

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 150043-EI

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.

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PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONER
PARTICIPATING: COMMISSIONER JULIE I. BROWN
PREHEARING OFFICER

DATE: Wednesday May 20, 2015

TIME: Commenced at 1:30 p.m.
Concluded at 1:43 p.m.

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

REPORTED BY: LINDA BOLES, CRR, RPR
Official FPSC Reporter
(850) 413-6734

1 APPEARANCES:

2 MATTHEW R. BERNIER, ESQUIRE, 106 East College
3 Avenue, Suite 800, Tallahassee, Florida 32301-7740; JOHN
4 T. BUTLER, DIANNE TRIPLETT, MICHAEL WALLS and BLAISE N.
5 GAMBA, ESQUIRES, 299 First Avenue North, St. Petersburg,
6 Florida 33701, appearing on behalf of Duke Energy
7 Florida, Inc.

8 ROBERT SCHEFFEL WRIGHT and JOHN T. LaVIA III,
9 ESQUIRES, Gardner Law Firm, 1300 Thomaswood Drive,
10 Tallahassee, Florida 32308, appearing on behalf of
11 Osprey Energy Center, LLC.

12 OWEN J. KOPON, JAMES W. BREW and LAURA A.
13 WYNN, ESQUIRES, Brickfield, Burchette, Ritts & Stone,
14 P.C., 1025 Thomas Jefferson Street, NW, Eighth Floor,
15 West Tower, Washington, DC 20007, appearing on behalf of
16 White Springs Agricultural Chemicals, Inc. d/b/a PCS
17 Phosphate - White Springs.

18 CHARLES REHWINKEL, DEPUTY PUBLIC COUNSEL,
19 ESQUIRE, Office of Public Counsel, c/o the Florida
20 Legislature, 111 W. Madison Street, Room 812,
21 Tallahassee, Florida 32399-1400, appearing on behalf of
22 the Citizens of the State of Florida.

1 APPEARANCES (Continued):

2 CHARLES W. MURPHY, ESQUIRE, on behalf of
3 Commission Staff, Florida Public Service Commission,
4 2540 Shumard Oak Boulevard, Tallahassee, Florida
5 32399-0850.

6 CHARLIE BECK, GENERAL COUNSEL, and MARY ANNE
7 HELTON, ESQUIRE, Florida Public Service Commission, 2540
8 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850,
9 appearing as advisors to the Commission.

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P R O C E E D I N G S

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2 **COMMISSIONER BROWN:** Good afternoon,
3 everybody. We are going to begin.

4 I'd like to call this prehearing to order in
5 Docket 150043-EI. The time is 1:30, and it is May 20th,
6 2015. And I would like staff to read the notice,
7 please, Mr. Murphy.

8 **MR. MURPHY:** By notice published May 5th,
9 2015, this time and place is set for a Prehearing
10 Conference in Docket 150043-EI. The purpose of the
11 Prehearing Conference is set out in the notice.

12 **COMMISSIONER BROWN:** Thank you so much. And I
13 will take appearances starting with my left, which we'll
14 start with Mr. Wright.

15 **MR. WRIGHT:** Thank you. Robert Scheffel
16 Wright and John T. LaVia III on behalf of Osprey Energy
17 Center, LLC.

18 **MR. BERNIER:** Good afternoon, Commissioner.
19 Matt Bernier for Duke Energy. I'd also like to enter
20 appearances for John Burnett and Dianne Triplett, as
21 well as James Michael Walls and Blaise Gamba with
22 Carlton, Fields, Jorden, Burke.

23 **COMMISSIONER BROWN:** Thank you.

24 **MR. KOPON:** Owen Kopon on behalf of PCS
25 Phosphate. I'd like to enter an appearance for James

1 Brew and Laura Wynn also.

2 **COMMISSIONER BROWN:** Thank you.

3 **MS. PUTNAL:** Hi. Karen Putnal for the Florida
4 Industrial Power Users Group. I'd like to enter an
5 appearance for Jon C. Moyle as well.

6 **COMMISSIONER BROWN:** Thank you.

7 **MR. REHWINKEL:** Good afternoon, Commissioner.
8 Charles Rehwinkel on behalf of the Office of Public
9 Counsel.

10 **COMMISSIONER BROWN:** Thank you. And staff.

11 **MR. MURPHY:** Charles Murphy on behalf of the
12 Commission staff.

13 **MS. HELTON:** And Mary Anne Helton, advisor to
14 the Commission.

