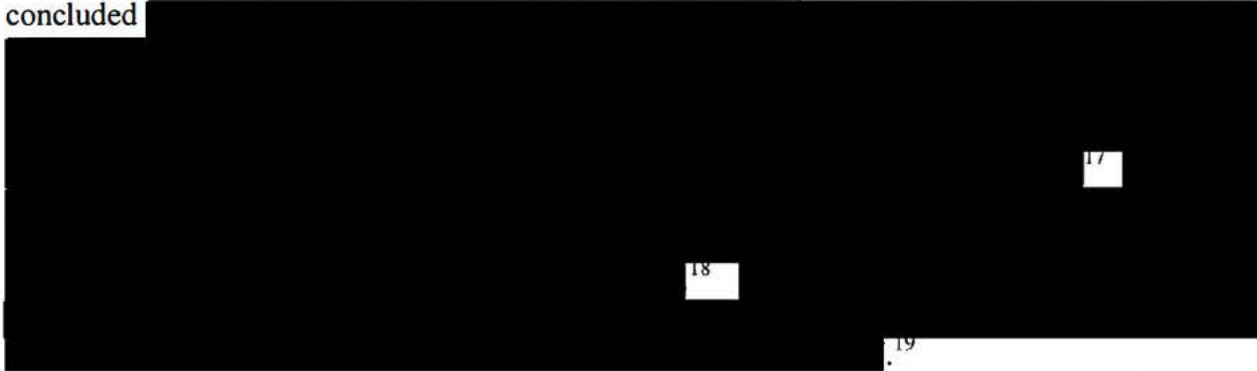
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Intervenors' Response

Intervenors contend that DEF does not contest that there are findings of fact supported by competent substantial evidence in the record to support the ALJ's conclusion of law. Thus, Intervenors conclude that, under those circumstances, we cannot reject the ALJ's conclusion of law or substitute its own judgment for that of the ALJ.

Ruling

This conclusion of law constitutes the ALJ's acceptance of Mitsubishi's RCA which concluded



DEF is simply rearguing its case that its RCA should be substituted for that of Mitsubishi. DEF has not contested the facts upon which Conclusion of Law 112 is based. Conclusion of Law 112 is the companion to Conclusion of Law 111 and it is upheld for the same reasons – that there is competent substantial evidence to support this conclusion and the conclusion is reasonable given the facts proven by a preponderance of the evidence presented. DEF has failed to demonstrate that its conclusion is as or more reasonable than that of the ALJ. Thus, DEF's Exception to Conclusion of Law 112 is denied.

DEF Exception to Conclusion of Law 113

DEF takes exception with the ALJ's Conclusion of Law 113, which states:

113. Mr. Polich persuasively argued that it would have been simple prudence for DEF to ask Mitsubishi about the ability of the turbine to operate continuously in excess of 420 MW output before actually operating it at those levels. DEF understood that the blades had been designed for the Tenaska 3x1 configuration and should have at least explored with Mitsubishi the wisdom of operating the steam turbine with steam flows in excess of those anticipated in the original design.

¹⁷ Finding of Fact Nos. 37, 63.

¹⁸ Finding of Fact No. 70.

¹⁹ Finding of Fact No. 78.

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2) the MW output of a steam turbine is not an “operating parameter”; and 3) Mitsubishi knew DEF would operate the plant in excess of 420 MW. For these reasons, DEF argues that it is “as or more reasonable” to conclude that DEF did not need to contact Mitsubishi.

Intervenors argue that DEF is simply rehashing the evidence presented and urging this Commission to make new findings that are “as or more reasonable” than the findings made by the ALJ. The ALJ states that he found OPC’s expert persuasive on this point and it is the exclusive prerogative of the ALJ, not the Commission, to evaluate the credibility of a witness and the weight to be given to his/her testimony. Intervenors contend that since there is competent substantial evidence supporting the conclusion that DEF should have called Mitsubishi, this conclusion cannot be modified.

Second, the type and meaning of [REDACTED] [REDACTED] Third, the cause of the damage to the low pressure [REDACTED] Analysis of these three areas results in a finding regarding whether DEF acted prudently in the operation of the steam turbine which in turn drives the decision of whether replacement power costs for the April 2017 outage should be recovered or denied.

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²⁴ Finding of Fact No. 87.

Under these circumstances it is reasonable to believe that Mitsubishi would have

██████████²⁵ This is especially true since DEF was proposing the use of an additional 501 Type F combustion turbine and heat recovery steam generator, giving DEF's proposed configuration the ability to produce far more steam than needed to generate 420 MW of output when compared to the original 3x1 application for which the steam turbine was designed.²⁶ Additionally, neither DEF nor Mitsubishi had any experience running a 4x1 combined cycle plant prior to commencing operation of Bartow Unit 4.²⁷ In sum, for these reasons the ALJ found that Mitsubishi did not contemplate DEF's operation of the steam turbine beyond the ██████████ set out in the Purchase Agreement.²⁸

Given these extremely unique circumstances, the ALJ concluded that DEF's failure to contact Mitsubishi before pushing output beyond 420 MW was not prudent. Contacting Mitsubishi would have allowed DEF to receive written verification from Mitsubishi that the steam turbine could be safely operated above 420 MW and would have effectively updated the warranty to reflect the higher MW output.²⁹ The ALJ's conclusion of law is supported by competent substantial evidence of record. Because DEF has failed to demonstrate that its conclusion of law is as or more reasonable than the ALJ's, DEF's Exception to Conclusion of Law 113 is denied.

DEF Exception to Conclusion of Law 114

DEF takes exception with the ALJ's Conclusion of Law 114, which states:

114. The record evidence demonstrated an ██████████ that vibrations associated with high energy loadings were the primary cause of the L-0 blade failures. DEF failed to satisfy its burden of showing its actions in operating the steam turbine in Period 1 did not cause or contribute significantly to the vibrations that repeatedly damaged the L-0 blades. To the contrary, the preponderance of the evidence pointed to DEF's operation of the steam turbine in Period 1 as the most plausible culprit.

DEF argues that it is "as or more reasonable" to conclude from the evidence presented that DEF's actions did not cause or contribute significantly to the ██████████. DEF contends this is true because the ██████████ were damaged in Periods 2-5 when the unit was not run above 420 MW as well as Period 1 when it was. DEF further states that the ALJ is imposing the impossible standard of proving a negative. DEF argues that it does not have the burden to prove that damage did not occur as a result of its actions. Rather, DEF states that it is only required to show that it acted as a reasonable utility manager would have done given the facts known or reasonably knowable at the time without the benefit of hindsight review.

²⁵ Finding of Fact No. 87.

²⁶ Finding of Fact No. 31.

²⁷ Finding of Fact No. 85.

²⁸ Finding of Fact No. 102.

²⁹ Factual Finding No. 93.

Intervenors' Response

Intervenors argue that Conclusion of Law 114 summarizes the findings of fact that support the ALJ's ultimate determination. Intervenors state that these findings of fact are supported by competent substantial evidence and we may not reject them. With regard to the contention that the ALJ required DEF to prove a negative, Intervenors argue that DEF has the burden of proof to demonstrate that it acted prudently in the operation of Bartow Unit 4 which requires it to establish a *prima facie* case that it did act prudently and to rebut evidence of its imprudence. The Intervenors assert that DEF did neither here and the ALJ's conclusion may not be disturbed.

Ruling

As discussed in the ruling on Conclusions of Law 110-113 above, the ALJ found that a preponderance of the evidence supported the finding that the [REDACTED] was caused by vibrations/flutter associated with high energy loadings. Further, the ALJ found that the weight of the evidence supported the conclusion that the high energy loading on the blades was the result of [REDACTED]. DEF does not contest that these findings of fact are supported by competent substantial evidence of record.

We agree with the ALJ that DEF has the burden of proving that it acted prudently in the operation of its steam turbine, i.e., the burden to make a *prima facie* case supported by competent substantial evidence that it acted prudently. The burden of proof also requires DEF to rebut evidence produced that it acted imprudently. Here under the unique circumstances of this case, DEF has failed to prove it acted prudently in light of the information that was available to it at the time as found by the ALJ in Conclusion of Law 110. DEF's exception to Conclusion of Law 114 reargues DEF's factual position and fails to demonstrate that its conclusion is as or more reasonable than the ALJ's. For these reasons, DEF's Exception to Conclusion of Law 114 is denied.

DEF Exception to Conclusion of Law 119

DEF takes exception with the ALJ's Conclusion of Law 119, which states:

119. It is speculative to state that the original Period L-0 blades would still be operating today had DEF observed the [REDACTED] of 420 MW. It is not speculative to state that the events of Periods 2 through 5 were precipitated by DEF's actions during Period 1. It is not possible to state what would have happened from 2012 to 2017 if the excessive loading had not occurred, but it is possible to state that events would not have been the same.

Specifically, DEF disputes the ALJ's conclusion that it is not speculative to state that the events of Periods 2 through 5 were precipitated by DEF's actions during Period 1. DEF argues that there is no causal link between the operation of the unit in Period 1 and the forced outage

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that occurred in Period 5. DEF contends that the lack of a causal link is proven by the fact that there was no residual damage done to the steam turbine itself in Period 1 and all parties agreed that DEF's operation of the plant subsequent to Period 1 was prudent.

Intervenors' Response

Intervenors state that the conclusions in Paragraph 119 are based on the ALJ's findings of fact in Paragraphs 84 and 89 which are supported by competent substantial evidence and OPC's expert's credible testimony. Intervenors argue that to the extent that this conclusion is an inference from the ALJ's factual findings, the ALJ is permitted to draw reasonable inferences from competent substantial evidence in the record. *Amador v. School Board of Monroe County*, 225 So. 3d 853, 858 (Fla. 3d DCA 2017). Further, Intervenors state that the fact that more than one reasonable inference can be drawn from the same evidence of record is not grounds for setting aside the ALJ's conclusion. *Id.*

Ruling

This conclusion of law is in response to OPC witness Polich's testimony that the low pressure [REDACTED] would still have been in use but for the operation of the steam turbine in excess of 420 MW.³⁰ While the ALJ rejected that conclusion as too speculative, he did accept witness Polich's testimony that the damage to the blades was most likely cumulative during Period 1, making it irrelevant exactly when during the operation of the unit in Period 1 the damage occurred.³¹ DEF's witness Swartz testified that the damage to the blades could have occurred in Period 1 during the 50% of the time that the steam turbine was operated under 420 MW, i.e., when by Intervenors' standards, the unit was being operated prudently. Where reasonable people can differ about the facts, an agency is bound by the hearing officer's reasonable inferences based on the conflicting inferences arising from the evidence. *Amador v. School Board of Monroe County*, 225 So. 3d 853, 857-8 (Fla. 3d DCA 2017). Additionally, the hearing officer is entitled to rely on the testimony of a single witness even if the testimony contradicts the testimony of a number of other witnesses. *Stinson v. Winn*, 938 So. 2d 554, 555 (Fla. 1st DCA 2006).

DEF's exception to Conclusion of Law 119 reargues DEF's factual position and fails to demonstrate that its conclusion is as or more reasonable than the ALJ's. For these reasons, DEF's Exception to Conclusion of Law 119 is denied.

DEF Exception to Conclusion of Law 120

DEF takes exception with the ALJ's Conclusion of Law 120, which states:

120. In his closing argument, counsel for White Springs summarized the equities of the situation very well:

³⁰ Finding of Fact No. 84.

³¹ Finding of Fact No. 89; Footnote 4.

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You can drive a four-cylinder Ford Fiesta like a V8 Ferrari, but it's not quite the same thing. At 4,000 RPMs, in second gear, the Ferrari is already doing 60 and it's just warming up. The Ford Fiesta, however, will be moaning and begging you to slow down and shift gears. And that's kind of what we're talking about here.

It's conceded as fact that the root cause of the Bartow low pressure turbine problems is [REDACTED] caused repeatedly over time. The answer to the question is was this due to the way [DEF] ran the plant or is it due to a [REDACTED] Well, the answer is both.

The fact is that [DEF] bought a steam turbine that was already built for a different configuration that was in storage, and then hooked it up to a configuration . . . that it knew could produce much more steam than it needed. It had a generator that could produce more megawatts, so the limiting factor was the steam turbine.

On its own initiative, it decided to push more steam through the steam turbine to get more megawatts until it broke.

* * *

So from our perspective, [DEF] clearly was at fault for pushing excessive steam flow into the turbine in the first place. The repair which has been established . . . may or may not work, but the early operation clearly impeded [DEF's] ability to simply claim that Mitsubishi was entirely at fault. And under those circumstances, it's not appropriate to assign the cost to the consumers.

DEF argues that Conclusion of Law 120 is a slightly edited, verbatim recitation of PCS Phosphate counsel's final argument which the ALJ adopts, characterizing it as summarizing "the equities of the situation very well." DEF takes exception to that portion of the final argument stating that under the circumstances presented in this case, it is not appropriate to assign the cost of the February 2017 forced outage to DEF's customers. DEF argues that it is as or more reasonable to conclude that here, where DEF consistently acted prudently, DEF should not be forced to bear replacement power costs.

Intervenors' Response

As demonstrated in its response to Paragraphs 110-114 above, Intervenors argue that there is more than adequate competent substantial evidence to support the ALJ's ultimate determination that DEF did not act prudently and should bear replacement power costs. Intervenors state that DEF is simply rearguing the case it presented to the ALJ which the ALJ found to be unpersuasive.

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Ruling

As noted above, this conclusion of law is an edited version of PCS Phosphate counsel's final argument which the ALJ agrees has summarized the "equities of the situation very well." [REDACTED] Further, whether the vibration was due to the way the plant was run or [REDACTED] is that both are true. The ALJ concludes that DEF was at fault for pushing excessive steam flow into the turbine. The ALJ further agrees that by operating the unit above 420 MW, without contacting Mitsubishi, DEF impeded its ability to claim that Mitsubishi was entirely at fault. Under these circumstances, PCS Phosphate's counsel, and the ALJ, conclude that consumers should not bear replacement power costs.

Upon review of this material, it is clear that it is a summary of Conclusions of Law 110-114 above. These conclusions are supported by competent substantial evidence of record. Again, DEF reargues the factual underpinnings of the ALJ's Conclusion of Law without adequately demonstrating that DEF's conclusion is as or more reasonable. Therefore, DEF's Exception to Conclusion of Law 120 is denied.

DEF Exception to Conclusion of Law 121

DEF takes exception with the ALJ's Conclusion of Law 121, which states:

121. The greater weight of the evidence supports the conclusion that DEF did not exercise reasonable care in operating the steam turbine in a configuration for which it was not designed and under circumstances which DEF knew, or should have known, that it should have proceeded with caution, seeking the cooperation of Mitsubishi to devise a means to operate the steam turbine above 420 MW.

Specifically, DEF takes exception with the ALJ's conclusion that it did not exercise reasonable care in operating the steam turbine and should have sought the cooperation of Mitsubishi prior to operating the steam turbine above 420 MW. DEF again argues that it is as or more reasonable to conclude that operation within the express parameters given by Mitsubishi was prudent and did not require further consultation with the manufacturer.

Intervenors' Response

As demonstrated in their response to Paragraphs 110-114 above, Intervenors argue that there is more than adequate competent substantial evidence to support the ALJ's ultimate determination that DEF did not exercise reasonable care operating the plant in excess of 420 MW without consulting Mitsubishi first. Intervenors assert that the Commission is not free to reject or modify conclusions of law that are supported by competent substantial evidence and logically flow from that evidence.

Ruling

This conclusion is a statement of the ALJ's ultimate conclusion that DEF did not exercise reasonable care in the operation of the steam turbine given its configuration and design without consulting Mitsubishi. This ultimate conclusion is supported by competent substantial evidence as discussed in Conclusions of Law 110-114 above. Because DEF has failed to demonstrate that its conclusion is as or more reasonable than the ALJ's, DEF's Exception to Conclusion of Law 121 is denied.

DEF Exception to Conclusion of Law 122

DEF takes exception with the ALJ's Conclusion of Law 122, which states:

122. Given DEF's failure to meet its burden, a refund of replacement power costs is warranted. At least \$11.1 million in replacement power was required during the Period 5 outage. This amount should be refunded to DEF's customers.

DEF takes exception to the ALJ's conclusion that DEF should refund replacement power costs to its customers. Citing the arguments made in its exceptions to Paragraphs 110-114 and 119, DEF states that DEF did act prudently in the operation of its Bartow Unit 4 plant and, therefore, it is as or more reasonable to conclude that no replacement power costs should be refunded to customers.

Intervenors' Response

Intervenors argue that the ALJ's conclusion is supported by competent substantial evidence of record and is consistent with applicable law. Therefore, the Intervenors conclude that the Commission cannot, under these circumstances, reject the ALJ's conclusion of law by reweighing the evidence and substituting new and directly contrary findings that are favorable to DEF.

Ruling

This conclusion of law is based on the ALJ's Conclusions of Law 110-114, supported by competent substantial evidence of record, that DEF acted imprudently in its operation of the steam turbine in Period 1. Since DEF disagrees that it acted imprudently in incurring the replacement power costs, it argues that the \$11.1 million should not be refunded to customers. The amount of the refund is not contested. The findings of fact underlying Conclusion of Law 122 are not in dispute. Ultimately, the conclusion is supported by competent substantial evidence. Because DEF has failed to demonstrate that DEF's conclusion was as or more reasonable than the ALJ's, DEF's Exception to Conclusion of Law 122 is denied.

DEF Exception to Conclusion of Law 123

DEF takes exception with the ALJ's Conclusion of Law 123, which states:

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123. DEF failed to carry its burden to show that the Period 5 blade damage and the required replacement power costs were not consequences of DEF's imprudent operation of the steam turbine in Period 1.

For the reasons stated in its exception to Paragraph 110, DEF argues that it did demonstrate by a preponderance of the evidence that it operated the steam turbine prudently in Period 1. Thus, DEF contends that it is as or more reasonable to conclude that DEF carried its burden of proof that the steam turbine was operated prudently in Period 1.

Intervenors' Response

Intervenors contend that the ALJ's conclusion is supported by competent substantial evidence of record as detailed in Intervenors' responses to DEF's exceptions to Paragraphs 110-114 and 119, and is consistent with applicable law. Therefore, Intervenors argue that we cannot, under these circumstances, reject the ALJ's conclusion of law by reweighing the evidence and substituting new and directly contrary findings that are favorable to DEF.

Ruling

A review of DEF's exception reveals that it is simply re-argument of its position taken in Conclusion of Law No. 110 discussed above. For the reasons stated therein, DEF's Exception to Conclusion of Law 123 is denied because DEF has failed to demonstrate that its conclusion is as or more reasonable than the ALJ's.

DEF Exception to Conclusion of Law 124

DEF takes exception with the ALJ's Conclusion of Law 124, which states:

124. The de-rating of the steam turbine that required the purchase of replacement power for the 40 MW loss caused by the installation of the pressure plate was a consequence of DEF's failure to prudently operate the steam turbine during Period 1. Because it was ultimately responsible for the de-rating, DEF should refund replacement costs incurred from the point the steam turbine came back on line in May 2017 until the start of the planned fall 2019 outage that allowed the replacement of the pressure plate with the [REDACTED] in December 2019. Based on the record evidence, the amount to be refunded due to the de-rating is \$5,016,782.

DEF argues that the operation of the steam turbine in Period 1 was proven by DEF by a preponderance of the evidence to be prudent. DEF contends that this fact, coupled with the undisputed evidence that DEF also operated the steam turbine prudently in Periods 2-5, demonstrates that it is as or more reasonable to conclude that the Period 5 blade damage and resulting replacement power costs were not a consequence of DEF's operation of the steam turbine during Period 1.

Intervenors' Response

Intervenors argue that the ALJ's conclusion is supported by competent substantial evidence of record as detailed in Intervenors' responses to DEF's exceptions to Conclusions of Law 110-114 and 119. Intervenors contend that DEF's is simply rearguing its case that its operation of the steam turbine was prudent, and therefore no refunds associated with the installation of the pressure plate are required. Intervenors assert that the basis for the ALJ's conclusion that derating costs of \$5,016,782 should be refunded to customers is his finding of DEF's imprudence in operation of the steam turbine in Period 1. For these reasons, Intervenors conclude that there is no basis to set aside that finding or to set aside this conclusion of law.

Ruling

There is no question that installation of the pressure plate caused the derating of the steam turbine from 420 to 380 MW.³² Likewise, the parties have agreed that the period of time associated with the derating is April 2017 through the end of September 2019.³³ Nor do the parties disagree that the amount associated with the derating is \$5,016,782.³⁴ DEF is simply rearguing its position that its operation of the steam turbine was not responsible for blade damage in Period 5, a position considered and rejected by the ALJ.³⁵ As discussed in Conclusions of Law 110-114 and 119 above, there is competent substantial evidence to support the ALJ's conclusion that DEF's imprudent actions in Period 1 resulted in the derating. That being the case, DEF's Exception to Conclusion of Law 124 is denied because DEF has failed to demonstrate that its conclusion is as or more reasonable than that of the ALJ.

DEF Exception to Conclusion of Law 125

DEF takes exception with the ALJ's Conclusion of Law 125, which states:

125. The total amount to be refunded to customers as a result of the imprudence of DEF's operation of the steam turbine in Period 1 is \$16,116,782, without interest.

DEF takes exception to this conclusion on the grounds that DEF did prove by a preponderance of the evidence that it acted prudently in the operation of the steam turbine in Period 1. That being the case, DEF contends that it is as or more reasonable to conclude that no refund to its customers of any amount is required.

Intervenors' Response

Intervenor's argue that the ALJ's conclusion is supported by competent substantial evidence of record as detailed in Intervenors' responses to DEF's exceptions to Conclusions of

³² Finding of Fact No. 60.

³³ Finding of Fact No. 61.

³⁴ Finding of Fact No. 80.

³⁵ Finding of Fact No. 119.

Law 110-114 and 119. Intervenors state that DEF is simply rearguing its case that its operation of the steam turbine was prudent and therefore no refunds are required. Intervenors assert that we cannot, under these circumstances, reject the ALJ's conclusion of law by reweighing the evidence and substituting new and directly contrary findings that are favorable to DEF.

Ruling

This is a fall-out conclusion based upon Conclusions of Law 110-114 and 119 discussed above, which results in the ultimate conclusion of law that DEF acted imprudently. Conclusions of Law 110-114 and 119 are based on competent substantial evidence of record. For that reason, DEF's Exception to Conclusion of Law 125 is denied, because DEF has failed to demonstrate that its conclusion is as or more reasonable than that of the ALJ.

C. Conclusion

DEF has failed to show that the ALJ's conclusions are not reasonable or that the facts from which his conclusions are drawn are not based on competent substantial evidence of record. Further, DEF has not argued that the proceeding did not comport with the essential requirements of law. Finally, DEF has not specifically stated how the ALJ's conclusions of law are contrary to prior Commission policy statements for utility operation. For these reasons, we deny DEF's exceptions to Conclusions of Law 110-114 and 119-125 since DEF has failed to demonstrate that its proposed modifications to those conclusions are as or more reasonable than that of the ALJ.

III. ADOPTION AND APPROVAL OF THE RECOMMENDED ORDER AS THE FINAL ORDER

As set forth above, we deny all exceptions filed by DEF, approve all of the ALJ's findings of fact and conclusions of law without modification, and hereby adopt the ALJ's Recommended Order, found in Attachment A, as our Final Order.

