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March 3, 2009

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Ms. Ann Cole, Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

**Re: Docket No. 080501-EI, Petition for waiver of Rule 25-17.250(l) and (2)(a), F.A.C., which requires Progress Energy Florida to have a standard offer contract open until a request for proposal is issued for same avoided unit in standard offer contract, and for approval of standard offer contract**

**Docket No. 070235-EQ, Petition for approval of standard offer contract for purchase of firm capacity and energy from renewable energy producer or qualifying facility less than 100 kW tariff, by Progress Energy Florida, Inc.**

Dear Ms. Cole:

Please find enclosed for filing on behalf of White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (“PCS Phosphate”) the original and seven (7) copies of the *Supplementary Direct Testimony of Martin J. Marz* in the above referenced dockets.

Thank you for your assistance in this matter. Should you have any questions, please feel free to call me at (202) 342-0800.

Sincerely,

James W. Brew  
F. Alvin Taylor

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ECR |  
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AT:pdi  
Enclosures: a/s

cc: John T. Burnett

Reporter

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Petition to Intervene has been furnished by electronic mail and/or U.S. Mail this 3rd day of March 3, 2009 to the following individuals:

*s/ F. Alvin Taylor*

Progress Energy Florida, Inc.  
Mr. Paul Lewis, Jr.  
106 East College Avenue, Suite 800  
Tallahassee, FL 32301-7740

Progress Energy Service Company, LLC  
John T. Burnett  
P.O. Box 14042  
Saint Petersburg, FL 33733-4042

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Approval of Standard Offer  
Contract for Purchase of Firm Capacity and  
Energy from Renewable Energy Producer or  
Qualifying Facility Less Than 100 KW Tariff, by  
Progress Energy Florida, Inc.

DOCKET NO. 070235-EQ

DOCKET NO. 080501-EQ

Filed: March 5, 2009

SUPPLEMENTAL DIRECT TESTIMONY OF  
MARTIN J. MARZ



J. P O L L O C K

ON BEHALF OF  
WHITE SPRINGS AGRICULTURAL CHEMICALS, INC.  
D/B/A PCS PHOSPHATE – WHITE SPRINGS

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01757 MAR-4 8

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1    **1.    INTRODUCTION, QUALIFICATIONS AND PURPOSE**

2    **Q.    Please state your name and business address.**

3    **A.    Martin J. Marz: 1525 Lakeville Drive. Suite 217. Kingwood. Texas 77345.**

4    **Q.    What is your occupation and by who are you employed?**

5    **A.    I am an Energy Advisor and Senior Consultant for J. Pollock Incorporated.**

6    **Q.    What is your educational background?**

7    **A.    I have a Bachelor of Arts in Political Science from the University of Akron, and a**  
8    ***Juris Doctor* from the University of Akron School of Law.**

9    **Q.    Please describe your professional experience.**

10    **A.    During my 27 years of experience in the energy industry, I have represented**  
11    **marketers and producers (both in gas and electric matters), pipelines, local**  
12    **distribution companies, and state regulatory agencies in contractual and regulatory**  
13    **matters. In that time, I have been involved in every major regulatory change that**  
14    **has occurred in the natural gas industry, beginning with Order No. 436 and its**  
15    **progeny and extending through Order No. 636.**

16            **Before joining J. Pollock, Incorporated in July 2007, I was employed by**  
17    **BP in Houston, Texas, where I worked for the natural gas and power trading and**  
18    **marketing operations as Senior Attorney, as a Trade Regulation Manager**  
19    **(compliance) and as a Director of State Regulatory Affairs. In my legal capacity,**  
20    **I was responsible for, and engaged in, the negotiation of numerous power and gas**  
21    **purchase and sales contracts, including financial agreements, and even producer**  
22    **agreements. Similarly, prior to joining BP, I had been involved in contract**

DOCUMENT NUMBER-DATE

01757 MAR-4 8

FPSC-COMMISSION CLERK

1 negotiations and drafting on behalf of energy marketers, pipelines and distribution  
2 companies.

3 Prior to BP, I was a member of the Staff of the Public Utilities  
4 Commission of Ohio (PUCO), participating in rate and regulatory matters before  
5 the PUCO as well as proceedings before the Ohio Supreme Court and the FERC.  
6 Prior to joining the PUCO Staff, I worked for the Ohio Office of Consumer's  
7 Counsel on cost of service, cost of equity and rate design matters involving gas  
8 local distribution companies, electric utilities, and pipeline companies.

9 **Q. On whose behalf are you testifying in this proceeding?**

10 **A.** I am testifying on behalf of White Springs Agricultural Chemicals, Inc. d/b/a PCS  
11 Phosphate – White Springs (PCS Phosphate). PCS Phosphate is a manufacturer  
12 of fertilizer products with plants and operations in or near White Springs, Florida  
13 that are located in Progress Energy Florida's (PEF) electric service area. PCS  
14 Phosphate uses waste heat recovered from the manufacture of phosphate products  
15 to cogenerate electricity.

16 **Q. What is the purpose of your testimony?**

17 **A.** PCS Phosphate has engaged me to review PEF's 2007 Standard Offer Contract  
18 for Renewable Energy Producers or Qualifying Facilities less than 100 KW which  
19 was filed in Docket No. 070235-EQ. On February 18, 2008, I filed testimony that  
20 discussed numerous flaws in the 2007 Standard Offer Contract that served as  
21 serious barriers to the execution of contracts that would result in the development  
22 of renewable energy projects. In all likelihood, these flaws may largely account  
23 for the fact that no developer had actually executed a standard offer contract. PEF

1           responded to my testimony with rebuttal testimony that conceded some of the  
2           flaws described in my testimony but left the more serious criticisms in my  
3           testimony un-resolved. That docket was suspended prior to hearing in light of the  
4           PEF's filing in April 2008 of its proposed 2008 Standard Offer Contract, which is  
5           the subject of this proceeding. In its November 13, 2008 Petition to Intervene,  
6           Protest of Administrative Action and Petition for Formal Administrative Hearing,  
7           PCS Phosphate included my prior testimony and requested that it be incorporated  
8           into the proceeding.

9           To avoid repetition of my prior testimony, I have focused this testimony  
10          on those aspects of PEF's 2008 Standard Offer Contract that have changed and on  
11          arguments advanced by PEF witness David Gammon in his March 10, 2008  
12          rebuttal testimony in Docket No. 070235 and his February 2, 2009 testimony filed  
13          in this proceeding in support of the current proposed standard offer contract.  
14          Based on my review, including those changes which PEF made from its 2007  
15          Standard Offer Contract to the current version, I recommend a number of  
16          revisions that are needed for the standard offer contract to further the State of  
17          Florida's objective to encourage renewable energy generation. The changes are  
18          shown on **Exhibit MJM-1**, which is a redlined version of the PEF Standard Offer  
19          Contract<sup>1</sup>.

20          My testimony is not intended to provide an exhaustive review of each and  
21          every element of PEF's Standard Offer Contract, but does provide an assessment  
22          of the most serious impediments to renewable energy development presented by  
23          the Standard Offer Contract. Also, I am aware that the Commission in FPSC

1 Docket No. 080503-EI, has recommended to the Legislature as one alternative,  
2 the use of standard offer contracts as a means of implementing Florida's  
3 renewable portfolio standard (RPS). If that alternative approach were adopted by  
4 the State of Florida, the resolution of the issues raised in my testimony become  
5 doubly important.

6 **2. SUMMARY**

7 **Q. Please summarize your conclusions and recommendations.**

8 **A.** Florida has enacted a state policy to promote the development of renewable  
9 energy sources. Utility standard offer contracts are the basic vehicle for  
10 facilitating that development. The State's program aims to allow a renewable  
11 energy producer to elect between accepting and signing a standard offer contract  
12 that requires no further approvals or delays, or negotiating a project specific  
13 contract subject to Commission approval. Both alternatives need to be viable  
14 choices if this system is to be implemented as intended. The problem is that PEF's  
15 Standard Offer Contract is not designed to be acceptable to any renewable energy  
16 producer. As I explain, while PEF has addressed some of the issues I previously  
17 identified, the PEF contract still contains provisions that are unreasonable, one-  
18 sided, not consistent with reasonable commercial practice, and are overly  
19 complex. Additionally, certain of the price terms require a level of performance  
20 well in excess of that achieved by PEF's existing combined cycle generating  
21 facilities and actually serve as a barrier to renewable energy development.

22 PEF maintains that it intends its Standard Offer Contract to be the starting  
23 point for negotiating a project specific arrangement. This approach, however,

1           defeats the essential purpose of a “standard offer” contract and forces an extended  
2           and unwarranted negotiation over the removal or modification of unacceptable  
3           standard offer terms and conditions. My testimony recommends basic revisions  
4           that are required for the Standard Offer Contract to serve its intended purpose.  
5           These recommendations do not unduly burden PEF as they are consistent with  
6           standard industry practice and PEF’s own practice in a non-standard offer contract  
7           context.

8   **Q.    Please summarize your conclusions and recommendations.**

9   **A.    My conclusions and recommendations are as follows:**

10                   Price Terms

- 11           1. The required 69% performance capacity factor (Section 4) is  
12           inconsistent with PEF’s avoided unit (estimated of 65.3%) capacity  
13           factor and with the operation of PEF’s existing combined cycle units  
14           (which operated at a capacity factor of approximately 42% in 2007);
- 15           2. Capacity factor and availability factor are different measures of unit  
16           performance. However, the proposed Standard Offer Contract would  
17           treat them the same. For example, the proposed Availability Factor  
18           (Section 4) would require a renewable energy producer<sup>2</sup> to achieve a  
19           minimum 89% annual capacity factor rather than require the  
20           renewable energy producer to make capacity available 89% of the time  
21           to obtain a capacity payment. PEF uses the 89% availability factor for  
22           the minimum availability factor as well.



- 1                   3. To qualify for the full capacity payment, a renewable energy producer  
2                   must achieve an 89% capacity factor, not an 89% availability factor.  
3                   Such a capacity factor requirement is unreasonably high.
- 4                   4. At a minimum, a renewable energy producer should be entitled to a  
5                   full capacity payment if it is available for generation in a manner  
6                   consistent with PEF's own units and achieves the same annual  
7                   capacity factor as the avoided unit would have. Further, the Standard  
8                   Offer Contract should be revised to recognize that renewable  
9                   technologies have different operating characteristics. As such, a one  
10                  size fits all capacity or availability factor is an impediment to the use  
11                  of the Standard Offer Contract. The determination of the appropriate  
12                  capacity factor is best left to the parties in the negotiations process. If  
13                  the Commission should decide a capacity factor is necessary, the  
14                  capacity factor employed should be 65.3% to be consistent with FPSC  
15                  Rule 25-17.0832(4)(e)(8).

16                  Non-price Terms

- 17                  1. The imposition of a Right of First Refusal (ROFR) that PEF demands  
18                  for Renewable Energy Credits owned by a renewable producer should  
19                  be removed from the Standard Offer Contract.
- 20                  2. Capacity Testing –
- 21                    i. Under Section 7.4 to the extent PEF requests a second capacity  
22                    test, such test should be for cause, occur no earlier than six (6)  
23                    months after the most recent capacity test and PEF should be

1 responsible for any incremental costs associated with a second  
2 test in a given year:

3 ii. For bottom-cycling cogenerators. i.e., entities that are using  
4 waste heat from a manufacturing process, the timing of a test  
5 must be agreed upon so as not to interfere with the  
6 manufacturing process.

7 3. Creditworthiness Provisions –

8 i. These provisions are one-sided and are not consistent with  
9 established commercial practice and thus must be revised to  
10 provide protection to both parties in the transaction.

11 ii. The collateral requirements are likewise and do not appropriately  
12 reflect default risk for both parties.

13 4. The default provisions of the Standard Offer Contract are one-sided  
14 and do not provide for the renewable producer to declare an event of  
15 default for such matters as non-payment, breach of representations and  
16 warranties and failure to comply with obligations under the terms of  
17 the contract and creditworthiness.

18 5. A renewable energy producer should be provided a corresponding  
19 opportunity to examine the books and records of the buyer (who will  
20 be handling billing and payment).

21 6. Representations and warranties are one-sided and not commercially  
22 reasonable. This section needs to be revised so that PEF provides  
23 standard commercial representations and warranties.

1           7. The maintenance scheduling provisions of Section 10.2 should be  
2           revised to make it clear that the timing of maintenance, particularly for  
3           manufacturing facilities that are producing the energy from their  
4           manufacturing processes, are subject to negotiation and agreement  
5           between the parties. Further the minimum number of days for planned  
6           maintenance should be increased to 30 days.

7           8. The requirement that a renewable energy producer take firm standby  
8           service from PEF (Section 8.2) is not justified and should be deleted.

9   **3.    GENERAL ASSESSMENT OF THE STANDARD OFFER CONTRACT.**

10 **Q.    Does the Standard Offer Contract serve the purpose of being an agreement**  
11 **that a renewable energy developer is likely to enter into without serious**  
12 **negotiations?**

13 **A.**    No. PEF witness David W. Gammon opined that the Standard Offer Contract  
14 provides a “first draft” against which negotiated contracts are developed<sup>3</sup>. Having  
15 reviewed the document, I understand fully why he makes that statement. As I  
16 discuss, the Standard Offer Contract has numerous provisions that would  
17 discourage a renewable energy producer from accepting the Standard Offer  
18 Contract. The areas that are one-sided in favor of PEF extend across many  
19 aspects of the general terms and conditions. Given the nature of the document, I  
20 would not expect any renewable energy producer to enter into the agreement on  
21 an “as is” basis and indeed, Mr. Gammon testifies that no party has accepted the  
22 standard offer contract<sup>4</sup>. Presenting an unbalanced standard offer contract of this  
23 nature defeats the intended purpose of such a contract.

1 **Q. What should be the purpose of a Standard Offer Contract?**

2 **A.** A standard contract should provide the general terms and conditions of the  
3 agreement in a balanced manner which minimizes, or ideally eliminates, the need  
4 for negotiations between the parties regarding the general terms and conditions  
5 and permits them to focus on items critical to each party. A more balanced  
6 standard offer contract providing reasonable protections to both buyers and sellers  
7 would minimize transaction costs and thereby encourage the development of  
8 renewable resources consistent with state policy. Examples of such agreements  
9 providing balanced general terms and conditions include the Edison Electric  
10 Institute Master Power Purchase and Sale Agreement (“EEI Master Agreement”),  
11 the North American Energy Standards Board Base Contract for the Sale and  
12 Purchase of Natural Gas (“NAESB Agreement”) and even the International  
13 Swaps and Derivatives Association’s ISDA Master Agreement (“ISDA Master”)  
14 covering swaps and derivative transactions. The above all fit into the category of  
15 “standardized agreements” that are comparable in purpose to the PEF Standard  
16 Offer Contract, that is, standardized commercial agreements that are susceptible  
17 to being entered into without major negotiations and redrafts of the general terms  
18 and conditions, such as creditworthiness, default, representations and warranties,  
19 assignment and audit provisions.

1 **Q. Were those contracts designed to serve the same purpose as a Standard Offer**  
2 **Contract for the purchase of electricity and capacity from renewable energy**  
3 **producers?**

4 **A.** In many respects, yes. Those contracts were designed to make it easier for a  
5 diverse group of parties, including regulated utilities, power marketers,  
6 independent power producers, and commodities traders to enter into a number of  
7 transactions providing for the sale, purchase and delivery of electricity and natural  
8 gas. The agreements all share a similar objective, which is to provide  
9 commercially-reasonable protection to both sides while ensuring the quick  
10 consummation of transactions on a relatively uniform basis. A Standard Offer  
11 Contract for renewable energy producers should accomplish the same objective.  
12 It should not take extensive negotiations or substantial redrafting of the general  
13 terms and conditions to achieve a workable agreement. This is especially true  
14 where one party has a much stronger position which, if unchecked, could be used  
15 to thwart State policies.

