

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for determination that the Osprey Plant acquisition or, alternatively, the Suwannee Simple Cycle Project is the most cost effective generation alternative to meet remaining need prior to 2018, by Duke Energy Florida, Inc.

DOCKET NO. 150043-EI
ORDER NO. PSC-15-0212-PHO-EI
ISSUED: May 28, 2015

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on May 20, 2015, in Tallahassee, Florida, before Commissioner Julie I. Brown, as Prehearing Officer.

APPEARANCES:

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On behalf of Duke Energy Florida, Inc. (DEF or Company)

ROBERT SCHEFFEL WRIGHT and JOHN T. LAVIA III, ESQUIRES, 1300 Thomaswood Drive, Tallahassee, FL 32308

On behalf of Osprey Energy Center (OSPREY)

CHARLES J. REHWINKEL, ESQUIRE, 111 W. Madison Street, Room 812, Tallahassee, FL 32399

On behalf of Office of Public Counsel (OPC)

JON C. MOYLE, JR. and KAREN PUTNAL, ESQUIRES, 118 N. Gadsden Street, Tallahassee, FL 32312

On behalf of Florida Industrial Power Users Group (FIPUG)

JAMES W. BREW, OWEN J. KOPON, and LAURA A. WYNN, ESQUIRES, 1025 Thomas Jefferson Street, N.W., Eighth Floor, West Tower, Washington D.C., 20007

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

CHARLES W. MURPHY, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

On behalf of the Florida Public Service Commission (Staff)

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Advisor to the Florida Public Service Commission

PREHEARING ORDER

I. CASE BACKGROUND

On January 30, 2015, pursuant to Chapter 366, Florida Statutes (F.S.), and Rules 25-22.080 and 28-106.301, Florida Administrative Code (F.A.C.), and in accordance with the 2013 Revised and Restated Stipulation and Settlement Agreement (“2013 Settlement Agreement”),¹ DEF petitioned the Florida Public Service Commission (Commission) for a determination that the Calpine Construction Finance Company, L.P. (Calpine) Osprey Plant acquisition is the most cost-effective generation to meet DEF’s remaining need for additional generation capacity prior to 2018 (Petition). In the alternative, if DEF cannot purchase the Osprey Plant, DEF asks for a determination that construction of its Suwannee Simple Cycle Project is the most cost-effective generation to meet DEF’s remaining need.² DEF initially petitioned the Commission to determine that the Suwannee Simple Cycle Project and the Hines Chillers Power Uprate Project were the most cost-effective generation alternatives to meet that need.³ On the first day of the hearing in Docket No. 140111-EI,⁴ DEF made a motion to withdraw its request with respect to the Suwannee Simple Cycle Project, which was granted by a bench decision. Subsequently, DEF executed an Asset Purchase and Sale Agreement for the Osprey Plant, which is the subject of the instant proceeding.

Petitions to intervene by FIPUG, Osprey and PCS have been granted, and the Notice of Intervention by OPC has been acknowledged. An administrative hearing to address DEF’s Petition is scheduled for **June 3-4, 2015**. Jurisdiction over these matters is vested in the Commission through several provisions of Chapter 366, F.S., including Sections 366.04, 366.05, and 366.06, F.S.

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. Issues for hearing were established by separate order.⁵

¹ Approved by Order No. PSC-13-0598-FOF-EI, issued on November 12, 2013, in Docket No. 130208-EI.

² The Osprey Plant acquisition is contingent on various required regulatory approvals, including approval by the Commission, the Federal Energy Regulatory Commission (“FERC”), and the Department of Justice (“DOJ”). If the requisite regulatory approvals are not timely obtained, DEF cannot purchase the Osprey Plant and intends to complete the Suwannee Simple Cycle Project in the alternative.

³ Docket No. 140111-EI.

⁴ August 26, 2014.

⁵ Order No. PSC-15-0127-PCO-EI, issued March 19, 2015.

III. JURISDICTION

This Commission is vested with jurisdiction by the provisions of Chapter 366, 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.

While it is the policy of this Commission for 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, at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing, parties must have copies for the Hearing Officer, 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 Hearing Officer, 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 and Staff 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, which 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.

The testimony of witnesses who have been excused from the hearing shall be inserted into the record as though read, and the exhibits submitted with such testimony, as shown in Section IX of this Prehearing Order, shall be identified and admitted into the record.