We note that this case is highly fact specific and for that reason will have limited precedential value. There is literally no other plant in DEF's system that has four combustion turbines connected to one steam turbine nor any other plant in DEF's system that uses an after-market steam turbine designed for a 3x1 configuration in a 4x1 configuration. The ALJ was persuaded by OPC witness Polich's testimony that because Bartow Unit 4 was operated to produce more than 420 MW, too much steam was forced into the low pressure section of the steam turbine damaging the L-O blades. Nothing in the ALJ's Recommended Order or our decision in any way establishes, indicates, implies or imputes any going-forward protocol for the operation of steam turbines in DEF's fleet. Adoption of the Recommended Order with this conclusion of law does not translate into a general policy decision by the Commission that under any set of circumstances it is imprudent to run a unit above its nameplate capacity.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the attached Recommended Order (Attachment A) is adopted and approved as the Final Order in this docket. It is further

ORDERED that all of the exceptions to the Recommended Order filed by Duke Energy Florida, LLC, are denied. It is further

ORDERED that the docket shall remain open.

By ORDER of the Florida Public Service Commission this 15th day of October, 2020.


ADAM J. TEITZMAN
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

SPS

Commissioner Donald J. Polmann dissents with opinion.

I respectfully disagree with the majority decision. Having reviewed the evidentiary record in its entirety, applying my knowledge and expertise to the issues, I find that DEF acted prudently. I believe that the majority applied legal boundaries and restrictions that impeded it from taking certain actions, thereby precluding this Commission from exercising its broad authority and its affirmative duty to judge prudence in the public interest of the State of Florida. In my opinion, the particularities of this case involving substantial confidential testimony, the Sunshine Law, and transfer to DOAH imposed such overbearing limitations on the majority that its role was effectively reduced to ministerial.

To ensure that this Commission has clear and unambiguous authority to execute its full breadth of duties in future dockets, I strongly support statutory revisions to redress the diminished capacities that burdened this case. In my opinion, this Commission must advocate to the Florida Legislature for necessary statutory authority to hear confidential material efficiently and effectively in the future.

My profound concern is for perceptions of legal boundaries and restrictions that led this Commission in the majority to be muted into near dysfunction on addressing the Administrative Law Judge's (ALJ's) Recommended Order. My perception of legal boundaries and restrictions is of lesser limitations that do not impede this Commission from taking certain actions which better serve the public interest. Section 120.57(1)(1), Florida Statutes, affords a process in which to accept, reject, or modify an ALJ's Recommended Order. In this case, I disagree that the Conclusions of Law were so inextricably linked with the Findings of Fact. This inextricable linkage ostensibly conflicts with our obligation to review the entire record and leads us down the path of what I believe is strict inappropriate deference to the ALJ's determination of prudence. If that strict deference is appropriate, our role is reduced to ministerial where we must accept the ALJ Order and are unable to fully consider and determine prudence based upon the entire record. The standard for approving an "exception to a Conclusion of Law" is that a different Conclusion of Law is "as or more reasonable" than that of the ALJ and including particular reasons as to why an exception is made. I believe that the information DEF has provided in its exceptions is sufficient reason in Toto to accept a position that is as reasonable as the ALJ. Therefore, I submit that the Commission should have modified the ALJ's Order, by accepting DEF's exceptions to Conclusions of Law 110 through 114 and 119 through 125 and concluded that DEF met its burden of proof that its actions were prudent.

However, my vote in this matter also rejects the notion that the circumstances of this case, combined with legal constraints, eliminated the Commission's ability to hear this case in the first instance. We must conduct all proceedings in the Sunshine pursuant to s. 286.011, F.S., which effectively precludes this Commission from hearing cases requiring presentation of substantial confidential testimony and exhibits. Contrary to normal application of the Administrative Procedure Act and our practice, this case was sent to the Division of Administrative Hearings with delegation of our fact-finding responsibilities to an ALJ. Section 120.569, F.S., provides that each agency "may" refer a matter to DOAH and sets forth the legal standards for the ALJ as fact-finder "if" the agency makes the referral. The conflict of Sunshine and confidentiality caused the Commission to abdicate its fact-finder role.

In my opinion, the Commission's inability to hear this case affected the outcome. Our unique agency expertise and understanding of sound utility principles and practices to assess witness testimony and the record in this case would have been the more appropriate procedure in the public interest. While I fully respect and support the Sunshine Law and conducting our business in the Sunshine, I believe unintended consequences arose in this case through a process defect where certain statutes are not acting in harmony. A case based almost entirely on confidential information, though rare, points directly to critical Commission functions worthy of remedy. Therefore, to avoid frustrating the public interest in the future, I would strongly encourage the Legislature to consider amending the Sunshine Law to allow for a limited and narrow exception which would allow the Commission to conduct a closed hearing in the rare instance where most of the disputed facts at issue are confidential under s. 366.093, F.S.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

FILED 10/15/2020
DOCUMENT NO. 11211-2020
FPSC - COMMISSION CLERK

**FLORIDA PUBLIC SERVICE COMMISSION
OFFICE OF COMMISSION CLERK**



DOCUMENT NUMBER ASSIGNMENT*

FILED DATE: 10/15/2020

DOCKET NO.: 20200001-EI

DOCUMENT NO.: 11211-2020

DOCUMENT DESCRIPTION:

(CONFIDENTIAL) Final Order PSC-2020-0368-FOF-EI establishing fuel cost recovery for Duke Energy.

***This document number has been assigned to a confidential document.**

For further information, contact the Office of Commission Clerk.

E-MAIL: CLERK@PSC.STATE.FL.US PHONE NO. (850) 413-6770 FAX NO. (850) 717-0114

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
clause with generating performance incentive
factor.

DOCKET NO. 20200001-EI
ORDER NO.
ISSUED:

CONFIDENTIAL

The following Commissioners participated in the disposition of this matter:

GARY F. CLARK, Chairman
ART GRAHAM
JULIE I. BROWN
DONALD J. POLMANN
ANDREW GILES FAY

FINAL ORDER ESTABLISHING FUEL COST RECOVERY
FOR DUKE ENERGY FLORIDA, LLC.

BY THE COMMISSION:

I. BACKGROUND

Docket No. 20190001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*, referred to as the Fuel Clause, was opened on January 2, 2019. The Fuel Clause is a perennial docket closed, reopened, and renumbered every year in which the Commission processes all petitions filed by investor-owned electric utilities seeking to recover the cost of fuel and fuel-related activities needed to generate electricity.

A. Prehearing proceedings before the Commission

Duke Energy Florida, LLC (DEF) is an investor-owned electric utility operating in the State of Florida. DEF reaffirmed its party status in Docket No. 20190001-EI on January 3, 2019. Likewise, the Office of Public Counsel (OPC), authorized by Section 350.0611, Florida Statutes (F.S.), to provide legal representation to Florida electric utility customers before the Commission, reaffirmed its party status in Docket No. 20190001-EI on January 4, 2019. The Florida Industrial Power Users Group (FIPUG), an association of utility customers who consume large amounts of electricity, and White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate – White Springs (PCS Phosphate), a fertilizer company, reaffirmed their party status on January 4, 2019 and January 15, 2019, respectively.

We issued Order No. PSC-2019-0059-PCO-EI on February 13, 2019, establishing the procedures to be followed. On March 1, 2019, DEF filed its Petition for approval of fuel cost recovery and capacity cost recovery with generating performance incentive factor actual true-ups for the period ending December 2018. At that time DEF also filed the direct testimony of Jeffrey

Swartz which incorporated Exhibit JS-1, filed in the 2018 Fuel Clause. On September 13, 2019, OPC filed the direct testimony and exhibits of Richard A. Polich, non-confidential Exhibits RAP-1 through RAP-2, and confidential Exhibits RAP-3 through RAP-9. On September 26, 2019, DEF filed the rebuttal testimony of Jeffrey Swartz with confidential Exhibits JS-2 through JS-4.

A Prehearing Conference was held on October 22, 2019, and Prehearing Order No. PSC-2019-0466-PHO-EI was issued on October 31, 2019. At that time two issues associated with the testimony of witnesses Swartz and Polich were identified: Issues 1B and 1C. Issue 1B and 1C state as follows:

Issue 1B: Was DEF prudent in its actions and decisions leading up to and in restoring the unit to service after the February 2017 forced outage at the Bartow plant, and if not, what action should the Commission take with respect to replacement power costs?

Issue 1C: Has DEF made prudent adjustments, if any are needed, to account for replacement power costs associated with any impacts related to the de-rating of the Bartow Plant? If adjustments are needed and have not been made, what adjustment(s) should be made?

B. Evidentiary proceedings before the Division of Administrative Hearings

It became readily apparent that large portions of the testimony and exhibits of both witnesses Swartz and Polich associated with these issues, as well as the Commission staff's proposed trial exhibits, were highly confidential in nature. This fact made it impossible to conduct meaningful direct or cross examination without reference to, and discussion of, confidential material. The only way to conduct a hearing based substantially on confidential material would be to close the hearing to the public. Because we must conduct all proceedings in the sunshine under the law,¹ we do not have the ability to close a hearing, even one which deals extensively with confidential materials and testimony. Therefore, in order to maintain the confidentiality of these materials, we referred DEF Bartow Unit 4 Issues 1B and 1C to the Division of Administrative Hearings (DOAH) on November 8, 2019.

Administrative law judge (ALJ) Lawrence P. Stevenson conducted a closed final evidentiary hearing on February 4-5, 2020. At the hearing, DEF presented the confidential testimony of Jeffrey Swartz, with his prefiled direct and rebuttal testimony inserted into the record as though read. DEF's Exhibit Nos. 80-82 were admitted into evidence. OPC presented the confidential testimony of Richard A. Polich, with his prefiled testimony inserted into the record as though read. OPC's Exhibit Nos. 68-75, 101-109, and 115-117 were admitted into evidence. Commission staff Exhibit Nos. 110 and 111 were admitted into evidence. FIPUG's Exhibit No. 118 and PCS Phosphate's Exhibit Nos. 112 and 113 were also admitted into

¹ Section 286.011, F.S.

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evidence. The revised Comprehensive Exhibit List (CEL) was admitted into evidence by stipulation as Exhibit No. 114.

A three-volume transcript of the final hearing was filed with the Commission Clerk on February 18, 2020, and was provided to the DOAH Clerk on February 24, 2020. DEF, Commission staff, and OPC, jointly with PCS Phosphate and FIPUG, timely filed confidential proposed recommended orders on March 20, 2020. The ALJ issued his Recommended Order² on April 27, 2020. A redacted version of the Recommended Order is found in Attachment A to this Final Order.

C. Overview of the Recommended Order

This case involves the operation of DEF's Bartow Unit 4 combined cycle natural gas plant and whether DEF operated the plant prudently from the time it was brought on line in June 2009 until February 2017. Bartow Unit 4 is comprised of a steam turbine manufactured by Mitsubishi Hitachi Power Systems (Mitsubishi) with a gross output of 420 MW connected to four M501 Type F combustion turbines. The steam turbine is an "after-market" unit which was originally designed for Tenaska Power Equipment, LLC (Tenaska) to be used in a 3x1 configuration with three M501 Type F combustion turbines with a gross output of 420 MW. Prior to purchasing the steam turbine, DEF's predecessor, Progress Energy Florida, LLC contracted with Mitsubishi to [REDACTED]

As required by its contract, [REDACTED]

The Bartow plant has experienced five outages since it was brought on line in June 2009: March 2012 (planned), August 2014 (planned), April 2016 (planned), October 2016 (forced), and February 2017 (forced).

In March 2012 during a scheduled outage, DEF discovered that the [REDACTED] in the low pressure section of the steam turbine were damaged. The [REDACTED] were replaced with [REDACTED] and the plant was operated until August 2014 when the plant was taken out of service to [REDACTED] the [REDACTED]. The plant came back on line in December 2014 and ran until April 2016 when it was taken off line for routine valve work and [REDACTED] inspection. The plant was placed back in service in May 2016 with a [REDACTED] and operated until October 2016, when DEF shut the plant down due to excessive vibration and loss of [REDACTED] material. In December 2016 the plant was put back in service with the [REDACTED], and was taken out of service in February of 2017 due to a [REDACTED] projectile that traveled through the low pressure turbine rupture disk diaphragm. DEF brought the plant back on line in April 2017 with a pressure plate installed in the low pressure section of the steam turbine, which effectively decreased the output of the plant from 420 to 380 MW. DEF continued to operate the plant with the pressure plates until September 28, 2019.

² "Recommended Order" is defined in Section 120.52(15), F.S., as the official recommendation of the ALJ assigned by DOAH or of any other duly authorized presiding officer, other than the agency head or member thereof.

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There are two amounts that are associated with the initial prudence question: 1) replacement power costs for the February 2017 outage in the amount of \$11.1 million, and 2) May 2017 through September 2019 unit derating³ costs in the amount of \$5,016,782 million.

Petitioner, DEF, has the burden of proving by a preponderance of the evidence, that it acted prudently in the operation of Bartow Unit 4 up to and restoring the unit to service after the February 2017 forced outage. Additionally, DEF must prove by a preponderance of the evidence that no adjustment to replacement power costs should be made to account for the fact that after March 2017, and the installation of a pressure plate, Bartow Unit 4 could no longer produce its rated nameplate capacity of 420 MW. The standard for determining whether replacement power costs are prudent is “what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or should [have] been known at the time the decision was made.”⁴

In his Recommended Order, the ALJ detailed the relevant facts and legal standards required to determine whether DEF acted prudently in its operation of Bartow Unit 4 from June 2009 until February 2017. In his conclusion, the ALJ recommended that this Commission find that DEF failed to demonstrate that it acted prudently in the operation of its Bartow Unit 4 plant and in restoring the unit to service after the February 2017 forced outage, and that DEF should refund a total of \$16,116,782 to its customers.

D. Post-Hearing proceedings before the Commission

On May 12, 2020, DEF submitted exceptions to the Recommended Order. OPC, jointly with PCS Phosphate and FIPUG (collectively, the Intervenor), filed a Response to DEF's Exceptions.

We have Jurisdiction over this matter under Sections 120.57, 366.04, 366.05, and 366.06, F.S. As discussed in more detail below, we deny DEF's Exceptions to the Recommended Order and adopt the Administrative Law Judge's Recommended Order as the Final Order.

II. RULINGS ON EXCEPTIONS

A. Standard of Review of Recommended Order and Exceptions

Section 120.57(1)(l), F.S., establishes the standards an agency must apply in reviewing a Recommended Order following a formal administrative proceeding. The statute provides that the agency may adopt the Recommended Order as the Final Order of the agency or may modify or reject the Recommended Order. An agency may only reject or modify an ALJ's findings of fact if, after a review of the entire record, the agency determines and states with particularity that the

³ “Derating” is the reduction in MW output due to installing pressure plates in place of the [REDACTED] in the low pressure section of the steam turbine.

⁴ *Southern Alliance for Clean Energy v. Graham*, 113 So. 3d 742, 750 (Fla. 2013).

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findings of fact were not based on competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law.⁵

Section 120.57(1)(l), F.S., also states that an agency in its final order may reject or modify conclusions of law over which it has substantive jurisdiction and interpretations of administrative rules over which it has substantive jurisdiction. When rejecting or modifying a conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying the conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact.⁶

In regard to parties' exceptions to the ALJ's Recommended Order, Section 120.57(1)(k), F.S., provides that the Commission does not have to rule on exceptions that fail to clearly identify the disputed portion of the Recommended Order by specific page numbers or paragraphs or that do not identify the legal basis for the exception, or those that lack appropriate and specific citations to the record.⁷ Section 120.57(1)(l), F.S., requires our final order to include an explicit ruling on each exception and sets a high bar for rejecting an ALJ's findings.

B. Rulings on Exceptions to the Recommended Order

DEF Exception to Conclusion of Law 110

DEF takes exception with the ALJ's Conclusion of Law 110, which states:

110. DEF failed to demonstrate by a preponderance of the evidence that its actions during Period 1 were prudent. DEF purchased an aftermarket steam turbine from Mitsubishi with the knowledge that it had been manufactured to the specifications of Tenaska with a design point of 420 MW of output. Mr. Swartz's testimony regarding the irrelevance of the 420 MW limitation was unpersuasive in light of the documentation that after the initial blade failure, DEF itself accepted the limitation and worked with Mitsubishi to find a way to increase the output of the turbine to [REDACTED]

First, as a general criticism, DEF argues that when weighing the facts presented at hearing, although stating the correct legal standard of review - what a reasonable utility manager should have done based on what he knew or should have known at the time - the ALJ did not apply that standard but instead evaluated DEF's actions from the perspective of what is currently known. DEF states that this type of "hindsight" and "Monday-morning quarterbacking" prudence analysis has been found to be inappropriate under *Florida Power Corporation v. Public Service Comm. (Florida Power)*, 456 So. 2d 451, 452 (Fla. 1984).

⁵ Section 120.57(1)(l), F.S.

⁶ *Id.*

⁷ Section 120.57(1)(k), F.S.

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Second, DEF disagrees with the ALJ's conclusion that the 420 MW design point was a limitation on the steam turbine. DEF argues that the record supports the conclusion that the 420 MW design point is a fall out number based on various combinations of operating parameters provided by Mitsubishi. DEF argues that operating within the [REDACTED] was prudent given what DEF knew or should have known during Period 1. At that time, DEF contends that there was no reason to believe that increasing the output above 420 MW would damage the unit [REDACTED]. Thus, DEF concludes that the fact that the [REDACTED] failed in February 2017 does not mean that the plant operator reasonably should have known that would happen in June 2009.

Third, DEF argues that DEF's compliance with lower than 420 MW output after Period 1 and its request to Mitsubishi for modifications to operate the unit at [REDACTED] do not logically support the conclusion that DEF agreed the unit originally could not be operated above 420 MW. These actions, according to DEF, allowed the unit to continue to be operated to produce the most power possible while research into the cause of the Period 1 outage was conducted. DEF argues that getting the unit back on line producing as much power as possible is implementation of long standing Commission policy that utilities operate generating units for maximum efficiency. DEF asserts that these actions are not evidence of DEF's acceptance of 420 MW as a limitation on the output of the unit.

Intervenors' Response

Intervenors contend that DEF, while conceding that the ALJ referenced the correct legal standard for prudence review, never explains or demonstrates exactly how the ALJ applied "Monday-morning quarterbacking" to reach any of the conclusions in Conclusions of Law 110. In the determination of what a utility knew or should have known at any past point in time, Intervenors state that there is necessarily a review of contemporaneous prior actions and documents. They contend that that review was done here. Intervenors note that DEF has not argued that there is no competent substantial evidence supporting the ALJ's conclusions in Conclusions of Law 110 and cites nine separate parts of the record that do logically support the ALJ's conclusion that DEF did not act prudently in running the unit above 420 MW in Period 1.

Intervenors further argue that the *Florida Power* case relied upon by DEF is not applicable here for several reasons. In *Florida Power*, the Commission classified "non-safety related" repair work as "safety-related" repair work and then applied the higher standard of care for "safety-related" repair work to determine if Florida Power had conducted the repairs prudently. Finding that the record indicated that the extensive repair work was not *per se* safety-related, the Court found that the Commission could not apply the higher standard of care. *Florida Power*, 456 So. 2d at 451. Intervenors argue that in this case, the facts upon which the ALJ relied regarding the repair of the unit are supported by competent substantial evidence and are not in dispute, nor does DEF argue that the inferences drawn from the facts by the ALJ are unreasonable. Intervenors state that DEF would simply draw different conclusions from the same set of facts, i.e., would have us weigh the evidence differently, an action prohibited by Chapter 120, F.S.

Ruling

DEF is asking us to modify a conclusion of law. When rejecting or modifying a conclusion of law, we must state with particularity our reasons for doing so, and must make a finding that the substituted conclusion of law is as or more reasonable than the one rejected or modified.⁸ Rejection or modification of a conclusion of law may not form the basis for rejection or modification of a finding of fact.⁹ With respect to DEF's exception to Conclusion of Law 110, DEF has failed to provide an adequate basis for rejecting or modifying the Conclusion of Law, and DEF's exception is therefore denied.

Further, DEF has not raised exceptions to any of the 102 factual findings made by the ALJ in his Recommended Order. As its rationale for not doing so, DEF cites the high standard that must be met to set aside an ALJ's finding of fact.¹⁰ The failure to file exceptions to findings of fact constitutes a waiver of the right to object to those facts on appeal. *Mehl v. Office of Financial Regulation*, 859 So. 2d 1260 (Fla. 1st DCA 2003); *Environmental Coalition of Florida v. Broward County*, 586 So. 2d 1212 (Fla. 1st DCA 1991). Nor has DEF argued that the proceedings conducted by the ALJ that produced those facts did not comply with the essential requirements of law. Thus, for all practical purposes, DEF has accepted all of the ALJ's 102 factual findings.

If the ALJ's findings of fact are supported by competent substantial evidence, the agency may not reject or modify them even to make alternative findings that are also supported by competent substantial evidence. *Kanter Real Estate, LLC v. Department of Environmental Protection (Kanter)*, 267 So. 3d 483, 487-88 (Fla. 1st DCA 2019), *reh'g denied* (Mar. 19, 2019), *review dismissed sub nom. City of Miramar v. Kanter Real Estate, LLC*, SC19-636, 2019 WL 2428577 (Fla. June 11, 2019)(citing *Lanz v. Smith*, 106 So. 3d 518, 521 (Fla. 1st DCA 2013)).

Finally, an agency is not authorized to substitute its judgment for that of the ALJ by taking a different view of, or placing greater weight on, the same evidence, reweighing the evidence, judging the credibility of witnesses, or otherwise interpreting the evidence to fit its desired conclusion. *Prysi v. Department of Health*, 823 So. 2d 823, 825 (Fla. 1st DCA 2002); *Heifetz v. Department of Business Regulation*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985).

We agree with DEF and the Intervenors that the standard for determining whether replacement power costs are prudent is "what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or should [have] been known at the time the decision was made."¹¹ However, in reaching the conclusion of law that DEF failed to show by a preponderance of the evidence that it acted prudently in Period 1, DEF contends that the ALJ did not follow this standard but instead evaluated DEF's actions in light of present knowledge. However, DEF never specifically identifies the facts it could not have known which

⁸ Section 120.57(1)(I), F.S.; *Prysi v. Department of Health*, 823 So. 2d 823, 825 (Fla. 1st DCA 2002)

⁹ Section 120.57(1)(I), F.S.

¹⁰ DEF Exceptions at 2.

¹¹ *Southern Alliance for Clean Energy v. Graham*, 113 So. 3d 742, 750 (Fla. 2013).

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were relied upon by the ALJ in reaching his conclusion of imprudence. Without identifying the facts upon which the ALJ improperly relied, it is impossible to evaluate this contention and it is rejected.

