

REDACTED

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination that)
the Osprey Plant Acquisition and,)
alternatively, the Suwannee Simple)
Cycle Project is the most Cost Effective)
Generation Alternative to meet the)
Remaining Need Prior to 2018 for)
Duke Energy Florida, Inc.)

DOCKET NO. 150043-EI

Submitted for filing: February 20, 2015

RECEIVED-FPSC
15 FEB 20 PM 1:07
COMMISSION
CLERK

DUKE ENERGY FLORIDA, INC.'S FIRST REQUEST FOR CONFIDENTIAL CLASSIFICATION REGARDING PORTIONS OF THE TESTIMONY AND EXHIBITS FILED IN SUPPORT OF DUKE ENERGY FLORIDA'S PETITION

Duke Energy Florida, Inc. ("DEF" or the "Company"), pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006(3), Florida Administrative Code ("F.A.C."), files this Request for Confidential Classification Regarding Portions of the Testimony and Exhibits filed in support of DEF's Petition for Determination That the Osprey Plant Acquisition Or, Alternatively, the Suwannee Simple Cycle Project Is The Most Cost Effective Generation Alternative To Meet Duke Energy Florida's Remaining Need Prior to 2018 (the "Request"). DEF is seeking confidential classification of portions of the materials filed with the Florida Public Service Commission ("FPSC" or the "Commission") in the above referenced docket on January 30, 2015 as more specifically described below and in the justification matrix attached hereto as Exhibit C. DEF's Request is supported by the Affidavits of DEF witnesses Mr. Benjamin M. H. Borsch, Mr. Kevin Delehanty, Mr. Kris G. Edmondson, Mr. Edward L. Scott as well as Mr. Todd Thornton the Senior Vice President, Origination and Development for Calpine Construction Finance Company, L.P. ("Calpine"). DEF is submitting the Affidavit of Mr. Thornton along with its own witness affidavits to support the confidentiality of the identified information because much of the confidential information relates to competitively sensitive business negotiations between DEF and Calpine (hereinafter collectively, the "Parties") and

COM _____
AFD 1
APA _____
ECO 2
ENG 2
GCL 2
IDM _____
TEL _____
CLK _____

competitively sensitive contractual terms of DEF and Calpine's Asset Purchase and Sale Agreement ("APA") for the Osprey Energy Facility Combined Cycle Plant ("Osprey Plant").¹ Some of the identified information is also Calpine's proprietary confidential business information related to the Osprey Plant. DEF and Calpine are also contractually obligated to preserve and protect the confidential and competitively sensitive business information of each other based on reasonable confidentiality agreements entered into as part of the bidding process and the negotiations surrounding the APA.

An unredacted version of the documents identified below is being filed under seal with the Commission as Appendix A on a confidential basis to keep the proprietary confidential business information in those documents confidential.

In further support of this Request, DEF states as follows:

**Proprietary Confidential Business Information is Protected
From Public Disclosure Under Florida Law**

Section 366.093(1), Florida Statutes, provides that "any records received by the Commission which are shown and found by the Commission to be proprietary confidential business information shall be kept confidential and shall be exempt from [the Public Records Act]." § 366.093(1), Fla. Stat. Proprietary confidential business information means information that is (i) intended to be and is treated as private confidential information by the Company, (ii) because disclosure of the information would cause harm, (iii) either to the Company's ratepayers or the Company's business operation, and (iv) the information has not been voluntarily disclosed to the public. § 366.093(3), Fla. Stat. Specifically, "information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms" is defined as proprietary

¹ DEF executed the Asset Purchase and Sale Agreement with Osprey Energy Center, LLC as the assignee of Calpine Construction Finance Company, L.P. for the Osprey Plant.

confidential business information. § 366.093(3)(d), Fla. Stat. Additionally, subsection 366.093(3)(e) defines “information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information,” as proprietary confidential business information. Subsection 366.093(3)(a) also states that information relating to “trade secrets” qualifies as proprietary confidential business information.

Confidential Documents at Issue

DEF is requesting confidential classification of the following testimony and exhibits: (1) portions of the Direct Testimony of Benjamin M.H. Borsch, including portions of his Exhibit BMHB-1 and Exhibit BMHB-2; (2) portions of Exhibits KED-1 through KED-3 to the Direct Testimony of Kevin E. Delehanty; (3) portions of the Direct Testimony of Kris G. Edmondson, including portions of his Exhibits KGE-2 and KGE-3; (4) portions of the Direct Testimony of Mark E. Landseidel, including portions of his Exhibit MEL-4; (5) portions of the Direct Testimony of Matthew E. Palasek, including portions of his Exhibits MEP-1 and MEP-2; and (6) portions of Exhibit ELS-1 to the Direct Testimony of Edward L. Scott. The reasons for this Request are described in more detail below and in the Affidavits incorporated herein and filed contemporaneously with this Request.

Basis for Confidential Classification

As listed above, portions of the Direct Testimony and portions of Exhibits BMHB-1 and BMHB-2 of DEF witness Mr. Borsch contain confidential and sensitive information and numbers regarding the supply-side generation proposal evaluated by the Company to meet its remaining capacity needs prior to 2018, the disclosure of which would impair DEF’s competitive business interests and ability to negotiate favorable contracts, as well as violate contractual nondisclosure provisions of these bids. See Affidavit of Borsch, ¶¶ 3-4. In order to obtain such proposals, DEF must be able to ensure potential bidders that the terms of their bids will be kept

confidential. Id. If such assurances are not provided, and potential bidders know that the terms of their bids are subject to public disclosure, they might withhold sensitive information necessary for DEF to fully understand and accurately assess the costs and benefits of their proposals. Id. Persons or companies who otherwise would have submitted bids in response to the utility's Request for Proposal might not do so if there is no assurance that their proposals would be protected from disclosure. Id. Furthermore, the information at issue relates to the bids submitted by the bidding entities, including Calpine, and thus impacts the competitive interests of DEF and the bidding entities because disclosure of what one entity is willing to include in one bid could impair their competitive business interests in future bid events. See Affidavit of Borsch, ¶ 4; Affidavit of Thornton ¶ 4. As such, this information qualifies as "information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information," under § 366.093(3)(e), Fla. Stat., and as "information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms" under § 366.093(3)(d), Fla. Stat., and as proprietary confidential business information under the statute.

Additionally, DEF is requesting confidential classification of portions of Exhibits KED-1, KED-2 and KED-3 to the Direct Testimony of DEF witness Mr. Delehanty. These exhibits contain confidential information related to the Company's long-term forecasts for fuel pricing. This information would adversely impact DEF's competitive business interests if disclosed to third parties by allowing third parties access to DEF's forecasting expertise and strategic projections. See Affidavit of Delehanty, ¶ 3. In many instances, DEF is also contractually obligated to preserve the proprietary information and forecasts of its vendors contained in these exhibits. See Affidavit of Delehanty, ¶ 3. As such, this information qualifies as proprietary confidential business information under subsection 366.093(3)(d) and (e), Fla. Stat.

DEF is also requesting confidential classification of portions of the Direct Testimony and Exhibit Nos. KGE-2 and KGE-3 of Kris G. Edmondson. Mr. Edmondson's testimony and exhibits contain confidential information relating to DEF's future forecasts for operating and maintenance costs for the Osprey Plant and DEF's due diligence review of the Plant. See Affidavit of Edmondson, ¶¶ 4-5. If third parties were to know DEF's specific needs for future maintenance and DEF's projected costs, they could increase the price of those goods and services. See id. Mr. Edmondson's testimony and exhibits also contains other technical and cost information on the Osprey Plant provided to DEF by Calpine through the due diligence process conducted prior to execution of the APA that is considered confidential by Calpine as indicated in the affidavit of Mr. Thornton. See Affidavit of Thornton ¶ 4. The disclosure of this information to third parties would adversely impact DEF's and Calpine's competitive business interests. Affidavit of Edmondson, ¶¶ 4-5; Affidavit of Thornton ¶ 4. Furthermore, Mr. Edmondson's Exhibit KGE-2 is also a proprietary confidential independent consultant technical due diligence report on the Osprey Plant that DEF is contractually obligated to maintain as confidential and also contains Calpine confidential Plant information. Affidavit of Edmondson, ¶ 4; Affidavit of Thornton ¶ 4. As such, this information qualifies as proprietary confidential business information under subsection 366.093(3)(e) and (d), Fla. Stat.

DEF is also requesting confidential classification of portions of the Direct Testimony of Matthew E. Palasek and Exhibit Nos. MEP-1 and MEP-2. Mr. Palasek's testimony and exhibits contain confidential information and terms of the Parties in the APA and Term Sheet attached as exhibits to Mr. Palasek's testimony. See Affidavit of Palasek, ¶ 4. DEF is requesting confidential classification of those documents because public disclosure of the terms of the APA and Term Sheet would impair the Parties' competitive business interests by letting third parties know the confidential, negotiated deal between DEF and Calpine and would thus impair future deals by DEF and Calpine, and would also violate the confidentiality agreement between DEF

and Calpine. See Affidavit of Palasek, ¶ 4; Affidavit of Thornton ¶ 4.

DEF is further requesting confidential classification of portions of the Direct Testimony of Mark E. Landseidel and Exhibit No. MEL-4. Mr. Landseidel's testimony and exhibit contain a confidential term related to the Company's projected schedule for completion of the Suwannee Simply Cycle project as an alternative to the Calpine Osprey Plant acquisition. See Affidavit of Palasek, ¶ 4. The disclosure of the information at issue would impair Calpine's competitive business interests and is a confidential term of the Parties' APA. See Affidavit of Palasek, ¶ 4; Affidavit of Thornton ¶ 4. As such, this information qualifies as proprietary confidential business information under subsection 366.093(3)(d) and (e), Fla. Stat.

Finally, DEF is also requesting confidential classification of Exhibit ELS-1 to the Direct Testimony of Mr. Scott, which is a confidential description of the potential generating facility acquisitions evaluated for transmission cost impacts to the DEF transmission system. Affidavit of Scott, ¶ 3. If third parties were to know DEF's specific transmission needs, considerations and strategic evaluation they could increase the price of those goods and services and/or influence the bid process with such information. Affidavit of Scott, ¶ 4.

In summary, disclosure of any of this information described above would adversely impact DEF's and, in many instances, Calpine's competitive business interests. Affidavit of Borsch, ¶¶ 3-4, Delehanty, ¶ 3, Edmondson, ¶ 5, Palasek, ¶¶ 4-5 and Scott, ¶¶ 3-4, Thornton ¶ 4. If third parties were made aware of confidential contractual terms and conditions that the Company has with other parties, they may offer DEF less competitive contractual terms and conditions in any future contractual negotiations. Id. Moreover, in order to obtain the best deals for DEF's customers DEF must be able to assure its contracting partners that the confidential negotiated terms and conditions of agreements will not be publicly disclosed. Id. Without DEF's measures to maintain the confidentiality of sensitive terms in contracts between DEF and these

contractual partners and/or vendors, the Company's efforts to obtain competitive contracts would be undermined. Affidavits of Borsch, ¶¶ 3-4, Edmondson, ¶ 5, Palasek, ¶ 5 and Scott, ¶¶ 3-4. The documents identified by DEF in this Request contain competitively sensitive confidential information, contractual data and trade secret information and as such qualify as proprietary confidential business information under Florida law.

Confidentiality Procedures

Strict procedures have been established by DEF and are followed to maintain the confidentiality of all of the confidential documents and information at issue. Such procedures including restricting access to those persons who need the information and documents to assist the Company or as provided in the applicable confidentiality agreements with Calpine. See Affidavit of Borsch, ¶¶ 5-6, Delehanty, ¶ 4, Edmondson, ¶ 6, Palasek, ¶ 5 and Scott, ¶¶ 5-6.

At no time has the Company nor has Calpine publicly disclosed the confidential information or documents at issue; DEF and Calpine have treated and continue to treat the information and documents at issue as confidential. See Affidavit of Borsch, ¶¶ 5-6, Delehanty, ¶ 4, Edmondson, ¶ 6, Palasek, ¶ 5 and Scott, ¶¶ 5-6; Affidavit of Thornton ¶ 4.

Conclusion

The information at issue in this Request fits the statutory definition of proprietary confidential business information under Section 366.093, Fla. Stat., and Rule 25-22.006, F.A.C., and therefore DEF requests that this information be afforded confidential classification. In support of this Request, DEF has enclosed the following:

(1) A separate, sealed envelope containing one copy of the confidential Appendix A to DEF's First Request for Confidential Classification containing the information and documents for which DEF is requesting confidential classification with the appropriate section, pages, or lines containing the confidential information highlighted. **This information should be**

accorded confidential treatment pending a decision on DEF's Request by the Commission;

(2) Two copies of the documents with the information for which DEF is requesting confidential classification redacted by section, pages, or lines where appropriate as Appendix B; and,

(3) A justification matrix of the confidential information contained in Appendix A supporting DEF's Request, as Appendix C.

WHEREFORE, DEF respectfully requests that the redacted portions of (1) the Direct Testimony of Benjamin M.H. Borsch including Exhibit BMHB-1 and Exhibit BMHB-2; (2) Exhibits KED-1 through KED-3 to the Direct Testimony of Kevin E. Delehanty; (3) the Direct Testimony of Kris G. Edmonson including Exhibits KGE-2 and KGE-3; (4) the Direct Testimony of Mark E. Landseidel including Exhibit MEL-4; (5) the Direct Testimony of Matthew E. Palasek including Exhibits MEP-1 and MEP-2; and (6) Exhibit ES-1 to the Direct Testimony of Edward L. Scott be afforded confidential classification for the reasons set forth above.

Respectfully submitted this 20th day of February, 2015.

John T. Burnett
Deputy General Counsel
Dianne M. Triplett
Associate General Counsel
DUKE ENERGY FLORIDA, INC.
Post Office Box 14042
St. Petersburg, FL 33733-4042
Telephone: (727) 820-5587
Facsimile: (727) 820-5519


James Michael Walls
Florida Bar No. 0706242
Blaise N. Gamba
Florida Bar No. 0027942
CARLTON FIELDS JORDEN BURT, P.A.
Post Office Box 3239
Tampa, FL 33601-3239
Telephone: (813) 223-7000
Facsimile: (813) 229-4133

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing has been furnished to counsel and parties of record as indicated below via electronic mail this 20th day of February, 2015.



Attorney

Charles Murphy
Shalonda Hopkins
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
cmurphy@psc.state.fl.us
shopkins@psc.state.fl.us

Charles Rehwinkel
Deputy Public Counsel
Erik Sayler
Associate Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400
Phone: (850) 488-9330
Email: rehwinkel.charles@leg.state.fl.us
Sayler.erik@leg.state.fl.us

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination that
the Osprey Plant Acquisition and,
alternatively, the Suwannee Simple
Cycle Project is the most Cost Effective
Generation Alternative to meet the
Remaining Need Prior to 2018 for
Duke Energy Florida, Inc.

DOCKET NO. 150043-EI

Duke Energy Florida, Inc.'s
First
Request for Confidential Classification

EXHIBIT B

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination that
the Osprey Plant Acquisition and,
alternatively, the Suwannee Simple
Cycle Project is the most Cost Effective
Generation Alternative to meet the
Remaining Need Prior to 2018 for
Duke Energy Florida, Inc.

DOCKET NO. _____
Submitted for filing: January 30, 2015

REDACTED

DIRECT TESTIMONY
OF BENJAMIN M. H. BORSCH

ON BEHALF OF
DUKE ENERGY FLORIDA, INC.

JOHN T. BURNETT
Deputy General Counsel
DIANNE M. TRIPLETT
Associate General Counsel
DUKE ENERGY FLORIDA, INC.
299 1st Avenue North
St. Petersburg, Florida 33733
Telephone: (727) 820-5184
Facsimile: (727) 820-5519

JAMES MICHAEL WALLS
Florida Bar No. 706272
BLAISE N. GAMBA
Florida Bar No. 027942
CARLTON FIELDS JORDEN
BURT, P.A.
4221 W. Boy Scout Blvd., Ste.1000
Tampa, Florida 33607
Telephone: (813) 223-7000
Facsimile: (813) 229-4133

1 Simple Cycle Project, pending DEF and Calpine's agreement to an APA and
2 conditioned upon regulatory approval of the acquisition. That same day DEF
3 withdrew its petition with respect to the Suwannee Simple Cycle Project in
4 Docket No. 140111-EI.

5 DEF and Calpine have now agreed to an APA for the Osprey Plant. DEF
6 and Calpine agreed that DEF's acquisition of the Plant to meet DEF's remaining
7 need for additional generation capacity by the summer of 2017 is conditioned
8 upon the timely receipt of all required regulatory approvals for the acquisition. If
9 the requisite regulatory approvals are timely received, as defined in the APA, by
10 [REDACTED], DEF will purchase the Osprey Plant as the most cost-effective
11 generation alternative to meet its remaining need prior to 2018. If the requisite
12 regulatory approvals are not timely received, then DEF cannot purchase the
13 Osprey Plant and DEF will move forward with the Suwannee Simple Cycle
14 Project as the most cost effective generation alternative to meet DEF's remaining
15 generation capacity need by the summer of 2017.

16 For this reason, DEF petitions the Commission to approve the Osprey
17 Plant acquisition and, alternatively, the Suwannee Simple Cycle Project as the
18 most cost effective generation alternative to meet DEF's remaining need for
19 additional generation capacity prior to 2018. The Osprey Plant acquisition is the
20 most cost effective alternative to maintain DEF's electric system reliability and
21 integrity, and provide DEF's customers with adequate electricity at a reasonable
22 cost, by the summer of 2017. If, however, DEF cannot purchase the Osprey Plant
23 because DEF does not receive timely regulatory approvals for that acquisition, the

1 combined cycle generation plant located in Polk County, Florida. DEF will close
2 on the Osprey Plant acquisition in January 2017 if the requisite regulatory
3 approvals in accordance with the terms of the APA are received. DEF cannot
4 purchase the Osprey Plant to fulfill its remaining generation capacity needs prior
5 to 2018 if these regulatory approvals are not obtained. If DEF cannot purchase
6 the Osprey Plant, there will be no closing, and DEF must recommence the
7 Suwannee Simple Cycle Project to meet DEF's remaining need for additional
8 generation capacity by the summer of 2017. The Suwannee Simple Cycle Project
9 involves the construction of a new 320 MW simple cycle combustion turbine
10 plant consisting of two F class combustion turbine units at the Company's
11 existing Suwannee River power plant site. These units would come into service
12 prior to the summer of 2017 if DEF recommences the Suwannee Simple Cycle
13 Project by [REDACTED] This is the most cost-effective generation resource
14 plan that is available to the Company to meet the Company's remaining
15 generation capacity needs for its customers prior to 2018.

16
17 **Q. Does this plan satisfy the Company's remaining need for generation capacity**
18 **prior to 2018?**

19 A. Yes. DEF still needs additional generation capacity by the summer of 2017 to
20 fulfill its Reserve Margin obligations and reliably serve customers even with the
21 Commission's approval of the Hines Chillers Power Uprate Project in Order No.
22 PSC-14-0590-FOF-EI to meet part of DEF's need for generation capacity prior to
23 2018. The Company's current plan to meet its remaining generation capacity

1 approval of this Petition. DEF agreed to request all requisite regulatory approvals
2 for its purchase of the Osprey Plant pursuant to the terms of the APA. DEF and
3 Calpine also agreed to a PPA from October 2014 to January 2017 for the purchase
4 of firm capacity and energy that the Osprey Plant can provide DEF. Calpine
5 agreed in the APA to continue to operate and maintain the Plant consistent with
6 good utility practice and in accordance with applicable laws, regulations, orders,
7 and permits for the Plant during this PPA period.

8 If the requisite regulatory approval is not timely obtained DEF cannot
9 purchase the Osprey Plant, there is no closing, and [REDACTED]
10 [REDACTED]. In that event, [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED], DEF will
14 close on the Osprey Plant, acquire the Plant, and Calpine will assign its firm gas
15 transportation contracts and firm partial path transmission rights to DEF. These
16 are the principle terms of the APA between DEF and Calpine. The terms and
17 conditions of the APA are further explained in the direct testimony of Mr. Palasek
18 and the APA is included as an exhibit to Mr. Palasek's testimony.

19
20 **IV. DEF'S PLAN TO MEET ITS REMAINING GENERATION CAPACITY**
21 **NEED: THE OSPREY PLANT ACQUISITION AND, ALTERNATIVELY,**
22 **THE SUWANNEE SIMPLE CYCLE PROJECT.**

23 **Q. Please describe the Osprey Plant.**

1 V. THE MOST COST-EFFECTIVE GENERATION ALTERNATIVE.

2 Q. What is the most cost-effective alternative for meeting the Company's
3 remaining reliability needs prior to 2018?

4 A. The most cost effective generation alternative to meet DEF's remaining reliability
5 need prior to 2018 is the acquisition of the Osprey Plant if that acquisition is
6 approved after the required regulatory reviews. The Osprey Plant will provide
7 DEF's customers with beneficial combined-cycle generation fuel efficiency and
8 emissions costs at a favorable acquisition price even with the necessary capital
9 maintenance, O&M, and transmission interconnection investment in the Plant to
10 incorporate it into DEF's system. On a CPVRR basis, the Osprey Plant
11 acquisition is about \$61 million more cost effective for DEF's customers than the
12 Suwannee Simple Cycle Project. See Exhibit No. ___ (BMHB-3).

13 If FERC approves the Osprey Plant acquisition [REDACTED]
14 [REDACTED] and DEF timely receives the other
15 requisite regulatory approvals, DEF will purchase the Osprey Plant and close on
16 that transaction in January 2017. The parties negotiated [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED] If FERC [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED] or the other regulatory approvals are not obtained, however, DEF
23 cannot purchase the Osprey Plant and, under these circumstances, the Suwannee

1 generation resource or resource proposal currently exists to displace or defer
2 DEF's remaining generation capacity needs prior to 2018.

3
4 **VI. CONSEQUENCES OF DELAY.**

5 **Q. What is the impact of delaying Commission approval of DEF's Petition?**

6 A. DEF needs Commission approval for the Osprey Plant acquisition, and,
7 alternatively, the Suwannee Simple Cycle Project at this time to ensure that DEF
8 meets its remaining reliability needs prior to 2018 in the most cost effective
9 manner for DEF's customers. DEF cannot delay its petition to this Commission
10 because there is insufficient time before DEF must recommence the Suwannee
11 Simple Cycle Project to preserve the benefits of that cost effective Project for
12 customers to meet DEF's remaining need for generation capacity by the summer
13 of 2017, if DEF does not obtain the requisite regulatory approvals to purchase the
14 Osprey Plant.

15 DEF must recommence the Suwannee Simple Cycle Project by [REDACTED]
16 [REDACTED] for that Project to be in commercial service by the summer of 2017. As I
17 explained above, if DEF cannot buy the Osprey Plant the Suwannee Simple Cycle
18 Project is the most cost effective generation alternative to meet DEF's remaining
19 need for additional generation capacity by the summer of 2017. To preserve this
20 generation alternative for customers DEF must request all requisite regulatory
21 approvals for the Osprey Plant acquisition and have an adequate determination of
22 those regulatory approvals by [REDACTED]

1 DEF and Calpine agreed that this is the fundamental principle of the
2 regulatory approval conditions precedent to DEF's obligation to purchase the
3 Osprey Plant in the APA. To this end, Calpine and DEF agreed to cooperate with
4 all requests for regulatory approval, including this Petition, to obtain a decision
5 from the requisite regulatory bodies on approval of the Osprey Plant acquisition
6 by [REDACTED]. Ensuring that DEF can provide customers the benefits of one
7 of these two most cost effective generation alternatives to meet its need prior to
8 2018, whichever alternative the circumstances warrant, is central to the deal
9 between DEF and Calpine in the APA.

10 DEF and Calpine agreed in the APA to preserve the benefits of the most
11 cost-effective generation alternative for customers to meet DEF's remaining need
12 prior to 2018, regardless of the outcome of the requisite regulatory approvals for
13 the Osprey Plant acquisition. DEF and Calpine structured the deal in the APA for
14 both generation capacity projects, with DEF proceeding to close on the Osprey
15 Plant acquisition in the event of timely regulatory approval, and with DEF
16 proceeding with the Suwannee Simple Cycle Project in the event regulatory
17 approval for the acquisition is not timely obtained. In this way, DEF mitigates the
18 risk to customers of regulatory approvals beyond DEF's and Calpine's control.
19 For this reason, the Osprey Plant acquisition and the Suwannee Simple Cycle
20 Project are inextricably intertwined in the APA and they cannot logically or
21 practicably be evaluated separately by the Commission. As a result, DEF cannot
22 present, and the Commission cannot consider one project without the other in

1 determining the most cost-effective generation alternative to meet DEF's
2 remaining need prior to 2018.

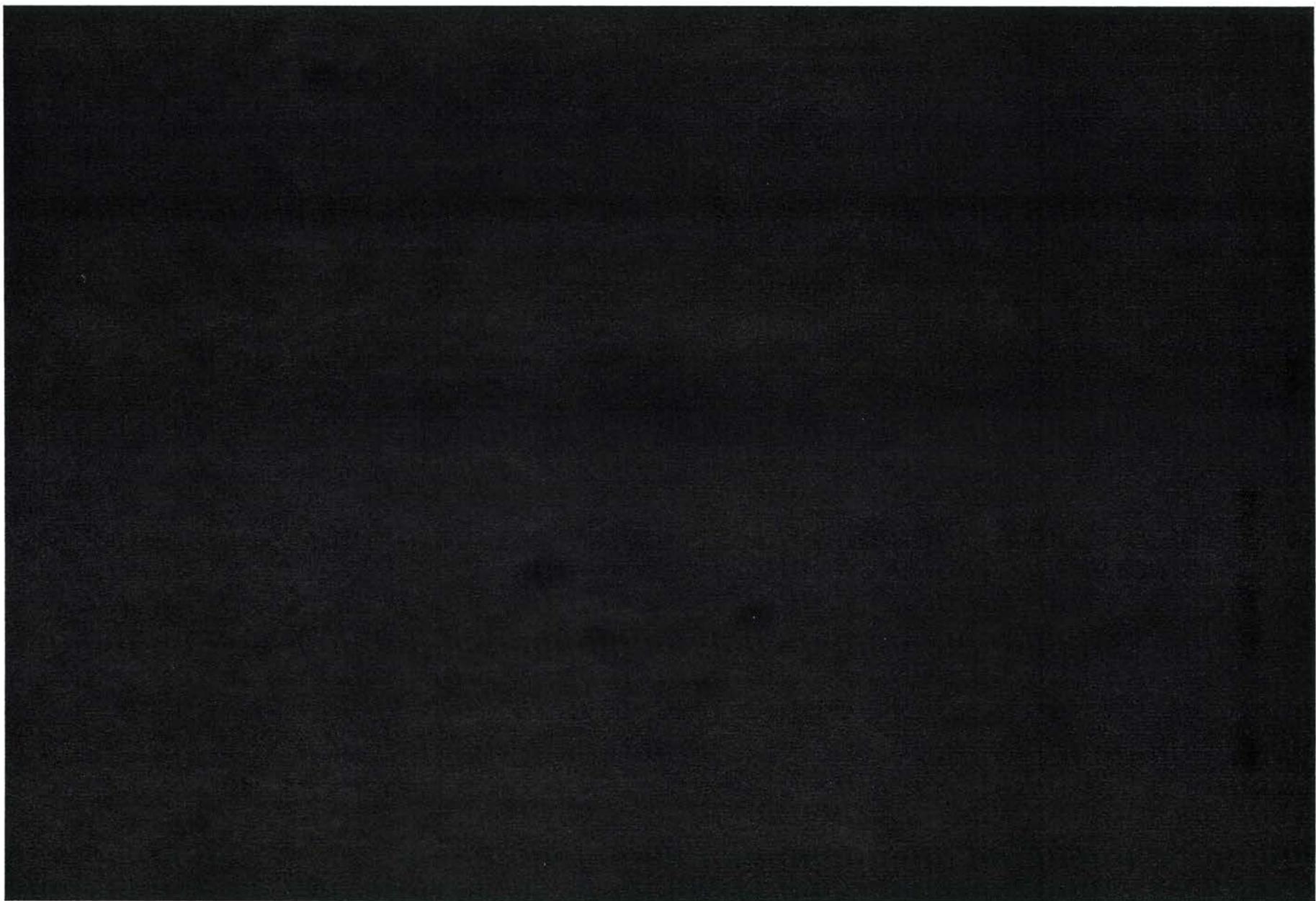
3 DEF has provided the Commission the information necessary to approve
4 its Petition to alternatively purchase the Osprey Plant or build the Suwannee
5 Simple Cycle Project to ensure that DEF's customers receive the benefits of the
6 most cost effective generation alternative to meet their reliability needs by the
7 summer of 2017 regardless of the outcome of the requisite regulatory reviews.
8 This decision will allow DEF to add additional generation capacity to meet its
9 reliability commitment to customers without any risk of interruption of service in
10 the event of unanticipated forced outages or other contingencies for which DEF
11 maintains reserves.

12
13 **VII. CONCLUSION.**

14 **Q. Please summarize DEF's request for relief from the Commission in this**
15 **Petition.**

16 **A.** DEF needs the Osprey Plant and, alternatively, the Suwannee Simple Cycle
17 Projects to maintain its electric system reliability and integrity and to provide its
18 customers with adequate electricity at a reasonable cost. DEF will not both buy
19 the Osprey Plant and build the Suwannee Simple Cycle Project. DEF will build
20 the Suwannee Simple Cycle Project only if DEF cannot buy the Osprey Plant.
21 DEF will realistically know if it can obtain the requisite regulatory approvals to
22 purchase the Osprey Plant by [REDACTED], the deadline for DEF to
23 recommence the Suwannee Simple Cycle Project to place that Project in

REDACTED



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination
of Cost Effective Generation Alternative
to Meet Need Prior to 2018 for Duke
Energy Florida, Inc.

DOCKET NO. 140111-EI
Submitted for filing:
August 5, 2014

REDACTED
REBUTTAL TESTIMONY
OF BENJAMIN M.H. BORSCH
ON BEHALF OF
DUKE ENERGY FLORIDA, INC.

JOHN T. BURNETT
Deputy General Counsel
DIANNE M. TRIPLET
Associate General Counsel
DUKE ENERGY FLORIDA, INC.
299 1st Avenue North
St. Petersburg, Florida 33733
Telephone: (727) 820-5184
Facsimile: (727) 820-5519

JAMES MICHAEL WALLS
Florida Bar No. 706272
BLAISE N. GAMBA
Florida Bar No. 027942
CARLTON FIELDS JORDEN
BURT, P.A.
4221 W. Boy Scout Blvd., Ste.1000
Tampa, Florida 33607
Telephone: (813) 223-7000
Facsimile: (813) 229-4133

REDACTED

1 Uprate Project, to determine the most cost effective alternative to meet its
2 need prior to 2018.

3
4 **Q. What were the NRG and Calpine generation capacity proposals to meet**
5 **DEF's need prior to 2018?**

6 A. NRG made two proposals to DEF to meet DEF's generation capacity needs
7 prior to 2018. One NRG proposal [REDACTED] and the second was
8 an acquisition proposal or an offer to sell the NRG three combustion turbine
9 ("CT"), 471MW plant to DEF. This is the "Acquisition 1" proposal that NRG
10 witness Mr. Pollock recommends as an alternative to DEF's self-build
11 generation projects in his direct testimony. Both NRG proposals are identified
12 in Exhibit No. ____ (BMHB-7) and Exhibit No. ____ (BMHB-8) to my direct
13 testimony.

14 Calpine also submitted [REDACTED] and an acquisition proposal to
15 DEF to meet DEF's need for generation capacity prior to 2018. Calpine's
16 separate acquisition proposal was an offer to sell its 594MW combined cycle
17 power plant to DEF. Calpine's PPA and acquisition proposals are also
18 identified in Exhibit No. ____ (BMHB-7) and Exhibit No. ____ (BMHB-8) to my
19 direct testimony.

20 These NRG and Calpine proposals were evaluated in DEF's generation
21 resource options assessment that is described in detail in my direct testimony
22 and exhibits in this Docket. As I explain there, based on that assessment,
23 including all quantitative and qualitative costs and risks, the Company

REDACTED

1 consummated; and (iii) all costs, including legal and expert fees, at FERC to
2 attempt to obtain FERC approval of the PPA with the acquisition option. In
3 other words, DEF expected NRG and Calpine to take all the risk --- not DEF's
4 customers --- that FERC would not approve their proposed PPA structure with
5 the plant acquisition to get DEF the value of the acquisition as soon as
6 possible without substantial mitigation. Structuring the deal to accomplish this
7 objective was complicated.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

1. NRG'S FINAL AND BEST OFFER.

Q. Did NRG make a final and best offer to DEF?

A. Yes. NRG submitted a final and best offer to DEF on June 18, 2014. NRG's final and best offer was intended, we believe, to address DEF's quantitative and qualitative concerns with NRG's original acquisition proposal including the FERC Competitive Analysis Screen failure. NRG's final and best offer is included as Exhibit No. ____ (BMHB-14) to my rebuttal testimony.