VI. ORDER OF WITNESSES

Each witness whose name is followed by an asterisk (*) is excused from the hearing.

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Mark E. Landseidel*	DEF	4
Edward L. Scott	DEF	2, 4
Kevin E. Delehanty	DEF	2, 4

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
Kris G. Edmondson	DEF	2
Matthew E. Palasek	DEF	3
Benjamin M.H. Borsch	DEF	1, 2, 3, 4, 5

VII. BASIC POSITIONS

DEF: The Company's current and projected customer and peak demand growth, and its existing and planned plant retirements and generation plant capacity reductions, demonstrate a need for additional generation capacity in the summer of 2017. Accordingly, on January 30, 2015, pursuant to the provisions of Chapter 366, Florida Statutes, and Rules 25-22.080 and 28-106.301, Florida Administrative Code ("F.A.C."), and in accordance with the 2013 Revised and Restated Stipulation and Settlement Agreement ("2013 Settlement Agreement"), DEF petitioned the Florida Public Service Commission ("PSC" or the "Commission") for a determination that the Calpine Construction Finance Company, L.P. ("Calpine") Osprey Plant acquisition⁶ and, alternatively, if DEF cannot purchase the Osprey Plant, the construction of the Suwannee Simple Cycle Project is the most cost effective generation to meet DEF's remaining need for additional generation capacity prior to 2018. DEF needs either the Osprey Plant or, if DEF cannot purchase the Osprey Plant, the Suwannee Simple Cycle Project to meet its remaining need for additional generation prior to 2018.

DEF signed an Asset Purchase and Sale Agreement ("APA") with Calpine in December 2014 to acquire the Osprey Plant. That acquisition, however, is contingent on various required regulatory approvals, including approval by the Federal Energy Regulatory Commission ("FERC"), this Commission, and the Department of Justice ("DOJ"). DEF mitigated this regulatory risk in the APA by preserving for DEF's customers the benefits of the Suwannee Simple Cycle Project. If the requisite regulatory approvals are not timely obtained, DEF cannot purchase the Osprey Plant and DEF will complete the Suwannee Simple Cycle Project to meet DEF's remaining generation need prior to 2018. If this occurs, DEF must commence work on that Suwannee Project in time to complete the project to meet DEF's need for additional generation capacity in the summer of 2017.

DEF has determined, based upon the terms and conditions of the APA, that the Osprey Plant acquisition is the most cost effective generation alternative to meet

⁶ DEF executed an Asset Purchase and Sale Agreement with Osprey Energy Center, LLC as the assignee of Calpine Construction Finance Company, L.P. for the Osprey Plant (Osprey Energy Center).

DEF's need for additional generation prior to 2018, if the Osprey Plant acquisition is approved by the requisite regulatory authorities in accordance with the APA. The Osprey Plant will provide DEF's customers with beneficial combined-cycle generation fuel efficiency and emissions costs at a favorable acquisition price even with the necessary capital maintenance, operations & maintenance, and transmission interconnection investment in the Plant to incorporate it into DEF's system. On a Cumulative Present Value Revenue Requirement ("CPVRR") basis, the Osprey Plant acquisition is the most cost effective alternative for DEF's customers and the Suwannee Simple Cycle Project is the next most cost effective alternative for DEF's customers and the Commission should approve DEF's petition.

OSPREY: Based on DEF's current and projected customer and peak demand growth, and on its recent and projected plant retirements and generation plant capacity reductions, DEF has a need for additional generation capacity in the summer of 2017. The Osprey Energy Center (or "Osprey Plant") is an advanced-class, 599 MW (nominal) natural gas fired combined cycle electrical generating plant located in Auburndale, Florida. The Osprey Plant is interconnected to Tampa Electric Company's transmission system and to the interstate natural gas pipeline owned and operated by Gulfstream Natural Gas System, LLC ("Gulfstream"). The Osprey Plant is operated by Calpine Operating Services Company Inc. ("COSCI") under an operating and maintenance agreement between Osprey LLC and COSCI. The Osprey Plant achieved commercial operation in 2004 and has a proven track record of reliable operations. Since 2006, Osprey has supplied more than 14 million MWh of wholesale power to a number of Florida utilities, including DEF, Tampa Electric Company, Seminole Electric Cooperative, and other utilities, with an equivalent forced outage rate of less than 2.0 percent. The Osprey Plant is fully dispatchable and, when integrated into DEF's generating fleet, the Plant is expected to continue to operate with high availability factors and at a capacity factor that is consistent with other DEF combined cycle units of similar vintage. The Osprey Plant will provide DEF's customers with beneficial combined-cycle generation fuel efficiency and emissions costs at a highly favorable acquisition price, even allowing for necessary capital maintenance costs, operations & maintenance expenses, and transmission interconnection investments in the Plant to integrate it into DEF's system. On a Cumulative Present Value Revenue Requirement ("CPVRR") basis, the Osprey Plant acquisition is the most cost-effective power supply alternative available to meet the needs of DEF's customers and the Commission should approve DEF's petition.