The ALJ bases his conclusion that a preponderance of the evidence established the actions of DEF in Period 1 were imprudent on three facts. First, the Mitsubishi aftermarket steam turbine was manufactured with a design point of 420 MW of output. Second, witness Swartz's testimony that the 420 MW was not an operational limitation was unpersuasive. Third, DEF accepted this limitation in Periods 2-5 and [REDACTED]

With regard to the first point, DEF does not contest that the steam turbine was aftermarket manufactured with a design point of 420 MW. This conclusion is supported by Findings of Fact Nos. 14-26. With regard to the second point, the ALJ extensively discusses the arguments presented by DEF witness Swartz that the 420 MW is not an operational limitation for this steam turbine in Findings of Fact Nos. 16-32 which culminate in Finding of Fact No. 33. Finding of Fact No. 33, a finding that DEF did not contest, states: "The greater weight of the evidence establishes that the Mitsubishi steam turbine was designed to operate at 420 MW of output and that 420 MW was an operational limitation of the turbine." Since DEF did not take exception to the identical statement in Finding of Fact No. 33, DEF has waived its ability to contest Conclusion of Law 110 on the grounds that the design point did not act as an operational limitation. However, even if DEF had taken exception to Finding of Fact 33, it is clear that the ALJ considered and rejected witness Swartz's arguments that DEF did not act imprudently by operating the steam turbine for extended periods of time at more than 420 MW.

With regard to the third point, DEF does not dispute that in Periods 2-5 it complied with the lower operating limitations placed on it by Mitsubishi and worked with Mitsubishi to increase the steam turbine's output to [REDACTED]. DEF disputes the significance of having done so. DEF argues that by [REDACTED] in Periods 2-5 it was acting to maximize the steam turbine's output for the benefit of its customers. As a general matter, DEF has argued that if a conclusion of law is "infused with overriding policy considerations," the agency, not the ALJ, should decide that issue.¹² Although not specifically identified, apparently, DEF believes that "maximization of output" is such an "overriding policy consideration" which should be given agency deference when determining operational prudence. However, DEF has not identified any statute, rule or Commission order that identifies "maximization of output" as a Commission policy. Additionally, the idea of agency deference, even in the interpretation of an agency's own rules and statutes, is now highly questionable given the passage of Amendment 6 to the Florida Constitution.¹³

¹² *Pillsbury v. State, Department of Health & Rehabilitative Services*, 744 So. 2d 1040, 1042 (Fla. 2d DCA 1999).

¹³ "Section 21. Judicial interpretation of statutes and rules. – In interpreting a state statute or rule, a state court or an officer hearing an administrative action pursuant to general law may not defer to an agency's interpretation of such statute or rule, and must instead interpret such statute or rule de novo."

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Additionally, we do not find the *Florida Power* decision cited by DEF on the issue of hindsight to be relevant. In *Florida Power*, the Commission made a finding of fact that was not supported by the record - that "non- safety related" repair work was "safety-related" repair work - and then improperly applied the higher standard of care for "safety-related" repair work. The crux of the problem in *Florida Power* was this unsupported finding of fact. Here DEF is not contesting any of the ALJ's 102 findings of fact as being unsupported by competent substantial evidence. Nor is DEF arguing that the legal conclusions the ALJ has drawn from these uncontested facts are unreasonable. Here there is no mistake of fact triggering the misapplication of a legal standard. In this case all parties agree on the standard to be applied, DEF simply does not like the result reached by the ALJ.

Because DEF has failed to establish that its exception to Conclusion of Law 110 is as or more reasonable than that of the ALJ, DEF's Exception to Conclusion of Law 110 is denied.

DEF Exception to Conclusion of Law 111

DEF takes exception with the ALJ's Conclusion of Law 111, which states:

111. DEF's RCA [Root Cause Analysis] concluded that the blade failures were caused [REDACTED]

[REDACTED] This conclusion is belied by the fact that [REDACTED] Mitsubishi cannot be faulted for [REDACTED] in a way that would allow an operator to run the turbine consistently beyond its capacity.

DEF takes exception to the conclusion that the [REDACTED] were not caused by [REDACTED]

[REDACTED] DEF argues that Mitsubishi was contracted specifically to assess whether this particular steam turbine could handle the proposed 4x1 steam configuration. DEF states that Mitsubishi did not originally identify [REDACTED] as a potential problem and it was reasonable for DEF in Period 1 to rely upon Mitsubishi's assessment. The better comparison, according to DEF, is not with other Mitsubishi facilities, but with blade failures in Periods 2-5 when the unit was run at less than 420 MW. Finally, DEF notes that the exact time that the [REDACTED] were damaged in Period 1 cannot be established. DEF states that the damage could have occurred during the half of the time in Period 1 when the steam turbine was operated at less than 420 MW.

Intervenors' Response

Intervenors respond that the conclusions of law in Paragraph 111 are supported by competent substantial evidence of record. Further, to the extent that a finding is both a factual and legal conclusion, Intervenors state that it cannot be rejected when there is competent substantial evidence to support the conclusion and the legal conclusion necessarily follows. *Berger*, 653 So. 2d at 480; *Strickland*, 799 So. 2d at 279; *Dunham*, 652 So. 2d at 897. Additionally, Intervenors contend that it is the ALJ, not the Commission, who is authorized to interpret the evidence presented and to decide between two contrary positions supported by

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conflicting evidence. *Heifetz v. Dept. of Business Regulation*, 475 So. 2d 1277, 1281-2 (Fla. 1st DCA 1985). With regard to DEF's reliance on the fact that it is impossible to tell when the [REDACTED] were damaged in Period 1, Intervenor's find this to be irrelevant since the ALJ does not address that fact in Paragraph 111.

Ruling

This conclusion of law constitutes the ALJ's rejection of DEF's Root Cause Analysis (RCA) conclusion that the low pressure steam turbine 40" [REDACTED]

[REDACTED]¹⁴
[REDACTED]¹⁵
[REDACTED]¹⁶ Given these facts, none of which are disputed by DEF, the ALJ found DEF's exclusion of [REDACTED] from its final RCA to be troubling, as does this Commission.

The ALJ's Conclusion of Law was adequately supported by the relevant findings of fact. DEF has failed to demonstrate that its conclusion is as or more reasonable than that of the ALJ. For this reason, DEF's Exception to Conclusion of Law 111 is denied.

DEF Exception to Conclusion of Law 112

DEF takes exception with the ALJ's Conclusion of Law 112, which states:

112. [REDACTED]

DEF states that Mitsubishi did not ultimately attribute the [REDACTED]

[REDACTED] DEF argues that given the fact that the turbine was not operated above 420 MW in Periods 2 through 5, it is more reasonable to conclude that the damage to the [REDACTED] in Period 1 was the result of [REDACTED]

¹⁴ Finding of Fact No. 67.

¹⁵ Finding of Fact No. 83.

¹⁶ Finding of Fact No. 70.

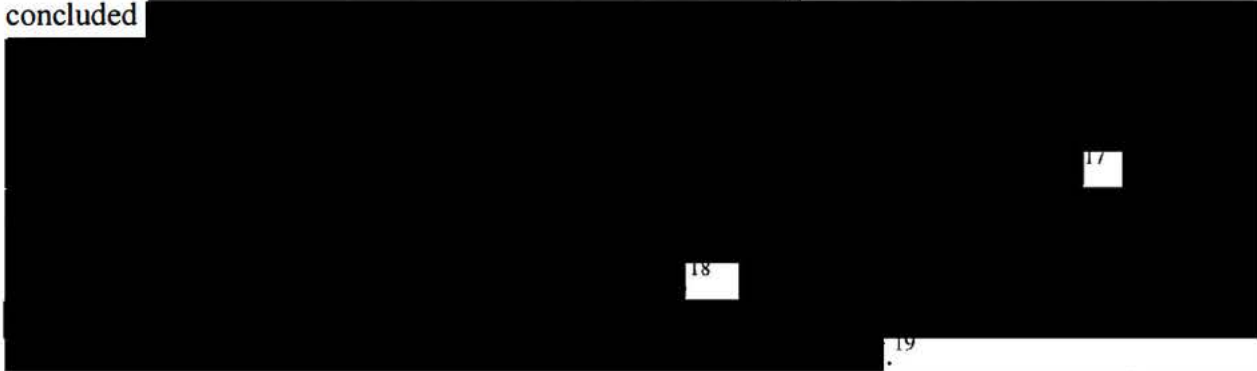
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Intervenors' Response

Intervenors contend that DEF does not contest that there are findings of fact supported by competent substantial evidence in the record to support the ALJ's conclusion of law. Thus, Intervenors conclude that, under those circumstances, we cannot reject the ALJ's conclusion of law or substitute its own judgment for that of the ALJ.

Ruling

This conclusion of law constitutes the ALJ's acceptance of Mitsubishi's RCA which concluded



DEF is simply rearguing its case that its RCA should be substituted for that of Mitsubishi. DEF has not contested the facts upon which Conclusion of Law 112 is based. Conclusion of Law 112 is the companion to Conclusion of Law 111 and it is upheld for the same reasons – that there is competent substantial evidence to support this conclusion and the conclusion is reasonable given the facts proven by a preponderance of the evidence presented. DEF has failed to demonstrate that its conclusion is as or more reasonable than that of the ALJ. Thus, DEF's Exception to Conclusion of Law 112 is denied.

DEF Exception to Conclusion of Law 113

DEF takes exception with the ALJ's Conclusion of Law 113, which states:

113. Mr. Polich persuasively argued that it would have been simple prudence for DEF to ask Mitsubishi about the ability of the turbine to operate continuously in excess of 420 MW output before actually operating it at those levels. DEF understood that the blades had been designed for the Tenaska 3x1 configuration and should have at least explored with Mitsubishi the wisdom of operating the steam turbine with steam flows in excess of those anticipated in the original design.

¹⁷ Finding of Fact Nos. 37, 63.

¹⁸ Finding of Fact No. 70.

¹⁹ Finding of Fact No. 78.

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2) the MW output of a steam turbine is not an “operating parameter”; and 3) Mitsubishi knew DEF would operate the plant in excess of 420 MW. For these reasons, DEF argues that it is “as or more reasonable” to conclude that DEF did not need to contact Mitsubishi.

Intervenors argue that DEF is simply rehashing the evidence presented and urging this Commission to make new findings that are “as or more reasonable” than the findings made by the ALJ. The ALJ states that he found OPC’s expert persuasive on this point and it is the exclusive prerogative of the ALJ, not the Commission, to evaluate the credibility of a witness and the weight to be given to his/her testimony. Intervenors contend that since there is competent substantial evidence supporting the conclusion that DEF should have called Mitsubishi, this conclusion cannot be modified.

Second, the type and meaning of [REDACTED] Third, the cause of the damage to the low pressure [REDACTED] Analysis of these three areas results in a finding regarding whether DEF acted prudently in the operation of the steam turbine which in turn drives the decision of whether replacement power costs for the April 2017 outage should be recovered or denied.

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²⁴ Finding of Fact No. 87.

Under these circumstances it is reasonable to believe that Mitsubishi would have

██████████²⁵ This is especially true since DEF was proposing the use of an additional 501 Type F combustion turbine and heat recovery steam generator, giving DEF's proposed configuration the ability to produce far more steam than needed to generate 420 MW of output when compared to the original 3x1 application for which the steam turbine was designed.²⁶ Additionally, neither DEF nor Mitsubishi had any experience running a 4x1 combined cycle plant prior to commencing operation of Bartow Unit 4.²⁷ In sum, for these reasons the ALJ found that Mitsubishi did not contemplate DEF's operation of the steam turbine beyond the ██████████ set out in the Purchase Agreement.²⁸

Given these extremely unique circumstances, the ALJ concluded that DEF's failure to contact Mitsubishi before pushing output beyond 420 MW was not prudent. Contacting Mitsubishi would have allowed DEF to receive written verification from Mitsubishi that the steam turbine could be safely operated above 420 MW and would have effectively updated the warranty to reflect the higher MW output.²⁹ The ALJ's conclusion of law is supported by competent substantial evidence of record. Because DEF has failed to demonstrate that its conclusion of law is as or more reasonable than the ALJ's, DEF's Exception to Conclusion of Law 113 is denied.

DEF Exception to Conclusion of Law 114

DEF takes exception with the ALJ's Conclusion of Law 114, which states:

114. The record evidence demonstrated an ██████████ that vibrations associated with high energy loadings were the primary cause of the L-0 blade failures. DEF failed to satisfy its burden of showing its actions in operating the steam turbine in Period 1 did not cause or contribute significantly to the vibrations that repeatedly damaged the L-0 blades. To the contrary, the preponderance of the evidence pointed to DEF's operation of the steam turbine in Period 1 as the most plausible culprit.

DEF argues that it is "as or more reasonable" to conclude from the evidence presented that DEF's actions did not cause or contribute significantly to the ██████████. DEF contends this is true because the ██████████ were damaged in Periods 2-5 when the unit was not run above 420 MW as well as Period 1 when it was. DEF further states that the ALJ is imposing the impossible standard of proving a negative. DEF argues that it does not have the burden to prove that damage did not occur as a result of its actions. Rather, DEF states that it is only required to show that it acted as a reasonable utility manager would have done given the facts known or reasonably knowable at the time without the benefit of hindsight review.

²⁵ Finding of Fact No. 87.

²⁶ Finding of Fact No. 31.

²⁷ Finding of Fact No. 85.

²⁸ Finding of Fact No. 102.

²⁹ Factual Finding No. 93.

Intervenors' Response

Intervenors argue that Conclusion of Law 114 summarizes the findings of fact that support the ALJ's ultimate determination. Intervenors state that these findings of fact are supported by competent substantial evidence and we may not reject them. With regard to the contention that the ALJ required DEF to prove a negative, Intervenors argue that DEF has the burden of proof to demonstrate that it acted prudently in the operation of Bartow Unit 4 which requires it to establish a *prima facie* case that it did act prudently and to rebut evidence of its imprudence. The Intervenors assert that DEF did neither here and the ALJ's conclusion may not be disturbed.

Ruling

As discussed in the ruling on Conclusions of Law 110-113 above, the ALJ found that a preponderance of the evidence supported the finding that the [REDACTED] was caused by vibrations/flutter associated with high energy loadings. Further, the ALJ found that the weight of the evidence supported the conclusion that the high energy loading on the blades was the result of [REDACTED]. DEF does not contest that these findings of fact are supported by competent substantial evidence of record.

We agree with the ALJ that DEF has the burden of proving that it acted prudently in the operation of its steam turbine, i.e., the burden to make a *prima facie* case supported by competent substantial evidence that it acted prudently. The burden of proof also requires DEF to rebut evidence produced that it acted imprudently. Here under the unique circumstances of this case, DEF has failed to prove it acted prudently in light of the information that was available to it at the time as found by the ALJ in Conclusion of Law 110. DEF's exception to Conclusion of Law 114 reargues DEF's factual position and fails to demonstrate that its conclusion is as or more reasonable than the ALJ's. For these reasons, DEF's Exception to Conclusion of Law 114 is denied.

DEF Exception to Conclusion of Law 119

DEF takes exception with the ALJ's Conclusion of Law 119, which states:

119. It is speculative to state that the original Period L-0 blades would still be operating today had DEF observed the [REDACTED] of 420 MW. It is not speculative to state that the events of Periods 2 through 5 were precipitated by DEF's actions during Period 1. It is not possible to state what would have happened from 2012 to 2017 if the excessive loading had not occurred, but it is possible to state that events would not have been the same.

Specifically, DEF disputes the ALJ's conclusion that it is not speculative to state that the events of Periods 2 through 5 were precipitated by DEF's actions during Period 1. DEF argues that there is no causal link between the operation of the unit in Period 1 and the forced outage

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that occurred in Period 5. DEF contends that the lack of a causal link is proven by the fact that there was no residual damage done to the steam turbine itself in Period 1 and all parties agreed that DEF's operation of the plant subsequent to Period 1 was prudent.

Intervenors' Response

Intervenors state that the conclusions in Paragraph 119 are based on the ALJ's findings of fact in Paragraphs 84 and 89 which are supported by competent substantial evidence and OPC's expert's credible testimony. Intervenors argue that to the extent that this conclusion is an inference from the ALJ's factual findings, the ALJ is permitted to draw reasonable inferences from competent substantial evidence in the record. *Amador v. School Board of Monroe County*, 225 So. 3d 853, 858 (Fla. 3d DCA 2017). Further, Intervenors state that the fact that more than one reasonable inference can be drawn from the same evidence of record is not grounds for setting aside the ALJ's conclusion. *Id.*

Ruling

This conclusion of law is in response to OPC witness Polich's testimony that the low pressure [REDACTED] would still have been in use but for the operation of the steam turbine in excess of 420 MW.³⁰ While the ALJ rejected that conclusion as too speculative, he did accept witness Polich's testimony that the damage to the blades was most likely cumulative during Period 1, making it irrelevant exactly when during the operation of the unit in Period 1 the damage occurred.³¹ DEF's witness Swartz testified that the damage to the blades could have occurred in Period 1 during the 50% of the time that the steam turbine was operated under 420 MW, i.e., when by Intervenors' standards, the unit was being operated prudently. Where reasonable people can differ about the facts, an agency is bound by the hearing officer's reasonable inferences based on the conflicting inferences arising from the evidence. *Amador v. School Board of Monroe County*, 225 So. 3d 853, 857-8 (Fla. 3d DCA 2017). Additionally, the hearing officer is entitled to rely on the testimony of a single witness even if the testimony contradicts the testimony of a number of other witnesses. *Stinson v. Winn*, 938 So. 2d 554, 555 (Fla. 1st DCA 2006).

DEF's exception to Conclusion of Law 119 reargues DEF's factual position and fails to demonstrate that its conclusion is as or more reasonable than the ALJ's. For these reasons, DEF's Exception to Conclusion of Law 119 is denied.

DEF Exception to Conclusion of Law 120

DEF takes exception with the ALJ's Conclusion of Law 120, which states:

120. In his closing argument, counsel for White Springs summarized the equities of the situation very well:

³⁰ Finding of Fact No. 84.

³¹ Finding of Fact No. 89; Footnote 4.

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You can drive a four-cylinder Ford Fiesta like a V8 Ferrari, but it's not quite the same thing. At 4,000 RPMs, in second gear, the Ferrari is already doing 60 and it's just warming up. The Ford Fiesta, however, will be moaning and begging you to slow down and shift gears. And that's kind of what we're talking about here.

It's conceded as fact that the root cause of the Bartow low pressure turbine problems is [REDACTED] caused repeatedly over time. The answer to the question is was this due to the way [DEF] ran the plant or is it due to a [REDACTED] Well, the answer is both.

The fact is that [DEF] bought a steam turbine that was already built for a different configuration that was in storage, and then hooked it up to a configuration . . . that it knew could produce much more steam than it needed. It had a generator that could produce more megawatts, so the limiting factor was the steam turbine.

On its own initiative, it decided to push more steam through the steam turbine to get more megawatts until it broke.

* * *

So from our perspective, [DEF] clearly was at fault for pushing excessive steam flow into the turbine in the first place. The repair which has been established . . . may or may not work, but the early operation clearly impeded [DEF's] ability to simply claim that Mitsubishi was entirely at fault. And under those circumstances, it's not appropriate to assign the cost to the consumers.

DEF argues that Conclusion of Law 120 is a slightly edited, verbatim recitation of PCS Phosphate counsel's final argument which the ALJ adopts, characterizing it as summarizing "the equities of the situation very well." DEF takes exception to that portion of the final argument stating that under the circumstances presented in this case, it is not appropriate to assign the cost of the February 2017 forced outage to DEF's customers. DEF argues that it is as or more reasonable to conclude that here, where DEF consistently acted prudently, DEF should not be forced to bear replacement power costs.

Intervenors' Response

As demonstrated in its response to Paragraphs 110-114 above, Intervenors argue that there is more than adequate competent substantial evidence to support the ALJ's ultimate determination that DEF did not act prudently and should bear replacement power costs. Intervenors state that DEF is simply rearguing the case it presented to the ALJ which the ALJ found to be unpersuasive.

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Ruling

As noted above, this conclusion of law is an edited version of PCS Phosphate counsel's final argument which the ALJ agrees has summarized the "equities of the situation very well." [REDACTED] Further, whether the vibration was due to the way the plant was run or [REDACTED] is that both are true. The ALJ concludes that DEF was at fault for pushing excessive steam flow into the turbine. The ALJ further agrees that by operating the unit above 420 MW, without contacting Mitsubishi, DEF impeded its ability to claim that Mitsubishi was entirely at fault. Under these circumstances, PCS Phosphate's counsel, and the ALJ, conclude that consumers should not bear replacement power costs.

Upon review of this material, it is clear that it is a summary of Conclusions of Law 110-114 above. These conclusions are supported by competent substantial evidence of record. Again, DEF reargues the factual underpinnings of the ALJ's Conclusion of Law without adequately demonstrating that DEF's conclusion is as or more reasonable. Therefore, DEF's Exception to Conclusion of Law 120 is denied.

DEF Exception to Conclusion of Law 121

DEF takes exception with the ALJ's Conclusion of Law 121, which states:

121. The greater weight of the evidence supports the conclusion that DEF did not exercise reasonable care in operating the steam turbine in a configuration for which it was not designed and under circumstances which DEF knew, or should have known, that it should have proceeded with caution, seeking the cooperation of Mitsubishi to devise a means to operate the steam turbine above 420 MW.

Specifically, DEF takes exception with the ALJ's conclusion that it did not exercise reasonable care in operating the steam turbine and should have sought the cooperation of Mitsubishi prior to operating the steam turbine above 420 MW. DEF again argues that it is as or more reasonable to conclude that operation within the express parameters given by Mitsubishi was prudent and did not require further consultation with the manufacturer.

Intervenors' Response

As demonstrated in their response to Paragraphs 110-114 above, Intervenors argue that there is more than adequate competent substantial evidence to support the ALJ's ultimate determination that DEF did not exercise reasonable care operating the plant in excess of 420 MW without consulting Mitsubishi first. Intervenors assert that the Commission is not free to reject or modify conclusions of law that are supported by competent substantial evidence and logically flow from that evidence.

Ruling

This conclusion is a statement of the ALJ's ultimate conclusion that DEF did not exercise reasonable care in the operation of the steam turbine given its configuration and design without consulting Mitsubishi. This ultimate conclusion is supported by competent substantial evidence as discussed in Conclusions of Law 110-114 above. Because DEF has failed to demonstrate that its conclusion is as or more reasonable than the ALJ's, DEF's Exception to Conclusion of Law 121 is denied.

DEF Exception to Conclusion of Law 122

DEF takes exception with the ALJ's Conclusion of Law 122, which states:

122. Given DEF's failure to meet its burden, a refund of replacement power costs is warranted. At least \$11.1 million in replacement power was required during the Period 5 outage. This amount should be refunded to DEF's customers.

DEF takes exception to the ALJ's conclusion that DEF should refund replacement power costs to its customers. Citing the arguments made in its exceptions to Paragraphs 110-114 and 119, DEF states that DEF did act prudently in the operation of its Bartow Unit 4 plant and, therefore, it is as or more reasonable to conclude that no replacement power costs should be refunded to customers.

Intervenors' Response

Intervenors argue that the ALJ's conclusion is supported by competent substantial evidence of record and is consistent with applicable law. Therefore, the Intervenors conclude that the Commission cannot, under these circumstances, reject the ALJ's conclusion of law by reweighing the evidence and substituting new and directly contrary findings that are favorable to DEF.

Ruling

This conclusion of law is based on the ALJ's Conclusions of Law 110-114, supported by competent substantial evidence of record, that DEF acted imprudently in its operation of the steam turbine in Period 1. Since DEF disagrees that it acted imprudently in incurring the replacement power costs, it argues that the \$11.1 million should not be refunded to customers. The amount of the refund is not contested. The findings of fact underlying Conclusion of Law 122 are not in dispute. Ultimately, the conclusion is supported by competent substantial evidence. Because DEF has failed to demonstrate that DEF's conclusion was as or more reasonable than the ALJ's, DEF's Exception to Conclusion of Law 122 is denied.