Q. Were DEF's concerns addressed in NRG's final and best offer?

A. No. NRG's final and best offer was at least [REDACTED] negative on a Cumulative Present Value Revenue Requirements ("CPVRR") basis compared to the Suwannee Simple Cycle Project and Hines Chillers Power Uprate Project. NRG proposed [REDACTED]

[REDACTED]
[REDACTED]

REDACTED

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED] DEF's response to NRG and evaluation of NRG's final and best
22 offer is included in Exhibit No. ____ (BMHB-15) to my rebuttal testimony.

REDACTED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

[REDACTED]

[REDACTED] See Exhibit No. ____ (BMHB-16) to my rebuttal testimony.

Q. What was DEF's response to the Calpine June 16th offer?

A. DEF could not accept this offer because it did not "close the gap" between the

[REDACTED]

REDACTED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

[REDACTED]

[REDACTED] DEF explained this to Calpine in a June 26, 2014 letter that is included in Exhibit No. ____ (BMHB-13) to my rebuttal testimony.

Q. What was Calpine's response to DEF's concerns in DEF's June 26, 2014 letter to Calpine?

A. Calpine's response was to make its July 3rd final and best offer to DEF. Calpine witness Mr. Thornton correctly describes this July 3rd offer in his direct testimony as a five-year PPA for 515MW of capacity and energy with a guaranteed heat rate and plant availability. Calpine lowered the capacity payments during the PPA. (Thornton Direct Test., p. 8, lines 2-15; Exhibit No. ____ (BMHB-17) to my rebuttal testimony). [REDACTED] provided DEF the option to purchase the plant for [REDACTED] "subject to certain adjustments the terms of which would be negotiated by Calpine" and DEF. (Thornton Direct Test., p. 8, lines 15-19). Calpine further provided for the first time terms that addressed the risk that FERC might not approve the Calpine

REDACTED

1 PPA-acquisition proposal or that FERC might approve it only with mitigation.
2 All other terms of the Calpine July 3rd final and best offer remained the same
3 as the June 16th Calpine offer. See Exhibit No. ____ (BMHB-17) to my rebuttal
4 testimony. In this final and best offer Calpine attempted to address DEF's
5 concerns with its initial plant acquisition proposal and its June 16th final and
6 best offer and to "close the gap" between the cost effectiveness of the Calpine
7 plant acquisition and the Company's Suwannee Simple Cycle Project and the
8 Hines Chillers Power Uprate Project to meet DEF's need prior to 2018.

9
10 **Q. Was the Calpine July 3rd final and best offer more cost effective for**
11 **DEF's customers than the Company's self-build generation projects?**

12 **A.** No. On a CPVRR basis, accounting for all the costs to DEF of the Calpine
13 July 3rd final and best offer, the Calpine July 3rd offer is still [REDACTED] less
14 cost effective in a FERC no mitigation scenario, [REDACTED] less cost effective
15 in a FERC mitigation scenario where DEF has to default to a delayed DEF
16 self-build generation plan, and [REDACTED] less cost effective if DEF were to
17 accept the full five years of the PPA with no acquisition. Calpine moved closer
18 to the cost-effectiveness of DEF's self-build generation resources to meet
19 DEF's need prior to 2018, but Calpine did not fully close that gap, thus, the
20 Company's Suwannee Simple Cycle Project and the Hines Chillers Power
21 Uprate Project are still the most cost effective generation capacity resources to
22 meet DEF's need prior to 2018. Please see DEF's evaluation of Calpine's July

REDACTED

1 plant capacity year-round, DEF does not have firm transmission rights to
2 obtain the full plant capacity across TEC's system and onto DEF's system.

3 Mr. Hibbard admits --- contrary to Mr. Simpson's testimony --- that only
4 249MW of the Calpine plant capacity can be supplied on a firm basis under
5 the PPA prior to the new \$150 million transmission infrastructure. (Hibbard
6 Direct Test., p. 13, lines 21-23). While Mr. Simpson takes the position that the
7 Calpine plant can firmly deliver DEF more than 249MW of plant capacity even
8 before the new transmission infrastructure is constructed with the use of
9 operating procedures and re-dispatch of generation resources by both DEF
10 and TEC, he at least admits that "additional transmission service will need to
11 be purchased from TEC for the delivery of additional energy and capacity"
12 from Calpine's plant to DEF. (Simpson Direct Test., p. 8, lines 12-14). Mr.
13 Hibbard does not include the costs for this additional transmission service to
14 deliver the full plant capacity to DEF under the PPA in the Calpine July 3rd
15 offer in his CPVRR adjustments. DEF, in its evaluation of the Calpine offer,
16 attempted to address these issues by modeling a scenario in which the
17 available transmission capacity was limited to 249MW during four peak
18 months of the year and the full 515MW was available during the remaining
19 eight months, shaping the expected transmission charges owed to TEC
20 accordingly. The cost of this transmission service over the term of the PPA in
21 the July 3rd offer has a negative CPVRR impact of [REDACTED] for the Calpine
22 PPA-acquisition proposal. Mr. Hibbard ignores these costs in his adjustments
23 to the CPVRR evaluation in his direct testimony.

REDACTED

1 customers and TEC's customers to assume this uneconomic re-dispatch cost
2 to enable Calpine to deliver its full plant capacity to DEF when it is needed.

3
4 **Q. What costs are associated with the plant acquisition at a later date under**
5 **the July 3rd offer that Mr. Hibbard does not include in his analysis?**

6 A. DEF included costs to account for the Calpine plant condition including
7 necessary expected maintenance contract and other costs to align the
8 maintenance of the Calpine plant with DEF's other combined cycle generation
9 plants if the Calpine plant was acquired by DEF. The Calpine plant, despite
10 Calpine's witnesses' claims about its reliable operation, is ten years old and it
11 will be at least 15 years old at the latest time of the acquisition under the
12 Calpine July 3rd PPA-acquisition offer. Notably, Calpine failed to guarantee
13 upon acquisition the performance or maintenance of the Calpine plant in its
14 July 3rd offer. DEF included direct costs of [REDACTED] with a CPVRR impact
15 of [REDACTED]. It is unreasonable for Calpine and Mr. Hibbard to ignore any
16 additional cost to DEF to maintain and incorporate a 15-year old plant into its
17 system. See Exhibit No. ____ (BMHB-18).

18 In addition, DEF included transaction costs for the actual plant
19 acquisition, which again, Calpine failed to include in its July 3rd offer and Mr.
20 Hibbard failed to include in his CPVRR adjustments. Calpine must admit that
21 there would necessarily be such transaction costs, because even Calpine
22 explains that its offer was not final, but instead subject to negotiation.
23 (Thornton Direct Test., pl. 8, lines 15-16; p. 9, lines 10-12). These costs also

REDACTED

1 impact the economic comparison of the Calpine July 3rd offer to the
2 Company's self-build generation projects. DEF included a [REDACTED] estimate
3 for these costs. See Exhibit No. __ (BMHB-18).

4
5 **Q. Why is Mr. Hibbard's firm gas transportation cost adjustment incorrect?**

6 **A.** Mr. Hibbard makes a substantial [REDACTED] adjustment to the CPVRR
7 economic evaluation of the Calpine July 3rd proposal based on his
8 unwarranted and unsupported assumption that [REDACTED]

9 [REDACTED]
10 [REDACTED]. (Hibbard
11 Direct Test., p. 32, lines 1-6). In other words, Mr. Hibbard says DEF should
12 simply [REDACTED]

13 [REDACTED]
14 [REDACTED]

15 [REDACTED] Mr. Hibbard claims this is a fair allocation because DEF
16 purchases gas on a system or fleet-wide basis, and, therefore, according to
17 him, to level "the playing field" between DEF generation resources and third-
18 party proposals the DEF firm gas transportation contracts should be
19 transferable to any proposal including Calpine's proposal. (Hibbard Direct
20 Test., pp. 30-31).

21 Mr. Hibbard makes an unsupported assumption that the gas
22 transportation contracts which supply the Suwannee site can be redirected to
23 the Calpine Osprey plant location. This is not correct. Different gas

REDACTED

1 As mentioned above, there is another reason Mr. Hibbard's simplistic
2 view is inaccurate. If DEF has reserved firm gas transportation now for its
3 Suwannee Simple Cycle Project it does not make economic sense for DEF
4 and its customers to give that firm gas transportation up now for the Calpine
5 proposal or any other proposal only for DEF to have to buy back future firm
6 gas transportation at a higher price when DEF knows its system is growing.
7 Mr. Hibbard's firm gas transportation CPVRR adjustment fails to compensate
8 DEF's customers for the differential cost that is lost if DEF must purchase firm
9 gas transportation in the future at a higher cost to replace the firm gas
10 transportation it has now but must give up to Calpine under Mr. Hibbard's
11 simplistic view of the use of system firm gas transportation resources.

12
13 **Q. Did Mr. Hibbard account for the costs associated with the extended**
14 **operation of the Suwannee Steam units?**

15 **A.** No. One of the benefits of the construction of the Suwannee Simple Cycle
16 Project is that it allows for retirement of the more than 50-year old Suwannee
17 Steam units in 2016. Both Calpine and Mr. Hibbard failed to account for the
18 cost to extend the retirement of the Suwannee steam units from 2016 to 2018
19 if FERC approves the Calpine July 3rd PPA-acquisition proposal without
20 mitigation. The Suwannee steam units are needed for transmission grid
21 reliability in the North Florida area between 2016 and 2018 if the Suwannee
22 Simple Cycle Project is not placed in commercial operation in 2016. DEF
23 included these costs with a CPVRR impact of [REDACTED] in its analysis.

REDACTED

1 Q. What additional costs did Mr. Hibbard fail to include for the deferral of
2 the self-build generation projects while DEF and Calpine attempt to
3 obtain FERC approval for the Calpine PPA-acquisition proposal?

4 A. As explained above, DEF announced in May 2014 that the Suwannee Simple
5 Cycle Project and the Hines Chillers Power Uprate Project were the most cost
6 effective generation capacity to meet DEF's need prior to 2018. DEF filed its
7 Petition and Direct Testimony in support of that determination and DEF
8 necessarily is incurring costs to ensure that the Suwannee Simple Cycle
9 Project can be completed in time to meet DEF's need in 2016 --- all before
10 DEF received the Calpine final and best offer, which is still subject to FERC
11 approval. There are, therefore, sunk costs associated with this Project that
12 Calpine --- not DEF's customers --- must assume. [REDACTED]

13 [REDACTED]
14 [REDACTED]
15 [REDACTED] Mr.
16 Hibbard fails to include this cost in his CPVRR analysis entirely.

17 Finally, there obviously will be costs, including legal and expert fees,
18 associated with any attempt to obtain FERC approval of the Calpine July 3rd
19 PPA-acquisition proposal. [REDACTED]

20 [REDACTED]
21 [REDACTED] See Exhibit No. ____ (BMHB-17). Mr. Hibbard never
22 included these costs in his CPVRR analysis. DEF and its customers obviously

REDACTED

1 should not be responsible for the costs of obtaining FERC approval for
2 Calpine's July 3rd proposal.

3 Recognizing that these costs totaling at least [REDACTED] might be the
4 subject of a future "negotiation" on the final purchase price, DEF did not
5 directly include these in its CPVRR analysis, but DEF has identified them as a
6 potential reduction in any benefit to customers if Calpine is not willing to fully
7 net them against the purchase price.
8

9 **Q: Did Calpine offer any offset to the Suwannee Project Costs?**

10 A. Calpine offered [REDACTED]
11 its July 3rd offer. (See Exhibit No. ____ (BMHB-17); Thornton Direct Test., p. 9,
12 lines 7-9) [REDACTED]
13 [REDACTED] See Exhibit No. ____ (BMHB-18) to my rebuttal testimony. [REDACTED]
14 [REDACTED]
15 [REDACTED] See Exhibit
16 No. ____ (BMHB-17).
17

18 **Q. Please explain the qualitative factors that add risk and cost to the**
19 **Calpine July 3rd offer.**

20 A. As I explained above, Calpine acknowledges that many of the terms and
21 conditions of Calpine's July 3rd PPA-acquisition proposal remain to be
22 negotiated and, in Calpine's view, are "subject to certain adjustments."
23 (Thornton Direct Test., p. 8, lines 9-10). This includes the terms for the actual

REDACTED

1 plant acquisition value --- if there was economic value to DEF customers to the plant
2 acquisition in the deal --- as soon as possible by obtaining early FERC
3 approval of the PPA-acquisition offer, and, if FERC did not approve the PPA-
4 acquisition proposal or FERC approved it subject to required mitigation, DEF
5 could get out of the PPA. Hence, the "escape" clause that DEF required and
6 that Calpine finally provided in the July 3rd PPA-acquisition proposal, albeit still
7 subject to further negotiation on the final terms. See Exhibit No. ____ (BMHB-
8 17).

9 This "escape" clause provision necessarily committed DEF to a
10 minimum two-year PPA with Calpine while DEF and Calpine sought FERC
11 approval of the PPA-acquisition proposal and, if it was not approved or was
12 only approved subject to required mitigation, DEF deferred the in-service of
13 the Suwannee Simple Cycle Project to 2017. This "escape" clause detracted
14 from the value of the Calpine July 3rd offer. In fact, the minimum two-year PPA
15 under the "escape" clause resulted in a negative CPVRR impact of [REDACTED]
16 compared to the Company's self-build generation projects. See Exhibit No.
17 ____ (BMHB-18). Neither Calpine nor Mr. Hibbard account for this negative
18 CPVRR impact. They both ignore it in their direct testimony.

19
20 **Q: Did Calpine offer an offsetting payment in this case?**

21 **A:** DEF identified, and Calpine recognized, that in the event that DEF suspended
22 the Suwannee Project during the period of consideration by FERC, DEF would
23 incur costs regardless of FERC's eventual ruling on the Calpine PPA-

REDACTED

1 acquisition proposal. In the event of FERC approval, DEF and Calpine would
2 have to negotiate, in advance, a settlement for the project costs so that they
3 would not accrue to customers as discussed earlier. In the event that FERC
4 does not approve the Calpine PPA-acquisition proposal, or requires mitigation,
5 DEF would incur cost for suspending and restarting the project as well as
6 carrying costs for the funds already committed and the costs for extended
7 operation of the Suwannee steam units.

8 Calpine offered [REDACTED]
9 [REDACTED] (See Exhibit No. ____ (BMHB-17) and Thornton Direct
10 Test., p. 9, lines 7-9). [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED] See Exhibit No. ____ (BMHB-18) to my rebuttal testimony. [REDACTED]

14 [REDACTED]

15 [REDACTED] See Exhibit

16 No. ____ (BMHB-17). Mr. Hibbard, however, failed to include [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED] in his analysis.

21 Finally, [REDACTED]

22 [REDACTED] are based on DEF's ability to exercise the

23 "escape clause" at the end of year two of the PPA (or in 2016). If the PPA

REDACTED

1 Calpine July 3rd final and best offer is less cost effective by [REDACTED] in a
2 FERC approval scenario and [REDACTED] to [REDACTED] less cost effective in a
3 FERC disapproval or FERC mitigation scenario than the Company's self-build
4 generation projects, depending on the length of the eventual PPA. Please see
5 DEF's evaluation of the Calpine July 3rd offer in Exhibit No. ____ (BMHB-18).
6

7 **IV. DEF EVIDENCE UNCONTESTED BY INTERVENOR TESTIMONY IN THIS DOCKET.**

8 **Q. What issues will the Commission decide in this Docket?**

9 **A. My understanding is that the Commission will determine:**

(i) Are the proposed Suwannee Simple Cycle Project and Hines Chillers Power Uprate Project needed, taking into account the need for electric system reliability and integrity;

(ii) Are the proposed Suwannee Simple Cycle Project and Hines Chillers Power Uprate Project needed, taking into account the need for adequate electricity at a reasonable cost;

(iii) Are the proposed Suwannee Simple Cycle Project and Hines Chillers Power Uprate Project needed, taking into account the need for fuel diversity and fuel supply reliability;

(iv) Are there any renewable energy sources and technologies or conservation measures taken by or reasonably available to DEF that might mitigate the need for the proposed Suwannee Simple Cycle Project and Hines Chillers Power Uprate Project;

(v) Are the proposed Suwannee Simple Cycle Project in 2016 and the Hines Chillers Power Uprate Project in 2017 the most cost-effective alternative available to meet the needs of DEF and its customers; and

(vi) Did DEF reasonably evaluate all alternative scenarios for cost effectively meeting the needs of its customers over the relevant planning horizon.

REDACTED

1 the point of Exhibit No. ____ (PJH-6). This means that new generation on
2 DEF's system affects the cost effectiveness of the Calpine plant as a DEF
3 generation system resource in the DEF resource evaluation. So Mr. Hibbard
4 develops a chart comparing the projected energy growth on DEF's system to
5 the projected growth in potential new combined cycle generation from 2018 to
6 2043 to claim that DEF doesn't need all the new combined cycle generation in
7 its resource evaluation that is negatively affecting the value of Calpine's plant
8 in the production cost dispatch analysis of the system. See Exhibit No. ____
9 (PJH-5). What Mr. Hibbard has done to create this apparent "overbuild" in
10 future combined cycle generation capacity is to assume that all the existing
11 and new combined cycle generation will always operate at a [REDACTED]
12 [REDACTED]. That assumption is obviously unrealistic and incorrect.

13 The whole point of resource planning is to add additional generation
14 capacity when it is economic to do so to meet system reliability needs.
15 Arbitrarily forcing the production cost model to run older, more costly to
16 operate and maintain, and less fuel efficient units on the system will yield an
17 overall more expensive system for customers than allowing the production
18 cost model to select the most cost efficient resources even if that means
19 adding new generation and reducing the operation of existing generation on
20 the system. What Mr. Hibbard fails to mention is that the Calpine plant runs at
21 a capacity factor of [REDACTED] from 2014 to 2026 in his own Exhibit No.
22 ____ (PJH-6) when the Calpine plant is 10 to 22 years old. Of course, the
23 Calpine plant operation will fall off when the plant is over 20 years old as new,

REDACTED

1 more fuel efficient generation units are added to the system. DEF's existing,
2 older generation units on the system are not immune from these effects, the
3 same thing happens to the capacity factor and number of starts for DEF's
4 existing combined cycle generation.

5
6 **Q. You testified that the LCOE analysis that Mr. Hibbard recommends**
7 **should only be used to compare "like type" resources. Does Mr. Hibbard**
8 **use the LCOE analysis to compare "like type" resources?**

9 **A.** No. Mr. Hibbard uses his LCOE analysis to compare combined cycle
10 generation – the Calpine plant – to CT generation --- the Suwannee Simple
11 Cycle Project. It should not surprise anyone in the utility industry that
12 combined cycle and CT generation have different capital, fixed and variable
13 operation and maintenance ("O&M"), and other costs and different capacity
14 factors. Using the LCOE analysis to make a selection between these two
15 different resource options is not a meaningful exercise to determine which
16 generation option is the most cost effective generation on DEF's system.

17 Mr. Hibbard's Exhibit No. ____ (PJH-3) illustrates this point. According
18 to Mr. Hibbard, Exhibit No. ____ (PJH-3) demonstrates that the Calpine asset
19 sale at \$85.3 (\$2014/MWh) is more cost effective than the DEF Suwannee
20 Simple Cycle Project at \$168 (\$2014/MWh). But Mr. Hibbard is comparing the
21 Calpine asset sale value at a [REDACTED] capacity factor to the value of the
22 Suwannee Simple Cycle Project at a 9.3 percent capacity factor, which is the
23 expected capacity factor for the Suwannee Simple Cycle Project. See Exhibit

REDACTED

1 No. ____ (PJH-4). If Mr. Hibbard is suggesting that DEF should always
2 compare combined cycle generation costs on a \$/MWh basis at a [REDACTED]
3 capacity factor to CT generation on a \$/MWh basis at a roughly 9 percent
4 capacity factor, then, DEF --- or any other public utility for that matter --- will
5 always select the combined cycle generation over the CT generation. Since
6 this will never be the case in the real world where DEF and every other public
7 utility will build generation to meet base, intermediate, and peaking load the
8 LCOE analysis is clearly a meaningless exercise when the utility must
9 determine what type of generation is the most cost effective generation on its
10 system.

11
12 **Q. Based on DEF's actual system need prior to 2018, does Mr. Hibbard's**
13 **LCOE analysis tell you anything about the most cost effective generation**
14 **resource to meet that need?**

15 **A.** It could be read this way. DEF identified a peaking generation need prior to
16 2018 and that is why the production cost model evaluations in DEF's IRP
17 process identified the Suwannee Simple Cycle Project in 2016. Based on
18 DEF's need for peaking generation on its system prior to 2018, Mr. Hibbard's
19 own exhibit demonstrates that the Suwannee Simple Cycle Project is more
20 cost effective than the Calpine plant. On Exhibit No. ____ (PJH-4), at any
21 capacity factor below [REDACTED], the Suwannee Simple Cycle Project is more
22 cost effective on a \$/MWh basis than the Calpine plant. At the expected
23 capacity factor of 9.3 percent for the Suwannee Simple Cycle Project, then,

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (BMHB-2)
Page 90 of 121

Docket No. 140111-EI
Duke Energy Florida
Exhibit No. _____ (BMHB-12)
Pages 1 through 49

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination
of Cost Effective Generation Alternative
to Meet Need Prior to 2018 for Duke
Energy Florida, Inc.

DOCKET NO. 140111-EI
Submitted for filing:
August 5, 2014

**EXHIBIT BMHB-12 OF
REBUTTAL TESTIMONY
OF BENJAMIN M.H. BORSCH
IS COMPETITIVELY SENSITIVE CONFIDENTIAL INFORMATION
IN ITS ENTIRETY**

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (BMHB-2)
Page 91 of 121

Docket No. 140111-EI
Duke Energy Florida
Exhibit No. _____ (BMHB-13)
Pages 1 through 51

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination
of Cost Effective Generation Alternative
to Meet Need Prior to 2018 for Duke
Energy Florida, Inc.

DOCKET NO. 140111-EI
Submitted for filing:
August 5, 2014

**EXHIBIT BMHB-13 OF
REBUTTAL TESTIMONY
OF BENJAMIN M.H. BORSCH
IS COMPETITIVELY SENSITIVE CONFIDENTIAL INFORMATION
IN ITS ENTIRETY**

Docket No. 140111-EI
Duke Energy Florida
Exhibit No. _____ (BMHB-14)
Pages 1 through 3

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination
of Cost Effective Generation Alternative
to Meet Need Prior to 2018 for Duke
Energy Florida, Inc.

DOCKET NO. 140111-EI
Submitted for filing:
August 5, 2014

**EXHIBIT BMHB-14 OF
REBUTTAL TESTIMONY
OF BENJAMIN M.H. BORSCH
IS COMPETITIVELY SENSITIVE CONFIDENTIAL INFORMATION
IN ITS ENTIRETY**

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (BMHB-2)
Page 93 of 121

Docket No. 140111-EI
Duke Energy Florida
Exhibit No. _____ (BMHB-15)
Pages 1 through 9

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination
of Cost Effective Generation Alternative
to Meet Need Prior to 2018 for Duke
Energy Florida, Inc.

DOCKET NO. 140111-EI
Submitted for filing:
August 5, 2014

**EXHIBIT BMHB-15 OF
REBUTTAL TESTIMONY
OF BENJAMIN M.H. BORSCH
IS COMPETITIVELY SENSITIVE CONFIDENTIAL INFORMATION
IN ITS ENTIRETY.**

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (BMHB-2)
Page 94 of 121

Docket No. 140111-EI
Duke Energy Florida
Exhibit No. _____ (BMHB-16)
Pages 1 through 4

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination
of Cost Effective Generation Alternative
to Meet Need Prior to 2018 for Duke
Energy Florida, Inc.

DOCKET NO. 140111-EI
Submitted for filing:
August 5, 2014

**EXHIBIT BMHB-16 OF
REBUTTAL TESTIMONY
OF BENJAMIN M.H. BORSCH
IS COMPETITIVELY SENSITIVE CONFIDENTIAL INFORMATION
IN ITS ENTIRETY**

Docket No. 140111-EI
Duke Energy Florida
Exhibit No. ____ (BMHB-17)
Pages 1 through 2

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination
of Cost Effective Generation Alternative
to Meet Need Prior to 2018 for Duke
Energy Florida, Inc.

DOCKET NO. 140111-EI
Submitted for filing:
August 5, 2014

**EXHIBIT BMHB-17 OF
REBUTTAL TESTIMONY
OF BENJAMIN M.H. BORSCH
IS COMPETITIVELY SENSITIVE CONFIDENTIAL INFORMATION
IN ITS ENTIRETY**

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (BMHB-2)
Page 96 of 121

Docket No. 140111-EI
Duke Energy Florida
Exhibit No. _____ (BMHB-18)
Pages 1 through 3

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination
of Cost Effective Generation Alternative
to Meet Need Prior to 2018 for Duke
Energy Florida, Inc.

DOCKET NO. 140111-EI
Submitted for filing:
August 5, 2014

**EXHIBIT BMHB-18 OF
REBUTTAL TESTIMONY
OF BENJAMIN M.H. BORSCH
IS COMPETITIVELY SENSITIVE CONFIDENTIAL INFORMATION
IN ITS ENTIRETY**

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination that
the Osprey Plant Acquisition and,
alternatively, the Suwannee Simple
Cycle Project is the most Cost Effective
Generation Alternative to meet the Remaining
Need Prior to 2018 for Duke Energy Florida, Inc.

DOCKET NO. _____
Submitted for filing: January 30, 2015

DIRECT TESTIMONY
OF KEVIN E. DELEHANTY

ON BEHALF OF
DUKE ENERGY FLORIDA, INC.

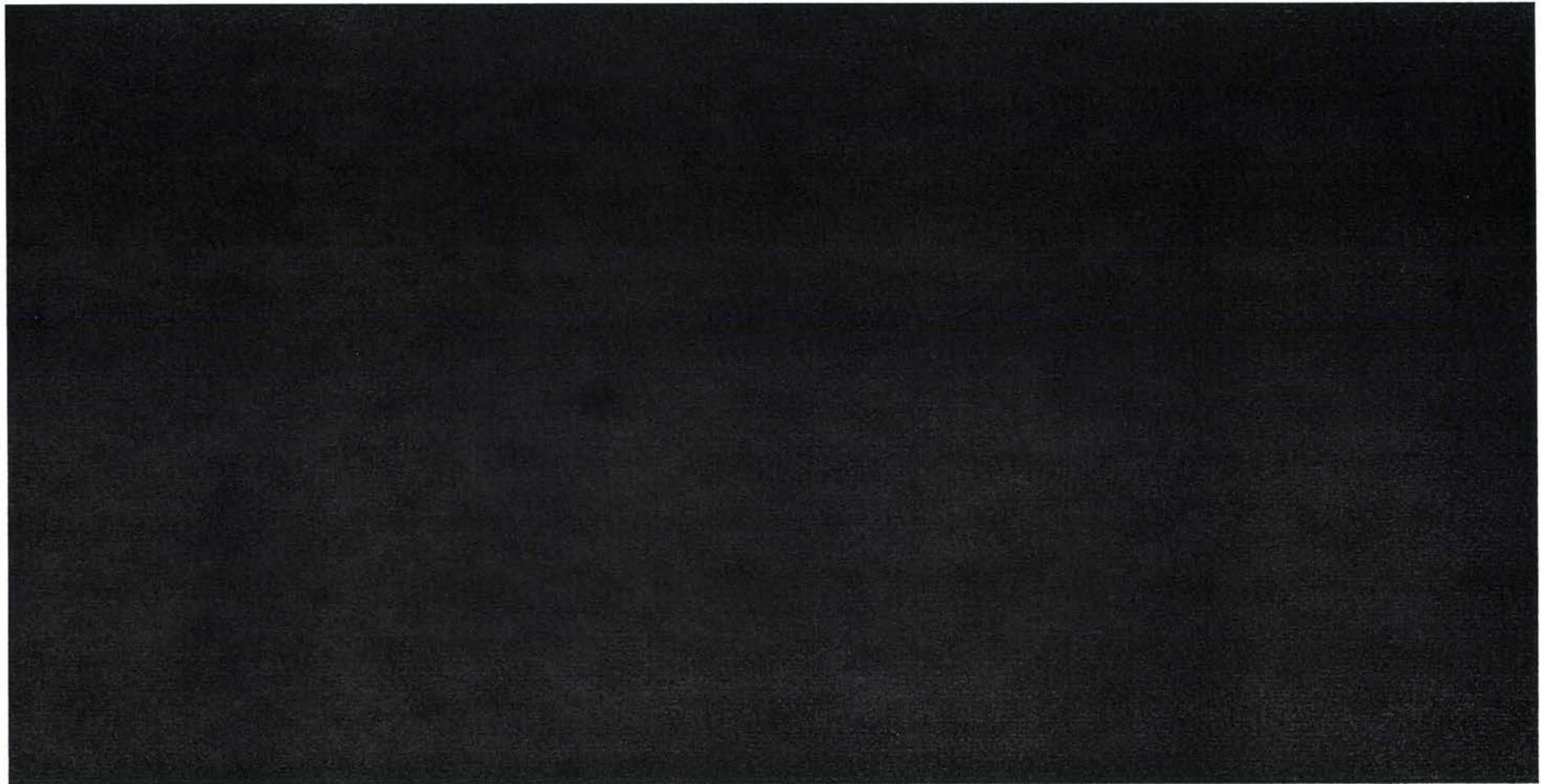
JOHN T. BURNETT
Deputy General Counsel
DIANNE M. TRIPLETT
Associate General Counsel
DUKE ENERGY FLORIDA, INC.
299 1st Avenue North
St. Petersburg, Florida 33733
Telephone: (727) 820-5184
Facsimile: (727) 820-5519

JAMES MICHAEL WALLS
Florida Bar No. 706272
BLAISE N. GAMBA
Florida Bar No. 027942
CARLTON FIELDS JORDEN
BURT, P.A.
4221 W. Boy Scout Blvd., Ste.1000
Tampa, FL 33607
Telephone: (813) 223-7000
Facsimile: (813) 229-4133

