

State of Florida



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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:** July 9, 2015

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Division of Engineering (Matthews, King, Mtenga)  
Division of Accounting and Finance (Barrett, Brown, Bulecza-Banks, Buys, Cicchetti) *MB*  
Division of Economics (Higgins, McNulty, Wu) *WGM*  
Office of the General Counsel (Murphy) *CM/KCF* *WGM* *IN*

**RE:** 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.

**AGENDA:** 07/21/15 – Regular Agenda – Post-Hearing Decision – Participation is Limited to Commissioners and Staff

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Brown

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** Post Hearing Review/ Approval of Hearing Officer's Recommended Order

## 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”),<sup>1</sup> DEF petitioned the Florida Public Service Commission (Commission) for a determination that

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

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 asked for a determination that construction of its Suwannee Simple Cycle Project is the most cost-effective generation to meet DEF's remaining need.<sup>2</sup> 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.<sup>3</sup> However, on the first day of the hearing in Docket No. 140111-EI,<sup>4</sup> 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 (APA)<sup>5</sup> for the Osprey Plant, which is the subject of the instant proceeding.

Petitions to Intervene by Florida Industrial Power Users Group (FIPUG), Osprey Energy Center, LLC (Osprey), and White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate-White Springs (PCS) were granted, and the Notice of Intervention by the Office of Public Counsel (OPC) was acknowledged. An administrative hearing to address DEF's Petition was held on June 3, 2015. Just prior to the hearing date, all of the parties proposed a stipulation of the issues in this case, which is memorialized in a document entitled "Docket 150043 Proposed Stipulations" and included in the hearing record as Exhibit 29. In light of the stipulation of issues, the parties agreed to the admission of all exhibits reflected in the Comprehensive Exhibit List<sup>6</sup> and all prefiled testimony in this docket. The parties also agreed to waive cross-examination of the witnesses, the filing of post-hearing briefs and the filing of exceptions to the recommended order. Upon request and with no objection from any of the parties, PCS was excused from the hearing as well as DEF's witnesses. At hearing, OPC made a statement for the record that PCS also supports the proposed stipulation. The Hearing Officer approved the stipulation as memorialized in Exhibit 29.

On June 12, 2015, the Hearing Officer submitted a Recommended Order to the full Commission for review and approval. The Recommended Order is the subject of staff's recommendation and is included in this recommendation as Attachment A. 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.

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<sup>2</sup> 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.

<sup>3</sup> Docket No. 140111-EI.

<sup>4</sup> August 26, 2014.

<sup>5</sup> Asset Purchase and Sale Agreement by and between Duke Energy Florida, Inc. and Osprey Energy Center, LLC. dated December 17, 2014, as amended.

<sup>6</sup> Exhibit 1, comprised of all exhibits proffered by Commission staff and the parties.

### **Discussion of Issues**

**Issue 1:** Should the Commission approve the Hearing Officer's Recommended Order?

**Recommendation:** Yes. Staff recommends that the Commission approve the Hearing Officer's Recommended Order. (Matthews, Murphy)

**Staff Analysis:** The parties to this docket have agreed to stipulate the issues in this case as set forth in the Recommended Order, and waived the filing of post hearing briefs and exceptions to the Recommended Order. The Hearing Officer has recommended that the Commission a) approve the proposed stipulation of the issues, b) find that the proposed stipulation of the issues to be in the public interest, and c) close the docket. Staff recommends that the proposed stipulation is supported by the record in this case and is accurately reflected in the Recommended Order. Therefore, staff recommends that the Recommended Order be approved by the Commission and a final order issued.

**Issue 2:** Should this docket be closed?

**Recommendation:** With the approval of the Recommended Order and issuance of a final order in this docket, nothing remains to be done and this docket should be closed. (Matthews, Murphy)

**Staff Analysis:** With the approval of the Recommended Order and issuance of a final order in this docket, nothing remains to be done and this docket should be closed.

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

SUBMITTED FOR FILING: June 12, 2015

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this docket before the Florida Public Service Commission by its duly designated Hearing Officer, Commissioner Julie I. Brown, on June 3, 2015, in Tallahassee, Florida.

APPEARANCES:

ROBERT SCHEFFEL WRIGHT and JOHN T. LAVIA III, ESQUIRES,  
GARDNER Law Firm, 1300 Thomaswood Drive, Tallahassee, FL 32308  
On behalf of Osprey Energy Center (OSPREY)

DIANNE TRIPLETT, ESQUIRE, 299 First Avenue, N., St. Petersburg, FL 33701  
On behalf of Duke Energy Florida, Inc. (DEF or Company)

CHARLES J. REHWINKEL, DEPUTY PUBLIC COUNSEL, and J.R. KELLY,  
PUBLIC COUNSEL, Office of Public Counsel, c/o the Florida Legislature, 111  
W. Madison Street, Room 812, Tallahassee, FL 32399-1400  
On behalf of Citizens of the State of Florida (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)

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 (Staff)

CHARLIE BECK, GENERAL COUNSEL, and MARY ANNE HELTON,  
DEPUTY GENERAL COUNSEL, Florida Public Service Commission, 2540  
Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
Advisors to the Florida Public Service Commission

### 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”),<sup>7</sup> 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 asked for a determination that construction of its Suwannee Simple Cycle Project is the most cost-effective generation to meet DEF’s remaining need.<sup>8</sup> 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.<sup>9</sup> However, on the first day of the hearing in Docket No. 140111-EI,<sup>10</sup> 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 (APA)<sup>11</sup> for the Osprey Plant, which is the subject of the instant proceeding.