15 **MR. BECK:** Charlie Beck, General Counsel.

16 **COMMISSIONER BROWN:** Thank you so much for
17 being here.

18 Mr. Murphy, preliminary matters. Do we need
19 to address any preliminary matters before we get into
20 the draft Prehearing Order today?

21 **MR. MURPHY:** There are none at this time.

22 **COMMISSIONER BROWN:** Okay. Anything from the
23 parties? Seeing none, I would like to expeditiously
24 walk through the draft Prehearing Order, and I'll -- as
25 usual, I'll identify the sections. Please speak up if

1 there are any corrections or changes that need to be
2 made, but I will go through it pretty swiftly at this
3 time, starting with Section I, the case background.
4 Seeing any changes from the parties? None.

5 We'll move to Section II, conduct of
6 proceedings. Seeing any corrections? None.

7 Section III, jurisdiction. Changes? Seeing
8 none.

9 Section IV, the procedure for handling
10 confidential information. As you know, the
11 prehearing -- the requirements for dealing with
12 confidential data, if you plan to use it for cross, you
13 already have those available to you. If you have any
14 questions about that or any procedural issues, please
15 contact our legal staff who will be available to discuss
16 those with you.

17 Section V, the prefiled testimony and
18 exhibits as well as witnesses. And I would like to
19 ask, Mr. Murphy, are there any witnesses that you know
20 of that can be excused at this time?

21 **MR. MURPHY:** I'm not aware of any, but I
22 believe Duke may have a request in that regard.

23 **MR. BERNIER:** Yes, we do. Thank you,
24 Commissioner. Mark Landseidel is going to be
25 unavailable due to medical issues.

1 **COMMISSIONER BROWN:** Due to what issue?

2 **MR. BERNIER:** Medical issues.

3 **COMMISSIONER BROWN:** Oh, I'm sorry.

4 **MR. BERNIER:** Yes. So we will be filing a
5 notice of adoption of testimony to have his testimony
6 adopted by his supervisor, and then his supervisor would
7 be available at hearing should anybody need to question
8 him.

9 **COMMISSIONER BROWN:** Any objection? Seeing
10 none.

11 Do any of the parties have -- object to any of
12 the witnesses being excused?

13 **MR. WRIGHT:** We do not object to any of the
14 witnesses being excused.

15 **MR. BERNIER:** Nor do we.

16 **COMMISSIONER BROWN:** PCS?

17 (No response.)

18 Okay. I'll go to Mr. Rehwinkel.

19 **MR. REHWINKEL:** Is -- when you -- we have not
20 identified any witnesses other than Mr. Landseidel at
21 Duke's request being excused. If, if we do go to
22 hearing, we will have questions for the witnesses that
23 they have presented.

24 **COMMISSIONER BROWN:** All of the witnesses?

25 **MR. REHWINKEL:** At this time, yes,

1 Commissioner.

2 **COMMISSIONER BROWN:** Okay. Thanks.

3 Staff, do you have anything to note regarding
4 the witnesses?

5 **MR. MURPHY:** One thing for clarification, did
6 we get an agreement that -- and I don't know how to
7 pronounce his name -- is he agreeable to be excused?

8 **COMMISSIONER BROWN:** Mr. Rehwinkel?

9 **MR. REHWINKEL:** Mr. Landseidel?

10 **COMMISSIONER BROWN:** Uh-huh.

11 **MR. REHWINKEL:** I think the Public Counsel and
12 PCS have agreed, but I don't think that FIPUG has been
13 able to confirm whether they could agree to excuse him
14 yet. Ms. Putnal can --

15 **MS. PUTNAL:** Right. And I wasn't clear if a
16 witness would be made available for cross-examination or
17 if he's excused and it would just go in as his filed
18 testimony.

19 **COMMISSIONER BROWN:** Mr. Bernier.

20 **MR. BERNIER:** Yeah. What we would propose to
21 do is have his testimony, his direct testimony adopted
22 by his supervisor. It would be Mike Delowery, who's
23 testified here before.

24 **COMMISSIONER BROWN:** Uh-huh.

25 **MR. REHWINKEL:** And then we would make

1 Mr. Delowery available for cross-examination, should
2 anybody have questions for him.

3 **COMMISSIONER BROWN:** Is that suitable?

4 **MS. PUTNAL:** That's, that's suitable. Thank
5 you.