16 **Q. Should the PEF Standard Offer Contract be revised to make it amendable to**  
17 **a less complex negotiation and drafting process?**

18 **A.** Yes, and with that objective in mind, I have reviewed the revised Standard Offer  
19 Contract and Testimony of PEF witness Gammon and set forth my proposed  
20 changes as shown in **Exhibit MJM-1**. In this exhibit, I have only corrected the  
21 provisions in the contract itself, and have not edited the appendices included with  
22 the contract. PEF should incorporate corresponding changes to those appendices.

1    **4.    PRICE TERMS**

2    **Q.    What is the PEF avoided cost unit?**

3    **A.**    Based upon its 2008 Ten Year Site Plan and its Petition for Waiver, PEF is using  
4           the Suwannee River Plant – Unit A as its avoided unit. According to the Standard  
5           Offer Contract, the avoided unit is a natural gas combined cycle plant with a  
6           summer capacity of 1.159 megawatts (MW) and winter capacity of 1.279 MW.  
7           This unit is expected to enter commercial operations in June 2013.

8    **Q.    Does the FPSC rule governing firm capacity and energy contracts address**  
9           **performance standards?**

10   **A.**    Yes. Section 25-17.0832(4)(e)(8) states that the Standard Offer Contract shall  
11           provide:

12                   (8) The minimum performance standard for the delivery of firm  
13                   capacity and energy by the qualifying facility during the utility’s  
14                   daily season at peak and off-peak periods. These performance  
15                   standards shall approximate the anticipated peak and off-peak  
16                   availability and capacity factor of the utility’s avoided unit over the  
17                   term of the contract.

18   **Q.    Does PEF include performance standards in the Standard Offer Contract?**

19   **A.**    Yes. In Section 4, Minimum Specifications and Milestones, PEF has established  
20           minimum performance standards for both on-peak and off-peak which it labels as  
21           an “availability factor.” It also establishes a minimum availability factor for  
22           purposes of making (or receiving in the case of the renewable generator) a  
23           capacity payment at 69%. As discussed later, PEF actually uses capacity factor  
24           rather than availability factor to measure performance.

1 **Q. Does a renewable energy producer that achieves an availability factor of**  
2 **69% receive a full capacity payment?**

3 **A.** No. To receive a full monthly capacity payment, the renewable energy producer's  
4 unit must achieve an 89% availability factor for the month. Further, the 89%  
5 would apply to both on and off-peak periods within the month.

6 **Q. Please discuss the availability factor described in the Standard Offer**  
7 **Contract.**

8 **A.** The availability factor is used to determine the amount of the capacity payment  
9 and is found in Section 4 of the Standard Offer Contract. Availability factor is  
10 defined in Appendix A. Appendix A provides that "[i]n the event that the  
11 [Annual Capacity Billing Factor ("ACBF")] is less than 69%, then no Monthly  
12 Capacity Payment shall be due."<sup>5</sup> The ACBF is derived by dividing electric  
13 energy actually received by PEF from the renewable energy producer by the sum  
14 of the Committed Capacity and the hours in the period.<sup>6</sup>

15 **Q Is this the correct formula for determining an availability factor?**

16 **A** No. The formula in Appendix A is for determining a capacity factor, not an  
17 availability factor.<sup>7</sup>

18 Even Mr. Gammon refers to capacity factor, not availability factor in his  
19 Testimony<sup>8</sup>. Capacity factor is quite distinct from an availability factor.

20 **Q. Would you explain the difference between availability factor and capacity**  
21 **factor?**

22 **A.** Yes. An availability factor defines a unit's availability to provide energy to the  
23 system, not how or when it actually generates the energy. A unit's availability

1 factor is the sum of the service hours plus reserve stand-by hours divided by  
2 period hours times 100.<sup>9</sup> Service hours are those hours when the unit is  
3 synchronized with the transmission system, and reserve stand-by hours are those  
4 hours where the unit is available to generate but is not synchronized with the  
5 system.<sup>10</sup>

6 In contrast, a capacity factor is the product of the energy generated during  
7 the period divided by the committed capacity times the period hours, expressed as  
8 a percentage. Thus, a capacity factor addresses the actual unit usage, whereas an  
9 availability factor addresses a unit's potential to produce energy.

10 **Q. How does the “availability factor” in the Standard Offer Contract compare**  
11 **to the capacity factor of the avoided unit and PEF’s existing combined cycle**  
12 **units?**

13 **A.** According to PEF’s 2008 Ten Year Site Plan, the capacity factor for the avoided  
14 unit is 65.3% and the availability factor is 89%. Thus, a renewable producer’s  
15 unit must perform better than the avoided unit to qualify for any level of a  
16 capacity payment.

17 **Q. Do PEF’s existing combined cycle units operate at a 65.3% capacity factor?**

18 **A.** No. PEF’s existing combined cycle units, the Hines Energy Facility and the Tiger  
19 Bay Facility, only achieved a weighted average capacity factor of 41.6% in  
20 2007.<sup>11</sup> Similarly, for the period 2004-2007, the average PEF combined cycle  
21 capacity factor averaged slightly above 46%.<sup>12</sup>



1 **Q. Would a renewable energy producer receive any capacity payment if it**  
2 **operated at a capacity factor comparable to PEFs existing combined cycle**  
3 **units?**

4 **A.** No. Despite the fact the PEF is allowed to recover its investment in the Hines and  
5 Tiger Bay facilities regardless of the actual capacity factor at which the units  
6 operate, a renewable energy producer would not receive any capacity payment for  
7 operating at a capacity factor comparable to PEF's existing combined cycle units  
8 or even the projected capacity factor for the avoided unit. To achieve full  
9 capacity payment, the renewable facility would need to operate at an 89%  
10 capacity factor. Thus, the Standard Offer Contract is biased.

11 **Q. Is this a reasonable requirement?**

12 **A.** No. Contrary to Mr. Gammon's testimony that "the specified capacity ensures  
13 that PEF's customers are receiving equivalent capacity compared to the avoided  
14 unit," this requirement is unreasonable in light of, and inconsistent with, the  
15 performance level of PEF's existing combined cycle units and the expected  
16 performance level capacity factor of the avoided unit – which is 65.3%.<sup>13</sup> The  
17 Standard Offer Contract imposes a standard upon renewable energy producers  
18 that PEF does not achieve in its own operations. The high capacity factor  
19 requirement serves to discourage renewable producers from entering into a  
20 Standard Offer Contract.

1 **Q. What is your understanding of the purpose of a capacity payment?**

2 **A.** A capacity payment is simply a payment made by the party acquiring the capacity  
3 to the party owning the capacity to reserve the right to call upon a particular asset  
4 the capacity for service.

5 **Q. What is your recommendation with regard to the establishment of a floor for**  
6 **a capacity payment?**

7 **A.** This is a matter that should be subject to negotiations between the parties.  
8 Various renewable resources will have different operating characteristics, which  
9 in turn would result in different capacity values. As such, one-size-fits-all floor  
10 would be impracticable.

11 However, recognizing the limitations of the standard offer contract model,  
12 should the Commission require a floor for determining when a capacity payment  
13 is to be made, I recommend that the capacity factor of the avoided unit, which  
14 would be consistent with FPSC Rule 25-17.0832(4)(e)(8).

15 **5. NON-PRICE TERMS**

16 **Q. What do you mean by non-price terms?**

17 **A.** Non-price terms to the “general terms and conditions” of a contract include items  
18 of general applicability such as credit protection, default, audit of billing  
19 information, representations and warranties, assignment, planning (which in a  
20 number of contracts includes nominations and scheduling) and force majeure. In  
21 addition, I also address certain items that are non-price related, but are peculiar to  
22 renewable contracts, such as the right to retain the renewable energy credits,  
23 capacity testing and insurance.

1 **Q. Has PEF included changes in its standard offer contract?**

2 **A.** Yes. In Mr. Gammon's Direct Testimony he has indicated that PEF has accepted  
3 some changes proposed in my Direct Testimony submitted in Docket No. 07-  
4 0235-EQ. Several of those changes made by PEF are acceptable; I address those  
5 changes which are not adequate and other concerns in my testimony.

6 **Q. Has PEF included language addressing renewable energy attributes?**

7 **A.** Yes. In Section 6.2 PEF provides itself with the right of first refusal to purchase  
8 any Renewable Energy Attributes associated with the Facility, and also limits the  
9 price that the seller may otherwise obtain in the market to a price no less than the  
10 price at which PEF has purchased such credits.

11 **Q. Are you aware of potential rules addressing Renewable Energy Attributes?**

12 **A.** Yes. On January 30, 2009 the Commission submitted to the President of the  
13 Senate and the Speaker of the House of Representatives draft rules governing  
14 renewable energy portfolio standards. Included in the proposal, were two  
15 separate approaches for dealing with renewable energy credits ("REC"). (In my  
16 testimony, Renewable Energy Attributes referenced in the Standard Offer  
17 Contract are treated as the same as RECs). One proposal would create a tradable  
18 market for RECs predicated upon privately negotiated contracts between the party  
19 holding the rights to the RECs and the utility. The second approach would rely  
20 upon standard offer contracts for the purchase and sales of RECs. These  
21 proposals would supersede the provisions contained in the Standard Offer  
22 Contract.

1 **Q. Given the proposed rules forwarded to the Legislature, how should the**  
2 **Commission address Subsection 6.2 of the Standard Offer Contract?**

3 **A.** The provision should be removed from the Standard Offer Contract pending  
4 further changes to the proposed Renewable Portfolio Standards. Once the  
5 Legislature and Commission have addressed the issue, the parties will be in the  
6 position to finalize an agreement on the RECs. In the absence of action on the  
7 Commission's proposals sent to the Legislature and to avoid a potentially  
8 unlawful taking, Section 6.2 should be stricken as inconsistent with FPSC Rule  
9 25-17.280 and not authorized by any statute.

10 **Q. Should the Commission elect not to remove Section 6.4 do you have other**  
11 **concerns regarding PEF's proposed right of first refusal?**

12 **A.** Yes. RECs are the property of the renewable energy producer. The rule should  
13 not encumber the ability of a producer to sell or transfer those RECs, and PEF  
14 certainly should be permitted to acquire an option on the RECs while fairly  
15 compensating a renewable energy producer. Moreover, as written in the Standard  
16 Offer Contract, a customer is required to sell its Renewable Energy Attributes to  
17 PEF at the terms of any *bona fide* offer. However, there is no requirement that the  
18 renewable energy producer actually be willing to sell its attributes at the terms of  
19 the *bona fide* offer. As such, any *bona fide* offer must be at terms and conditions  
20 acceptable to the renewable energy producer. Further, the time period in which  
21 PEF may decide whether to match the *bona fide* offer is 30 days; a time period  
22 that is too long. Given that the RECs may ultimately be tradable commodities, a  
23 much shorter period is appropriate so as to protect both buyer and seller. During a

1 30 day period the overall price of the RECs may very well change, depending  
2 upon supply and demand. To ensure that the renewable producer is receiving the  
3 fair value at the time of the sale, a time limit of three business days should be  
4 substituted for the 30 day period. Finally, the provision limiting the price at  
5 which the renewable producer may sell the RECs after sale to PEF needs to be  
6 stricken.

7 **Q. Do you have any concerns regarding the provisions of Section 7.4 on**  
8 **performance testing that PEF revised.**

9 **A.** Yes. PEF has added a notice requirement to Section 7.4. However, the revisions  
10 fall short of recognizing the needs and characteristics of renewable producers.  
11 PCS operates a renewable energy resource that is integrated with the manufacture  
12 of phosphate fertilizer. Testing on insufficient notice could be disruptive to  
13 manufacturing operations and may impose unnecessary costs on PCS. As such  
14 any additional tests should be undertaken upon both adequate notice and at times  
15 agreed by the renewable producer.

16 **Q. Should further changes to Sections 7.4 and 8.2 be made?**

17 **A.** Yes. I believe that to the extent a second capacity test is requested by PEF under  
18 Section 7.4, PEF should be responsible for any additional expenses associated  
19 with such a test. Such test should be requested only for cause (*i.e.*, failure to  
20 deliver over a consistent period the contracted capacity). Finally, such a test  
21 should occur no earlier than six months after the most recent test.

22 With reference to Section 8.2, the following should be added to the end of  
23 the first sentence, "or for such other period as the parties may agree." This will

1           make clear that the testing procedures may be revised to meet the unique  
2           characteristics of the particular type of facility being installed.

3   **Q.   Have you picked only certain provisions from the Vandolah tolling**  
4   **agreement for inclusion in the Standard Offer Contract?**

5   **A.**   No. In my testimony I offered PEF's Vandolah agreement as an example of how  
6           PEF "has recognized that capacity testing period[s] may need to be different  
7           depending on the facility."<sup>14</sup> Thus, I have and continue to advocate for  
8           recognition of flexibility in the Testing Procedures contained in Section 8.2 of the  
9           Standard Offer Contract.

10   **6.   GENERAL TERMS AND CONDITIONS THAT ARE NORMALLY**  
11   **BILATERAL**

12   **Q.   What will you be addressing in this section of your Testimony?**

13   **A.**   This section addresses general terms and conditions that should be reciprocal and  
14           are regularly found in standardized commercial agreements providing for the sale  
15           of energy and energy products (which would include financial and derivative  
16           products such as swaps and futures). Such items include credit and collateral  
17           requirements, default, representations and warranties, and conditions precedent.

18   **Q.   In reviewing the Standard Offer Contract what have you concluded with**  
19   **regard to the above mentioned general terms and conditions?**

20   **A.**   Many of the provisions are one-sided, giving PEF a particular right without  
21           providing the renewable energy producer with the corresponding right, or  
22           imposing an obligation on the renewable energy producer without imposing a

1 reciprocal obligation upon PEF. There are times where it is appropriate to  
2 provide one party with a right or obligation and not the other party, but in  
3 reference to the general terms and conditions of a commercial agreement, items  
4 such as credit and collateral requirements, default, assignment, representations  
5 and warranties, conditions precedent (I would note that there may be more  
6 conditions precedent applicable to one party versus the other) and force majeure  
7 should be reciprocal. The failure to include these provisions in a reciprocal  
8 format is not conducive to achieving the objective of the use of a Standard Offer  
9 Contract, nor is it commercially reasonable.

10 **Q. Do typical energy purchase and sale agreements customarily include bi-**  
11 **lateral provisions for each of the items mentioned above?**

12 **A.** Yes. As examples, the EEI Master Agreement, the NAESB Agreement and the  
13 ISDA Master all include provisions that address credit and collateral  
14 requirements, default, representations and warranties, and conditions precedent as  
15 they apply to both parties. Likewise, in reviewing the documents provided by  
16 PEF, its negotiated contracts also have included reciprocity with respect to the  
17 above mentioned provisions. This enables parties to enter into an agreement with  
18 a minimum of cost and effort, reducing costs and time, for both parties.

19 **Q. Are the credit provisions within the Standard Offer Contract comparable**  
20 **with those found in a typical commercial agreement?**

21 **A.** No. Provisions that require each party to establish its creditworthiness are  
22 completely absent from the Standard Offer Contract. The Standard Offer  
23 Contract requires a renewable energy producer to post security upon execution of

1 the Standard Offer Contract and maintain such security until well after completion  
2 of the renewable unit and the initial capacity test (Section 11). It also requires the  
3 renewable energy producer to provide security to cover a "termination fee"  
4 (Section 12). However, there are no provisions that require PEF to establish its  
5 creditworthiness, permit the seller to periodically review PEF's credit status or  
6 permit the seller to request collateral if PEF's creditworthiness is not acceptable to  
7 the renewable producer.