DEF Exception to Conclusion of Law 123

DEF takes exception with the ALJ's Conclusion of Law 123, which states:

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123. DEF failed to carry its burden to show that the Period 5 blade damage and the required replacement power costs were not consequences of DEF's imprudent operation of the steam turbine in Period 1.

For the reasons stated in its exception to Paragraph 110, DEF argues that it did demonstrate by a preponderance of the evidence that it operated the steam turbine prudently in Period 1. Thus, DEF contends that it is as or more reasonable to conclude that DEF carried its burden of proof that the steam turbine was operated prudently in Period 1.

Intervenors' Response

Intervenors contend that the ALJ's conclusion is supported by competent substantial evidence of record as detailed in Intervenors' responses to DEF's exceptions to Paragraphs 110-114 and 119, and is consistent with applicable law. Therefore, Intervenors argue that we cannot, under these circumstances, reject the ALJ's conclusion of law by reweighing the evidence and substituting new and directly contrary findings that are favorable to DEF.

Ruling

A review of DEF's exception reveals that it is simply re-argument of its position taken in Conclusion of Law No. 110 discussed above. For the reasons stated therein, DEF's Exception to Conclusion of Law 123 is denied because DEF has failed to demonstrate that its conclusion is as or more reasonable than the ALJ's.

DEF Exception to Conclusion of Law 124

DEF takes exception with the ALJ's Conclusion of Law 124, which states:

124. The de-rating of the steam turbine that required the purchase of replacement power for the 40 MW loss caused by the installation of the pressure plate was a consequence of DEF's failure to prudently operate the steam turbine during Period 1. Because it was ultimately responsible for the de-rating, DEF should refund replacement costs incurred from the point the steam turbine came back on line in May 2017 until the start of the planned fall 2019 outage that allowed the replacement of the pressure plate with the [REDACTED] in December 2019. Based on the record evidence, the amount to be refunded due to the de-rating is \$5,016,782.

DEF argues that the operation of the steam turbine in Period 1 was proven by DEF by a preponderance of the evidence to be prudent. DEF contends that this fact, coupled with the undisputed evidence that DEF also operated the steam turbine prudently in Periods 2-5, demonstrates that it is as or more reasonable to conclude that the Period 5 blade damage and resulting replacement power costs were not a consequence of DEF's operation of the steam turbine during Period 1.

Intervenors' Response

Intervenors argue that the ALJ's conclusion is supported by competent substantial evidence of record as detailed in Intervenors' responses to DEF's exceptions to Conclusions of Law 110-114 and 119. Intervenors contend that DEF's is simply rearguing its case that its operation of the steam turbine was prudent, and therefore no refunds associated with the installation of the pressure plate are required. Intervenors assert that the basis for the ALJ's conclusion that derating costs of \$5,016,782 should be refunded to customers is his finding of DEF's imprudence in operation of the steam turbine in Period 1. For these reasons, Intervenors conclude that there is no basis to set aside that finding or to set aside this conclusion of law.

Ruling

There is no question that installation of the pressure plate caused the derating of the steam turbine from 420 to 380 MW.³² Likewise, the parties have agreed that the period of time associated with the derating is April 2017 through the end of September 2019.³³ Nor do the parties disagree that the amount associated with the derating is \$5,016,782.³⁴ DEF is simply rearguing its position that its operation of the steam turbine was not responsible for blade damage in Period 5, a position considered and rejected by the ALJ.³⁵ As discussed in Conclusions of Law 110-114 and 119 above, there is competent substantial evidence to support the ALJ's conclusion that DEF's imprudent actions in Period 1 resulted in the derating. That being the case, DEF's Exception to Conclusion of Law 124 is denied because DEF has failed to demonstrate that its conclusion is as or more reasonable than that of the ALJ.

DEF Exception to Conclusion of Law 125

DEF takes exception with the ALJ's Conclusion of Law 125, which states:

125. The total amount to be refunded to customers as a result of the imprudence of DEF's operation of the steam turbine in Period 1 is \$16,116,782, without interest.

DEF takes exception to this conclusion on the grounds that DEF did prove by a preponderance of the evidence that it acted prudently in the operation of the steam turbine in Period 1. That being the case, DEF contends that it is as or more reasonable to conclude that no refund to its customers of any amount is required.

Intervenors' Response

Intervenor's argue that the ALJ's conclusion is supported by competent substantial evidence of record as detailed in Intervenors' responses to DEF's exceptions to Conclusions of

³² Finding of Fact No. 60.

³³ Finding of Fact No. 61.

³⁴ Finding of Fact No. 80.

³⁵ Finding of Fact No. 119.

Law 110-114 and 119. Intervenor state that DEF is simply rearguing its case that its operation of the steam turbine was prudent and therefore no refunds are required. Intervenor assert that we cannot, under these circumstances, reject the ALJ's conclusion of law by reweighing the evidence and substituting new and directly contrary findings that are favorable to DEF.

Ruling

This is a fall-out conclusion based upon Conclusions of Law 110-114 and 119 discussed above, which results in the ultimate conclusion of law that DEF acted imprudently. Conclusions of Law 110-114 and 119 are based on competent substantial evidence of record. For that reason, DEF's Exception to Conclusion of Law 125 is denied, because DEF has failed to demonstrate that its conclusion is as or more reasonable than that of the ALJ.

C. Conclusion

DEF has failed to show that the ALJ's conclusions are not reasonable or that the facts from which his conclusions are drawn are not based on competent substantial evidence of record. Further, DEF has not argued that the proceeding did not comport with the essential requirements of law. Finally, DEF has not specifically stated how the ALJ's conclusions of law are contrary to prior Commission policy statements for utility operation. For these reasons, we deny DEF's exceptions to Conclusions of Law 110-114 and 119-125 since DEF has failed to demonstrate that its proposed modifications to those conclusions are as or more reasonable than that of the ALJ.

III. ADOPTION AND APPROVAL OF THE RECOMMENDED ORDER AS THE FINAL ORDER

As set forth above, we deny all exceptions filed by DEF, approve all of the ALJ's findings of fact and conclusions of law without modification, and hereby adopt the ALJ's Recommended Order, found in Attachment A, as our Final Order.

We note that this case is highly fact specific and for that reason will have limited precedential value. There is literally no other plant in DEF's system that has four combustion turbines connected to one steam turbine nor any other plant in DEF's system that uses an after-market steam turbine designed for a 3x1 configuration in a 4x1 configuration. The ALJ was persuaded by OPC witness Polich's testimony that because Bartow Unit 4 was operated to produce more than 420 MW, too much steam was forced into the low pressure section of the steam turbine damaging the L-O blades. Nothing in the ALJ's Recommended Order or our decision in any way establishes, indicates, implies or imputes any going-forward protocol for the operation of steam turbines in DEF's fleet. Adoption of the Recommended Order with this conclusion of law does not translate into a general policy decision by the Commission that under any set of circumstances it is imprudent to run a unit above its nameplate capacity.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the attached Recommended Order (Attachment A) is adopted and approved as the Final Order in this docket. It is further

ORDERED that all of the exceptions to the Recommended Order filed by Duke Energy Florida, LLC, are denied. It is further

ORDERED that the docket shall remain open.

By ORDER of the Florida Public Service Commission this 15th day
of October, 2020.


ADAM J. TEITZMAN
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

SPS

Commissioner Donald J. Polmann dissents with opinion.

I respectfully disagree with the majority decision. Having reviewed the evidentiary record in its entirety, applying my knowledge and expertise to the issues, I find that DEF acted prudently. I believe that the majority applied legal boundaries and restrictions that impeded it from taking certain actions, thereby precluding this Commission from exercising its broad authority and its affirmative duty to judge prudence in the public interest of the State of Florida. In my opinion, the particularities of this case involving substantial confidential testimony, the Sunshine Law, and transfer to DOAH imposed such overbearing limitations on the majority that its role was effectively reduced to ministerial.

To ensure that this Commission has clear and unambiguous authority to execute its full breadth of duties in future dockets, I strongly support statutory revisions to redress the diminished capacities that burdened this case. In my opinion, this Commission must advocate to the Florida Legislature for necessary statutory authority to hear confidential material efficiently and effectively in the future.

My profound concern is for perceptions of legal boundaries and restrictions that led this Commission in the majority to be muted into near dysfunction on addressing the Administrative Law Judge's (ALJ's) Recommended Order. My perception of legal boundaries and restrictions is of lesser limitations that do not impede this Commission from taking certain actions which better serve the public interest. Section 120.57(1)(1), Florida Statutes, affords a process in which to accept, reject, or modify an ALJ's Recommended Order. In this case, I disagree that the Conclusions of Law were so inextricably linked with the Findings of Fact. This inextricable linkage ostensibly conflicts with our obligation to review the entire record and leads us down the path of what I believe is strict inappropriate deference to the ALJ's determination of prudence. If that strict deference is appropriate, our role is reduced to ministerial where we must accept the ALJ Order and are unable to fully consider and determine prudence based upon the entire record. The standard for approving an "exception to a Conclusion of Law" is that a different Conclusion of Law is "as or more reasonable" than that of the ALJ and including particular reasons as to why an exception is made. I believe that the information DEF has provided in its exceptions is sufficient reason in Toto to accept a position that is as reasonable as the ALJ. Therefore, I submit that the Commission should have modified the ALJ's Order, by accepting DEF's exceptions to Conclusions of Law 110 through 114 and 119 through 125 and concluded that DEF met its burden of proof that its actions were prudent.

However, my vote in this matter also rejects the notion that the circumstances of this case, combined with legal constraints, eliminated the Commission's ability to hear this case in the first instance. We must conduct all proceedings in the Sunshine pursuant to s. 286.011, F.S., which effectively precludes this Commission from hearing cases requiring presentation of substantial confidential testimony and exhibits. Contrary to normal application of the Administrative Procedure Act and our practice, this case was sent to the Division of Administrative Hearings with delegation of our fact-finding responsibilities to an ALJ. Section 120.569, F.S., provides that each agency "may" refer a matter to DOAH and sets forth the legal standards for the ALJ as fact-finder "if" the agency makes the referral. The conflict of Sunshine and confidentiality caused the Commission to abdicate its fact-finder role.

In my opinion, the Commission's inability to hear this case affected the outcome. Our unique agency expertise and understanding of sound utility principles and practices to assess witness testimony and the record in this case would have been the more appropriate procedure in the public interest. While I fully respect and support the Sunshine Law and conducting our business in the Sunshine, I believe unintended consequences arose in this case through a process defect where certain statutes are not acting in harmony. A case based almost entirely on confidential information, though rare, points directly to critical Commission functions worthy of remedy. Therefore, to avoid frustrating the public interest in the future, I would strongly encourage the Legislature to consider amending the Sunshine Law to allow for a limited and narrow exception which would allow the Commission to conduct a closed hearing in the rare instance where most of the disputed facts at issue are confidential under s. 366.093, F.S.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request:

- 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or
- 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

Exhibit C**DUKE ENERGY FLORIDA
Confidentiality Justification Matrix**

DOCUMENT/RESPONSES	PAGE/LINE	JUSTIFICATION
Florida Public Service Commission's Final Order No. PSC-2020-0368-FOF-EI	<p><u>Page 3:</u></p> <p>The information after “contracted with Mitsubishi to” and before “As required by its contract” in its entirety</p> <p>The information after “As required by its contract” to the end of the paragraph in its entirety</p> <p>The information after “DEF discovered that the” and before “in the low pressure” in its entirety</p> <p>The information after “were damaged. The” and before “were replaced with” in its entirety</p> <p>The information after “were replaced with” and before “and the plant” in its entirety</p> <p>The information after “out of service to” and before “the” in its entirety</p> <p>The information after “the” and before “The plant came back” in its entirety</p> <p>The information after “routine valve work and” and before “inspection. The plant” in its entirety</p>	<p>§366.093(3)(c), F.S.</p> <p>The document in question contains confidential information, contractual information, or information provided by a third party that DEF is obligated to keep confidential, the disclosure of which would harm its competitive business interests</p>

	<p>The information after “May 2016 with a” and before “and operated until” in its entirety</p> <p>The information after “vibration and loss of” and before “material. In December” in its entirety</p> <p>The information after “service with the” and before “and was taken” in its entirety</p> <p>The information after “due to a” and before “projectile that traveled” in its entirety</p> <p><u>Page 4:</u> The information in the third footnote after “in place of the” and before “in the low pressure” in its entirety</p> <p><u>Page 5:</u> The information at the end of paragraph 110 after “output of the turbine to” in its entirety</p> <p><u>Page 6:</u> The information after “operating within the” and before “was prudent given” in its entirety</p> <p>The information after “damage the unit” and before “Thus, DEF concludes” in its entirety</p> <p>The information after “operate the unit at” and before “do not logically” in its entirety</p>	
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	<p><u>Page 8:</u> The information after “in Periods 2-5 and” to the end of the paragraph in its entirety</p> <p>The information after “turbine’s output to” and before “DEF disputes the” in its entirety</p> <p>The information after “DEF argues that by” and before “in Periods 2-5” in its entirety</p> <p><u>Page 9:</u> The information in paragraph 111 after “failures were caused” and before “This conclusion is belied” in its entirety</p> <p>The information after “by the fact that” and before “Mitsubishi cannot be” in its entirety</p> <p>The information after “be faulted for” and before “in a way that” in its entirety</p> <p>The information after “conclusion that the” and before “were not caused by” in its entirety</p> <p>The information after “were not caused by” and before “DEF argues that” in its entirety</p> <p>The information after “not originally identify” and</p>	
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	<p>before “as a potential problem” in its entirety</p> <p>The information after “exact time that the” and before “were damaged in” in its entirety</p> <p><u>Page 10:</u></p> <p>The information after “to tell when the” and before “were damaged in” in its entirety</p> <p>The information after “steam turbine 40” and before “footnote 14” in its entirety</p> <p>The information after “footnote 14” and before “footnote 15” in its entirety</p> <p>The information after “footnote 15” and before “footnote 16” in its entirety</p> <p>The information after “DEF's exclusion of” and before “from its final” in its entirety</p> <p>The information in paragraph 112 in its entirety</p> <p>The information after “ultimately attribute the” and before “DEF argues that” in its entirety</p> <p>The information after “damage to the” and before “in Period 1” in its entirety</p> <p>The information after “was the result of” to the end of</p>	
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	<p>the paragraph in its entirety</p> <p><u>Page 11:</u> The information after “which concluded” and before “footnote 17” in its entirety</p> <p>The information after “footnote 17” and before “footnote 18” in its entirety</p> <p>The information after “footnote 18” and before “footnote 19” in its entirety</p> <p><u>Page 12:</u> The information after “evidence in the record: 1)” and before “2) the MW output” in its entirety</p> <p>The information after “focusing on several areas.” and before “Second, the type” in its entirety</p> <p>The information after “and meaning of” and before “Third, the cause” in its entirety</p> <p>The information after “the low pressure” and before “Analysis of these” in its entirety</p> <p>The information after “clearly states” and before “footnote 23” in its entirety</p> <p>The information after “footnote 23” and before “footnote 24” in its entirety</p> <p>The information in footnote</p>	
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	<p>22 after “Entitled the” and before “executed between Florida” in its entirety</p> <p><u>Page 13:</u></p> <p>The information after “Mitsubishi would have” and before “footnote 25” in its entirety</p> <p>The information after “turbine beyond the” and before “set out in the” in its entirety</p> <p>The information after “evidence demonstrated an” and before “that vibrations associated” in its entirety</p> <p>The information after “significantly to the” and before “DEF contends this” in its entirety</p> <p>The information after “true because the” and before “were damaged in” in its entirety</p> <p><u>Page 14:</u></p> <p>The information after “finding that the” and before “was caused by” in its entirety</p> <p>The information after “was the result of” and before “DEF does not contest” in its entirety</p> <p>The information after “DEF observed the” and before “of 420 MW.” in its entirety</p>	
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	<p><u>Page 15:</u> The information after “low pressure” and before “would still have” in its entirety</p> <p><u>Page 16:</u> The information after “turbine problems is” and before “caused repeatedly over” in its entirety</p> <p>The information after “due to a” and before “Well, the answer” in its entirety</p> <p><u>Page 17:</u> The information after “situation very well.”” and before “Further, whether the” in its entirety</p> <p>The information after “plant was run or” and before “is that both” in its entirety</p> <p><u>Page 19:</u> The information in paragraph 124 after “plate with the” and before “in December 2019.” in its entirety</p>	
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Exhibit D

AFFIDAVIT OF JEFFREY SWARTZ

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
Clause with generating performance incentive
Factor

Docket No. 20200001-EI

Filed: October 29, 2020

**AFFIDAVIT OF JEFFREY SWARTZ IN SUPPORT OF
DUKE ENERGY FLORIDA LLC'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

STATE OF FLORIDA

COUNTY OF _____

BEFORE ME, the undersigned authority duly authorized to administer oaths, personally appeared Jeffrey Swartz, who being first duly sworn, on oath deposes and says that:

1. My name is Jeffrey Swartz. I am over the age of 18 years old and I have been authorized by Duke Energy Florida, LLC (hereinafter "DEF" or the "Company") to give this affidavit in the above-styled proceeding on DEF's behalf and in support of DEF's Request for Confidential Classification (the "Request"). The facts attested to in my affidavit are based upon my personal knowledge.

2. I am the Vice President of Florida Generation. I am responsible for the overall leadership and strategic direction of DEF's power generation fleet. My major duties and responsibilities include strategic and tactical planning to operate and maintain DEF's non-nuclear generation fleet; generation fleet project and additions recommendations; major maintenance programs; outage and project management; retirement of generation facilities; asset allocation; workforce planning and staffing; organizational alignment and design; continuous

business improvements; retention and inclusion; succession planning; and oversight of hundreds of employees and hundreds of millions of dollars in assets and capital and operating budgets.

3. DEF is seeking confidential classification for certain information contained in the Florida Public Service Commission's Final Order PSC-2020-0368-FOF-EI (DN 11211-2020). The confidential information at issue is contained in confidential Exhibit A to DEF's Request and is outlined in DEF's Justification Matrix that is attached to DEF's Request as Exhibit C. DEF is requesting confidential classification of this information because it contains confidential information, contractual information, or information provided by a third party that DEF is obligated to keep confidential, the disclosure of which would harm its competitive business interests.

4. In order to contract with third-party vendors and Original Equipment Manufacturers on favorable terms, DEF must keep contractual terms and third-party proprietary information confidential. The disclosure of which would be to the detriment of DEF and its customers. DEF takes affirmative steps to prevent the disclosure of this information to the public, as well as limits its dissemination within the Company to those employees with a need to access the information to provide their job responsibilities. Absent such measures, third-party vendors would run the risk that sensitive business information that they provided would be made available to the public and, as a result, end up in possession of potential competitors. Faced with that risk, persons or companies who would otherwise contract with DEF might decide not to do so if DEF did not keep specific information confidential. Without DEF's measures to maintain the confidentiality of sensitive terms in contracts, the Company's efforts to obtain competitive contracts could be undermined.

5. Additionally, the disclosure of confidential information provided by a third party could adversely impact DEF's competitive business interests. If such information was disclosed to DEF's competitors, DEF's efforts to obtain competitive contracts that add economic value to both DEF and its customers could be undermined.

6. Upon receipt of confidential information from third-party vendors, and with its own confidential information, strict procedures are established and followed to maintain the confidentiality of the terms of the documents and information provided, including restricting access to those persons who need the information to assist the Company. At no time since receiving the contracts and information in question has the Company publicly disclosed that information. The Company has treated and continues to treat the information and contracts at issue as confidential.

7. This concludes my affidavit.

Further affiant sayeth not.

Dated the ____ day of _____, 2020.

(Signature)

Jeffrey Swartz

Vice President – Generation Florida

THE FOREGOING INSTRUMENT was sworn to and subscribed before me this ____ day of _____, 2020 by Jeffrey Swartz. He is personally known to me or has produced his _____ driver's license, or his _____ as identification.

(Signature)

(Printed Name)

NOTARY PUBLIC, STATE OF _____

(Commission Expiration Date)

(Serial Number, If Any)

(AFFIX NOTARIAL SEAL)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
clause with generating performance incentive
factor.

DOCKET NO. 20200001-EI
ORDER NO. PSC-2020-0415-PHO-EI
ISSUED: October 30, 2020

PREHEARING ORDER

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on October 26, 2020, in Tallahassee, Florida, before Commissioner Andrew Giles Fay, as Prehearing Officer.

APPEARANCES:

MATTHEW BERNIER, ESQUIRE, 106 East College Avenue, Tallahassee, Florida 32301-7740; and DIANNE M. TRIPLETT, ESQUIRE, 299 First Avenue North, St. Petersburg, Florida 33701
On behalf of Duke Energy Florida, LLC (DEF)

MARIA J. MONCADA and DAVID LEE, ESQUIRES, Florida Power & Light Company, 700 Universe Boulevard, Juno Beach, Florida 33408-0420
On behalf of Florida Power & Light Company (FPL)

BETH KEATING, ESQUIRE, Gunster, Yoakley & Stewart, P.A., 215 South Monroe St., Suite 601, Tallahassee, Florida 32301
On behalf of Florida Public Utilities Company (FPUC)

RUSSELL A. BADDERS, ESQUIRE, Gulf Power Company, One Energy Place, Pensacola, Florida 32520; and MARIA J. MONCADA, ESQUIRE, Florida Power & Light Company, 700 Universe Boulevard, Juno Beach, Florida 33408-0420
On behalf of Gulf Power Company (Gulf)

JAMES D. BEASLEY, J. JEFFRY WAHLEN, and MALCOM N. MEANS, ESQUIRES, Ausley McMullen, Post Office Box 391, Tallahassee, Florida 32302
On behalf of Tampa Electric Company (TECO)

J.R. KELLY, CHARLES REHWINKEL, PATRICIA A. CHRISTENSEN, STEPHANIE MORSE, A. MIREILLE FALL-FRY, and THOMAS A. DAVID, ESQUIRES, Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida (OPC)

JON C. MOYLE, JR. and KAREN PUTNAL, ESQUIRES, Moyle Law Firm, PA, The Perkins House, 118 North Gadsden Street, Tallahassee, Florida 32301
On behalf of the Florida Industrial Power Users Group (FIPUG)

JAMES W. BREW and LAURA WYNN BAKER, ESQUIRES, Stone Mattheis Xenopoulos & Brew, PC, 1025 Thomas Jefferson St., NW, Eighth Floor, West Tower, Washington, DC 20007

On behalf of White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (PCS Phosphate)

SUZANNE BROWNLESS, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

On behalf of the Florida Public Service Commission (Staff)

MARY ANNE HELTON, ESQUIRE, Deputy General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

Advisor to the Florida Public Service Commission

KEITH HETRICK, ESQUIRE, General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

Florida Public Service Commission General Counsel

PREHEARING ORDER

I. CASE BACKGROUND

As part of the continuing fuel and purchased power adjustment and generating performance incentive clause proceedings, an administrative hearing will be held by the Florida Public Service Commission (Commission) on November 3-5, 2020. The purpose of this docket is to review and approve purchased wholesale electric power charges, electric generation facilities' fuel and fuel related costs, and incentives associated with the efficient operation of generation facilities which are passed through to ratepayers through the fuel adjustment factor. The Commission will address those issues listed in this prehearing order. The Commission has the option to render a bench decision with agreement of the parties on any or all of the issues listed below.

II. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code (F.A.C.), this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

State buildings are currently closed to the public and other restrictions on gathering remain in place due to COVID-19. Accordingly, the hearing will be conducted remotely, and all parties and witnesses shall be prepared to present argument and testimony by communications media technology. The Commission shall act as the host of the hearing and will use a combination of technologies to ensure full participation. The Commission will employ

GoToMeeting as an audio and video platform for the hearing, which will include a telephone number for audio-only participation.

A GoToMeeting invitation shall be provided to counsel for each party. It shall be the responsibility of counsel to provide their clients, client representatives, and witnesses with the invitation, which will allow them to access the hearing, as necessary. Counsel for each party will also be provided the call-in number for audio participation.

Any member of the public who wants to observe or listen to the proceedings may do so by accessing the live video broadcast on each day of the hearing, which is available from the Commission website. Upon completion of the hearing, the archived video will also be available.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 366, Florida Statutes (F.S.). This hearing will be governed by said Chapter and Chapters 25-6, 25-22, and 28-106, F.A.C., as well as any other applicable provisions of law.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing that has not been filed as prefiled testimony or prefiled exhibits, parties must follow the procedures for providing confidential electronic exhibits to the Commission Clerk prior to the hearing.

- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by electronic exhibit.

If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to three minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Christopher A. Menendez	DEF	6-11, 18-23 (A-D), 27-36
*James McClay	DEF	18
*Mary Ingle Lewter	DEF	16, 17
*R. B. Deaton	FPL	2H, 6-11, 18-22, , 24B, 27-33, 34-36
*G. J. Yupp	FPL	2B, 2C-2E, 6-11, 18
R. Coffey	FPL	2F, 2G, 6-11, 18
*C. R. Rote	FPL	16, 17
*L. Fuentes	FPL	2A, 24A
*E. J. Anderson	FPL	2A, 24A
*Curtis D. Young ¹	FPUC	3A, 8, 9, 10, 11, 18-22, 34-36
*P. Mark Cutshaw	FPUC	10, 11
*Richard L. Hume	Gulf	4A, 6-11, 18-22, 27-36
*Charles Rote ²	Gulf	16, 17
*M. Ashley Sizemore	TECO	6-11, 18-22, 27-35
*Jeremy B. Cain	TECO	16-18

¹ Revised 2021 Projection Testimony filed October 22, 2020.

² Adopts the GPIF Results Testimony and exhibit of Jarvis Van Norman filed on March 16, 2020.

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
*Benjamin F. Smith	TECO	18, 31
*John C. Heisey	TECO	5A, 18
*Debra M. Dobiac	Staff	4A

* These witnesses have been stipulated to by the parties.

VII. BASIC POSITIONS

DEF: Not applicable. DEF's positions on specific issues are listed below.

FPL: FPL's 2021 Fuel and Purchased Power Cost Recovery factors and Capacity Cost Recovery factors, including its prior period true-ups, are appropriate and reasonable and should be approved. In addition, FPL's refund, including interest, of \$12.4 million and base rate decrease of 0.059% associated with the true-up of the 2018 SoBRA should be approved.

FPUC: The Commission should approve Florida Public Utilities Company's final net true-up for the period January through December 2019, the estimated true-up for the period January through December, 2020, and the purchase power cost recovery factors for the period January through December, 2021.

GULF: It is the basic position of Gulf Power Company that the fuel and capacity cost recovery factors proposed by the Company present the best estimate of Gulf's fuel and capacity expense for the period January 2021 through December 2021 including the true-up calculations, GPIF and other adjustments allowed by the Commission.

TECO: The Commission should approve Tampa Electric's calculation of its fuel adjustment, capacity cost recovery, and GPIF true-up and projection calculations, including the proposed fuel adjustment factor of 3.167 cents per kWh before any application of time of use multipliers for on-peak or off-peak usage; the company's proposed capacity factor for the period January through December 2021; a GPIF reward of \$2,858,056 for performance during 2019 and the company's proposed GPIF targets and ranges for 2021.

OPC: The utilities have the burden of proof to justify and support the recovery of costs and their proposal(s) seeking the Commission's adoption of policy statements (whether new or changed) or other affirmative relief sought, regardless of whether

the Interveners provide evidence to the contrary. Regardless of whether the Commission has previously approved a program as meeting the Commission's requirements, the utilities must still meet their burden of demonstrating that the costs submitted for final recovery meet the statutory test(s) and are reasonable in amount and prudently incurred.

FIPUG: Only reasonable and prudent costs legally authorized and reviewed for prudence should be recovered through the fuel clause. FIPUG maintains that the respective utilities must satisfy their burden of proof for any and all monies or other relief sought in this proceeding.

PCS

Phosphate: Only costs prudently incurred and legally authorized should be recovered through the fuel clause. Florida electric utilities, including in particular Duke Energy Florida, LLC ("DEF"), must satisfy the burden of proving the reasonableness of any expenditures for which recovery or other relief is sought in this proceeding.

At its agenda conference held on September 1, 2020, the Commission voted to adopt, without modifications, the findings and recommendations ("Recommended Order") of the Department of Administrative Hearings ("DOAH") which concluded that DEF should not be permitted to recover in consumer rates the replacement power costs associated with the 2017 DEF Bartow Unit 4 outage and subsequent de-rating. The disputed costs had previously been included in fuel clause charges pending that Commission determination. In its recommendation memorandum, Public Service Commission Staff stated that DEF "should be required to refund \$11.1 million in replacement power associated with its April 2017 Bartow Unit 4 outage and \$5,016,782 for the de-rating of the unit from May 2017 until December of 2019, for a total refund of \$16,116,782."³ Based on the Commission's final Order No. PSC-2020-0368-FOF-EI, issued October 15, 2020, DEF should credit a refund of those costs in the determination of its fuel clause factor to be collected in 2021.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions stated herein.

VIII. ISSUES AND POSITIONS

COMPANY SPECIFIC ISSUES

Duke Energy Florida, LLC.

³ Docket No. 20200001, Fuel and purchased power cost recovery clause with generating performance incentive factor, *Memorandum from Public Service Commission Staff* at 23 (Aug. 6, 2020).

ISSUE 1A: **What action should be taken in response to Commission Order No. PSC-2020-0368-FOF-EI regarding the Bartow Unit 4 February 2017 outage?**

DEF: No action is appropriate at this time. The Commission's Order, PSC-2020-0368-FOF-EI, denying DEF's exceptions and adopting the ALJ's Recommended Order without modification was rendered on October 15, 2020, approximately a month and a half after DEF filed its 2021 projection filing and proposed 2021 fuel factors; given the date the order was rendered in relation to the filing schedule in this docket, the appropriate action will be to incorporate the refund (if any) as part of the true-up process in next year's docket, pending resolution of any appeal or motion for reconsideration. Moreover, pursuant to section 120.68(2)(a), Fla. Stat., DEF is entitled to seek appellate review within thirty days of the rendering of the final order; therefore, DEF is permitted to take an appeal on or before November 15, 2020, twelve days after the final hearing in this docket is scheduled to occur. Under Rule 25-22.061(1), F.A.C., if DEF seeks appellate review it is entitled to a stay of the order's effectiveness pending resolution of that appeal.

FPL: No position given.

FPUC: No position.

GULF: No position given.

TECO: No position given.

OPC: The Commission voted in Order No. PSC-2020-0368-FOF-EI that DEF was imprudent in causing \$16,116,782 (excluding interest) in replacement power costs related to the Bartow Unit 4 outage and de-rating. These costs should be refunded to customers in the fuel factor applicable to 2021 billings.

FIPUG: Adopt the position of OPC.

PCS

Phosphate: The Commission should issue its order consistent with Order No. PSC-2020-0368-FOF-EI, issued October 15, 2020, but no further independent action is required. Based on that Order, the Commission should direct DEF to reduce its proposed cost recovery amounts for January 2021 through December 2021 by \$16.1 million, plus interest, to refund costs relating to the replacement power and de-rating costs due to the outage of Bartow Unit 4 in April 2017. To the extent that this reduction in allowed cost recovery reduces the fuel cost recovery factors for DEF, corresponding adjustments should be made to those proposed.

STAFF: No position at this time.

Florida Power & Light Company

ISSUE 2A: What is the appropriate revised SoBRA factor for the 2018 projects to reflect actual construction costs that are less than the projected costs used to develop the initial SoBRA factor?

Proposed stipulation – See Section X.

ISSUE 2B: What is the total gain under FPL’s Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL may recover for the period January 2019 through December 2019, and how should that gain to be shared between FPL and customers?

Proposed stipulation – See Section X.

ISSUE 2C: What is the appropriate amount of Incremental Optimization Costs under FPL’s Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL should be allowed to recover through the fuel clause for Personnel, Software, and Hardware costs for the period January 2019 through December 2019?

Proposed stipulation – See Section X.

ISSUE 2D: What is the appropriate amount of Variable Power Plant O&M Attributable to Off-System Sales under FPL’s Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL should be allowed to recover through the fuel clause for the period January 2019 through December 2019?

Proposed stipulation – See Section X.

ISSUE 2E: What is the appropriate amount of Variable Power Plant O&M Avoided due to Economy Purchases under FPL’s Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL should be allowed to recover through the fuel clause for the period January 2019 through December 2019?

Proposed stipulation – See Section X.

ISSUE 2F: Has FPL made reasonable and prudent adjustments, if any are needed, to account for replacement power costs associated with the April 2019 forced outage at St. Lucie Nuclear Power Plant, Unit No. 1?

DEF: No position.

FPL: No adjustments are needed for the replacement power costs associated with the April 2019 outage at St. Lucie Nuclear Power Plant, Unit No. 1. The Commission

has consistently based clause recovery of replacement fuel costs on whether a utility's actions were prudent in the circumstances that led to the need for replacement power. FPL acted prudently with respect to the circumstances that resulted in the April 2019 outage and the associated need for replacement power. Therefore, the replacement power costs should be recovered through the fuel cost recovery clause. (Coffey)

FPUC: No position.

GULF: No position provided.

TECO: No position provided.

OPC: No. At this time FPL has not demonstrated that its actions related to the outage attributed to the magnetic termite were prudent and that replacement power costs should be borne by customers. Likewise, FPL has not demonstrated that its overall stewardship of the nuclear program activities at the St. Lucie and Turkey Point sites are reasonable and prudent.

FIPUG: Adopt the position of OPC.

PCS

Phosphate: No position.

STAFF: Staff has no position at this time.

ISSUE 2G: **Has FPL made reasonable and prudent adjustments, if any are needed, to account for replacement power costs associated with the March 2020 return-to-service delay at St. Lucie Nuclear Power Plant, Unit No. 2?**

DEF: No position.

FPL: No adjustments are needed for the replacement power costs associated with the March 2020 return-to-service delay at St. Lucie Power Plant Unit No. 2. The Commission has consistently based clause recovery of replacement fuel costs on whether a utility's actions were prudent in the circumstances that led to the need for replacement power. FPL acted prudently with respect to the circumstances that resulted in the March 2020 return-to-service delay and the associated need for replacement power. Therefore, the replacement power costs should be recovered through the fuel cost recovery clause. (Coffey)

FPUC: No position.

GULF: No position provided.

TECO: No position provided.

OPC: No. At this time FPL has not demonstrated that its actions related to the outage were prudent and that replacement power costs should be borne by customers. Likewise, FPL has not demonstrated that its overall stewardship of the nuclear program activities at the St. Lucie and Turkey Point sites are reasonable and prudent.

FIPUG: Adopt the position of OPC.

PCS

Phosphate: No position.

STAFF: Staff has no position at this time.

ISSUE 2H: What is the appropriate subscription credit associated with FPL's Solar Together Program, approved by Order No. PSC-2020-0084-S-EI, to be included for recovery in 2021?

Proposed stipulation – See Section X.

Florida Public Utilities Company

ISSUE 3A: Should the Commission approve FPUC's revised Fuel and Purchased Power Cost Recovery factors filed in accordance with the Stipulation and Settlement approved in Docket No. 20190156-EI, which reflect the flow-through of interim rate over-recovery calculated based on 9 months actual and 1 month estimated revenues?

Proposed stipulation – See Section X.

Gulf Power Company

ISSUE 4A: Should the Commission approve as prudent Gulf's actions to mitigate the volatility of natural gas, residual oil, and purchased power prices, as reported in Gulf's April 2020 hedging report?

Proposed stipulation – See Section X.

Tampa Electric Company

ISSUE 5A: What was the total gain under TECO's Optimization Mechanism approved by Order No. PSC-2017-0456-S-EI that TECO may recover for the period January 2019 through December 2019, and how should that gain to be shared between TECO and customers?

Proposed stipulation – See Section X.

GENERIC FUEL ADJUSTMENT ISSUES

ISSUE 6: **What are the appropriate actual benchmark levels for calendar year 2020 for gains on non-separated wholesale energy sales eligible for a shareholder incentive?**

DEF: \$1,602,141. (Menendez)

FPL: *Proposed stipulation – See Section X.*

FPUC: No position.

GULF: *Proposed stipulation – See Section X.*

TECO: *Proposed stipulation – See Section X.*

OPC: OPC takes no position on this issue nor does it have the burden of proof related to it. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or Staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on this issue, either in this docket, in an order of the Commission or in a representation to a Court.

FIPUG: Adopt the position of OPC.

**PCS
Phosphate:** Agree with OPC.

STAFF: Staff has no position at this time.

ISSUE 7: **What are the appropriate estimated benchmark levels for calendar year 2021 for gains on non-separated wholesale energy sales eligible for a shareholder incentive?**

DEF: \$1,682,538. (Menendez)

FPL: *Proposed stipulation – See Section X.*

FPUC: No position.

GULF: *Proposed stipulation – See Section X.*

TECO: *Proposed stipulation – See Section X.*

OPC: OPC takes no position on this issue nor does it have the burden of proof related to it. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or Staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on this issue, either in this docket, in an order of the Commission or in a representation to a Court.

FIPUG: Adopt the position of OPC.

PCS

Phosphate: Agree with OPC.

STAFF: Staff has no position at this time.

ISSUE 8: **What are the appropriate final fuel adjustment true-up amounts for the period January 2019 through December 2019?**

DEF: \$21,535,230 under-recovery, which was collected as part of DEF's Fuel Midcourse approved in Order No. PSC-2020-0154-PSC-EI. (Menendez)

FPL: \$51,621,690 under-recovery. (Deaton)

FPUC: *Proposed stipulation – See Section X.*

GULF: *Proposed stipulation – See Section X.*

TECO: *Proposed stipulation – See Section X.*

OPC: OPC takes no position on this issue nor does it have the burden of proof related to it. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or Staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on this issue, either in this docket, in an order of the Commission or in a representation to a Court.

FIPUG: Adopt the position of OPC.

PCS

Phosphate: Agree with OPC.

STAFF: Staff has no position at this time.

ISSUE 9: **What are the appropriate fuel adjustment actual/estimated true-up amounts or the period January 2020 through December 2020?**

DEF: \$160,850,438 over-recovery. (Menendez)

FPL: \$30,951,780 over-recovery. (Deaton)

FPUC: *Proposed stipulation – See Section X.*

GULF: *Proposed stipulation – See Section X.*

TECO: *Proposed stipulation – See Section X.*

OPC: OPC takes no position on this issue nor does it have the burden of proof related to it. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or Staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on this issue, either in this docket, in an order of the Commission or in a representation to a Court.

FIPUG: Adopt the position of OPC.

PCS

Phosphate: Agree with OPC.

STAFF: Staff has no position at this time.

ISSUE 10: **What are the appropriate total fuel adjustment true-up amounts to be collected/refunded from January 2021 through December 2021?**

DEF: \$61,083,424 over-recovery. (Menendez)

FPL: \$20,669,910 under-recovery. (Deaton)

FPUC: *Proposed stipulation – See Section X.*

GULF: *Proposed stipulation – See Section X.*

TECO: *Proposed stipulation – See Section X.*

OPC: The OPC believes this is a fallout issue that is subject to the resolution of Issues 1A and 11.

FIPUG: Adopt the position of OPC.

PCS

Phosphate: Agree with OPC.

STAFF: Staff has no position at this time.

ISSUE 11: **What are the appropriate projected total fuel and purchased power cost recovery amounts for the period January 2021 through December 2021?**

DEF: \$1,279,043,741, which is adjusted for line losses and excludes prior period true-up amounts, revenue taxes and GPIF amounts. (Menendez)

FPL: *Proposed stipulation – See Section X.*

FPUC: *Proposed stipulation – See Section X.*

GULF: *Proposed stipulation – See Section X.*

TECO: *Proposed stipulation – See Section X.*

OPC: The Commission issued Order No. PSC-2020-0368-FOF-EI finding that DEF was imprudent in causing \$16,116,782 (excluding interest) in replacement power costs related to the Bartow Unit 4 outage and de-rating. These costs should be refunded to customers in the fuel factor applicable to 2021 billings. Accordingly, DEF's cost recovery amounts for January 2021 through December 2021 should be reduced by \$16.1 million, plus interest. Furthermore, these costs should be returned in the manner in which they were collected.

FIPUG: Adopt the position of OPC.

PCS

Phosphate: Pursuant to Order No. PSC-2020-0368-FOF-EI, issued October 15, 2020, DEF's cost recovery amounts for January 2021 through December 2021 should be reduced by \$16.1 million, plus interest, to refund costs relating to the replacement power and de-rating costs due to the outage of Bartow Unit 4 in April 2017. These costs should be returned in the manner in which they were collected.

STAFF: Staff has no position at this time.

COMPANY-SPECIFIC GENERATING PERFORMANCE INCENTIVE FACTOR ISSUES

Duke Energy Florida, LLC.

No company-specific GPIF issues for Duke Energy Florida, LLC. have been identified at this time. If such issues are identified, they shall be numbered 12A, 12B, 12C, and so forth, as appropriate.

Florida Power & Light Company

No company-specific GPIF issues for Florida Power and Light Company have been identified at this time. If such issues are identified, they shall be numbered 13A, 13B, 13C, and so forth, as appropriate.

Gulf Power Company

No company-specific GPIF issues for Gulf Power Company have been identified at this time. If such issues are identified, they shall be numbered 14A, 14B, 14C, and so forth, as appropriate.

Tampa Electric Company

No company-specific GPIF issues for Tampa Electric Company have been identified at this time. If such issues are identified, they shall be numbered 15A, 15B, 15C, and so forth, as appropriate.

GENERIC GPIF ISSUES

ISSUE 16: **What is the appropriate GPIF reward or penalty for performance achieved during the period January 2019 through December 2019 for each investor-owned electric utility subject to the GPIF?**

DEF: For DEF, a \$4,407,712 reward. (Lewter)

FPL: *Proposed stipulation – See Section X.*

FPUC: No position.

GULF: *Proposed stipulation – See Section X.*

TECO: *Proposed stipulation – See Section X.*

OPC: OPC takes no position on this issue nor does it have the burden of proof related to it. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or Staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on this issue, either in this docket, in an order of the Commission or in a representation to a Court.

FIPUG: Adopt the position of OPC.

PCS

Phosphate: Agree with OPC.

STAFF: Staff has no position at this time.

ISSUE 17: **What should the GPIF targets/ranges be for the period January 2021 through December 2021 for each investor-owned electric utility subject to the GPIF?**

DEF: For DEF, the appropriate targets and ranges are shown on Page 4 of Exhibit MIL-1P filed on September 3, 2020 with the Direct Testimony of Mary Ingle Lewter. (Lewter)

FPL: *Proposed stipulation – See Section X.*

FPUC: No position.

GULF: *Proposed stipulation – See Section X.*

TECO: *Proposed stipulation – See Section X.*

OPC: OPC takes no position on this issue nor does it have the burden of proof related to it. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or Staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on this issue, either in this docket, in an order of the Commission or in a representation to a Court.

FIPUG: Adopt the position of OPC.

PCS

Phosphate: Agree with OPC.

STAFF: Staff has no position at this time.

FUEL FACTOR CALCULATION ISSUES

ISSUE 18: **What are the appropriate projected net fuel and purchased power cost recovery and Generating Performance Incentive amounts to be included in the recovery factor for the period January 2021 through December 2021?**

DEF: \$1,223,244,961 (Menendez)

FPL: \$2,732,181,548 including prior period true-ups, revenue taxes, FPL's portion of Incentive Mechanism gains, FPL's 2021 SolarTogether Credit amount and the GPIF reward. (Deaton)

FPUC: *Proposed stipulation – See Section X.*

GULF: *Proposed stipulation – See Section X.*

TECO: *Proposed stipulation – See Section X.*

OPC: OPC believes that this is a fallout issue that is subject to the resolution of Issues 1A and 11.

FIPUG: Adopt the position of OPC.

PCS

Phosphate: Agree with OPC.

STAFF: Staff has no position at this time.

ISSUE 19: **What is the appropriate revenue tax factor to be applied in calculating each investor-owned electric utility’s levelized fuel factor for the projection period January 2021 through December 2021?**

DEF: 1.00072 (Menendez)

FPL: *Proposed stipulation – See Section X.*

FPUC: *Proposed stipulation – See Section X.*

GULF: *Proposed stipulation – See Section X.*

TECO: *Proposed stipulation – See Section X.*

OPC: OPC takes no position on this issue nor does it have the burden of proof related to it. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or Staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on this issue, either in this docket, in an order of the Commission or in a representation to a Court.

FIPUG: Adopt the position of OPC.

PCS

Phosphate: Agree with OPC.

STAFF: Staff has no position at this time.

ISSUE 20: **What are the appropriate levelized fuel cost recovery factors for the period January 2021 through December 2021?**

DEF: 3.090 cents/kWh (adjusted for jurisdictional losses) (Menendez)

FPL: FPL is proposing a levelized factor of 2.444 cents/kWh. (Deaton)

FPUC: *Proposed stipulation – See Section X.*

GULF: *Proposed stipulation – See Section X.*

TECO: *Proposed stipulation – See Section X.*

OPC: The OPC believes that this is a fallout issue that is subject to the resolution of Issues 1A and 11.

FIPUG: Adopt the position of OPC.

PCS

Phosphate: Pursuant to Order No. PCS-2020-0368-FOF-EI, issued October 15, 2020, approving the Recommended Order submitted by the Administrative Law Judge, DEF's cost recovery amounts for January 2021 through December 2021 should be reduced by \$16.1 million, plus interest, to refund costs relating to the replacement power and de-rating costs due to the outage of Bartow Unit 4 in April 2017. To the extent this reduction in allowed cost recovery reduces the fuel cost recovery factors for DEF, the levelized factors should be adjusted in a conforming manner.

STAFF: Staff has no position at this time.

ISSUE 21: **What are the appropriate fuel recovery line loss multipliers to be used in calculating the fuel cost recovery factors charged to each rate class/delivery voltage level class?**

DEF:	<u>Group</u>	<u>Delivery Voltage Level</u>	<u>Line Loss Multiplier</u>
	A	Transmission	0.9800
	B	Distribution Primary	0.9900
	C	Distribution Secondary	1.0000
	D	Lighting Service	1.0000
			(Menendez)

FPL: *Proposed stipulation – See Section X.*

FPUC: *Proposed stipulation – See Section X.*

GULF: *Proposed stipulation – See Section X.*

TECO: *Proposed stipulation – See Section X.*

OPC: OPC takes no position on this issue nor does it have the burden of proof related to it. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or Staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on this issue, either in this docket, in an order of the Commission or in a representation to a Court.

