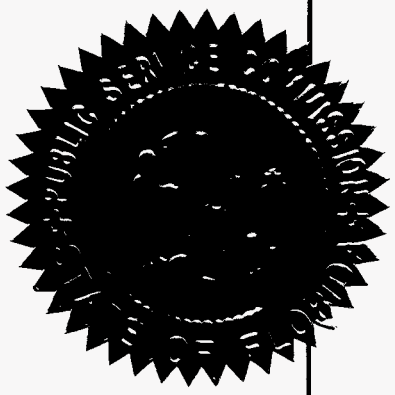
BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080501-EI

In the Matter of:

PETITION FOR WAIVER OF RULE 25-17.250 (1) 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.
_____/



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PROCEEDINGS:	HEARING
BEFORE:	COMMISSIONER LISA POLAK EDGAR COMMISSIONER KATRINA J. McMURRIAN COMMISSIONER NANCY ARGENZIANO
DATE:	Thursday, April 16, 2009
TIME:	Commenced at 9:39 a.m. Concluded at 10:50 a.m.
PLACE:	Betty Easley Conference Center Room 148 4075 Esplanade Way Tallahassee, Florida
REPORTED BY:	LINDA BOLES, RPR, CRR JANE FAUROT, RPR Official FPSC Reporters (850) 413-6734/(850) 413-6732

PARTICIPATING:

JOHN T. BURNETT, ESQUIRE, Progress Energy Service Company, LLC, Post Office Box 14042, St. Petersburg, Florida 33733-4042, appearing on behalf of Progress Energy Florida.

JAMES W. BREW, ESQUIRE, c/o Brickfield Law Firm, 1025 Thomas Jefferson Street, N.W., Eighth Floor, West Tower, Washington, DC 20007-5201, appearing on behalf of PCS Phosphate - White Springs.

JEAN HARTMAN, ESQUIRE, FPSC General Counsel's Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, representing the Commission Staff.

MARY ANNE HELTON, DEPUTY GENERAL COUNSEL, FPSC General Counsel's Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, appearing as advisor to the Commission.

I N D E X

EXHIBITS

NUMBER:		ID.	ADMTD.
1	Comprehensive Exhibit List	6	6
2	Staff's Composite Exhibit 2 - stipulated	6	6
3	Staff's Exhibit 3 - stipulated	6	6
4	DWG-1	6	80
5	DWG-2	6	80
6	DWG-3	6	80
7	DWG-4	6	80
8	MJM-1	6	130
9	MJM-2	6	130
10	MJM-3	6	130
11	Deposition of Martin J. Marz 4/1/09	8	8

P R O C E E D I N G S

COMMISSIONER EDGAR: Good morning. I call this hearing to order. And we will begin by asking our staff to read the notice.

MS. HARTMAN: Pursuant to notice, this time and place has been scheduled for the purpose of conducting a hearing in Docket Number 080501-EI. The purpose of the hearing is set forth more fully in the notice.

COMMISSIONER EDGAR: Thank you. And let's take appearances from counsel.

MR. BURNETT: Good morning. John Burnett for Progress Energy Florida.

COMMISSIONER EDGAR: Thank you.

MR. BREW: Good morning. James Brew for White Springs Agricultural Chemicals - PCS Phosphate.

MS. HARTMAN: Jean Hartman for Commission staff.

MS. HELTON: Mary Anne Helton, advisor to the Commission.

COMMISSIONER EDGAR: Thank you very much. Okay. We will jump right in here in just a moment. For planning purposes, please know that to accommodate a variety of schedules we are going to take lunch as close to 11:30 to 1:00 as makes for a natural break with where

we are, and I am hopeful that we will finish today. We will, of course, give as much time as we need to to address all of the issues that we are here to address. And so with that, I will ask our staff, are there any preliminary matters?

MS. HARTMAN: Yes, there are. We would request identification of the exhibit list, staff's composite exhibit and staff's stipulated exhibit, which is PCS Phosphate's responses to staff's first set of interrogatories, and prefiled exhibits, Exhibits 4 through 10.

COMMISSIONER EDGAR: We will for the record have those exhibits so marked.

(Exhibits 1 through 10 marked for identification.)

MS. HARTMAN: Thank you. We would request that Exhibits 1, 2 and 3 be moved into the record.

COMMISSIONER EDGAR: Any objection?

MR. BURNETT: No objection.

COMMISSIONER EDGAR: Hearing none, exhibits marked 1, 2 and 3 will be entered into the record at this time.

(Exhibits 1, 2 and 3 admitted into the record.)

MS. HARTMAN: We would also request that the

deposition transcript of Martin J. Marz be entered into the record, but we would also ask that certain portions of the record, of the deposition be stricken. If I could go through those portions of the record.

COMMISSIONER EDGAR: And just a moment.

MS. HARTMAN: I'm sorry. I mean the deposition.

COMMISSIONER EDGAR: That's okay. And let me ask the parties, it's my understanding that what counsel is going to lay out for us is a joint agreement by the parties, is that correct, to your knowledge, once we hear it in detail?

MR. BREW: Yes, Commissioner. Generally speaking, we have a strong opposition to trial by deposition, but we've gone through the transcript with staff and we're agreeable to the portions that counsel will propose to strike.

COMMISSIONER EDGAR: Thank you.

Mr. Burnett.

MR. BURNETT: We have no objection.

COMMISSIONER EDGAR: Okay. Then with that I appreciate the parties working together for the administrative efficiency, and we'll ask our counsel to further describe the agreement.

MS. HARTMAN: Thank you. The agreement is

that we, on Page 6 of the deposition that Lines 12 through 20 be stricken; on Page 10 of the deposition, that Lines 12 through 25 be stricken; that on Page 11, Lines 1 through 5 be stricken; and finally on Page 17, that Lines 4 through 12 be struck.

COMMISSIONER EDGAR: Commissioners, any questions about that? No. And the court reporter has that? So do we need to enter the deposition as you have described it into the record at this time?

MS. HARTMAN: Yes. And I believe we would number it Number 11 as well.

COMMISSIONER EDGAR: Okay. Then we will mark for identification Exhibit Number 11, deposition of -- and I'm sorry, I didn't --

MS. HARTMAN: Martin J. Marz.

COMMISSIONER EDGAR: Deposition of Martin J. Marz as excerpted.

MR. BREW: As redacted.

COMMISSIONER EDGAR: As redacted. Okay. That's much better. Thank you. As redacted. And Exhibit 11 is entered into the record, if I didn't say that.

(Exhibit 11 marked for identification and admitted into the record.)

Any other preliminary matters?

MS. HARTMAN: No.

COMMISSIONER EDGAR: Anything from the parties before we move to opening statements?

MR. BURNETT: No, ma'am.

COMMISSIONER EDGAR: Okay. Nothing from the bench?

Mr. Burnett, I believe you're up first. Are you ready?

MR. BURNETT: Yes, ma'am. Thank you.

Commissioners, over the years PEF has filed its Standard Offer Contract time and time again and this Commission has reviewed and approved that contract time and time again without anyone ever raising an issue or protest.

Recently one company, PCS Phosphate, a company that has been using a totally different contract to sell PEF power since at least 1989 and it is still using a completely different contract to sell PEF power today, has decided that it now has multiple problems with our Standard Offer Contract despite that they have never raised any problems with it in the past when we have filed it time and time again and this Commission has approved it time and time again.

Acting in good faith, however, PEF has worked with PCS since they filed this protest and has made 12

of PCS's 20 proposed changes to our Standard Offer Contract in an effort to work this matter out. As part of this process, PEF has been able to narrow the scope of PCS's dispute down to just eight remaining issues and those are the issues that bring us here today.

The reason that PEF has not and cannot agree with the eight remaining changes that PCS proposes is that to do that would cost our customers money that they should not have to pay. It would unfairly shift risk away from PCS and onto our customers and would threaten the reliable delivery of the energy that our customers pay to receive.

In a contract like the Standard Offer Contract where PEF has to sign it without negotiation whether we want to or not, one can see where these may, these issues would cause concern.

Commissioners, I want to briefly explain the remaining issues to you and tell you what the evidence will show you today as to why you, our regulator and our policymaker, should not agree to these last eight changes that PCS proposes.

First, PCS Phosphate says that although they want to get paid like they have the capacity factor of the unit that their unit will help PEF actually avoid building, they don't want to actually have to perform

like that unit. I wish I could get that deal. However, realizing PEF's customers would have to pay for the extra capacity that they would never get, this is obviously not a good idea.

Second, PCS says that in instead of having 30 days to execute on a right of first refusal to buy renewable energy credits from them, we should only have three days. We've come back and just asked for ten days to be an acceptable compromise, and to this date they've refused. It's hard for me to see how asking for ten days to make a purchase decision like that would be unreasonable.

Third, PCS wants to be able to use interruptible power to start up their units. Think about what the implications are if PEF is in urgent need of power, starts to interrupt its customers to prevent a blackout, only to call on PCS to start up and provide critically needed energy and they cannot start up because their power is out and has been interrupted. The result would be that PEF's customers would not get the power they are paying for at the time they need it the most.

Fourth, PCS says that if we have, PEF has good cause to believe that there is a problem with their unit, we cannot ask them to perform a test to prove that

the unit is okay unless six months has passed from the time we've done our last test. This defies logic. If something is wrong with their plant and we have good cause to believe it's wrong, then they should have to prove that they can actually run like they're supposed to.

Fifth, PCS proposes a provision that requires them to run their unit for 24 hours when it first goes online and once a year thereafter to prove that the unit actually works. If PEF, if PEF's customers are going to be paying for this unit for years and years, it seems pretty reasonable that PCS could at least show that a brand new unit coming online, at least once a year that it could run like it's supposed to for 24 hours.

Sixth, PEF projects that the unit that the PCS unit would be compared to and would avoid would be offline for 15 days a year for maintenance. PCS wants 30 days, even though the unit that they are avoiding against would be down for only half that time. Guess who pays for the replacement power while they're out for those 15 extra days -- our customers do.

Seventh, PCS opposes providing a performance security to help defray some of the cost to buy replacement power if they don't deliver the power that they say they will under the contract. Said another

way, PCS wants our customers to bear all the risk if something goes wrong with their plant and they can't deliver power.

Finally, PCS wants to add a provision that makes PEF post a security if PEF's credit rating drops below a certain level in some amount that we would have to agree on. It's hardly fair to put this burden on PEF because, unlike PCS, we can't negotiate in this contract. We cannot walk away and we have to sign this contract no matter what. So, again, why should our customers have to bear this risk and this cost?

In conclusion, Commissioners, these remaining eight issues seem like no-brainers to us. And while we've worked with PCS and agreed to the majority of their proposed changes, we simply cannot agree in good faith to the ones I just described, especially given the fact that not only could PCS take advantage of these changes, but anyone else who wanted to sign this contract could take advantage of these changes as well that hurt our customers and make our customers pay money.

At the conclusion of this evidence we believe that you will agree that you as our regulator and our policymaker cannot allow these changes either. Thank you.

COMMISSIONER EDGAR: Thank you.

Mr. Brew.

MR. BREW: Thank you, Commissioners. Good morning. Please remember at the outset that all of the changes that PCS has proposed to the Standard Offer Contract aren't going to affect ratepayers or PEF at all. They are -- they make the contract fairer, easier to implement and streamlines the whole contracting process.