8 **Q. Why should PEF be required to meet creditworthiness standard?**

9 **A.** PEF is the paying party. The renewable producer is assuming the risk of non-  
10 payment when entering into the agreement also. It uses the creditworthiness to  
11 mitigate its risk. The inability of PEF to control or manage the risk through credit  
12 provisions serves as a barrier for renewable producer to sell its output to PEF.

13 **Q. Does Commission approval of the contract assure payment to the renewable  
14 producer by PEF?**

15 **A.** No. It only provides assurance to PEF that it will be able to recover the charges  
16 from its customers. Should PEF incur financial difficulty regardless of the reason,  
17 it (PEF) will determine order of payment. That is the reason for two way  
18 creditworthiness provisions in bilateral standard agreements.

19 **Q. Should the Commission require PEF to incorporate bilateral  
20 creditworthiness and collateral requirements in its Standard Offer Contract?**

21 **A.** Yes, each party in a commercial agreement should be required to meet  
22 creditworthiness standards and be subject to a collateral posting requirement if the  
23 party's creditworthiness is insufficient to support unsecured credit in an amount



1 exceeding the potential liability to the other party. Such provisions are customary  
2 and generally included in all electric and gas purchase and sale contracts. Further,  
3 in typical commercial contracts, the collateral requirements are tied to the  
4 creditworthiness of the entity and the threshold for requiring an entity to post  
5 additional collateral is measured by the other entity's exposure (payment in the  
6 event of default). Creditworthiness is usually determined using a company's  
7 rating by Moody's, Standard & Poor's or Fitch. The stronger the  
8 creditworthiness, the higher the threshold amount (*i.e.* the amount of unsecured  
9 credit a company is given).

10  
11 **Q. Does Section 25-17.0832 require security from a renewable producer?**

12 **A.** Yes. It requires "provisions to ensure repayment of payments to the extent that  
13 annual firm capacity and energy payments made to the qualifying facility in any  
14 year exceed the year's annual value of deferring the avoided unit . . ." Separately  
15 the renewable producer is also required to provide security to protect ratepayers in  
16 the event that the qualifying facility fails to deliver firm capacity and energy in  
17 the "amount and time specified in the contract." It goes on to specify that such  
18 [p]ayment or surety shall be refunded upon completion of the facility and  
19 demonstration that the facility can deliver the amount of capacity and energy  
20 specified in the contract . . . ." Rule 25-17.0832(4)(f)(1) (Emphasis added).

21 **Q. Do provisions of the Standard Offer Contract comply with Rule 25-17.0832?**

22 **A.** No, not fully. Section 11 requires a renewable energy producer, upon execution of  
23 the agreement, to post collateral referred to as performance collateral. This  
24 provision appears to be based upon the permissive language of Rule 25-

1 17.0832(4)(f)(1). However, upon completion of the facility and the  
2 demonstration that it can provide the capacity and energy, the surety (payment)  
3 “shall” be refunded. Under the PEF approach, it retains the surety until contract  
4 termination. To this extent the provision is inconsistent with FPSC Rule 25-  
5 17.0832. Such performance security must be returned to the renewable energy  
6 producer upon completion and successful capacity testing to comply with the  
7 Commission’s Rule.

8 **Q. What credit worthiness provisions are you proposing?**

9 **A.** Referring to **Exhibit MJM-1**, I have incorporated creditworthiness provisions  
10 after the existing Section 11. My objective is to simplify the Standard Offer  
11 Contract and make it fairer for renewable energy producers. These particular  
12 provisions were taken from an existing PEF power supply agreement with the  
13 City of Mount Dora, Florida. I have chosen that particular provision because it  
14 employs a simpler form than the EEI Master Agreement. While these provisions  
15 may not be ideal, PEF had previously deemed them acceptable. The provisions I  
16 propose do not differentiate between credit standing once an entity achieves an  
17 investment grade bond rating. A more complex formula could be used, which  
18 establishes a threshold level of unsecured credit which, if exposure exceeds the  
19 threshold amount, collateral is required to be posted. If there is a preference for  
20 such an approach, the EEI Master Agreement provides an excellent model.

21 **Q. Does the Standard Offer Contract include default provisions?**

22 **A.** Yes. However, once again the default provisions apply only to the renewable  
23 provider. There are no provisions that permit the renewable producer to declare a

1 default by PEF. Thus, for example, if PEF simply stopped paying a renewable  
2 energy producer, it has no contractual right to declare PEF in default. Instead, the  
3 renewable energy producer must continue providing capacity and energy to PEF  
4 without payment or face the risk that PEF would declare it in default and claim  
5 the generator's performance collateral.

6 **Q. What types of circumstances may give rise to a default by either party?**

7 **A.** Typically, the following are items which could give rise to an event of default by  
8 the either party: 1) failure to make a payment when due, and such failure is not  
9 corrected within a specified period of time following notice of such failure; 2) any  
10 representation or warranty that is false or misleading in any material respect when  
11 made; 3) failure to perform any covenant or obligation under the agreement; 4) a  
12 party becomes bankrupt; 5) a party fails to satisfy the creditworthiness provisions;  
13 6) a party merges or consolidates with another entity and such remaining entity  
14 does not assume all the obligations under the agreement; or 7) a guarantor  
15 breaches its guarantee, fails to make payment on its guarantee or the guarantor  
16 becomes bankrupt.

17 **Q. Should the Standard Offer Contract have bilateral default provisions?**

18 **A.** Yes. The required language is provided in **Exhibit MJM-1** at Section 14. I  
19 have also retained provisions found in the Standard Offer Contract that are  
20 applicable to renewable energy producers. The addition of the PEF default  
21 provisions serves to make the contract more balanced, without denigrating the  
22 protections for PEF's customers.

1 **Q. What is PEF's justification for excluding any provisions of default in the**  
2 **Standard Offer Contract?**

3 **A.** PEF witness Gammon states that since "the PSC has already approved this  
4 contract . . . there are no issues about payment or guarantees for payment."  
5 However, this statement is not accurate. Approval only guarantees recovery of  
6 the cost of the contract by PEF. The renewable producer also has to assume the  
7 risk of non-performance by PEF. The Commission is not guaranteeing  
8 performance by PEF. Separately, all of the contracts between PEF and other  
9 renewable producers that I have reviewed contain default provisions applicable to  
10 PEF.

11 **Q. Is there an early termination provision in the Standard Offer Contract?**

12 **A.** Yes. There is a provision for a termination payment contained in the Standard  
13 Offer Contract. Mr. Gammon asserts that the Termination Fee is required by Rule  
14 25-17.0832(4)(e)(10), and it is simply included pursuant to such section.<sup>15</sup> The  
15 cited Rule permits the imposition of a provision to "ensure repayment of  
16 payments to the extent that annual firm capacity and energy payments made to the  
17 qualifying facility in any year exceed that year's annual value of deferring the  
18 avoided unit specified in the contract in the event that the qualifying facility fails  
19 to perform pursuant to the terms and conditions of the contract." However, the  
20 amount of the Termination Security that PEF may retain should be limited to its  
21 potential liability arising from any early capacity payments, that is, the security  
22 required should be sufficient only to provide repayment of early capacity  
23 payments that are not offset by capacity and energy under the terms of the

1 contract. Separately, there is no provision for a termination fee should the buyer  
2 default. Should the buyer (PEF) default, the renewable energy provider should  
3 also be entitled to damages under the contract.

4 **Q. Do the representation and warranty provisions apply to both parties under**  
5 **PEF's Standard Offer Contract?**

6 **A.** No. Those provisions apply only to the renewable energy producer. This is  
7 inconsistent with the standard form agreements referenced earlier as well as  
8 standard industry practice, including PEF's practice.

9 **Q. What representations and warranties should each party provide?**

10 **A.** Normally each party is able to represent and warrant that:

- 11 • It is an organization in good standing and qualified to do business in  
12 Florida,
- 13 • That the contract is duly authorized, and that there are no approvals  
14 required or if so, that such approvals have been obtained.
- 15 • That there are no defaults that prohibit performance under the agreement.
- 16 • That the party is in compliance with all applicable laws.
- 17 • That no suits are pending that would have a material adverse affect on the  
18 party's ability to perform and
- 19 • That all government approvals have or will be obtained and remain in  
20 force and effect.

1           These representations and warranties are contained in existing PEF  
2 agreements. I have proposed conforming changes in the representations and  
3 warranties section of **Exhibit MJM-1** to make certain of them reciprocal.

4 **Q. Do you have any concerns regarding the Conditions Precedent in the**  
5 **Standard Offer Contract?**

6 **A.** Yes. Again these provisions only provide conditions precedent for one party, the  
7 renewable energy producer. Generally, there are also frequently conditions  
8 precedent that apply to both parties. An example of such a provision that should  
9 flow both ways is Section 5(a)(vi), which requires the renewable energy producer  
10 to provide corporate constitutional documents, approvals and the like to PEF. I  
11 have revised this section to flow both ways.

12 **Q. Do you agree that scheduled maintenance should be limited to 15 days per**  
13 **year?**

14 **A.** No. Section 10.2 is unnecessary and unduly restrictive. Fifteen days per calendar  
15 year may not be sufficient to allow a renewable energy producer to provide the  
16 maintenance essential to meeting the contractually obligated performance  
17 requirements. Further, PEF does not impose similar restrictions on its own units.  
18 This is yet another example of how the proposed Standard Offer Contract is one-  
19 sided and fails to recognize the specific circumstances of renewable energy  
20 producers. At a minimum, the Commission needs to make it clear that this  
21 provision is subject to negotiation. Further, the maximum number of maintenance  
22 days should be increased to 30 days.

1 **Q. Is PEF's requirement that a renewable energy producer utilize firm standby**  
2 **service for start-up service reasonable?**

3 A. No. PEF offers both firm and interruptible standby service (Rate Schedules SS-1  
4 and SS-2). Either Rate Schedule is applicable to facilities with on-site generation.  
5 In fact, PCS purchases interruptible standby service for its existing on-site  
6 generation. Whether PCS chooses to enter into a Standard Offer Contract with  
7 PEF to sell its surplus renewable power and energy is not a valid reason for  
8 denying access to Schedule SS-2. Such a requirement serves as a direct barrier to  
9 PCS, as it currently purchases the majority of its needs under Rate SS-2.

10 **Q. Please briefly summarize any other changes you have made to the Standard**  
11 **Offer Contract.**

12 A. I have revised Section 10.5.6, which required a renewable energy producer to  
13 have a three day fuel supply on-site only if necessary to provide capacity and  
14 energy. Such a requirement is not applicable to most renewable generators and  
15 thus should not be included in the Standard Offer Contract.

16 **Q. Does this conclude your testimony?**

17 A. Yes, it does.

## ENDNOTES

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<sup>1</sup> Because an editable version of the Standard Offer Contract was not available, I converted the document available on PEF's website (<http://www.progress-energy.com/aboutenergy/rates/tariffctstdoffer.pdf>) to an editable format. Due to the lack of preciseness in such a conversion process, some transpositions are included in my exhibit.

<sup>2</sup> I will refer to both renewable energy resources and small qualifying facilities of less than 100 kW as renewable energy producers.

<sup>3</sup> Gammon 2009 Direct Testimony at 2.

<sup>4</sup> *Id.*

<sup>5</sup> See Standard Offer Contract, First Revised Sheet No. 9.442.

<sup>6</sup> See Standard Offer Contract, Original Sheet 9.443.

<sup>7</sup> GADS indicates that a Net Capacity Factor is calculated as follows:  
Net Actual Generation / (Period Hours\*Net Maximum Capacity) \* 100.  
See GADS Data Reporting Instructions, Page F-10, 1/2008. While the Availability Factor is calculated as follows: Available Hours/Period Hours\*100%. Page F-9.1/2008.

<sup>8</sup> Gammon 2009 Direct Testimony at 12.

<sup>9</sup> See North American Electric Reliability Corporation, Generation Availability Data System. GADS Data Reporting Instruction, F-9.

<sup>10</sup> There are other methods of calculating equivalent availability factors that take into account scheduled and unscheduled deratings, some of which are for maintenance derates. See generally, GADS Data Reporting Instructions.

<sup>11</sup> See Exhibit MJM-2.

<sup>12</sup> *Id.*

<sup>13</sup> Gammon 2009 Direct Testimony at 13

<sup>14</sup> Marz 2008 Direct Testimony in 0703546-EQ at 16.

<sup>15</sup> Gammon 2009 Direct Testimony at 17.

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**Exhibit MJM-1**

to the

DIRECT TESTIMONY OF  
MARTIN J. MARZ

ON BEHALF OF  
WHITE SPRINGS AGRICULTURAL CHEMICALS, INC.  
D/B/A PCS PHOSPHATE – WHITE SPRINGS

**Proposed Changes to  
PEF's Standard Offer Contract**

Docket No. 070235-EQ  
Docket No. 080501-EI  
Filed: March 4, 2009

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SECTION NO. IX  
ORIGINAL SHEET NO. 9.401

Docket No. 070235-EQ  
Docket No. 080501-EI  
Proposed Changes to Standard Offer Contract  
Exhibit MJM-1, Page 1 of 49

STANDARD OFFER CONTRACT FOR THE PURCHASE OF FIRM CAPACITY  
AND ENERGY FROM A RENEWABLE ENERGY PRODUCER  
OR QUALIFYING FACILITY LESS THAN 100 KW

between

and

PROGRESS ENERGY FLORIDA

ISSUED BY: Lori J. Cross, Manager, Utility Regulatory Planning  
EFFECTIVE:

TABLE OF CONTENTS

i.

	<u>SHEET NO.:</u>
Introduction & Parties' Recitals	9.404
1. Definitions	9.405
2. Facility: Renewable Facility or Qualifying Facility Status	9.414
3. Term of Contract	9.415
4. Minimum Specifications and Milestones	9.415
5. Conditions Precedent	9.416
6. Sale of Electricity by the RF/QFRF/QF	9.417
7. Committed Capacity: Capacity Delivery Date	9.418
8. Testing Procedures	9.419
9. Payment for Electricity Produced by the Facility	9.420
10. Electricity Production and Plant Maintenance Schedule	9.421
11. Completion Performance Security	9.423
12. Termination Fee	9.425
13. Performance Factor	9.426
14. Default	9.427
15. PEF's Rights in the Event of Default	9.428
16. Indemnification	9.428

TABLE OF CONTENTS

*ii*

17 Insurance	9.430
18. Force Majeure	9.431
19. Representations, Warranties, and Covenants of RF/QF	9.433
20 General Provisions	9.434
Execution	9.441

STANDARD OFFER CONTRACT FOR THE PURCHASE OF FIRM CAPACITY  
AND ENERGY FROM A RENEWABLE ENERGY PRODUCER  
OR QUALIFYING FACILITY LESS THAN 100 KW

THIS STANDARD OFFER CONTRACT FOR THE PURCHASE OF FIRM CAPACITY AND ENERGY (hereinafter referred to as the "Contract") is made and entered this \_\_\_ day of \_\_\_ (hereinafter referred to as the "Execution Date"), by and between (hereinafter the Renewable Energy Provider/Qualifying Facility ("RF/QF"), and Florida Power Corporation d/b/a Progress Energy Florida (hereinafter "PEF"), a private utility corporation organized and existing under the laws of the State of Florida. The RF/QF and PEF shall be individually be identified herein as the "Party" and collectively as the "Parties". This Contract contains five Appendices which are incorporated into and made part of this Contract: Appendix A: Monthly Capacity Payment Calculation; Appendix B: Termination Fee; Appendix C: Detailed Project Information; Appendix D: Rate Schedule COG-2; Appendix E: Agreed Upon Payment Schedules; and Appendix F: Florida Public Service Commission ("FPSC") Rules 25-17.080 through 25-17.310, F.A.C.