DOCKET NO. _____
DUKE ENERGY FLORIDA
EXHIBIT NO. _____ (KED-1)
Page 19 of 22

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (KD-1)
Page 1 of 1

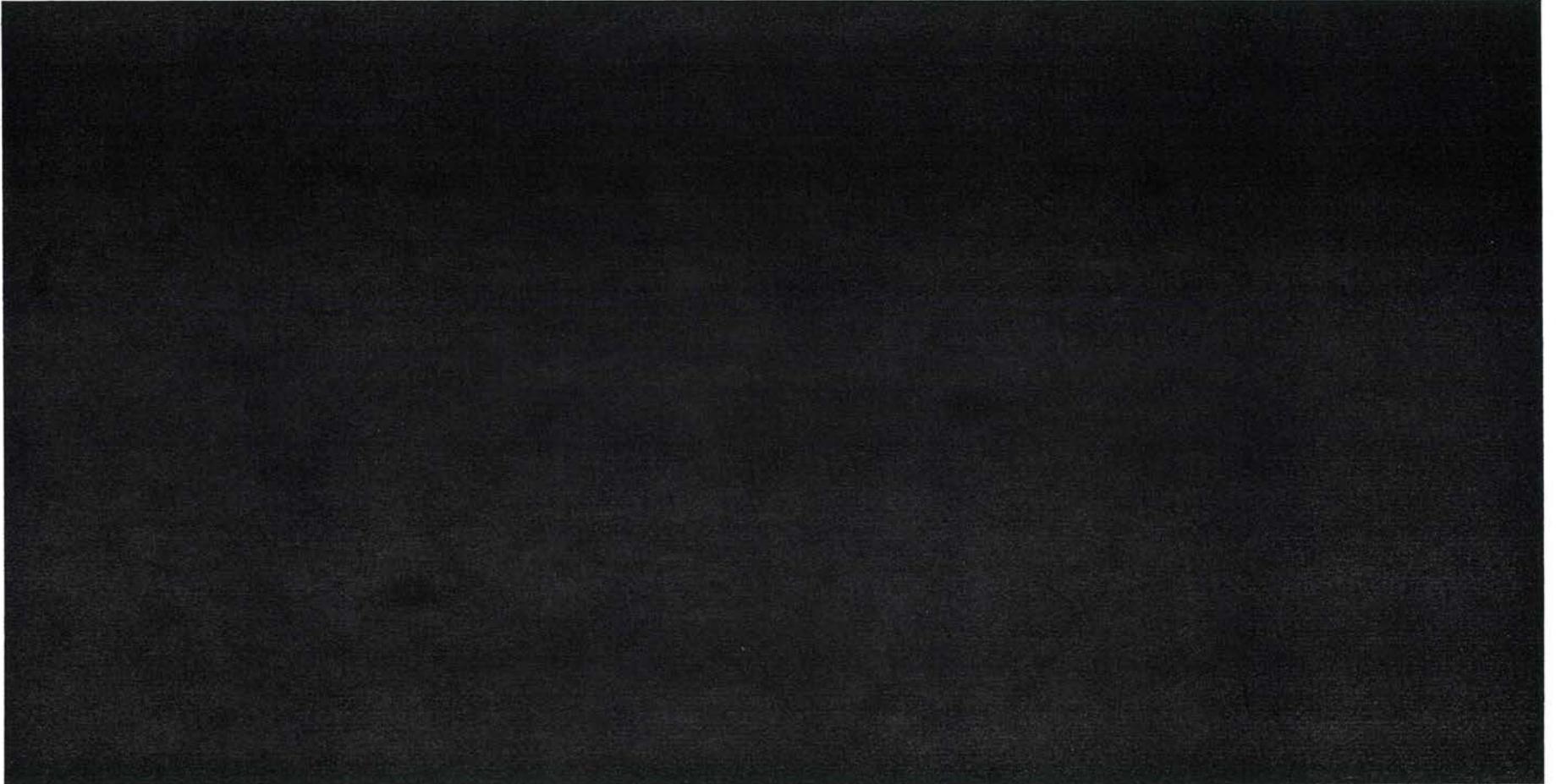
REDACTED



DOCKET NO. _____
DUKE ENERGY FLORIDA
EXHIBIT NO. _____ (KED-1)
Page 20 of 22

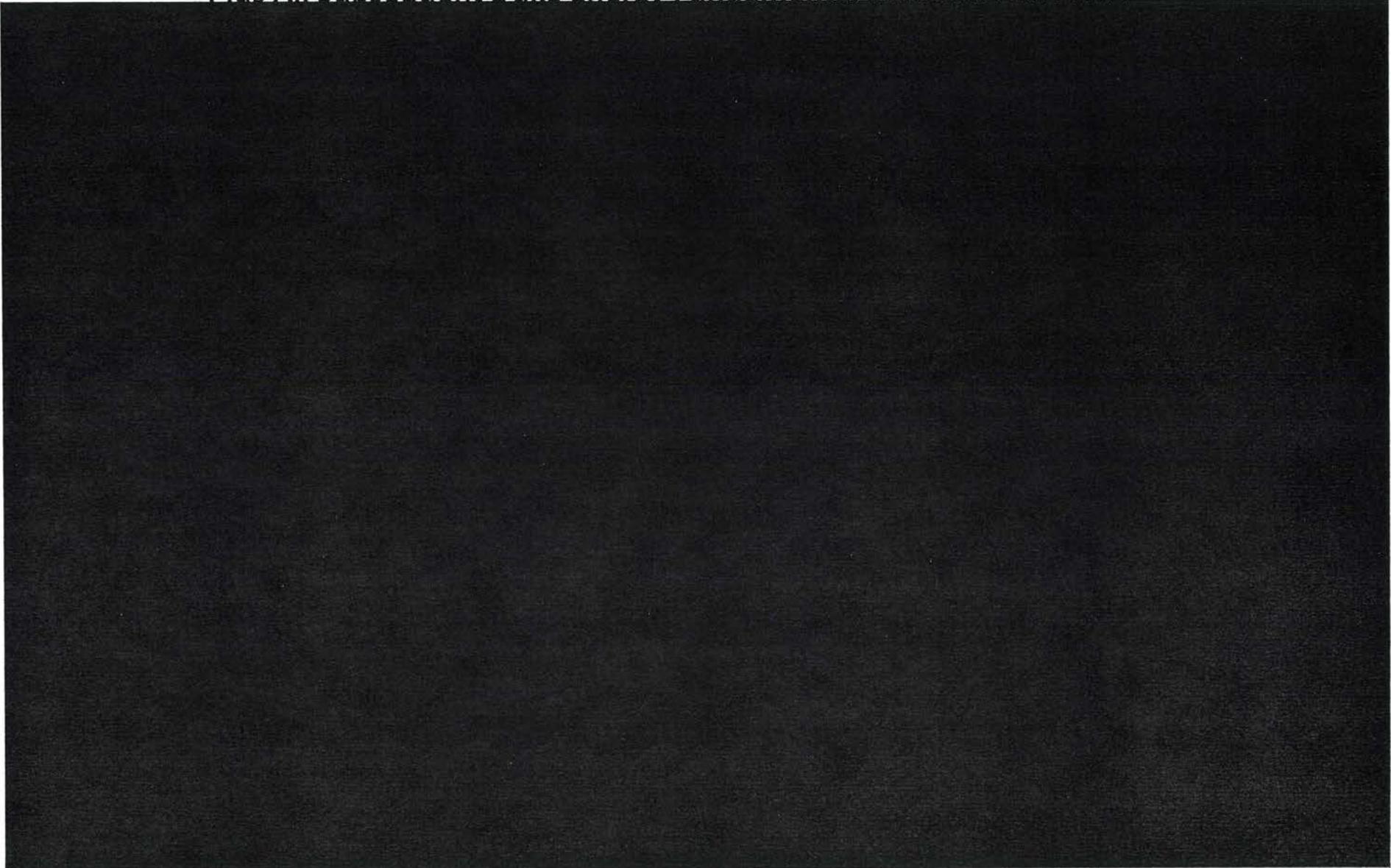
Docket No. _____
Duke Energy Florida
Exhibit No. _____ (KD-2)
Page 1 of 1

REDACTED



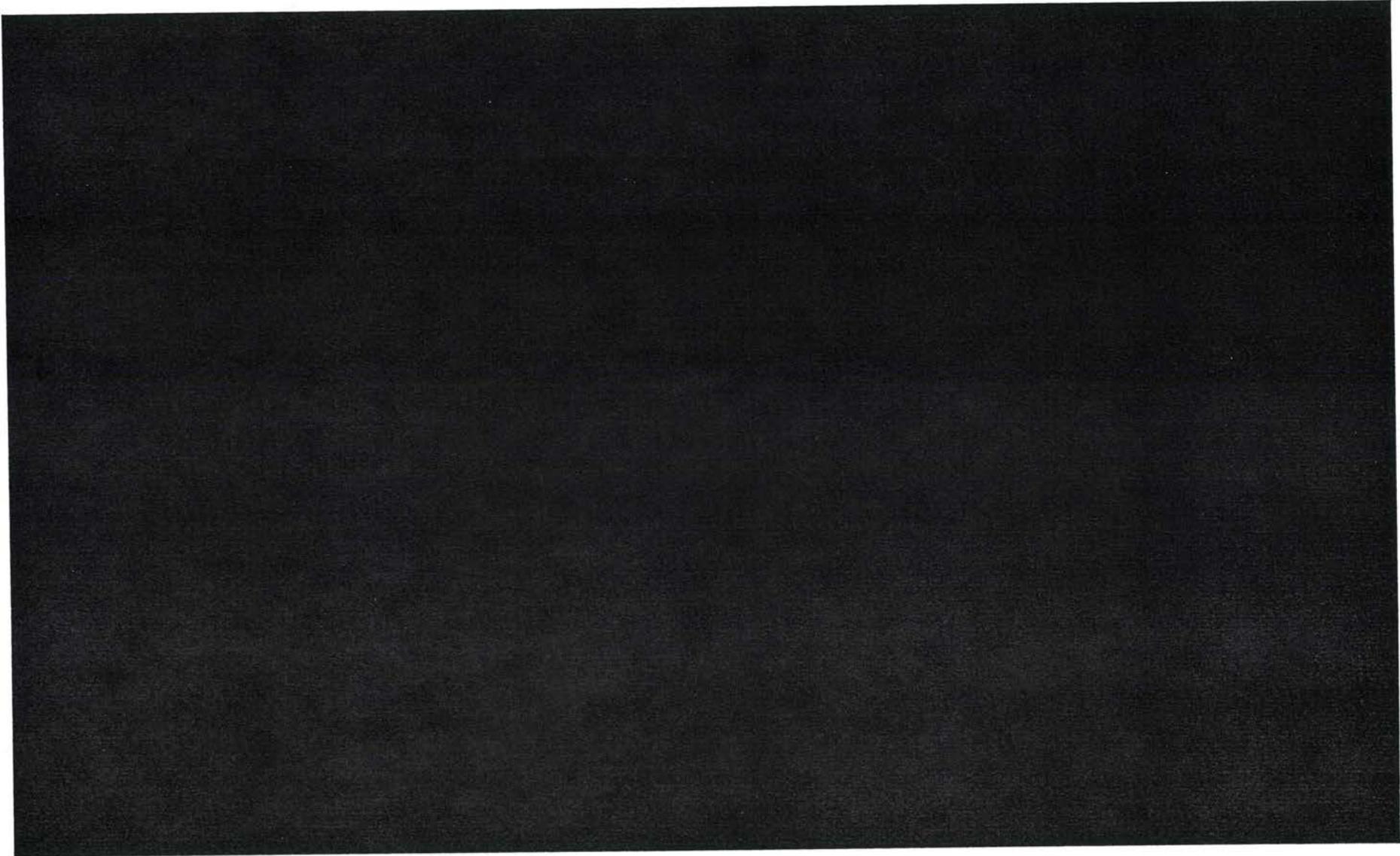
REDACTED

**Fall 2013 Natural Gas Price Forecast Range at Henry Hub, LA
Plus All Subsequent Duke Energy Fundamental Scenario Forecasts**



REDACTED

Duke Energy Fall 2013 Outlook for Natural Gas Prices at Henry Hub, LA



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In re: Petition for Determination that
the Osprey Plant Acquisition and,
alternatively, the Suwannee Simple
Cycle Project is the most Cost Effective
Generation Alternative to meet the Remaining
Need Prior to 2018 for Duke Energy Florida, Inc.**

DOCKET NO. _____
Submitted for filing: January 30, 2015

REDACTED

**DIRECT TESTIMONY
OF KRIS G. EDMONDSON**

**ON BEHALF OF
DUKE ENERGY FLORIDA, INC.**

JOHN T. BURNETT
Deputy General Counsel
DIANNE M. TRIPLETT
Associate General Counsel
DUKE ENERGY FLORIDA, INC.
299 1st Avenue North
St. Petersburg, Florida 33733
Telephone: (727) 820-5184
Facsimile: (727) 820-5519

JAMES MICHAEL WALLS
Florida Bar No. 706272
BLAISE N. GAMBA
Florida Bar No. 027942
CARLTON FIELDS JORDEN
BURT, P.A.
4221 W. Boy Scout Blvd., Ste.1000
Tampa, Florida 33607
Telephone: (813) 223-7000
Facsimile: (813) 229-4133

1 **Q. What is the fuel source for the Osprey Plant?**

2 A. The Osprey Plant runs on natural gas. Calpine currently has a firm transportation service
3 agreement with Gulfstream Natural Gas System, LLC ("Gulfstream"), which provides for
4 [REDACTED] of firm capacity. The contract maximum flow rate is [REDACTED]
5 [REDACTED]. Under the Osprey Plant acquisition agreement, the rights to the
6 Gulfstream contracted capacity will be assigned to DEF by Calpine once the Plant
7 acquisition is completed. The current term of the Gulfstream contract is not scheduled to
8 expire [REDACTED]

9
10 **Q. Does the Osprey Plant have dual fuel capability?**

11 A. No. The Osprey Plant does not burn fuel oil and so it does not have dual fuel capability.
12 However, a majority of DEF's combined cycle and peaking power plants in Florida have
13 dual fuel capability, therefore, the resource reliability from dual fuel already exists on
14 DEF's system.

15
16 **Q. Can you briefly describe the proposed Osprey Plant acquisition terms?**

17 A. The specific terms of the Osprey Plant acquisition are described in detail in the testimony
18 of Mr. Matthew Palasek and in the APA attached to his testimony. For my purpose in
19 managing the due-diligence review of the Plant acquisition, my understanding is that
20 DEF is proposing to purchase the Osprey Plant following a two-year PPA. The purchase
21 of the Plant would occur on or before January 3, 2017.
22

1 closing for the Osprey Plant acquisition on January 3, 2017. As a result, Calpine will
2 continue to operate and maintain the Osprey Plant during this PPA period even though
3 DEF and Calpine have entered into the APA for the Osprey Plant. Because DEF will not
4 close on the Plant for over two years, during which time Calpine, not DEF, will operate
5 and maintain the Plant, [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 [REDACTED] and pursuant to the provisions of the APA as discussed in Mr.
18 Palasek's testimony.

19
20 **Q. Once DEF acquires ownership of the Plant does DEF expect to incur further costs to**
21 **operate the Plant on DEF's system?**

22 **A. Yes. Combined cycle plants like the Osprey Plant require routine maintenance and major**
23 **maintenance overhauls at various intervals based on an understanding of the pedigree of**

1 the key components and parts and recommendations from the equipment manufacturers
2 or Original Equipment Manufacturers (“OEMs”). In the case of the Osprey Plant, since it
3 was put in service in 2004, the combustion turbines and steam turbines, principally, will
4 be coming up on their major maintenance intervals in the 2017 and 2018 time frame.
5 Accordingly, DEF estimates that it will incur [REDACTED] (\$2014) in 2017 and [REDACTED]
6 [REDACTED] (\$2014) in 2018 to perform these major maintenance requirements.

7 In addition to the costs for the major maintenance requirements for the Plant, DEF
8 will also incur costs to re-stock and maintain equipment and material inventory for the
9 continued operation of the Osprey Plant on DEF’s system consistent with DEF’s standard
10 policies and practices. Similarly, DEF expects to incur additional costs to integrate the
11 Osprey Plant into the DEF fleet. All these costs are reflected in the Major Maintenance
12 Cost Summary Projection Pro Forma Forecast (\$2014) attached to my direct testimony as
13 Exhibit No. __ (KGE-3). The exhibit includes the Forecast of estimated O&M major
14 maintenance and capital major maintenance for the Osprey Plant through 2030, and
15 provides an itemized list of the maintenance or replacement costs needed for each
16 category of equipment and the year in which it must be incurred.

17
18 **Q. What makes up the major maintenance costs in 2017 and 2018?**

19 **A.** A significant portion of these major maintenance needs are tied to major inspections that
20 are coming due on both Plant gas turbines, the steam turbine, and all three generators,
21 during which a substantial number of the parts and components are typically inspected
22 and likely replaced. DEF has a robust plant maintenance program for combined cycle
23 plants that demands a high-level of quality for parts used in the plants and regular interval

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (KGE-2)
Pages 1 through 84

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

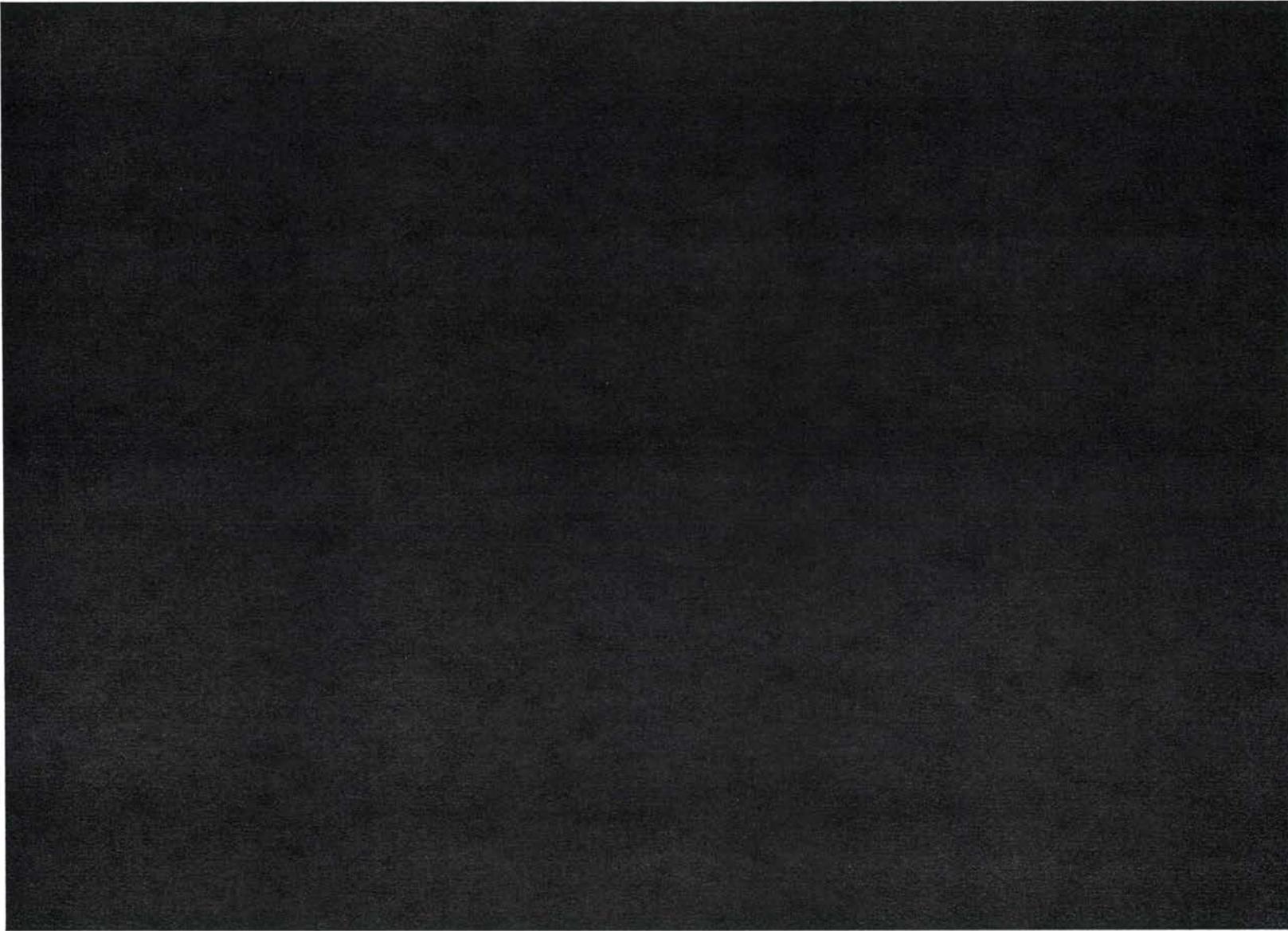
**In re: Petition for Determination that
the Osprey Plant Acquisition and,
alternatively, the Suwannee Simple
Cycle Project is the most Cost Effective
Generation Alternative to meet the Remaining
Need Prior to 2018 for Duke Energy Florida, Inc.**

DOCKET NO. _____
Submitted for filing: January 30, 2015

**EXHIBIT KGE-2 OF
DIRECT TESTIMONY
OF KRIS G. EDMONDSON
IS CONFIDENTIAL IN ITS ENTIRETY**

REDACTED

DOCKET NO. _____
DUKE ENERGY FLORIDA
EXHIBIT NO. _____ (KGE-3)
Page 1 of 1



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In re: Petition for Determination that
the Osprey Plant Acquisition and,
Alternatively, the Suwannee Simple
Cycle Project is the most Cost Effective
Generation Alternative to Meet the Remaining
Need prior to 2018 for Duke Energy Florida, Inc.**

DOCKET NO. _____
Submitted for filing: Jan. 30, 2015

REDACTED

**DIRECT TESTIMONY
OF MARK E. LANDSEIDEL**

**ON BEHALF OF
DUKE ENERGY FLORIDA, INC.**

JOHN T. BURNETT
Deputy General Counsel
DIANNE M. TRIPLETT
Associate General Counsel
DUKE ENERGY FLORIDA, INC.
299 1st Avenue North
St. Petersburg, Florida 33733
Telephone: (727) 820-5184
Facsimile: (727) 820-5519

JAMES MICHAEL WALLS
Florida Bar No. 706272
BLAISE N. GAMBA
Florida Bar No. 027942
CARLTON FIELDS JORDEN
BURT, P.A.
4221 W. Boy Scout Blvd., Ste.1000
Tampa, Florida 33607
Telephone: (813) 223-7000
Facsimile: (813) 229-4133

1 combustors with water injection when operating on oil. In addition, the F class
2 combustion turbine technology is well suited to peaking capacity needs with both fast
3 start capability and high reliability. Peaking capacity units are cost effective and
4 necessary for customer reliability in times of peak demand or system upsets.

5
6 **Q. What is the schedule for construction of the Suwannee Simple Cycle project?**

7 A. The Suwannee Simple Cycle project is scheduled for commercial operation in June
8 2017. To meet this schedule, DEF must commence work on the Suwannee Simple
9 Cycle project no later than [REDACTED] DEF plans to commence this work on
10 [REDACTED] if DEF has not obtained the necessary regulatory approvals for the
11 Calpine Osprey plant acquisition by [REDACTED] A copy of the current major
12 milestone schedule for permitting and construction of the Suwannee Simple Cycle
13 project is included in Exhibit No. ___ (MEL-4) to my direct testimony.

14
15 **Q. Will the Company place the Suwannee Simple Cycle project in service by that
16 date?**

17 A. Yes, if DEF cannot purchase the Osprey plant. In my opinion, the schedule for
18 completion of the Suwannee Simple Cycle project is reasonable and it can be met by
19 the Company. If the Company commences work on the Suwannee Simple Cycle
20 project on [REDACTED] DEF will place the Suwannee Simple Cycle combustion
21 turbines in commercial operation by June 2017.

22

REDACTED

Projected Schedule

Key Project Milestone	Date
BOD Approval	December 2014
FPSC Need Filing	January 2015
FPSC Need Approval	May 2015
Receive Air Permit	June 2015
Start EPC Contractor	
Start CTG and GSU Suppliers	
EPC Begin Construction	
CTG Site Delivery	
Mechanical Completion	
First Fire	
Commercial Operation	June 2017

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In re: Petition for Determination that
the Osprey Plant Acquisition and,
alternatively, the Suwannee Simple
Cycle Project is the most Cost Effective
Generation Alternative to meet the
Remaining Need Prior to 2018 for
Duke Energy Florida, Inc.**

DOCKET NO. _____
Submitted for filing: January 30, 2015

REDACTED

**DIRECT TESTIMONY
OF MATTHEW E. PALASEK**

**ON BEHALF OF
DUKE ENERGY FLORIDA, INC.**

JOHN T. BURNETT
Deputy General Counsel
DIANNE M. TRIPLETT
Associate General Counsel
DUKE ENERGY FLORIDA, INC.
299 1st Avenue North
St. Petersburg, Florida 33733
Telephone: (727) 820-5184
Facsimile: (727) 820-5519

JAMES MICHAEL WALLS
Florida Bar No. 706272
BLAISE N. GAMBA
Florida Bar No. 027942
CARLTON FIELDS JORDEN
BURT, P.A.
4221 W. Boy Scout Blvd., Ste.1000
Tampa, Florida 33607
Telephone: (813) 223-7000
Facsimile: (813) 229-4133

1 Q. What were the main issues that remained unresolved as the August hearing in
2 Docket No. 140111-EI approached?

3 A. First was the need to obtain Federal Energy Regulatory Commission ("FERC") approval
4 and the [REDACTED]. Related to this concern was the
5 need to hold DEF's customers whole for certain obligations DEF had made to support the
6 Suwannee Project. The Company had to move forward with the Suwannee Project to
7 maintain the expected 2016 in-service date, and there were sunk costs associated with
8 that Project by the time of the hearing in Docket No. 140111-EI. The Company was also
9 concerned with ensuring that customers were protected if FERC did not approve the
10 Osprey Plant acquisition, including ensuring that the Suwannee Project remained a viable
11 option for as long as possible until more certainty regarding required regulatory approvals
12 for the Osprey Plant acquisition could be obtained. The other major negotiation issue
13 was the purchase price for the Plant, as well as the pricing for the Power Purchase
14 Agreement ("PPA") that is part of the overall Osprey transaction. DEF had to ensure that
15 the Osprey Plant acquisition (when considering the entire deal) was more favorable to its
16 customers than its Suwannee Project.

17
18 Q. Did the parties resolve those last remaining open issues?

19 A. Yes. As explained during the opening stages of the hearing in Docket No. 140111-EI,
20 DEF and Calpine agreed in principle to a deal, as evidenced in a term sheet, for DEF's
21 acquisition of the Osprey Plant. A copy of the confidential term sheet between DEF and
22 Calpine is included as Exhibit No. ___ (MEP-1) to my direct testimony. The parties
23 requested that the Suwannee Project portion of DEF's petition in Docket No. 140111-EI

1 transfer the gas transportation and transmission contracts and rights for the Osprey Plant
2 to DEF.

3
4 **Q. Will Calpine continue to own and operate the Osprey Plant prior to the closing?**

5 A. Yes. DEF and Calpine agreed to a two-year PPA between October 2014 and January 2,
6 2017 for DEF's purchase of firm capacity and energy that Calpine can deliver from the
7 Osprey Plant to DEF's system. During this PPA period, DEF will seek to obtain the
8 required regulatory approvals for DEF's acquisition of the Osprey Plant and Calpine will
9 continue to own, operate, and maintain the Osprey Plant.

10
11 **Q. What are the adjustments to the purchase price?**

12 A. The adjustments to the base purchase price of \$166 million are known and potential
13 offsets with the potential offsets depending on certain situations or circumstances that
14 might occur. For example, there is a [REDACTED]

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 These adjustments are described in Section
23 2.06 of the APA. See Exhibit No. ____ (MEP-2).

1 Q. What are the conditions precedent to the closing for the Osprey Plant acquisition?

2 A. The conditions precedent to the closing of the Osprey Plant acquisition include obtaining
 3 the requisite governmental or regulatory approvals for the acquisition. Other conditions
 4 precedent include the parties' performance of the covenants in the APA and compliance
 5 with the terms of the APA. Calpine's covenants include the continued operation and
 6 maintenance of the Osprey Plant in accordance with good utility practice and compliance
 7 with all laws, regulations, and permits in operating the Plant during the PPA period prior
 8 to closing. Another condition precedent to the closing is the lack of any Material
 9 Adverse Effect, which under the APA generally means [REDACTED]

10 [REDACTED]

11 [REDACTED] The conditions precedent to the
 12 closing for the Osprey Plant acquisition are set forth in detail in Articles VI and VII of
 13 the APA. See Exhibit No. ___ (MEP-2).

14
 15 B. REQUIRED REGULATORY APPROVALS.

16 Q. What regulatory approvals are required to complete DEF's acquisition of the
 17 Osprey Plant?

18 A. This acquisition requires approval from at least three agencies. First, FERC approval of
 19 DEF's acquisition of the Osprey Plant is required for DEF to complete its acquisition of
 20 the Osprey Plant. DEF and Calpine agreed that DEF would petition FERC to approve
 21 DEF's acquisition of the Osprey Plant in 2015. DEF and Calpine further agreed to

22 [REDACTED] for the Osprey Plant if FERC approval, [REDACTED]

23 [REDACTED], is not obtained prior

1 to [REDACTED]. If FERC approval is not obtained, [REDACTED]
2 [REDACTED]. See Exhibit No. ___ (MEP-2).

3
4 **Q. What is the significance of the [REDACTED] date for FERC approval of the
5 Osprey Plant acquisition?**

6 A. This deadline for FERC approval was established because DEF must recommence the
7 Suwannee Project by [REDACTED] to place that Project in commercial service to meet
8 DEF's remaining summer peak load requirements in 2017. This requirement to
9 recommence the Suwannee Project is further explained in the direct testimony of Mr.
10 Mark Landseidel and Mr. Benjamin Borsch. As a result, [REDACTED] represents the
11 date by which DEF can meet its remaining need for additional generation capacity prior
12 to 2018 by generation resources other than the acquisition of the Osprey Plant, if the
13 regulatory approvals for DEF's acquisition of that Plant are not obtained. DEF,
14 accordingly, preserved for its customers the benefits of this alternative generation
15 resource to meet its remaining need for additional generation capacity prior to 2018 in the
16 event that DEF did not obtain the required regulatory approvals for the Osprey Plant
17 acquisition.

18
19 **Q. What is the next regulatory approval that must be obtained before DEF can acquire
20 the Osprey Plant?**

21 A. DEF's acquisition of the Osprey Plant is also conditioned upon approval [REDACTED]
22 [REDACTED] by the Department of Justice ("DOJ") under the Hart
23 Scott Rodino ("HSR") Act. The APA obligates the parties to make two filings with the

1 DOJ to obtain HSR approval. The initial filing must be made in 2015 and the subsequent
2 filing must be made no later than March 31, 2016.

3
4 **Q. Why must the parties make two HSR filings?**

5 A. If the DOJ approves the acquisition, that approval is only valid if the acquisition is closed
6 within one year of obtaining the approval. However, making the initial filing even
7 though the closing is not planned until January 2017 provides the parties both additional
8 certainty as to whether the acquisition will ultimately be approved, and the ability to
9 continue with the Suwannee Project by [REDACTED], if ultimate approval of the
10 acquisition is doubtful. The second filing, if warranted by the response to the initial
11 filing, will be made closer in time to the January 3, 2017 closing.

12
13 **Q. Regarding the [REDACTED] for both the FERC and HSR filings, how did
14 the parties address what is [REDACTED] in the APA?**

15 A. The term [REDACTED] is a defined term in Section 1.01 of
16 the APA. See Exhibit No. ___ (MEP-2). Basically, it means [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

1 Q. What is the significance of [REDACTED]

2 A. DEF negotiated [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED], the overall acquisition of the

8 Osprey Plant remains the most cost effective alternative. The overall cost effectiveness of

9 the Osprey Plant acquisition is further explained in Mr. Borsch's testimony.

10

11 Q. What is the other regulatory approval that must be obtained before DEF can
12 acquire the Osprey plant?

13 A. DEF must obtain approval from the FPSC to move forward with this acquisition.

14

15 Q. What happens under the APA if DEF does not obtain the required regulatory
16 approvals to acquire the Osprey Plant?

17 A. DEF has [REDACTED] if any of the regulatory approvals are not

18 obtained. If FERC does not approve the acquisition by [REDACTED]

19 [REDACTED]

20 [REDACTED]. The PPA with Calpine would

21 continue through January 2, 2017, and DEF would resume the Suwannee Project. The

22 Suwannee Project is described by Mr. Landseidel in his direct testimony in this

23 proceeding.

1 Q. Why must Calpine only [REDACTED]
2 [REDACTED]

3 A. When Calpine and DEF began negotiations for this acquisition, the parties recognized
4 that obtaining [REDACTED].
5 This is described in more detail in the exhibits to Mr. Borsch's direct testimony in this
6 proceeding. [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]

11
12 C. DUE DILIGENCE RIGHTS.

13 Q. Did DEF complete any due diligence between the execution of the term sheet and the
14 APA?

15 A. Yes. DEF and Calpine provided for a due diligence period for DEF to assess and
16 evaluate the condition of the Plant, the operation and maintenance conditions and
17 requirements, environmental, water, and other site related permits and permit
18 requirements for continued operation of the Plant, and complete regulatory and financial
19 assessments associated with the Plant acquisition by DEF. Due diligence is a reasonable,
20 utility standard practice prior to any power plant acquisition and it is a necessary step in
21 the acquisition process to develop the terms and conditions of the final purchase
22 agreement. DEF and Calpine cooperated in the due diligence process for the Osprey
23 Plant acquisition between September and December 2014. This due diligence process

1 and the results of DEF's due diligence for the Osprey Plant acquisition are described in
2 more detail in the direct testimony of Mr. Kris Edmondson in this proceeding.

3
4 **Q. What due diligence rights did DEF negotiate in the APA?**

5 A. Because the closing will not occur until early 2017, DEF and Calpine negotiated for
6 continued due diligence to ensure that the Osprey Plant remains in a condition that is
7 similar to its current condition, normal wear and tear excepted. DEF and Calpine agreed

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 [REDACTED] Those terms and conditions are contained in Section 5.06 of my Exhibit
16 No. __ (MEP-2).

17
18 **Q. Why are these due diligence rights necessary?**

19 A. DEF has determined that the Osprey Plant acquisition is beneficial to DEF's customers if,
20 of course, DEF receives the materially same Plant in two years that DEF evaluated in its
21 initial due diligence review and cost effectiveness analysis leading to the APA for the
22 Plant. [REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

[REDACTED]

[REDACTED]

D. PROTECTION AND SECURITY FOR DEF'S CUSTOMERS.

Q. Does the APA contain any terms to ensure that DEF's customers retain the value of the Osprey acquisition?

A. Yes, there are several such provisions. First, as described above, DEF negotiated reasonable terms to protect the condition of the asset between the APA execution and the closing. In addition, because DEF has agreed to acquire the Osprey Plant in the future, subject to obtaining the required governmental or regulatory approvals, DEF and Calpine agreed that DEF [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Q. How does the APA ensure that Calpine will meet its financial obligations under the APA?

A. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

[REDACTED]

Q. What protections does the APA contain to ensure that DEF, and its customers, are held harmless with respect to [REDACTED]

A. [REDACTED]

E. CONTINUITY OF OPERATIONS.

Q. Are there any terms in the APA to ensure that the Osprey Plant will continue to be run in a prudent manner between now and the closing?

1 A. Yes. First, Calpine is obligated to operate the Plant consistent with good utility practice
2 and in material compliance with all applicable laws, regulations, orders, and permits. In
3 addition to the due diligence process explained above, [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED] Those
7 provisions are contained in Section 5.02(a) and Section 5.06(c) of the Purchaser
8 Disclosure Schedule. See Exhibit No. __ (MEP-2).

9
10 **Q. What will happen to the employees currently working at the Osprey Plant?**

11 A. DEF and Calpine recognized that it is essential to ensure that Calpine's employees
12 remain engaged to prudently and safely operate the Osprey Plant between now and the
13 closing. Accordingly, the parties negotiated terms [REDACTED]
14 [REDACTED]
15 [REDACTED] Those provisions are contained in Section 5.07 of Exhibit
16 No. __ (MEP-2).