Now we recognize that this is a busy time for the Commission. It's also an immensely challenging time to be a manufacturing operation in Florida. This is an important proceeding. Florida has a variety of activities going on designed to promote renewable energy development in the state. A cornerstone of that policy is this Standard Offer Contract. For a utility plant, recovery of fixed costs is indifferent to how it performs. Whether it's a baseload unit, a peaking unit, they recover their costs in base rates or through other tracking mechanisms irrespective of how they're actually dispatched or how they run. That's not true for renewable energy producers. We recover costs and get paid based on the terms of the standard offer.

We recognize as well that the utility can and does negotiate contracts in lieu of the Standard Offer

Contract. But that does not end the issue, it actually starts it. We believe and the rule is drafted to require a Standard Offer Contract that has a meaning and purpose other than simply being a template for beginnings of the discussions for a negotiated contract. The Commission's rules separately permit and encourage negotiated contracts but require the development of a Standard Offer Contract that a developer can enter into.

So the purpose of a Standard Offer Contract is to provide a streamlined mechanism for establishing an avoided cost base, which means by definition no additional cost to ratepayers, agreement that can be signed and accepted in short order. What we had found and the reason why PCS first protested the Standard Offer Contract in 2007, we simply never got to the hearing on that, on that contract, is that the terms in the standard offer really weren't drafted to be commercially feasible.

What we've seen in various energy-related transactions and which the PCS witness will address is that energy transactions through the years have migrated towards streamlining operations through standardizing the terms associated with basic operations so you can negotiate on the terms that actually matter so you don't have to spend countless hours renegotiating all of the

basic provisions of the agreement. The very purpose of the changes that we've introduced in this docket is to get to that same point.

Now I'd note that over the course of exchanging testimony over two years Progress has in fact made a number of adjustments and that's been very productive. But you can see that that's a very inefficient process because we started with what was essentially a one-sided agreement drafted by the utility with very little input, if any, from the renewable energy producer side. We've tried to add that.

The one particular example that will come up today is the requirement with respect to capacity factor, and there are two pieces to that. One is that there's a simple error in Progress's proposal. They use capacity factor when they mean availability factor. They would require a unit to operate effectively at a 90 percent capacity factor in order to receive a full capacity payment.

Well, there's no gas combined cycle unit that operates at a 90 percent capacity factor. That would mean it would be running 8,000 hours a year. That's not how a gas combined cycle unit, which is the avoided unit, runs. Such a unit might be available to run much of the time, but it doesn't actually run in that

fashion. So the terms that Progress has proposed really would only be applicable to a baseloaded coal or nuclear unit so that you've got a basic problem in terms of an error that needs to be fixed.

The second is that if you want to precisely mimic the operating characteristics of a gas combined cycle unit, you're going to get gas combined cycle units. If your, if your purpose is to encourage supplanting gas burning in the state by encouraging alternative energy producers which have somewhat different operating characteristics, you need to reflect that in the rule. And the basic change that we propose in that regard is to provide that basis so that you are accomplishing your intent which was to encourage the development of these alternative technologies rather than simply mimicking gas combined cycle characteristics.

Two of the basic things that we've looked at in negotiating any contract over time, the basic fundamentals of contracting come into play, which is, two of which are rights and obligations go both ways. One party doesn't have all the rights and then the other party has all the obligations. You establish a certain amount of reciprocity and symmetry in those obligations. And that's -- a number of the things that we proposed

here that Progress is taking exception to is simply adding symmetry to the contract.

The second is that no party gets something for nothing. In the case of the right of first refusal on renewable energy credits, Progress has simply asked for something for nothing. It's not reflected in the avoided cost payments. It's granting a right to Progress for which they haven't paid. So what we've tried to do again is simply bring a level of fairness to the contract to streamline the basic terms so that it makes more sense from a developer's standpoint and to set the basis so that you can really only have to talk about the issues that matter, which is the features of that technology and the avoided cost payments that are a function of the -- otherwise applicable in the rule, and that's what we will discuss today. Thank you.

COMMISSIONER EDGAR: Thank you.

Mr. Burnett.

MR. BURNETT: Yes, ma'am. Thank you. We would call David Gammon.

COMMISSIONER EDGAR: And is Witness Marz here as well? Is that the gentleman there? Nice to see you.

Let's go ahead and swear you both in so that we have that done, if you would. You may stand there, and if you'll stand with me and raise your right hand.

(Witnesses collectively sworn.)

DAVID W. GAMMON

was called as a witness on behalf of Progress Energy Florida and, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BURNETT:

Q. Good morning, sir. Will you please introduce yourself to the Commission and provide your business address?

A. Sure. Good morning, Commissioners. My name is David Gammon. My business address is 299 1st Avenue North, St. Petersburg, Florida 33701.

Q. Thank you. And you were just sworn as a witness; correct?

A. I was.

Q. Okay. Who do you work for and what is your position?

A. I work for Progress Energy Florida, and I'm a Senior Power Delivery Specialist for Progress Energy Florida.

Q. Have you filed prefiled direct testimony and exhibits in this proceeding?

A. Yes, I have.

Q. Do you have a copy of your prefiled testimony

and exhibits with you today?

A. Yes.

Q. Do you have any changes to make to your prefiled testimony and exhibits?

A. No.

Q. If I asked you the same questions in your prefiled today, would you give the same answers that are in your prefiled testimony?

A. Yes.

MR. BURNETT: Madam Chair, we request that the prefiled testimony be entered into the record as if it was read today.

COMMISSIONER EDGAR: The prefiled testimony on direct of this witness will be entered into the record as though read.

I. INTRODUCTION, QUALIFICATIONS AND PURPOSE

Q. Please state your name and business address.

A. My name is David W. Gammon. My business address is P.O. Box 14042, St. Petersburg, Florida 33733.

Q. By whom are you employed and in what capacity?

A. I am employed by Progress Energy Florida, Inc. ("PEF" or "the Company") as a Senior Power Delivery Specialist.

Q. What are your job responsibilities?

A. I am currently employed as a Senior Power Delivery Specialist for PEF. This position has responsibility for cogeneration contracts and renewable energy contracts. In this position, I have responsibility for PEF's Qualifying Facility ("QF") power purchases, including the development of Standard Offer Contracts. My responsibilities further include administering long-term QF contracts, negotiating extensions, resolving disputes, and administering payments to cogeneration and renewable suppliers.

Q. Please describe your educational background and professional experience.

A. I received a Bachelor of Science in Engineering degree from the University of Central Florida in 1980 and a Master of Business Administration from the University of South Florida in 2001. I am a registered Professional Engineer in the State of Florida.

My employment with Progress Energy Florida/Florida Power Corporation has been related to QF purchases since 1991. Prior to this position, I have had other positions at Florida Power Corporation including Project Engineer in Energy Management Resources and Project Engineer in Relay Design. My employment with Florida Power Corporation began in 1977.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to address the structure and history of PEF's Standard Offer Contracts for QF and Renewable Energy Producers ("Renewables"). I also explain why certain terms and conditions are included in PEF's current Standard Offer Contract.

Q. Please summarize your testimony.

A. PEF is required by law to have a Standard Offer Contract available for QFs and Renewables. A QF or a Renewable can accept PEF's Standard Offer Contract without any negotiation, and PEF is compelled to abide by the terms and conditions of that contract for any and all counterparties who wish to agree to sell power under it. While almost all QFs and Renewables elect to enter into a negotiated power purchase contract with PEF instead of utilizing PEF's Standard Offer Contract, the Standard Offer Contract provides a comprehensive baseline of acceptable terms and conditions for energy providers to use in their negotiations with PEF, and PEF has had excellent success in obtaining power purchase agreements with QFs and

Renewables by using its Standard Offer Contract as a "first draft" against which negotiated contracts are developed.

PEF has made a number of changes to its Standard Offer Contract in order to comply with rule changes and to incorporate feedback that PEF has received from QFs and Renewables including PCS Phosphate. By making these changes, PEF has developed a Standard Offer Contract that both promotes Renewables to engage into negotiations with PEF and that strikes a balance between the interests of PEF and its customers and such energy producers.

Q. Are you sponsoring your testimony with any exhibits?

A. Yes, I am sponsoring the following exhibits:

- Exhibit No. ___ (DWG-1) – Protest of PCS Phosphate–White Springs (Dkt# 070235)
- Exhibit No. ___ (DWG-2) – Direct testimony of David Gammon (Dkt# 070235)
- Exhibit No. ___ (DWG-3) – Direct testimony of Martin J. Marz on behalf of PCS Phosphate – White Springs (Dkt# 070235)
- Exhibit No. ___ (DWG-4) – Rebuttal testimony of David Gammon (Dkt# 070235)

II. OVERVIEW

Q. Please provide an overview of what actions were taken prior to, and including, Docket No. 080501-EQ.

A. Pursuant to Rule 25-17. 250(1) and (2)(a), F.A.C., PEF filed its standard offer contract for approval by the Commission on April 2, 2007 which established Docket

No. 070235-EQ. The Commission approved PEF's standard offer contract at the May 22, 2007 Agenda Conference. Order No. PSC-07-0493-TRF-EQ was issued on June 11, 2007 approving PEF's standard offer contract and associated tariffs. On July 2, 2007, White Springs Agricultural Chemicals, Inc. ("PCS Phosphate – White Springs"), a customer located in PEF's service territory, protested Order No. PSC-07-0493-TRF-EQ stating PEF's standard offer contract was understated, unnecessarily complicated and contains unnecessary and burdensome requirements (*See Exhibit No. ___ (DWG-1), Pages 4-16*). A hearing was scheduled for April 10, 2008. PEF filed its direct testimony of David Gammon on January 14, 2008 (*See Exhibit No. ___ (DWG-2)*). PCS Phosphate – White Springs filed their testimony of Martin J. Marz on February 18, 2008 recommending changes to PEF's Standard Offer Contract (*See Exhibit No. ___ (DWG-3)*). On March 10, 2008, PEF filed its rebuttal testimony (*See Exhibit No. ___ (DWG-4)*). Since a new standard offer contract was being filed on April 1, 2008, PCS Phosphate – White Springs filed a Motion for Continuance on March 21, 2008 until new standard offer was filed. As a result, the April 10, 2008 hearing was canceled.

On April 1, 2008, PEF filed its standard offer contract creating Docket No. 080187-EQ. The Commission was scheduled to vote on PEF's SOC at the July 29, 2008 Agenda Conference. PEF diligently worked to create a standard offer contract that incorporated some of PCS Phosphate concerns addressed in their original protest (*See Exhibit No. ___ (DWG-1)*) and on July 15, 2008 PEF filed a revised standard offer contract creating Docket No. 080501-EQ. PEF requested that no action be taken on Docket No. 080187-EQ, but instead asked the Commission to take action on

Docket No. 080501-EQ. On July 23, 2008 PEF filed a Notice of Withdrawal of its standard offer contract filed in Docket No. 080187-EQ. Order No. PSC-08-0695-FOF-EQ was issued on October 20, 2008 acknowledging PEF's Notice of Withdrawal and closing Docket No. 080187-EQ.

The standard offer contract filed in Docket No. 080501-EQ was approved by the Commission at the September 29, 2008 Agenda. PCS Phosphate – White Springs filed a protest on November 13, 2008 seeking a final resolution concerning, in their view, unreasonable non-price terms and conditions that continue to be reflected in PEF's standard offer contract.