WITNESSETH:

WHEREAS, the RF/QF desires to sell, and PEF desires to purchase electricity to be generated by the RF/QF consistent with Florida Statutes 366.91 (2006) and FPSC Rules 25- 17.080 through 25-17.310 F.A.C.; and

WHEREAS, the RF/QF has acquired an interconnection/transmission service agreement with the utility in whose service territory the Facility is to be located, pursuant to which the RF/QF assumes contractual responsibility to make any and all transmission-related arrangements (including ancillary services) between the RF/QF and the Transmission Provider for delivery of the Facility's firm capacity and energy to PEF. The Parties recognize that the Transmission Provider may be PEF and that the transmission service will be provided under a separate agreement; and

WHEREAS, the FPSC has approved this Contract for the Purchase of Firm Capacity and Energy from a Renewable Energy Producer; and

WHEREAS, the RF/QF guarantees that the Facility is capable of delivering firm capacity and energy to PEF for the term of this Contract in a manner consistent with the provision of this Contract;

NOW, THEREFORE, for mutual consideration the Parties agree as follows:

ISSUED BY: Lori J. Cross, Manager, Utility Regulatory Planning  
EFFECTIVE:

## 1. Definitions

"AFR" means the Facility's annual fuel requirement.

"AFTR" means the Facility's annual fuel transportation requirement

"Annual Capacity Billing Factor" or "ACBF" means 12 month rolling average of the Monthly Availability Factor as further defined and explained in Appendix A.

"Appendices" shall mean the schedules, exhibits, and attachments which are appended hereto and are hereby incorporated by reference and made a part of this Contract. Such Appendices include:

"Appendix A" sets forth the Monthly Capacity Payment Calculation.

"Appendix B" sets forth the Termination Fee.

"Appendix C" sets forth the Detailed Project Information.

"Appendix D" sets forth Rate Schedule COG-2.

"Appendix E" sets forth the Agreed Upon Payment Schedules and Other Mutual Agreements

"Appendix F" sets forth Florida Public Service Commission ("FPSC") Rules 25-17.080 through 25-17.310, F.A.C.

"As-Available Energy Rate" means the rate calculated by PEF in accordance with FPSC Rule 25-17.0825, F.A.C., and PEF's Rate Schedule COG-I, as they may each be amended from time to time

"Authorization to Construct" means authorization issued by any appropriate Government Agency to construct or reconstruct the Facility granted to RF/QF in accordance with the laws of the State of Florida and any relevant federal law.

"Avoided Unit" means the electrical generating unit described in Section 4 upon which this Contract is based.

"Avoided Unit Energy Cost" has the meaning assigned to it in Appendix D.

"Avoided Unit Fuel Cost" has the meaning assigned to it in Appendix D.

"Avoided Unit Heat Rate" means the average annual heat rate of the Avoided Unit as defined in Section 4.

"Avoided Unit In-Service Date" means the date upon which the Avoided Unit would have started commercial operation as specified in Section 4.

"Avoided Unit Life" means the economic life of the Avoided Unit.

SECTION NO. IX  
ORIGINAL SHEET NO. 9.405

"Avoided Unit Variable O&M" means the Avoided Unit variable operation and maintenance expenses as defined in Section 4. This rate will escalate annually based upon CPI-U. The annual escalation will begin in the payment for January deliveries.

SECTION No. IX  
ORIGINAL SHEET NO. 9.406

"Base Capacity Payment" or "BCP" means capacity payment rates defined in Appendix D and further defined by the selection of Option A,B,C or D in Section 9.2.

"Base Performance Security Amount" means the dollar amount per MW listed in the Table 2 in Section 11 for years 1-5 associated with the applicable credit class of the Party.

"Base Year" means the year that this Contract was approved by the FPSC.

"Business Day" means any day except a day upon which banks licensed to operate in the State of Florida are authorized, directed or permitted to close, Saturday, Sunday or a weekday that is observed as a public holiday in the State of Florida.

"CAMD" means the Clean Air Markets Division of the Environmental Protection Agency or successor administrator (collectively with any local, state, regional, or federal entity given jurisdiction over a program involving transferability of Environmental Attributes).

"Capacity" means the minimum average hourly net capacity (generator output minus auxiliary load) measured over the Committed Capacity Test Period.

"Capacity Delivery Date" means the first calendar day immediately following the date of the Facility's successful completion of the first Committed Capacity Test.

"Capacity Payment" means the payment defined in Section 9.2 and Appendix A.

"Committed Capacity" or "CC" means the capacity in MW that the RF/QF commits to sell to PEF, the amount of which shall be determined in accordance with Section 7 and Appendix D.

"Committed Capacity Test" means the testing of the capacity of the Facility performed in accordance with the procedures set forth in Section 8.

"Committed Capacity Test Period" means a test period of twenty-four (24) consecutive hours.

"Completed Permits Date" means the date by which the RF/QF must complete licensing, certification, and all federal, state and local governmental, environmental, and licensing approvals required to initiate construction of the Facility. This date is specified in Section 4.

"Completion Performance Security" means the security described in Section 11.

"Conditions Precedent" shall have the meaning assigned to it in Section 5.

"Contract" means this standard offer contract for the purchase of Firm Capacity and Energy from a Renewable Energy Producer or Qualifying Facility with a nameplate capacity of less than 1 00 kW.



SECTION No, IX  
ORIGINAL SHEET NO. 9.406

"CPI-U" means the revised monthly consumer price index for All Urban Consumers, U.S. City Average (CPI-U) (All Items 1982-84 = 100) promulgated by the Bureau of Labor Statistics of the United States Department of Labor.

ISSUED BY: Lori J. Cross, Manager, Utility Regulatory Planning  
EFFECTIVE:

SECTION No. IX  
ORIGINAL SHEET NO. 9.407

"Creditworthy" with respect to a Party or its credit support provider, as applicable, means a party is rated by at least two (2) of the three (3) following rating agencies Standard & Poor's (S&P), Moody's Investor Services (Moody's) and Fitch Rating Services (Fitch). Rating shall be the unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement). Both ratings (if company is only rated by 2 of the 3 agencies) or at least two (2) of the three (3) (if company is rated by all three agencies) must be (i) BBB- or greater from S&P (ii) Baa3 or greater from Moody's (iii) BBB- or greater from Fitch.

"Demonstration Period" means a sixty-hour period in which the Committed Capacity Test must be completed.

"Distribution System" means the distribution system consisting of electric lines, electric plant, transformers and switchgear used for conveying electricity to ultimate consumers, but not including any part of the Transmission System.

"Dispute" shall have the meaning assigned to it in Section 20.9.

"Drop Dead Date" means the date which is twelve (12) months following the Execution Date.

"Eastern Prevailing Time" or "EPT" means the time in effect in the Eastern Time Zone of the United States of America, whether Eastern Standard Time or Eastern Daylight Savings Time.

"Effective Date" has the meaning assigned to it in Section 5.

"Electrical Interconnection Point" means the physical point at which the Facility is connected with the Transmission System or, if RF/QF interconnects with a Transmission System other than PEF's, PEF's interconnection with the Transmission Provider's Transmission System, or such other physical point on which RF/QF and PEF may agree.

"Eligible Collateral" means (i) a Letter of Credit from a Qualified Institution or (ii) cash deposited into a PEF Security Account by RF/QF or RF/QF Security Account by PEF, as the case may be, or (iii) RF/QF Guarantee or PEF Guarantee or a combination of (i), (ii) and/or (iii) as outlined in Section 11.

"Energy" means megawatt-hours generated by the Facility of the character commonly known as three-phase, sixty hertz electric energy that is delivered at a nominal voltage at the Electrical Interconnection Point.

SECTION No. IX  
ORIGINAL SHEET NO. 9.408

"Environmental Attributes" means all attributes of an environmental or other nature that are created or otherwise arise from the Facility's generation of electricity from a renewable energy source in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources. Forms of such attributes include, without limitation, any and all environmental air quality credits, green credits, renewable energy credits ("RECs"), carbon credits, emissions reduction credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, (i) resulting from the avoidance of the emission of any gas, chemical, or other substance, including but not limited to, mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water or soil gas, chemical, or other substance, and (ii) attributable to the generation, purchase, sale or use of Energy from or by the Facility, or otherwise attributable to the Facility during the Term. Environmental Attributes include, without limitation, those currently existing or arising during the Term under local, state, regional, federal, or International legislation or regulation relevant to the avoidance of any emission described in this Contract under any governmental, regulatory or voluntary program, including, but not limited to, the United Nations Framework Convention on Climate Change and related Kyoto Protocol or other programs, laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency ("CAMD") or successor administrator (collectively with any local, state, regional, or federal entity given jurisdiction over a program involving transferability of Environmental Attributes.).

"Event of Default" has the meaning assigned to it in Section 14.

"Execution Date" has the meaning assigned to it in the opening paragraph of this Contract.

"Exemplary Early Capacity Payment Date" means the exemplary date used to calculate Capacity Payments for Option Band D. This date is specified in Section 4. The actual Capacity Payments for Option Band D will be calculated based upon the Capacity Delivery Date.

"Standard Offer Expiration Date" means the final date upon which this Contract can be executed. This date is specified in Section 4.

"Facility" means all equipment, as described in this Contract, used to produce electric energy and, and all equipment that is owned or controlled by the RF/QF required for parallel operation with the Transmission System. In the case of a cogenerator the Facility includes all equipment that is owned or controlled by the RF/QF to produce useful thermal energy through the sequential use of energy.

"Financial Closing" means the fulfillment of each of the following conditions:

- (a) the execution and delivery of the Financing Documents; and
- (b) all Conditions Precedent to the initial availability for disbursement of funds under the Financing Documents (other than relating to the effectiveness of this Contract) are satisfied or waived.

"Financing Documents" shall mean documentation with respect to any private equity investment in RF/QF, any loan agreements (including agreements for any subordinated debt), notes, bonds, indentures, guarantees, security agreements and hedging agreements relating to the financing or refinancing of the design, development, construction, Testing, Commissioning, operation and maintenance of the Facility or any guarantee by any Financing Party of the repayment of all or any portion of such financing or refinancing.

"Financing Party" means the Persons (including any trustee or agent on behalf of such Persons) providing financing or refinancing to or on behalf of RF/QF for the design, development, construction, testing, commissioning, operation and maintenance of the Facility (whether limited recourse, or with or without recourse).

"Firm Capacity and Energy" has the meaning assigned to it in Appendix D.

"Firm Capacity Rate" has the meaning assigned to it in Appendix D.

"Firm Energy Rate" has the meaning assigned to it in Appendix D.

"Force Majeure" has the meaning given to it in Section 18.

"FPSC" means the Florida Public Service Commission or its successor.

"Government Agency" means the United States of America, or any state or any other political subdivision thereof, including without limitation, any municipality, township or county, and any domestic entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, without limitation, any corporation or other entity owned or controlled by any of the foregoing.

"Governmental Approval" means any authorization, consent, approval, license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of or regulation by any Government Agency relating to the construction, development, ownership, occupation, start-up, Testing, operation or maintenance of the Facility or to the execution, delivery or performance of this Contract as any of the foregoing are in effect as of the date of this Contract.

"Gross Domestic Price Implicit Price Deflator" or "GDPIPD" has the meaning assigned to it in Section 11.

"IEEE" means the Institute of Electrical and Electronics Engineers, Inc.

"Indemnified Party" has the meaning assigned to it in Section 16.

"Indemnifying Party" has the meaning assigned to it in Section 16.

"Initial Reduction Value" has the meaning assigned to it in Appendix B.

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SECTION No. IX  
ORIGINAL SHEET NO. 9.409

Docket No. 070235-EQ  
Docket No. 080501-EI  
Proposed Changes to Standard Offer Contract  
Exhibit MJM-1, Page 12 of 49

"Insurance Services Office" has the meaning assigned to it in Section 17.

ISSUED BY: Lori J. Cross, Manager, Utility Regulatory Planning  
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"KVA" means one or more kilovolts-amperes of electricity, as the context requires.

"kW" means one or more kilowatts of electricity, as the context requires.

"kWh" means one or more kilowatt-hours of electricity, as the context requires.

"Letter of Credit" means a stand-by letter of credit from a Qualified Institution that is acceptable to PEF whose approval may not be unreasonably withheld.

"La!" means a letter of intent for fuel supply.

"Material Adverse Change" means as to PEF, that PEF or PEF Guarantor, if applicable, or, as to RF/QF, that RF/QF or RF/QF Guarantor, if applicable, any of the following events: (a) such party is no longer Creditworthy or (b) the party of Party's guarantor, if applicable, defaults on an aggregate of fifty million dollars (\$50,000,000) or five percent (5%) of equity, whichever is less.

"MCPC" means the Monthly Capacity Payment for Option A.

"Monthly Billing Period" means the period beginning on the first calendar day of each calendar month, except that the initial Monthly Billing Period shall consist of the period beginning 12:01 a.m., on the Capacity Delivery Date and ending with the last calendar day of such month.

"Monthly Availability Factor" or "MAF" means the total energy received during the Monthly Billing Period for which the calculation is made, divided by the product of Committed Capacity times the total hours during the Monthly Billing Period.

"Monthly Capacity Payment" or "MCP" means the payment for Capacity calculated in accordance with Appendix A.

"MW" means one or more megawatts of electricity, as the context requires.

"MWh" means one or more megawatt-hours of electricity, as the context requires.

"Option A" means normal Capacity Payments as described in Appendix D.

"Option B" means early Capacity Payments as described in Appendix D.

"Option C" means levelized Capacity Payments as described in Appendix D.

"Option D" means early levelized Capacity Payments as described in Appendix D.

"Party" or "Parties" has the meaning assigned to it in the opening paragraph of this Contract.

"PEF" has the meaning assigned to it in the opening paragraph of this Contract.

"PEF Entities" has the meaning assigned to it in Section 16.

"PEF Guarantee" means a guarantee provided by PEF Guarantor that is acceptable to RF/QF whose approval may not be unreasonably withheld.

"PEF Guarantor" means a party that, at the time of execution and delivery of its PEF Guarantee is a direct or indirect owner of PEF and is (a) Creditworthy or is (b) reasonably acceptable to RF/QF as having verifiable Creditworthiness and a net worth sufficient to secure PEF's obligations.

"PEF Security Account" means an account designated by PEF for the benefit of PEF free and clear of all liens (including liens of any lenders) to be established and maintained at a Qualified Institution pursuant to a control agreement in a form and substance acceptable to PEF whose cost is to be borne by the RF/QF..

"Person" means any individual, partnership, corporation, association, joint stock company trust, joint venture, unincorporated organization, or Governmental Agency (or any department, agency, or political subdivision thereof).

"Project Consents" mean the following Consents, each of which is necessary to RF/QF for the fulfillment of RF/QF's obligations hereunder:

- (a) the Authorization to Construct;
- (b) planning permission and consents in respect of the Facility, and any electricity substation located at the Facility site, including but not limited to, a prevention of significant deterioration permit, a noise, proximity and visual impact permit, and any required zoning permit; and
- (c) any integrated pollution control license.

"Project Contracts" means this Contract, and any other contract required to construct, operate and maintain the Facility. The Project Contracts may include, but are not limited to, the turnkey engineering, procurement and construction contract, the electrical interconnection and operating agreement, the fuel supply agreement, the facility site lease, and the operation and maintenance agreement.

"Prudent Utility Practices" means any of the practices, methods, standards and acts (including, but not limited to, the practices, methods and acts engaged in or approved by a significant portion of owners and operators of power plants of technology, complexity and size similar to the Facility in the United States) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, could have been expected to accomplish the desired result and goals (including such goals as efficiency, reliability, economy and profitability) in a manner consistent with applicable facility design limits and equipment specifications and applicable laws and regulations. Prudent Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of acceptable practices, methods or acts in each case taking into account the Facility as an independent power project.