17
18 **V. NEXT STEPS.**

19 **Q. What are the next steps to implement the APA?**

20 A. One step is occurring now, with DEF's Petition for FPSC approval of the Osprey Plant
21 acquisition as a cost effective generation resource to meet DEF's remaining need for
22 generation prior to 2018. Likewise, the parties have or soon will file an application for
23 FERC approval of the acquisition and notification of the Plant acquisition with the DOJ



CALPINE CORPORATION

Docket No. _____
Duke Energy Florida
Exhibit No. ____ (MEP-1)
Page 1 of 5

Confidential

August 25, 2014

REDACTED

Att: John Burnett, Deputy General Counsel
Duke Energy Florida
299 First Avenue North
St. Petersburg, FL 33701
(727) 820-5184

Via e mail: John.Burnett@Duke.energy.com

Re: Calpine Revised PPA and Acquisition Term Sheet

Dear Mr. Burnett,

In this Term Sheet, Calpine Corporation ("Calpine") is pleased to present a revised proposal for a Power Purchase Agreement ("PPA") and asset acquisition by Duke Energy Florida ("Duke") of the Osprey Energy Center ("Osprey" or "Osprey Facility"), a 599 MW natural gas-fired, combined-cycle generating facility located in Auburndale, Florida. We believe the proposed deal structure set forth below addresses both Duke's and Calpine's concerns that we have articulated and discussed, allows Duke to acquire Osprey at an attractive price, and protects Duke's customers from additional costs if the necessary regulatory approvals are not obtained in a timely fashion.

Deal Structure:

- 2 year PPA beginning January 1, 2015 followed by Duke acquisition of the facility in December 2016 (after FERC approval), or a 27-month PPA beginning October 1, 2014, with capacity payments adjusted to produce the same net present value of capacity payments under the 27-month PPA as under the 2-year PPA described in the attached Schedule A. The PPA will also include a one-time extension option, exercisable by Duke in its sole discretion, to extend the PPA term from January 1, 2017 through December 31, 2019,
- Duke will file for approval of the acquisition at FERC on a date that is mutually agreeable to Duke and Calpine, but no later than January 31, 2015. Duke will use its best efforts to aggressively and diligently pursue FERC approval, and Calpine and Duke will cooperate and coordinate fully with respect to Duke's efforts to obtain FERC approval.
- If approved by FERC, Duke agrees to acquire Osprey for \$166 million (nominal dollars) at closing. At closing, Calpine will reimburse Duke for [REDACTED] in sunk costs associated with Duke's development efforts on the Suwannee Peak Project. (Schedule B summarizes the key terms of the Osprey acquisition transaction.)
- If FERC rejects the acquisition, or [REDACTED], or fails to issue an order by [REDACTED], Calpine will pay Duke a one-time breakage fee of [REDACTED].
- [REDACTED]

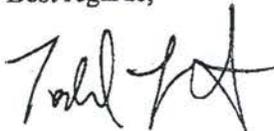
**** Confidentiality.** *The consummation of any transaction is expressly conditioned upon the negotiation and execution of definitive agreements and the receipt of necessary corporate and regulatory approvals. This Term Sheet is being delivered to you on the understanding and on the condition that its existence and its content will be treated in a strictly confidential manner and will not be disclosed to any person or entity other than Duke and its advisors, unless such disclosure is otherwise mutually agreed to by Duke and Calpine. Specifically, neither this Term Sheet nor its contents may be referenced or introduced in any proceeding before the Florida Public Service Commission unless expressly agreed to in writing by Duke and Calpine. ***

REDACTED

- Calpine and Duke will share the actual costs of the FERC Section 203 filing equally.
- The definitive agreements will include terms and conditions that are standard for transactions of this type, including (without limitation) appropriate opportunities for Duke to perform a "walk-down" or "due diligence" inspection of the Osprey Facility before the definitive agreements are executed, and appropriate and satisfactory assurances to Duke that Calpine will properly maintain the Osprey Facility in accordance with good utility practice, and that Calpine will deliver the Osprey Facility to Duke in as good condition at closing as it is at the time of Duke's walk-down inspection. If the "walk-down" or "due diligence" inspection reveals a material adverse condition, i.e., a condition that would require material expenditures to remedy, then Calpine will either fix such condition, or Calpine may terminate negotiations without executing the definitive agreements contemplated hereby.
- Calpine's financial commitments (including, without limitation, Calpine's obligations to pay the breakage fee and to perform its obligations [REDACTED] will be backed by a parent guaranty of Calpine Corporation.
- Abeyance of Proceedings Regarding Suwannee Peak Project: Upon acceptance of this Term Sheet by Duke and Calpine, Duke will file, and Calpine will support, a motion for abeyance or abatement of the proceedings in Florida PSC Docket No. 140111-EI as those proceedings relate to Duke's proposed Suwannee Peak Project. The motion will include Duke's and Calpine's stipulation that their witnesses' testimony and exhibits may be entered into the record of PSC Docket No. 140111-EI and PSC Docket No. 140110-EI, but will request that any substantive hearings regarding the Suwannee Peak Project in Docket No. 140111-EI be deferred to future dates, in order to provide Duke and Calpine the opportunity to complete the negotiation and execution of the definitive agreements contemplated in this Term Sheet.
- Exclusivity. For the period commencing on the date hereof and ending on the earlier of [REDACTED] the date of an adverse decision from FERC regarding the acquisition (i.e., either FERC rejection of the proposed acquisition, or FERC [REDACTED] (i) Calpine will not, and will cause its subsidiaries and its and their respective directors, officers, employees, agents and advisors (collectively, "Representatives") not to, take any action to, directly or indirectly, encourage, initiate, solicit, substantively respond to or engage in any discussions or negotiations with, or provide any information to, any entity or person other than Duke and its Representatives concerning any transaction similar to the transaction contemplated by this Term Sheet; and (ii) Duke agrees to work exclusively with Calpine to negotiate definitive documentation on the basis of this Term Sheet, and will not, and will cause its Representatives not to, during such period, engage in discussions or negotiations with any other entity or person in respect of the transaction contemplated by this Term Sheet, or any transaction similar to, or that would displace, the acquisition of the Osprey Facility contemplated by this Term Sheet.

The foregoing terms relating to confidentiality and exclusivity are binding as of the execution of this Term Sheet. The definitive transaction documents, if any, will include the specific numeric values regarding price for the Osprey Facility, reimbursement of certain costs to Duke, term and pricing under the PPA, and the breakage fee. Calpine is prepared to fully cooperate with Duke toward the expeditious completion of Duke's due diligence inspection of the Osprey Facility and the prompt negotiation of the definitive transaction agreements.

Best regards,



Todd Thornton
Senior Vice President, Calpine Corporation

Accepted for Duke Energy Florida by:



R. Alexander Glenn, President
Duke Energy Florida, Inc.

REDACTED

Schedule A

PPA Terms

Buyer: Duke Energy Florida ("Duke")

Seller: [TBD] ("Calpine")

Facility: Osprey Energy Center ("Osprey" or the "Osprey Facility")

Product: Capacity and Energy Tolling Agreement

Duke would provide all fuel, including start and test fuel, to the Facility and Calpine will toll the fuel into energy at the rate requested by Duke.

Term: January 1, 2015 – December 31, 2016 (or October 1, 2014 – December 31, 2016)*, plus a one-time extension option, exercisable by Duke in its sole discretion, to extend the PPA term through December 31, 2019, with Capacity Payments for the 2017-2019 Option Period as shown below.

Contract Capacity: 515 MW at Summer Reference Conditions

Energy Delivery Point: 249 MW delivered at Duke under Seller's firm transmission agreement described below. Remainder delivered at the Facility Bus-bar

Heat Rate: █████ Btu/kWh at the Contract Capacity with a +/-2% dead-band Conditions

Capacity Payment: \$████/kW-month* 2015
\$████/kW-month* 2016

Option Period: \$████/kW-month 2017
\$████/kW-month 2018
\$████/kW-month 2019

Variable O&M: \$████/MWh for every MWh delivered in 2015\$, escalating each contract year at GDP-IPD

Start Charges: \$████ per combustion-turbine per start in 2015\$, escalating each contract year at GDP-IPD

Gas Capacity Release: Seller shall assign its firm gas transportation contract on Gulfstream to Buyer in the quantity of █████ MMBtu per day at a cost of \$████/MMBtu per day.

* If Duke and Calpine agree to the initial PPA term being October 1, 2014 – December 31, 2016, the Capacity Payments for that term (i.e., through December 31, 2016) will be adjusted so that the Net Present Value of the Capacity Payments under the 27-month PPA is equal to the NPV of the Capacity Payments under the 24-month PPA set forth above, with discounting at Duke's current approved discount rate of 6.46%.

REDACTED

Availability Guarantee: ■% Summer (June – August)
■% Winter (September – May) excluding planned maintenance outages and excused events.

Failure to maintain this availability during any month will result in a Capacity Payment reduction of one percent (1%) for each percentage point the actual availability is below the Availability Guarantee.

Scheduling: Duke will provide good-faith day-ahead forecast by 10:00 a.m. Eastern Prevailing Time on the business day prior to delivery. Schedule revisions will be accommodated on an intra-day basis provided the initial schedule revision is made four (4) hours prior to the start of any daily schedule. Schedule revisions made with less than a four (4) hour notice will be accommodated according to operating or permit constraints.

Schedules will be limited to ■ per turbine per day for a minimum of ■ consecutive hours per turbine start with a minimum downtime of ■ hours.

Dispatch: Duke will have the right to dispatch the Facility over its full range from minimum load to full output, within permit and technical limitations. The Facility will have Automatic Generator Control (“AGC”) capability to allow Duke to dynamically control the output level.

Minimum Load: ■ MW (in 1x1 operation), based on the physical limitations of the equipment, environmental permits, and ambient conditions.

Transmission: Seller currently holds 249 MW of Firm point-to-point transmission from the Facility across TECO to Duke, with rollover rights. Per our discussions, at this time no additional transmission will be requested.

Environmental Change in Law: Full pass through of all change in law costs

REDACTED
Schedule B

Asset Acquisition and Turbine Sale/Cancellation Provisions:

Buyer: Duke Energy Florida ("Duke")

Seller: [TBD] ("Calpine")

Facility: Osprey Energy Center ("Osprey" or the "Osprey Facility")

Purchase Price: \$166,000,000 (sale of Osprey Facility either through the sale of assets comprising the facility or sale of 100% of the membership interest in Osprey Energy Center, LLC for a cash purchase on a debt-free, working capital-free, cash-free and capital spare parts-free basis)

Gas Capacity Release: Seller shall assign its firm gas transportation contract on Gulfstream to Buyer in the quantity of [REDACTED] MMBtu per day (present rate is \$ [REDACTED]/MMBtu per day).

Transmission: Seller currently holds 249 MW of Firm point-to-point transmission from the Facility across TECO to Duke, with rollover rights; Seller will assign its transmission contract and rights to Buyer. [REDACTED]

Breakage Fee: If FERC rejects the acquisition, or [REDACTED] Calpine will pay Duke a one-time breakage fee of \$ [REDACTED]

FERC Filing: Duke will file for approval of the acquisition at FERC on or before January 31, 2015.

Transaction Close: December 31, 2016

[REDACTED]: [REDACTED]

	Page
Section 4.08	Due Diligence Investigation 30
Section 4.09	Funds 30
Section 4.10	Exon-Florio..... 31
Section 4.11	Reliance on Seller’s Representations and Warranties 31
Article V COVENANTS 31	
Section 5.01	Investigation by Purchaser..... 31
Section 5.02	Conduct of Business; Integration..... 32
Section 5.03	Certain Restrictions 32
Section 5.04	Governmental Approvals..... 34
Section 5.05	Tax Matters..... 36
Section 5.06	Changes in Condition of Assets..... 37
Section 5.07	Employees 40
Section 5.08	Insurance..... 42
Section 5.09	Transfer Taxes..... 42
Section 5.10	Release of Credit Support..... 42
Section 5.11	██████████ 43
Section 5.12	Reports; Financial Statements 43
Section 5.13	Notification of Certain Matters..... 43
Section 5.14	Seller’s Marks..... 44
Article VI CONDITIONS TO OBLIGATIONS OF PURCHASER 44	
Section 6.01	Representations and Warranties 44
Section 6.02	Performance..... 44
Section 6.03	Officers’ Certificates 44
Section 6.04	Orders and Laws..... 45
Section 6.05	Governmental or Regulatory Approvals..... 45
Section 6.06	Instruments of Transfer 45
Section 6.07	Third-Party Consents..... 45
Section 6.08	No Material Adverse Effect..... 45
Article VII CONDITIONS TO OBLIGATIONS OF SELLER..... 45	
Section 7.01	Representations and Warranties 45
Section 7.02	Performance..... 45
Section 7.03	Officer’s Certificates 46
Section 7.04	Orders and Laws..... 46
Section 7.05	Governmental or Regulatory Approvals..... 46
Section 7.06	Third-Party Consents..... 46
Section 7.07	Instruments of Transfer 46
Section 7.08	Release of Credit Support..... 46
Article VIII INDEMNIFICATION; NO OTHER REPRESENTATIONS..... 46	
Section 8.01	Survival..... 46
Section 8.02	Indemnification..... 47

	Page
Section 8.03	Duty to Mitigate..... 48
Section 8.04	Exclusive Remedy; Reduction of Benefit..... 48
Section 8.05	Procedure With Respect to Third-Party Claims 49
Section 8.06	Effect of Investigation 50
Section 8.07	Adjustment to Purchase Price..... 50
Section 8.08	Release of Indemnity Escrow Funds 50
Section 8.09	Indemnification Letter of Credit 51
Article IX	TERMINATION 52
Section 9.01	Termination 52
Section 9.02	Effect of Termination 54
Section 9.03	██████████ 54
Section 9.04	Specific Performance..... 55
Article X	MISCELLANEOUS 56
Section 10.01	Entire Agreement..... 56
Section 10.02	Expenses 56
Section 10.03	Announcements 57
Section 10.04	No Waiver..... 57
Section 10.05	Amendments 57
Section 10.06	Addresses for Notices 57
Section 10.07	Captions 58
Section 10.08	Severability 58
Section 10.09	Assignment 58
Section 10.10	No Third-Party Beneficiary 58
Section 10.11	Counterparts..... 58
Section 10.12	Governing Law 59
Section 10.13	Consent to Jurisdiction 59
Section 10.14	WAIVER OF JURY TRIAL 59
Section 10.15	Disclosure 59
Section 10.16	DISCLAIMER..... 60
Section 10.17	Florida Law Disclosure 60
Section 10.18	Time is of the Essence 60

ASSET PURCHASE AND SALE AGREEMENT

This ASSET PURCHASE AND SALE AGREEMENT is made as of December 17, 2014 (together with all annexes, schedules and exhibits attached hereto or delivered in connection herewith, this "Agreement") by and between Duke Energy Florida, Inc., a Florida corporation ("Purchaser"), and Osprey Energy Center, LLC, a Delaware limited liability company ("Seller" or "Company").

WITNESSETH:

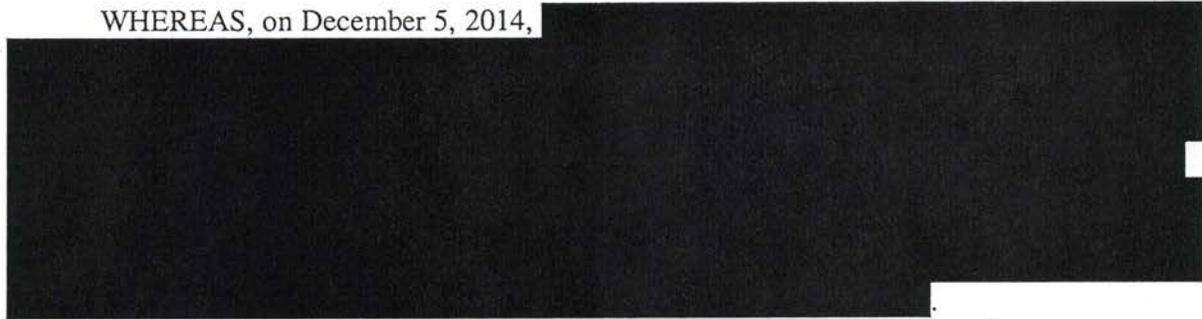
WHEREAS, Seller owns and operates a natural gas-fired combined-cycle generating facility in Auburndale, Florida (the "Project");

WHEREAS, Seller desires to sell, and Purchaser desires to purchase, all of Seller's right, title and interest in and to the Project and certain properties and assets associated therewith or ancillary thereto, on the terms and subject to the conditions set forth in this Agreement;

WHEREAS, concurrently herewith, Duke Energy Corporation, a Delaware corporation ("DEC"), has executed and delivered to Seller a guaranty, dated as of the date hereof, pursuant to which DEC has guaranteed the payment obligations of Purchaser hereunder (the "Parent Guaranty"); and

WHEREAS, concurrently herewith, Calpine Corporation, a Delaware corporation ("Calpine"), has executed and delivered to Purchaser a guaranty, dated as of the date hereof, pursuant to which Calpine Corporation has guaranteed the payment obligations of Seller hereunder (the "Calpine Guaranty").

WHEREAS, on December 5, 2014,



NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Purchaser and Seller agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Definitions. As used in this Agreement, the following defined terms have the meanings indicated below:

“Actions or Proceedings” means any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, commercial, labor, criminal, administrative, investigative or informal) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental or Regulatory Authority or arbitrator.

“Affiliate” means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Person specified. For purposes of this definition, “control” of a Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person whether through ownership of voting securities or ownership interests, by Contract or otherwise, and specifically with respect to a corporation, partnership or limited liability company, means direct or indirect ownership of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person.

“Agreement” has the meaning ascribed thereto in the preamble to this Agreement.

“Ancillary Agreements” means (i) the Bill of Sale, (ii) the Deed, (iii) the Assignment and Assumption Agreement, (iv) the Assignment and Assumption Agreement (CES), (v) the Parent Guaranty, (vi) the Calpine Guaranty, (vii) the Escrow Agreement, and (viii) any additional agreements, instruments of sale, transfer, conveyance, assignment and assumption or other documents that may be executed and delivered by any party hereto or any Affiliate thereof at or in connection with the Closing, if any.

“APEC” has the meaning ascribed thereto in Section 3.21(b).

“Apportioned Obligations” has the meaning ascribed thereto in Section 5.05(a).

[REDACTED]

“Assignment and Assumption Agreement” means the Assignment and Assumption Agreement, substantially in the form of Exhibit A-1, to be executed and delivered by Seller and Purchaser at the Closing.

“Assignment and Assumption Agreement (CES)” means the Assignment and Assumption Agreement, substantially in the form of Exhibit A-2, to be executed and delivered by Calpine Energy Services, L.P., a Delaware limited liability partnership, and Purchaser at the Closing.

“Assumed Liabilities” has the meaning ascribed thereto in Section 2.03.

“Base Purchase Price” has the meaning ascribed thereto in Section 2.06(a).

“Benefit Plan” means each employee benefit plan, within the meaning of Section 3(3) of ERISA, and each other plan, program, policy, agreement or arrangement relating to compensation, employee benefits (including fringe benefits), severance, employment, vacation, incentive compensation or bonus compensation, in each case that is sponsored, maintained or contributed to or required to be sponsored, maintained or contributed to by, or otherwise covering Seller or any of its Affiliates or the Operator or any of its Affiliates, or to which Seller or any of its Affiliates or the Operator or any of its Affiliates is a party, in each case for the benefit of any Facility Employee.

“Bill of Sale” means a Bill of Sale, substantially in the form of Exhibit B, to be executed and delivered by Seller at the Closing.

“Books and Records” means all files, documents, instruments, papers, books, reports, records, drawings, tapes, microfilms, photographs, letters, budgets, ledgers, journals, title policies, supplier lists, change order logs, regulatory filings, startup and commissioning documentation, vendor and OEM reports, operating data and plans, design and technical documentation (design specifications, functional requirements, operating instructions, logic manuals, flow charts, etc.), plant construction records (including asset and component purchase agreements), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), critical infrastructure protocol (CIP) records and controls, internal and external correspondence, accounting records (excluding any general ledgers, accounts payable records or financial statements) and other documents primarily relating to the operation of the Project, and other similar materials that, in all such cases, are primarily related to the Project, the Project Site, the Purchased Assets or the Business in whatever form (including material electronic files), but excluding materials relating primarily to this transaction, market and similar forecast information and the Excluded Books and Records.

“Business” means the business, as currently conducted, of owning, operating and maintaining the Project, procuring fuel and generating, selling, transmitting and delivering electric energy from the Project.

“Business Day” means a day other than Saturday, Sunday or any day on which banks located in New York, New York are authorized or obligated to close.

“Calpine” has the meaning ascribed thereto in the recitals.

“Calpine Guaranty” has the meaning ascribed thereto in the recitals.

“Claim Amount” has the meaning ascribed thereto in Section 8.08(b).

“Claiming Party” has the meaning ascribed thereto in Section 8.05(b).

“Closing” has the meaning ascribed thereto in Section 2.05.

[REDACTED]

[REDACTED]

[REDACTED]

“Closing Date” means (a) January 3, 2017, or (b) such other date as Purchaser and Seller may mutually agree.

“Closing Payment” has the meaning ascribed thereto in Section 2.06(a).

“Code” means the Internal Revenue Code of 1986, as may be amended, modified, supplemented or replaced from time to time, and the rules and regulations promulgated thereunder.

“Company” has the meaning ascribed thereto in the preamble to this Agreement.

“Company Contracts” has the meaning ascribed thereto in Section 3.13(a).

“Confidentiality Agreement” means that certain Confidentiality Agreement, dated October 11, 2013, by and between Calpine and DEC.

“Contract” means any contract, agreement, lease, license, evidence of Indebtedness, mortgage, indenture, security agreement or other legally binding arrangement (whether oral or written and whether express or implied).

“Controlled Group Liability” means any and all liabilities (i) under Title IV of ERISA, (ii) under Section 302, 303 or 4068(a) of ERISA, (iii) under Section 412, 430 or 4971 of the Code or (iv) for violation of the continuation coverage requirements of Sections 601 et seq. of ERISA and Section 4980B of the Code or the group health requirements of Sections 701 et seq. of ERISA and Sections 9801 et seq. of the Code, in the case of each of the foregoing clauses (i) through (iv), with respect to any ERISA Affiliate.

“Credit Support Obligations” has the meaning ascribed thereto in Section 5.10(a).

“DEC” has the meaning ascribed thereto in the recitals.

“Deductible Amount” has the meaning ascribed thereto in Section 8.02(b).

“Deed” means the Special Warranty Deed, substantially in the form of Exhibit C, to be executed and delivered by Seller at the Closing.

“DOJ” has the meaning ascribed thereto in Section 5.04(b).

“Effective Date” means the date set forth in the first paragraph of this Agreement.

“Emission Allowances” means all environmental credits, offsets and allowances issued under the federal Clean Air Act (42 U.S.C. § 7401 et seq.), any applicable emission budget programs, or any other state, regional or federal emission trading program.

“Environmental Auditor” has the meaning ascribed thereto in Section 5.01.

“Facility Employees” means the employees of the Operator or its Affiliates (including employees on vacation or leave of absence) who exclusively or primarily provide services to or for the Project, each of whom, as of the date hereof, is listed on Section 1.01(c) of the Seller Disclosure Schedule and which Schedule shall be updated on the last day of each calendar month by Seller prior to the Closing, and as of the Closing Date.

“FERC” means the Federal Energy Regulatory Commission.

“FERC Approval Order” means an Order issued by FERC under Section 203 of the Federal Power Act that approves the transactions contemplated hereby [REDACTED]

“FERC Mitigation Order” means an Order issued by FERC under Section 203 of the FPA that subjects approval of the transactions contemplated hereby [REDACTED]

“FPA” means the Federal Power Act.

“FPSC” means the Florida Public Service Commission.

“FRCC” means Florida Reliability Coordinating Council, Inc.

“Financial Statements” has the meaning ascribed thereto in Section 3.05.

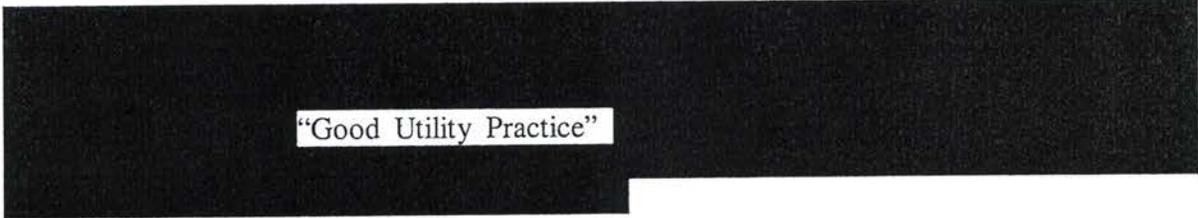
“FTC” has the meaning ascribed thereto in Section 5.04(b).

“Fundamental Representations” has the meaning ascribed thereto in Section 8.01.

“GAAP” means generally accepted accounting principles in the United States, consistently applied throughout the specified period.

[REDACTED]

“Good Utility Practices” [REDACTED]



“Good Utility Practice”

“Governmental or Regulatory Approval” means any authorization, consent, approval, ruling, tariff, rate, certification, waiver, exemption, filing, variance, Permit or Order of, or any notice to or registration by or with, any Governmental or Regulatory Authority.

“Governmental or Regulatory Authority” means any federal, state, local or foreign government or subdivision thereof or any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any governmental authority, agency, department, board, commission or instrumentality of the United States, including FERC, the Federal Communications Commission, the North American Electric Reliability Corporation and any of its regional entities, FRCC, FPSC, NERC, any state of the United States or any political subdivision thereof, and any tribunal, court or arbitrator(s) of competent jurisdiction.

“Hazardous Substance” means any: (a) petrochemical or petroleum products, oil, coal ash, fly ash or bottom ash, coal combustion byproducts, pesticides, insecticides, fungicides, rodenticides, radioactive materials, radon gas, asbestos or asbestos-containing material, polychlorinated biphenyls, lead-based paint, urea formaldehyde foam insulation flammable or explosive materials, mold, biohazardous materials or waste, natural or synthetic gas, or silica; (b) chemicals, materials, substances, wastes, compounds, mixtures or by-products, whether solid, liquid or gaseous, that are identified, listed, defined, designated, restricted, prohibited or otherwise regulated as or included in the definition of “hazardous substances,” “hazardous materials,” “hazardous constituents,” “hazardous wastes,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “regulated substances,” “solid waste,” “sludge,” “toxic pollutants,” “toxic air pollutants,” “restricted hazardous materials,” “extremely hazardous substances,” “hazardous air pollutants,” “dangerous or toxic substances,” “chemical wastes,” “special wastes,” “pollutants,” “contaminants” or words of similar meaning and regulatory effect under any Environmental Law; and (c) other chemicals, materials, substances, wastes, compounds, mixtures or by-products (in each case, whether solid, liquid or gaseous), the exposure to, or treatment, storage, transportation, disposal or release, of which is prohibited, limited or regulated by any Environmental Law.

“Hired Employee” has the meaning ascribed thereto in Section 5.07(b).

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as may be amended, modified, supplemented or replaced from time to time, and the rules and regulations promulgated thereunder.



“Indebtedness” of any Person means, without duplication, any and all liabilities and obligations of such Person (a) for borrowed money or indebtedness issued or incurred in

substitution or exchange for indebtedness for borrowed money, (b) evidenced by notes, bonds, debentures, mortgages or other debt instruments, debt securities or other similar instruments, (c) under capital leases or similar arrangements, and (d) in the nature of guarantees of the obligations described in clauses (a) through (c) above of any other Person or that is recourse to such Person or any of its assets.

"Indemnification Letter of Credit" has the meaning ascribed thereto in Section 8.09.

"Indemnification LOC Issuing Bank" has the meaning ascribed thereto in Section 8.09.

"Indemnity Escrow Account" has the meaning ascribed thereto in Section 2.06(b).

"Indemnity Escrow Amount" has the meaning ascribed thereto in Section 2.06(a).

"Indemnity Escrow Fund" has the meaning ascribed thereto in Section 2.06(a).

"Indemnity Escrow Period" has the meaning ascribed thereto in Section 2.06(b).

"Initial HSR" has the meaning ascribed thereto in Section 5.04(b).

"Intellectual Property" has the meaning ascribed thereto in Section 3.12.

"Inventory" means any and all of the inventory items used for the Business including: capital spare parts, consumables; lubricants, chemicals, fluids, lubricating oils, filters, fittings, connectors, seals, gaskets, hardware, wire and other similar materials; maintenance, shop and office supplies; and tools (excluding any specialty tooling) or similar equipment; and similar items of moveable property located or held for use at the Project Site.

"Knowledge of Purchaser" means the knowledge of those Persons listed in Section 1.01(a) of the Purchaser Disclosure Schedule, in each case after reasonable inquiry.

"Knowledge of Seller" means the knowledge of those Persons listed in Section 1.01(b) of the Seller Disclosure Schedule, in each case after reasonable inquiry.

"Laws" means all laws, statutes, rules, regulations, ordinances, constitutions, codes, and other pronouncements having the effect of law of the United States or any state, county, city or other political subdivision thereof or of any Governmental or Regulatory Authority.

"Liabilities" means all Indebtedness, obligations, claims, costs, charges and other liabilities of a Person (whether absolute, accrued, contingent, determined, determinable, direct, fixed, indirect, matured or unmatured, or whether due or to become due), including those arising under any Law, Action or Proceeding or Order and those arising under any Contract or otherwise.

"Liens" means any mortgage, deed of trust, deed to secure debt, pledge, assessment, security interest, lease, lien, adverse claim, levy, charge, easement, restrictive covenant, option, right of way, encroachment, right of first refusal or other encumbrance, or any conditional sale contract, title retention contract or other contract to give any of the foregoing.

“LOC Fees” has the meaning ascribed thereto in Section 9.03(b).

“Loss” means any and all damages, fines, Taxes, penalties, deficiencies, losses and expenses (including without limitation interest, court costs, reasonable fees of attorneys, accountants and other experts), whether involving claims solely between the parties or by a third party against a party, and excluding any punitive, special, exemplary or remote damages (except for any such damages that are recovered by third-parties in connection with a Loss otherwise indemnified hereunder).

“Material Adverse Effect”

[REDACTED]

Effect”

“Material Adverse

[REDACTED]



“NERC” means the North American Electric Reliability Corporation.

“Operator” means Calpine Operating Services Company, Inc.

“Order” means any writ, judgment, order, decree, stipulation, determination, ruling, injunction or award issued, or otherwise put into effect by or under the authority of any court, administrative agency, or other Governmental or Regulatory Authority (in each such case whether preliminary or final) or any arbitrator.

“Other Losses” has the meaning ascribed thereto in Section 5.06(b).

“Overlap Period” means with respect to the Business, any taxable year or other period beginning on or before and ending after the Closing Date.

“Parent Guaranty” has the meaning ascribed thereto in the recitals.

“Permits” means all licenses, permits, certificates of authority, authorizations, approvals, registrations, franchises and similar authorizations granted by any Governmental or Regulatory Authority, including Permits required under Environmental Law.

“Permitted Liens” means (a) with respect to the Real Property: (i) any Lien for Taxes (x) which are not yet due and payable or (y) for the current year that are not yet delinquent or which are being contested in good faith, (ii) any statutory Lien or builders’, mechanics’, carriers’, workers’, warehousemens’, repairers’ and other similar liens and rights arising or incurred in the ordinary course of business for amounts not yet due or delinquent, (iii) all covenants, restrictions, conditions, easements, reservations, rights of way and other matters of record shown on the Title Commitment and all encumbrances and other matters disclosed on the Survey, (iv) zoning restrictions and other land use and environmental regulations by any Governmental or Regulatory Authorities as in effect on the date hereof, and any such restrictions and regulations not in effect on the date hereof which would not reasonably be expected to materially impair the value of the Property or the ability of Purchaser to use the Real Property in a manner consistent with Purchaser’s intended use of the Project for the generation, sale, transmission, and delivery of electric power following the Closing, as the Project exists as of the Effective Date and (v) any imperfection of title or other similar Lien not in effect on the date hereof which individually or in the aggregate with other such Liens would not reasonably be expected to materially impair the value of the Property or the ability of Purchaser to use the Real Property in a manner consistent with Purchaser’s intended use of the Project for the generation, sale, transmission, and delivery of electric power following the Closing, as the Project exists as of the Effective Date, and (vi) the Liens listed in Section 1.01(d)-1 of the Seller Disclosure Schedule, and (b) with respect to all Purchased Assets other than the Real Property: (i) any Lien for Taxes which are not yet due and payable or which are being contested in good faith, (ii) any statutory Lien or builders’, mechanics’, carriers’, workers’, warehousemens’, repairers’, and other similar liens and rights arising or incurred in the ordinary course of business for amounts not yet due or delinquent, (iii) any imperfection of title or similar Lien not in effect on the date hereof which individually or in the aggregate with other such Liens would not reasonably be expected to materially impair the

value of such asset or the ability of Purchaser to use such asset in a manner consistent with Purchaser's intended use of the Project for the generation, sale, transmission, and delivery of electric power following the Closing, as the Project exists as of the Effective Date, and (iv) the Liens listed in Section 1.01(d)-2 of the Seller Disclosure Schedule.