OPC: As a basic proposition, the Public Counsel believes that the Commission should find that the lowest cost, prudent, reliable generation solution should be selected in the event that the Commission determines that Duke has met its burden to demonstrate that a need for generation resources exists before 2018. Duke has entered into an Asset Purchase and Sale Agreement ("Agreement") that appears reasonably designed to protect Duke's customers if a need and cost-effectiveness

is found and in the event certain contingencies occur related to the proposed acquisition of the Osprey Plant. The strict enforcement of all of the provisions of the Agreement, which operate together to protect customers, as described in the direct testimony of Matthew Palasek, should be assumed and expressly relied upon by the Commission in its order containing a determination of cost-effectiveness (if so determined) in this Docket.

FIPUG: DEF must meet its burden of proof to that there is a need for additional energy and capacity. The most cost-effective, reliable option to meet this need, if such need exists, should be approved by the Commission. If the Commission decides that the purchase of the Osprey unit should be pursued, the risks associated with this transaction, including, but not limited to possible delay or denial of the transaction involving the Osprey generating plant by the Federal Energy Regulatory Commission (“FERC”), should be borne by DEF and the Calpine; these transactional risks should not be borne by the ratepayers. Accordingly, the Commission should expressly provide in its Final Order, should DEF’s petition be approved, that all transaction risks of the sale and transfer of the Osprey unit will be the responsibility of DEF and/or Calpine and will not be placed on ratepayers.

PCS: Duke Energy carries the burden of demonstrating that 1) it has a capacity need prior to the summer of 2018; 2) the Osprey acquisition, as defined in the Asset Purchase and Sale Agreement (“the Agreement”), or, in the alternative, the Suwannee combustion turbine construction project, represent the best available resource options to meet that need; and 3) the expected costs of the proposed alternatives are reasonable. Duke maintains that there are substantial economic benefits to its customers of pursuing the Osprey power purchase and acquisition while simultaneously acknowledging that there is considerable uncertainty associated with that transaction, including in particular the need for timely regulatory approvals. PCS Phosphate understands that the Agreement contains specific provisions, described in Duke’s testimony, that are intended to preserve the economic benefits to consumers in the event of project delays, cost overruns, and other contingency events. It is essential that each of those measures is fully applied and enforced.

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

ISSUE 1: Does DEF have a need for additional generation capacity prior to 2018?

POSITIONS

DEF: Yes. DEF still has a need for near-term additional generation capacity consistent with what DEF demonstrated in Docket No. 140111-EI as explained in DEF's direct testimony and exhibits filed in this docket. The term sheet for DEF's acquisition of the Osprey Plant was executed the first day of the hearing in Docket No. 140111-EI based on the same evidence supporting the need for additional generation capacity in that Docket. Between the date of that term sheet in late August 2014 and the execution of the APA, DEF conducted due diligence evaluations and analyses of the Osprey Plant to ensure that the Osprey Plant acquisition was feasible and practicable. Further, as DEF conducted its due diligence reviews and negotiated the APA with Calpine, DEF continued to evaluate the cost effectiveness of the Osprey Plant acquisition based on meeting the remaining need for additional generation capacity prior to 2018 that DEF demonstrated in Docket No. 140111-EI. That need remained through DEF's decision to sign the APA and purchase the Osprey Plant to meet that need.

