



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

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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 2nd day of June, 2020.

/s/ Matthew R. Bernier

Attorney

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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

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]

“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] 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 to 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] [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
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“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 to 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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**DUKE ENERGY FLORIDA
Confidentiality Justification Matrix**

DOCUMENT/RESPONSES	PAGE/LINE	JUSTIFICATION
<p>DEF’S Exceptions to the 2020 Recommended Order from the State of Florida Division of Administrative Hearings</p>	<p><u>Exception to RO ¶ 110</u> <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. 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) Jt. 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.

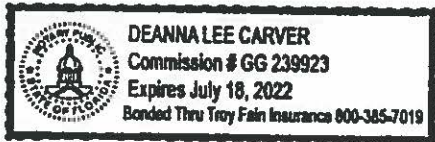
Dated the 28th day of May, 2020.

JE 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)
0
(Serial Number, If Any)