"Person" means any individual, corporation, company, voluntary association, partnership, joint venture, trust, limited liability company, other business or similar entity or Governmental or Regulatory Authority.

"Phase I Assessment" has the meaning ascribed thereto in Section 5.01.

"Post-Closing Tax Period" has the meaning ascribed thereto in Section 5.05(a).

"Pre-Closing Period" means all taxable years or other taxable periods that end on or before the Closing Date and, with respect to any Overlap Period, the portion of such Overlap Period ending on and including the Closing Date; provided that for purposes of this Agreement, anything occurring outside of the ordinary course of business on the Closing Date but after the Closing shall not be treated as occurring in a Pre-Closing Period.

"Project" has the meaning ascribed thereto in the recitals of this Agreement.

"Project Insurance Policies" has the meaning ascribed thereto in Section 3.16.

"Project Site" means the approximately 19.48 acre site upon which the Project is located in Polk County, Florida, as described in Section 3.10(a) of the Seller Disclosure Schedule.

"Project Software" means all Software that is used in the operation of the Business as presently conducted, or used in the operation, testing or maintenance of the Project.

[REDACTED]

"Property Reps" has the meaning ascribed thereto in Section 8.01.

"Purchase Price" means (i) the Base Purchase Price [REDACTED]

[REDACTED]

"Purchased Assets" has the meaning ascribed thereto in Section 2.01. "Purchased Contracts" has the meaning ascribed thereto in Section 2.01(d). "Purchaser" has the meaning ascribed thereto in the preamble to this Agreement.

“Purchaser Disclosure Schedule” has the meaning ascribed thereto in the introduction to Article IV.

[REDACTED]

“Purchaser Indemnified Parties” has the meaning ascribed thereto in Section 8.02(a)(i).

“Real Property” has the meaning ascribed thereto in Section 3.10.

“Representatives” means, as to any Person, its officers, directors, employees, agents, partners, members, stockholders, counsel, accountants, financial advisors, financing sources, engineers, consultants and other advisors.

“Responding Party” has the meaning ascribed thereto in Section 8.05(b).

“Retiree Benefits” has the meaning ascribed thereto in Section 3.15(e).

“Seller” has the meaning ascribed thereto in the preamble to this Agreement.

“Seller Disclosure Schedule” has the meaning ascribed thereto in the introduction to Article III of this Agreement.

“Seller Indemnified Parties” has the meaning ascribed thereto in Section 8.02(a)(ii).

“Seller’s Marks” has the meaning ascribed thereto in Section 5.14.

[REDACTED]

“Separation Plan” has the meaning ascribed thereto in Section 5.02(c).

“Software” means any and all computer programs, whether in source code or object code, databases, username and passwords and change logs and access privilege logs, and all related documentation.

“Survey” means that certain survey prepared by Chastain Skillman Incorporated, dated May 4, 2009, under Drawing No. ESS-7287.19A.

“Tangible Personal Property” means all machinery, mobile or otherwise, equipment, vehicles, pumps, fittings, tools, plant monitoring, relaying, detection and control systems and annunciators, operator and other programming devices, subsystem control systems, programmable logic controllers, wired and wireless network systems, fixed and mobile plant interfaces and diagnostic systems, computer hardware, laptop computers, tablets, smart pads, mobile computing devices, furniture or furnishings, meter equipment and other tangible personal property (other than Inventory) owned or leased or purchased by the Company for use or consumption primarily at the Project.

“Tax” means any and all federal, state, provincial, local, foreign and other taxes, levies, fees, imposts, duties, and similar governmental charges (including any interest, fines, assessments, penalties or additions to tax imposed in connection therewith or with respect thereto, and whether payable directly or by withholding and whether or not requiring the filing of a Tax Return) including (a) taxes imposed on, or measured by, income, franchise, profits or gross

receipts, and (b) ad valorem, value added, capital gains, sales, goods and services, use, real or personal property, capital stock, license, branch, payroll, estimated withholding, employment, social security (or similar), unemployment, compensation, utility, severance, production, excise, stamp, occupation, premium, windfall profits, payment or fee in lieu of taxes (or any similar obligation), transfer and gains taxes, and customs duties.

“Tax Purchase Price” has the meaning ascribed thereto in Section 2.08.

“Tax Return” means any return, report, information return, declaration, claim for refund, election, disclosure, estimate, or other document, together with all schedules, attachments, amendments and supplements thereto (including all related or supporting information), supplied to or required to be supplied to any Governmental or Regulatory Authority responsible for the administration of Taxes.

“Termination Date” has the meaning ascribed thereto in Section 9.01(b)(i).

“Third-Party Claim” has the meaning ascribed thereto in Section 8.05(b).

“Title Commitment” means that certain Title Commitment issued by Stewart Title Guaranty Company as File Number 2013021 with respect to the Project Site.

“Tolling Agreement” means that certain Tolling Agreement between Seller (as assignee of Calpine Construction Finance Company, L.P.) and Purchaser, dated September 30, 2014.

“Transfer Taxes” has the meaning ascribed thereto in Section 5.09.

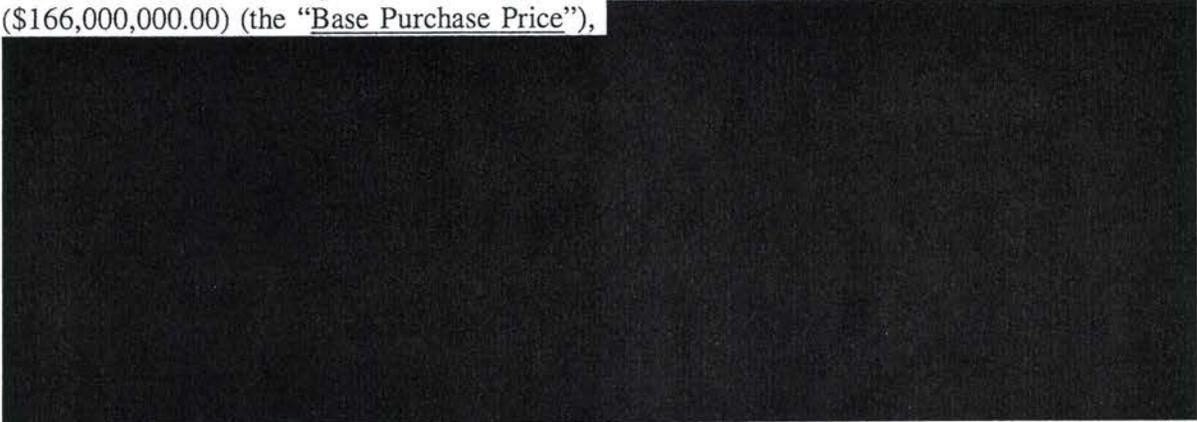
“U.S. Dollars” means the lawful currency of the United States.

Section 1.02 Certain Principles of Interpretation. In this Agreement, unless otherwise indicated, all words defined in the singular have the corresponding meaning in the plural and vice versa; words importing any gender include the other gender; references to statutes or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; references to “writing” include printing, typing, lithography and other means of reproducing words in a tangible visible form; the words “including”, “includes” and “include” shall be deemed to be followed in each instance by the words “without limitation”; the words “shall” and “will” have the same meaning; references to articles, sections (or subdivisions of sections), exhibits, annexes or schedules are to articles, sections (or subdivisions of sections), exhibits, annexes or schedules of or to this Agreement; references to agreements and other contractual instruments shall be deemed to include all amendments, extensions and other modifications to such instruments (without, however, limiting any prohibition on any subsequent amendments, extensions and other modifications by the terms of this Agreement); references to Persons include their respective successors and permitted assigns and, in the case of Governmental or Regulatory Authorities, Persons succeeding to their respective functions and capacities; the phrase ordinary course of

financial and accounting purposes as of 11:59 p.m. on the day immediately preceding the Closing Date.

Section 2.06 Purchase Price.

(a) The cash purchase price payable at the Closing for the Purchased Assets shall be an amount equal to the sum of, (i) one hundred sixty six million dollars (\$166,000,000.00) (the “Base Purchase Price”),



(such aggregate amount, the “Closing Payment”).

(b) Subject to the terms of Section 8.09, at the Closing, Purchaser will deposit the Indemnity Escrow Amount with [REDACTED] (the “Escrow Agent”), by wire transfer of immediately available funds, to be held by the Escrow Agent in a separate account (the “Indemnity Escrow Account”) pursuant to the terms of the Escrow Agreement. The Indemnity Escrow Amount will be available to satisfy any indemnification obligations of Seller pursuant to Section 8.02(a)(i), subject to the terms and conditions of this Agreement and the Escrow Agreement. Subject to the terms and conditions of this Agreement and the Escrow Agreement, the term of the Indemnity Escrow Account will be for a period of eighteen (18) months following the Closing Date (the “Indemnity Escrow Period”), subject to the provisions of the Escrow Agreement. The Indemnity Escrow Amount, plus any interest accrued thereon (collectively, the “Indemnity Escrow Fund”) will be held by the Escrow Agent and disbursed in accordance with Section 8.08 of this Agreement and the Escrow Agreement.

Section 2.07 Further Assurances; Post-Closing Cooperation.

(a) Subject to the terms and conditions of this Agreement, at any time or from time to time after the Closing, each of the parties hereto shall execute and deliver such other documents and instruments, provide such materials and information, and take such other actions as may reasonably be necessary, proper or advisable, to the extent permitted by Law, to fulfill its obligations under this Agreement.

(b) For a period extending four (4) years after the Closing Date, each party will afford the other party, its counsel and its accountants, during normal business hours, reasonable access to the books, records and other data, documents or reports relating to the business or financial or operating condition of the Business in its possession with respect to periods prior to the Closing Date and the right to make copies and extracts therefrom, to the extent that such access may reasonably be required by the requesting party in connection with (i)

(a) amending Seller's certificate of formation or its limited liability company agreement, in any manner which could materially adversely impact Seller's ability to consummate the transactions contemplated by this Agreement;

(b) acquiring, disposing or removing from the Project Site any asset of the Company (other than Inventory) with a value in excess of [REDACTED] which would be included in the Purchased Assets or the Project Site, or incurring any Liens on the Purchased Assets, other than Permitted Liens;

(c) entering into or amending in any material respect, any Company Contract (or any Contract that if in existence on the date hereof would have been required to be disclosed on Section 3.13 of the Seller Disclosure Schedule) other than an Excluded Contract;

(d) incurring, assuming, guaranteeing or modifying any Indebtedness of the Company, except as would upon or after the Closing constitute an Excluded Liability;

(e) except as set forth in Section 5.03(e) of the Seller Disclosure Schedule, making capital expenditures or commitments with respect to the Business, the Purchased Assets, the Project and the Project Site for additions to property, plant or equipment constituting capital assets in an aggregate amount exceeding [REDACTED];

(f) failing to maintain insurance coverage with respect to the Business, the Purchased Assets, the Project and the Project Site substantially equivalent to (i) the insurance coverage currently maintained, or (ii) if such coverage is not available on commercially reasonable terms, the insurance coverage maintained with respect to other similarly-situated power generation facilities owned by Calpine or any of its Affiliates;

(g) failing to use commercially reasonable efforts to maintain the properties and assets included in the Purchased Assets in at least the same condition as they were on the Effective Date, subject to reasonable wear and tear;

(h) voluntarily taking any action constituting a failure to comply with any material Permit in any material respect required for the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets;

(i) hiring any employees to provide services at or for the Project other than to fill vacancies, [REDACTED]

(j) establishing, amending or terminating any compensation or benefit plan, program, policy, practice, arrangement or agreement on behalf of any Facility Employee or officer or director of the Company, or increase the compensation or benefits of any Facility Employee or officer or director of the Company except in the ordinary course of business consistent with past practice;

(k) except as required by GAAP, making any change in any method of accounting or auditing practice of Seller;

(l) acquiring, selling or transferring any specialty tooling except that Seller may consume and replenish specialty tooling in the ordinary course of business consistent with past practice;

(m) amending any property Tax Return for property Taxes relating to, imposed on, or attributable to the Purchased Assets;

(n) terminating any Contract relating to the maintenance, support or escrow of any Project Software that is a Purchased Asset, unless such Contract is replaced, or refusing to install any update, new release, new version, upgrade, patch, error correction or other modification of any Project Software that is a Purchased Asset to which Seller is entitled (of which Seller is aware) to receive pursuant to any such Contract, except if Seller (or its parent entities) does not adopt such update, release, version, upgrade, patch, error correction or other modification for the applicable Calpine facilities generally; or

(o) agreeing, authorizing or committing to do or engage in any of the foregoing.

Notwithstanding Section 5.03, or any other provision herein, (x) Seller may take commercially reasonable actions with respect to emergency situations; provided, that Seller shall act in accordance with Good Utility Practice and promptly notify Purchaser of the taking of such actions, and (y) Seller may remove any and all Inventory from the Project and the Project Site at any time prior to the Closing, and during the ten Business Days immediately after the Closing.

Furthermore, if any Liens (other than Permitted Liens) are incurred on the Purchased Assets by actions of Seller during the period from the date hereof until Closing, the Seller shall cure any such Liens which are monetary title and survey defects, and shall use commercially reasonable efforts to cure any other Liens (other than Permitted Liens), in each case prior to the Closing.

Section 5.04 Governmental Approvals.

(a) Subject to the terms and conditions of this Agreement and applicable Law, each party shall use its reasonable commercial efforts to take, or cause to be taken, all actions and do, or cause to be done, all things necessary, proper or advisable to obtain as promptly as reasonably practicable all necessary or appropriate waivers, consents, approvals or authorizations of Governmental or Regulatory Authorities, including without limitation with respect to the FERC, FPSC and HSR Act, and to satisfy all other conditions required in order to consummate the transactions contemplated by this Agreement.

(b) In addition to the foregoing, (i) Purchaser, on the one hand, and Seller, on the other hand, shall, in accordance with Section 5.04(c) hereof, file no later than January 30, 2015, any application, form or report required for FERC approval of the transaction contemplated by this Agreement (the initial draft of which shall be prepared by Seller and made available for review by Purchaser by no later than January 15, 2015), and Purchaser shall use its reasonable best efforts to diligently pursue all necessary and appropriate waivers, consents, approvals or authorizations of FERC; provided, however, that nothing in this Agreement shall require the Purchaser to

[REDACTED]

_____ (ii) Purchaser shall file no later than January 30, 2015, any application or petition before the FPSC seeking all necessary approvals from the FPSC to consummate the transactions contemplated herein, which application shall (A) be drafted by Purchaser, and Seller shall have at least seven (7) Business Days to review and comment on such draft prior to its filing and (B) either continue to proceed under the Existing FPSC Docket or seek to proceed under a new FPSC filing docket, (iii) Purchaser, on the one hand, and Seller, on the other hand, shall file notification and report forms required pursuant to the HSR Act with the Antitrust Division of the Department of Justice (the “DOJ”) and the Federal Trade Commission (“FTC”) no later than January 30, 2015 (the “Initial HSR”), requesting early termination of the waiting period thereunder, and Purchaser, on the one hand, and Seller, on the other hand, shall use its commercially reasonable efforts to diligently pursue all necessary clearances, consents, approvals or authorizations of the DOJ and FTC, as applicable; provided, however, that nothing in this Agreement shall require the Purchaser to _____

_____, and (iv) Purchaser, on the one hand, and Seller, on the other hand, shall file no later than March 31, 2016, any other form or report required by any Governmental or Regulatory Authority relating to antitrust, competition, trade or energy regulation matters. Purchaser and Seller shall make any additional filings under the HSR Act, and observe waiting periods accordingly, as are necessary to consummate the transaction. Each of the parties shall request expedited treatment of any such filings. Purchaser and Seller shall (i) respond as promptly as practicable to any inquiries or requests received from any Governmental or Regulatory Authority for additional information or documentation and (ii) not enter into any agreement with any Governmental or Regulatory Authority not to consummate the transactions contemplated by this Agreement, except with the prior consent of the other party (which shall not be unreasonably withheld, delayed or conditioned). Each party shall (i) promptly notify the other party of any material written communication to that party from any Governmental or Regulatory Authority and, subject to applicable Law and execution of an appropriate joint defense arrangement, permit the other party or its counsel to review in advance any proposed written communication to any of the foregoing, (ii) not agree to participate in any substantive meeting or discussion with any Governmental or Regulatory Authority in respect of any filings, investigation or inquiry concerning this Agreement or the transactions contemplated hereby unless it consults with the other party in advance and, to the extent permitted by such Governmental or Regulatory Authority, gives the other party the opportunity to attend and participate thereat, and (iii) subject to applicable Law and execution of an appropriate joint defense arrangement, furnish the other party with copies of all material correspondence, filings, and communications (and memoranda setting forth the substance thereof) between them and their Affiliates and their respective Representatives on the one hand, and any Governmental or Regulatory Authority or members of their respective staffs on the other hand, with respect to this Agreement and the transactions contemplated hereby.

(c) The parties shall cooperate in the preparation of, and each have the right to approve, not to be unreasonably withheld, any application, form or report required for FERC approval of the transaction contemplated by this Agreement that must be submitted jointly by Seller and Purchaser.

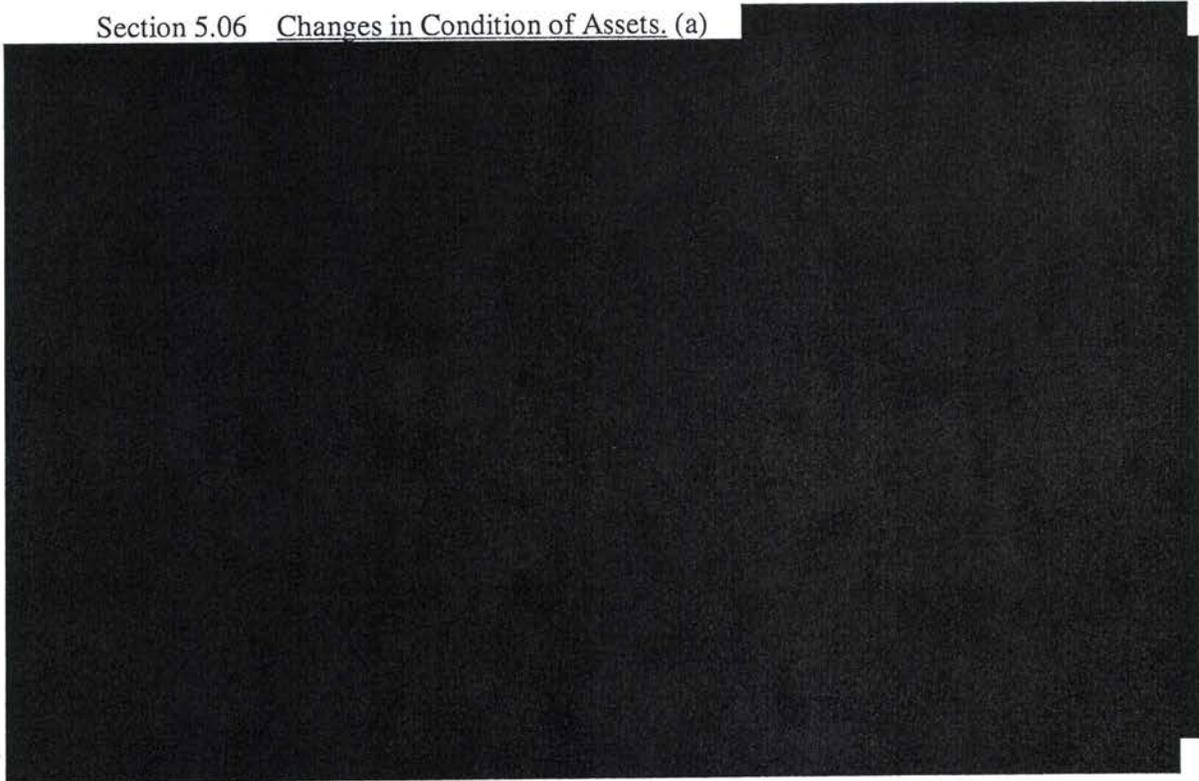
resolved by the due date for filing a Tax Return for the Overlap Period giving effect to all available valid extensions, Purchaser shall have the right to file any such Tax Return in a manner determined by the Purchaser, and the Tax Return will be amended if and to the extent necessary to reflect the resolution of any disputed item.

(d) Following the Closing, Seller shall not make any Tax election, amend any Tax Return, or respond to any audit or inquiry by a taxing authority that could reasonably be expected to materially adversely affect the Tax liability of Purchaser or any of its Affiliates without the prior written consent of Purchaser, which consent shall not be unreasonably withheld or delayed.

(e) If Seller does not deliver to Purchaser the certification required by Section 6.03(b), Purchaser shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement (including the Purchase Price) such amount as it is required pursuant to Section 1445 of the Code to deduct and withhold with respect to the making of such payment.

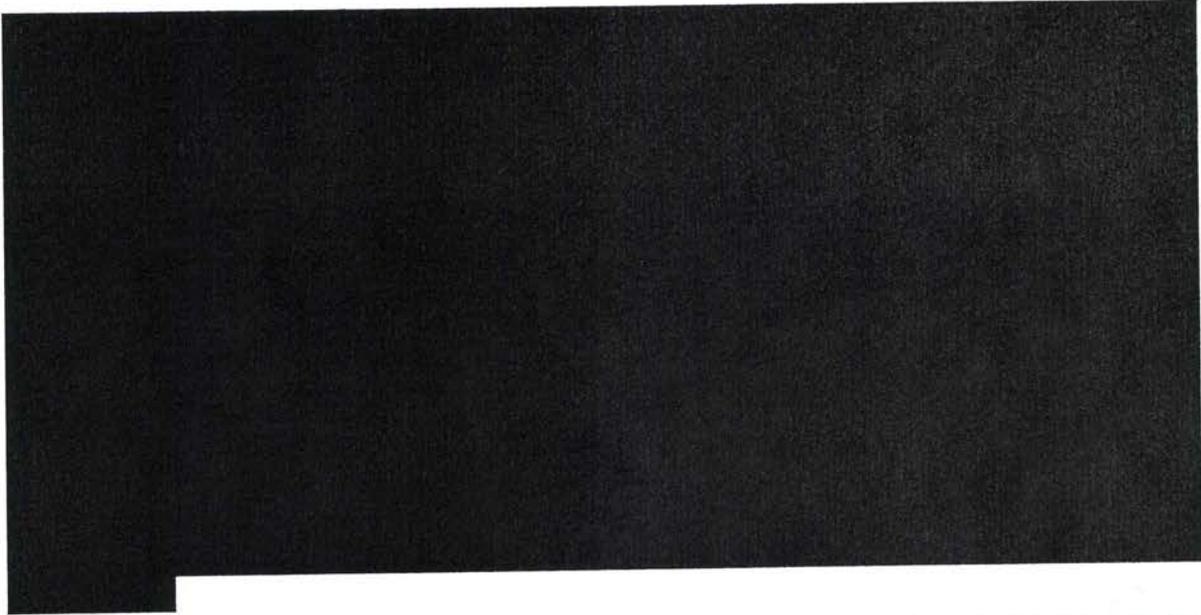
(f) Notwithstanding anything in this Agreement to the contrary, any proceeding with a Governmental or Regulatory Authority relating to any Taxes attributable to the Purchased Assets which are described in Section 5.05(a) shall be controlled at all stages by Purchaser; provided, however, that Purchaser shall permit Seller to participate in such proceedings, negotiations or defense at any time at its own expense and Purchaser shall not settle or otherwise compromise any such proceeding without the prior written consent of Seller, which shall not be unreasonably withheld, conditioned or delayed.

Section 5.06 Changes in Condition of Assets. (a)

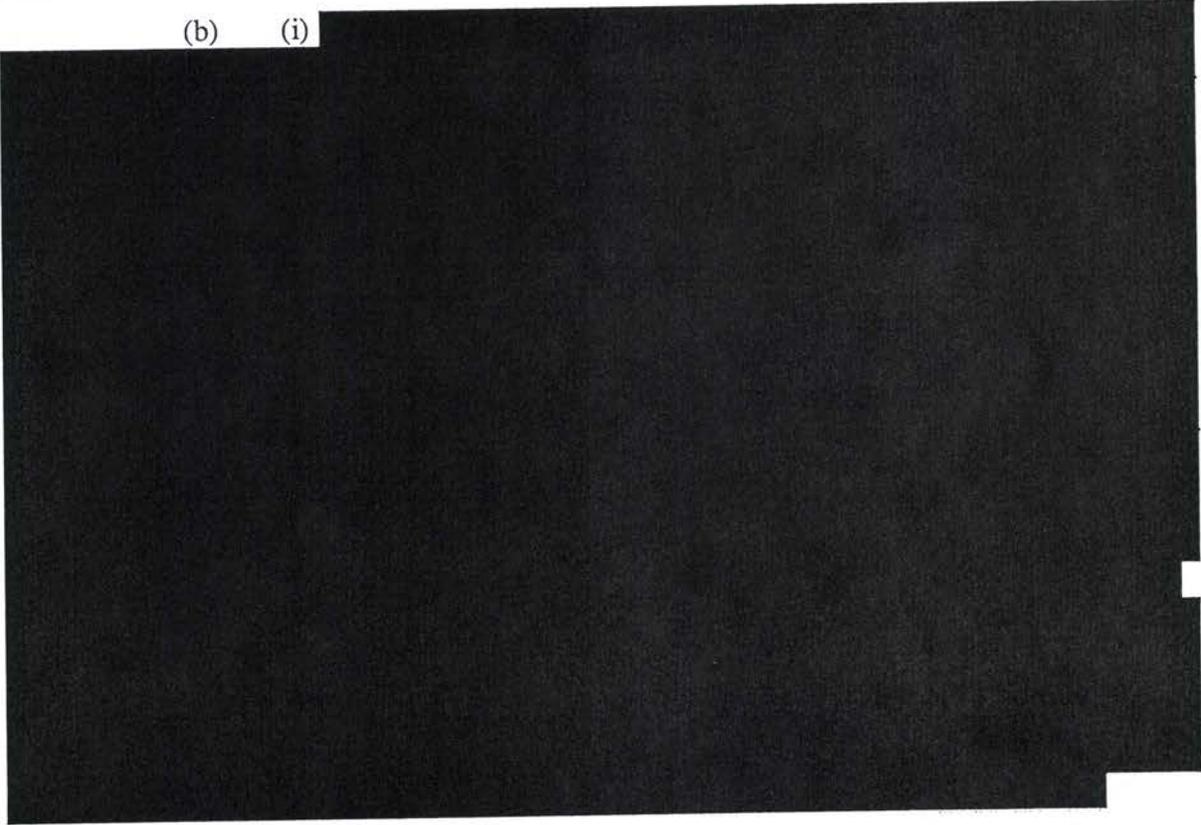


REDACTED

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (MEP-2)
Page 45 of 167



(b) (i)

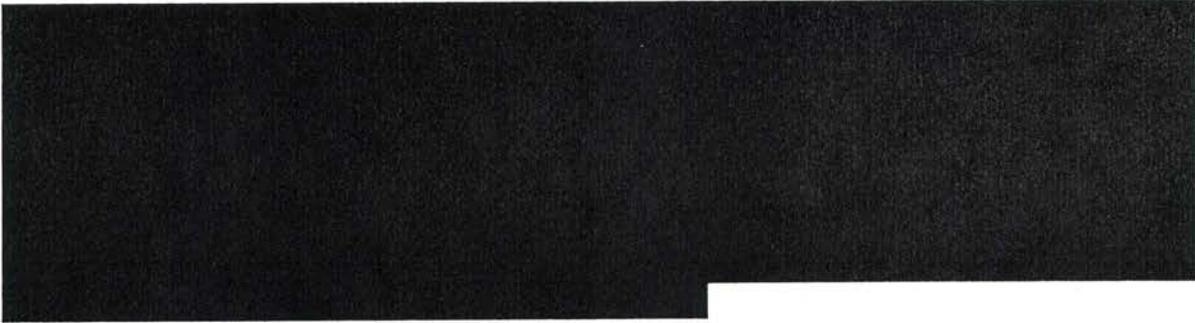


(ii)

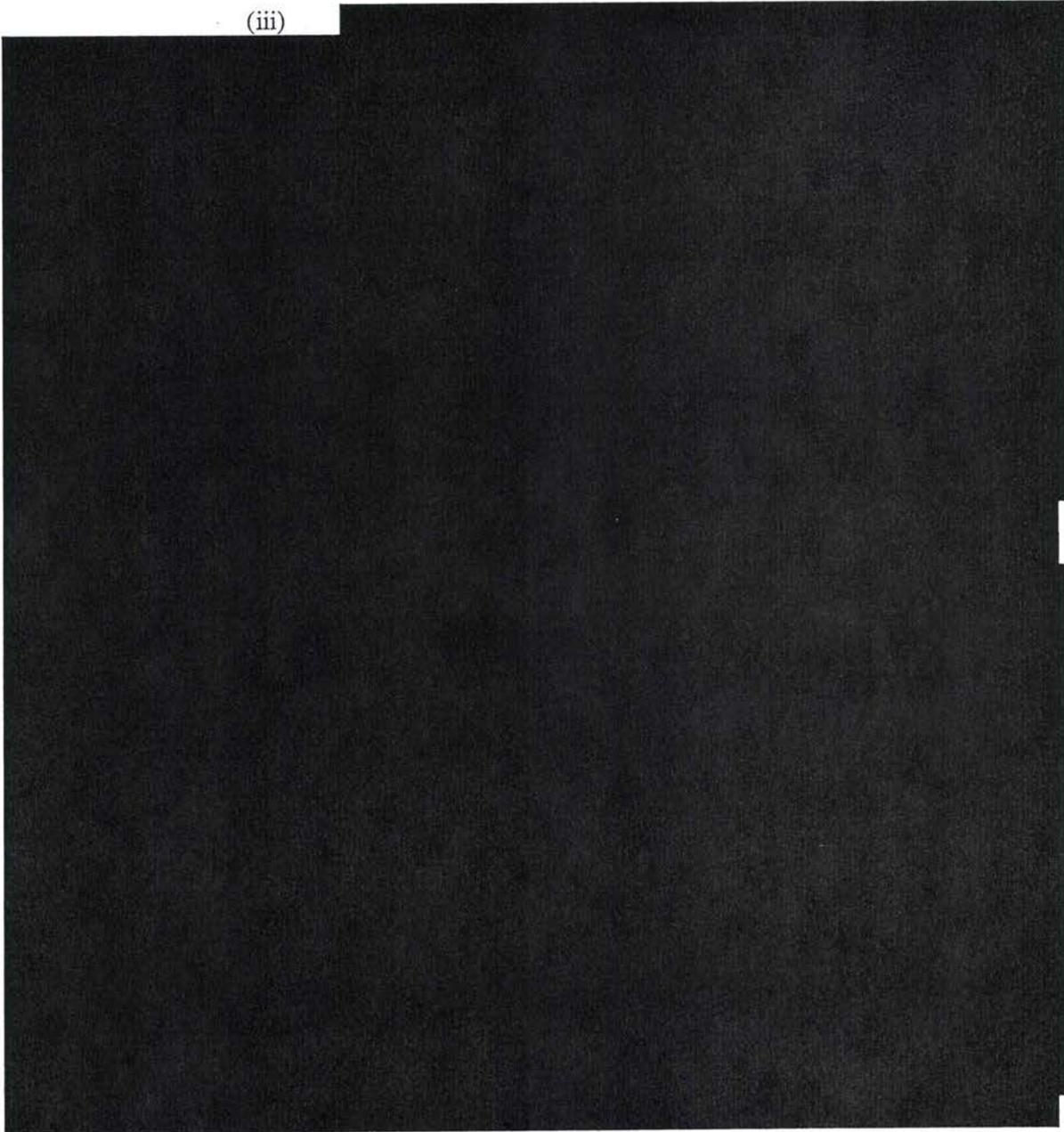


REDACTED

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (MEP-2)
Page 46 of 167



(iii)



[REDACTED]

(iv)

[REDACTED]

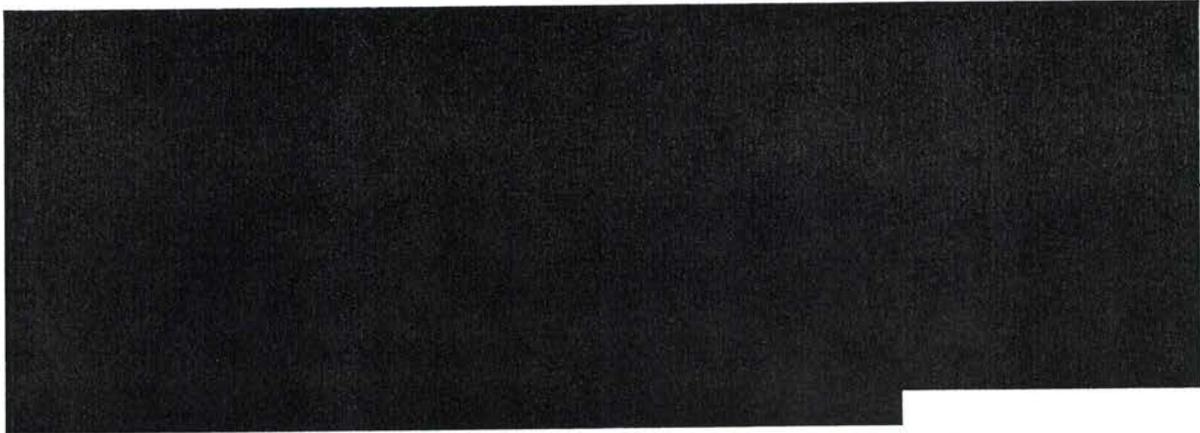
(c)

[REDACTED]

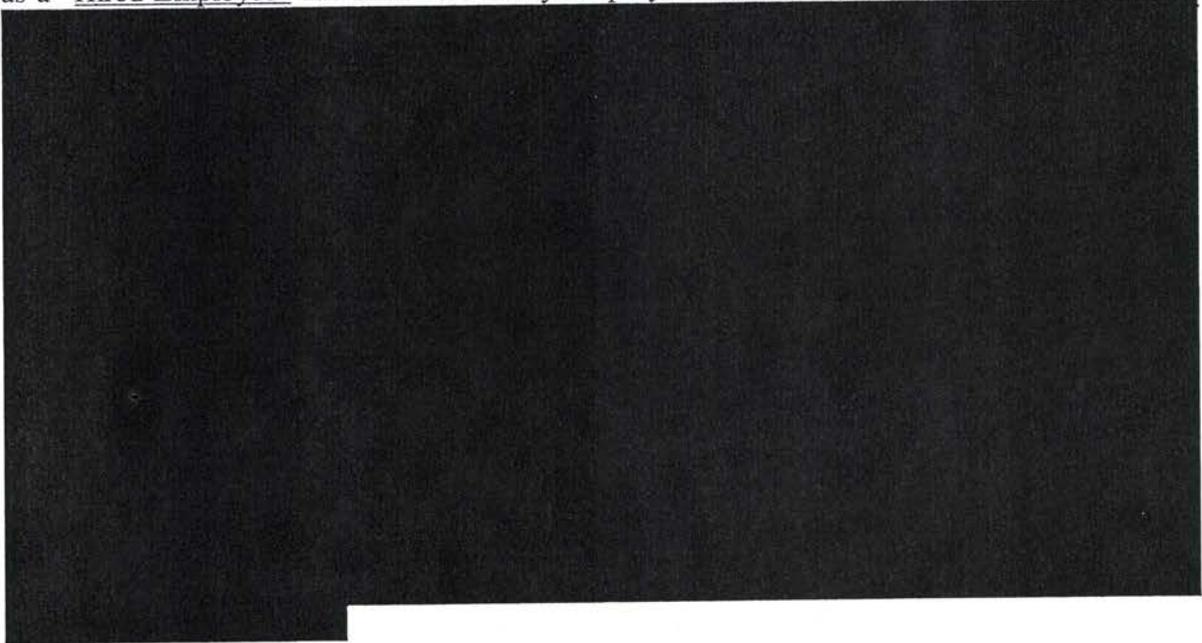
Section 5.07 Employees.