"Qualifying Facility" or "QE" means a cogenerator, small power producer, or non-utility generator that has been certified or self-certified by the FERC as meeting certain ownership, operating and efficiency criteria established by the Federal Energy Regulatory Commission pursuant to the Public Utility Regulatory Policies Act of 1978 ("PURP A"), the criteria for which are currently set forth in 18 C.F.R. § 292, *et seq.* (2006). Section 210 of PURPA, 16 U.S.C.

§ 824a-3 (2005), 16 U.S.C. 796 *et seq.* (2006), and Section 1253 of EPAAct 2005, Pub. L. No. 109-58, § 1253, 119 Stat. 594 (2005) or, alternatively, analogous provisions under the laws of the State of Florida.

"Qualified Institution" means the domestic office of a United States commercial bank or trust company or a foreign bank with a United States branch with total assets of at least ten billion dollars (\$10,000,000,000) (which is not an affiliate of either party) having a general long-term senior unsecured debt rating of A- or higher (as rated by Standard & Poor's Ratings Group), A3 or higher (as rated by Moody's Investor Services) or A- or higher (as rated by Fitch Ratings).

"Rate Schedule COG-I" means PEF's Agreement for Purchase of As-Available Energy and/or Parallel Operation with a Qualifying Facility as approved by the FPSC and as may be amended from time to time.

"REC" means renewable energy credits, green tags, green tickets, renewable certificates, tradable renewable energy credits ("T-REC") or any tradable certificate that is produced by a renewable generator in addition to and in proportion to the production of electrical energy.

"Reduction Value" has the meaning assigned to it in Appendix B.

"Renewable Facility" or "RF/OF" means an electrical generating unit or group of units at a single site, interconnected for synchronous operation and delivery of electricity to an electric utility, where the primary energy in British Thermal Units used for the production of electricity is from one or more of the following sources: hydrogen produced from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, hydroelectric power or waste heat from a commercial or industrial manufacturing process.

"RF/QF Entities" has the meaning assigned to it in Section 16.

"RF/OF Guarantee" means a guarantee provided by RF/QF Guarantor that is acceptable to PEF whose approval may not be unreasonably withheld.

"RF/QF Guarantor" means a party that, at the time of execution and delivery of its RF/QF Guarantee is a direct or indirect owner of RF/QF and is (a) Creditworthy or is (b) reasonably acceptable to PEF as having verifiable Creditworthiness and a net worth sufficient to secure RF/QF's obligations.

"RF/QF Insurance" has the meaning assigned to it in Section 17.

"RF/OF Performance Security" has the meaning assigned in Section 11.

"RF/QF Security Account" means an account designated by the RF/QF for the benefit of the RF/QF free and clear of all liens (including liens of any lenders) to be established and maintained at a Qualified Institution pursuant to a control agreement in a form and substance acceptable to RF/QF whose cost is to be borne by PEF.

"Security Documentation" has the meaning assigned to it in Section 12.

"Supplemental Eligible Collateral" means additional collateral in the form of Letter of Credit or cash to augment the RF/QF Performance Security in the event of a Material Adverse Change.

"Term" has the meaning assigned to it in Section 3.

"Termination Date" means the date upon which this Contract terminates unless terminated earlier in accordance with the provisions hereof. This date is specified in Section 4.

"Termination Fee" means the fee described in Appendix B as it applies to any Capacity Payments made under Option B, C or D.

"Termination Security" has the meaning assigned to it in Section 12.

"Transmission Provider" means the operator(s) of the Transmission System(s) or any successor thereof or any other entity or entities authorized to transmit Energy on behalf of RF/QF from the Electrical Interconnection Point.

"Transmission System" means the system of electric lines comprised wholly or substantially of high voltage lines, associated system protection, system stabilization, voltage transformation, and capacitance, reactance and other electric plant used for conveying electricity from a generating station to a substation, from one generating station to another, from one substation to another, or to or from any Electrical Interconnection Point or to ultimate consumers and shall include any interconnection owned by the Transmission Provider or PEF, but shall in no event include any lines which the Transmission Provider has specified to be part of the Distribution System except for any distribution facilities required to accept capacity and energy from the Facility.

SECTION No. IX

FIRST REVISED SHEET NO. 9.415 CANCELS ORIGINAL SHEET NO. 9.415

2. Facility: Renewable Facility or Qualifying Facility Status

The Facility's location and generation capabilities are as described in Table 1 below.

TABLE 1

TECHNOLOGY AND GENERATOR CAPABILITIES	
Location: Specific legal description (e.g., metes and bounds or other legal description with street address required)	City: County:
Generator Type (Induction or Synchronous)	
Technology	
Fuel Type and Source	
Generator Rating (KVA)	
Maximum Capability (k W)	
Net Output (k W)	
Power Factor (%)	
Operating Voltage (kV)	
Peak Internal Load kW	

The RF/QF's failure to complete Table 1 in its entirety shall render this Contract null and void and of no further effect.

The RF/QF shall use the same fuel or energy source and maintain the status as a Renewable Facility or a Qualifying Facility throughout the term of this Contract. RF/QF shall at all times keep PEF informed of any material changes in its business which affects its Renewable Facility or Qualifying Facility status. PEF and RF/QF shall have the right, upon reasonable notice of not less than seven (7) Business Days, to inspect the Facility and to examine any books, records, or other documents reasonably deemed necessary to verify compliance with this Contract. In the event of an emergency at or in proximity to the RF/QF site that impacts PEF's system, PEF shall make reasonable efforts to contact the Facility and make arrangements for an emergency inspection. On or before March 31 of each year during the term of this Contract, the RF/QF shall provide to PEF a certificate signed by an officer of the RF/QF certifying that the RF/QF

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| SECTION No. IX  
FIRST REVISED SHEET NO. 9.415 CANCELS ORIGINAL SHEET NO. 9.415

continuously maintained its status as a Renewable Facility or a Qualifying Facility during the prior calendar year.

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EFFECTIVE:

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3. Term of Contract

Except as otherwise provided herein, this Contract shall become effective immediately upon its execution by the Parties and shall end at 12:01 a.m. on the Termination Date, (the "Term") unless terminated earlier in accordance with the provisions hereof. Notwithstanding the foregoing, if the Capacity Delivery Date of the Facility is not accomplished by the RF/QF before the Avoided Unit In-Service Date (or such later date as may be permitted by PEF pursuant to Section 7), this Contract shall be rendered null and void and PEF's shall have no obligations under this Contract.

4. Minimum Specifications and Milestones

As required by FPSC Rule 25-17.0832(4)(e), the minimum specifications pertaining to this Contract and milestone dates are as follows:

Avoided Unit	Suwannee River Plant 4-on-1 CC
A voided Unit Capacity	1161 MW
Avoided Unit In-Service Date	June 1, 2013
Avoided Unit Heat Rate	7.134 BTU/kWh
Avoided Unit Variable O&M	0.203¢ per kWh escalating annually at 2.25%
Avoided Unit Life	25 years
Capacity Payments begin	Avoided Unit In-Service Date unless Option B. or D is selected
Termination Date	May 31, 2023 (10 years)
Minimum Performance Standards On	89%
Peak Availability Factor*	
Minimum Performance Standards Off	89%
Peak Availability Factor	
Minimum Availability Factor Required to qualify for a Capacity payment	69%
Expiration Date	April 1, 2009
Completed Permits Date	June 1, 2012
Exemplary Early Capacity Payment Date	January 1, 2009

\* RF/QF performance shall be as measured and/or described in Appendix A.

## SECTION No. IX

FIRST REVISED SHEET NO. 9.416 CANCELS ORIGINAL SHEET NO. 9.416

## 5. Conditions Precedent

- (a) Unless otherwise waived in writing by PEF, on or before the Drop Dead Date, RF/QF shall satisfy the following Conditions Precedent:
- (i) RF/QF shall have obtained firm transmission service necessary to deliver Capacity and energy from the Facility to the Electrical Interconnection Point, in a form and substance satisfactory to RF/QF in its sole discretion;
  - (ii) RF/QF shall have obtained the Project Consents and any other Consents for which it is responsible under the terms hereof in a form and substance satisfactory to RF/QF in its sole discretion;
  - (iii) RF/QF shall have entered into Financing Documents relative to the construction of the Facility and have achieved Financial Closing in a form and substance satisfactory to RF/QF in its sole discretion;
  - (iv) RF/QF shall have entered into the Project Contracts in a form and substance satisfactory to RF/QF in its sole discretion;
  - (v) RF/QF shall have obtained insurance policies or coverage in compliance with Section 17;
  - (vi) ~~RF/QF~~ Each Party shall have delivered to ~~PEF~~ the other Party (i) a copy of its constitutional documents (certified by its corporate secretary as true, complete and up-to-date) and (ii) a copy of a corporate resolution approving the terms of this Contract and the transactions contemplated hereby and authorizing one or more individuals to execute this Contract on its behalf (such copy to have been certified by its corporate representative as true, complete and up-to-date);
  - (vii) in the event the RF/QF is a Qualifying Facility, RF/QF obtaining Qualifying Facility status from either the FPSC or FERC.
- (b) Promptly upon satisfaction (or waiver by ~~PEF~~ in writing) of the Conditions Precedent to be satisfied by ~~RF/QF~~, PEF ~~the Party having satisfied the same~~ shall deliver to RF/QF the other Party a certificate evidencing such satisfaction. Subject to there being no Event of Default which has occurred and/or is continuing as of the date upon which the last of such certificates is delivered, the date of such last certificate shall constitute the effective date of this Contract (the "Effective Date").
- (c) Unless all Conditions Precedent are satisfied by ~~RF/QF~~ on or before the Drop Dead Date or such Conditions Precedent are waived in writing by ~~PEF~~, this Contract shall terminate on such date and neither Party shall have any further liability to the other Party hereunder.
- (d) RF/QF shall achieve the Capacity Delivery Date on or before the Avoided Unit In Service Date.

- (e) RF/QF shall ensure that before the initial Committed Capacity Test:
- (a) the Facility shall have been constructed so that the Committed Capacity Test may be duly and properly undertaken in accordance with Section 7: and
  - (b) an operable physical connection from the Facility to the Transmission System shall have been effected in accordance with the electrical interconnection and operating agreement required by the Transmission Provider, provided, however, that such physical connection shall be made consistent with the terms hereof.
6. Sale of Electricity by the RF/QF
- 6.1 Consistent with the terms hereof, the RF/QF shall sell to PEF and PEF shall purchase from the RF/QF electric power generated by the Facility. The purchase and sale of electricity pursuant to this Contract shall be a ( ) net billing arrangement or ( ) simultaneous purchase and sale arrangement: provided, however, that no such arrangement shall cause the RF/QF to sell more than the Facility's net output. The billing methodology may be changed at the option of the RF/QF, subject to the provisions of Appendix D.
- 6.2 Ownership and Offering For Sale Of Renewable Energy Attributes

~~The RF/QF shall retain any and all rights to own and to sell any and all Environmental Attributes associated with the electric generation of the Facility, provided that: (i) PEF shall have a right of first refusal with respect to any and all bona fide offers to purchase any Environmental Attributes; and (ii) the RF/QF shall not sell Environmental Attributes to any party at a price less than that charged by PEF. PEF must respond to an offer by a bona fide offer within thirty (30) days of notification by the RF/QF.~~

6.3 ~~The RF/QF shall not rely on interruptible standby service for the start-up requirements (initial or otherwise) of the Facility.~~

### Alternate 6.2

The RF/QF shall retain any and all rights to own and sell any and all Environmental Attributes associated with the electric generation of the Facility, provided that (i) PEF shall have a right of first refusal with respect to any and all bona fide offers to purchase Environmental Attributes that are on terms and conditions acceptable to the RF/QF. PEF must respond to such a bona fide offer provided to it by the renewable energy producer within three (3) business days of receipt of same from the RF/QF.

SECTION No. IX

FIRST REVISED SHEET NO. 9.418 CANCELS ORIGINAL SHEET NO. 9.418

- 6 The RF/QF shall be responsible for the scheduling of required transmission and for all costs, expenses, taxes, fees and charges associated with the delivery of energy to PEF. The RF/QF shall enter into a transmission service agreement with the Transmission Provider in whose service territory the Facility is to be located and the RF/QF shall make any and all transmission-related arrangements (including ancillary services) between the RF/QF and the Transmission Provider for delivery of the Facility's firm Capacity and energy to PEF. The Capacity and energy amounts paid to the RF/QF hereunder do not include transmission losses. The RF/QF shall be responsible for transmission losses that occur prior to the point at which the RF/Q's energy is delivered to PEF. The Parties recognize that the Transmission Provider may be PEF and that if PEF is the Transmission Provider, that the transmission service will be provided under a separate agreement.
7. Committed Capacity/Capacity Delivery Date
  - 7.1 In the event that the RF/QF elects to make no commitment as to the quantity or timing of its deliveries to PEF, then its Committed Capacity as defined in the following Section 7.2 shall be zero (0) MW. If the Committed Capacity is zero (0) MW, Sections 7.2 through Section 7.7 and all of Section 8 shall not apply.
  - 7.2 If the RF/QF commits to sell capacity to PEF, the amount of which shall be determined in accordance with this Section 7 and Appendix D. Subject to Section 7.4, the Committed Capacity is set at kW, with an expected Capacity Delivery Date on or before the Avoided Unit In-Service Date.
  - 7.3 Capacity testing of the Facility (each such test a Committed Capacity Test) shall be performed in accordance with the procedures set forth in Section 8. The Demonstration Period for the first Committed Capacity Test shall commence no earlier than ninety (90) days before the expected Capacity Delivery Date and testing must be completed before the Avoided Unit In-Service Date. The first Committed Capacity Test shall not be successfully completed unless the Facility demonstrates a Capacity of at least one hundred percent (100%) of the Committed Capacity set forth in Section 7.2. Subject to Section 8.1, the RF/QF may schedule and perform up to three (3) Committed Capacity Tests to satisfy the requirements of the Contract with respect to the first Committed Capacity Test.



SECTION No. IX

FIRST REVISED SHEET NO. 9.418 CANCELS ORIGINAL SHEET NO. 9.418

- 7.4 In addition to the first Committed Capacity Test, PEF shall have the right to require the RF/QF, after notice of no less than ten (10) Business Days prior to such proposed event, to validate the Committed Capacity by means of a Committed Capacity Test at any time, up to two (2) times per year, the results of which shall be provided to PEF within seven (7) calendar days of the conclusion of such test. On and after the date of such requested Committed Capacity Test, and until the completion of a subsequent Committed Capacity Test, the Committed Capacity shall be set at the lower of the Capacity tested or the Committed Capacity as set forth in Section 7.2. Provided however, any such second test requested within a twelve (12) month period must be for cause; may be no earlier than six (6) months following the most recent Capacity Test and PEF shall pay any incremental costs associated with a second Committed Capacity Test requested during the year.