FIPUG: Adopt the position of OPC.

PCS

Phosphate: Agree with OPC.

STAFF: Staff has no position at this time.

ISSUE 22: What are the appropriate fuel cost recovery factors for each rate class/delivery voltage level class adjusted for line losses?

DEF:

Fuel Cost Factors (cents/kWh)						
Group	Delivery Voltage Level	First Tier Factor	Second Tier Factors	Levelized Factors	Time of Use	
					On-Peak	Off-Peak
A	Transmission	--	--	3.032	3.793	2.689
B	Distribution Primary	--	--	3.063	3.832	2.717
C	Distribution Secondary	2.811	3.811	3.094	3.871	2.744
D	Lighting Secondary	--	--	2.955	--	--

FPL:

GROUPS	RATE SCHEDULE	JANUARY - DECEMBER		
		Average Factor	Fuel Recovery Loss Multiplier	Fuel Recovery Factor
A	RS-1 first 1,000 kWh	2.444	1.00226	2.123
A	RS-1 all additional kWh	2.444	1.00226	3.123
A	GS-1, SL-2, GSCU-1, WIES-1	2.444	1.00226	2.449
A-1	SL-1, OL-1, PL-1 ⁽¹⁾	2.352	1.00226	2.357
B	GSD-1	2.444	1.00220	2.449
C	GSLD-1, CS-1	2.444	1.00164	2.448
D	GSLD-2, CS-2, OS-2, MET	2.444	0.99483	2.431
E	GSLD-3, CS-3	2.444	0.97357	2.379
A	GST-1 On-Peak	2.896	1.00226	2.903
A	GST-1 Off-Peak	2.248	1.00226	2.253
A	RTR-1 On-Peak			0.454
	RTR-1 Off-Peak			(0.196)
B	GSDT-1, CILC-1(G), HLFT-1 (21-499 kW) On-Peak	2.896	1.00220	2.902
B	GSDT-1, CILC-1(G), HLFT-1 (21-499 kW) Off-Peak	2.248	1.00220	2.253
C	GSLDT-1, CST-1, HLFT-2 (500-1,999 kW) On-Peak	2.896	1.00164	2.901
C	GSLDT-1, CST-1, HLFT-2 (500-1,999 kW) Off-Peak	2.248	1.00164	2.252
D	GSLDT-2, CST-2, HLFT-3 (2,000+ kW) On-Peak	2.896	0.99518	2.882
D	GSLDT-2, CST-2, HLFT-3 (2,000+ kW) Off-Peak	2.248	0.99518	2.237
E	GSLDT-3, CST-3, CILC-1(T), ISST-1(T) On-Peak	2.896	0.97357	2.819
E	GSLDT-3, CST-3, CILC-1(T), ISST-1(T) Off-Peak	2.248	0.97357	2.189
F	CILC-1(D), ISST-1(D) On-Peak	2.896	0.99485	2.881
	CILC-1(D), ISST-1(D) Off-Peak	2.248	0.99485	2.236

⁽¹⁾ WEIGHTED AVERAGE 16% ON-PEAK AND 84% OFF-PEAK

GROUPS	RATE SCHEDULE	JUNE - SEPTEMBER		
		Average Factor	Fuel Recovery Loss Multiplier	Fuel Recovery Factor
B	GSD(T)-1 On-Peak	3.685	1.00220	3.693
	GSD(T)-1 Off-Peak	2.280	1.00220	2.285
C	GSLD(T)-1 On-Peak	3.685	1.00164	3.691
	GSLD(T)-1 Off-Peak	2.280	1.00164	2.284
D	GSLD(T)-2 On-Peak	3.685	0.99518	3.667
	GSLD(T)-2 Off-Peak	2.280	0.99518	2.269

(Deaton)

FPUC: *Proposed stipulation – See Section X.*

GULF: *Proposed stipulation – See Section X.*

TECO: *Proposed stipulation – See Section X.*

OPC: The OPC believes that this is a fallout issue that is subject to the resolution of Issues 1A and 11.

FIPUG: Adopt the position of OPC.

PCS

Phosphate: Pursuant to Order No. PSC-2020-0368-FOF-EI, issued October 15, 2020, approving the Recommended Order submitted by the Administrative Law Judge, DEF's cost recovery amounts for January 2021 through December 2021 should be reduced by \$16.1 million to refund costs relating to the replacement power and de-rating costs due to the outage of Bartow Unit 4 in April 2017. To the extent that this reduction in allowed cost recovery reduces the fuel cost recovery factors for DEF, those factors should be adjusted.

STAFF: Staff has no position at this time.

II. CAPACITY ISSUES

COMPANY-SPECIFIC CAPACITY COST RECOVERY FACTOR ISSUES

Duke Energy Florida, LLC.

ISSUE 23A: What is the appropriate net book value of retired Plant Crystal River South (Units 1 and 2) assets to be recovered over a one-year period as approved by Order No. PSC-2017-0451-AS-EU?

DEF: The estimated CR1&2 net book value of retired assets recovered over a one-year period in 2021 is \$80,592,431; the final CR1&2 net book value will be included in DEF's 2020 Final True-Up filing. (Menendez)

FPL: No position given.

FPUC: No position.

GULF: No position given.

TECO: No position given.

OPC: OPC takes no position on this issue nor does it have the burden of proof related to it. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or Staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on this issue, either in this docket, in an order of the Commission or in a representation to a Court.

FIPUG: Adopt the position of OPC.

PCS

Phosphate: Agree with OPC.

STAFF: Staff has no position at this time.

ISSUE 23B: **What is the appropriate amount of costs for the Independent Spent Fuel Storage Installation (ISFSI) that DEF should be allowed to recover through the capacity cost recovery clause pursuant to DEF's 2017 Settlement?**

DEF: \$6,879,837 (Menendez)

FPL: No position given.

FPUC: No position.

GULF: No position given.

TECO: No position given.

OPC: OPC takes no position on this issue nor does it have the burden of proof related to it. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or Staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on this issue, either in this docket, in an order of the Commission or in a representation to a Court.

FIPUG: Adopt the position of OPC.

PCS

Phosphate: Agree with OPC.

STAFF: Staff has no position at this time.

ISSUE 23C: **Should the Commission approve the Third Implementation Stipulation and, if approved, what is the amount of state corporate income tax savings that should be refunded to customers through the capacity clause in 2021?**

DEF: Yes, the Commission should approve the Third Implementation Stipulation and \$8,379,918 of income tax savings refunded to customers through the capacity clause in 2021. (Menendez)

FPL: No position given.

FPUC: No position.

GULF: No position given.

TECO: No position given.

OPC: OPC takes no position on this issue nor does it have the burden of proof related to it. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or Staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on this issue, either in this docket, in an order of the Commission or in a representation to a Court.

FIPUG: Adopt the position of OPC.

PCS

Phosphate: Yes, the Commission should approve the Third Implementation Stipulation filed in this docket on July 27, 2020. PCS Phosphate was a signatory to that agreement.

STAFF: Staff has no position at this time.

ISSUE 23D: What adjustment amounts should the Commission approve to be refunded through the capacity clause in 2021 for the Columbia SoBRA I project approved in Docket No. 20180149-EI and the DeBary, Lake Placid, and Trenton SoBRA II projects approved in Docket No. 20190072-EI?

DEF: \$1,023,015 (Menendez)

FPL: No position given.

FPUC: No position.

GULF: No position given.

TECO: No position given.

OPC: OPC takes no position on this issue nor does it have the burden of proof related to it. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another

party or Staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on this issue, either in this docket, in an order of the Commission or in a representation to a Court.

FIPUG: Adopt the position of OPC.

PCS

Phosphate: Agree with OPC.

STAFF: Staff has no position at this time.

Florida Power & Light Company

ISSUE 24A: What is the appropriate true-up adjustment amount associated with the 2018 SOBRA projects approved by Order No. PSC-2018-0028-FOF-EI to be refunded through the capacity clause in 2021?

Proposed stipulation – See Section X.

ISSUE 24B: What are the appropriate Indiantown non-fuel base revenue requirements to be recovered through the Capacity Clause pursuant to the Commission's approval of the Indiantown transaction in Docket No. 160154-EI (Order No. PSC-16-0506-FOF-EI) for 2021?

Proposed stipulation – See Section X.

Gulf Power Company

No company-specific capacity cost recovery factor issues for Gulf Power Company have been identified at this time. If such issues are identified, they will be numbered 25A, 25B, 25C, and so forth as appropriate.

Tampa Electric Company

No company-specific capacity cost recovery factor issues for Tampa Electric Company have been identified at this time. If such issues are identified, they will be numbered 26A, 26B, 26C, and so forth as appropriate.

GENERIC CAPACITY COST RECOVERY FACTOR ISSUES

ISSUE 27: What are the appropriate final capacity cost recovery true-up amounts for the period January 2019 through December 2019?

DEF: \$797,779 under-recovery (Menendez)

FPL: *Proposed stipulation – See Section X.*

FPUC: No position.

GULF: *Proposed stipulation – See Section X.*

TECO: *Proposed stipulation – See Section X.*

OPC: OPC takes no position on this issue nor does it have the burden of proof related to it. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or Staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on this issue, either in this docket, in an order of the Commission or in a representation to a Court.

FIPUG: Adopt the position of OPC.

**PCS
Phosphate:** Agree with OPC.

STAFF: Staff has no position at this time.

ISSUE 28: **What are the appropriate capacity cost recovery actual/estimated true-up amounts for the period January 2020 through December 2020?**

DEF: \$334,694 over-recovery (Menendez)

FPL: *Proposed stipulation – See Section X.*

FPUC: No position

GULF: *Proposed stipulation – See Section X.*

TECO: *Proposed stipulation – See Section X.*

OPC: OPC takes no position on this issue nor does it have the burden of proof related to it. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or Staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on this issue, either in this docket, in an order of the Commission or in a representation to a Court.

FIPUG: Adopt the position of OPC.

**PCS
Phosphate:** Agree with OPC.

STAFF: Staff has no position at this time.

ISSUE 29: **What are the appropriate total capacity cost recovery true-up amounts to be collected/refunded during the period January 2021 through December 2021?**

DEF: \$463,084 under-recovery (Menendez)

FPL: *Proposed stipulation – See Section X.*

FPUC: No position

GULF: *Proposed stipulation – See Section X.*

TECO: *Proposed stipulation – See Section X.*

OPC: OPC takes no position on this issue nor does it have the burden of proof related to it. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or Staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on this issue, either in this docket, in an order of the Commission or in a representation to a Court.

FIPUG: Adopt the position of OPC.

PCS

Phosphate: Agree with OPC.

STAFF: Staff has no position at this time.

ISSUE 30: **What are the appropriate projected total capacity cost recovery amounts for the period January 2021 through December 2021?**

DEF: \$479,983,370 (Menendez)

FPL: *Proposed stipulation – See Section X.*

FPUC: No position

GULF: *Proposed stipulation – See Section X.*

TECO: *Proposed stipulation – See Section X.*

OPC: OPC takes no position on this issue nor does it have the burden of proof related to it. As such, the OPC represents that it will not contest or oppose the Commission

taking action approving a proposed stipulation between the Company and another party or Staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on this issue, either in this docket, in an order of the Commission or in a representation to a Court.

FIPUG: Adopt the position of OPC.

PCS

Phosphate: Agree with OPC.

STAFF: Staff has no position at this time.

ISSUE 31: **What are the appropriate projected net purchased power capacity cost recovery amounts to be included in the recovery factor for the period January 2021 through December 2021?**

DEF: \$487,677,167 (Menendez)

FPL: *Proposed stipulation – See Section X.*

FPUC: No position

GULF: *Proposed stipulation – See Section X.*

TECO: *Proposed stipulation – See Section X.*

OPC: OPC takes no position on this issue nor does it have the burden of proof related to it. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or Staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on this issue, either in this docket, in an order of the Commission or in a representation to a Court.

FIPUG: Adopt the position of OPC.

PCS

Phosphate: Agree with OPC.

STAFF: Staff has no position at this time.

ISSUE 32: **What are the appropriate jurisdictional separation factors for capacity revenues and costs to be included in the recovery factor for the period January 2021 through December 2021?**

DEF: Base – 92.885%, Intermediate – 72.703%, Peaking – 95.924%, consistent with the 2017 Settlement approved in Order No. PSC-2017-0451-AS-EI. (Menendez)

FPL: *Proposed stipulation – See Section X.*

FPUC: No position

GULF: *Proposed stipulation – See Section X.*

TECO: *Proposed stipulation – See Section X.*

OPC: OPC takes no position on this issue nor does it have the burden of proof related to it. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or Staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on this issue, either in this docket, in an order of the Commission or in a representation to a Court.

FIPUG: Adopt the position of OPC.

PCS

Phosphate: Agree with OPC.

STAFF: Staff has no position at this time.

ISSUE 33: **What are the appropriate capacity cost recovery factors for the period January 2021 through December 2021?**

DEF:	<u>Rate Class</u>	<u>CCR Factor</u>
	Residential	1.405 cents/kWh
	General Service Non-Demand	1.342 cents/kWh
	@ Primary Voltage	1.329 cents/kWh
	@ Transmission Voltage	1.315 cents/kWh
	General Service 100% Load Factor	0.808 cents/kWh
	General Service Demand	4.20 \$/kW-month
	@ Primary Voltage	4.16 \$/kW-month
	@ Transmission Voltage	4.12 \$/kW-month
	Curtailable	1.22 \$/kW-month
	@ Primary Voltage	1.21 \$/kW-month
	@ Transmission Voltage	1.20 \$/kW-month
	Interruptible	3.50 \$/kW-month
	@ Primary Voltage	3.47 \$/kW-month
	@ Transmission Voltage	3.43 \$/kW-month
	Standby Monthly	0.404 \$/kW-month
	@ Primary Voltage	0.400 \$/kW-month
	@ Transmission Voltage	0.396 \$/kW-month

Standby Daily	0.192 \$/kW-month
@ Primary Voltage	0.190 \$/kW-month
@ Transmission Voltage	0.188 \$/kW-month
Lighting	0.172 cents/kWh (Menendez)

FPL: *Proposed stipulation – See Section X.*

FPUC: No position

GULF: *Proposed stipulation – See Section X.*

TECO: *Proposed stipulation – See Section X.*

OPC: OPC takes no position on this issue nor does it have the burden of proof related to it. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or Staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on this issue, either in this docket, in an order of the Commission or in a representation to a Court.

FIPUG: Adopt the position of OPC.

PCS

Phosphate: Agree with OPC.

STAFF: Staff has no position at this time.

I. EFFECTIVE DATE

ISSUE 34: **What should be the effective date of the fuel adjustment factors and capacity cost recovery factors for billing purposes?**

DEF: The new factors should be effective beginning with the first billing cycle for January 2021 through the last billing cycle for December 2021. The first billing cycle may start before January 1, 2021, and the last billing cycle may end after December 31, 2021, so long as each customer is billed for twelve months regardless of when the factors became effective. (Menendez)

FPL: *Proposed stipulation – See Section X.*

FPUC: *Proposed stipulation – See Section X.*

GULF: *Proposed stipulation – See Section X.*

TECO: *Proposed stipulation – See Section X.*

OPC: OPC takes no position on this issue nor does it have the burden of proof related to it. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or Staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on this issue, either in this docket, in an order of the Commission or in a representation to a Court.

FIPUG: Adopt the position of OPC.

PCS

Phosphate: No position.

STAFF: Staff has no position at this time.

ISSUE 35: **Should the Commission approve revised tariffs reflecting the fuel adjustment factors and capacity cost recovery factors determined to be appropriate in this proceeding?**

DEF: Yes. The Commission should approve revised tariffs reflecting the fuel adjustment factors and capacity cost recovery factors determined to be appropriate in this proceeding. The Commission should direct Staff to verify that the revised tariffs are consistent with the Commission decision. (Menendez)

FPL: *Proposed stipulation – See Section X.*

FPUC: *Proposed stipulation – See Section X.*

GULF: *Proposed stipulation – See Section X.*

TECO: *Proposed stipulation – See Section X.*

OPC: OPC takes no position on this issue nor does it have the burden of proof related to it. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or Staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on this issue, either in this docket, in an order of the Commission or in a representation to a Court.

FIPUG: Adopt the position of OPC.

PCS

Phosphate: No position.

STAFF: Staff has no position at this time.

ISSUE 36: **Should this docket be closed?**

DEF: Yes. (Menendez)

FPL: *Proposed stipulation – See Section X.*

FPUC: *Proposed stipulation – See Section X.*

GULF: *Proposed stipulation – See Section X.*

TECO: *Proposed stipulation – See Section X.*

OPC: OPC takes no position on this issue nor does it have the burden of proof related to it. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or Staff as a final resolution of the issue. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on this issue, either in this docket, in an order of the Commission or in a representation to a Court.

FIPUG: Adopt the position of OPC.

PCS

Phosphate: No position.

STAFF: Staff has no position at this time.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
<u>Direct</u>			
Christopher A. Menendez	DEF	(CAM-1T)	Fuel Cost Recovery True-Up (Jan – Dec. 2019)
Christopher A. Menendez	DEF	(CAM-2T)	Capacity Cost Recovery True-Up (Jan – Dec. 2019)
Christopher A. Menendez	DEF	(CAM-3T)	Schedules A1 through A3, A6 and A12 for Dec 2019

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Christopher A. Menendez	DEF	(CAM-4T)	2019 Capital Structure and Cost Rates Applied to Capital Projects
Christopher A. Menendez	DEF	(CAM-2)	Actual/Estimated True-up Schedules for period January – December 2020
Christopher A. Menendez	DEF	(CAM-3)	Projection Factors for January - December 2021
Mary Ingle Lewter	DEF	(MIL-1T)	Calculation of GPIF Reward for January - December 2019
Mary Ingle Lewter	DEF	(MIL-1P)	GPIF Targets/Ranges Schedules for January – December 2021
R. B. Deaton	FPL	(RBD-1)	2019 FCR Final True-Up Calculation
R. B. Deaton	FPL	(RBD-2)	2019 CCR Final True-Up Calculation (Confidential)
R. B. Deaton	FPL	(RBD-3)	2020 FCR Actual/Estimated True-Up Calculation
R. B. Deaton	FPL	(RBD-4)	2020 CCR Actual/Estimated True-Up Calculation
R. B. Deaton	FPL	(RBD-5)	2019 FCR Final True-Up Calculation REVISED
R. B. Deaton	FPL	(RBD-6)	Appendix II 2021 FCR Projections
R. B. Deaton	FPL	(RBD-7)	Appendix III 2021 CCR Projections
G. J. Yupp	FPL	(GJY-1)	2019 Incentive Mechanism Results (Confidential)

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
G. J. Yupp	FPL	(GJY-2)	Appendix I Fuel Cost Recovery
C. R. Rote	FPL	(CRR-1)	Generating Performance Incentive Factor Performance Results for January 2019 through December 2019
C. R. Rote	FPL	(CRR-2)	Generating Performance Incentive Factor Performance Targets for January 2021 through December 2021
L. Fuentes	FPL	(LF-1)	2018 SoBRA Final Revenue Requirement Calculation
E. J. Anderson	FPL	(EJA-1)	Revised 2018 SoBRA Factor/Refund Calculation
E. J. Anderson	FPL	(EJA-2)	2018 SoBRA Prospective Adjustment for January 1, 2021
E. J. Anderson	FPL	(EJA-3)	Projected Retail Base Revenues for January 1, 2021
E. J. Anderson	FPL	(EJA-4)	Summary of Tariff Changes for January 1, 2021
E. J. Anderson	FPL	(EJA-5)	Typical Bill Projections
Curtis D. Young	FPUC	(CDY-1)	Final True-Up Schedules (Schedules A, C1, and E1-B for FPUC's Division
Curtis D. Young	FPUC	(CDY-2) ⁴	Estimated/Actual (Schedules E1A, E1-B, and E1-B1)
Curtis D. Young	FPUC	(CDY-3)	Revised Monthly True-Up for January through June 2020
Curtis D. Young	FPUC	(CDY-4) ⁵	Schedules E1, E1A, E2, E7, E8, E10 and Schedule A

⁴ Revised October 22, 2020.

⁵ Revised October 22, 2020.

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Richard L. Hume	Gulf	(RLH-1)	Calculation of Final True-Up January 2019 – December 2019
Richard L. Hume	Gulf	(RLH-2)	A-Schedules December 2019
Richard L. Hume	Gulf	(RLH-3)	Estimated Fuel True-Up January 2020 – December 2020
Richard L. Hume	Gulf	(RLH-4)	Estimated Capacity True-up January 2020 – December 2020
Richard L. Hume	Gulf	(RLH-5)	Projection January 2021 – December 2021
Richard L. Hume	Gulf	(RLH-6)	Hedging Information Report August 2019 – December 2019
Richard L. Hume	Gulf	(RLH-7)	Hedging Information Report January 2020– March 2020
Richard L. Hume	Gulf	(RLH-8)	Calculation of the stratified separation factors
Charles Rote	Gulf	(JAV-1)	Gulf Power Company GPIF Results January 2019 – December 2019
Charles Rote	Gulf	(CR-1)	Gulf Power Company GPIF Targets and Ranges January 2021 – December 2021
M. Ashley Sizemore	TECO	(MAS-1)	Final True-up Capacity Cost Recovery January 2019- December 2019

<u>Witness</u>	<u>Proffered By</u>	<u>Description</u>
		Final True-up Fuel Cost Recovery January 2019-December 2019
		Actual Fuel True-up Compared to Original Estimates January 2019 – December 2019
		Schedules A-1, A-2, A-6 through A-9, and A-12 January 2019 – December 2019
		Capital Projects Approved for Fuel Clause Recovery January 2019 – December 2019
M. Ashley Sizemore	TECO (MAS-2)	Actual/Estimated True-Up Fuel Cost Recovery January 2020 – December 2020
		Actual/Estimated True-Up Capacity Cost Recovery January 2020 – December 2020
		Capital Projects Approved for Fuel Clause Recovery January 2020 – December 2020
		Lake Hancock Stipulated Issue Fuel Savings January 2019 – December 2019
M. Ashley Sizemore	TECO (MAS-3)	Projected Capacity Cost Recovery January 2021 – December 2021
		Projected Fuel Cost Recovery January 2021 – December 2021

<u>Witness</u>	<u>Proffered By</u>	<u>Description</u>
		Levelized and Tiered Fuel Rate January 2021 – December 2021
Jeremy B. Cain	TECO	(JBC-1) Final True-Up Generating Performance Incentive Factor January 2019 – December 2019
		Actual Unit Performance Data January 2019 – December 2019
Jeremy B. Cain	TECO	(JC-1) Generating Performance Incentive Factor January 2021 – December 2021
		Summary of Generating Performance Incentive Factor Targets
John C. Heisey	TECO	(JCH-1) Optimization Mechanism Results January 2019 – December 2019
Debra M. Dobiac	Staff	(DMD-1) Auditor’s Report – Hedging Activities

X. PROPOSED STIPULATIONS

There are proposed Type 2 stipulations⁶ as stated below. The OPC position on each Type 2 stipulation (except for Issues 34-36) stated below is as follows:

OPC takes no position on these issues nor does it have the burden of proof related to them. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or staff as a final resolution of these issues. No person is authorized to state that the OPC is a participant in, or party to, a

⁶ A Type 2 stipulation occurs on an issue when the utility and the staff, or the utility and at least one party adversarial to the utility, agree on the resolution of the issue and the remaining parties (including staff if they do not join in the agreement) do not object to the Commission relying on the agreed language to resolve that issue in a final order.

stipulation on these issues, either in this docket, in an order of the Commission or in a representation to a Court.