III. STANDARD OFFER CONTRACTS, RULES AND TARIFFS

Q. Please briefly give an explanation of what a Standard Offer Contract is and the history of the development of Standard Offer Contracts.

A. Standard Offer Contracts were developed pursuant to the Public Utility Regulatory Policy Act ("PURPA"), which was passed by Congress in 1978. Utilities in Florida have had Standard Offer Contracts approved by the Florida Public Service Commission ("FPSC" or "Commission") in effect since 1984, offering the same contract terms to any and all suppliers, although different terms can be developed through negotiation.

Because the Standard Offer Contract is offered to all renewable suppliers, its terms must be broad enough to cover all possible circumstances. The particular contractual needs of a specific type of supplier, such as a solar supplier, may be

different than the contractual needs of another supplier, such as a biomass facility, but the Standard Offer Contract must be available to all suppliers regardless of the resource used. The fact that different types of suppliers may benefit from different terms is the reason that the terms and conditions in a Standard Offer Contract have to be broad-based and comprehensive.

Q. Can you also provide a brief history of the development of the rules governing Standard Offer Contracts for Renewable Generation?

A. The rules regarding Standard Offer Contracts have been in place since 1984. As the rules have evolved and changed over time, the Commission has given careful consideration to the development of contractual terms to balance the needs of suppliers and utility customers. Accordingly, the rules have been amended several times. Most recently, the Standard Offer Contract rules were amended in 2006 to specifically address renewable energy generation. All of the rule changes were made according to the rulemaking procedures in place at the time, and comments from all interested parties were solicited, heard and thoughtfully evaluated by the Commission.

Q. You mentioned a rule change in 2006 regarding renewable energy. What particular aspects of the Commission's rules promote renewable generation?

A. There are numerous provisions of the Commission's rules that promote renewable generation. They include:

- Removing the previous cap limiting Renewables to 80 MW or less.

- Requiring updated Standard Offer Contracts be filed by each utility each year by April 1.
- Requiring a separate Standard Offer Contract for each technology type identified in the utility's Ten Year Site Plan ("TYSP").
- Requiring that a Standard Offer Contract be continuously available to Renewables.
- Providing the Renewable the option to choose the term of the Standard Offer Contract between ten years and the economic life of the avoided unit.
- Allowing a portion of the energy payment under a Standard Offer Contract to be fixed.
- Removing subscription limits in the Standard Offer Contract.
- Requiring a provision in the Standard Offer Contract to reopen the contract in the event of changes in environmental and governmental regulations.
- Requiring that Renewable Energy Credits ("RECs") remain the exclusive property of the Renewable.
- Requiring prior approval by the Commission before equity adjustments for imputed debt can be made to a utility's avoided cost.
- Providing for dispute resolution between a Renewable and a utility.

Q. What changes did PEF make in its tariff to comply with the FPSC's 2006 rule revisions?

A. In order to comply with the rule changes and in response to comments received during recent contract negotiations with Renewables, numerous changes were made

to PEF's Standard Offer Contract. PEF's Standard Offer Contract now includes the following:

- The Standard Offer Contract is based on the next avoidable fossil fueled generating unit identified in PEF's TYSP, as required by Rule 25-17.250(1), F.A.C., which is currently a combined cycle unit.

- The Standard Offer Contract is available to both Renewables and QFs less than 100 kW, as provided by Rule 25-17.250(1), F.A.C.

- The Standard Offer Contract is offered on a continuous basis, as required by Section 366.91, F.S., and Rule 25-17.250(2), F.A.C.

- The Standard Offer Contract allows a Renewable or QF to choose any contract term from 10 years up to 25 years, which is the projected life of the avoided unit, as required by Section 366.91, F.S., and Rule 25-17.250(3), F.A.C.

- The Standard Offer Contract includes normal payments, early payments, levelized payments, and early levelized payments, as required by Rule 25-17.250(4) and (6), F.A.C.

- The Standard Offer Contract contains no preset subscription limits for the purchase of capacity and energy from Renewables, as required by Rule 25-17.260, F.A.C.

- The Standard Offer Contract contains a provision to reopen the contract based on changes resulting from new environmental or regulatory requirements that affect the utility's full avoided costs of the unit on which the contract is based, as required by Rule 25-17.270, F.A.C.

- The maximum number of capacity tests specified in the Standard Offer Contract is reduced from six times per year to two times per year.

Q. Other than the changes listed above, is the Standard Offer Contract substantially the same as previously-approved versions?

A. Yes. Although there were other changes made to PEF's 2007 Standard Offer Contract, in addition to those described above, including grammatical changes, capitalization of defined terms, renumbering of sections, and the like, the bulk of the Standard Offer Contract has remained unchanged since it was last reviewed and approved by the Commission in 2003.

In 2008, additional changes were made to the Standard Offer Contract based upon suggestions from PCS Phosphate. These changes are:

- Specifying a minimum of 10 days notice before a Committed Capacity Test is required.
- Specifying a minimum of 7 business days notice before an examination of the books and records of the counterparty. Such inspections also must be performed on a normal business day. The right of inspection of books and records has been changed to apply to both parties.
- The Force Majeure definition has been changed to exclude PEF's loss of markets, PEF's inability to use or resell the capacity and energy, or the renewable's inability to sell the capacity and energy at a greater price. The need to "conclusively" demonstrate that the event was not foreseeable has been changed to "reasonably" demonstrate.

- Allow the renewable supplier's discretion as to the form and substance of documentation for some of the Conditions Precedent.
- Changed the requirement for planned outage notices from a detailed plan to a good faith estimate.
- Changed the assignment language from "PEF's sole discretion" to "may not be unreasonably withheld".

Q. One of the requirements of Rule 25-17.250, F.A.C., is that the utility make separate Standard Offer Contracts available for each type fossil-fueled generating unit in that utility's TYSP. Has PEF done that?

A. Yes. PEF's 2008 TYSP contained four proposed generating units. Of those four units, the Bartow Repowering was already under construction, making it ineligible for a Standard Offer Contract. Two other proposed generating units are nuclear facilities, and they are also ineligible for a Standard Offer Contract. The remaining eligible generating unit is a combined cycle unit. In compliance with Commission rule, PEF's filed a Standard Offer Contract is based on that unit. Subsequent to the that filing, PEF issued a RPF for its combined cycle unit and PEF asked for a rule waiver to retain that combined cycle unit as the avoided unit until another qualifying unit appears in PEF's TYSP.

Q. Has the FPSC approved PEF's TYSP on which the Standard Offer Contracts in this case are based?

A. Yes. PEF's TYSP was approved by the Commission on December 1, 2008.

IV. SPECIFIC PROVISIONS OF THE STANDARD OFFER CONTRACT

Payments

Q. How are "avoided costs" derived for both energy and capacity payments in PEF's Standard Offer Contract?

A. The "avoided costs" for capacity are calculated using the data from the TYSP and in accordance with the formula in Rule 25-17.0832(6), F.A.C. The formula in Rule 25-17.0832(6), F.A.C., utilizes the value of deferral method to determine the capacity cost. Simply stated, the value of deferral method determines the savings produced by deferring the construction of generation.

The avoided energy cost is determined in accordance with Rule 25-17.0832(5), F.A.C., which states that the avoided energy cost is determined using the heat rate of the avoided unit when the avoided unit would have operated; and, when the avoided unit would not have operated, the avoided energy cost is equal to the as-available rate. For purposes of the Standard Offer Contract, it is assumed that the avoided unit would operate in any hour when the as-available rate is greater than the energy cost calculated using the heat rate of the avoided unit. Therefore, the energy payment rate is determined hourly by comparing the as-available rate to the energy cost using the avoided unit heat rate and then using the lower of those two values. This methodology to determine the hourly rate has been used in Standard Offer Contracts for a number of years.

The as-available energy cost is PEF's marginal cost of energy before the sale of interchange energy and is calculated in accordance with Rule 25-17.0825, F.A.C., and PEF's Rate Schedule COG-1.

Q. Does PEF's Standard Offer Contract include a provision requiring a renewable energy generator to maintain a 69% or greater capacity factor in order to qualify for a capacity payment and a 89% capacity factor or greater in order to qualify for the full capacity payment?

A. Yes.

Q. Why is it appropriate to require a renewable generator to maintain a 89% or greater capacity factor to qualify for the full capacity payment?

A. It is appropriate to require a Renewable to maintain a 89% capacity factor to qualify for the full capacity payment because 89% is the projected availability of the avoided unit. Under the Standard Offer Contract, the supplier has the right to deliver to PEF whenever it chooses. To ensure that PEF's customers receive the capacity that they are paying for and have contracted to receive, the Standard Offer Contract must require the supplier to deliver to PEF at the same capacity factor during the on-peak hours (89%) that the avoided unit would deliver. Said another way, the Standard Offer Contract requires the supplier to be available 89% of the on-peak hours.

Q. Why is the specified capacity factor included in PEF's Standard Offer Contract?

A. The specified capacity factor ensures that PEF's customers are receiving equivalent capacity compared to the avoided unit and are therefore receiving what they are paying for. In addition, the specified capacity factor ensures that PEF can count on the Standard Offer Contract to meet its capacity and reserve margin requirements.

Right of Inspection

Q. PEF's Standard Offer Contract includes a provision granting PEF a right to inspect a renewable generator's facility and books. Why is this provision included?

A. A right to inspection provision is included because it assures PEF has the ability to inspect a facility and/or its books to determine a supplier's compliance with the terms of the Standard Offer Contract, if PEF has reason to believe that the supplier may not be complying with the contract. For instance, if a renewable supplier has contracted to use biomass as its fuel to qualify as a renewable generator, but PEF has reason to believe that it may be using only natural gas, then an inspection and/or review of the facility and its books would verify the type of fuel that was being consumed. The intention of this provision is not for PEF to be a nuisance or hindrance to a facility by repeatedly and unreasonably inspecting a facility and/or its books, but for PEF to have the ability to inspect when necessary. This has been a requirement in previous versions of PEF's approved Standard Offer Contract.

Conditions Precedent

Q. Does PEF's Standard Offer Contract include a provision outlining conditions precedent for a renewable energy generator to meet?

A. Yes.

Q. Why is this provision included in PEF's Standard Offer Contract?

A. A provision regarding conditions precedent is included in the Standard Offer Contract to provide protection to PEF's customers. Most facilities that enter into a QF or renewable contract with PEF are new facilities. The conditions precedent section provides milestones that the supplier must meet to ensure that the project continues to move forward and that the facility will be on-line when expected. In other words, the conditions precedent section gives PEF assurances that a project will stay on course for successful completion, and it gives PEF advance notice that it may need to make other plans to secure replacement capacity to meet customer demand if a counterparty cannot comply with those conditions.

Renewable Energy Credits

Q. Does PEF's Standard Offer Contract include a provision specifying that PEF has the right of first refusal to purchase any RECs?

A. Yes, as have previous versions of PEF's approved Standard Offer Contract.

Q. Could a renewable generator negotiate a different arrangement regarding RECs?

A. Yes. As with most provisions of the Standard Offer Contract, the supplier has the right to negotiate different terms than those contained in the Standard Offer Contract. PEF has done so a number of times, most recently in its contracts with the Florida Biomass Group, Biomass Gas and Electric and Horizon Energy.

Use of Interruptible Standby Service for Start-up

Q. PEF's Standard Offer Contract includes a provision restricting the use of a renewable energy generator's ability to use interruptible stand-by service tariffs. Why is this provision included?