- 7.5 Notwithstanding anything contrary to the terms hereof, the Committed Capacity may not exceed the amount set forth in Section 7.2 without the consent of PEF; which consent shall be granted in PEF's sole discretion.
- 7.6 Unless Option B, C or D as contained in Appendix D is chosen by RF/QF, in no event shall PEF shall make no Capacity Payments to the RF/QF prior to the Capacity Delivery Date.
- 7.7 The RF/QF shall be entitled to receive Capacity Payments beginning on the Capacity Delivery Date, provided the Capacity Delivery Date occurs before the Avoided Unit In-Service Date (or such later date permitted by PEF). If the Capacity Delivery Date does not occur before the Avoided Unit In-Service Date, PEF shall immediately be entitled to draw down the Completion/Performance Security in full.
8. Testing Procedures
- 8.1 The Committed Capacity Test must be completed successfully within the Demonstration Period, which period, including the approximate start time of the Committed Capacity Test, shall be selected and scheduled by the RF/QF by means of a written notice to PEF delivered at least thirty (30) calendar days prior to the start of such period. The provisions of the foregoing sentence shall not apply to any Committed Capacity Test ordered by PEF under any of the provisions of this Contract. PEF shall have the right to be present onsite to monitor firsthand any Committed Capacity Test required or permitted under this Contract.
- 8.2 The Committed Capacity Test results shall be based on a test period of twenty four (24) consecutive hours (the "Committed Capacity Test Period") at the highest sustained net kW rating at which the Facility can operate without exceeding the design operating conditions, temperature, pressures, and other parameters defined by the applicable manufacturer(s) for steady state operations at the Facility or for such other period as the Parties may agree. The Committed Capacity Test Period shall commence at the time designated by the RF/QF pursuant to Section 8.1 or at such time requested by PEF pursuant to Section 7.4; provided, however, that the Committed Capacity Test Period may commence earlier than such time in the event that PEF is notified of, and consents to, such earlier time.
- 8.3 Normal station service use of unit auxiliaries, including, without limitation, cooling towers, heat exchangers, and other equipment required by law, shall be in service during the Committed Capacity Test Period.
- 8.4 The Capacity of the Facility shall be the minimum average hourly net output in kW (generator output minus auxiliary) measured over the Committed Capacity Test Period.

- 8.5 The Committed Capacity Test shall be performed according to standard industry testing procedures for the appropriate technology of the RF/QF.
- 8.6 The results of any Committed Capacity Test, including all data related to Facility operation and performance during testing, shall be submitted to PEF by the RF/QF within seven (7) calendar days of the conclusion of the Committed Capacity Test. The RF/QF shall certify that all such data is accurate and complete.
9. Payment for Electricity Produced by the Facility
- 9.1 Energy
- 9.1.1 PEF agrees to pay the RF/QF for energy produced by the Facility and delivered to PEF in accordance with the rates and procedures contained in PEP's approved Rate Schedule COG-1 if the Committed Capacity pursuant to Section 7.2 is set to zero. If the Committed Capacity is greater than zero MW, then PEF agrees to pay the RF/QF for energy produced by the Facility and delivered to PEF in accordance with the rates and procedures contained in Appendix D, as it may be amended from time to time. The Parties agree that this Contract shall be subject to all of the provisions contained in Rate Schedule COG or Appendix D whichever applies as approved and on file with the FPSC.
- 9.1.2 PEF may, at its option, limit deliveries under this Contract to 110% of the Committed Capacity as set forth in Section 7. In the event that PEF chooses to limit deliveries, any energy in excess of 110% of the Committed Capacity will be paid for at the rates defined in Rate Schedule COG-I and shall not be included in the calculations in Appendix A hereto.
- 9.2 Capacity

PEF agrees to pay the RF/QF for the Capacity described in Section 7 in accordance with the rates and procedures contained in Appendix D, as it may be amended and approved from time to time by the FPSC, and pursuant to the election of Option of Appendix D. The RF/QF understands and agrees that Capacity Payments will only be made if the Capacity Delivery Date occurs before the A voided Unit In-Service Date and the Facility is delivering firm Capacity and Energy to PEF. Once so selected, this Option, the Firm Capacity Rate and/or the Firm Energy Rate cannot be changed for the term of this Contract.

SECTION No. IX  
FIRST REVISED SHEET NO. 9.421 CANCELS ORIGINAL SHEET NO. 9.421

9.3 Payments for Energy and Capacity

9.3.1 Payments due the RF/QF will be made monthly, and normally by the twentieth Business Day following the end of the billing period. The kilowatt-hours sold by the RF/QF and the applicable avoided energy rate at which payments are being made shall accompany the payment to the RF/QF.

9.3.2 Payments to be made under this Contract shall, for a period of not longer than two (2) years, remain subject to adjustment based on billing adjustments due to error or omission by either Party, provided that such adjustments have been agreed to between the Parties.

10. Electricity Production and Plant Maintenance Schedule

10.1 No later than sixty (60) calendar days prior to the Capacity Delivery Date, and prior to October 1 of each calendar year thereafter during the term of this Contract, the RF/QF shall submit to PEF in writing a good-faith estimate of the amount of electricity to be generated by the Facility and delivered to PEF for each month of the following calendar year, including the time, duration and magnitude of any scheduled maintenance period(s) or reductions in Capacity. A RF/QF agrees to provide updates to its planned maintenance periods as they become known. The Parties agree to discuss coordinating scheduled maintenance schedules.

10.2 By October 31 of each calendar year, PEF shall notify the RF/QF in writing whether the requested scheduled maintenance periods in the detailed plan are acceptable. If PEF does not accept any of the requested scheduled maintenance periods, PEF shall advise the RF/QF of the time period closest to the requested period(s) when the outage(s) can be scheduled. The RF/QF shall only schedule outages during periods approved by PEF, and such approval shall not be unreasonably withheld. Once the schedule for the detailed plan has been established and approved, either Party requesting a subsequent change in such schedule, except when such change is due to Force Majeure, must obtain approval for such change from the other Party. Such approval shall not be unreasonably withheld or delayed. Scheduled maintenance outage days shall be limited to ~~fifteen (15)~~ thirty (30) days per calendar year unless otherwise agreed by the Parties. In no event shall maintenance periods be scheduled during the following periods: June 1 through September 15 and December 1 through and including the last day of February.

10.3 The RF/QF shall comply with reasonable requests by PEF regarding day-to-day and hour-by-hour communication between the Parties relative to electricity production and maintenance scheduling.

ISSUED BY: Lori J. Cross, Manager, Utility Regulatory Planning EFFECTIVE:

ISSUED BY: Lori J. Cross, Manager, Utility Regulatory Planning  
EFFECTIVE:

SECTION No. IX  
ORIGINAL SHEET NO. 9.422

10.4 The Parties recognize that the intent of the availability factor in Section 4 of this Contract includes an allowance for scheduled outages, forced outages and forced reductions in the output of the Facility. Therefore, the RF/QF shall provide PEF with notification of any forced outage or reduction in output which shall include the time and date at which the forced outage or reduction occurred, a brief description of the cause of the outage or reduction and the time and date when the forced outage or reduction ceased and the Facility was able to return to normal operation. This notice shall be provided to PEF within seventy-two (72) hours of the end of the forced outage or reduction.

The RF/QF is required to provide the total electrical output to PEF except (i) during a period that was scheduled in Section 10.2, (ii) during a period in which notification of a forced outage or reduction was provided, (iii) during an event of Force Majeure or (iv) during a curtailment period as described in Section 10.5.5. In the event that the RF/QF does not deliver its full electrical output to PEF during an hour *not* excluded in the previous sentence then the RF/QF shall be charged a rate equal to the PEF's Rate Schedule COG-I times the difference between the Committed Capacity and the actual energy received by PEF in that hour. If, in PEF's sole judgment, it is determined that the normal operation of the RF/QF requires it to cease operation or reduce its output, the charges in this Section 10.4 may be waived.

#### 10.5 Dispatch and Control

10.5.1 Power supplied by the RF/QF hereunder shall be in the form of three phase 60 hertz alternating current, at a nominal operating voltage of \_\_\_\_\_ (\_\_\_\_\_ kV) and power factor dispatchable and controllable in the range of 90% lagging to 90% leading as measured at the interconnection point to maintain system operating parameters, including power factor, as specified from time to time by PEF.

10.5.2 The RF/QF shall operate the Facility with all system protective equipment in service whenever the Facility is connected to, or is operated in parallel with, PEF's system, except for normal testing and repair in accordance with good engineering and operating practices as agreed by the Parties. The RF/QF shall provide adequate system protection and control devices to ensure safe and protected operation of all energized equipment during normal testing and repair. All RF/QF facilities shall meet IEEE and industry standards. The RF/QF shall have independent, third party qualified personnel test, calibrate and certify in writing all protective equipment at least once every twelve (12) months in accordance with good engineering and operating practices. A unit functional trip test shall be performed after each overhaul of the Facility's turbine, generator or boilers and results provided to PEF in writing prior to returning the equipment to service. The specifics of the unit functional trip test will be consistent with good engineering and operating practices as agreed by the Parties.

10.5.3 If the Facility is separated from the PEF system for any reason, under no circumstances shall the RF/QF reconnect the Facility to PEF's system without first obtaining PEF'S specific approval.

10.5.4 During the term of this Contract, the RF/QF shall employ qualified personnel for managing, operating and maintaining the Facility and for coordinating such with PEF. The RF/QF *shall* ensure that operating personnel are on duty at all times, twenty-four (24) hours a calendar day and seven (7) calendar days a week. Additionally, during the term of this Contract, the RF/QF shall operate and maintain the Facility in such a manner as to ensure compliance with its obligations hereunder and in accordance with applicable law and Prudent Utility Practices.

10.5.5 PEF shall not be obligated to purchase, and may require curtailed or reduced deliveries of energy to the extent allowed under FPSC Rule 25- 17.086 and under any curtailment plan which PEF may have on file with the FPSC from time to time.

10.5.6 During the term of this Contract, the RF/QF shall maintain sufficient fuel on the site of the Facility to deliver the capacity and energy associated with the Committed Capacity for an uninterrupted seventy-two-(72) hour period. At PEF's request, the RF/QF shall demonstrate this capability to PEF's reasonable satisfaction. During the term of this Contract, the RF/QF's output shall remain within a band of plus or minus ten percent (10%) of the daily output level or levels specified by the plant operator, in ninety percent (90%) of all operating hours under normal operating conditions. This calculation will be adjusted to exclude forced outage periods and periods during which the RF/QF's output is affected by a Force Majeure event.

11. Completion/Performance Security

11.1 ~~Upon satisfaction of the Conditions Precedent, Simultaneous with the execution of this agreement~~ RF/QF shall deliver to PEF Eligible Collateral in an amount according to Table 2. RF/QF's Performance Security shall be maintained until completion of the Facility and demonstration that the Facility can deliver the amount of capacity and energy specified in the Contract throughout the Term ~~although the amount of Eligible Collateral shall be adjusted from time to time in accordance with Table 2 and Section 11.4.~~ The listed amounts are considered the initial amounts and use 2006 as the Base Year, with all amounts expressed in US Dollars. [Adjusted to conform to FPSC Rule 25-17.0832(4)(f)(1).]

Note: The amounts in the following Table are for 2006 and are subject to change based on utility cost estimates for any year subsequent to the Base Year.

TABLE 2

Credit Class	Amount per MW	
	Years 1-5	Years 6 - 10
A- and Above	\$45,000	\$30,000
BBB+ to BBB	\$65,000	\$55,000
BBB-	\$90,000	\$80,000
Below BBB-	\$135,000	\$90,000

11.2 In the event that a Material Adverse Change occurs in respect of RF/QF, then within two (2) Business Day(s) RF/QF shall deliver to PEF Supplemental Eligible Collateral equal to 50 percent of the current Eligible Collateral amount, provided however, that in the PEP's sole discretion, based on a review of the overall circumstances of RF/QF's Material Adverse Change, the total of the Eligible Collateral and the Supplemental Eligible Collateral may be reduced but in no event shall the amount be less than the Base Performance Security Amount.

11.4 Performance Security Annual Adjustments - The RF/QF Performance Security shall be adjusted on an annual basis beginning January 1, 2007 and each year of during the term of the Agreement. The values in Table 2 will be adjusted using the change in the Gross Domestic Price Implicit Price Deflator (GDPIPD) between the Base Year and each year during the term as reported in the Survey of Current Business published in January each year and revised thereafter, by the Bureau of Economic Analysis, United States Department of commerce, Washington, D.C. using the following formula: Current Performance Security amount (CPSA) multiplied by one plus the change in the GDPIPD. (CPSA X (1 + ~GDPIPD))

11.5 Replacement Collateral, Release of Collateral - Upon any reduction of the amount of RF/QF Performance Security pursuant to Section 11.2 or 11.3 the beneficiary thereof shall upon two (2) Business Days written request by the other Party release any Eligible or Supplemental Eligible Collateral that is no longer required. The choice of the type of Eligible Collateral by a Party may be selected from time to time by such Party and upon receipt of substitute Eligible Collateral, the holder of the Eligible Collateral for which the substitution is being made shall promptly release such Eligible Collateral. Following any termination of this agreement, the Parties shall mutually agree to a final settlement of all obligations under this Agreement which such period shall not exceed 90 days from such termination date unless extended by mutual agreement between the Parties. After such settlement, any remaining Eligible Collateral posted by a Party that has not been drawn upon by the other Party pursuant to its rights under this Contract shall be returned to such Party. Any dispute between the Parties regarding such final settlement shall be resolved according to applicable procedures set forth in Section 20.9.

SECTION No. IX  
ORIGINAL SHEET NO. 9.425

- 11.6 Draws, Replenishment - A Non-Defaulting Party may draw upon Eligible Collateral or Supplemental Eligible Collateral provided by the other Party following the occurrence of an Event of Default by such other Party or pursuant to the other provisions of this Agreement in order to recover any damages to which such Non-Defaulting Party is entitled to under this Contract. In the event of such a draw then, except in the circumstance when this Contract otherwise terminates, the Defaulting Party shall within two (2) Business Days replenish the Eligible Collateral or Supplemental Eligible Collateral to the full amounts required by Table 2.
- 11.7 Reporting - RF/QF shall promptly notify PEF of any circumstance that results in RF/QF's failure to be in compliance with the RF/QF Performance Security Requirements of Section 11. From time to time, at PEF's written request, RF/QF shall provide PEF with such evidence as PEF may reasonably request, that RF/QF and any RF/QF Guarantor RF/QF Guarantee, Letter of Credit or Security Account is in Full Compliance with this agreement.

xx. **Creditworthiness**

xx.1 The Parties shall at all time each maintain acceptable creditworthiness or shall provide performance assurance to the non-affected Party. To maintain acceptable creditworthiness the Parties shall not be in default of any payment obligations set out in the Agreement, and:

(i) Each Party shall maintain either a credit rating (i.e. the rating assigned to its unsecured senior long-term debt obligations or underlying rating if there is no secured long-term debt) by Standard & Poor's of at least BBB- and/or Long Term Issuer or Underlying Rating, if there is no Long Term Issuer Rating from Moody's Investor Services of at least Ba3; or

(ii) If a Party does not have commercial credit ratings set out in subsection (i), the Party shall provide three (3) years of its most recent financial statements to the other Party which will be evaluated in a commercially reasonable manner to demonstrate to the other Party's reasonable satisfaction that the Party meets standards that are at least equivalent to the standards underlying the credit ratings set out in subsection (i).

xx.2 Performance assurance shall man one of the following: (a) as to either Party, an unconditional and irrevocable letter of credit or cash deposit equal to the amount that the Parties estimate that the Party providing performance assurance would owe to the non-defaulting Party.

xx.3 If a Party that originally demonstrates acceptable creditworthiness subsequently fails to maintain acceptable creditworthiness or suffers a material adverse change, then the non-affected Party may notify the other Party that it no



SECTION No. IX

longer meets the creditworthiness standards and may request performance assurance from the affected Party. Such assurances shall be provided within five (5) days of written request for such performance assurances.

12. Termination Fee

12.1 In the event that the RF/QF receives Capacity Payments pursuant to Option B, Option C, or Option D of Appendix D or any Capacity Payment schedule in Appendix E that differs from a Normal Capacity Payment Rate as calculated in FPSC Rule 25-17.0832(6)(a), then upon the termination of this Contract, the RF/QF shall owe and be liable to PEF for the Termination Fee. The RF/QF's obligation to pay the Termination Fee shall survive the termination of this Contract. PEF shall provide the RF/QF, on a monthly basis, a calculation of the Termination Fee.