(a) Subject to this Section 5.07, Purchaser shall extend a written offer of employment, effective as of the Closing Date and contingent on the Closing actually occurring,

[REDACTED]



(b) Each Facility Employee who accepts such offer of employment and commences employment with Purchaser or an Affiliate on the Closing Date is referred to herein as a "Hired Employee" and all such Facility Employees collectively as the "Hired Employees".



(c) Purchaser shall be solely responsible for any and all severance or termination pay expenses which arise in connection with the termination of employment of any Hired Employee by Purchaser after the Closing Date.

(d) Purchaser shall recognize for all purposes, other than benefit accrual under any defined benefit pension plan and other than for all purposes under any post-retirement healthcare plan, under Purchaser's and its Affiliates' policies and employee benefit plans (including paid time off and severance) the service of any Hired Employee with the Operator and/or any of its Affiliates (and each predecessor respectively thereof) prior to the Closing Date, except to the extent that recognition of such service would result in duplication of benefits.

(e) The Operator or its Affiliates shall retain responsibility for the payment of any employee benefits or entitlement accrued through the Closing Date, including severance or termination pay, bonuses, accrued vacation, sick or holiday pay, to any Facility Employee or pursuant to any Benefit Plan as a result of or in connection with the consummation of the transactions contemplated hereby.

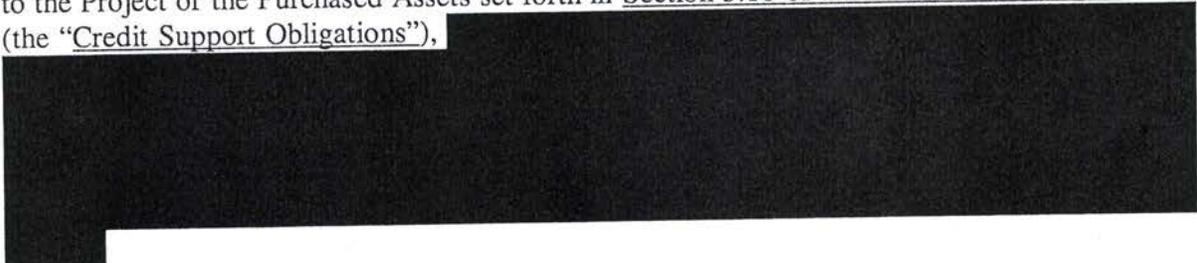
(f) Notwithstanding the foregoing, nothing contained in this Agreement shall be deemed or construed to (i) give rise to any rights, claims, benefits or causes of action to a Facility Employee or representative thereof or make any Facility Employee or representative thereof a third party beneficiary hereof, (ii) be treated as an amendment or other modification of any employee benefit plan, or (iii) prevent, restrict or limit each of Seller, the Operator, any Affiliate of Seller or the Operator, Purchaser or any Affiliate of Purchaser, following the Closing Date, from modifying or terminating any of its benefit plans, programs or policies from time to time as it may deem appropriate, subject only to compliance with the express provisions of this Section 5.07.

Section 5.08 Insurance. Purchaser acknowledges that, effective upon the Closing, Seller shall terminate or modify the Project Insurance Policies to exclude coverage of the Business, the Purchased Assets, the Project and the Project Site from the Project Insurance Policies or any other policies of insurance maintained by Seller.

Section 5.09 Transfer Taxes. All transfer Taxes, including documentary, sales, use, stamp, registration, filing, recording, permit, license, authorization, controlling interest transfer and other similar Taxes and fees (including any penalties and interest) ("Transfer Taxes") incurred in connection with this Agreement and the transactions contemplated hereby, if any, shall be shared equally by Purchaser and Seller when due, and Purchaser and Seller shall file all necessary Tax Returns and other documentation with respect to any such Transfer Taxes, and, if required by applicable Law, Purchaser and Seller shall, as applicable, and shall cause their respective Affiliates to, join in the execution of any such Tax Returns and other documentation and shall cooperate with each other to take such commercially reasonable actions as will minimize or reduce the amount of such Taxes.

Section 5.10 Release of Credit Support.

(a) Prior to the Closing, Purchaser shall use commercially reasonable efforts to effect the full and unconditional release of Seller and its Affiliates from all guarantees, letters of credit and other credit support posted on behalf of Seller or an Affiliate of Seller and relating to the Project or the Purchased Assets set forth in Section 5.10 of the Seller Disclosure Schedule (the "Credit Support Obligations"),



(b) Within ninety (90) days following the Closing, Purchaser shall effect the full and unconditional release of Seller and its Affiliate from the Credit Support Obligations.

Section 5.11 [REDACTED]

(a)

[REDACTED]

(b)

[REDACTED]

(c)

[REDACTED]

Section 5.12 Reports; Financial Statements. Seller will furnish to Purchaser (a) promptly after available, copies of all Governmental or Regulatory Approvals or Permits filed with any Governmental or Regulatory Authority after the date hereof, (b) promptly after available (but in no event later than forty-five (45) days following the relevant period), quarterly unaudited balance sheets of the Seller, and (c) promptly after asserted, a summary of any material claims asserted by Seller pursuant to any Project Insurance Policy after the Effective Date. Each of the financial statements delivered pursuant to this Section 5.12 shall be prepared in conformance with the presentation and delivery requirements contained in Section 3.05. Each of the financial statements delivered pursuant to this Section 5.12 shall be accompanied by a certificate of an authorized financial officer of Seller to the effect that such financial statements are prepared in conformance with the presentation requirements set forth in Section 3.05.

Section 5.13 Notification of Certain Matters. Each party hereto shall give prompt notice to the other party hereto after becoming aware of (a) the occurrence, or failure to occur, of any event that causes, or would be likely to cause, any representation or warranty of the notifying party contained in this Agreement to be untrue or inaccurate in any material respect at any time

Section 7.03 Officer's Certificates. Purchaser shall have delivered to Seller an officer's certificate, dated the Closing Date and executed in the name and on behalf of Purchaser, certifying that all of the conditions set forth in Sections 7.01 and 7.02 have been satisfied.

Section 7.04 Orders and Laws. There shall not be in effect on the Closing Date any Order or Law restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement.

Section 7.05 Governmental or Regulatory Approvals. All Governmental or Regulatory Approvals set forth in Section 7.05 of the Seller Disclosure Schedule shall have been obtained, made or given, and shall be in full force and effect.

Section 7.06 Third-Party Consents. The consents (or waivers in lieu thereof) set forth in Section 7.06 of the Seller Disclosure Schedule shall have been obtained, made or given, and shall be in full force and effect.

Section 7.07 Instruments of Transfer. At or prior to the Closing, Purchaser shall have executed and delivered to Seller the Assignment and Assumption Agreement, the Assignment and Assumption (CES) and such other documentation and instruments of transfer as shall be reasonably required.

Section 7.08 Release of Credit Support. Purchaser shall have complied with its obligations under Section 5.10(a).

ARTICLE VIII

INDEMNIFICATION; NO OTHER REPRESENTATIONS

Section 8.01 Survival. The representations, warranties, covenants and agreements of Purchaser and Seller contained in this Agreement [REDACTED] and no claims shall be made thereafter with respect to any breach thereof or indemnification for any breach thereof, except for (i) the representations and warranties set forth in Section 3.14 (Taxes), [REDACTED] (ii) the representations and warranties of Seller set forth in Section 3.15 (Employee Matters) and Section 3.17 (Environmental Matters), which [REDACTED]; (iii) the representations and warranties of Seller set forth in Section 3.01 (Legal Existence) and Section 3.02 (Authority) and Section 3.19 (Brokers), which [REDACTED] (iv) the representations and warranties of Seller set forth in Section 3.03 (No Conflicts) and Section 3.06 (No Undisclosed Liabilities) which [REDACTED] (v) the representations and warranties of Seller set forth in the second sentence of Section 3.10 (Real Property), the first sentence of Section 3.11 (Personal Property) and the first sentence of Section 3.12 (Intellectual Property), which [REDACTED] (the "Property Reps"), (vi) the representations and warranties of Purchaser set forth in Section 4.01 (Legal Existence), Section 4.02 (Authority), and Section 4.07 (Brokers) which [REDACTED], (vii) the representations and warranties of Purchaser set forth in Section 4.03 (No Conflicts), which [REDACTED] (the items in clauses (iii) and (vi) collectively, the "Fundamental

Representations"); (viii) claims which are asserted in good faith prior to the end of the applicable periods set forth in clauses (i) through (vii) immediately above, which [REDACTED]; and (ix) covenants and agreements (including obligations to indemnify) that are to be performed in whole or in part following the Closing, which [REDACTED]

Section 8.02 Indemnification.

(a) Subject to Sections 8.01 and 8.02(b), and the other limitations to indemnification set forth in this Article VIII, from and after the Closing:

(i) Seller shall indemnify, defend and hold harmless Purchaser and its respective Affiliates and Representatives (collectively, the "Purchaser Indemnified Parties") from and against all Losses actually incurred or suffered by the Purchaser Indemnified Parties arising out of, resulting from or relating to: (A) any breach of any representation or warranty of Seller contained in this Agreement or any Ancillary Agreement to which Seller is a party as of the Closing as if made on the Closing Date (except to the extent expressly made as of an earlier date); (B) any breach of any covenant or agreement of Seller contained in this Agreement or any Ancillary Agreement to which Seller is a party; and (C) the Excluded Liabilities (without duplication of amount paid by Seller to Purchaser in accordance with Section 5.05(a) or Section 5.05(b)).

(ii) Purchaser shall indemnify, defend and hold harmless Seller and its Affiliates and Representatives (collectively, the "Seller Indemnified Parties") from and against all Losses actually incurred or suffered by the Seller Indemnified Parties arising out of, resulting from or relating to: (A) any breach of any representation or warranty of Purchasers contained in this Agreement or any Ancillary Agreement to which Purchaser is a party as of the Closing as if made on the Closing Date (except to the extent expressly made as of an earlier date); (B) any breach of any covenant or agreement of Purchaser contained in this Agreement or any Ancillary Agreement to which Purchaser is a party; and (C) the Assumed Liabilities.

(b) Notwithstanding anything in this Agreement to the contrary, except in the case of any claim based upon (i) fraud, intentional misrepresentation or criminal activity or (ii) the breach of any Property Rep, Section 3.14 (Taxes) or any Fundamental Representation, in each case, which shall not be subject to limitations set forth in this Section 8.02(b) (with the exception of the last sentence in Section 8.02(b)), neither party shall have any liability under Section 8.02(a)(i)(A) and Section 8.02(a)(ii)(A) (x) if the Persons listed in Section 1.01(a) of the Purchaser Disclosure Schedule (in the case of liability under Section 8.02(a)(i)(A)) or the Persons listed in Section 1.01(b) of the Seller Disclosure Schedule (in the case of liability under Section 8.02(a)(ii)(A)) had actual and direct knowledge of such breach or of all facts material to such breach, except in the case of liability under Section 8.02(a)(i)(A), for those matters set forth on Section 8.02(b) of the Purchaser Disclosure Schedule; and (y) until the aggregate amount of all such Losses exceeding such amount incurred by the Purchaser Indemnified Parties or the Seller Indemnified Parties, as applicable [REDACTED] (the "Deductible Amount"), in which event the indemnifying party shall be liable for Losses only to the extent they are in excess of the Deductible Amount, and in no event shall the aggregate liability of the

indemnifying party for claims made pursuant to Section 8.02(a)(i)(A) or Section 8.02(a)(ii)(A), as the case may be (other than the Fundamental Representations), exceed [REDACTED]. Notwithstanding anything herein to the contrary, neither Purchaser nor Seller shall be liable under this Agreement to the other party for aggregate Losses in excess of the Purchase Price.

(c) Notwithstanding anything in this Agreement to the contrary, there shall be no indemnification pursuant to this Agreement by any indemnifying party hereunder for any punitive, special, indirect, exemplary, incidental, consequential or similar damages (including any damages on account of lost profits, loss of revenue, loss of production or diminution in value (based on multiple of earnings or otherwise) or other damages attributable to business interruption), whether by statute, in tort or under contract, under any indemnity provision or otherwise, except in connection with a Third-Party Claim.

(d) The parties have negotiated the limitations set forth in Section 8.02(b) in part to avoid disputes concerning the meaning of materiality qualifiers such as “Material Adverse Effect”, “material”, “materially”, “in all material respects” and other similar qualifiers. Accordingly, for purposes of this Article VIII, any such materiality qualifier contained in any representation or warranty or in the definition of any defined term used therein (except for the representation in Section 3.07(b)) shall be ignored in determining whether there has been a breach of or inaccuracy in a representation or warranty and in measuring the corresponding damages.

Section 8.03 Duty to Mitigate. A party that becomes aware of a Loss for which it may seek indemnification under this Article VIII shall use commercially reasonable efforts to mitigate such Loss, including taking any actions reasonably requested by the other party, and such other party shall not be liable for any Loss to the extent that it is attributable to the failure of the party seeking indemnification to comply with this Section 8.03.

Section 8.04 Exclusive Remedy; Reduction of Benefit.

(a) Purchaser and Seller acknowledge and agree that from and after the Closing, except in the case of fraud or intentional misrepresentation, (i) the indemnification provisions in this Article VIII shall be the sole and exclusive remedy of the Purchaser Indemnified Parties and the Seller Indemnified Parties with respect to any breach of, or cause of action arising under this Agreement and the Ancillary Agreements (other than the Parent Guaranty and the Calpine Guaranty) or any claims relating to or arising under Environmental Law, including common law and statutory remedies (including, remedies under CERCLA and any other Environmental Law); and (ii) Purchaser expressly and knowingly releases and waives any right to seek any form of recourse other than the indemnification provisions in this Article VIII against Seller or its Affiliates with respect to claims relating to or arising under Environmental Laws, including common law and statutory remedies.

(b) Any obligation of Purchaser to indemnify a Seller Indemnified Party or of Seller to indemnify a Purchaser Indemnified Party shall be reduced to the extent of the cash paid to the applicable indemnified party (net of any costs incurred to recover such amount) pursuant to (y) a warranty or indemnification from a third party or (z) insurance.

(c) No Losses may be claimed under Section 8.02 by any Purchaser Indemnified Party or Seller Indemnified Party, as the case may be, to the extent such Losses are included in the calculation of any adjustment to the Purchase Price as [REDACTED].

(d) It is the express intention of the parties that the indemnification provided for in this Article VIII shall apply to direct claims between the parties for a breach of this Agreement and the Ancillary Agreements (whether or not involving a third party).

Section 8.05 Procedure With Respect to Third-Party Claims.

(a) No claim may be asserted pursuant to this Article VIII for breach of any representation, warranty, covenant or agreement contained herein unless written notice of such claim is delivered by the party seeking indemnification on or prior to the date on which the representation, warranty, covenant or agreement on which such claim is based ceases to survive as set forth in this Article VIII.

(b) If any Purchaser Indemnified Party or Seller Indemnified Party becomes subject to a pending or threatened claim of a third party (a "Third-Party Claim") and such Person (the "Claiming Party") believes it has a claim for indemnification against Purchaser or Seller, as applicable (the "Responding Party"), then the Claiming Party shall deliver to the Responding Party with reasonable promptness written notice of such Third-Party Claim. The Responding Party shall notify the Claiming Party as soon as practicable whether the Responding Party desires to defend the Claiming Party against such Third-Party Claim. The failure of the Claiming Party to so notify the Responding Party shall not relieve the Responding Party of liability hereunder; provided, however, that if the defense of such Third-Party Claim is prejudiced by the failure to give such notice, any Third Party Claim shall be reduced by the damages resulting from such Claiming Party's delay or failure to provide notice. Within thirty (30) days after receipt of any notice pursuant to this Section 8.05(b), the Responding Party shall notify the Claiming Party in writing that it desires to defend the Third-Party Claim pursuant to this Section 8.05(b) and acknowledge its obligations to indemnify hereunder. Upon giving such notice, the Responding Party shall have control of such defense and proceedings, including any settlement thereof.

(c) If the Responding Party notifies the Claiming Party that it desires to defend the Third-Party Claim pursuant to Section 8.05(b), then the Responding Party shall work diligently to defend the Third-Party Claim with counsel reasonably acceptable to the Claiming Party and shall not enter into any settlement or consent to the entry of any Order (i) that does not include as a term thereof the giving by each claimant or plaintiff to the Claiming Party a release from all liability in respect of such Third-Party Claim, (ii) that provides for any relief other than the payment of monetary damages as to which the Claiming Party shall be paid in full or (iii) in the reasonable judgment of the Claiming Party, is likely to establish a precedential custom or practice or result in an outcome that is materially adverse to the continuing business interests of the Claiming Party; provided, however, that if requested by the Responding Party, the Claiming Party shall, at the sole cost and expense of the Responding Party, reasonably cooperate with the Responding Party and its counsel in contesting any Third-Party Claim that the Responding Party elects to contest. The Claiming Party may elect to participate in such proceedings, negotiations or defense at any time at its own expense; provided, however, that the Responding Party shall pay the reasonable attorneys' fees of the Claiming Party if (i) the employment of separate counsel

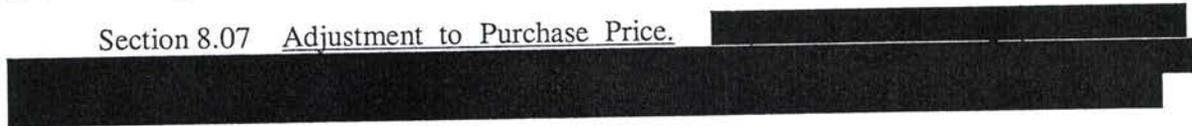
shall have been authorized in writing by the Responding Party in connection with the defense of such Third-Party Claim, (iii) there are legal defenses available to the Claiming Party that are different from or additional to those available to the Responding Party or (iii) the Claiming Party's counsel shall have advised the Claiming Party in writing, with a copy delivered to the Responding Party, that there is a conflict of interest that could make it inappropriate under applicable standards of professional conduct for the Responding Party and the Claiming Party to have common counsel.

(d) Until the Responding Party notifies the Claiming Party that the Responding Party desires to defend the Third-Party Claim pursuant to Section 8.05(b), the Claiming Party shall (upon reasonable prior notice to the Responding Party) have the right to undertake the defense of such Third-Party Claim, with counsel chosen by the Claiming Party; provided, however, that the Responding Party shall reimburse the Claiming Party for the costs of defending against such Third-Party Claim (including reasonable attorneys' fees and expenses) and shall remain otherwise responsible for any liability with respect to amounts arising from or related to such Third-Party Claim, in both cases to the extent it is ultimately determined that such Responding Party is liable with respect to such Third-Party Claim for a breach under this Agreement; and provided, further, that the Claiming Party shall not enter into settlement of any such Third-Party Claim without the prior written consent of the Responding Party which shall not be unreasonably withheld. The Responding Party may elect to participate in such proceedings, negotiations or defense at any time at its own expense.

(e) Sections 8.05(a) through (d) apply only to indemnification relating to Third Party Claims. A party to this Agreement may assert an indemnity claim not related to a Third-Party Claim by providing notice to the other party within the applicable time periods set forth in Section 8.01.

Section 8.06 Effect of Investigation. Subject to Section 8.02(b)(x), the representations, warranties and covenants of the indemnifying party, and the indemnified party's right to indemnification with respect thereto, shall not be affected or deemed waived by reason of any investigation made by or on behalf of the indemnified party (including by any of its Representatives) or by reason of the fact that the indemnified party or any of its Representatives should have known that any such representation or warranty is, was or might be inaccurate or by reason of the indemnified party's waiver of any condition set forth in Article VI or Article VII, as the case may be.

Section 8.07 Adjustment to Purchase Price.



Section 8.08 Release of Indemnity Escrow Funds. The Indemnity Escrow Fund will be released pursuant to the terms of the Escrow Agreement as follows:

(a) In the event that, prior to the date of the expiration of the Indemnity Escrow Period, a Purchaser Indemnified Party is entitled to receive payments under (i) any mutual agreement between the parties or (ii) any final Order, in any case, regarding claims for Losses made by such Purchaser Indemnified Party pursuant to Section 8.02(a)(i), then Purchaser and Seller will promptly execute a joint written instruction to the Escrow Agent directing the

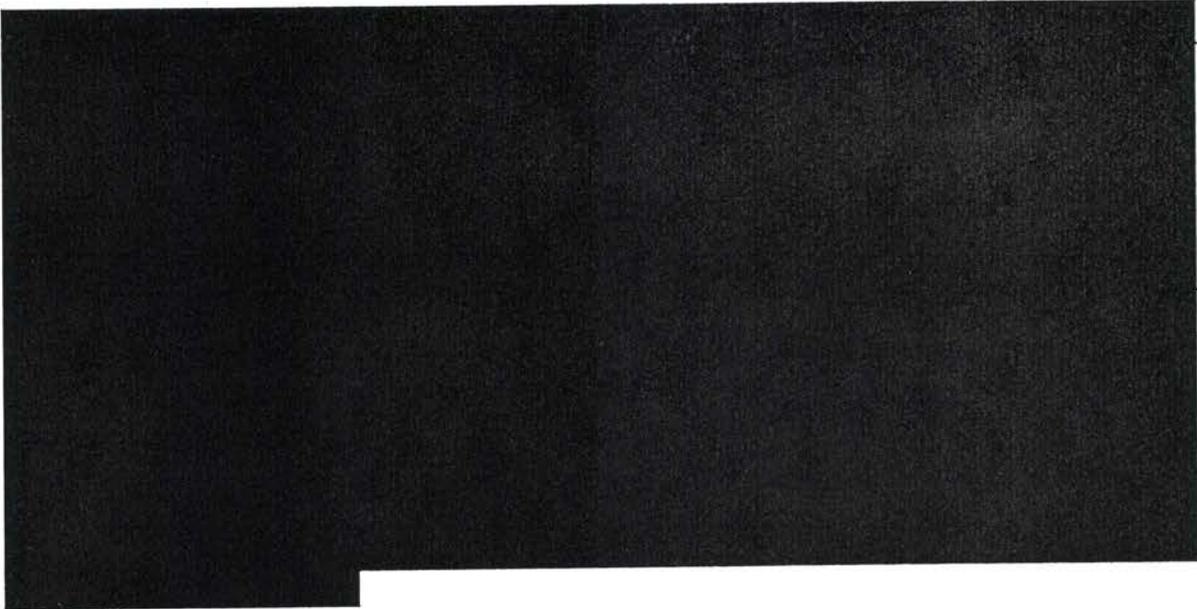
Escrow Agent to deliver such amounts to the Purchaser Indemnified Party and the remaining balance of the Indemnity Escrow Fund will be retained in accordance with the terms of this Section 8.08 and the Escrow Agreement.

(b) In the event that Purchaser will have made claim(s) for Losses pursuant to Section 8.02(a)(i) and such indemnification claim(s) remain outstanding as of the date of the expiration of the Indemnity Escrow Period, then the Indemnity Escrow Fund will only be delivered to Seller to the extent that the amount of such indemnification claim(s) (the "Claim Amount"), is less than the remaining balance of the Indemnity Escrow Fund, in which case, (i) within two (2) Business Days after the expiration of the Indemnity Escrow Period, Purchaser and Seller will execute a joint written instruction to the Escrow Agent directing the Escrow Agent to deliver to Seller an amount equal to the remaining balance of the Indemnity Escrow Fund less the Claim Amount, (ii) Purchaser and Seller will execute any required amendments to the Escrow Agreement in order to extend the Indemnity Escrow Period and (iii) the portion of the Indemnity Escrow Fund equal to the Claim Amount will remain held in escrow pending the resolution of such indemnification claim. Upon resolution of such outstanding indemnification claim(s), either by mutual agreement of the parties or pursuant to a final Order, Purchaser and Seller will promptly execute a joint written instruction to the Escrow Agent directing the Escrow Agent to deliver to (A) Purchaser any amounts which Purchaser is entitled to receive as a result of the resolution of such outstanding indemnification claims(s) and (B) Seller any remaining balance of the Indemnity Escrow Fund.

(c) Interest on the Indemnity Escrow Amount will be paid to Purchaser and Seller in the proportion of the Indemnity Escrow Amount paid to them.

(d) Purchaser will make demand for payment under the Escrow Agreement prior to instituting any proceedings or taking any other action against Seller, unless the failure to institute proceedings or take such other action will prejudice Purchaser's ability to make such indemnification claim.

Section 8.09 Indemnification Letter of Credit. At the Closing, Seller may deliver to Purchaser a letter of credit in the amount of [REDACTED] and substantially in the form of Exhibit E attached hereto (the "Indemnification Letter of Credit") to secure Seller's indemnification obligations under Section 8.02(a)(i), subject to the terms and conditions of this Agreement, in which event the Base Purchase Price will not be reduced by the Indemnity Escrow Amount and Purchaser and Seller will not enter into the Escrow Agreement at Closing, as to the Indemnity Escrow Fund. The Indemnification Letter of Credit must be issued by a U.S. commercial bank or the U.S. branch of a foreign bank with total assets of at least \$10 billion having a general long-term senior unsecured debt rating of A- or higher (as rated by Standard & Poor's Rating Group) or A3 or higher (as rated by Moody's Investor Services, Inc.) and shall permit presentation at a bank located in Charlotte, NC, Atlanta, GA, or New York, NY (the "Indemnification LOC Issuing Bank"). Seller would ensure that the Indemnification Letter of Credit remains in full force, outstanding and in the required amount until the later of (i) the date which is [REDACTED]



ARTICLE IX

TERMINATION

Section 9.01 Termination. This Agreement may be terminated, and the transactions contemplated hereby may be abandoned, at any time by written notice from either party to the other party (except for paragraph (a) below):

- (a) by mutual written consent of Purchaser and Seller;
- (b) by either Purchaser or Seller:

(i) if the Closing has not occurred on or before March 31, 2017 (the "Termination Date"); provided, that the terminating party is not in material breach under this Agreement, and subject to Seller's right to extend the Termination Date for up to ninety (90) days pursuant to Section 5.06(b)(ii);

(ii) at any time before the Closing, if any court of competent jurisdiction in the United States or other Governmental or Regulatory Authority other than FERC shall have issued a final Order or enacted any Law or taken any other final action restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement and such Order or Law or other action is or shall have become final and nonappealable; provided, however, that the party seeking to terminate this Agreement pursuant to this Section 9.01(b)(ii) shall have used commercially reasonable efforts to prevent the entry of and to remove such Order or final action;

(iii) if [REDACTED] occur prior to August 1, 2015 and the terminating party reasonably determines that the cost of repairing, replacing or restoring the damaged assets will exceed [REDACTED] of the Base Purchase Price, provided that the terminating party provides notice on or prior to August 1, 2015;

(iv)

[REDACTED]

(v)

[REDACTED]

(vi)

[REDACTED]

(vii) at any time before the Closing

[REDACTED], instituted or pending any suit, action or proceeding by the DOJ, the FTC or the Florida attorney general's office seeking to restrain, enjoin or otherwise prohibit the consummation of the transactions contemplated by this Agreement provided notice of termination is given within 30 days of such threat in writing or the commencement of such proceeding, as applicable; or

(viii) if [REDACTED] and/or Other Losses occur [REDACTED]

[REDACTED]

(c) by:

(i)

[REDACTED]

(ii)

[REDACTED]

(iii) Purchaser or Seller, at any time before the Closing, if the FPSC affirmatively rejects the transactions contemplated hereby, provided notice of termination is given within 30 days after such FPSC rejection;

(iv)

[REDACTED]

[REDACTED]

; or

(v) [REDACTED]

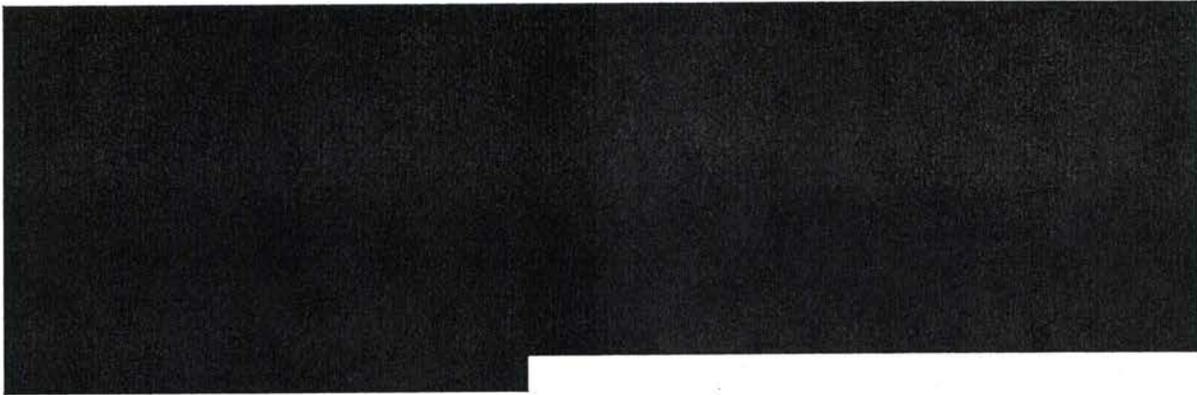
(d) at any time before the Closing, by Purchaser (provided that Purchaser is not in material breach under this Agreement) if (A) there has been a breach by Seller of any representation, warranty, covenant or agreement contained in this Agreement or if any representation or warranty of Seller shall have become untrue, in either case such that the conditions set forth in Section 6.01 or 6.02 would not be satisfied, and (B) such breach is not curable by the Termination Date;

(e) at any time before the Closing, by Seller (provided that Seller is not in material breach under this Agreement) if (A) there has been a breach by Purchaser of any representation, warranty, covenant or agreement contained in this Agreement or if any representation or warranty of Purchaser shall have become untrue, in either case such that the conditions set forth in Section 7.01 or 7.02 would not be satisfied, and (B) such breach is not curable by the Termination Date; provided, however, that no cure period shall apply to Purchaser's obligation to pay the Closing Payment.