DEF identified additional generation capacity needs prior to 2018 during the Company's integrated resource planning ("IRP") process. In its IRP process DEF evaluated the relationship of demand and supply against the Company's reliability criteria and included cost-effective demand side management programs before DEF determined additional generation capacity was needed prior to 2018. This analysis was first reflected in the Company's 2013 Ten Year Site Plan ("TYSP") and confirmed in its 2014 TYSP. DEF needs additional generation capacity resources on its system prior to 2018 to meet its 20 percent Reserve Margin commitment and to serve DEF's future electrical power needs in a reliable and cost-effective manner for its customers.

One of the factors in the Company's need for additional generation is that DEF is experiencing load growth as the Florida economy recovers from the last recession. DEF expects both more customers and growth in energy demand in the near term.

Another driver in DEF's need for additional generation is the retirement of or reduction in generation capacity on DEF's system including the retirement of its Crystal River Unit 3 nuclear power plant, which accounted for approximately 790 MW of summer generation capacity on DEF's system, and planned retirements of some of DEF's oldest and least efficient plants. Additionally, the Company's plan for compliance with the United States Environmental Protection Agency ("EPA") Mercury and Air Toxics Standards Rule ("MATS") at Crystal River Unit 1 and Crystal River Unit 2 will result in a reduction in their capacity of approximately 130 MW beginning in the spring of 2016.

DEF still needs the Osprey Plant or, alternatively, if DEF cannot purchase the Osprey Plant, the Suwannee Simple Cycle Project by the summer of 2017 to meet its 20 percent Reserve Margin Commitment. The Company's remaining need for additional generation capacity is now approximately 180 MW in the summer of 2017, growing to over 300 MW in the summer of 2018. With the Osprey Plant acquisition the Company's Reserve Margin will be 20.6 percent in the summer of 2017. Alternatively, if DEF builds the Suwannee Simple Cycle Project, the Company's Reserve Margin will be 20.7 percent in the summer of 2017. Without one of these generation capacity additions, DEF's Reserve Margin will decrease to 18 percent in the summer of 2017. Accordingly, DEF needs this additional generation capacity, whether it is the Osprey Plant or the Suwannee Simple Cycle Project, in the summer of 2017 to meet its obligation to provide reliable electric service to its customers. (Borsch).

OSPREY: Yes. DEF has a need for additional generation capacity prior to 2018. The Osprey Energy Center is the best and most cost-effective alternative available to DEF to meet that need.

OPC: The OPC takes no position on whether Duke has ultimately met its burden of demonstrating that its forecasting process supports the need for the pre-2018 generation resources.

FIPUG: DEF must meet its burden of proof on this issue.

PCS: PCS agrees with the Office of Public Counsel.

STAFF: Staff has no position pending evidence adduced at the hearing.

ISSUE 2: **Is the acquisition of Calpine's Osprey Plant the most cost-effective way to meet DEF's generation need prior to 2018?**

POSITIONS

DEF: Yes, the acquisition of the Osprey Plant is the most cost effective way to meet DEF's generation need prior to 2018. Before selecting the Osprey Plant, DEF evaluated several generation options to meet its near-term reliability need prior to 2018. Generation alternatives that passed DEF's cost-effectiveness screen based on cost, fuel sources and availability, technological maturity, and resource feasibility were included in DEF's economic evaluation and were evaluated and ranked based on a CPVRR comparison of the generation resource options that satisfied DEF's reliability requirements. Based on the CPVRR analysis, the Company initially chose the Suwannee Simple Cycle Project and the Hines Chillers Power Upgrade Project as its base generation plan to meet the Company's reliability needs prior to 2018.

DEF next evaluated the potential future supply of firm capacity from purchased power contracts and potential generation facility acquisitions, including the Osprey Plant, to determine if they were more cost effective than the Company's Suwannee Simple Cycle Project and Hines Chillers Power Uprate Project to meet its reliability need prior to 2018. DEF screened the proposal's fixed and variable payments or costs and performed economic optimization screening analyses in a staged, detailed economic evaluation. The economic evaluation included a quantification of cost and other qualitative risks with the proposals that were evaluated in cost sensitivity analyses, including gas transportation, transmission, and FERC approval of the acquisitions. These sensitivity analyses provided DEF with a cost effectiveness range for all proposals. As a result of these quantitative and qualitative analyses, DEF initially selected the Suwannee Simple Cycle Project and the Hines Chillers Power Uprate Project as the most cost effective generation resource options to meet DEF's customer reliability needs prior to 2018.