I. COMPANY SPECIFIC ISSUES

Florida Power & Light

ISSUE 2A: What is the appropriate revised SoBRA factor for the 2018 projects to reflect actual construction costs that are less than the projected costs used to develop the initial SoBRA factor?

Stipulation: The appropriate revised SoBRA factor for the 2018 projects reflecting the actual construction cost is 0.856%.

ISSUE 2B: What was the total gain under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL may recover for the period January 2019 through December 2019, and how should that gain be shared between FPL and customers?

Stipulation: The total gain under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL may recover for the period January 2019 through December 2019 is \$55,249,313, as reflected in Column 5 of Table 1, Total Gains Schedule, (Exhibit GJY-1, Page 1 of 4). This amount exceeded the sharing threshold of \$40 million, and therefore the incremental gain above that amount should be shared between FPL and customers, with FPL retaining \$9,149,588, as reflected in Column 9 of Table 2, Total Gains Schedule (Exhibit GJY-1, Page 1 of 4).

ISSUE 2C: What is the appropriate amount of Incremental Optimization Costs under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL should be allowed to recover through the fuel clause for Personnel, Software, and Hardware costs for the period January 2019 through December 2019?

Stipulation: The appropriate amount of Incremental Optimization Costs under FPL's Incentive Mechanism, approved by Order No. PSC-2016-0560-AS-EI, that FPL should be allowed to recover through the fuel clause for Personnel, Software, and Hardware costs for the period January 2019 through December 2019 is \$533,064, as reflected in Columns 2 and 3 of the Incremental Optimization Costs Schedule (Exhibit GJY-1, Page 4 of 4).

ISSUE 2D: What is the appropriate amount of Variable Power Plant O&M Attributable to Off-System Sales under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL should be allowed to recover through the fuel clause for the period January 2019 through December 2019?

Stipulation: The appropriate amount of Variable Power Plant O&M Attributable to Off-System Sales under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI, that it should be allowed to recover through the fuel clause for the period January 2019 through December 2019 is \$1,754,273, as reflected in Column 6 of the Incremental Optimization Costs Schedule (Exhibit GJY-1, page 4 of 4).

ISSUE 2E: What is the appropriate amount of Variable Power Plant O&M Avoided due to Economy Purchases under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL should be allowed to recover through the fuel clause for the period January 2019 through December 2019?

Stipulation: The appropriate amount of Variable Power Plant O&M Avoided due to Economy Purchases under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that it should be allowed to recover through the fuel clause for the period January 2019 through December 2019 is a credit of \$358,272, as reflected in Column 7 of the Incremental Optimization Costs Schedule (Exhibit GJY-1, page 4 of 4).

ISSUE 2H: What is the appropriate subscription credit associated with FPL's Solar Together Program, approved by Order No. PSC-2020-0084-S-EI, to be included for recovery in 2021?

Stipulation: The appropriate subscription credit associated with FPL's Solar Together Program is \$98,939,400.

Gulf Power Company

ISSUE 4A: Should the Commission approve as prudent Gulf's actions to mitigate the volatility of natural gas, residual oil, and purchased power prices, as reported in Gulf's April 2020 and August 2020 hedging reports?

Stipulation: Yes, the Commission should approve as prudent Gulf's actions to mitigate the volatility of natural gas, residual oil, and purchased power prices that are reported in the April 2020 and August 2020 filing in Docket No. 20200001-EI. For the period August 1, 2019 through March 31, 2020, Gulf's hedging activities resulted in a net cost of \$5,154,160. These activities were pursuant to, and were consistent with, previously approved risk management plans. Pursuant to the 2017 Stipulation and Settlement Agreement, Gulf agreed not to enter into any additional hedges during the term of the Agreement.

Tampa Electric Company

ISSUE 5A: What was the total gain under TECO's Optimization Mechanism approved by Order No. PSC-2017-0456-S-EI that TECO may recover for the period January 2019 through December 2019, and how should that gain to be shared between TECO and customers?

Stipulation: The total gain under TECO's Optimization Mechanism, approved by Order No. PSC-2017-0456-S-EI, for the period January 2019 through December 2019 was \$6,468,033, as reflected in Table 1, Column 5 of the Total Gains Threshold Schedule (Exhibit JCH-1, Page 1 of 3). This amount should be shared between TECO and customers (60% and 40%, respectively), with customers receiving \$5,287,213, and TECO retaining \$1,180,820, as reflected in Columns 7 and 8 of Table 2, Total Gains Threshold Schedule (Exhibit JCH-1, Page 1 of 3).

GENERIC FUEL ADJUSTMENT ISSUES

ISSUE 6: What are the appropriate actual benchmark levels for calendar year 2020 for gains on non-separated wholesale energy sales eligible for a shareholder incentive?

Stipulation: The appropriate actual benchmark levels for calendar year 2020 for gains on non-separated wholesale energy sales eligible for a shareholder incentive are as follows:

FPL: The appropriate actual benchmark levels for calendar year 2020 for gains on non-separated wholesale energy sales eligible for a shareholder incentive are as follows:

Pursuant to the Stipulation and Settlement that was approved in Order No. PSC-2016-0560-AS-EI, FPL revised its Incentive Mechanism program, which does not rely upon the three-year average Shareholder Incentive Benchmark specified in Order No. PSC-00-1744-PAA-EI. Setting the appropriate actual benchmark levels for calendar year 2020 for gains on non-separated wholesale energy sales eligible for a shareholder incentive is not applicable to FPL as part of its revised Incentive Mechanism.

GULF: \$912,580.

TECO: The Company did not set a benchmark level for calendar year 2020. Pursuant to the Stipulation and Settlement that was approved in Order No. PSC-2017-0456-S-EI, the Company's Optimization Mechanism replaces the incentive program that used benchmark levels for gains on non-separated wholesale energy sales eligible for a shareholder incentive.

ISSUE 7: What are the appropriate estimated benchmark levels for calendar year 2021 for gains on non-separated wholesale energy sales eligible for a shareholder incentive?

Stipulation:

FPL: Pursuant to the Stipulation and Settlement that was approved in Order No. PSC-2016-0560-AS-EI, FPL revised its Incentive Mechanism program, which does not rely upon the three-year average Shareholder Incentive Benchmark specified in Order No. PSC-00-1744-PAA-EI. Setting the appropriate estimated benchmark levels for calendar year 2021 for gains on non-separated wholesale energy sales eligible for a shareholder incentive is not applicable to FPL as part of its revised Incentive Mechanism.

GULF: \$274,562.

TECO: The Company did not set an estimated benchmark level for calendar year 2021. Pursuant to the Stipulation and Settlement that was approved in Order No. PSC-2017-0456-S-EI, the Company's Optimization Mechanism replaces the incentive program that used benchmark levels for gains on non-separated wholesale energy sales eligible for a shareholder incentive.

ISSUE 8: What are the appropriate final fuel adjustment true-up amounts for the period January 2019 through December 2019?

Stipulation:

FPUC: An under-recovery of \$2,017,896.

GULF: An over-recovery of \$8,868,596.

TECO: An over-recovery of \$35,821,098.

ISSUE 9: What are the appropriate fuel adjustment actual/estimated true-up amounts for the period January 2020 through December 2020?

Stipulation:

FPUC: An over-recovery of \$2,315, 064.

GULF: An under-recovery of \$9,968,285.

TECO: An under-recovery of \$61,300,153.

ISSUE 10: What are the appropriate total fuel adjustment true-up amounts to be collected/refunded from January 2021 through December 2021?

Stipulation:

FPUC: An over-recovery of \$297,168.

GULF: An under-recovery of \$1,099,690.

TECO: An under-recovery of \$25,479,055.

ISSUE 11: What are the appropriate projected total fuel and purchased power cost recovery amounts for the period January 2021 through December 2021?

Stipulation:

FPL: \$2,593,860,560.

FPUC: \$44,407,969.

GULF: \$326,225,315.

TECO: \$588,143,346.

COMPANY-SPECIFIC GENERATING PERFORMANCE INCENTIVE FACTOR ISSUES

Gulf Power Company

No company-specific GPIF issues for Gulf Power Company have been identified at this time. If such issues are identified, they shall be numbered 14A, 14B, 14C, and so forth, as appropriate.

Tampa Electric Company

No company-specific GPIF issues for Tampa Electric Company have been identified at this time. If such issues are identified, they shall be numbered 15A, 15B, 15C, and so forth, as appropriate.

GENERIC GPIF ISSUES

ISSUE 16: What is the appropriate GPIF reward or penalty for performance achieved during the period January 2019 through December 2019 for each investor-owned electric utility subject to the GPIF?

Stipulation:

FPL: A reward of \$8,125,681.

GULF: A reward of \$62,232.

TECO: A reward of \$2,858,056.

ISSUE 17: What should the GPIF targets/ranges be for the period January 2021 through December 2021 for each investor-owned electric utility subject to the GPIF?

Stipulation:

FPL:

Table 17-2
GPIF Targets/Ranges for the period January-December, 2021

	Plant/Unit	EAF			ANOHR		
		Target	Maximum		Target	Maximum	
		EAF (%)	EAF (%)	Savings (\$000's)	ANOHR BTU/KWH	ANOHR BTU/KWH	Savings (\$000's)
FPL	Canaveral 3	90.1	92.6	430	6,640	6,724	1,581
	Sanford 5	90.4	92.9	209	7,372	7,549	2,158
	Ft. Myers 2	91.2	93.7	288	7,189	7,343	3,276
	Port Everglades 5	84.0	87.0	949	6,566	6,671	2,558
	Riviera 5	84.6	87.1	512	6,545	6,636	1,818
	St. Lucie 1	80.6	84.1	3,807	10,422	10,522	363
	St. Lucie 2	84.0	87.0	2,815	10,297	10,389	267
	Turkey Point 3	85.7	88.7	2,769	11,234	11,492	828
	Turkey Point 4	93.6	96.6	2,816	10,888	11,041	643
	Turkey Point 5	80.6	83.6	194	7,350	7,468	1,186
	West County 1	91.0	93.5	581	7,098	7,260	3,025
	West County 2	89.7	92.2	643	6,882	7,053	3,572
	West County 3	83.2	85.7	622	6,919	7,074	3,118
	Total*			16,635			24,393

Source: GPIF Target and Range Summary (Exhibit CRR-2, Pages 6-7 of 36).

*May not compute due to rounding.

GULF:

Table 17-3
GPIF Targets/Ranges for the period January-December, 2021

GULF	Plant/Unit	EAF			ANOHR		
		Target	Maximum		Target	Maximum	
		EAF (%)	EAF (%)	Savings (\$000's)	ANOHR BTU/KWH	ANOHR BTU/KWH	Savings (\$000's)
	Scherer 3	95.3	95.5	1	11,339	11,679	57
	Crist 7	89.0	92.4	16	10,882	11,208	519
	Daniel 1	93.9	97.1	1	10,650	10,970	45
	Daniel 2	93.4	94.8	2	10,334	10,644	205
	Smith 3	91.2	92.3	<u>110</u>	6,913	7,120	<u>3,315</u>
	Total			130	4,141		

Source: GPIF Unit Performance Summary (Exhibit CR-1, Schedule 3, Page 5 of 28).

TECO:

Table 17-4
GPIF Targets/Ranges for the period January-December, 2021

TECO	Plant/Unit	Target	Maximum		Target	Maximum	
		EAF (%)	EAF (%)	Savings (\$000's)	ANOHR BTU/KWH	ANOHR BTU/KWH	Savings (\$000's)
	Big Bend 4	54.0	60.7	181.0	11,576	12,191	1,916.4
	Polk 1	77.7	82.1	675.5	9,684	10,348	1,167.3
	Polk 2	80.6	82.1	213.7	6,940	7,125	3,324.1
	Bayside 1	93.9	94.5	2,242.6	7,352	7,460	1,516.3
	Bayside 2	90.9	92.2	<u>1,043.8</u>	7,439	7,560	<u>1,723.2</u>
	Total			4356.6	<u>9,647.3</u>		

Source: GPIF Target and Range Summary (Exhibit JC-1, Document 1, Page 4 of 32).

FUEL FACTOR CALCULATION ISSUES

ISSUE 18: What are the appropriate projected net fuel and purchased power cost recovery and Generating Performance Incentive amounts to be included in the recovery factor for the period January 2021 through December 2021?

Stipulation:

FPUC: \$44,110,801.

GULF: \$327,622,911.

TECO: \$618,103,935.

ISSUE 19: What is the appropriate revenue tax factor to be applied in calculating each investor-owned electric utility's levelized fuel factor for the projection period January 2021 through December 2021?

Stipulation:

FPL: 1.00072.

FPUC: 1.00072.

GULF: 1.00072.

TECO: 1.00072.

ISSUE 20: What are the appropriate levelized fuel cost recovery factors for the period January 2021 through December 2021?

Stipulation:

FPUC: 4.540 cents per kWh.

GULF: 3.053 cents per kWh.

TECO: 3.162 cents per kWh.

ISSUE 21: What are the appropriate fuel recovery line loss multipliers to be used in calculating the fuel cost recovery factors charged to each rate class/delivery voltage level class?

Stipulation:

FPL: The appropriate fuel recovery line loss multipliers to be used in calculating the fuel cost recovery factors charged to each rate class/delivery voltage level class are provided in response to Issue No. 22.

FPUC: The appropriate fuel recovery line loss multiplier to be used in calculating the fuel cost recovery factors charged to each rate class/delivery voltage level class is 1.0000.

GULF: See Table 21-2 below:

Table 21-2
GULF Fuel Recovery Line Loss Multipliers
for the period January-December, 2021

Group	Rate Schedules	Fuel Recovery Loss Multipliers
A	RS, RSVP, RSTOU, GS, GSD, GSDT, GSTOU, OSIII, SBS(1)	1.00555
B	LP, LPT, SBS(2)	0.99188
C	PX, PXT, RTP, SBS(3)	0.97668
D	OSI/II	1.00560
(1) Includes SBS customers with a contract demand in the range of 100 to 499 kW (2) Includes SBS customers with a contract demand in the range of 500 to 7,499 kW (3) Includes SBS customers with a contract demand over 7,499 kW		

Source: Schedule E1-E (Exhibit RLH-5, 2021 Projection Filing, Page 7 of 41).

TECO: See Table 21-3 below:

Table 21-3
TECO Fuel Recovery Line Loss Multipliers
for the period January-December, 2020

Delivery Voltage Level	Line Loss Multiplier
Transmission	0.98
Distribution Primary	0.99
Distribution Secondary	1.00
Lighting Service	1.00

Source: Schedule E1-D.

ISSUE 22: What are the appropriate fuel cost recovery factors for each rate class/delivery voltage level class adjusted for line losses?

Stipulation:

FPUC: The appropriate levelized fuel adjustment and purchased power cost recovery factors for the period January 2021 through December 2021 for the Consolidated Electric Division, adjusted for line loss multipliers and including taxes, are shown in Table 22-4 below:

Table 22-4
FPUC Fuel Cost Recovery Factors for the period January-December, 2021

Fuel Recovery Factors – By Rate Schedule	
For the Period January through December, 2021	
Rate Schedule	Levelized Adjustment (cents/kWh)
RS	7.269
GS	7.034
GSD	6.719
GSLD	6.495
LS	5.072

Source: Schedule E1, Page 3 of 3.

Table 22-9
FPUC Fuel Cost Recovery Factors for the period January-December, 2021

Step Rate Allocation for Residential Customers (RS Rate Schedule)	
For the Period January through December, 2021	
Rate Schedule and Allocation	Levelized Adjustment (cents/kWh)
RS Rate Schedule – Sales Allocation	7.269
RS Rate Schedule with less than or equal to 1,000 kWh/month	6.961
RS Rate Schedule with more than 1,000 kWh/month	8.211

Source: Schedule E1, Page 3 of 3.

Table 22-10
FPUC Fuel Cost Recovery Factors for the period January-December, 2021

Fuel Recovery Factors for Time of Use – By Rate Schedule		
For the Period January through December, 2021		
Rate Schedule	Levelized Adjustment On Peak (cents/kWh)	Levelized Adjustment Off Peak (cents/kWh)
RS	15.361	3.061
GS	11.034	2.034
GSD	10.719	3.469
GSLD	12.495	3.495
Interruptible	4.995	6.495

Source: Schedule E1, Page 3 of 3.

GULF: The appropriate fuel cost recovery factors for each rate class/delivery voltage level class adjusted for line losses for the period January 2021 through December 2021, are shown in Tables 22-11 and 22-12 below:

Table 22-11
Gulf Standard Fuel Cost Recovery Factors
for the period January-December, 2021

Group	Rate Schedules	Fuel Cost Recovery Factors (cents/kWh)
A	RS, RSVP, RSTOU, GS, GSD, GSDT, GSTOU, OSIII, SBS(1)	3.070
B	LP, LPT, SBS(2)	3.028
C	PX, PXT, RTP, SBS(3)	2.982
D	OSI/II	3.045

Source: Schedule E1-E (Exhibit RLH-5, 2021 Projection Filing, Page 7 of 41).

Table 22-12
Gulf Time-of-Use Fuel Cost Recovery Factors
for the period January-December, 2021

Group	Time-of-Use Rate Schedules	Fuel Recovery Loss Multipliers	Fuel Cost Recovery Factors (cents/kWh)	
			On-Peak	Off-Peak
A	GSDT, SBS(1)	1.00555	3.539	2.879
B	LPT, SBS(2)	0.99188	3.490	2.840
C	PXT, SBS(3)	0.97668	3.437	2.796
(1) Includes SBS customers with a contract demand in the range of 100 to 499 kW (2) Includes SBS customers with a contract demand in the range of 500 to 7,499 kW (3) Includes SBS customers with a contract demand over 7,499 kW				

Source: Schedule E1-E (Exhibit RLH-5, 2021 Projection Filing, Page 7 of 41).

TECO: The appropriate fuel cost recovery factors for each rate class/delivery voltage level class adjusted for line losses for the period January 2021 through December 2021, are shown in Table 22-13 below:

Table 22-13
TECO Fuel Cost Recovery Factors for the period January-December, 2021

Fuel Cost Recovery Factors for the period ending December, 2021				
Metering Voltage Level		Fuel Cost Recovery Factors (cents per kWh)		
		Levelized Fuel Recovery Factor	First Tier (Up to 1,000 kWh)	Second Tier (Over 1,000 kWh)
STANDARD				
	Distribution Secondary (RS only)	--	2.856	3.856
	Distribution Secondary	3.167		
	Distribution Primary	3.135		
	Transmission	3.104		
	Lighting Service	3.136		
TIME OF USE				
	Distribution Secondary- On-Peak	3.335		
	Distribution Secondary- Off-Peak	3.095		
	Distribution Primary- On-Peak	3.302		
	Distribution Primary- Off-Peak	3.064		
	Transmission – On-Peak	3.268		
	Transmission – Off-Peak	3.033		

Source: Schedule E1-E.

II. CAPACITY ISSUES

COMPANY-SPECIFIC CAPACITY COST RECOVERY FACTOR ISSUES

Florida Power & Light Company

ISSUE 24A: What is the appropriate true-up adjustment amount associated with the 2018 SOBRA projects approved by Order No. PSC-2018-0028-FOF-EI to be refunded through the capacity clause in 2021?

Stipulation: \$12,401,882.

ISSUE 24B: What are the appropriate Indiantown non-fuel base revenue requirements to be recovered through the Capacity Clause pursuant to the Commission's approval of the Indiantown transaction in Docket No. 160154-EI, Order No. PSC-16-0506-FOF-EI, for 2021?

Stipulation: \$1,356,055.

Gulf Power Company

No company-specific capacity cost recovery factor issues for Gulf Power Company have been identified at this time. If such issues are identified, they will be numbered 25A, 25B, 25C, and so forth, as appropriate.

Tampa Electric Company

No company-specific capacity cost recovery factor issues for Tampa Electric Company have been identified at this time. If such issues are identified, they will be numbered 26A, 26B, 26C, and so forth, as appropriate.

GENERIC CAPACITY COST RECOVERY FACTOR ISSUES

ISSUE 27: **What are the appropriate final capacity cost recovery true-up amounts for the period January 2019 through December 2019?**

Stipulation:

FPL: An over-recovery of \$5,141,967.

GULF: An over-recovery of \$452,844.

TECO: An over-recovery of \$111,228.

ISSUE 28: **What are the appropriate capacity cost recovery actual/estimated true-up amounts for the period January 2020 through December 2020?**

Stipulation:

FPL: An over-recovery of \$7,388,454.

GULF: An under-recovery of \$2,700,587.

TECO: An over-recovery of \$1,660,252.

ISSUE 29: **What are the appropriate total capacity cost recovery true-up amounts to be collected/refunded during the period January 2021 through December 2021?**

Stipulation:

FPL: An over-recovery of \$12,530,421.

GULF: An under-recovery of \$2,247,743.

TECO: An over-recovery of \$1,771,480.

ISSUE 30: What are the appropriate projected total capacity cost recovery amounts for the period January 2021 through December 2021?

Stipulation:

FPL: \$237,781,299.

GULF: \$83,552,876.

TECO: \$2,125,115.

ISSUE 31: What are the appropriate projected net purchased power capacity cost recovery amounts to be included in the recovery factor for the period January 2021 through December 2021?

Stipulation:

FPL: \$214,358,302.

GULF: \$85,862,394.

TECO: \$353,890.

ISSUE 32: What are the appropriate jurisdictional separation factors for capacity revenues and costs to be included in the recovery factor for the period January 2021 through December 2021?

Stipulation:

The appropriate jurisdictional separation factors are as follows:

FPL: Demand: Transmission 90.2300 percent, Non-Stratified Production 95.6891 percent, Intermediate Strata Production 95.0081 percent, Peaking Strata Production 95.2778 percent, Distribution 100 percent.

Energy: Total Sales 95.2084 percent, Non-Stratified Sales 95.6788 percent, Intermediate Strata Sales 94.9979 percent, Peaking Strata Sales 95.2675 percent.

General Plant: Labor 96.9888 percent.

GULF: Demand: Total Production/Transmission 97.2343 percent, Non-Stratified Production 100 percent, Intermediate Strata Production 97.5922 percent, Peaking Strata Production 76.0860 percent, Distribution 98.1419 percent.

Energy: Total Sales 97.4597 percent, Non-Stratified Sales 100 percent, Intermediate Strata Sales 97.5922 percent, Peaking Strata Sales 76.0860 percent.

General Plant: 96.9888 percent.

TECO: The appropriate jurisdictional separation factor is 1.00.

ISSUE 33: What are the appropriate capacity cost recovery factors for the period January 2021 through December 2021?