12.1.1 The Termination Fee shall be secured by the RF/QF by: (i) an unconditional, irrevocable, direct pay letter(s) of credit issued by a financial institution(s) with an investment grade credit rating in form and substance acceptable to PEF (including provisions (a) permitting partial and full draws and (b) permitting PEF to draw upon such Letter of Credit, in full, if such Letter of Credit is not renewed or replaced at least ten (10) Business Days prior to its expiration date); (ii) a bond issued by a financially sound company in form and substance acceptable to PEF; or (iii) a cash deposit with PEF (any of (i), (ii), or (iii), the "Termination Security"). The specific security instrument selected by the RF/QF for purposes of this Contract is:

- Unconditional, irrevocable, direct pay letter(s) of credit.
- Bond.
- Cash deposit(s) with PEF.

SECTION No. IX  
ORIGINAL SHEET NO. 9.426

12.1.2 PEF shall have the right and the RF/QF shall be required to monitor the financial condition of (i) the issuer(s) in the case of any Letter of Credit and (ii) the insurer(s), in the case of any bond. In the event the senior debt rating of any issuer(s) or insurer(s) has deteriorated to a level below investment grade, PEF may require the RF/QF to replace the letter(s) of credit or the bond, as applicable. In the event that PEF notifies the RF/QF that it requires such a replacement, the replacement letter(s) of credit or bond, as applicable, must be issued by a financial institution(s) or insurer(s) with an investment grade credit rating, and meet the requirements of Section 12.1.1 within thirty (30) calendar days following such notification. Failure by the RF/QF to comply with the requirements of this Section 12.1.2 shall be grounds for PEF to draw in full on any existing Letter of Credit or bond and to exercise any other remedies it may have hereunder.

12.1.3 After the close of each calendar quarter (March 31, June 30, September 30, and December 31) occurring subsequent to the Capacity Delivery Date, upon PEF's issuance of the Termination Fee calculation as described in Section 12.1, the RF/QF must provide PEF, within ten calendar (10) days, written assurance and documentation (the "Security Documentation"), in form and substance acceptable to PEF, that the amount of the Termination Security is sufficient to cover the balance of the Termination Fee. In addition to the foregoing, at any time during the term of this Contract, PEF shall have the right to request and the RF/QF shall be obligated to deliver within five (5) calendar days of such request, such Security Documentation. Failure by the RF/QF to comply with the requirements of this Section 12.1.3 shall be grounds for PEF to draw in full on any existing Letter of Credit or bond or to retain any cash deposit, and to exercise any other remedies it may have hereunder.

12.1.4 Upon any termination of this Contract following the Capacity Delivery Date, PEF shall be entitled to receive (and in the case of the letter(s) of credit or bond, draw upon such letter(s) of credit or bond) and retain one hundred percent (100%) of the Termination Security.

### 13. Performance Factor

PEF desires to provide an incentive to the RF/QF to operate the Facility during on-peak and off-peak periods in a manner that approximates the projected performance of the Avoided Unit. A formula to achieve this objective is attached as Appendix A.

14. Default

Notwithstanding the occurrence of any Force Majeure as described in Section 18, each of the following shall constitute an Event of Default with respect to RF/QF:

- (a) the RF/QF changes or modifies the Facility from that provided in Section 2 with respect to its type, location, technology or fuel source, without the prior written approval of PEF;
- (b) after the Capacity Delivery Date, the Facility fails for twelve (12) consecutive months to maintain an Annual Capacity Billing Factor, as described in Appendix A, of at least seventy one percent (~~71-69~~ %);
- (c) the RF/QF fails to satisfy its obligations to maintain sufficient fuel on the site of the Facility to deliver the capacity and energy associated with the Committed Capacity for an uninterrupted seventy-two-(n) hour period under Section 10.5.6 hereof;
- (d) ~~the RF/QF fails to provide the Completion/Performance Security and the Termination Fee and to comply with any of the provisions of Sections 11 and 12 hereof~~ **[Covered in the other generally applicable Default provisions.]**
- (e) ~~the RF/QF, or the entity which owns or controls the RF/QF, ceases the conduct of active business; or if proceedings under the federal bankruptcy law or insolvency laws shall be instituted by or for or against the RF/QF or the entity which owns or controls the RF/QF; or if a receiver shall be appointed for the RF/QF or any of its assets or properties, or for the entity which owns or controls the RF/QF; or if any part of the RF/QF's assets shall be attached, levied upon, enumerated, pledged, seized or taken under any judicial process, and such proceedings shall not be vacated or fully stayed within thirty (30) calendar days thereof; or if the RF/QF shall make an assignment for the benefit of creditors, or admit in writing its inability to pay its debts as they become due;~~ **[Covered in the other generally applicable Default provisions.]**
- (f) ~~the RF/QF fails to give proper assurance of adequate performance as specified under this Contract within thirty (30) calendar days after PEF, with reasonable grounds for insecurity, has requested in writing such assurance;~~ **[Covered in the other generally applicable Default provisions.]**
- (g) the RF/QF fails to achieve licensing, certification, and all federal, state and local governmental, environmental, and licensing approvals required to initiate construction of the Facility by no later than the Completed Permits Date;
- (h) the RF/QF fails to comply with the provisions of Section 20.3 hereof;
- (i) ~~any of the representations or warranties made by the RF/QF in this Contract is false or misleading in any material respect as of the time made;~~ **[Covered in the other generally applicable Default provisions.]**

SECTION No. IX  
ORIGINAL SHEET NO. 9.428

1. if, at any time after the Capacity Delivery Date, the RF/QF reduces the Committed Capacity due to an event of Force Majeure and fails to repair the Facility and reset the Committed Capacity to the level set forth in Section 7.2 (as such level may be reduced by Section 7.4) within twelve (12) months following the occurrence of such event of Force Majeure; or
- (k) ~~the RF/QF breaches any material provision of this Contract not specifically mentioned in this Section 14.~~ Covered in the other generally applicable Default provisions.

xx.1 PEF Events of Default for Either Parties

With respect to each Party, the occurrence of any of the following shall constitute an Event of Default:

- a. The failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;
- b. Any representation or warranty made such Party is false or misleading in any material respect when made or when deemed made or repeated;
- c. The failure to perform any material covenant or obligation set forth in this Agreement if such failure is not remedied within three (3) Business Days after written notice;
- d. Such Party becomes Bankrupt;
- e. The failure of such Party to satisfy the creditworthiness requirements agreed to pursuant to Section hereof;
- f. With respect to such Party's Guarantor, if any:
  - (i) If any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
  - (ii) The failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement;
  - (iii) The Guarantor becomes Bankrupt;
  - (iv) The failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement prior to the satisfaction of all obligations of PEF under this Agreement without the written consent of RF/QF; or
  - (v) The Guarantor shall repudiate, disaffirm, disclaim or reject, in whole or in part, or challenge the validity of any guaranty.

15. PEF's Rights in the Event of Default

15.1 ~~Upon the occurrence of any of the Events of Default in Section 14.~~ PEF the non-defaulting Party may, at its option:

15.1.1 immediately terminate this Contract, without penalty or further

ISSUED BY: Lori J. Cross, Manager, Utility Regulatory Planning  
EFFECTIVE:

SECTION No. IX

- obligation, except as set forth in Section 15.2, by written notice to the RF/QF defaulting Party, and offset against any payment(s) due from PEF to the RF/QF from the defaulting Party. any monies otherwise due from the RF/QF to PEF;
- 15.1.2 enforce the provisions of the Termination Security requirement pursuant to Section 12 hereof; and
- 15.1.3 exercise any other remedy(ies) which may be available to the non-defaulting Party PEF at law or in equity.
- 15.2 Termination shall not affect the liability of either Party for obligations arising prior to such termination or for damages, if any, resulting from any breach of this Contract.
16. Indemnification
- 16.1 PEF and the RF/QF shall each be responsible for its own facilities. PEF and the RF/QF shall each be responsible for ensuring adequate safeguards for other PEF customers, PEF's and the RF/QF's personnel and equipment, and for the protection of its own generating system. Each Party (the "Indemnifying Party") agrees, to the extent permitted by applicable law, to indemnify, pay, defend, and hold harmless the other Party (the "Indemnified Party") and its officers, directors, employees, agents and contractors (hereinafter called respectively, "PEF Entities" and "RF/QF Entities") from and against any and all claims, demands, costs or expenses for loss, damage, or injury to persons or property of the Indemnified Party (or to third parties) directly caused by, arising out of, or resulting from:

| SECTION No. IX

ORIGINAL SHEET NO. 9.429

- (a) a breach by the Indemnifying Party of its covenants, representations, and warranties or obligations hereunder;
  - (b) any act or omission by the Indemnifying Party or its contractors, agents, servants or employees in connection with the installation or operation of its generation system or the operation thereof in connection with the other Party's system;
  - (c) any defect in, failure of, or fault related to, the Indemnifying Party's generation system;
  - (d) the negligence or willful misconduct of the Indemnifying Party or its contractors, agents, servants or employees; or
  - (e) any other event or act that is the result of, or proximately caused by, the Indemnifying Party or its contractors, agents, servants or employees related to the Contract or the Parties' performance thereunder.
- 16.1 Payment by an Indemnified Party to a third party shall not be a condition precedent to the obligations of the Indemnifying Party under Section 16. No Indemnified Party under Section 16 shall settle any claim for which it claims indemnification hereunder without first allowing the Indemnifying Party the right to defend such a claim. The Indemnifying Party shall have no obligations under Section 16 in the event of a breach of the foregoing sentence by the Indemnified Party. Section 16 shall survive termination of this Agreement.

## 17. Insurance

- 17.1 The RF/QF shall procure or cause to be procured and shall maintain throughout the entire Term of this Contract, a policy or policies of liability insurance issued by an insurer acceptable to PEF on a standard "Insurance Services Office" commercial general liability form (such policy or policies, collectively, the "RF/QF Insurance"). An original certificate of insurance shall be delivered to PEF at least fifteen (15) calendar days prior to the start of any interconnection work. At a minimum, the RF/QF Insurance shall contain (a) an endorsement providing coverage, including products liability/completed operations coverage for the term of this Contract, and (b) a broad form contractual liability endorsement covering liabilities (i) which might arise under, or in the performance or nonperformance of, this Contract and the Interconnection Agreement, or (ii) caused by operation of the Facility or any of the RF/QF's equipment or by the RF/QF's failure to maintain the Facility or the RF/QF's equipment in satisfactory and safe operating condition. Effective at least fifteen (15) calendar days prior to the synchronization of the Facility with PEF's system, the RF/QF Insurance shall be amended to include coverage for interruption or curtailment of power supply in accordance with industry standards. Without limiting the foregoing, the RF/QF Insurance must be reasonably acceptable to PEF. Any premium assessment or deductible shall be for the account of the RF/QF and not PEF.
- 17.2 The RF/QF Insurance shall have a minimum limit of one million dollars (\$1,000,000.00) per occurrence, combined single limit, for bodily injury (including death) or property damage.
- 17.3 To the extent that the RF/QF Insurance is on a "claims made" basis, the retroactive date of the policy(ies) shall be the Effective Date of this Contract or such other date as may be agreed upon to protect the interests of the PEF Entities and the RF/QF Entities. Furthermore, to the extent the RF/QF Insurance is on a "claims made" basis, the RF/QF's duty to provide insurance coverage shall survive the termination of this Contract until the expiration of the maximum statutory period of limitations in the State of Florida for actions based in contract or in tort. To the extent the RF/QF Insurance is on an "occurrence" basis, such insurance shall be maintained in effect at all times by the RF/QF during the term of this Contract.
- 17.4 The RF/QF Insurance shall provide that it may not be cancelled or materially altered without at least thirty (30) calendar days' written notice to PEF. The RF/QF shall provide PEF with a copy of any material communication or notice related to the RF/QF Insurance within ten (10) Business Days of the RF/QF's receipt or issuance thereof.

17.5 The RF/QF shall be designated as the named insured and PEF shall be designated as an additional named insured under the *RFIQF* Insurance. The RF/QF Insurance shall be endorsed to be primary to any coverage maintained by PEF.

#### 18. Force Majeure

- 18.1 "Force Majeure" is defined as an event or circumstance that is not reasonably foreseeable, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the Party claiming Force Majeure or its contractors or suppliers and adversely affects the performance by that Party of its obligations under or pursuant to this agreement. Such events or circumstances may include, but are not limited to, actions or inactions of civil or military authority (including courts and governmental or administrative agencies), acts of God, war, riot or insurrection, blockades, embargoes, sabotage, epidemics, explosions and fires not originating in the Facility or caused by its operation, hurricanes, floods, strikes, lockouts or other labor disputes or difficulties (not caused by the failure of the affected party to comply with the terms of a collective bargaining agreement). Force Majeure shall not be based on (i) the loss of PEF's markets; (ii) PEF's economic inability to use or resell the Capacity and Energy purchased hereunder; or (iii) RF/QF's inability to sell the Capacity or Energy at a price greater than the price herein. Equipment breakdown or inability to use equipment caused by its design, construction, operation, maintenance or inability to meet regulatory standards, or otherwise caused by an event originating in the control of a Party, or a Party's failure to obtain on a timely basis and maintain a necessary permit or other regulatory approval, shall not be considered an event of Force Majeure, unless such Party can reasonably demonstrate, to the reasonable satisfaction of the non-claiming Party, that the event was not reasonably foreseeable, was beyond the Party's reasonable control and was not caused by the negligence or lack of due diligence of the Party claiming Force Majeure or its agents, contractors or suppliers and adversely affects the performance by that Party of its obligations under or pursuant to this agreement.
- 18.2 Except as otherwise provided in this Contract, each Party shall be excused from performance when its nonperformance was caused, directly or indirectly by an event of Force Majeure.
- 18.3 In the event of any delay or nonperformance resulting from an event of Force Majeure, the Party claiming Force Majeure shall notify the other Party in writing within five (5) Business Days of the occurrence of the event of Force Majeure, of the nature cause, date of commencement thereof and the anticipated extent of such delay, and shall indicate whether any deadlines or date(s), imposed hereunder may be affected thereby. The suspension of performance shall be of no greater scope and of no greater duration than the cure for the Force Majeure requires. A Party claiming Force Majeure shall not be entitled to any relief therefore unless and until conforming notice is provided. The Party claiming Force Majeure shall notify the other Party of the cessation of the event of Force Majeure or of the conclusion of the affected Party's cure for the event of Force Majeure in either case within two (2) Business Days thereof.



- 18.4 The Party claiming Force Majeure shall use its best efforts to cure the cause(s) preventing its performance of this Contract; provided, however, the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected Party and such Party shall not be required to settle such strikes, lockouts or other labor disputes by acceding to demands which such Party deems to be unfavorable.
- 18.5 If the RF/QF suffers an occurrence of an event of Force Majeure that reduces the generating capability of the Facility below the Committed Capacity, the RF/QF may, upon notice to PEF temporarily adjust the Committed Capacity as provided in Sections 18.5 and 18.6. Such adjustment shall be effective the first calendar day immediately following PEF's receipt of the notice or such later date as may be specified by the RF/QF. Furthermore, such adjustment shall be the minimum amount necessitated by the event of Force Majeure.
- 18.6 If the Facility is rendered completely inoperative as a result of Force Majeure, the RF/QF shall temporarily set the Committed Capacity equal to 0 kW until such time as the Facility can partially or fully operate at the Committed Capacity that existed prior to the Force Majeure. If the Committed Capacity is 0 kW, PEF shall have no obligation to make Capacity Payments hereunder.
- 18.7 If, at any time during the occurrence of an event of Force Majeure or during its cure, the Facility can partially or fully operate, then the RF/QF shall temporarily set the Committed Capacity at the maximum capability that the Facility can reasonably be expected to operate.
- 18.8 Upon the cessation of the event of Force Majeure or the conclusion of the cure for the event of Force Majeure, the Committed Capacity shall be restored to the Committed Capacity that existed immediately prior to the Force Majeure. Notwithstanding any other provisions of this Contract, upon such cessation or cure, PEF shall have right to require a Committed Capacity Test to demonstrate the Facility's compliance with the requirements of this Section 18.8. Any such Committed Capacity Test required by PEF shall be additional to any Committed Capacity Test under Section 7.4.
- 18.9 During the occurrence of an event of Force Majeure and a reduction in Committed Capacity under Section 18.4 all Monthly Capacity Payments shall reflect, pro rata, the reduction in Committed Capacity, and the Monthly Capacity Payments will continue to be calculated in accordance with the pay-for performance provisions in Appendix A.