Calpine, however, submitted a new and different proposal that "closed the gap" between the cost effectiveness of the Osprey Plant acquisition and the Suwannee Simple Cycle Project. At that point, DEF and Calpine reached an agreement in principle for DEF to acquire the Calpine Osprey Plant subject to DEF's due diligence reviews of the Plant and the agreement of the parties to an asset purchase agreement for DEF to purchase the Plant.

DEF evaluated the technical feasibility and viability of the Osprey Plant acquisition through due diligence reviews involving the quantitative and qualitative analysis of factors such as the physical condition and maintenance of the Plant, Plant operating permits, capital and O&M requirements to incorporate the Plant into the DEF system, site environmental impacts and environmental permit compliance, permitted water supplies, insurance, indemnity obligations, and guarantees. Based on the results of DEF's due diligence reviews, DEF determined that there were no material impediments to DEF's purchase of the Osprey Plant as a long-term generation resource on DEF's system.

DEF has determined, based upon the terms and conditions of the APA, that the Osprey Plant acquisition is the most cost effective generation alternative to meet DEF's need for additional generation prior to 2018, if the Osprey Plant acquisition is approved by the requisite regulatory authorities in accordance with the APA. The Osprey Plant will provide DEF's customers with beneficial combined-cycle generation fuel efficiency and emissions costs at a favorable acquisition price. On a CPVRR basis, the Osprey Plant acquisition is approximately \$61 million more cost effective for DEF's customers than the Suwannee Simple Cycle Project and is the most effective way to meet DEF's remaining generation need prior to 2018. (Borsch, Scott, Delehanty, Edmondson)

OSPREY: Yes, the acquisition of the Osprey Plant is the most cost-effective generation supply alternative available to meet the needs of DEF and its customers prior to 2018.

The Osprey Plant will provide DEF's customers with beneficial combined-cycle generation fuel efficiency and emissions costs at a highly favorable acquisition price. On a CPVRR basis, the Osprey Plant acquisition is approximately \$61 million more cost effective for DEF's customers than the Suwannee Simple Cycle Project and is the most cost-effective way to meet DEF's remaining generation need prior to 2018.

OPC: The OPC takes no position on whether Duke has ultimately met its burden of demonstrating that its forecasting process supports the need for the pre-2018 generation resources. However, if the need exists, the acquisition of the Osprey plant in strict accordance with the Asset Purchase and Sale Agreement appears to be the most cost-effective way to meet the need that Duke proposes.

FIPUG: DEF must meet its burden of proof on this issue.

PCS: PCS agrees with the Office of Public Counsel.

STAFF: Staff has no position pending evidence adduced at the hearing.

ISSUE 3: **Does the Asset Purchase and Sale Agreement for the Osprey Plant contain adequate provisions to protect DEF's customers?**

POSITIONS

DEF: Yes, the APA contains provisions to protect DEF customers, as explained in detail in the testimony of Mr. Palasek and Mr. Borsch. First, DEF negotiated reasonable terms to protect the condition of the Osprey Plant between the APA execution and the closing. Because the closing will not occur until early 2017, DEF and Calpine also negotiated for continued due diligence to ensure that the Osprey Plant remains in a condition that is similar to its current condition, normal wear and tear excepted. Second, a condition precedent to the closing of the Osprey Plant acquisition includes obtaining the requisite governmental or regulatory approvals for the acquisition. In addition, there are provisions that guarantee that Calpine will meet its financial obligations, and, there are protections to ensure that DEF and its customers are held harmless if FERC does not approve the acquisition in the time necessary for DEF to timely re-start the Suwannee project. (Borsch, Palasek)

OSPREY: Yes, the APA contains sound and appropriate provisions to effectively protect DEF's customers, including the following:

1. reasonable negotiated terms to protect the condition of the Osprey Plant between the Parties' execution of the APA and the closing of the acquisition;
2. provisions for DEF to continue due diligence activities to ensure that the Osprey Plant remains in a condition that is similar to its current condition, normal wear and tear excepted;
3. conditions precedent to the closing of the Osprey Plant acquisition that include obtaining the requisite governmental or regulatory approvals for the acquisition;
4. provisions that guarantee that Osprey LLC and Calpine will meet their financial obligations; and
5. protections to ensure that DEF and its customers are held harmless if the Federal Energy Regulatory Commission does not approve the acquisition in a timely manner.

