

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for determination that the Osprey Plant acquisition or, alternatively, the Suwannee Simple Cycle Project is the most cost effective generation alternative to meet remaining need prior to 2018, by Duke Energy Florida, Inc.

DOCKET NO.: 150043-EI

FILED: May 6, 2015

PREHEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to the Order Establishing Procedure in this docket, Order No. PSC-15-0110-PCO-EI, issued February 20, 2015, hereby submit this Prehearing Statement.

APPEARANCES:

Charles J. Rehwinkel
Deputy Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida

1. **WITNESSES:**

The Citizens do not intend to call any witnesses.

2. **EXHIBITS:**

None at this time.

3. STATEMENT OF BASIC POSITION

As a basic proposition, the Public Counsel believes that the Commission should find that the lowest cost, prudent, reliable generation solution should be selected in the event that the Commission determines that Duke has met its burden to demonstrate that a need for generation resources exists before 2018. Duke has entered into an Asset Purchase and Sale Agreement (“Agreement”) that appears reasonably designed to protect Duke’s customers if a need and cost-effectiveness is found and in the event certain contingencies occur related to the proposed acquisition of the Osprey Plant. The strict enforcement of **all** of the provisions of the Agreement, which operate together to protect customers, as described in the direct testimony of Matthew Palasek, should be assumed and expressly relied upon by the Commission in its order containing a determination of cost-effectiveness (if so determined) in this Docket.

4. STATEMENT OF FACTUAL ISSUES AND POSITIONS

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

OPC: The OPC takes no position on whether Duke has ultimately met its burden of demonstrating that its forecasting process supports the need for the pre-2018 generation resources.

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

OPC: The OPC takes no position on whether Duke has ultimately met its burden of demonstrating that its forecasting process supports the need for the pre-2018 generation resources. However, if the need exists, the acquisition of the Osprey plant **in strict accordance with the Asset Purchase and Sale Agreement** appears to be the most cost-effective way to meet the need that Duke proposes.

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

OPC: The Asset Purchase and Sale Agreement contains provisions which – if strictly adhered to – can preserve the positive CPVRR of approximately \$61 million that Duke asserts will result from the acquisition of the Osprey plant or which will preserve the original CPVRR of the Suwannee Generation Project that will be installed in the absence of the Osprey acquisition. The enforcement of **all** of the provisions of the Agreement, which operate together to protect customers, as described in the direct testimony of Matthew Palasek, should be assumed and expressly relied upon by the Commission in its order containing a determination of need and cost-effectiveness (if so determined) in this Docket. There are two principal provisions relating to Federal Energy Regulatory Commission (FERC) action that are vital to protecting the value of the generation resource that is ultimately chosen. The first provision caps the allowable mitigation costs provided for in the Agreement. These represent “costs” to Duke’s Florida customers, which – if incurred as a result of the FERC conditioning approval of the transaction on the implementation of mitigation measures – will not reduce the \$61 million value. The second key provision of the Agreement provides that the Osprey plant’s owners (Calpine) will bear, in the form of a payment to Duke, the costs of delay incurred by Duke (as a result of entertaining the Osprey plant purchase) in constructing the Suwannee Generation Project if the FERC does not approve the acquisition or imposes costs in excess of the mitigation allowance contained in the Agreement. The OPC takes the position that all the provisions contained in the Agreement, taken as a whole, are not unreasonable, but are only so if they are strictly followed. Any costs of delay or mitigation exceeding those assumed in the Agreement should not be borne by Duke’s customers.

Issue 4: If the Osprey Plant cannot be acquired under the terms and conditions of the Asset Purchase and Sale Agreement, is construction of the DEF Suwannee Generation Project the next most cost-effective way to meet DEF's generation need prior to 2018?

OPC: The OPC takes no position on whether Duke has ultimately met its burden of demonstrating that its forecasting process supports the need for the pre-2018 generation resources. However, if the need exists, the reinstatement of the Suwannee Generation Project ***in strict accordance with the terms of the Asset Purchase and Sale Agreement*** would then appear to be the next most cost-effective way to meet the need that Duke proposes.

Issue 5: Given the resolution of the foregoing issues, how and when may DEF request recovery of the final costs for the Osprey Plant acquisition or the Suwannee Simple Cycle Project?

OPC: Pursuant to Paragraph 16 of the Revised and Restated Stipulation and Settlement Agreement (RRSSA), Duke may “request” cost recovery closer in time to the in-service date of the proposed generation resources. At that time, Duke can assumedly request recovery of the actual (or nearly final estimated or projected) costs incurred to place the resources in service on a reasonable time frame in advance of the actual in-service date, subject to true-up for costs actually incurred at or below the estimate provided, and further subject to an opportunity to meet any extraordinary burden of proof for costs exceeding the estimates provided in the CPVRR analysis supporting its filing for approval of the two options in this Docket. The proceeding held to implement base rate cost recovery is the time when Duke must meet its burden of demonstrating the prudence of all costs for which it seeks recovery. Cost recovery may not occur until the resources are actually in service.

5. STIPULATED ISSUES:

None at this time.

6. PENDING MOTIONS:

None

7. STATEMENT OF PARTY’S PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY:

None.

8. OBJECTIONS TO QUALIFICATION OF WITNESSES AS AN EXPERT:

None at this time.

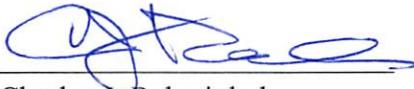
9. STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE:

There are no requirements of the Order Establishing Procedure with which the Office of Public Counsel cannot comply.

Dated this 6th day of May, 2015

Respectfully submitted,

J.R. Kelly
Public Counsel



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and foregoing **PREHEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL** has been furnished by electronic mail on this 6th day of May, 2015.

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