18.10 The RF/QF agrees to be responsible for and pay the costs necessary to reactivate the Facility and/or the interconnection with PEF's system if the same is (are) rendered inoperable due to actions of the RF/QF, its agents, or Force Majeure events affecting the RF/QF, the Facility or the interconnection with PEF. PEF agrees to reactivate, at its own cost, the interconnection with the Facility in circumstances where any interruptions to such interconnections are caused by PEF or its agents.

#### 19. Representations, Warranties, and Covenants of RF/QF

Each Party hereto~~The RF/QF~~ represents and warrants that as of the Effective Date:

##### 19.1 Organization, Standing and Qualification

~~The RF/QF~~It is a (corporation, partnership, or other, as applicable) duly organized and validly existing in good standing under the laws of \_\_\_\_\_ and has all necessary power and authority to carry on its business as presently conducted to own or hold under lease its properties and to enter into and perform its obligations under this Contract and all other related documents and agreements to which it is or shall be a Party. The Party~~RF/QF~~ is duly qualified or licensed to do business in the State of Florida and in all other jurisdictions wherein the nature of its business and operations or the character of the properties owned or leased by it makes such qualification or licensing necessary and where the failure to be so qualified or licensed would impair its ability to perform its obligations under this Contract or would result in a material liability to or would have a material adverse effect on the other Party~~PEF~~.

##### 19.2 Due Authorization, No Approvals, No Defaults

Each of the execution, delivery and performance ~~by the RF/QF~~ of this Contract has been duly authorized by all necessary action on the part of such Party~~the RF/QF~~, does not require any approval, except as has been heretofore obtained, of the \_\_\_\_\_ (shareholders, partners, or others, as applicable) of the RF/QF or any consent of or approval from any trustee, lessor or holder of any indebtedness or other obligation of the such Party~~RF/QF~~, except for such as have been duly obtained, and does not contravene or constitute a default under any law, the (articles of incorporation, bylaws, or other as applicable) of such Party~~the RF/QF~~, or any agreement, judgment, injunction, order, decree or other instrument binding upon the such Party~~RF/QF~~, or subject the Facility or any component part thereof to any lien other than as contemplated or permitted by this Contract.

##### 19.3 Compliance with Laws

~~It~~~~The RF/QF~~ has knowledge of all laws and business practices that must be followed in performing its obligations under this Contract. ~~It~~~~The RF/QF~~ is in compliance with all laws, except to the extent that failure to comply therewith would not, in the aggregate, have a material adverse effect on the other Party~~RF/QF or PEF~~.

#### 19.4 Governmental Approvals

Except as expressly contemplated herein, neither the execution and delivery by the ~~RF/QF~~ each Party of this Contract, nor the consummation by the ~~RF/QF~~ each Party of any of the transaction contemplated thereby, requires the consent or approval of, the giving of notice to, the registration with, the recording or filing of any document with, or the taking of any other action with respect to governmental authority, except with respect to permits (a) which have already been obtained and are in full force and effect or (b) are not yet required (and with respect to which the RF/QF has no reason to believe that the same will not be readily obtainable in the ordinary course of business upon due application therefore).

#### 19.5 No Suits, Proceedings

There are no actions, suits, proceedings or investigations pending or, to the knowledge of the ~~RF/QF~~ each Party, threatened against it at law or in equity before any court or tribunal of the United States or any other jurisdiction which individually or in the aggregate could result in any materially adverse effect on each Party's ~~the RF/QF's~~ business, properties, or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations under this Contract. Each Party ~~The RF/QF~~ has no knowledge of a violation or default with respect to any law which could result in any such materially adverse effect or impairment.

#### 19.6 Environmental Matters

To the best of its knowledge after diligent inquiry, each Party ~~the RF/QF~~ knows of no (a) existing violations of any environmental laws at the Facility, including those governing hazardous materials or (b) pending, ongoing, or unresolved administrative or enforcement investigations, compliance orders, claims, demands, actions, or other litigation brought by governmental authorities or other third parties alleging violations of any environmental law or permit which would materially and adversely affect the operation of the Facility as contemplated by this Contract.

### 20. General Provisions

#### 20.1 Project Viability

To assist PEF in assessing the RF/QF's financial and technical viability, the RF/QF shall provide the information and documents requested in Appendix C or substantially similar documents, to the extent the documents apply to the type of Facility covered by this Contract and to the extent the documents are available. All documents to be considered by PEF must be submitted at the time this Contract is presented to PEF. Failure to provide the following such documents may result in a determination of non-viability by PEF.

## 20.2 Permits

The RF/QF hereby agrees to obtain and maintain any and all permits, certifications, licenses, consents or approvals of any governmental authority which the RF/QF is required to obtain as a prerequisite to engaging in the activities specified in this Contract.

## 20.3 Project Management

If requested by PEF, the RF/QF shall submit to PEF its integrated project schedule for PEF's review within sixty (60) calendar days from the execution of this Contract, and a start-up and test schedule for the Facility at least sixty (60) calendar days prior to start-up and testing of the Facility. These schedules shall identify key licensing, permitting, construction and operating milestone dates and activities. If requested by PEF, the RF/QF shall submit progress reports in a form satisfactory to PEF every calendar month until the Capacity Delivery Date and shall notify PEF of any changes in such schedules within ten (10) calendar days after such changes are determined. PEF shall have the right to monitor the construction, start-up and testing of the Facility, either on-site or off-site. PEF's technical review and inspections of the Facility and resulting requests, if any, shall not be construed as endorsing the design thereof or as any warranty as to the safety, durability or reliability of the Facility.

The RF/QF shall provide PEF with the final designees/manufacturers generator capability curves, protective relay types, proposed protective relay settings, main one-line diagrams, protective relay functional diagrams, and alternating current and direct elementary diagrams for review and inspection at PEF no later than one hundred eighty (180) calendar days prior to the initial synchronization date.

## 20.4 Assignment

Either Party may not assign this Contract, without the other Party's prior written approval, which approval may not be unreasonably withheld or delayed.

## 20.5 Disclaimer

In executing this Contract, PEF does not, nor should it be construed, to extend its credit or financial support for benefit of any third parties lending money to or having other transactions with the RF/QF or any assigns of this Contract.

SECTION No. IX  
ORIGINAL SHEET NO. 9.436

## 20.6 Notification

All formal notices relating to this Contract shall be deemed duly given when delivered in person, or sent by registered or certified mail, or sent by fax if followed immediately with a copy sent by registered or certified mail, to the individuals designated below. The Parties designate the following individuals to be notified or to whom payment shall be sent until such time as either Party furnishes the other Party written instructions to contact another individual:

For the RF/QF:

For PEF:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Progress Energy Florida  
Cogeneration Manager  
PEF 155 299 First Avenue North  
St. Petersburg, FL 33701

Contracts and related documents may be mailed to the address below or delivered during normal business hours (8:00 a.m. to 4:45 p.m.) to the visitors' entrance at the address below:

Florida Power Corporation  
d/b/a Progress Energy Florida, Inc.  
L299 First Avenue North  
St. Petersburg, FL 33701

Attention: Cogeneration Manager PEF 155

## 20.7 Applicable Law

This Contract shall be construed in accordance with and governed by the laws of the State of Florida, and the rights of the parties shall be construed in accordance with the laws of the State of Florida.

ISSUED BY: Lori J. Cross, Manager, Utility Regulatory Planning  
EFFECTIVE:

## 20.8 Taxation

In the event that PEF becomes liable for additional taxes, including interest and/or penalties arising from an Internal Revenue Services determination, through audit, ruling or other authority, that PEF's payments to the RF/QF for Capacity under Options B, C, or D of the Appendix D are not fully deductible when paid (additional tax liability), PEF may bill the RF/QF monthly for the costs, including carrying charges, interest and/or penalties, associated with the fact that all or a portion of these Capacity Payments are not currently deductible for federal and/or state income tax purposes. PEF, at its option, may offset or recoup these costs against amounts due the RF/QF hereunder. These costs would be calculated so as to place PEF in the same economic position in which it would have been if the entire Capacity Payments had been deductible in the period in which the payments were made. If PEF decides to appeal the Internal Revenue Service's determination, the decision as to whether the appeal should be made through the administrative or judicial process or both, and all subsequent decisions pertaining to the appeal (both substantive and procedural), shall rest exclusively with PEF.

## 20.9 Resolution of Disputes

### 20.9.1 Notice of Dispute

In the event that any dispute, controversy or claim arising out of or relating to this Contract or the breach, termination or validity thereof should arise between the Parties (a "Dispute"), the Party may declare a Dispute by delivering to the other Party a written notice identifying the disputed issue.

### 20.9.2

#### Resolution by Parties

Upon receipt of a written notice claiming a Dispute, executives of both Parties shall meet at a mutually agreeable time and place within ten (10) Business Days after delivery of such notice and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the Dispute. In such meetings and exchanges, a Party shall have the right to designate as confidential any information that such Party offers. No confidential information exchanged in such meetings for the purpose of resolving a Dispute may be used by a Party in litigation against the other Party. If the matter has not been resolved within thirty (30) Days of the disputing Party's notice having been issued, or if the Parties fail to meet within ten (10) Business Days as required above, either Party may initiate binding arbitration in St. Petersburg, Florida, conducted in accordance with the then current American Arbitration Association's ("AAA") Large, Complex Commercial Rules or other mutually agreed upon procedures.

SECTION No. IX  
ORIGINAL SHEET NO, 9.438

#### 20.10 Limitation of Liability

IN NO EVENT SHALL PEF, ITS PARENT CORPORATION, OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR MULTIPLE DAMAGES RESULTING FROM ANY CLAIM OR CAUSE OF ACTION, WHETHER BROUGHT IN CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE OR STRICT LIABILITY), OR ANY OTHER LEGAL THEORY.

#### 20.11 Severability

If any part of this Contract, for any reason, is declared invalid or unenforceable by a public authority of appropriate jurisdiction, then such decision shall not affect the validity of the remainder of the Contract, which remainder shall remain in force and effect as if this Contract had been executed without the invalid or unenforceable portion.

#### 20.12 Complete Agreement and Amendments

All previous communications or agreements between the Parties, whether verbal or written, with reference to the subject matter of this Contract are hereby abrogated. No amendment or modification to this Contract shall be binding unless it shall be set forth in writing and duly executed by both Parties. This Contract constitutes the entire agreement between the Parties.

#### 20.13 Survival of Contract

Subject to the requirements of Section 20.4, this Contract, as it may be amended from time to time, shall be binding upon, and inure to the benefit of, the Parties' respective successors-in-interest and legal representatives.

#### 20.14 Record Retention

~~The RF/QF~~ Each Party shall maintain for a period of five (5) years from the date of termination hereof all records relating to the performance of its obligations hereunder, ~~and to cause all RF/QF Entities to retain for the same period all such records.~~

#### 20.15 No Waiver

No waiver of any of the terms and conditions of this Contract shall be effective unless in writing and signed by the Party against whom such waiver is sought to be enforced. Any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given. The failure of a Party to insist, in any instance, on the strict performance of any of the terms and conditions hereof shall not be construed as a waiver of such Party's right in the future to insist on such strict performance.

#### 20.16 Set-Off

PEF may at any time, but shall be under no obligation to, set off or recoup any and all sums due from the RF/QF against sums due to the RF/QF hereunder without undergoing any legal process.

#### 20.17 Change in Environmental Law or Other Regulatory Requirements

- (a) As used herein, "Change(s) in Environmental Law or Other Regulatory Requirements" means the enactment, adoption, promulgation, implementation, or issuance of, or a new or changed interpretation of, any statute, rule, regulation, permit, license, judgment, order or approval by a governmental entity that specifically addresses environmental or regulatory issues and that takes effect after the Effective Date.
- (b) The Parties acknowledge that Change(s) in Environmental Law or Other Regulatory Requirements could significantly affect the cost of the Avoided Unit ("Avoided Unit Cost Changes") and agree that, if any such change(s) should affect the cost of the Avoided Unit more than the Threshold defined in Section 20.17(c) below, the Party affected by such change(s) may avail itself of the remedy set forth in Section 20.17(d) below as its sole and exclusive remedy.
- (c) The Parties recognize and agree that certain Change(s) in Environmental Law or Other Regulatory Requirements may occur that do not rise to a level that the Parties desire to impact this Agreement. Accordingly, the Parties agree that for the purposes of this Agreement, such change(s) will not be deemed to have occurred unless the change in A voided Cost resulting from such change(s) exceed a mutually agreed upon amount. This mutually agreed upon amount is attached to this Contract in Appendix E.



SECTION No. IX  
ORIGINAL SHEET NO. 9.440

- (d) If an Avoided Unit Cost Change meets the threshold set forth in Section 20.17(c) above, the affected Party may request the avoided cost payments under this Contract be recalculated and that the avoided cost payments for the remaining term of the Contract be adjusted based on the recalculation. Any dispute regarding the application of this Section 20.17 shall be resolved in accordance with Section 20.9.

SECTION No. IX  
ORIGINAL SHEET NO. 9.441

Docket No. 070235-EQ  
Docket No. 080501-EI  
Proposed Changes to Standard Offer Contract  
Exhibit M.I.M-1. Page 49 of 49

IN WITNESS WHEREOF, the RF/QF and PEF executed this Contract on the later of the dates set forth below.

**RF/QF**

**FLORIDA POWER CORPORATION d/b/a  
PROGRESS ENERGY FLORIDA, INC.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

ISSUED BY: Lori J. Cross, Manager, Utility Regulatory Planning  
EFFECTIVE:

**Exhibit MJM-2**

to the

DIRECT TESTIMONY OF  
MARTIN J. MARZ

ON BEHALF OF  
WHITE SPRINGS AGRICULTURAL CHEMICALS, INC.  
D/B/A PCS PHOSPHATE – WHITE SPRINGS

**Capacity Factor of  
PEF's Combined Cycle Units**

Docket No. 070235-EQ  
Docket No. 080501-EI  
Filed: March 4, 2009

**Progress Energy Florida, Inc.**  
**Progress Energy Florida Combined Cycle Plants 2004 - 2007**

<u>Line</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>Average</u>
	(1)	(2)	(3)	(4)	(5)
1 <b>Annual MWhs</b>	5,885,806	6,956,112	8,173,754	8,752,230	7,441,976
2 <b>Operating Capacity</b>	1,334	1,916	1,885	2,402	1,884
3 <b>Weighted Heat Rates (1)</b>	7,476	7,305	7,272	7,121	7,293
4 <b>Weighted Capacity Factors (1)</b>	50.40	41.49	49.52	41.61	45.75

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Source: SNL Financial  
 (1) Weighted by annual MWhs

Note: Capacities are higher for 2005 than 2006. This is due to more data missing for 2006.