Petitions to intervene by FIPUG, Osprey, and White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate-White Springs (PCS) were granted, and the Notice of Intervention by OPC was acknowledged. An administrative hearing to address DEF’s Petition was held on June 3, 2015. Just prior to the hearing date, all of the parties proposed a stipulation of the issues in this case, which is memorialized in a document entitled “Docket 150043 Proposed Stipulations” and included in the hearing record as Exhibit 29. In light of the stipulation of issues, the parties agreed to the admission of all exhibits reflected in the Comprehensive Exhibit List<sup>12</sup> and all prefiled testimony in this docket. The parties also agreed to waive cross-examination of the witnesses, the filing of post-hearing briefs and the filing of exceptions to this recommended order. Upon request and with no objection from any of the parties, PCS was excused from the hearing as well as DEF’s witnesses. At hearing, OPC made a statement for the record that PCS also supports the proposed stipulation.

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.

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<sup>7</sup> Approved by Order No. PSC-13-0598-FOF-EI, issued on November 12, 2013, in Docket No. 130208-EI.

<sup>8</sup> 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.

<sup>9</sup> Docket No. 140111-EI.

<sup>10</sup> August 26, 2014.

<sup>11</sup> Asset Purchase and Sale Agreement by and between Duke Energy Florida, Inc. and Osprey Energy Center, LLC, dated December 17, 2014, as amended.

<sup>12</sup> Exhibit 1, comprised of all exhibits proffered by Commission staff and the parties.

## ISSUES

The parties have proposed that the issues in this docket be resolved and stipulated as follows:

### **Issue 1: Does DEF have a need for additional generation capacity prior to 2018?**

Yes, DEF has a need for additional generation capacity prior to 2018, as demonstrated in its testimony and exhibits in this docket.<sup>13</sup>

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

Yes, the acquisition of the Osprey Plant is the most cost effective way to meet DEF's generation need prior to 2018, if the Osprey Plant acquisition is approved by the requisite regulatory authorities in accordance with the APA.<sup>14</sup>

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

DEF entered into an Asset Purchase and Sale Agreement ("APA") with Osprey Energy Center, LLC as the assignee of Calpine Construction Finance Company, L.P. ("Calpine") to purchase Calpine's Osprey Plant.

The APA contains provisions that are intended to protect DEF's customers if certain contingencies occur related to the proposed acquisition of the Osprey Plant.

Unless mutually agreed by the Stipulating Parties, the parties agree that DEF must strictly enforce all of the provisions of the APA, and DEF agrees that it will strictly enforce those provisions.

DEF agrees that it will not and cannot use cost savings that may be realized in integrating the Osprey Plant into DEF's system, including transmission costs, to diminish or do away with any of the provisions, protections, or limitations contained in the APA.

DEF agrees that only reasonable and prudent costs will be recovered through the GBRA mechanism and that DEF bears the burden of proof regarding prudence. As part of this stipulation, DEF agrees that the "extraordinary circumstances standard" found in F.A.C. Rule 25-22.082(15) applies to this transaction, as if DEF had selected the self-build option.<sup>15</sup>

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<sup>13</sup> Stipulation joined by DEF, Osprey, and staff. The remaining parties take no position on this issue.

<sup>14</sup> Stipulation joined by DEF, Osprey, and staff. The remaining parties take no position on this issue.

<sup>15</sup> Stipulation joined by all parties except Osprey, which takes no position on this issue.

**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?**

The Parties agree that if DEF cannot acquire the Osprey Plant, construction of the Suwannee Simple Cycle Project is the next most cost-effective alternative, and that DEF bears the burden of demonstrating that only reasonable and prudent costs for that project are recovered in rates.<sup>16</sup>

**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?**

Pursuant to Paragraph 16 of the Revised and Restated Stipulation and Settlement Agreement ("RRSSA"), DEF may request cost recovery closer in time to the in-service date of the proposed generation resource. At that time, DEF can 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 the applicable burden(s) of proof referenced in the stipulations to Issues 3 and 4 above. Cost recovery may not occur until the resources are actually in service.<sup>17</sup>

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<sup>16</sup> Stipulation joined by all parties except Osprey, which takes no position on this issue.

<sup>17</sup> Stipulation joined by all parties except Osprey, which takes no position on this issue.



RECOMMENDATION

Having reviewed the proposed stipulation of issues by the parties as identified above, the testimony and exhibits, and the parties' statements at hearing, it is recommended that the Commission enter a final order:

- a. Approving the proposed stipulation of the issues;
- b. Finding the proposed stipulation of issues to be in the public interest; and
- c. Closing the docket.

Respectfully submitted,

/s/ Julie I. Brown  
JULIE I. BROWN  
Commissioner and Hearing 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.