A. This provision is part of PEF's Standard Offer Contract to ensure that the supplier's generation is available when it is needed most. If the generating unit was off-line when PEF interrupted its interruptible customers, then the generating unit could not return to service because it would not have power from PEF. The standby service purchased must be firm stand-by service to assure there is power available to start the unit. This has been a requirement in previously-approved versions of PEF's Standard Offer Contract.

Committed Capacity Test Results

Q. Does PEF's Standard Offer Contract include a provision requiring that a renewable energy generator demonstrate that it can deliver at least 100% of Committed Capacity?

A. Yes.

Q. Why is this provision included in PEF's Standard Offer Contract?

A. This provision is included simply to ensure that PEF's customers receive the capacity that they have contracted to purchase. If a contract is for 100 MW, but the facility can only reliably deliver 90 MW, then PEF's customers are being short-changed. This provision has been included in previously-approved versions of PEF's Standard Offer Contract.

Test Period

Q. Does PEF's Standard Offer Contract include a provision setting the test period to establish a facility's capacity?

A. Yes.

Q. Why is this provision part of PEF's Standard Offer Contract?

A. This provision is included to ensure that PEF's customers receive all the capacity that they have contracted to purchase. Under the provisions of the Standard Offer Contract, the supplier selects a time when it will perform a Committed Capacity Test. During that period, the supplier is to run the facility consistent with industry standards without exceeding its design parameters, and supplying the normal station service load. The capacity of the facility is the minimum hourly net output of the facility. Although this has been a requirement in previously-approved versions of PEF's Standard Offer Contract, as I have previously explained, PEF has lowered the number of tests PEF can request in a year from six to two, in response to suggestions from Renewables.

Detailed Annual Plan

Q. PEF's Standard Offer Contract includes a provision requiring that a renewable energy facility prepare a detailed plan of the electricity to be generated and delivered to PEF. Why is this provision included?

A. The Standard Offer Contract requires the supplier to provide an estimate of its deliveries to PEF. These estimates are required so that PEF can coordinate the planned outages of the supplier with the outages of its own facilities and the other facilities under contract with PEF. This has been a requirement in previously-approved versions of PEF's Standard Offer Contract.

Total Electrical Output

Q. PEF's Standard Offer Contract includes a provision requiring a renewable energy facility to provide its "total electrical output" to PEF. Why is this provision included?

A. In the event the supplier is selling its output to PEF and another party, contract provisions to accommodate partial deliveries to both parties would need to be negotiated. These types of negotiations are unique to each facility, exist with multiple purchasers, and are outside of the scope of the Standard Offer Contract. Such provisions would be handled through a negotiated contract. This provision requiring "total electric output" has been included in previously-approved versions of PEF's Standard Offer Contract.

Operating Personnel

Q. Does PEF's Standard Offer Contract include a provision requiring that a renewable energy facility have operating personnel on duty 24 hours a day, seven days a week?

A. Yes.

Q. Why is this provision included in PEF's Standard Offer Contract?

A. The Standard Offer Contract is a firm contract, so the facility needs to have operating personnel on duty 24 hours a day, seven days a week to comply with the requests of PEF's generation dispatcher. Personnel must be available to respond to requests to reduce output or alter the power factor to maintain system reliability. In rare cases, the unit may need to be taken off-line to prevent overloads to the transmission system, or be brought on-line, if possible, to address local or system-wide reliability issues. A similar requirement has been included in previously-approved versions of PEF's Standard Offer Contract.

Three Day Fuel Supply

Q. Does PEF's Standard Offer Contract include a provision requiring a three day supply of fuel?

A. Yes.

Q. Why is this provision part of PEF's Standard Offer Contract?

A. This provision is included because it helps to ensure that during an extreme operating event, such as a cold snap or after a natural disaster such as a hurricane, the supplier will be able to continue operating for 72 hours. Just as with other generating plants, Renewables should be required to maintain a fuel inventory to assure availability of the unit if for some reason the fuel supply is interrupted. Accordingly, this requirement has been included in previously-approved versions of PEF's Standard Offer Contract.

Q. What if a facility does not store its fuel on site, such as wind or solar power?

A. If a facility uses a fuel that cannot be stored, such as wind, then this provision obviously would not apply. If such a facility wished to utilize PEF's Standard Offer Contract with the exception of this provision, the simple solution would be to simply delete this section and enter into an otherwise identical negotiated contract with PEF.

Performance Security

Q. PEF's Standard Offer Contract includes a provision setting performance security. Why is this provision included?

A. Performance securities are typically found in all firm energy and capacity contracts and have been included in approved Standard Offer Contracts for many years. They are used to help ensure that if a supplier can no longer meet its obligations under the contract, then the purchaser has funds available to cover a portion of the replacement cost of energy. The performance security typically does not cover all the costs of the replacement energy, but it does offset some of the costs that are otherwise borne by

PEF's customers. These provisions are important to appropriately shift some of the risk of default away from PEF's customers and to the party that is not meeting its obligations under a purchase power contract.

Termination Fee and Insurance

Q. Does PEF's Standard Offer Contract include provisions setting a termination fee and requiring insurance?

A. Yes.

Q. Why are these provisions included in PEF's Standard Offer Contract?

A. Both of these provisions are required by Commission rule. The termination fee is required by Rule 25-17.0832(4)(e)10, F.A.C. The termination fee is designed to ensure the repayment of capacity payments to the extent that the capacity payments made to the supplier exceed the capacity that has been delivered. For example, early capacity payments, as defined in applicable rules, are capacity payments made before the in-service date of the avoided unit. In this example, those payments made before the avoided unit's in-service date must be secured to ensure that if the supplier does not operate for the term of the contract, PEF's customers are refunded the payments for the capacity that they did not receive. A termination fee has always been a part of the Standard Offer Contract. The insurance provision is required by Rule 25-17.087(5)(c), F.A.C., and helps to protect the utility and its customers from liability claims resulting from the operations of the supplier.

Default

Q. PEF's Standard Offer Contract includes a provision listing events of default. Can you explain the purpose of this provision?

A. Like all contracts for capacity and energy, the Standard Offer Contract contains a listing of events of default so that the parties know the circumstances under which the contract can be terminated for non-performance. These provisions are basic to any purchase power contract that I have ever seen and have been a requirement in previously-approved versions of PEF's Standard Offer Contract.

Force Majeure

Q. Does PEF's Standard Offer Contract include a provision setting forth *force majeure* terms?

A. Yes.

Q. Why is this provision included in PEF's Standard Offer Contract?

A. *Force Majeure* sections have always been included in PEF's Standard Offer Contracts and every other power purchase agreement that I have seen. These provisions define the responsibilities of the parties in the event that something outside the control of the parties makes one party unable to perform its obligations under the contract. The *force majeure* language is designed to limit damages for such an event outside the control of the parties but also to limit the financial exposure of PEF's customers.

Representations and Warranties

Q. Does PEF's Standard Offer Contract include a provision requiring the renewable energy generator make representations, warranties or covenants?

A. Yes.

Q. Why is this provision a part of PEF's Standard Offer Contract?

A. This provision is a standard contract term that helps ensure that the supplier entering into the Standard Offer Contract can do so legally, is responsible for its compliance with environmental laws, has any governmental approvals required, and so forth. These kinds of provisions have been contained in previously-approved versions of PEF's Standard Offer Contract.

Assignment

Q. PEF's Standard Offer Contract includes a provision prohibiting assignment without approval from PEF. Why is this provision included?

A. A provision prohibiting assignment without approval is included because it is not uncommon for a contract to be sold and assigned, possibly numerous times. The requirement for PEF's approval of any such assignments ensures that PEF can assess the purchasing party's ability to perform under the contract. This, of course, allows PEF to mitigate some degree of risk that would otherwise be borne by its customers. This provision has been a part of previously-approved versions of PEF's Standard Offer Contract.

Record Retention

Q. Does PEF's Standard Offer Contract include a provision specifying that the renewable energy facility must retain its performance records for five years?

A. Yes.

Q. Why is this provision part of PEF's Standard Offer Contract?

A. This provision is included so that in the event that a dispute arises regarding the operation of the supplier, the supplier's records will be available for five years. PEF retains these records for a minimum of five years as well. Record retention has been a requirement in previously-approved versions of PEF's Standard Offer Contract and has allowed PEF to successfully resolve would-be disputes with counterparties in the past.

V. FINANCING

Q. Does PEF's Standard Offer Contract permit the financing of renewable energy projects?

A. Yes. Most renewable energy projects require financing, and PEF's current Standard Offer Contract does more than ever to help projects obtain financing. Typically, the issue with financing is the certainty of the payment stream to the power generator. To address this issue, the capacity payments in the current Standard Offer Contract can be front-end loaded to help with financing and a portion of the energy payment can be fixed as well.

Q. Have any generators signed a Standard Offer Contract with PEF in the past three years?

A. No, but this is not surprising. Given the fact that power producers almost always have unique projects, circumstances, and needs, some modifications, even if minor in nature, usually have to be made to PEF's Standard Offer Contract, which will result in a negotiated contract. In 2008, PEF entered into contract with Vision Power that contains only minimal changes from the Standard Offer Contract but is still considered a negotiated contract.

Q. Have any generators signed significant negotiated contracts with PEF in the past three years?

A. Yes. In 2006, PEF entered into a negotiated contract for 116.6 MW with the Florida Biomass Energy Group LLC, in 2007 PEF entered into two negotiated contracts with Biomass Gas & Electric for 75 MW each, in 2008 PEF entered into a contract with Horizon energy for up to 60 MW and in 2008 PEF entered into a contract with Vision Power for 40 MW. These contracts show that while PEF's Standard Offer Contract provides a good baseline of acceptable terms and conditions for energy producers to work with, negotiated contracts best address the unique concerns of renewable suppliers. Thus, the combination of PEF's Standard Offer Contract and the ability for energy producers to negotiate contracts against that Standard Offer Contract advances and promotes the use of renewable energy in PEF's service territory.

VI. PCS PHOSPHATE'S CONCERNS OF PEF's STANDARD OFFER CONTRACT

Q. Have you reviewed the testimony and exhibits filed in Docket No. 070235-EQ by Martin Marz, the witness testifying for White Springs Agricultural Chemicals, Inc., d/b/a/ PCS Phosphate – White Springs ("PCS ")?

A. Yes, I have. While PEF does not know for sure what challenges PCS will raise in this docket, it is logical to assume that PCS will raise many, if not all of the issues they raised in Docket No. 070235-EQ. Therefore, I have addressed those challenges in my testimony in this docket below.

Q. Did you agree with Mr. Marz's prior testimony?

A. No, I do not. The theme of Mr. Marz's prior testimony that PEF's Standard Offer Contract does not encourage renewable energy development and his characterization of PEF's Standard Offer Contract as an "industry-type" contract that two parties can choose to utilize if it fits their needs are simply not true, as explained in detail below. PEF's Standard Offer Contracts are contracts that are mandated and pre-approved by the Public Service Commission ("PSC"). PEF is required to accept a signed Standard Offer Contract from a counterparty without any negotiation, unless it can be shown that the supplier is not financially or technically viable; or, it is unlikely that the committed capacity and energy would be available by the date specified in the Standard Offer Contract. In contrast, an industry-type contract, as suggested by Mr. Marz, provides a forum for mutual negotiation where two parties can agree upon a contract that fits their needs. Either party can decide that part of the industry-type contract may not work for them and negotiate changes Mr. Marz's suggestion that PEF's Standard Offer Contract should be a "one size fits all" document without

regard for the fact that PEF must accept it without negotiation is both impractical and unrealistic.