Stipulation:

FPL: The appropriate capacity cost recovery factors for the period January 2021 through December 2021 is shown in Tables 33-2 through 33-4:

Table 33-2
FPL Capacity Cost Recovery Factors for the period January-December, 2021

Rate Schedule	2021 Capacity Cost Recovery Factors			
	\$/kW	\$/kWh	Reservation Demand Charge (RDC) \$/kW	Sum of Daily Demand Charge (SDD) \$/kW
RS1/RTR1	-	0.00203	-	-
GS1/GST1	-	0.00205	-	-
GSD1/GSDT1/HLFT1/GSD1-EV	0.68	-	-	-
OS2	-	0.00088	-	-
GSLD1/GSLDT1/CS1/CST1/HLFT2/GSLD1-EV	0.76	-	-	-
GSLD2/GSLDT2/CS2/CST2/HLFT3	0.73	-	-	-
GSLD3/GSLDT3/CS3/CST3	0.74	-	-	-
SST1T	-	-	0.09	0.04
SST1D1/SST1D2/SST1D3	-	-	0.09	0.04
CILC D/CILC G	0.77	-	-	-
CILC T	0.74	-	-	-
MET	0.66	-	-	-
OL1/SL1/SL1M/PL1	-	0.00016	-	-
SL2/SL2M/GSCU1	-	0.00135	-	-

Source: Appendix III – 2021 CCR Projections (Exhibit RBD-7, Page 20 of 38).

Table 33-3
FPL Capacity Cost Recovery Factors for the period January-December, 2021

Rate Schedule	2020 Indiantown Capacity Cost Recovery Factors			
	Capacity Recovery Factor (\$/kW)	Capacity Recovery Factor (\$/kWh)	Reservation Demand Charge (RDC) \$/kW	Sum of Daily Demand Charge (SDD) \$/kW
RS1/RTR1	-	0.00001	-	-
GS1/GST1	-	0.00001	-	-
GSD1/GSDT1/HLFT1/GSD1-EV	-	-	-	-
OS2	-	0.00001	-	-
GSLD1/GSLDT1/CS1/CST1/HLFT2/GSLD1-EV	-	-	-	-
GSLD2/GSLDT2/CS2/CST2/HLFT3	-	-	-	-
GSLD3/GSLDT3/CS3/CST3	-	-	-	-
SST1T	-	-	-	-
SST1D1/SST1D2/SST1D3	-	-	-	-
CILC D/CILC G	0.01	-	-	-
CILC T	0.01	-	-	-
MET	0.01	-	-	-
OL1/SL1/SL1M/PL1	-	-	-	-
SL2/SL2M/GSCU1	-	0.00001	-	-

Source: Appendix III – 2021 CCR Projections (Exhibit RBD-7, Page 20 of 38).

Table 33-4
FPL Capacity Cost Recovery Factors for the period January-December, 2021

Rate Schedule	2021 Total Capacity Cost Recovery Factors			
	\$/kW	\$/kWh	Reservation Demand Charge (RDC) \$/kW	Sum of Daily Demand Charge (SDD) \$/kW
RS1/RTR1	-	0.00204	-	-
GS1/GST1	-	0.00206	-	-
GSD1/GSDT1/HLFT1/GSD1-EV	0.68	-	-	-
OS2	-	0.00089	-	-
GSLD1/GSLDT1/CS1/CST1/HLFT2/GSLD1-EV	0.76	-	-	-
GSLD2/GSLDT2/CS2/CST2/HLFT3	0.73	-	-	-
GSLD3/GSLDT3/CS3/CST3	0.74	-	-	-
SST1T	-	-	0.09	0.04
SST1D1/SST1D2/SST1D3	-	-	0.09	0.04
CILC D/CILC G	0.78	-	-	-
CILC T	0.75	-	-	-
MET	0.67	-	-	-
OL1/SL1/SL1M/PL1	-	0.00016	-	-
SL2/SL2M/GSCU1	-	0.00136	-	-

Source: Appendix III – 2021 CCR Projections (Exhibit RBD-7, Page 20 of 38).

GULF: The appropriate capacity cost recovery factors for the period January 2021 through December 2021 is shown in Table 33-5 below:

Table 33-5
GULF Capacity Cost Recovery Factors for the period January-December, 2021

Rate Class	2021 Capacity Cost Recovery Factors	
	Cents / kWh	Dollars / kW-month
RS, RSVP, RSTOU	0.915	-
GS	0.931	
GSD, GSDT, GSTOU	0.733	
LP, LPT	-	2.86
PX, PXT, RTP, SBS	0.623	-
OS-I/II	0.127	
OSIII	0.566	

Source: Schedule CCE-2, Page 2 of 2 (Exhibit RLH-5, Columns G and I, Page 40 of 41).

TECO: The appropriate capacity cost recovery factors for the period January 2021 through December 2021 is shown in Table 33-6 below:

Table 33-6
TECO Capacity Cost Recovery Factors for the period January-December, 2021

Rate Class and Metering Voltage	2021 Capacity Cost Recovery Factors	
	Cents / kWh	Dollars / kW
RS	0.002	-
GS and CS	0.002	
GSD, SBF Standard		
Secondary	-	0.01
Primary		0.01
Transmission		0.01
GSD Optional		
Secondary	0.002	-
Primary	0.002	
Transmission	0.002	
IS, SBI		
Primary	-	0.00
Transmission		0.00
LS1 Secondary	0.0000	-

Source: Exhibit MAS-3, Document Number 1, Page 3 of 4.

III. EFFECTIVE DATE

ISSUE 34: What should be the effective date of the fuel adjustment factors and capacity cost recovery factors for billing purposes?

Stipulation:

FPL, FPUC,

GULF, TECO: The new factors should be effective begin with the first billing cycle for January 2021 through the last billing cycle for December 2021. The first billing cycle may start before January 1, 2021, and the last cycle may be read after December 31, 2021, so that each customer is billed for twelve months regardless of when the recovery factors became effective. The new factors shall continue in effect until modified by this Commission.

ISSUE 35: Should the Commission approve revised tariffs reflecting the fuel adjustment factors and capacity cost recovery factors determined to be appropriate in this proceeding?

Stipulation:

FPL, FPUC,

GULF, TECO: Yes. The Commission should approve revised tariffs reflecting the fuel adjustment factors and capacity cost recovery factors determined to be reasonable in this proceeding. The Commission should direct staff to verify that the revised tariffs are consistent with the Commission's decisions.

ISSUE 36: Should this docket be closed?

Stipulation:

FPL, FPUC,

GULF, TECO: No. While a separate docket number is assigned each year for administrative convenience, this is a continuing docket and should remain open.

XI. PENDING MOTIONS

There are no pending motions at this time.

XII. PENDING CONFIDENTIALITY MATTERS

There are no pending confidentiality matters.

XIII. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 75 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 75 words, it must be reduced to no more than 75 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time.

XIV. RULINGS

Opening statements, if any, shall not exceed five minutes per party unless a party chooses to waive its opening statement. Each witness shall be given three minutes for a summary of their testimony.

The parties shall provide cross-examination exhibits, including impeachment exhibits, to the Commission Clerk by the close of business on October 27, 2020, following the procedures set forth in Attachment A. The exhibits that are pre-filed and designated as cross-examination or impeachment exhibits shall not be viewed by opposing witnesses or opposing counsel or otherwise have their contents or identity communicated to such witnesses or counsel.

It is therefore,

ORDERED by Commissioner Andrew Giles Fay, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Andrew Giles Fay, as Prehearing Officer, this 30th day of October, 2020.



ANDREW GILES FAY
Commissioner and Prehearing Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

SBr

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

ATTACHMENT A

Requirements related to providing Cross-Examination Exhibits prior to Hearing

By October 27, 2020, each party must provide the Commission Clerk an electronic copy of all cross-examination exhibits, including impeachment exhibits, the party plans to use during the hearing. All cross-examination exhibits must be provided to the Clerk's Office on either USB flash drives or CDs. Confidential documents must be placed on one USB flash drive or CD, and non-confidential exhibits must be placed on a different or separate USB flash drive or CD. This is because the Clerk's Office will process the confidential exhibits, and will transmit all non-confidential exhibits to the General Counsel's Office for processing. All USB flash drives or CDs provided to the Clerk's Office must be clearly labeled as confidential or non-confidential, and the label must also include the Docket Number(s) and the name of the party providing the exhibits.

Each party must also provide to the Clerk by October 27, 2020, a table listing the exhibit numbers and short titles of each cross-examination exhibit provided to the Clerk. Pursuant to Rule 25-22.006(3), F.A.C., a notice of intent to request confidential classification must be filed for all confidential information.

Each party must pre-number each exhibit with the following sequential numbering system that clearly denotes confidential exhibits. For example, DEF will pre-identify its cross-examination exhibits DEF-1, DEF-2, DEF-3, etc. All confidential exhibits must include the letter "C" placed after the number. Thus, if DEF's third exhibit is confidential, it will be labeled DEF-3C.

Each exhibit must be saved as a separate electronic file, and each file must be labeled with the exhibit number that reflects the information contained in the exhibit. The exhibit number will serve as the filename in the virtual folder during the hearing. Each exhibit must also include a cover page that includes the exhibit number. In addition, each exhibit must include sequentially numbered pages. The page numbers must be placed in the upper right-hand corner of each page.

The confidential and non-confidential cross-examination exhibits will be made available to the parties in virtual folders the day before the hearing. The cross-examination exhibits will be made available to the parties for the sole purpose of providing the witnesses and their counsel with the opportunity to print the exhibits or download them to their electronic devices for use during the hearing.⁷ The parties must not view or read the exhibits prior to the hearing. Parties will be provided usernames and passwords by Commission staff that will give them access to the confidential exhibits and any other confidential information that will be used during the hearing. By October 27, 2020, parties must provide the Commission Clerk with the list of names of those persons who should be given a user name and password to access confidential information.

2020001.PREHEARING.Ord-9.sbr

⁷ Microsoft Chrome is the best internet browser to use to access the virtual folder.



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

FILED 10/30/2020
DOCUMENT NO. 11655-2020
FPSC - COMMISSION CLERK

DATE: October 30, 2020

TO: Adam J. Teitzman, Commission Clerk, Office of Commission Clerk

FROM: Suzanne S. Brownless, Special Counsel, Office of the General Counsel *SBr*

RE: Docket No. 20200001-EI - Fuel and purchased power cost recovery clause with generating performance incentive factor.

Attached please find Office of Public Counsel's (OPC) confidential Final Order PSC-2020-0368-FOF-EI identified as Cross Examination Hearing Exhibit No. 1-C. This exhibit contains Attachment A and should be substituted for the Cross Examination Hearing Exhibit No. 1-C previously submitted on October 27. This Final Order is confidential and is the subject of an outstanding request for confidentiality.

RECEIVED-FPSC
2020 OCT 30 AM 11:15
COMMISSION
CLERK

DUKE ENERGY FLORIDA, LLC,

Appellants,

v.

FLORIDA PUBLIC SERVICE COMMISSION,

Appellee.

IN THE FLORIDA PUBLIC
SERVICE COMMISSION

DOCKET NO. 20200001-EI

NOTICE OF ADMINISTRATIVE APPEAL

Under Florida Rule of Appellate Procedure 9.030(a)(1)(B)(ii), Duke Energy Florida, LLC, hereby appeals to the Supreme Court of Florida the order of the Florida Public Service Commission, Order No. PSC-2020-0368-FOF-EI, rendered on October 15, 2020. The nature of the order appealed is a final order of administrative action by the Florida Public Service Commission. A conformed copy of the Confidential Order is on file with the Commission Clerk and should be maintained in a confidential status during the pendency of this appeal.

Respectfully submitted,

SHUTTS & BOWEN LLP

Attorneys for Duke Energy Florida, LLC

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Telephone: (850) 241-1717

and

4301 West Boy Scout Boulevard, Suite 300

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By: /s/ Daniel E. Nordby

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Daniel Hernandez (FBN 176834)

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Alyssa L. Cory (FBN 118150)

acory@shutts.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of November 2020, a true and accurate copy of the foregoing was e-filed with the Public Service Commission's online filing system and a true and correct copy has been furnished via electronic mail to the following counsel of record:

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BEFORE THE PUBLIC SERVICE COMMISSION

In Re: Fuel and purchased power cost recovery
clause with generating performance incentive
factor.

DOCKET NO. 20200001-EI

Filed on November 2, 2020

**DUKE ENERGY FLORIDA, LLC'S MOTION FOR
STAY PENDING JUDICIAL REVIEW**

Duke Energy Florida, LLC ("DEF"), pursuant to Rule 25-22.061, Florida Administrative Code, and Rule 9.190(e)(2)(A), Florida Rules of Appellate Procedure, moves to stay the final order of the Commission pending appeal and states:

1. On October 15, 2020, the Commission entered its final order establishing fuel cost recovery for DEF ("Final Order") which denied DEF's filed exceptions and adopted the recommended order issued by the administrative law judge following an evidentiary hearing. *See* Docket No. 20200001-EI, Order No. PSC-2020-0368-FOF-EI. The Final Order concludes DEF (1) failed to act prudently in the operation of its Bartow Power Plant ("Bartow Plant") relating to the February 2017 forced outage, and (2) failed to make prudent adjustment to account for replacement power costs associated with derating of the Bartow Plant and must refund charges to customers in relation to DEF's fuel replacement power and other costs associated with the outages at its Bartow Plant. Specifically, the Final Order determines DEF should refund \$16,166,782.00 to its customers.

2. Pursuant to Rule 9.030(a)(1)(B)(ii), Florida Rules of Appellate Procedure, DEF timely filed its Notice of Appeal of the Final Order on November 2, 2020.

3. Rule 25-22.061(1)(a), Florida Administrative Code, provides that when an appealed order involves the refund of money to customers, the Commission **shall** grant a stay

pending judicial proceedings upon motion of the utility or company affected. *See In re Aloha Utilities, Inc*, 2005 WL 405335 (Fla. P.S.C. Feb. 7, 2005). While the remaining subsection of Rule 25-22.061 affords the Commission discretion in determining a stay motion, subsection(1)(a) is mandatory when the order appealed “involves the refund of moneys to customers.”

4. Because DEF is an investor-owned electric utility and the order on appeal involves the refund of moneys to customers, Rule 25-22.061(1)(a) requires the Commission to grant the requested stay pending appeal.

5. Given the circumstances of this case and the on-going nature of the fuel docket, DEF should not be required to post a bond, corporate undertaking, or any other conditions to secure the revenues collected by DEF that may ultimately be subject to refund if the order under appeal is upheld; that is, because such a refund would take the form of a reduction in DEF’s fuel collections for the refund period, no bond, undertaking or other assurances are necessary or appropriate. *See* 25-22.061(1), (3), Florida Administrative Code.

6. DEF meets the prerequisites for a mandatory stay under the plain language of Rule 25-22.061(1)(a). But even if DEF were not entitled to a mandatory stay, the Commission should grant a discretionary stay in the alternative based upon a consideration of the non-exclusive factors outlined in Rule 25-22.061(2), Florida Administrative Code. Specifically, DEF is likely to prevail on the merits of the appeal and a stay on implementation of the Final Order during the pendency of the appeal would not cause substantial harm or be contrary to the public interest.

7. DEF has demonstrated a likelihood of success on the merits of its appeal for the reasons described in DEF’s Proposed Recommended Order at DOAH and in its exceptions to the

Recommended Order filed with the Commission, both of which are incorporated by reference herein. If the Final Order is not stayed, and DEF is successful on appeal, DEF would be entitled to recover the improperly refunded revenues from its customers. The public interest favors stability in electric utility rates rather than refunds followed by recoupments. The mandatory stay provided by Rule 25-22.061(1)(a) is consistent with this sound public policy, and the same considerations would counsel in favor of a discretionary stay pending appeal.

8. Pursuant to Rule 28-106.204(3), Florida Administrative Code, the undersigned counsel contacted counsel for each party in this docket to determine whether they object to the requested relief in this motion. DEF is authorized to represent that the Office of Public Counsel opposes the motion and will file a response; that PSC Phosphate and the Florida Industrial Power Users Group oppose the motion, and that Commission Staff, Florida Power & Light, Gulf Power, TECO, and Florida Public Utilities Company take no position on the motion.

CONCLUSION

WHEREFORE, DEF respectfully requests that the Commission enter an order granting a mandatory stay of the Final Order pending appeal. In the alternative, DEF respectfully requests that the Commission enter an order granting a discretionary stay of the Final Order pending appeal.

Respectfully submitted,

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COMMISSIONERS:
GARY F. CLARK, CHAIRMAN
ART GRAHAM
JULIE I. BROWN
DONALD J. POLMANN
ANDREW GILES FAY

STATE OF FLORIDA



OFFICE OF COMMISSION CLERK
ADAM J. TEITZMAN
COMMISSION CLERK
(850) 413-6770

Public Service Commission

November 2, 2020

John A. Tomasino, Clerk
Florida Supreme Court
500 South Duval Street
Tallahassee, Florida, 32399

Re: Fuel and purchased power cost recovery clause with generating performance incentive factor. No. 20200001-EI.

Dear Mr. Tomasino:

Enclosed please find a certified copy of a Notice of Administrative Appeal, which was filed with the Florida Public Service Commission on November 2, 2020, along with its attachment, Order No. PSC-2020-0368-FOF-EI (Final Order). The Final Order includes information the Florida Public Service Commission has deemed confidential and exempt from public disclosure pursuant to Subsections 366.093(3) and (4), Florida Statutes. This appeal was filed on behalf of the Duke Energy.

Sincerely,

A blue ink signature of Adam J. Teitzman.

Adam J. Teitzman
Commission Clerk

AJT:cdr

Enclosure

cc:

Dianne Triplett
Matthew Bernier
Daniel Nordy
Daniel Hernandez
Alyssa Cory

Hong Wang
Samantha Cibula
Suzanne Brownless

RECEIVED-FPSC
2020 NOV -3 PM 2:22
COMMISSION
CLERK

DUKE ENERGY FLORIDA, LLC,

Appellants,

v.

FLORIDA PUBLIC SERVICE COMMISSION,

Appellee.

IN THE FLORIDA PUBLIC
SERVICE COMMISSION

DOCKET NO. 20200001-EI

NOTICE OF ADMINISTRATIVE APPEAL

Under Florida Rule of Appellate Procedure 9.030(a)(1)(B)(ii), Duke Energy Florida, LLC, hereby appeals to the Supreme Court of Florida the order of the Florida Public Service Commission, Order No. PSC-2020-0368-FOF-EI, rendered on October 15, 2020. The nature of the order appealed is a final order of administrative action by the Florida Public Service Commission. A conformed copy of the Confidential Order is on file with the Commission Clerk and should be maintained in a confidential status during the pendency of this appeal.

Respectfully submitted,

SHUTTS & BOWEN LLP

Attorneys for Duke Energy Florida, LLC

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I CERTIFY THAT THIS IS A TRUE AND
CORRECT COPY OF THE ORIGINAL
DOCUMENT THAT WAS FILED WITH THE
FLORIDA PUBLIC SERVICE COMMISSION
BY:

ADAM J. TEITZMAN, COMMISSION CLERK
(or Office of Commission Clerk designee)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of November 2020, a true and accurate copy of the foregoing was e-filed with the Public Service Commission's online filing system and a true and correct copy has been furnished via electronic mail to the following counsel of record:

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FILED DATE: 10/15/2020

DOCKET NO.: 20200001-EI

DOCUMENT NO.: 11211-2020

DOCUMENT DESCRIPTION:

(CONFIDENTIAL) Final Order PSC-2020-0368-FOF-EI establishing fuel cost recovery for Duke Energy.

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: November 3, 2020
TO: Division of Accounting and Finance, Office of Primary Responsibility
FROM: OFFICE OF COMMISSION CLERK
RE: CONFIDENTIALITY OF CERTAIN INFORMATION

DOCKET NOS: 20200001-EI DOCUMENT NO: 11612-2020

DESCRIPTION: Duke Energy (Bernier) - (CONFIDENTIAL) Certain information provided in FPSC's Final Order PSC-2020-0368-FOF-EI; Composite Exh A [to request for confidential classification (DN 11617-2020)].

SOURCE: Duke Energy Florida LLC

The above confidential material was filed along with a request for confidential classification. Please complete the following form by checking all applicable information and forward it to the attorney assigned to the docket, along with a brief memorandum supporting your recommendation.

- ☐ The document(s) is (are), in fact, what the utility asserts it (them) to be.
- ☒ The utility has provided enough details to perform a reasoned analysis of its request.
- ☐ The material has been received incident to an inquiry.
- ☒ The material is confidential business information because it includes:
- ☐ (a) Trade secrets;
 - ☐ (b) Internal auditing controls and reports of internal auditors;
 - ☐ (c) Security measures, systems, or procedures;
 - ☒ (d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms;
 - ☒ (e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of information;
 - ☐ (f) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities;
- ☒ The material appears to be confidential in nature and harm to the company or its ratepayers will result from public disclosure.
- ☐ The material appears not to be confidential in nature.
- ☐ The material is a periodic or recurring filing and each filing contains confidential information.

This response was prepared by /s/Devlin Higgins on 11.4.20, a copy of which has been sent to the Office of Commission Clerk and the Office of General Counsel.

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: November 4, 2020

TO: Suzanne S. Brownless, Special Counsel, Office of the General Counsel

FROM: Devlin Higgins, Public Utility Analyst IV, Division of Accounting & Finance

RE: CONFIDENTIALITY OF CERTAIN INFORMATION
DOCKET NO: 20200001-EI DOCUMENT No: 11612-2020

DESCRIPTION: Duke Energy (Bernier) - (CONFIDENTIAL) Certain information provided in FPSC's Final Order PSC-2020-0368-FOF-EI; Composite Exh A [to request for confidential classification (DN 11617-2020)].

SOURCE: Duke Energy Florida

Pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code, Duke Energy Florida (DEF or Company) requests confidential classification of certain information contained in Florida Public Service Commission (FPSC) Order No. PSC-2020-0368A-FOF-EI, dated October 29, 2020.¹

Due to concerns regarding the maintenance of confidentiality with respect to the information subject to this request, the FPSC by Order No. PSC-2019-0484-FOF-EI, and Document No. 10846-2019, sent this matter for hearing to the Florida Division of Administrative Hearings.² The information provided by DEF for the SRO was available to the Office of Public Counsel, the Florida Industrial Power Users Group, White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate – White Springs, and Staff of the FPSC, collectively referred to as the “Parties” to the proceeding at DOAH concerning operations at Plant Bartow.

The Company is claiming confidentiality of its filing under Section 366.093(3)(d), F.S., and Section 366.093(3)(e), F.S. Per the Statute, propriety of confidential business information includes, but is not limited to: Subsection (d) “[i]nformation concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms,” and Subsection (e) “[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.”

¹Order No. Order No. PSC-2020-0368A-FOF-EI, Issued October 29, 2020, Docket No. 20200001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.*

²Order No. PSC-2019-0484-FOF-EI, Issued November 18, 2019, Docket No. 20190001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.*

More specifically, the information at issue relates to claimed proprietary and confidential operating technical information regarding a third-party's (to DEF) component/equipment design and operation parameters. DEF asserts that if it cannot demonstrate to its third-party partners that the Company has the ability to protect those third-parties' confidential and proprietary business information, it will be less likely that DEF can secure contracts that benefit its customers.

Staff has previously reviewed the subject information as well as the Company's confidentiality request. It is staff's opinion that the information subject to this request meets the criteria for confidentiality contained in Section 366.093(3)(d), F.S. and Section 366.093(3)(e), F.S.