OPC: The Asset Purchase and Sale Agreement contains provisions which - if strictly adhered to - can preserve the positive CPVRR of approximately \$61 million (or the adjusted amount occasioned by the contemplated implementation of the express provisions of the Agreement) that Duke asserts will result from the acquisition of the Osprey plant or which will preserve the original CPVRR of the Suwannee Generation Project that will be installed in the absence of the Osprey acquisition. The enforcement of all of the provisions of the Agreement, which operate together to protect customers, as described in the direct testimony of Matthew Palasek, should be assumed and expressly relied upon by the Commission in its order containing a determination of need and cost-effectiveness (if so determined) in this Docket. There are two principal provisions relating to Federal Energy Regulatory Commission (FERC) action that are vital to protecting the value of the generation resource that is ultimately chosen. The first provision caps the allowable mitigation costs provided for in the Agreement. These represent "costs" to Duke's Florida customers, which - if incurred as a result of the FERC conditioning approval of the transaction on the implementation of mitigation measures - will not reduce the \$61 million value beyond an amount expressly contemplated in the Agreement. The second key provision of the Agreement provides that the Osprey plant's owners (Calpine) will bear, in the form of a payment to Duke, the costs of delay incurred by Duke (as a result of entertaining the Osprey plant purchase) in constructing the Suwannee Generation Project if the FERC does not approve the acquisition or imposes costs in excess of the mitigation allowance contained in the Agreement. The OPC takes the position

that all the provisions contained in the Agreement, taken as a whole, are not unreasonable, but are only so if they are strictly followed. Any costs of delay or mitigation exceeding those assumed in the Agreement should not be borne by Duke's customers. Furthermore, any cost savings that Duke achieves in implementing the Agreement and integrating the Osprey Plant, including, but not limited to, lower than originally estimated costs of transmission facilities to deliver the full output of the unit to DEF, will be credited to customers and not used to offset or absorb Calpine or Duke shareholder costs not expressly contemplated in the Agreement.

FIPUG: DEF must meet its burden of proof. The risks associated with this transaction, including, but not limited to possible delay or denial of the transaction involving the Osprey generating plant by the Federal Energy Regulatory Commission ("FERC"), should be borne by DEF and the Calpine; these transactional risks should not be borne by the ratepayers. Accordingly, the Commission should expressly provide in its Final Order, should DEF's petition be approved, that all transaction risks of the sale and transfer of the Osprey unit will be the responsibility of DEF and/or Calpine and will not be placed on ratepayers.

PCS: PCS agrees with the Office of Public Counsel. All provisions of the Agreement that are designed to protect Duke Energy consumers must be fully enforced, and any costs of delay or mitigation exceeding those assumed in the Agreement should not be borne by Duke Energy's customers.

STAFF: Staff has no position pending evidence adduced at the hearing.

ISSUE 4: **If the Osprey Plant cannot be acquired under the terms and conditions of the Asset Purchase and Sale Agreement, is construction of the DEF Suwannee Generation Project the next most cost-effective way to meet DEF's generation need prior to 2018?**

POSITIONS

DEF: Yes it is. Before Calpine's proposal for the acquisition of the Osprey Plant "closed the gap" between the projects and made the Osprey Plant acquisition the most cost-effective generation option, DEF had conducted an extensive economic and qualitative analysis and initially selected the Suwannee Simple Cycle Project as the most cost effective option to meet DEF's need prior to 2018. There are customer benefits associated with the location of the Suwannee Simple Cycle Project at an existing Company power plant site that contributed to that conclusion. First, there are limited transmission system network upgrades and costs for the Suwannee Simple Cycle Project associated with the transmission interconnection of the combustion turbines at the existing Suwannee site. These transmission costs and benefits are explained in the direct testimony of Mr. Scott

in this proceeding. Second, the location of the Suwannee Simple Cycle Project at an existing brownfield, power plant site means there are limited to no additional environmental impacts associated with this additional generation capacity. Thus, this Project would provide DEF the ability to substantially increase its summer generation capacity to meet customer energy demand while maintaining its compliance with current and future environmental regulations.