Q. Do you agree with Mr. Marz prior assertion that PEF's Standard Offer Contract does not encourage the development of renewable energy?

A. No, I do not. Mr. Marz has a fundamental misconception regarding the Standard Offer Contract. It is not a form contract with fill-in-the-blanks. Instead, it is a firm offer that PEF and its customers are obligated to make available, to enter into without negotiations, and to make payments under. As such, it is necessary that the Standard Offer Contract – both as a whole and within its specific provisions – be prepared in such a way as to protect PEF's customers. With this understanding, and acknowledging that the PSC has recognized these protections as appropriate for PEF's customers, the provisions of the Standard Offer Contract are reasonable.

Further, because the Standard Offer Contract is offered to all renewable producers with a broad range of sizes, fuel types, types of generation, geographical location, and performance characteristics, its terms must be broad enough to cover all possible circumstances; thus, some of its provisions may be inappropriate for a particular project or type of supplier and may require revision to meet a specific supplier's needs. PEF's Standard Offer Contract provides a good baseline of acceptable terms and conditions for energy producers to work with, and, if necessary, to revise in order to address the unique concerns of renewable suppliers. In PEF's recent experiences with Florida Biomass Group, LLC, Biomass Gas & Electric and Horizon Energy, changes to the Standard Offer Contract were successfully negotiated

to accommodate the unique nature of these projects. In addition, the Commission recently approved the Vision Power contract which contained minimal changes from the Standard Offer Contract. In summary, Mr. Marz's theoretical contentions that PEF's Standard Offer Contract somehow inhibits renewable energy contracts are belied by actual fact and experience.

PRICE TERMS

Q. Explain how PCS Phosphate is mistaken in previously alleging that PEF's required availability factor of 71% is inconsistent with the avoided unit and with the operation of PEF's existing combined cycle units.

A. The mistake can be seen in Mr. Marz's understanding of the purpose of a capacity payment. In his prior testimony, Mr. Marz states that in his understanding, a capacity payment is "simply a payment made to reserve the right to call upon a particular asset to provide the payer with service when required." That is not correct with respect to this Standard Offer Contract; nor is it correct with respect to most qualifying facilities ("QFs") or renewable energy contracts in Florida. The Standard Offer Contract can be characterized as a "must-take" contract. That is, PEF does not have the right to call on the capacity in a Standard Offer Contract when PEF chooses. Rather, PEF "must-take" and pay for energy and capacity whenever the renewable facility is generating. But, in order to be eligible for capacity payments, the renewable generator must be available to provide generating capacity in a manner similar to the capacity that would be available from the avoided unit. The availability factor of the

2007 avoided unit was 91% of all hours and so that is the capacity factor required for the renewable generator to receive the full capacity payment. The capacity payment is reduced if the availability of the renewable generator is less than 91% but at least 71%. If the capacity factor is less than 71%, then the renewable supplier is not really providing the capacity necessary to avoid the unit and therefore should not receive a capacity payment.

Mr. Marz's comment that the availability factors are unreasonable in light of the capacity factors of PEF's existing combined cycle units is also misplaced. The generation in PEF's fleet is dispatchable, whereas the generation provided under a Standard Offer Contract is not. PEF has the ability to start or stop its various generating units depending on PEF's system economics and reliability criteria. This "dispatchability" accounts for the weighted average capacity factor of the existing combined cycle units being less than 91% and for the capacity factor of the avoided unit being less than 91%. The avoided unit will be available for dispatch 91% of all hours, but for economic and reliability reasons maybe dispatched less often. PEF could have chosen to require the renewable supplier to have the same capacity factor as the avoided unit, but the renewable supplier would have been required to be dispatchable. That is, the renewable energy supplier would have been required to start or stop generating depending upon PEF's system economics and reliability criteria. Furthermore, once the renewable energy supplier was dispatched on, it may have been required to vary its output to match PEF's changing load. PEF felt that it would be much easier for the renewable energy supplier to simply operate whenever it could. This can seen by the fact that PEF has entered into well over twenty (20) QF or

renewable contracts since the late 1980's and all have required capacity factors based upon the projected availability of the avoided unit, and nearly all have required capacity factors between 80% and 93%. This includes the recent contracts with Florida Biomass Group LLC, Biomass Gas & Electric, Horizon Energy and Vision Power. It should be noted that the 2008 Standard Offer Contract requires a capacity of 89% in accordance to the currently anticipated availability of the avoided combined cycle unit.

Q. Do you have any comments regarding PCS Phosphate's position that a renewable energy producer should be entitled to a full capacity payment if it achieves an availability factor no less than the availability factor of the avoided unit?

A. Yes. I agree that a renewable energy producer should be entitled to a full capacity payment when it achieves an availability factor equivalent to that of the avoided unit. In 2007, the avoided unit's projected availability is 91%, so since the Standard Offer Contract is not dispatchable and it is therefore presumed that the renewable energy supplier will deliver to PEF whenever it is available to operate, this is the level a renewable energy producer must achieve to receive a full capacity payment. This presumption that the renewable energy supplier will deliver to PEF whenever it is able to operate is meant to encourage renewables by eliminating the need to dispatch their output thereby reducing their operational requirements.

NON-PRICE TERMS

A. Renewable Energy Credits ("RECs")

Q. Mr. Marz previously alleged that PEF's Standard Offer Contract provision 6.2 specifying that PEF has the right of first refusal to purchase RECs and setting a price floor is unreasonable and should be deleted. Do you agree?

A. No, I do not. This provision simply allows PEF the right to purchase the RECs and to pay what anyone else would pay. It should be immaterial to the renewable generator to whom the RECs are sold if a fair market price is paid by the purchaser. Rule 25-17.280, F.A.C., does not preclude a Standard Offer Contract from containing a provision granting a utility the right of first refusal. In fact, at the January 9, 2007, Agenda Conference at which the rule was adopted, PSC staff stated that utilities could include a right of first refusal provision in the Standard Offer Contract. Further, it just seems reasonable that if PEF's ratepayers are paying a renewable supplier for its energy and capacity, then they should also have the right to purchase renewable attributes at a market price rather than possibly being forced to purchase renewable attributes elsewhere, possibly out of state. I would note Section 6.2, found on Sheet No. 9.417 of the Standard Offer Contract, requires PEF to respond to a bona fide offer for the purchase of the RECs within 30 days so if PEF does not choose to purchase the RECs, the renewable generator or QF can sell to another party. Finally, the renewable energy producer can negotiate different terms than those contained in the Standard Offer Contract. PEF has done so a number of times, most recently in its contracts with the Florida Biomass Group, Biomass Gas & Electric, Horizon Energy.

B. Capacity Test Periods

Q. Please explain how PCS Phosphate is in error in alleging that the capacity testing provisions are predicated upon a combined cycle unit and ignore the distinctive features and requirements of renewable energy producers.

A. In order for PEF to avoid constructing a generating facility, it has to know that the replacement capacity can reliably be expected to replace that generating facility. A requirement that the replacement capacity be able to operate reliably over a 24 hour period is a reasonable test and is actually less than the reliability testing that would be required of the avoided unit. If a supplier cannot meet this requirement then it is not avoiding a combined cycle unit and should not be paid as if it was avoiding the unit.

Q. Mr. Marz previously suggested that Section 8.2 be revised to make the Committed Capacity Test results based on the manufacturer's recommendations for testing the facility or other agreed-upon procedures, to require results be adjusted to reference environmental conditions and to delete the requirement for a 24 consecutive hour test period and uses PEF's agreement with Vandolah as an example. How do you respond?

A. Again, Mr. Marz misunderstands the purpose of the Standard Offer Contract and the basis on which capacity payments are made. The Standard Offer is a firm offer that PEF and its customers are obligated to take without revision or negotiation and which, accordingly, must be constituted to protected PEF's customers. The Standard Offer Contract "avoids" a combined cycle unit and the capacity to be provided under

the contract should be able to operate in a similar manner as the combined cycle unit would.

Mr. Marz erroneously makes comparisons to "tolling agreements" such as PEF's Vandolah Agreement. In a tolling agreement, the purchaser provides the fuel and dispatches the facility to operate when needed for system reliability or when it is economically justified. The Vandolah Agreement is fundamentally a different type of agreement that was negotiated with compromises on many terms. It is unreasonable to pick and choose terms from the Vandolah Agreement and conclude that PEF should be amenable to these same terms in all Standard Offer Contracts.

Q. Please comment on Mr. Marz's previously suggested revisions to Section 7.4 to give 10 business days notice of a capacity test, that the test be done only once per year, and that PEF pay for the test energy generated during the test.

A. The 10 day notice seems reasonable and has been included in the current Standard Offer Contract. Regarding the number of tests per year, it should be noted that PEF has already lowered the requirement from six times per year to two times per year. Two tests per year is reasonable and necessary. If PEF has some reason to believe that a supplier cannot reliably delivery energy, PEF must not be required to wait up to 12 more months to ask for a test, which is necessary to ensure that PEF's ratepayers are not paying for capacity that is not being provided. Finally, as seen on Sheet No. 9.456 of the Standard Offer Contract, PEF would already be obligated to pay for the test energy generated during the test since the Standard Offer Contract provides for

energy payments for any energy received from the supplier before or after the Avoided Unit In-Service Date.

C. Right of Inspection

Q. Mr. Marz's prior testimony alleges that the right of inspection provision is not limited and that inspection could occur at any time, day or night, and that notice is needed so that appropriate personnel can escort inspectors for safety and liability reasons. Exhibit MJM-1 indicates that the provision should be deleted and replaced with a new paragraph in Section 20. Explain the purpose behind this provision and whether you agree with revising it.

A. While I do not agree with deleting the provision on page 15 of Exhibit MJM-1 and replacing it wholesale with the suggested paragraph, some revision of the existing provision, incorporating some elements of Mr. Marz's suggested language on page 41 of Exhibit MJM-1 is acceptable. The intention of this provision is not and has never been for PEF to be a nuisance or hindrance to a facility by repeatedly and unreasonably inspecting a facility and/or its books, or to inspect in the middle of the night or during other periods when a renewable energy producer representative would be unavailable. The intention is simply for PEF to have the ability to inspect when necessary. Accordingly, a revision to allow PEF inspection of a renewable energy producer's books and/or facility upon seven (7) days notice and during normal business hours is now included in PEF's current Standard Offer Contract.

GENERAL TERMS AND CONDITIONS

Q. On page 18 of Mr. Marz's previous testimony, he argues that many provisions of the Standard Offer Contract are "one-sided," giving PEF a particular right without providing the renewable generator with a reciprocal right or imposing an obligation on the provider without imposing a reciprocal obligation on PEF. How do you respond to this argument?

A. Mr. Marz himself acknowledges that there are times when it is appropriate to provide one party with a right or obligation and not the other, and the purpose of the Standard Offer Contract and the circumstances under which it is made constitutes one of those times. First, this is a purchase contract under which the supplier must build, operate and interconnect a generating facility, while the buyer pays for the delivered capacity and energy. Moreover, the utility is subject to the PSC's regulatory authority and is required by law and regulations to purchase this capacity and energy pursuant to the contract.