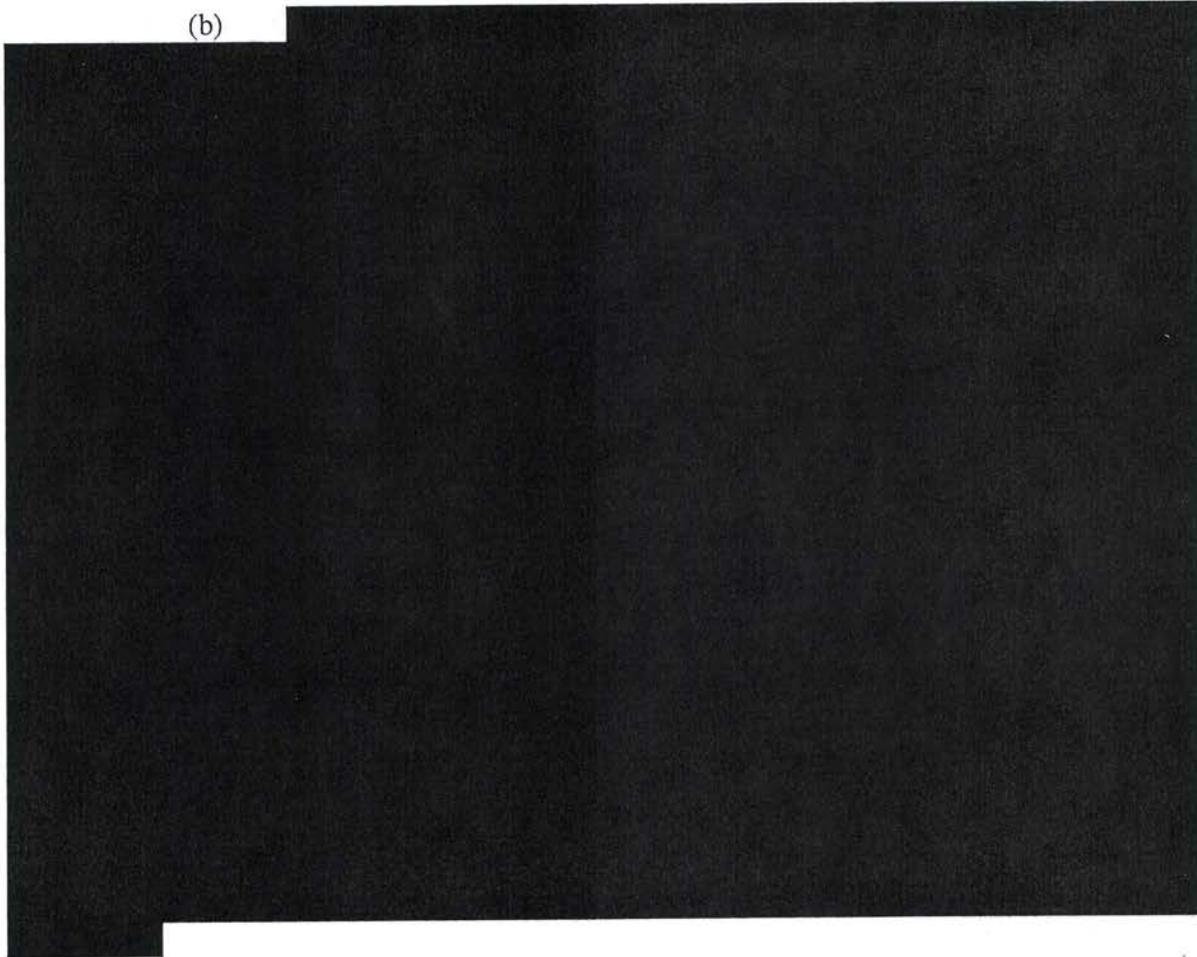
Section 9.02 Effect of Termination. Subject to Section 9.03, if this Agreement is validly terminated pursuant to Section 9.01, this Agreement will forthwith become null and void and there will be no liability or obligation on the part of either Purchaser or Seller (or any of their respective Affiliates or Representatives) in respect of this Agreement; provided, that the provisions set forth in Article X and Purchaser's indemnification obligations set forth in Section 5.01(a), Section 5.02(b), Section 5.06(c), and Section 5.11(d), will continue to apply following any termination hereof; and provided, further, that subject to Section 9.03, each party shall continue to be liable for any breach by such party prior to the termination of this Agreement of any representation, warranty, covenant or agreement of such party in this Agreement.

Section 9.03 [REDACTED] (a) [REDACTED]

[REDACTED]



(b)



Section 9.04 Specific Performance.

(a) Except as provided in the last sentence of Section 9.03, the parties to this Agreement agree that, upon a breach or threatened breach of their Agreement by any party, the remedies at law of the other party for a breach or threatened breach of this Agreement may not be a sufficient remedy and that the party shall be entitled to specific performance of the terms of

this Agreement and immediate injunctive relief, without the necessity of proving the inadequacy of money damages as a remedy, in addition to any other remedy at law or in equity.

(b) The parties further agree that (i) the seeking of the remedies provided for in Section 9.04(a) by another party to this Agreement shall not be required to provide any bond or other security in connection with such order or injunction or in any respect constitute a waiver by either party of its right to seek any other form of relief that may be available to either of them under this Agreement, from and after the Closing, and (ii) nothing set forth in this Agreement shall require any party hereto to institute any proceeding for (or limit such party's right to institute any proceeding for) specific performance under Section 9.04(a) prior to or as a condition to exercising any termination right under Article IX, nor shall the commencement of any legal proceeding pursuant to this Section 9.04 restrict or limit any party's right to terminate this Agreement in accordance with the terms of Article IX or pursue any other remedies under this Agreement that may be available then or thereafter.

ARTICLE X

MISCELLANEOUS

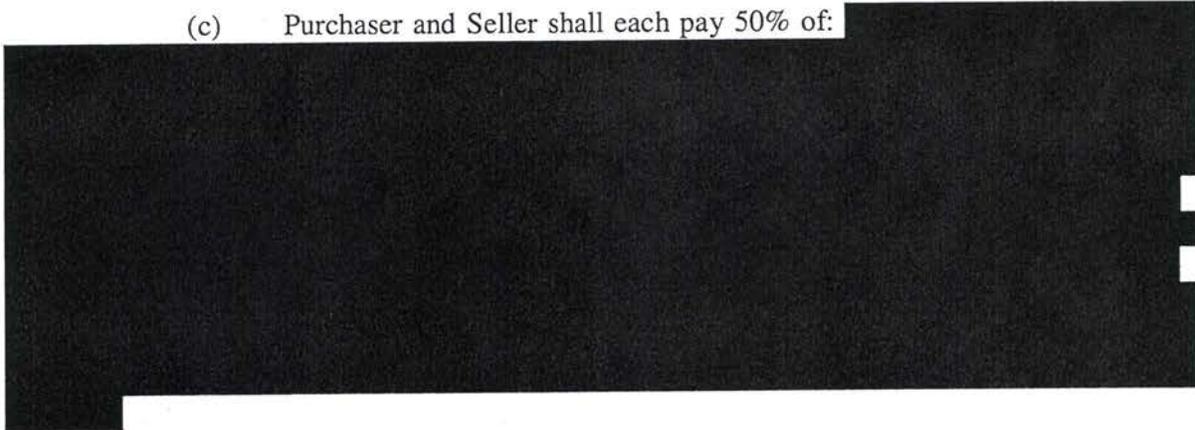
Section 10.01 Entire Agreement. This Agreement, together with the Ancillary Agreements and the Confidentiality Agreement, supersedes all prior discussions and agreements between the parties with respect to the subject matter hereof, and contains the sole and entire agreement between the parties hereto with respect to the subject matter hereof. For clarity, the term "Proprietary Information" in the Confidentiality Agreement shall be deemed to include this Agreement.

Section 10.02 Expenses.

(a) Except as otherwise specified in this Agreement, whether or not the transactions contemplated hereby are consummated, each party shall pay its own costs and expenses (including attorneys' fees) incurred in connection with the negotiation and execution of this Agreement and the transactions contemplated hereby.

(b) Purchaser shall pay 100% of any filing fees associated with a filing made in 2014 or 2015 under the HSR Act.

(c) Purchaser and Seller shall each pay 50% of:



REDACTED

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (MEP-2)
Page 74 of 167

Section 1.01(b)
Knowledge of Seller

1. [REDACTED], Vice President Corporate Development
2. [REDACTED] Senior Vice President Power Operations
3. [REDACTED] Vice President Development and Engineering
4. [REDACTED] Director Environmental Services
5. [REDACTED] Vice President Power Operations
6. [REDACTED] Plant Manager
7. [REDACTED] Vice President of Human Resources

Section 1.01(c)
Facility Employees

Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9054	Business Manager
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9076	Chemical Technician III
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9073	IC&E Technician III
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9073	IC&E Technician III
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9073	IC&E Technician III
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9082	Maint Technician III
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9082	Maint Technician III
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9082	Maint Technician III
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9109	Materials Technician III
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9027	Mgr Maintenance
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9026	Mgr Operations
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9087	Operator Technician II
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9087	Operator Technician II
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9075	Operator Technician III
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9075	Operator Technician III
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9075	Operator Technician III
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9075	Operator Technician III
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9075	Operator Technician III
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9075	Operator Technician III
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9075	Operator Technician III
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9075	Operator Technician III
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9042	Plant Engineer III
Calpine Operating Services Company	[REDACTED]	[REDACTED]	Osprey Energy Ctr	9014	Plant Manager

REDACTED

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (MEP-2)
Page 76 of 167

As disclosed in Section 5.03(i) of the Seller Disclosure, [REDACTED]

REDACTED

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (MEP-2)
Page 80 of 167

Section 2.02(d)
Excluded Contracts

1. [REDACTED]

2. [REDACTED]

3. [REDACTED]

4. [REDACTED]

5. [REDACTED]

6. [REDACTED]

REDACTED

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (MEP-2)
Page 81 of 167

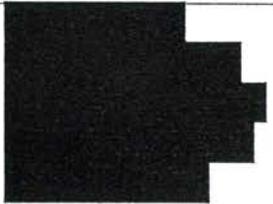
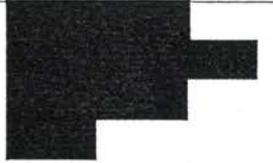
- [REDACTED]
- 7. [REDACTED]
- 8. [REDACTED]
- 9. [REDACTED]
- 10. [REDACTED]
- 11. [REDACTED]
- 12. [REDACTED]
- 13. [REDACTED]
- 14. [REDACTED]
- 15. [REDACTED]
- 16. [REDACTED]

Section 2.02(j)
Excluded Intellectual Property; Excluded Tangible Personal Property; Excluded Software

System Description	Product/License Detail	Licensed by Corp or Plant?	Number of Licenses by Type	Costs associated with transfer?	Excluded Intellectual Property; Excluded Tangible Personal Property; Excluded Software
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

REDACTED

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (MEP-2)
Page 84 of 167

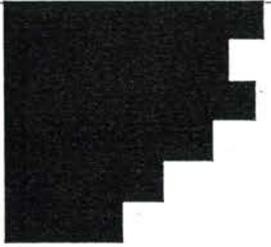
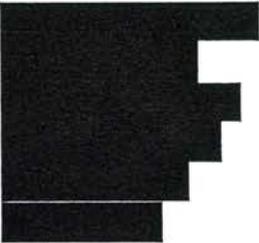
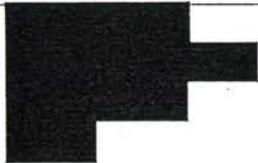
REDACTED

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (MEP-2)
Page 86 of 167

P [REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	I	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	I	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

REDACTED

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (MEP-2)
Page 87 of 167

REDACTED

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (MEP-2)
Page 88 of 167

					[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

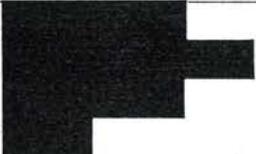
REDACTED

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (MEP-2)
Page 89 of 167

					t [REDACTED]
					[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

REDACTED

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (MEP-2)
Page 90 of 167

o	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

					[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

For the avoidance of doubt, Seller's Marks, as such term is defined in Section 5.14 of the Agreement are Excluded Intellectual Property.

Section 3.03(c)
No Conflict, Violation or Breach

1. Section 3.04 of this Seller Disclosure Schedule is incorporated herein by reference.

[REDACTED]

- 2.

[REDACTED]

- 3.

[REDACTED]

- 4.

[REDACTED]

[REDACTED]

- 5.

[REDACTED]

- 6.

[REDACTED]

REDACTED

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (MEP-2)
Page 97 of 167

Section 3.07
Absence of Changes



**Section 3.13
Company Contracts**

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]
8. [REDACTED]
9. [REDACTED]

REDACTED

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (MEP-2)
Page 104 of 167

10. 

REDACTED

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (MEP-2)
Page 105 of 167

Section 3.14
Taxes



Section 3.15(a)
Benefit Plans

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]
8. [REDACTED]
9. [REDACTED]
10. [REDACTED]
11. [REDACTED]
12. [REDACTED]
13. [REDACTED]
14. [REDACTED]
15. [REDACTED]
16. [REDACTED]
17. [REDACTED]
18. [REDACTED]
19. [REDACTED]
20. [REDACTED]

[REDACTED]

REDACTED

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (MEP-2)
Page 107 of 167

- 21. [REDACTED]
- 22. [REDACTED]
- 23. [REDACTED]
- 24. [REDACTED]
- 25. [REDACTED]
- 26. [REDACTED]

Section 3.16(a)
Project Insurance Policies

The policies listed below are part of a master corporate insurance program and all limits are shared among Calpine Corporation's fleet. For the avoidance of doubt, none of the policies set forth below will provide any coverage to Purchaser after Closing.

1. Property and Business Interruption Insurance

[REDACTED]

2. General Liability Insurance

[REDACTED]

3. Auto Liability Insurance

[REDACTED]

4. Worker's Compensation / Employer's Liability

[REDACTED]

5. Umbrella Liability Coverage

[REDACTED]

6. First Excess Liability

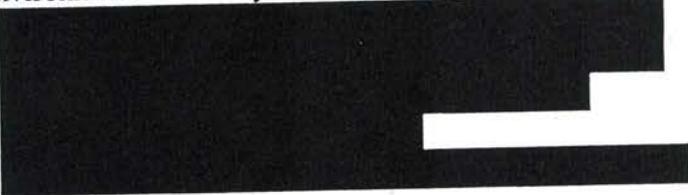
[REDACTED]

7. Second Excess Liability


8. Third Excess Liability


9. Fourth Excess Liability


10. Fifth Excess Liability


11. Environmental Liability


REDACTED

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (MEP-2)
Page 118 of 167

Section 3.20(b)
Auburndale Plant Interdependencies; Separation Plan

[REDACTED]

REDACTED

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (MEP-2)
Page 121 of 167

Section 5.03(i)
Certain Restrictions: Excluded Employees



REDACTED

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (MEP-2)
Page 122 of 167

**Section 5.10
Credit Support**

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]

[REDACTED]

**Section 7.06
Third-Party Consents**

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]

REDACTED

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (MEP-2)
Page 129 of 167

Section 5.02(a)
Conduct of Business

[REDACTED]

(a)

[REDACTED]

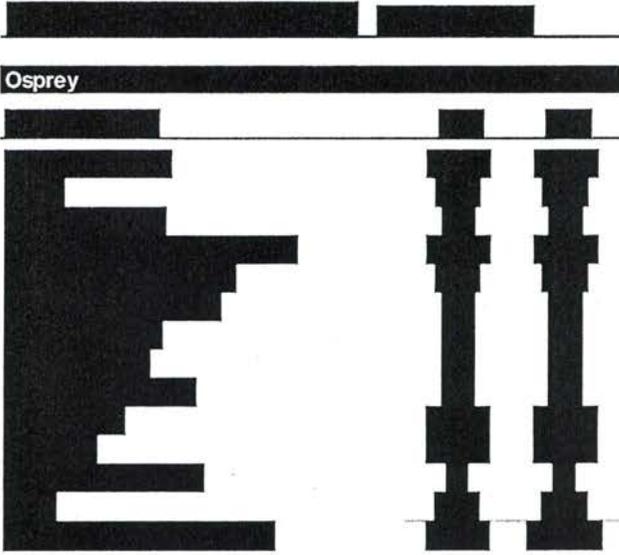
(b)

[REDACTED]

[REDACTED]

(c)

[REDACTED]



- (d) 
- (e) 
- (f) 
- (g) 
- (h) 

REDACTED

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (MEP-2)
Page 131 of 167

- (i) 
- i. 
- ii. 
- iii. 
- iv. 

REDACTED

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (MEP-2)
Page 132 of 167

Section 5.02(b)
Integration Activities

[REDACTED]

[REDACTED]

(a) [REDACTED]

(b) [REDACTED]

[REDACTED]

Section 6.07
Third-Party Consents

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]

REDACTED

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (MEP-2)
Page 135 of 167

Section 8.02(b)
Purchaser Excluded Knowledge Matters¹



¹ Purchaser has been advised by Seller that while Seller agrees with the factual nature of this statement, the inclusion of this statement in the Purchaser Disclosure Schedule is not deemed an admission by Seller of any breach of the Agreement.

PPAB 2604828v7

FORM OF ESCROW AGREEMENT

THIS ESCROW AGREEMENT, dated as of [January 3, 2017]¹ (this "Escrow Agreement"), is by and among OSPREY ENERGY CENTER, LLC, a Delaware limited liability company ("Seller"); DUKE ENERGY FLORIDA, INC., a Florida corporation ("Purchaser"); and [REDACTED]

RECITALS

A. Purchaser and Seller have entered into an Asset Purchase and Sale Agreement (the "Underlying Agreement"), dated as of December 17, 2014, pursuant to which Purchaser is purchasing Osprey Energy Center, a natural gas-fired combined-cycle generating facility in Auburndale, Florida, and associated assets and liabilities described in the Underlying Agreement. The Underlying Agreement provides that, simultaneously with the execution of this Escrow Agreement and the closing of the transactions contemplated under the Underlying Agreement, (a) Purchaser may, in accordance with the terms and conditions of the Underlying Agreement, deposit [REDACTED] (the "Indemnity Escrow Funds") in a segregated escrow account (the "Escrow Account A") to be held by Escrow Agent to satisfy certain indemnification obligations of Seller, and (b) Purchaser may, in accordance with the terms and conditions of the Underlying Agreement, deposit the Asset Repair Escrow Amount (the "Asset Repair Escrow Funds") in a segregated escrow account (the "Escrow Account B") to be held by Escrow Agent until certain disputes with respect to the Asset Repair Reduction Amount (as defined in the Underlying Agreement) are resolved in accordance with the terms and conditions of the Underlying Agreement.

B. Escrow Agent has agreed to accept, hold, and disburse the Escrow Funds deposited with it and the earnings thereon in accordance with the terms of this Escrow Agreement.

C. Purchaser and Seller have appointed the Representatives (as defined below) to represent them for all purposes in connection with Escrow Funds to be deposited with Escrow Agent and this Escrow Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, for themselves, their successors and assigns, hereby agree as follows:

1. Definitions. The following terms shall have the following meanings when used herein:

"Asset Repair Escrow Amount" means [REDACTED]

"Asset Repair Escrow Period" shall mean the [REDACTED]

"Business Day" shall mean any day other than a Saturday, Sunday or any other day on which Escrow Agent located at the notice address set forth below is authorized or required by law or executive order to remain closed.

"Escrow Funds" shall mean the funds deposited with Escrow Agent pursuant to Section 3 of this Escrow Agreement, together with any interest and other income thereon.

¹ All dates in brackets to be adjusted if actual Closing is other than January 3, 2017.

“Indemnity Escrow Period” shall mean _____, unless extended by mutual agreement of Purchaser and Seller, in accordance with the terms and conditions of the Underlying Agreement.

“Joint Written Direction” shall mean a written direction executed by the Representatives and directing Escrow Agent to disburse all or a portion of the Escrow Funds or to take or refrain from taking any other action pursuant to this Escrow Agreement.

“Purchaser Representative” shall mean the person(s) so designated on Schedule D hereto or any other person designated in a writing signed by Purchaser and delivered to Escrow Agent and the Seller Representative in accordance with the notice provisions of this Escrow Agreement, to act as its representative under this Escrow Agreement.

“Representatives” shall mean the Purchaser Representative and the Seller Representative.

“Seller Representative” shall mean the person(s) so designated on Schedule D hereto or any other person designated in a writing signed by Seller and delivered to Escrow Agent and the Purchaser Representative in accordance with the notice provisions of this Escrow Agreement, to act as its representative under this Escrow Agreement.

2. Appointment of and Acceptance by Escrow Agent. Purchaser and Seller hereby appoint Escrow Agent to serve as escrow agent hereunder. Escrow Agent hereby accepts such appointment and, upon receipt by wire transfer of the Escrow Funds in accordance with Section 3 below, agrees to hold, invest and disburse the Escrow Funds in accordance with this Escrow Agreement.

3. Deposit of Escrow Funds. Simultaneously with the execution and delivery of this Escrow Agreement, and upon written notice to the Escrow Agent of Escrow Funds to be received Purchaser (a) will transfer the Indemnity Escrow Funds into Escrow Fund A, by wire transfer of immediately available funds, to an account designated by Escrow Agent as Escrow Fund A and/or (b) the Asset Repair Escrow Funds into Escrow Fund B, by wire transfer of immediately available funds, to an account designated by Escrow Agent as Escrow Fund B (collectively, the Indemnity Escrow Funds and the Asset Repair Escrow Funds, the “Escrow Funds”). In the event that only one Escrow Fund is funded, the provisions herein regarding the other Escrow Fund shall be disregarded. Escrow Agent shall be provided Joint Written Direction to terminate either of the unused Escrow Funds.

4. Disbursements of Escrow Funds. Escrow Agent shall disburse Escrow Funds at any time and from time to time, upon receipt of, and in accordance with, a Joint Written Direction. Escrow Agent shall disburse Indemnity Escrow Funds upon the expiration of the Indemnity Escrow Period as instructed in a Joint Written Direction, and the Asset Repair Escrow Funds upon the expiration of the Asset Repair Escrow Period as instructed in a Joint Written Direction, or earlier as instructed in a Joint Written Direction, from time to time, on the third Business Day after receipt of, and in accordance with, a Joint Written Direction. Each Joint Written Direction shall include directions to disburse funds identifying from which Escrow Fund to withdraw and in accordance with payment instructions set forth on Schedule A hereto, or if payment instructions are altered shall include complete payment instructions, including wiring instructions or an address to which a check shall be sent. Wire instructions shall include the receiving bank name and ABA number, beneficiary account name and number, and beneficiary street address (PO Box is not acceptable), and are subject to the optional security procedures set forth in Section 16 hereof. Prior to any disbursement, Escrow Agent shall have received reasonable identifying information regarding the recipient such that Escrow Agent may comply with its regulatory obligations and reasonable business practices, including without limitation a properly completed United States

REDACTED

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (MEP-2)
Page 155 of 167

717 Texas Avenue, Suite 1000
Houston, TX 77002
Attention: Chief Legal Officer
Facsimile No.: (713) 830-8751 or (832) 325-1508
Telephone No:
Email:

with a copy to (which shall not constitute notice):

White & Case LLP
1155 Avenue of the Americas
New York, NY 10036-2787
Attention: Michael S. Shenberg
Facsimile No.: (212) 354-8113
Email: mshenberg@whitecase.com

If to Escrow Agent at:

[REDACTED]

or to such other address as each party may designate for itself by like notice and unless otherwise provided herein shall be deemed to have been given on the date received.

16. Optional Security Procedures. In the event funds transfer instructions, address changes or change in contact information are given (other than in writing at the time of execution of this Escrow Agreement), whether in writing, by facsimile or otherwise, Escrow Agent is authorized but shall be under no duty to seek confirmation of such instructions by telephone call-back to the Representative(s) designated on Schedule D hereto, and Escrow Agent may rely upon the confirmation of anyone purporting to be the Representative(s) so designated. The persons and telephone numbers for call-backs may be changed only in writing actually received and acknowledged by Escrow Agent and shall be effective only after Escrow Agent has a reasonable opportunity to act on such changes. If Escrow Agent is unable to contact any of the designated Representatives identified in Schedule D, Escrow Agent is hereby authorized but shall be under no duty to seek confirmation of such instructions by telephone call-back to any one or more of Purchaser or Seller's executive officers, as the case may be, which shall include the

REDACTED

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (MEP-2)

Page 159 of 167

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be executed under seal as of the date first above written.

OSPREY ENERGY CENTER, LLC

By: _____
Name: _____
Title: _____

DUKE ENERGY FLORIDA, INC.

By: _____
Name: _____
Title: _____

[REDACTED]

REDACTED

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (MEP-2)
Page 161 of 167

SCHEDULE B

Investment Authorization

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

REDACTED

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (MEP-2)
Page 162 of 167

SCHEDULE C

Schedule of Fees for Services as Escrow Agent

A large rectangular area of the page is completely redacted with black ink, obscuring the table's content. The redaction covers approximately the middle two-thirds of the page's vertical space.

REDACTED

Docket No. _____
Duke Energy Florida ^{EXHIBIT E]}
Exhibit No. _____ (MEP-2)
Page 164 of 167

IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____

DATE: _____, 201_

BENEFICIARY:

APPLICANT:

LADIES AND GENTLEMEN:

AT THE REQUEST AND FOR THE ACCOUNT OF _____ (THE "APPLICANT"), (ADDRESS), AND ON BEHALF OF _____ (THE "ACCOUNT PARTY") WE, _____ (THE "ISSUER"), HEREBY ESTABLISH, EFFECTIVE IMMEDIATELY, IN FAVOR OF _____ (THE "BENEFICIARY") OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____ (THIS "LETTER OF CREDIT") IN THE AGGREGATE AMOUNT OF _____ (AS SUCH AMOUNT MAY BE REDUCED FROM TIME TO TIME BY PARTIAL DRAWS HEREUNDER, THE "STATED AMOUNT").

THIS LETTER OF CREDIT IS ISSUED, PRESENTABLE AND PAYABLE AT THE ISSUER'S OFFICE LOCATED AT _____ ATTENTION: STANDBY LETTER OF CREDIT SECTION, AND EXPIRES WITH ITS CLOSE OF BUSINESS ON _____ (THE "EXPIRATION DATE")

FUNDS UNDER THIS LETTER OF CREDIT ARE AVAILABLE TO THE BENEFICIARY BY PAYMENT AGAINST PRESENTATION AT THE ISSUER'S OFFICE AS STIPULATED HEREIN ABOVE, OF THE BENEFICIARY'S SIGNED AND APPROPRIATELY COMPLETED SIGHT DRAFT IN THE FORM OF EXHIBIT 1 HERETO, THE BENEFICIARY'S SIGNED AND APPROPRIATELY COMPLETED DRAWING CERTIFICATE IN THE FORM OF EXHIBIT 2 HERETO AND A COPY OF THIS ORIGINAL LETTER OF CREDIT AND AMENDMENTS (IF ANY).

IF A DRAWING IN COMPLIANCE WITH THE TERMS AND CONDITIONS HEREOF IS PRESENTED AT THE ADDRESS SPECIFIED ABOVE OR DELIVERED TO US BY OVERNIGHT COURIER AT OR PRIOR TO 11:00 A.M. EASTERN TIME ON A BUSINESS DAY, PAYMENT OF THE AMOUNT SPECIFIED IN SUCH DRAFT WILL BE MADE ON THE THIRD SUCCEEDING BUSINESS DAY. IF SUCH DRAWING IS SO PRESENTED AFTER 11:00 A.M. EASTERN TIME ON A BUSINESS DAY, PAYMENT OF THE AMOUNT SPECIFIED IN SUCH DRAFT WILL BE MADE ON THE FOURTH SUCCEEDING BUSINESS DAY.

PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED HEREUNDER. ANY DRAWING HONORED HEREUNDER BY THE ISSUER SHALL REDUCE THE STATED AMOUNT AVAILABLE FOR DRAWINGS BY THE AMOUNT OF SUCH DRAWING.

ALL BANKING CHARGES ASSOCIATED WITH THIS LETTER OF CREDIT ARE FOR THE ACCOUNT OF THE APPLICANT.

AS USED HEREIN, "BUSINESS DAY" MEANS ANY DAY OTHER THAN SATURDAY, SUNDAY OR A DAY ON WHICH COMMERCIAL BANKS IN NEW YORK, NEW YORK ARE AUTHORIZED OR REQUIRED TO CLOSE.

THIS LETTER OF CREDIT IS SUBJECT TO AND GOVERNED BY THE INTERNATIONAL STANDBY PRACTICES, INTERNATIONAL CHAMBER OF COMMERCE (ICC) PUBLICATION NO. 590 ("ISP98"). AS TO MATTERS NOT ADDRESSED BY THE ISP98, AND TO THE EXTENT NOT INCONSISTENT WITH THE ISP98, THIS LETTER OF CREDIT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In re: Petition for Determination that
the Osprey Plant Acquisition and,
alternatively, the Suwannee Simple
Cycle Project is the most Cost Effective
Generation Alternative to meet the
Remaining Need Prior to 2018 for
Duke Energy Florida, Inc.**

DOCKET NO. _____
Submitted for filing: January 30, 2015

**DIRECT TESTIMONY
OF EDWARD L. SCOTT**

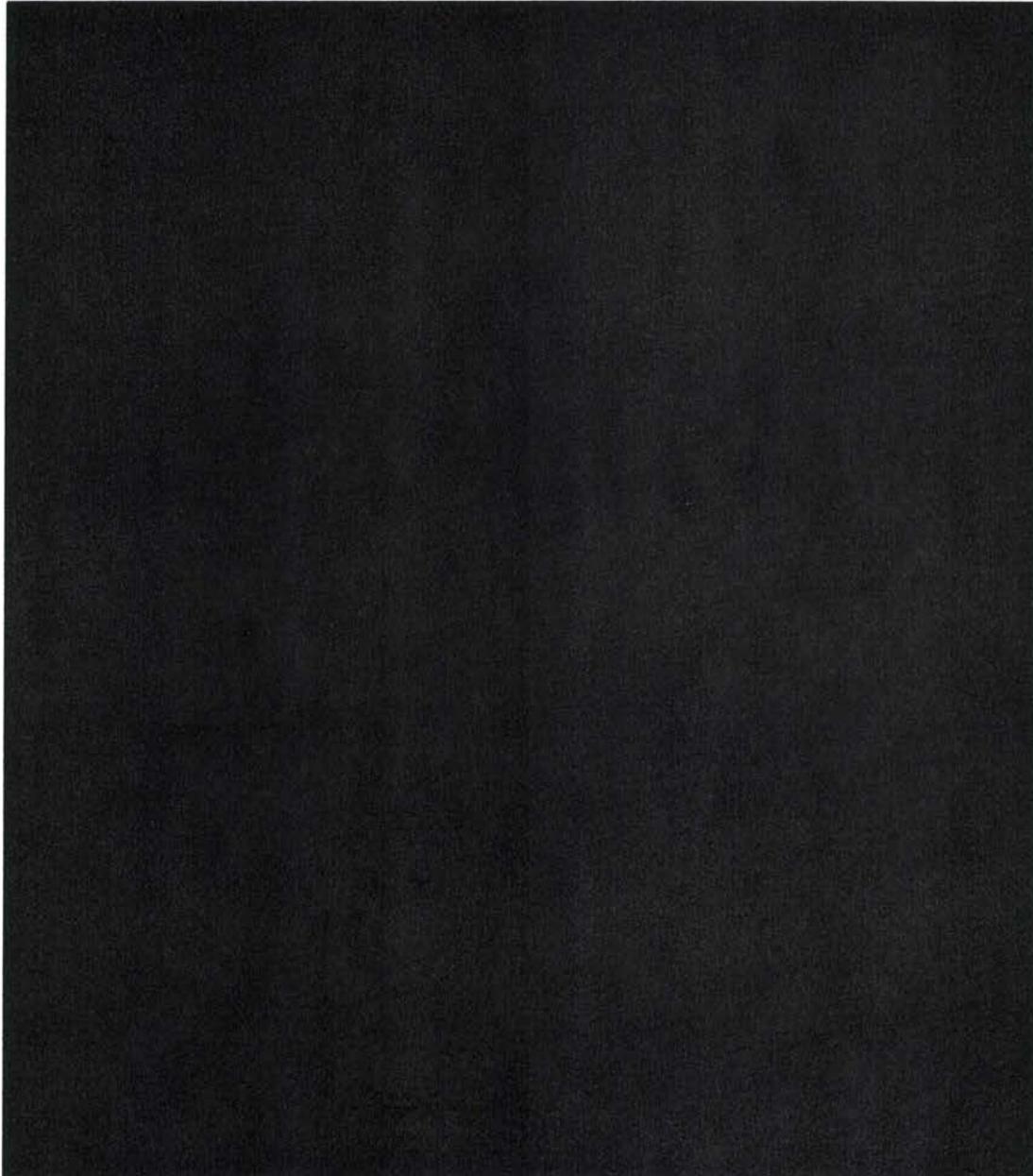
**ON BEHALF OF
DUKE ENERGY FLORIDA, INC.**

JOHN T. BURNETT
Deputy General Counsel
DIANNE M. TRIPLETT
Associate General Counsel
DUKE ENERGY FLORIDA, INC.
299 1st Avenue North
St. Petersburg, Florida 33733
Telephone: (727) 820-5184
Facsimile: (727) 820-5519