6 **MR. REHWINKEL:** But to be clear, if there is
7 agreement by FIPUG, we agree to his testimony going in
8 without cross. I mean, that's, that's, that's what I
9 think we've agreed to.

10 **COMMISSIONER BROWN:** FIPUG, you're on deck?

11 **MS. PUTNAL:** With that, I'll need to touch
12 base with Mr. Moyle, but I should be able to get an
13 answer back by the end of the day tomorrow.

14 **COMMISSIONER BROWN:** Okay. And Friday at the
15 latest.

16 **MS. PUTNAL:** Yes.

17 **COMMISSIONER BROWN:** Close of business.

18 And PCS?

19 **MR. KOPON:** We, we agree to that.

20 **COMMISSIONER BROWN:** Okay. So -- and, Mr.
21 Wright, sorry, you're all the way down there.

22 **MR. WRIGHT:** We're completely amenable to
23 Mr. Landseidel's testimony being entered and exhibits
24 received. Thank you.

25 **COMMISSIONER BROWN:** Thank you for putting

1 that on the record.

2 Is that okay?

3 **MR. MURPHY:** Yes. Thank you. And with that,
4 staff recommends that each witness be given three
5 minutes at hearing to summarize his or her testimony.

6 **COMMISSIONER BROWN:** Or less.

7 **MR. MURPHY:** Or less.

8 **COMMISSIONER BROWN:** That's great. Okay.

9 **MR. REHWINKEL:** Madam Commissioner, may I ask
10 a -- if we could revert to Section IV. The only
11 confidential information that the Public Counsel
12 would -- assuming that we, we do go to live hearing, the
13 only confidential information the Public Counsel would
14 propose to use in cross-examination would be an exhibit
15 attached to -- I forget the witness's name, but it is
16 the witness who sponsors the, the agreement, the APA.

17 **COMMISSIONER BROWN:** Three, witness Matthew
18 Palasek.

19 **MR. REHWINKEL:** Palasek, yes. That's the only
20 confidential information that we would propose to use.
21 And what we have done in the past with this new regime
22 is that we notify the staff and they make those copies
23 available to the Commissioners through the normal
24 process. Is that --

25 **COMMISSIONER BROWN:** That's amenable.

1 **MR. REHWINKEL:** Okay.

2 **COMMISSIONER BROWN:** Yes.

3 **MR. REHWINKEL:** Yeah. Thank you.

4 **COMMISSIONER BROWN:** Okay. We are on Section
5 VI, the order of witnesses. Any changes other than as
6 proposed by Duke? All right.

7 So Section VII, basic positions. Any changes?
8 Seeing none.

9 Moving to Section VIII, are there any changes
10 or corrections to the issues or the party positions?

11 Mr. Rehwinkel.

12 **MR. REHWINKEL:** Yes, Commissioner. We have --
13 yesterday we emailed a Word version of our position on
14 Issue 3.

15 **COMMISSIONER BROWN:** I'm in receipt of it.
16 Are the parties also in receipt of it?

17 **MR. KOPON:** Yes, Commissioner.

18 **MR. REHWINKEL:** So I don't think I need to
19 take, put that on the record.

20 **COMMISSIONER BROWN:** Thank you.

21 **MR. REHWINKEL:** The staff has it and they can
22 insert it into the order.

23 **COMMISSIONER BROWN:** Okay. Any other changes
24 to the parties?

25 Okay. Staff, do you have anything to add?

1 **MR. MURPHY:** No, ma'am.

2 **COMMISSIONER BROWN:** Okay. Thank you so much.
3 Section IX, exhibit list. Are there any
4 changes or corrections? None? Okay. Seeing none from
5 the parties.

6 Staff, anything to note?

7 **MR. MURPHY:** Yes. Staff has prepared a
8 Comprehensive Exhibit List which includes all prefiled
9 exhibits and also includes those exhibits staff wishes
10 to include in the record. Staff will check with the
11 parties prior to hearing to determine if there are any
12 objections to the Comprehensive Exhibit List or to any
13 of staff's exhibits being entered into the record.

14 **COMMISSIONER BROWN:** Thank you so much,
15 Mr. Murphy.

16 Section X, proposed stipulations. Staff.

17 **MR. MURPHY:** DEF and FIPUG have a stipulation
18 regarding FIPUG's standings. There are no other
19 stipulations at this time. Staff will continue to work
20 with the parties to obtain stipulations. Any
21 stipulations entered into by close of business on Friday
22 will be listed at this part of the order. A list of any
23 stipulations entered into after the Prehearing Order is
24 issued will be provided to the Commissioners prior to
25 the hearing.