Unlike the utility, the renewable generator is not subject to the pervasive jurisdiction of the PSC, so performance under the contract must be ensured by contract provisions such as completion security, conditions precedent, creditworthiness, and representations and warranties.

Finally, Mr. Marz's many references to the Edison Electric Institute Master Power Purchase and Sale Agreement, the North American Energy Standards Board Base Contract for the Sale and Purchase of Natural Gas and the International Swaps and Derivatives Association's ISDA Master Agreement are inapplicable. As explained previously, these are not examples of firm offer contracts that must be

accepted by PEF without further negotiations. Therefore, the terms contained in these agreements are irrelevant.

A. Performance Security

Q. Mr. Marz suggested that Section 11.1 of the Standard Offer Contract, Completion Performance Security, be revised to require collateral upon satisfaction of the Conditions Precedent and until completion of the facility and demonstration that it can deliver the amount of capacity and energy specified. What is currently required and do you agree with this revision?

A. The Standard Offer Contract requires the security be obtained simultaneous with the execution of the Standard Offer Contract and maintained throughout the term of the contract. Performance securities are needed throughout the term of the contract, beginning at its execution, to help ensure that if a supplier can no longer meet its obligations under the contract, then the utility has funds available to cover a portion of the replacement cost of energy needed to serve PEF customers. Without these provisions, the entire risk of default would be borne by PEF's customers, rather than by the party that is not meeting its obligations under a purchase power contract. Therefore, I do not agree with this revision.

Q. Please explain what would happen if, as PCS Phosphate has suggested, the performance security was "associated with the expected level of loss."

A. Typically, the required performance security amount does not cover all the costs of the replacement energy, but merely offsets some of the costs that are otherwise borne

by PEF's customers. If the performance security truly covered the expected level of loss, as PCS Phosphate suggests, the amounts specified in PEF's Standard Offer Contract would have to be significantly increased. The magnitude of the required increase could be very large. For instance, if a renewable supplier signed a Standard Offer Contract for 100 MW with a 25 year term and then defaulted in contract-year 4, PEF would have to purchase and/or build 100 MW of capacity to provide energy for the remaining 21 years to replace the energy not delivered by the renewable supplier. Further, even if only the replacement cost is considered until another facility could be built, the security amount would have to be much larger.

B. Creditworthiness, Default, Representations and Warranties

Q. Mr. Marz previously suggested adding a new section entitled "creditworthiness" after Section 11, which would require both parties to maintain acceptable creditworthiness or provide performance assurance. Is this new section desirable?

A. No, this new section is neither necessary nor desirable. Creditworthiness is relevant to the issue of a party's ability to perform under the contract, which for PEF means the ability to pay for the capacity and energy delivered. PEF's ability to pay is addressed through the fact that Standard Offer Contract is pre-approved by the PSC and therefore eligible for cost recovery from PEF customers through a cost recovery clause, making the creditworthiness of PEF irrelevant as it relates to Standard Offer Contracts. Further, as a regulated company, the PSC has oversight over PEF's financial condition, which is not true for renewable generators. The suggested

provision is undesirable because it implies the need for further performance assurances that are in fact inferior to those already existing.

Q. In his previous testimony, Mr. Marz alleged that PEF's default provisions in Section 14 are one-sided and suggests rewriting them to impose requirements upon PEF (in 14.1), to eliminate some with respect to renewable energy producers (in 14.2), and to make some apply to both parties (15.11-15.13). How do you respond to each of these changes?

A. Once again, Mr. Marz fails to recognize that PEF's actions and activities are subject to the oversight of the PSC and the renewable generators are not. This results in some logical asymmetry in the provisions of the Standard Offer Contract. Regarding default provisions for PEF, these are not required because the PSC has already approved this contract so, as explained previously, there are no issues about payment or guarantees for payment. Since the default provisions are unnecessary, the changes to Sections 15.11 through 15.13 are not needed. I will address the elimination of the requirements for suppliers one-by-one from Mr. Marz's Exhibit MJM-1, Page 29.

- Sections 14.2 (a), (h) and (j) - Remain unchanged from the previous language.
- Section 14.2 (b) - The added language regarding *force majeure* or waiver is not necessary because the Capacity Delivery Date is the date that the supplier begins receiving capacity payments, not a deadline. The deletion of the 71% (now 69%) would mean that a supplier could deliver to PEF at a single digit capacity factor for years and PEF's ratepayers would still be obligated to make capacity payments under this contract. To be clear, the 71% capacity

factor requirement is a 12-month rolling calculation; in order to drop below 71%, a supplier would have been off-line for a total of 106 days out of the last 365.

- Section 14.2 (c) - The inclusion of this as an Event of Default demonstrates the importance of this provision to PEF. In the event of a hurricane, for instance, there may not be any way to deliver fuel for a few days. This provision ensures that PEF's ratepayers have capacity available in the event of such a situation.
- Sections 14.2 (d), (e), (f), (i), and (k) - These provisions are included elsewhere in Mr. Marz's marked-up Standard Offer Contract. The other locations for these provisions are unnecessary and these provisions should remain in this section.
- Section 14.2 (g) - This provision states that the supplier must get its permits by the Completed Permits Date. If the supplier cannot obtain its permits then it will not be able to make deliveries to PEF.

Q. What is your response to Mr. Marz's previous suggestion of rewriting Section 14 to consolidate those provisions within Section 14 that relate to the obligation of a renewable energy producer to meet the avoided unit in-service date?

A. Conceptually, I do not oppose simply moving existing language within Section 14, if doing so would provide clarity to renewable energy producers. However, I believe they are appropriately placed in the current contract.

Q. PCS Phosphate suggested revising Section 12.1.4 to read that upon termination arising from default on the part of the renewable energy producer, PEF shall be entitled to retain only such portion of the termination fee sufficient to cover any liability arising from early payments. Do you agree with the suggested change?

A. The suggested change is not needed. In PEF's Standard Offer Contract, the Termination Fee already only covers the liability arising from early payments in accordance with Rule 25-17.0832(4)(e)10, F.A.C.

Q. Do you agree with Mr. Marz that the representations and warranties in the Standard Offer Contract should be revised so each party would be expected to represent and warrant certain items?

A. No, I do not. Again, as explained previously, because a Standard Offer Contract has been pre-approved by the PSC and because PEF is subject to the PSC's oversight, there is no need for the reciprocal changes to the representations and warranties that Mr. Marz suggests. Also, it is again important to keep in mind that PEF must accept the Standard Offer Contract without negotiation, so it is not unusual or unfair to have certain provisions that only apply to the renewable energy producer.

C. Assignment

Q. Mr. Marz's alleged previously that the assignment provision in Section 20.4 is one-sided and should be revised to permit assignment by either party with prior written consent, with certain exceptions. How do you respond?

A. Conceptually, PEF does not object to the changes in the assignment provision proposed by Mr. Marz and has changed its current Standard Offer Contract to incorporate these changes.

D. *Force Majeure*

Q. Do you have any comments regarding Mr. Marz's prior testimony that the *force majeure* provisions in Section 18 do not correspond to what is found in the existing master agreements or that they put a burden on the renewable energy producer while giving PEF discretion?

A. Yes. Again, because a Standard Offer Contract has been pre-approved by the PSC, there is no need for the reciprocal changes to the *force majeure* language that Mr. Marz suggests. As to the changes Mr. Marz suggests regarding PEF's loss of markets, PEF's economic use, or the renewable supplier's ability to sell at a higher price, while I do not think these are necessary or significant, PEF has no objection to incorporating these changes into the Standard Offer Contract. Similarly, because a Standard Offer Contract has been pre-approved by the PSC, there is no need for the reciprocal changes suggested by Mr. Marz, but PEF is willing to agree to these changes. Mr. Marz also suggests that the standard of "conclusively demonstrate" should be changed to "reasonably demonstrate." Again, these changes are acceptable to PEF and are included in the current Standard Offer Contract.

E. Conditions Precedent

Q. Mr. Marz has suggested several revisions to Section 5 relating to Conditions Precedent. Please respond.

A. I will respond to each of the suggested changes:

- Section 5(a) – The revisions making the conditions precedent provisions apply to both parties are unnecessary. As explained previously, PCS Phosphate fails to recognize that PEF's actions and activities are subject to the PSC's oversight and the renewable generators are not, resulting in some asymmetry in the provisions of the Standard Offer Contract.
- Sections 5(a)(i), (ii), (iii) and (iv) – Mr. Marz suggests that the form and substance in which information is provided be at the renewable generator's sole discretion. PEF does not object to this language as long as the provision that the renewable supplier has to certify that the conditions are met remains intact. This change has been made in the current Standard Offer Contract.
- Section 5(v) – PEF does not agree with deleting the requirement that a renewable generator obtain insurance as required by Section 17. This is further explained below.
- Section 5(a)(vi) - Once again, because a Standard Offer Contract has been pre-approved by the PSC and PEF is subject to the oversight of the PSC, there is no need for the delivery of constitutional documents and corporate resolutions from PEF that Mr. Marz suggests.
- Sections 5(a)(vii) – This section, as well as the last paragraph of Section 2, require the supplier to obtain QF status from the PSC and to maintain that status throughout the term of the Standard Offer Contract. These provisions are

reasonable because the Standard Offer Contract is only available to QFs or renewables that can be certified as a QF by the PSC. If a supplier cannot meet these requirements then another type of contract would be more appropriate.

- Section 5(b) – As explained above, the revisions making the conditions precedent apply to both parties are unnecessary.
- Section 5(c) – As explained above, the revisions making the conditions precedent apply to both parties are unnecessary. PEF does not object to the suggested change to allow termination of the contract with proper notice.
- Sections 5(d) and (e) – The provisions Mr. Marz suggested moving are properly considered conditions precedent and therefore should be included in that section. It is understood that failure to meet the conditions would amount to a default, so there is some logic to his suggestions. However, it would seem the provisions are appropriately placed in the current contract.

F. Annual Plan and Electricity Production and Plant Maintenance Schedule

Q. Mr. Marz stated that it is unreasonable to expect renewable energy producers to meet the plan requirements set out in Section 10.1. Do you agree?

A. No. A renewable energy producer should be able to provide an estimate of its deliveries to PEF so that PEF can coordinate the planned outages of the supplier with the outages of its own facilities and the other facilities under contract with PEF to ensure at any given moment there is adequate generation to meet demand. Meeting the plan requirements in this section is critical to PEF's responsibility and ability to serve its customers and maintain system reliability. PEF must plan to serve its

customers in a reliable manner while minimizing cost. Without the requirement to coordinate outages, a large renewable supplier could take an outage and jeopardize PEF's system reliability or force uneconomic purchases or sales to accommodate the renewable supplier's unforecasted outage or deliveries.

Q. What is your response to Mr. Marz's previously suggested revisions in Section 10.1 to change "detailed plan" to "good faith estimate"?

A. Conceptually, I do not oppose changing "detailed plan" to "good faith estimate" in Section 10.1. This change has been made in PEF's current Standard Offer Contract. A "good faith estimate" would include a maintenance schedule with anticipated output levels during the maintenance periods.

Q. Mr. Marz suggested the deletion of Section 10.2, alleging it fails to acknowledge the distinctive nature of renewable energy technologies and is unduly restrictive. How do you respond?

