

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: April 2, 2015

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COMMISSION
CLERK

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DUKE ENERGY FLORIDA, INC.'S SECOND REQUEST FOR CONFIDENTIAL CLASSIFICATION REGARDING AMENDMENTS TO EXHIBIT MEP-2 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 documents attached to DEF's Notice of Filing the Second, Third and Fourth Amendments to Exhibit MEP-2 the Asset and Sale Purchase Agreement ("APA"), which is attached as Exhibit No. __ (MEP-2) to the Direct Testimony of Mr. Matthew Palasek filed on January 30, 2015 in this docket (the "Request"). Specifically, DEF is seeking confidential classification of Amendment 4 of these documents as more specifically described below and in the justification matrix attached hereto as Exhibit C.

With respect to the confidential information contained in the response to Staff's discovery requests, DEF filed its Notice of Intent to Request Confidential Classification on March 23, 2015 (Document No. 01599-15). Pursuant to Rule 25-22.006(3), Florida Administrative Code, this request is timely. DEF hereby submits the following in support of its confidentiality request.

DEF is submitting the Affidavit of Mr. Matthew Palasek to support the confidentiality of the identified information because the documents at issue are contractual agreements between DEF and Calpine Construction Finance Company, L.P. ("Calpine") (hereinafter collectively, the

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

“Parties”) and contain competitively sensitive business information including terms and conditions relating to DEF’s purchase of the Osprey Energy Facility Combined Cycle Plant (“Osprey Plant”) from Calpine.¹ 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 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 the document 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 confidential business information. § 366.093(3)(d), Fla. Stat. Additionally, subsection

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.

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 Amendment 4 to the APA (Exhibit MEP-2) because public disclosure of the terms of the APA 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. As such, this information qualifies as proprietary confidential business information under subsection 366.093(3)(d) and (e), Fla. Stat.

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 Palasek, ¶¶ 4-5. 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. Affidavit of Palasek, ¶ 5. 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. Id.

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 Palasek, ¶ 5.

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 Palasek, ¶ 5.

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 Second 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 Amendment 4 to the APA (Exhibit MEP-2) be afforded confidential classification for the reasons set forth above.

Respectfully submitted this 2nd day of April, 2015.

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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 2nd day of April, 2015.

/s/ Blaise N. Gamba

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination that
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DOCKET NO. 150043-EI

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

EXHIBIT B

**FOURTH AMENDMENT TO ASSET PURCHASE AND SALE AGREEMENT
IS REDACTED IN ITS ENTIRETY**

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

DOCUMENT	PAGE/LINE/ COLUMN	JUSTIFICATION
Amendment to Direct- Testimony of Mark E. Palasek Exhibit No. ____ (MEP-2)	Amendment 4 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>