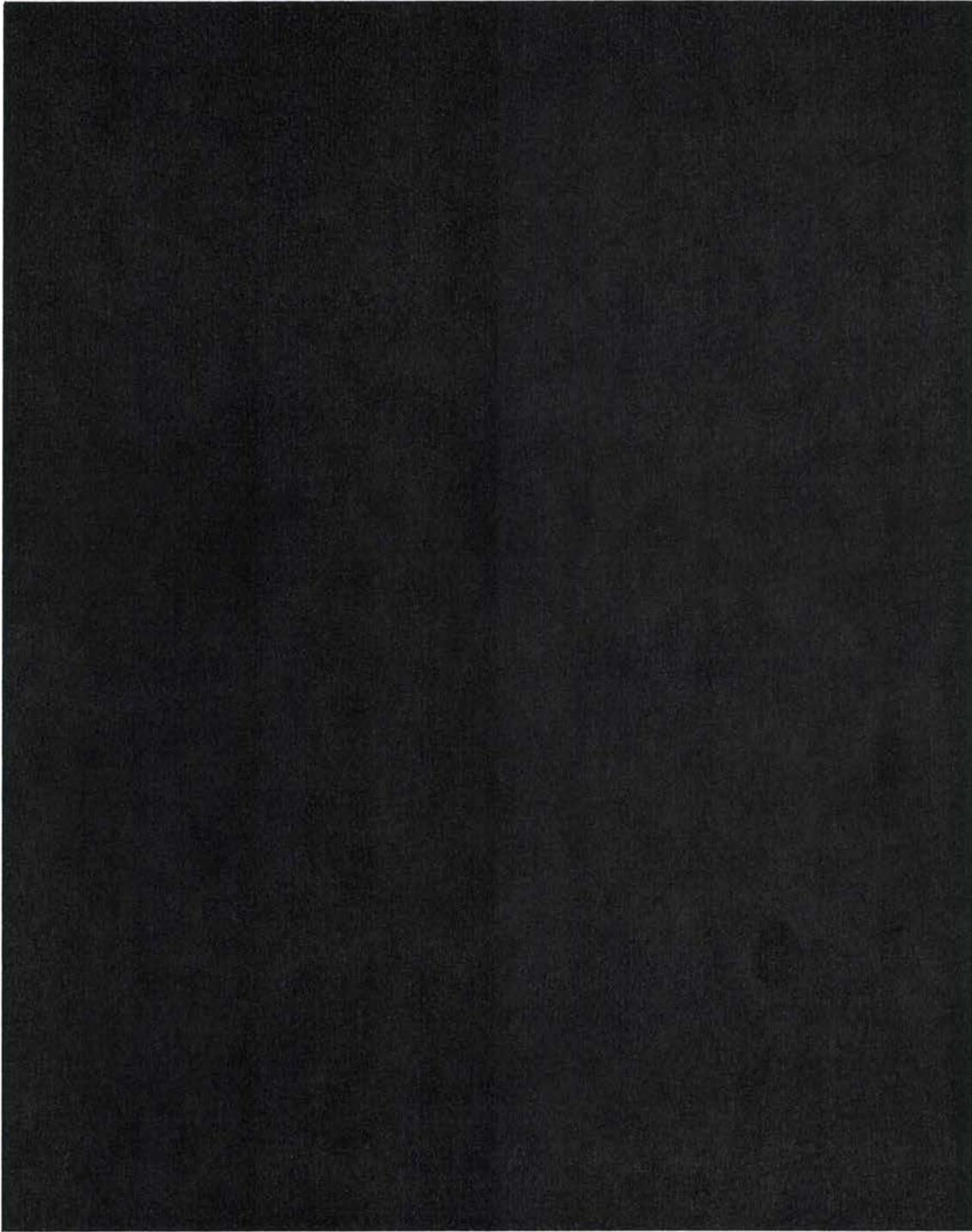
JAMES MICHAEL WALLS
Florida Bar No. 706272
BLAISE N. GAMBA
Florida Bar No. 027942
CARLTON FIELDS JORDEN
BURT, P.A.
4221 W. Boy Scout Blvd., Ste.1000
Tampa, Florida 33607
Telephone: (813) 223-7000
Facsimile: (813) 229-4133

REDACTED

**Potential Generation Facility Acquisitions Evaluated for Transmission Cost
Impacts to the DEF transmission system**



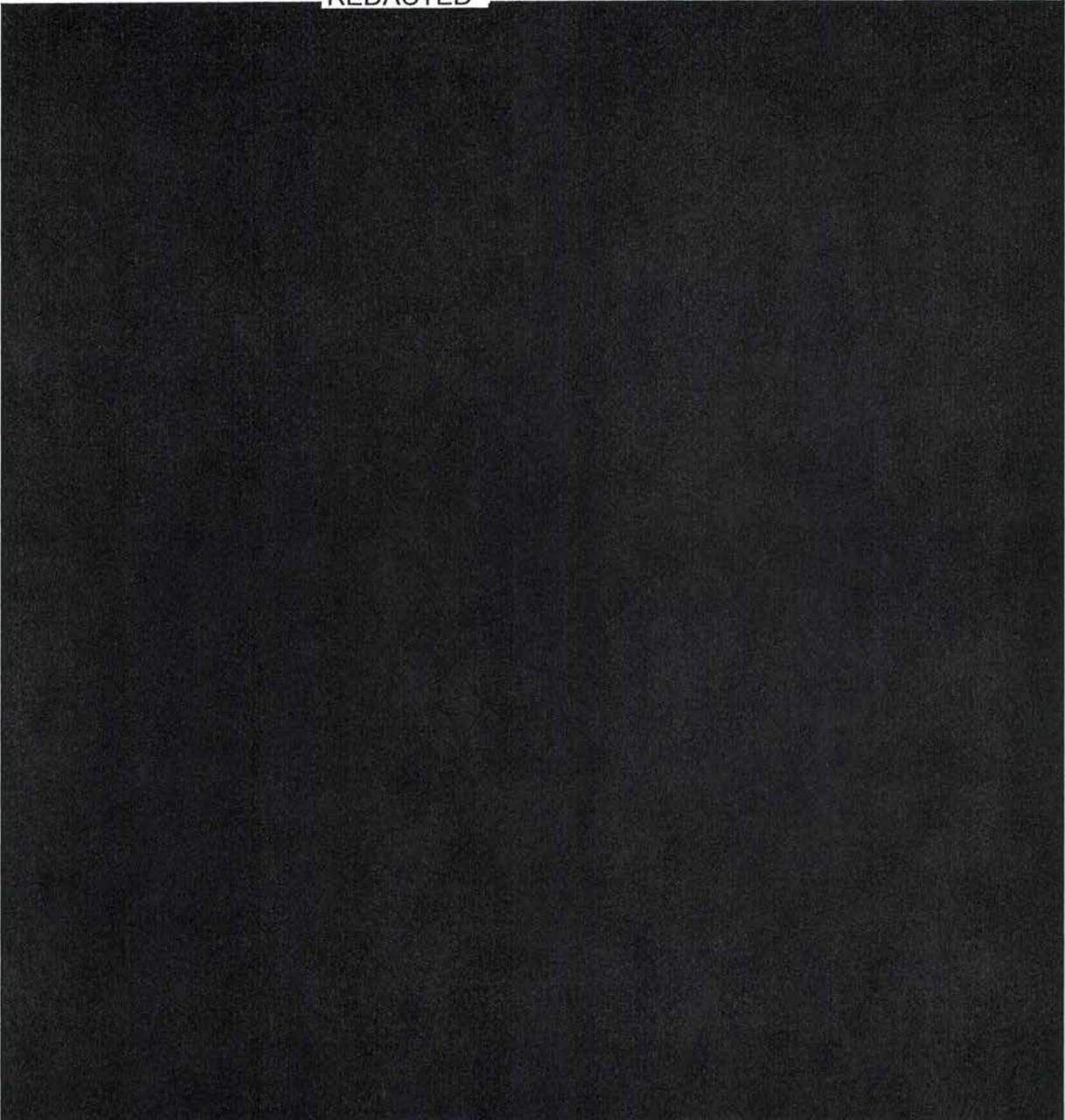
REDACTED



DOCKET NO. _____
DUKE ENERGY FLORIDA
EXHIBIT NO. ____ (ELS-1)
Page 18 of 19

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (ES-3)
Page 3 of 4

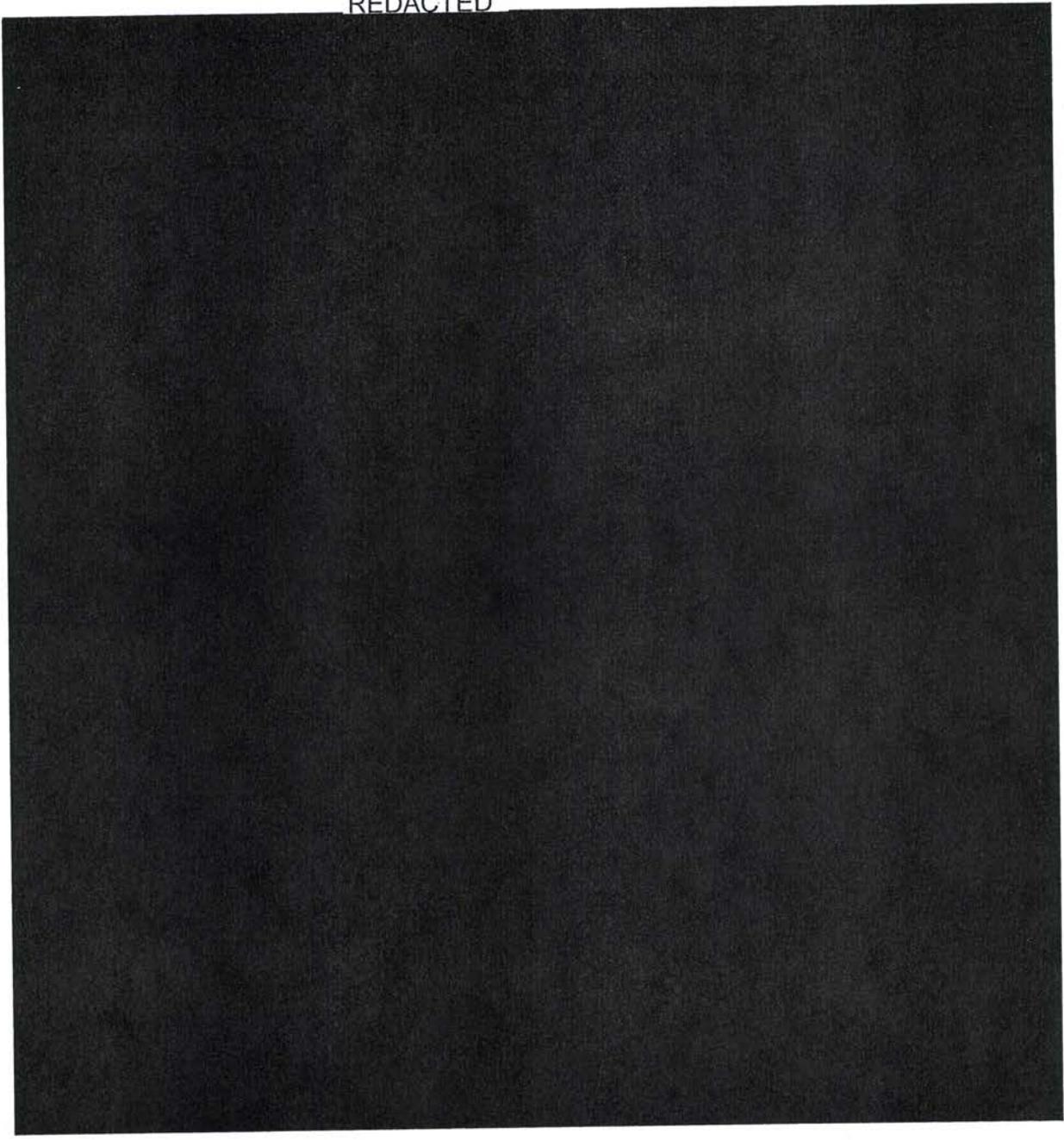
REDACTED



DOCKET NO. _____
DUKE ENERGY FLORIDA
EXHIBIT NO. ____ (ELS-1)
Page 19 of 19

Docket No. _____
Duke Energy Florida
Exhibit No. _____ (ES-3)
Page 4 of 4

REDACTED



DUKE ENERGY FLORIDA
DOCKET NO. 150043-EI
First Request for Confidential Classification
Confidentiality Justification Matrix

DOCUMENT	PAGE/LINE/ COLUMN	JUSTIFICATION
Direct Testimony of Benjamin M.H. Borsch	Page 7, Line 10, first three words; Page 10, line 13, third through fifth words; Page 17, Line 9, last six words, Line 10, all words on line except three through five, Lines 11 and 12 in their entirety, Line all words except last two words; Page 28, Line 13, all words except last two words, Line 14, first eight words, Line 16, last five words, Lines 17 and 18 in their entirety, Line 19, all words except third and fourth word from end, Lines 20 and 21 in their entirety, Line 22, first three words; Page 33, Line 15, last two words, Line 16, first word, Line 22, last three words; Page 34, Line 6, second through fourth words; Page 35, Line 22, sixth through eighth words	<p>§366.093(3)(d), Fla. Stat. The document portions in question contain confidential contractual information, the disclosure of which would impair DEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), Fla. Stat. The document portions in question contain confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>
Direct Testimony of Benjamin M.H. Borsch Exhibit No. ____ (BMHB-1)	Page 143 in its entirety	<p>§366.093(3)(d), Fla. Stat. The document portions in question contain confidential contractual information, the disclosure of which would impair DEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), Fla. Stat. The document portions in question contain confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of</p>

DUKE ENERGY FLORIDA
DOCKET NO. 150043-EI
First Request for Confidential Classification
Confidentiality Justification Matrix

DOCUMENT	PAGE/LINE/ COLUMN	JUSTIFICATION
		the information.
<p>Direct Testimony of Benjamin M.H. Borsch, Exhibit No. _____ (BMHB-2) [Pages 1 through 121] [Pages 1 through 235 confidential version]</p>	<p>Page 14 (of 121), Line 7, seventh through eleventh words, Line 14, fourth through seventh words; Page 24, Line 18, fourth and fifth words from end, Line 21, all words except first three, Lines 22 and 23 in their entirety; Page 25, Lines 1 through 20 in their entirety, Line 21, first word; Page 30, Line 5, all words except first three, Lines 6 through 23 in their entirety; Page 31, Lines 1 through 7 in their entirety, Line 8, first word, Lines 12 through 23 in their entirety; Page 32, Lines 1 through 7 in their entirety, Line 8, first two words, Line 18, last five words, Line 19, all words except last word, Line 20, ninth and tenth words; Page 33, Line 13, second and third word from end, Line 14, fourth and fifth word from end, Line 16, sixth and seventh word; Page 36, Line 21, fourth and fifth words from end; Page 39, Line 14, fifth and sixth words from end, Line 15, second and third words; Page 40, Line 2, second and third words from end, Line 6, sixth and seventh words, Line 8, last four words, Lines 9 in its entirety, Line 10, all words except last one, Line 12, all</p>	<p>§366.093(3)(a), Fla. Stat. The document in question contains proprietary confidential information relating to trade secrets, the disclosure of which would impair DEF or third parties business operations.</p> <p>§366.093(3)(d), Fla. Stat. The document portions in question contain confidential contractual information, the disclosure of which would impair DEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), Fla. Stat. The document portions in question contain confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>

DUKE ENERGY FLORIDA
DOCKET NO. 150043-EI
First Request for Confidential Classification
Confidentiality Justification Matrix

DOCUMENT	PAGE/LINE/ COLUMN	JUSTIFICATION
	<p>words except first word, Lines 13 and 14 in their entirety, Line 15, first three words; Page 42, Line 23, fourth and fifth words from end; Page 43, Line 12, last five words, Lines 13 and 14 in their entirety, Line 15, all words except last words, Line 19, all words except first three words, Line 20 in its entirety, Line 21 first five words; Page 44, Line 3, fourth and fifth words from end, Line 10, all words except first two words, Line 12, all words except first two words, Line 13, first two and last words, Line 14 in its entirety, Line 15, all words except last two words; Page 46, Line 15, last two words; Page 47, Line 8, all words except first two words, Line 9, first six words, Line 10, all words except first six words, Lines 11 and 12 in their entirety, Line 13, first and last words, Line 14 in its entirety, Line 15, all words except last two words, Line 16, last three words, Lines 17 through 19 in their entirety, Line 20, first four words, Line 21, all words except first word, Line 22, first four words; Page 50, Line 1, third and fourth words from end, Line 2, fifth, sixth, eighth and ninth words; Page 64, Line</p>	

DUKE ENERGY FLORIDA
DOCKET NO. 150043-EI
First Request for Confidential Classification
Confidentiality Justification Matrix

DOCUMENT	PAGE/LINE/ COLUMN	JUSTIFICATION
	11, last two words, Line 12, first two words, Line 21, fifth through eighth words; Page 65, Line 21, seventh and eighth words; Page 66, Line 2, last two words, Line 21, fourth and fifth words; Pages 90 through 210 of the confidential version in their entirety inclusive of exhibits BMHB-12 pages 1 through 49, BMHB-13 pages 1 through 51, BMHB-14, pages 1 through 3, BMHB-15, pages 1 through 9, BMHB-16, pages 1 through 4, BMHB-17, pages 1 through 2, and BMHB-18, pages 1 through 3	
Direct Testimony of Kevin E. Delehanty Exhibit No. ____ (KED-1)	Pages 19 and 20 in their entirety	<p>§366.093(3)(d), Fla. Stat. The document portions in question contain confidential contractual information, the disclosure of which would impair DEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), Fla. Stat. The document portions in question contain confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>
Direct Testimony of Kevin E. Delehanty Exhibit No. ____ (KED-2)	Entire page exclusive of header	<p>§366.093(3)(d), Fla. Stat. The document portions in question contain confidential contractual information, the disclosure of which</p>

DUKE ENERGY FLORIDA
DOCKET NO. 150043-EI
First Request for Confidential Classification
Confidentiality Justification Matrix

DOCUMENT	PAGE/LINE/ COLUMN	JUSTIFICATION
		<p>would impair DEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), Fla. Stat. The document portions in question contain confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>
<p>Direct Testimony of Kevin E. Delehanty Exhibit No. ____ (KED-3)</p>	<p>Entire page exclusive of header</p>	<p>§366.093(3)(d), Fla. Stat. The document portions in question contain confidential contractual information, the disclosure of which would impair DEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), Fla. Stat. The document portions in question contain confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>
<p>Direct Testimony of Kris G. Edmondson</p>	<p>Page 7, Line 4, first four and last words, Line 5, first three words, Line 8, all words except first word; Page 13, Line 5, all words except the first four words, Lines 6 through 16 in their entirety, Line 17, the first four words; Page 14, Line 5, eighth, ninth and last words, Line 6, the first word</p>	<p>§366.093(3)(d), Fla. Stat. The document portions in question contain confidential contractual information, the disclosure of which would impair DEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), Fla. Stat. The document portions in question contain confidential information relating to competitive business interests, the disclosure of which would impair the competitive</p>

DUKE ENERGY FLORIDA
DOCKET NO. 150043-EI
First Request for Confidential Classification
Confidentiality Justification Matrix

DOCUMENT	PAGE/LINE/ COLUMN	JUSTIFICATION
		business of the provider/owner of the information.
Direct Testimony of Kris G. Edmondson Exhibit No. ____ (KGE-2)	Document in its entirety	<p>§366.093(3)(d), Fla. Stat. The document portions in question contain confidential contractual information, the disclosure of which would impair DEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), Fla. Stat. The document portions in question contain confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>
Direct Testimony of Kris G. Edmondson Exhibit No. ____ (KGE-3)	Document in its entirety	<p>§366.093(3)(d), Fla. Stat. The document portions in question contain confidential contractual information, the disclosure of which would impair DEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), Fla. Stat. The document portions in question contain confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>
Direct Testimony of Mark E. Landseidel	Page 8, Line 9, sixth, seventh and eighth words, Line 10, first three words, Line 11, sixth, seventh and eighth words, Line 20, third, fourth and fifth words	<p>§366.093(3)(d), Fla. Stat. The document portions in question contain confidential contractual information, the disclosure of which would impair DEF's efforts to contract for goods or services on favorable terms.</p>

DUKE ENERGY FLORIDA
DOCKET NO. 150043-EI
First Request for Confidential Classification
Confidentiality Justification Matrix

DOCUMENT	PAGE/LINE/ COLUMN	JUSTIFICATION
		<p>§366.093(3)(e), Fla. Stat. The document portions in question contain confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>
<p>Direct Testimony of Mark E. Landseidel Exhibit No. ___ (MEL-4)</p>	<p>Projected Schedule, 1st column, 7th line, 2nd column, 7th through 13th lines</p>	<p>§366.093(3)(d), Fla. Stat. The document portions in question contain confidential contractual information, the disclosure of which would impair DEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), Fla. Stat. The document portions in question contain confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>
<p>Direct Testimony of Matthew E. Palasek</p>	<p>Page 5, Line 4, third through eighth words; Page 7, Line 14, last nine words, Lines 15 through 20 in their entirety, Line 21, first seven words; Page 8, Line 9, last eight words, Line 10 in its entirety, Line 11, first eight words, Line 22, first four and last words, Line 23, all words except last four; Page 9, Line 1, second, third, fourth and last five words, Line 2, first through seventh words, Line 4, seventh, eighth and ninth words, Line 7, fourth,</p>	<p>§366.093(3)(d), Fla. Stat. The document portions in question contain confidential contractual information, the disclosure of which would impair DEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), Fla. Stat. The document portions in question contain confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>

DUKE ENERGY FLORIDA
DOCKET NO. 150043-EI
First Request for Confidential Classification
Confidentiality Justification Matrix

DOCUMENT	PAGE/LINE/ COLUMN	JUSTIFICATION
	<p>fifth and sixth words, Line 10, tenth, eleventh and twelfth words, Line 21, last two words, Line 22, first three words; Page 10, Line 9, seventh, eighth and ninth words, Line 13, third and fourth words, Line 14, sixth and seventh words, Line 15, third, fourth, fifth and sixth words, Line 16, last four words, Lines 17 through 23 in their entirety; Page 11, Line 1, last four words, Line 2, all words except first two words, Lines 3 through 6 in their entirety, Line 7, all words except last five words, Line 17, third through eight words, Line 18, last seven words, Line 19 in its entirety, Line 20, first ten words; Page 12, Line 1, all words except first four, Line 2 in its entirety, Line 4, all words except first two, Line 6, all words except first word, Lines 7 through 10 in their entirety; Page 13, Lines 8 through 14 in their entirety, Line 15, first three words, Line 22, all words except first word; Page 14, Lines 1 and 2 in their entirety, Line 11, all words except first three words, Lines 12 through 14 and 18 through 23 in their entirety; Page 15, Lines 1 through 6 in their entirety, Line 9, last four words, Lines 10 through 18 in</p>	

DUKE ENERGY FLORIDA
DOCKET NO. 150043-EI
First Request for Confidential Classification
Confidentiality Justification Matrix

DOCUMENT	PAGE/LINE/ COLUMN	JUSTIFICATION
	their entirety; Page 16, Line 3, last six words, Lines 4 and 5 in their entirety, Line 6, all words except last word, Line 13, last seven words, Line 14 in its entirety, Line 15, first three words	
Direct Testimony of Matthew E. Palasek Exhibit No. ____ (MEP-1)	Page 1, 3 rd bullet point, 2 nd line, seventh and eighth words, 4 th bullet point, 1 st line, seventh through eleventh words, 2 nd line, first three and last two words, 5 th bullet point in its entirety; Page 2, 3 rd bullet point, 2 nd line, eighth through fourteenth words, 5 th bullet point, 1 st line, last two words, 2 nd line, first word, 3 rd line, seventh through twelfth words; Page 3, 8 th PPA Term, first word, 9 th PPA Term, 1 st and 2 nd line, first word on each, 10 th PPA Term, 1 st through 3 rd lines, first word on each, 11 th PPA Term, 1 st line, first word, 12 th PPA Term, 1 st line, first word, 13 th PPA term, 2 nd line, sixth and fourteenth words; Page 4, 1 st PPA Term, 1 st and 2 nd line, first word on both, 2 nd PPA Term, 2 nd paragraph, 1 st line, sixth and seventh words, 2 nd line, first two words, 3 rd line, first two words, 4 th PPA Term, 1 st line, first word; Page 5, 5 th Acquisition Term, 2 nd line	<p>§366.093(3)(d), Fla. Stat. The document portions in question contain confidential contractual information, the disclosure of which would impair DEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), Fla. Stat. The document portions in question contain confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>

DUKE ENERGY FLORIDA
DOCKET NO. 150043-EI
First Request for Confidential Classification
Confidentiality Justification Matrix

DOCUMENT	PAGE/LINE/ COLUMN	JUSTIFICATION
	sixth and thirteenth words, 7 th Acquisition Term, all information in hand written note, 1 st line, seventh through eleventh words, 2 nd line, last word, Last Acquisition Term in its entirety	
Direct Testimony of Mark E. Palasek Exhibit No. ____ (MEP-2) [Page 1 of 167]	Page 5 (of 167), Index Line 16, 2 nd Column, 1 st two words, Page 6, Index Line 11, 2 nd column, 1 st two words, Page 8, 7 th paragraph, 1 st line, last seven words, 2 nd through 9 th lines in their entirety; Page 9, seventh through twelfth paragraphs in their entirety; Page 10, 1 st three lines in their entirety; Page 11, 1 st three lines in their entirety; Page 13, 3 rd paragraph, 2 nd line, last three words, 3 rd and 4 th lines in their entirety, 4 th paragraph, 2 nd line, last five words, 3 rd line, first word, Paragraphs 12 through 17 in their entirety, Paragraph 18 in its entirety except for first three words; Page 14, 1 st paragraph on page, lines 1 through 3 in their entirety, Line 4, all words except fourth, fifth and sixth, Lines 5 and 6 in their entirety, 7 th paragraph in its entirety; Page 15, 8 th paragraph in its entirety; Page 16, 3 rd paragraph, first line in its entirety	<p>§366.093(3)(a), Fla. Stat. The document in question contains proprietary confidential information relating to trade secrets, the disclosure of which would impair DEF or third parties business operations.</p> <p>§366.093(3)(d), Fla. Stat. The document portions in question contain confidential contractual information, the disclosure of which would impair DEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), Fla. Stat. The document portions in question contain confidential information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider/owner of the information.</p>

DUKE ENERGY FLORIDA
DOCKET NO. 150043-EI
First Request for Confidential Classification
Confidentiality Justification Matrix

DOCUMENT	PAGE/LINE/ COLUMN	JUSTIFICATION
	<p>except first three words, 2nd line in its entirety, 3rd line, all words except first and last two, Lines 4 through end of paragraph in their entirety, 4th paragraph in its entirety; Page 17, first two lines in their entirety; Page 18, 10th paragraph in its entirety, 12th paragraph, 1st line, last eight words, Lines 2 through end of paragraph in their entirety; Page 19, 2nd and 12th paragraphs in their entirety; Page 20, 5th, 6th and 7th paragraphs in their entirety; Page 25, Paragraph (a), 3rd line, last 10 words, lines 4 through 14 in their entirety, Line 15, first word, Paragraph (b), 2nd line, sixth through ninth words; Page 40, Paragraph (b), 2nd line, eleventh word, Paragraph (e), last line, last word, Paragraph (i), 2nd line, all words except first two words, Lines 3 through 5 in their entirety; Page 41, last paragraph, 2nd line from bottom, all words except first four, last line in its entirety; Page 42, 1st line, first seven words, 13th line, last eight words, 14th line, first word; Page 44, last paragraph in its entirety except first eight words; Pages 45 and 46 in their entirety exclusive of paragraph numbering; Page 47, 1st three paragraphs in</p>	

DUKE ENERGY FLORIDA
DOCKET NO. 150043-EI
First Request for Confidential Classification
Confidentiality Justification Matrix

DOCUMENT	PAGE/LINE/ COLUMN	JUSTIFICATION
	<p>their entirety exclusive of paragraph numbering, 5th paragraph in its entirety exclusive of first two lines; Page 48, 1st paragraph in its entirety, 2nd paragraph in its entirety exclusive of first three lines; Page 49, paragraph (a), 5th line, last seven words, lines 6 to 11 in their entirety; Page 50, 1st four paragraphs in their entirety exclusive of paragraph numbering; Page 53, last paragraph, 2nd line, last eight words, 3rd line, first five words, 5th line, last ten words, 6th line in its entirety exclusive of the last two words, 8th line, fifth through fifteenth words, 10th line, last four words, 11th line, first word, 12th line, last six words, 13th line, first five words, 15th line, last five words, 16th line, first six words, 18th line, third through seventh words, 19th line, last eight words, last line, first three words; Page 54, 1st paragraph 2nd line, last four words, 3rd line, first twelve words, 5th line, fifth word to end, 6th line, all words, Last paragraph, 3rd line from bottom, sixth through eleventh words; Page 55, 1st paragraph, 2nd line, last word; Page 56, 1st paragraph, 3rd line, last three words; Page 57, 5th paragraph in its entirety</p>	

DUKE ENERGY FLORIDA
DOCKET NO. 150043-EI
First Request for Confidential Classification
Confidentiality Justification Matrix

DOCUMENT	PAGE/LINE/ COLUMN	JUSTIFICATION
	<p>exclusive of heading; Page 58, 5th paragraph, 2nd line, second through fifth words from end, 14th line, all words except first three, Lines 15 through end of paragraph in their entirety; Page 59, 1st paragraph in its entirety, Last paragraph, 1st line, third through fifth words, 3rd line, fifth through seventh words; Page 60, Paragraphs (iv), (v), (vi) in their entirety exclusive of paragraph numbering, Paragraph (vii), 1st line, last six words, 2nd line, first word, Paragraph (viii), 1st line, third, fourth, fifth and last three words, remainder of paragraph in its entirety, Paragraphs (i), (ii), (iv) in their entirety exclusive of paragraph numbering; Page 61, 1st, 2nd and last paragraph on page in their entirety exclusive of paragraph numbering; Page 62, 1st two paragraphs on page exclusive of paragraph numbering; Page 63, last paragraph, 1st line, last five words, remainder of paragraph in its entirety; Page 74, numbers 1 through 7, officer's names; Page 75, 2nd and 3rd columns in their entirety; Page 76, 1st line last thirteen words, 2nd line in its entirety; Pages 80 and 81, all information on page</p>	

**DUKE ENERGY FLORIDA
DOCKET NO. 150043-EI
First Request for Confidential Classification
Confidentiality Justification Matrix**

DOCUMENT	PAGE/LINE/ COLUMN	JUSTIFICATION
	<p>exclusive of paragraph numbering and heading; Page 83, all information on page exclusive of header and footer; Pages 84 through 93, all information on pages exclusive of footer; Page 94, all information on page exclusive of paragraph 1 and paragraph numbering; Page 97, 1st line, all information; Pages 103 and 104, all information on pages exclusive of heading and paragraph numbering; Page 105, all information on page exclusive of heading; Pages 106 and 107, all information on page exclusive of heading and paragraph numbering; Pages 110 and 111, all bullet points on pages; Page 118, all information on page exclusive of heading; Page 121, all information on page exclusive of heading; Page 122, all information in numbered paragraphs; Page 124, all information on page exclusive of heading and paragraph numbering; Pages 129 through 131, all information on pages exclusive of heading and paragraph numbering; Page 132, all information on page exclusive of heading and paragraph numbering; Page 134, all information</p>	

DUKE ENERGY FLORIDA
DOCKET NO. 150043-EI
First Request for Confidential Classification
Confidentiality Justification Matrix

DOCUMENT	PAGE/LINE/ COLUMN	JUSTIFICATION
	<p>on page exclusive of heading and paragraph numbering; Page 135, all information on page exclusive of heading and footer; Page 148, 1st paragraph, 3rd line, last three words, last line in its entirety, 2nd paragraph, 7th line, last four words, 8th line, first word, 7th paragraph, 1st line, fifth word to end, 2nd line in its entirety, 8th paragraph, 1st line, seventh word to end, 2nd line in its entirety; Page 149, 1st line, fifth word to end, 2nd line, first word; Page 155, all information under Escrow Agent; Page 159, last 5 lines on page; Pages 161 and 162 in their entirety exclusive of heading; Page 164, 1st paragraph, 5th line, all words except first three, 2nd paragraph, 3rd line, last six words, 4th line, first two words</p>	
<p>Direct Testimony of Edward L. Scott Exhibit No. _____ (ELS-1)</p>	<p>Pages 16 through 19 in their entirety exclusive of Document Title</p>	<p>§366.093(3)(d), Fla. Stat. The document portions in question contain confidential contractual information, the disclosure of which would impair DEF's efforts to contract for goods or services on favorable terms.</p> <p>§366.093(3)(e), Fla. Stat. The document portions in question contain confidential information relating to competitive business interests, the disclosure of which</p>

DUKE ENERGY FLORIDA
DOCKET NO. 150043-EI
First Request for Confidential Classification
Confidentiality Justification Matrix

DOCUMENT	PAGE/LINE/ COLUMN	JUSTIFICATION
		would impair the competitive business of the provider/owner of the information.