A. This section is vitally important to PEF's responsibility and ability to serve its customers and maintain system reliability. PEF must coordinate the outages of its units with those of its suppliers to ensure at any given moment there is adequate generation to meet demand. By the deletion of Section 10.2, a large portion of PEF's generation could decide to take outages at the same time or a large supplier could choose to take an outage during a time of high demand. These potential situations would make it difficult for PEF to maintain system reliability. Obviously, PEF coordinates the outages of its own generation, including combined cycle units, so that

the maximum amount of generation is available when it is likely to be most needed. For instance, PEF would avoid planning outages of its own units during the heat of the summer.

Q. Do you agree with Mr. Marz's deletion of Section 10.5.6, which requires a renewable energy producer to have a three day fuel supply on-site?

A. No, I disagree with deleting this provision. This provision is included in the Standard Offer Contract because it helps to ensure that during an extreme operating event, the supplier will be able to continue operating for 72 hours, using its on-site supply. The provision should not be deleted just because some renewable generators, such as a wind facility, cannot maintain a fuel inventory, because many renewable generators can. A wind facility has the option of proposing the deletion of those sections and negotiating other provisions that address its unique operating requirements. Further, in my experience, it is likely that a supplier using biomass, municipal solid waste or natural gas (remember the Standard Offer Contract applies to QFs as well) can meet this requirement and for those types of facilities the maintenance of a fuel inventory or a back-up fuel inventory is very important.

G. Insurance

Q. Do you agree with PCS Phosphate's previously suggested deletion of Section 17, regarding insurance?

A. No. Rule 25-17.087(5), F.A.C., requires insurance. In addition, the recent amendments to Rule 25-6.065, F.A.C. require insurance for the interconnection of

systems greater than 10 kW. As part of the recent net metering and interconnection rulemaking, the PSC thoroughly discussed and considered the issue of insurance and determined that insurance is required for all but the smallest systems.

H. Use of Interruptible Standby Service for Start-up

Q. Is PEF's requirement that a renewable energy producer utilize firm standby service for start up unreasonable, as PCS Phosphate alleged?

A. No, this provision is not unreasonable as it ensures the supplier's generation is available when it is needed most. If the generating unit was off-line when PEF interrupted its interruptible customers, then the generating unit could not return to service because it would not have power from PEF. The standby service purchased must be firm stand-by service to assure there is power available to start the unit.

I. Energy

Q. Mr. Marz suggested revising Section 6.1 (moved to 9.1.3) to delete the provision that no billing arrangement can result in a renewable energy producer selling more than the Facility's net output. Do you agree with this change?

A. No. The Federal Energy Regulation Commission ("FERC") has long held the position that a QF cannot sell more than its net output as a QF. In a 1981 case involving Occidental Geothermal, Inc., FERC found that the "power production capacity" of a facility is "the maximum net output of the facility."

VII. CONCLUSION

Q. Does this conclude your testimony?

A. Yes.

BY MR. BURNETT:

Q. Thank you.

Mr. Gammon. Do you have a brief summary of your prefiled direct testimony?

A. I do. I'm here to talk about the history of the Standard Offer Contract, the history of these proceedings, and the various provisions in the Standard Offer Contract, and I'll be glad to answer any questions that you may have.

MR. BURNETT: Thank you. We tender Mr. Gammon for cross-examination.

COMMISSIONER EDGAR: Mr. Brew.

MR. BREW: Yes. Thank you.

CROSS EXAMINATION

BY MR. BREW:

Q. Good morning, Mr. Gammon.

A. Good morning.

Q. Mr. Gammon, can you refer to Appendix A of the Standard Offer Contract proposal?

A. I don't have that in front of me.

COMMISSIONER EDGAR: Mr. Brew, do you have copies? Mr. Brew, is this in the record?

MR. BREW: It's part of the filing, the initial petition.

THE WITNESS: I'm sorry. I don't have a copy

of it.

MR. BREW: You don't have a copy?

COMMISSIONER EDGAR: Oh.

BY MR. BREW:

Q. This is -- I'll explain it. This is your '07 filing. Here's the Appendix A. It hasn't changed.

A. Okay. I have it now.

COMMISSIONER EDGAR: Okay. Ms. Hartman, is that something that staff has a copy of available?

MS. HARTMAN: We could, we could make it available shortly, make copies for everyone.

COMMISSIONER EDGAR: Okay. Mr. Brew, I mean, it just appeared that perhaps that was your copy. And I don't know if you need that one, so.

MR. BREW: Maybe if I can explain. This will be quick.

COMMISSIONER EDGAR: Okay.

MR. BREW: What I've shown Mr. Gammon is actually the copy of the 2007 filing Appendix A which hasn't changed. I actually have the current one on my computer, which I can't give him.

But I think based on -- if the company will accept, subject to check, that Appendix A doesn't change between the '07 and '08 versions, then I think we can move fairly quickly.

COMMISSIONER EDGAR: Mr. Burnett.

MR. BURNETT: I would actually defer to Mr. Gammon, who works on that. I think that's correct, but I wouldn't want to hazard a guess.

THE WITNESS: Other than the capacity factor values in here, it hasn't changed, no.

BY MR. BREW:

Q. I guess with one exception, that the reference to the capacity factor changes from 71 percent to 69 percent.

A. Well, this one is from 71 percent to 69 percent. I believe the '08 was from 89 percent to 69 percent.

Q. Okay. All right. Let's, let's just stick then, on Appendix A you define an annual capacity billing factor. Do you see that?

A. Yes.

Q. And am I correct that that capacity billing factor is based on actual production divided by rated capacity times the relevant number of hours?

A. Correct.

Q. Okay. So what we're talking about when we're talking about capacity factor is actual production relative to potential production.

A. Correct.

Q. Okay. So for a, a gas combined cycle facility to obtain a 90 percent capacity factor, it would need to run at its rated capacity at least 90 percent of the time; is that right?

A. To achieve a 90 percent capacity factor, that's correct.

Q. Okay. Are there any gas combined cycle facilities on the Progress system that operate in that fashion?

A. There are none that have a capacity factor of 90 percent that are available 90 percent of the time.

Q. Okay. But the, the rule proposed here is geared around capacity factor, which is actual production, not availability; is that right?

A. Correct.

Q. Okay. Now if we move down to your definition of MAF, which is monthly availability factor --

A. Yes.

Q. -- do you see that, is it true that that is also defined in terms of actual energy produced over the relevant time frame?

A. Correct.

Q. Okay. Now for gas-fired units, either combined cycle or combustion turbines, would you agree that they are generally designed to cycle or be

dispatched more to support peaking load?

A. Yes. Typically.

Q. Okay. Which means that they're not designed to run all the time, all 8,760 hours in a year.

A. Well, they could.

Q. Okay. But they're typically not operated in that fashion; right?

A. Right.

Q. Okay. And so would you agree with me that the real value of a CT or a combined cycle unit isn't in the total hours of production but being available when the production is needed?

A. Well, the value of a, of a combined cycle or a CT is that it's available a high percentage of the time and it can be dispatched.

Q. But it's not expected to produce energy all of the time.

A. Right. It's expected to be dispatched. That's right.

Q. Okay. So in order to achieve a 90 percent capacity factor, I'm really, we're really talking about the expected operating characteristics of a baseload unit like a coal or a nuclear unit.

A. No.

Q. Do you have any generating units that run at a

90 percent capacity factor or higher that aren't nuclear or coal?

A. I don't believe so, no.

Q. Okay. You mentioned it a minute ago and it actually comes up on Page 28 of your direct testimony, if you can switch to that.

A. Okay. I'm there.

Q. Thanks. On Lines 10 and 11 you say that PEF has the ability to stop, to start or stop its various generating units depending on PEF's system economics and reliability criteria. Do you see that?

A. Yes.

Q. So that basically means that PEF will run its units with the lowest running cost units going first unless there's a system reliability reason otherwise; is that right?

A. Correct.

Q. Okay. But Progress recovers the fixed cost of all its generating facilities regardless of how they're dispatched; is that right?

A. As long as they're operated prudently. Correct.

Q. Okay. That's good.

Does economic dispatch of your generating units have any bearing on the availability of those

units?

A. No.

Q. Okay. Good.

Mr. Gammon, I know you've submitted rebuttal testimony in this matter, but do you have the testimony and exhibits of Mr. Marz with you?

A. I believe so. Yes.

Q. Okay. Can I refer you to his exhibit labeled MJM-2?

A. Yes, I have that.

Q. Okay. Do you disagree with the calculations of the weighted capacity factors for the Progress Energy combined cycle facilities?

A. I haven't gone through these calculations in detail, so I can't say for certain. They look reasonable, but I haven't verified them.

Q. Okay. Thank you.

Mr. Marz (sic.), on Page 30 of your direct testimony -- did I call you Mr. Marz?

A. Yeah, you did.

MR. BREW: Well, then you give the answer.

MR. MARZ: Okay.

BY MR. BREW:

Q. Mr. Gammon, on Page 30, you discuss the Progress proposal regarding the right of first refusal

to purchase RECs. Do you see that?

A. On Page 30? Oh, I'm sorry. I'm looking in the wrong place.

Q. It's 30 in my copy.

A. Yeah. Yes.

Q. Okay. Now the, the right of first refusal that you're talking about grants to Progress the right to purchase RECs produced by a renewable energy producer at a, at whatever price is otherwise available?

A. Well, at a price that will match the price of a bona fide offer that's acceptable to the supplier. Yes.

Q. Okay. So in this circumstance if, if I, if through my production I was generating RECs and I wanted to sell them to JEA or FPL, could I?

A. Sure.

Q. Could I if Progress exercises its right of first refusal?

A. Well, no, not if we exercised that right.

Q. So you could prevent me from selling my RECs to JEA or FPL.

A. But we would pay you the same thing, so.

Q. No, that's not my question. The question is whether you could prevent me from selling it to another party.

A. Yes.

Q. Okay.

MR. BURNETT: Madam Chair, if I may.

COMMISSIONER EDGAR: Mr. Burnett, an objection?

MR. BURNETT: Thank you. I'm not sure I really have an objection, but I think I need a point of clarification.

Mr. Brew in his opening and now seems to be cross-examining Mr. Gammon on whether or not the contract should have a right of first refusal. That's confusing to me. Mr. Marz, in his direct testimony, suggests that the right of first refusal should remain but only, there should only be a three business days right to strike on it.

So I just would -- I don't know if Mr. Marz has abandoned his alternate 6.2 that appears, that appears in his Exhibit 1, Page 22 of 49, but that, that seems to say that the right of first refusal is okay under certain parameters. And what I hear now is that it's not, so.

COMMISSIONER EDGAR: Well, of course, Mr. Burnett, you will have the opportunity to pose questions to Witness Marz.

Mr. Brew, do you have a response?

MR. BREW: Actually no, Commissioner. I'm simply exploring the underpinnings for the company's proposal. I mean, Progress can ask Mr. Marz or we can address that issue in brief.

COMMISSIONER EDGAR: All right.

MR. BURNETT: Thank you.

COMMISSIONER EDGAR: Okay. Thank you.

Mr. Brew, you may proceed.

MR. BREW: Thanks.

BY MR. BREW:

Q. Does a right of first refusal for the RECs have any value to Progress?

A. It has a value to our ratepayers. It doesn't have a value to Progress.

Q. What is that value to ratepayers?

A. The value is the ability to purchase the RECs at the market price so that we don't have to -- so that, so that we have the ability to purchase RECs when we need them under an RPS or some other requirement that we may have to purchase RECs.