These benefits make the Suwannee Simple Cycle Project more economically beneficial to customers than similar generation capacity installed at a greenfield site. For these reasons, DEF's IRP process demonstrated that the economics favored the Suwannee Simple Cycle Project over other available options to meet its need prior to 2018. The results of this process and the Company's evaluation led the Company to conclude, based on price and non-price attributes, that if it is unable to purchase the Osprey Plant, the Suwannee Simple Cycle Project is the next most cost-effective self-generation alternative to meet DEF's need prior to 2018. (Borsch, Landseidel, Scott)

OSPREY: No position.

OPC: The OPC takes no position on whether Duke has ultimately met its burden of demonstrating that its forecasting process supports the need for the pre-2018 generation resources. However, if the need exists, the reinstatement of the Suwannee Generation Project in strict accordance with the terms of the Asset Purchase and Sale Agreement would then appear to be the next most cost-effective way to meet the need that Duke proposes.

FIPUG: DEF must meet its burden of proof on this issue.

PCS: PCS agrees with the Office of Public Counsel.

STAFF: Staff has no position pending evidence adduced at the hearing.

ISSUE 5: **Given the resolution of the foregoing issues, how and when may DEF request recovery of the final costs for the Osprey Plant acquisition or the Suwannee Simple Cycle Project?**

POSITIONS

DEF: In accordance with Section 16.A. of the 2013 Settlement Agreement, if DEF acquires the Osprey Plant it will petition to recover the costs of that acquisition through a base rate increase at the time of the acquisition. The closing for the Osprey Plant acquisition is expected to occur in January 2017. Alternatively, if DEF cannot acquire the Osprey Plant, and DEF moves forward to build the Suwannee Simple Cycle Project, DEF will petition to recover the costs to build

that project through a base rate increase when the unit is placed in service in 2017. (Borsch)

OSPREY: Because the Osprey Energy Center, to be acquired by DEF pursuant to the Asset Purchase and Sale Agreement, is the best and most cost-effective generation supply alternative available to meet the needs of DEF and its customers prior to 2018, the Commission should approve DEF's requests for timely recovery of its payments for the Osprey Plant. Osprey LLC takes no position as to the specific timing and method of DEF's requests for such cost recovery.

OPC: Pursuant to Paragraph 16 of the Revised and Restated Stipulation and Settlement Agreement (RRSSA), Duke may "request" cost recovery closer in time to the in-service date of the proposed generation resources. At that time, Duke can assumedly request recovery of the actual (or nearly final estimated or projected) costs incurred to place the resources in service on a reasonable time frame in advance of the actual in-service date, subject to true-up for costs actually incurred at or below the estimate provided, and further subject to an opportunity to meet any extraordinary burden of proof for costs exceeding the estimates provided in the CPVRR analysis supporting its filing for approval of the two options in this Docket. The proceeding held to implement base rate cost recovery is the time when Duke must meet its burden of demonstrating the prudence of all costs for which it seeks recovery. Cost recovery may not occur until the resources are actually in service.

FIPUG: Costs should not be recovered until the asset(s) in question is placed into service and is providing energy and/or capacity for the use and benefit of ratepayers.

PCS: PCS agrees with the Office of Public Counsel.

STAFF: Staff has no position pending evidence adduced at the hearing.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
	<u>Direct</u>		
Mark E. Landseidel	DEF	MEL-1	A map showing the location of the Suwannee power plant site in Suwannee County, Florida.

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Mark E. Landseidel	DEF	MEL-2	The preliminary layout of the Suwannee Simple Cycle project at the Suwannee power plant site.
Mark E. Landseidel	DEF	MEL-3	An itemization of the major cost items for the Suwannee Simple Cycle project.
Mark E. Landseidel	DEF	MEL-4	CONFIDENTIAL – The projected schedule for completion of the Suwannee Simple Cycle project.
Edward L. Scott	DEF	ELS-1	CONFIDENTIAL – A copy of Mr. Scott’s May 27, 2014 Direct Testimony and Exhibits filed in Docket No. 140111-EI, In re: Petition for Determination of Cost Effective Generation Alternative to Meet Need Prior to 2018 for Duke Energy Florida, Inc.
Kevin E. Delehanty	DEF	KED-1	CONFIDENTIAL – A copy of Mr. Delehanty’s May 27, 2014 Direct Testimony filed in Docket No. 140111-EI in re: Petition for Determination of Cost Effective Generation Alternative to Meet Need Prior to 2018 for Duke Energy Florida, Inc., along with Exhibit Nos. ___ (KD-1) through (KD-4).
Kevin E. Delehanty	DEF	KED-2	CONFIDENTIAL - A chart of the Company’s base, high, and low natural gas price forecast.