1 **COMMISSIONER BROWN:** Thank you. Any questions
2 on that?

3 All right. Moving to Section XI, pending
4 motions. It's my understanding that there are no
5 pending motions.

6 **MR. MURPHY:** That's right.

7 **COMMISSIONER BROWN:** Okay. Parties? Seeing
8 none.

9 Section XII, pending confidentiality. The
10 same goes for that, Mr. Murphy?

11 **MR. MURPHY:** Yes.

12 **COMMISSIONER BROWN:** Okay. Same here.
13 Section XIII, the post-hearing procedures.
14 Mr. Murphy.

15 **MR. MURPHY:** Staff recommends post-hearing
16 briefs, if any, be no longer than 30 pages.

17 **COMMISSIONER BROWN:** Okay. That's reasonable.
18 I will adopt that.

19 Section XIV, the rulings. It is my
20 understanding that the parties have agreed that the
21 opening statements shall be in accordance with the
22 following. Duke will -- Duke's opening statement will
23 not exceed ten minutes. Osprey, OPC, FIPUG, and PCS
24 will not exceed five minutes each. Is that everyone
25 else's understanding?

1 **MR. BERNSTEIN:** Yes.

2 **MR. WRIGHT:** Yes.

3 **COMMISSIONER BROWN:** Yes. Seeing a mutual yes
4 among all of the parties, we will move to other matters.

5 I would like to let the parties know that
6 pursuant to the Chairman's request, I will be presiding
7 as the hearing officer of this docket in accordance with
8 Section 350.01 of the *Florida Statutes*. And we have our
9 General Counsel here, Mr. Charlie Beck, to be made
10 available to answer any questions you may have regarding
11 the process of this proceeding. Does anybody?

12 **MR. REHWINKEL:** Am I to understand that there
13 will be a panel instead of all five Commissioners?

14 **COMMISSIONER BROWN:** It will be a panel of
15 one.

16 **MR. REHWINKEL:** Oh, I see. Okay.

17 **MR. BECK:** So, Charles, this will change the
18 post-hearing procedures a bit. Commissioner Brown will
19 issue a recommended order. The parties will be given an
20 opportunity prior to that to give proposed findings of
21 fact and conclusions of law as well as a brief.

22 After Commissioner Brown issues the
23 recommended order, there will be an opportunity to file
24 written exceptions. And then the recommended order and
25 the written exceptions then go to the full Commission

1 for -- I think it's the August Agenda Conference.

2 **MR. REHWINKEL:** Okay. Will what you just
3 described, will that be in the Prehearing Order or --

4 **MR. BECK:** We will need to issue something.
5 It may be an amendatory order or --

6 **MR. REHWINKEL:** Okay.

7 **MR. BECK:** Yes. There will be something.

8 **COMMISSIONER BROWN:** We have discussed that
9 amongst staff, and we will have something that comes
10 out. It may not, it may not be in the prehearing order,
11 but it will be subsequent, before the hearing.

12 **MR. REHWINKEL:** Okay. Thank you. That will
13 be helpful. Thank you.

14 **COMMISSIONER BROWN:** Any other questions by
15 any of the parties? Mr. Murphy, are there any other
16 preliminary -- other matters? Pardon me.

17 **MR. MURPHY:** Yes. Any information that's
18 anticipated to be provided to staff by the parties as a
19 result of this prehearing should be provided to staff by
20 close of business on Friday.

21 Duke, if you could get me your witnesses, the
22 spelling of their name, and if FIPUG could let me know
23 if they're agreeable to stipulate in the testimony, then
24 we wouldn't have to go there on the new witness.

25 **COMMISSIONER BROWN:** Okay. Sounds amenable.

1 If there are no other issues right now, this concludes
2 the Prehearing Conference. And I will see you all
3 Wednesday, June 3rd, at 9:30. Thank you so much.

4 (Prehearing Conference adjourned at 1:43 p.m.)
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1 STATE OF FLORIDA)
2 COUNTY OF LEON) : CERTIFICATE OF REPORTER

3
4 I, LINDA BOLES, CRR, RPR, Official Commission
5 Reporter, do hereby certify that the foregoing
6 proceeding was heard at the time and place herein
7 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 21st day of May, 2015.

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LINDA BOLES, CRR, RPR
FPSC Official Hearings Reporter
(850) 413-6734