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Kevin E. Delehanty	DEF	KED-3	CONFIDENTIAL - A chart of the Company's base natural gas price forecast and other industry natural gas price forecasts.
Kris G. Edmondson	DEF	KGE-1	A map showing the location of the Osprey Energy Center in Auburndale, Polk County, FL.
Kris G. Edmondson	DEF	KGE-2	CONFIDENTIAL - The Technical Due Diligence Evaluation report for the Osprey Energy Center prepared by Burns & McDonnell Engineering Company, Inc.
Kris G. Edmondson	DEF	KGE-3	CONFIDENTIAL - The Pro Forma Maintenance Cost Summary Projections for the Osprey Plant.
Matthew E. Palasek	DEF	MEP-1	CONFIDENTIAL - The August 25, 2014 term sheet between DEF and Calpine for DEF's acquisition of the Osprey Plant.
Matthew E. Palasek	DEF	MEP-2	CONFIDENTIAL - The APA between DEF and Calpine for DEF's acquisition of the Osprey Plant, including Amendments 1, 2, 3, and 4.

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Benjamin M.H. Borsch	DEF	BMHB-1	CONFIDENTIAL – A composite exhibit of (i) Mr. Borsch’s direct testimony and exhibits and (ii) the direct testimony and exhibits of DEF’s expert Julie Solomon, who performed the FERC Competitive Analysis Screen qualitative analysis for DEF’s evaluation of generation alternatives to meet its need prior to 2018, filed with the Commission in Docket No. 140111-EI on May 27, 2014.
Benjamin M.H. Borsch	DEF	BMHB-2	CONFIDENTIAL – A composite exhibit of (i) Mr. Borsch’s rebuttal testimony and exhibits and (ii) the rebuttal testimony and exhibits of DEF’s expert Julie Solomon, who performed the FERC Competitive Analysis Screen qualitative analysis for DEF’s evaluation of generation alternatives to meet its need prior to 2018, filed with the Commission in Docket No. 140111-EI on August 5, 2014.

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Benjamin M.H. Borsch	DEF	BMHB-3	The Company's final detailed economic analysis results that demonstrate the Osprey Plant acquisition is a more cost-effective generation alternative than the Suwannee Simple Cycle Project, if the requisite regulatory approvals for the Osprey Plant acquisition are obtained in accordance with the terms of the Asset Purchase and Sale Agreement between DEF and Calpine.
Benjamin M.H. Borsch	DEF	BMHB-4	The Company's forecast of summer peak demands and reserves with and without additional generation capacity in the summers of 2016 and 2017.

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

X. PROPOSED STIPULATIONS

DEF and FIPUG have stipulated as follows:

Duke Energy Florida, Inc. provides electrical service to FIPUG members; this proceeding affects the substantial interests of FIPUG members who receive electrical service from Duke Energy Florida, Inc.; FIPUG has standing in this matter for trial and appellate purposes.

XI. PENDING MOTIONS

There are no pending motions.

XII. PENDING CONFIDENTIALITY MATTERS

There are no pending confidentiality requests.

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 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. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, statement of issues and positions, and brief, shall together total no more than 30 pages and shall be filed at the same time. Consistent with Order No. PSC-15-0110-PCO-EI, issued in this Docket on February 20, 2015, the deadline for such post-hearing filings shall be June 19, 2015. A recommended order will be issued and, pursuant to Section 120.57(1)(k), F.S., the parties will have 15 days in which to submit written exceptions to the recommended order.

XIV. RULINGS

The parties have agreed that opening statements shall be in accordance with the following: DEF not to exceed 10 minutes and
Osprey, OPC, FIPUG and PCS not to exceed 5 minutes each.

It is therefore, hereby

ORDERED by Commissioner Julie I. Brown, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Hearing Officer.

By ORDER of Commissioner Julie I. Brown, as Prehearing Officer, this 28th day of May, 2015.



JULIE I. BROWN
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.

CWM

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.