Q. But you would have that right to purchase RECs in any event, right, just not necessarily these RECs?

A. Right. So there could be fewer RECs available because of, because the renewable has sold their RECs somewhere else. They may sell them out of state.

Q. Okay. So that value to PEF and its ratepayers is obtained by restricting the ability of the owner of those RECs to transact them?

A. At the same price, yes.

Q. Okay. The, the section of your testimony that is on Page 3 comes under the head of non-price terms. Do you see that on the previous page?

A. Yeah. Yes.

Q. Do I take it from that that no value has been included in obtaining this right in developing your avoided cost payments?

A. That's correct.

MR. BREW: Okay. That's all I have. Thank you, Mr. Gammon.

COMMISSIONER EDGAR: Thank you.

Are there questions from staff?

MS. HARTMAN: Yes, there are.

CROSS EXAMINATION

BY MS. HARTMAN:

Q. Good morning, Mr. Gammon.

A. Good morning.

Q. Could you please briefly describe the TREC marketplace?

A. Well, there really isn't one in Florida. So it's -- and all my experience is in Florida, so it's a

little difficult for me.

But essentially it's a, it's a mechanism to, it's a, it's a -- a TREC is a, is a, is a commodity that can be traded at some value and provides a revenue stream to a renewable provider.

Q. Okay. And who are the likely TREC buyers and sellers?

A. Well, the sellers are going to be renewable providers and the buyers are going to be utilities.

Q. Okay. Do you know if the TREC marketplace has changed over the last three years? And by changes, I would mean is there a larger volume of TRECs offered by sellers? Is there a faster turnaround time in auction markets? Is there greater competition among bidders?

A. I don't know.

Q. Okay. Do you know how the right of first refusal affects the value of TRECs in the marketplace?

A. No, I don't.

Q. Okay. Do you know if buyers in the TREC marketplace might be less likely to submit bids or offers on those TRECs that they know are subject to the right of first refusal?

A. I suppose that would depend on how the marketplace is set up. The way I would envision, the way things have been proposed so far in Florida anyways

is that a facility that needs RECs is probably going to, that's probably going to be part of the package when they, when they go get financing. The lender is going to say, well, you've got a revenue stream from capacity and energy and you've got a revenue stream from RECs, and because of that those RECs would likely be in a long-term contract. And so because of that it seems to me that you're not going to put a long-term contract in place in, in a few days. It's going to take longer than that.

MS. HARTMAN: Okay. Thank you. That's all of staff's cross questions for Mr. Gammon.

COMMISSIONER EDGAR: Commissioners, any questions for this witness? No?

Mr. Burnett.

MR. BURNETT: No redirect.

COMMISSIONER EDGAR: Okay. Let's take up exhibits.

MR. BURNETT: Yes, ma'am. We would move Mr. Gammon's prefiled direct testimony into evidence as well as Exhibits 4, 5, 6 and 7.

COMMISSIONER EDGAR: Okay. We did the prefiled testimony earlier. So at this time, seeing no objection, we will enter into the record marked Exhibits 4, 5, 6 and 7.

(Exhibits 4, 5, 6 and 7 admitted into the record.)

Mr. Gammon, thank you. Don't go too far.

THE WITNESS: Okay.

COMMISSIONER EDGAR: Mr. Brew, you may call your witness.

MR. BREW: Thank you. We call Martin Marz.

MARTIN J. MARZ

was called as a witness on behalf of PCS Phosphate and, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BREW:

Q. Mr. Marz, could you please state your name and address for the record, please?

A. Yes. My name is Martin J. Marz, M-A-R-Z. Address, 1525 Lakeville Drive, Kingwood, Texas 77339.

Q. And did you file a document labeled Supplemental Direct Testimony of Martin J. Marz in this docket?

A. Yes, sir, I did.

Q. And that's testimony that consists of 28 pages of questions and answers?

A. Yes.

Q. Do you have any corrections to that testimony?

A. Actually I do have one correction. Endnote

14 --

Q. Which page? Oh, endnote. Excuse me.

A. Endnote 14 there is a reference to Marz 2008 direct testimony in, we need to change the case number there, it was actually 070235-EQ, which was actually the preceding case in this string of proceedings.

Q. Do you have any other corrections?

A. No, I do not.

MR. BREW: I ask that the prefiled supplemental direct testimony of Martin Marz be incorporated into the record as if given orally today.

COMMISSIONER EDGAR: The prefiled testimony of the witness will be entered into the record as though read with the correction noted by the witness.

MR. BREW: Thank you.

BY MR. BREW:

Q. Mr. Martin -- excuse me. Mr. Marz, did you also prefile exhibits with your testimony?

A. Yes, sir, I did.

Q. And is one of those exhibits labeled MJM-1?

A. Yes.

Q. And is another labeled Exhibit MJM-2?

A. Yes.

MR. BREW: And I would ask that those exhibits be marked for identification at this point.

COMMISSIONER EDGAR: Okay. Mr. Brew, I believe for the record we have marked the exhibits from, the prefiled exhibits from this witness as Exhibits 8, 9 and 10 in order with MJM-1, 2, 3.

MR. BREW: Yes. But there's a need for a clarification, which is what I wanted to walk through two of them.

COMMISSIONER EDGAR: Okay. Okay.

MR. BREW: What we just marked are Exhibits 8 and 9 for identification which were filed with the supplemental direct testimony.

BY MR. BREW:

Q. Mr. Marz, did you previously file in Docket 070235 an exhibit that was labeled MJM-3?

A. Yes, sir.

MR. BREW: Okay. Commissioner, MJM-3 that's referenced as Exhibit 10 for identification is the document that was filed in that earlier docket which we're including as part of this presentation here and has been reflected in the Prehearing Order. So I'd ask that that document though filed previously be marked for identification in this docket.

COMMISSIONER EDGAR: Okay. And, Ms. Hartman, is that the exhibit that we have marked as Number 10?

MS. HARTMAN: I believe it is. But just to

clarify, you're referring to MJM-3 which should have a file date of February 18th, 2008?

MR. BREW: That is correct.

MS. HARTMAN: Yes. We have that as, marked as Exhibit 10.

COMMISSIONER EDGAR: Okay. Thank you for the clarification. So noted for the record.

1. INTRODUCTION, QUALIFICATIONS AND PURPOSE

Q. Please state your name and business address.

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

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

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

Q. What is your educational background?

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

Q. Please describe your professional experience.

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

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

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

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

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

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

Q. What is the purpose of your testimony?

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

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

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

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

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

2. SUMMARY

Q. Please summarize your conclusions and recommendations.

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

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

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

Q. Please summarize your conclusions and recommendations.

A. My conclusions and recommendations are as follows:

Price Terms

1. The required 69% performance capacity factor (Section 4) is inconsistent with PEF's avoided unit (estimated of 65.3%) capacity factor and with the operation of PEF's existing combined cycle units (which operated at a capacity factor of approximately 42% in 2007);
2. Capacity factor and availability factor are different measures of unit performance. However, the proposed Standard Offer Contract would treat them the same. For example, the proposed Availability Factor (Section 4) would require a renewable energy producer[2] to achieve a minimum 89% annual capacity factor rather than require the renewable energy producer to make capacity available 89% of the time to obtain a capacity payment. PEF uses the 89% availability factor for the minimum availability factor as well.

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

Non-price Terms

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

responsible for any incremental costs associated with a second test in a given year;

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

3. Creditworthiness Provisions –

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

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

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

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

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

7. The maintenance scheduling provisions of Section 10.2 should be revised to make it clear that the timing of maintenance, particularly for manufacturing facilities that are producing the energy from their manufacturing processes, are subject to negotiation and agreement between the parties. Further the minimum number of days for planned maintenance should be increased to 30 days.
8. The requirement that a renewable energy producer take firm standby service from PEF (Section 8.2) is not justified and should be deleted.

3. GENERAL ASSESSMENT OF THE STANDARD OFFER CONTRACT.

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

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

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

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

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

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

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

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

4. PRICE TERMS

Q. What is the PEF avoided cost unit?

A. Based upon its 2008 Ten Year Site Plan and its Petition for Waiver, PEF is using the Suwannee River Plant – Unit A as its avoided unit. According to the Standard Offer Contract, the avoided unit is a natural gas combined cycle plant with a summer capacity of 1,159 megawatts (MW) and winter capacity of 1,279 MW. This unit is expected to enter commercial operations in June 2013.

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

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

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

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

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

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

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

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

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

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

A No. The formula in Appendix A is for determining a capacity factor, not an availability factor.[7]

Even Mr. Gammon refers to capacity factor, not availability factor in his Testimony[8]. Capacity factor is quite distinct from an availability factor.

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

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

factor is the sum of the service hours plus reserve stand-by hours divided by period hours times 100.[9] Service hours are those hours when the unit is synchronized with the transmission system, and reserve stand-by hours are those hours where the unit is available to generate but is not synchronized with the system.[10]

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

Q. How does the "availability factor" in the Standard Offer Contract compare to the capacity factor of the avoided unit and PEF's existing combined cycle units?

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

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

A. No. PEF's existing combined cycle units, the Hines Energy Facility and the Tiger Bay Facility, only achieved a weighted average capacity factor of 41.6% in 2007.[11] Similarly, for the period 2004-2007, the average PEF combined cycle capacity factor averaged slightly above 46%.[12]

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

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

Q. Is this a reasonable requirement?

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

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

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

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

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

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

5. NON-PRICE TERMS

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

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

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

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

Q. Has PEF included language addressing renewable energy attributes?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. GENERAL TERMS AND CONDITIONS THAT ARE NORMALLY BILATERAL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Q. What credit worthiness provisions are you proposing?

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

Q. Does the Standard Offer Contract include default provisions?

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

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

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

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

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

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

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

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

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

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

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

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

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

Q. What representations and warranties should each party provide?

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

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

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

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

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

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

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

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

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

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

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

Q. Does this conclude your testimony?

A. Yes, it does.

ENDNOTES

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[1] 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.

[2] I will refer to both renewable energy resources and small qualifying facilities of less than100 kW as renewable energy producers.

[3] Gammon 2009 Direct Testimony at 2.

[4] *Id.*

[5] *See* Standard Offer Contract, First Revised Sheet No. 9.442.

[6] *See* Standard Offer Contract, Original Sheet 9.443.

[7] 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.

[8] Gammon 2009 Direct Testimony at 12.

[9] *See* North American Electric Reliability Corporation, Generation Availability Data System. GADS Data Reporting Instruction, F-9.

[10] 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.

[11] *See* Exhibit MJM–2.

[12] *Id.*

[13] Gammon 2009 Direct Testimony at 13

[14] Marz 2008 Direct Testimony in ~~0703546~~ 070235-EQ-EQ at 16.

[15] Gammon 2009 Direct Testimony at 17.

MR. BREW: Thank you. With that, the witness is available for examination.

COMMISSIONER EDGAR: Thank you.

Mr. Burnett.

MR. BURNETT: Thank you, ma'am.

CROSS EXAMINATION

BY MR. BURNETT:

Q. Good morning, Mr. Marz. Mr. Marz, are you aware of the fact that the Standard Offer Contract we are discussing here today is supposed to be a contract that a renewable producer can come in and sign without any negotiations with PEF?

A. Yes, sir.

Q. Okay. Are you further aware that if a renewable producer comes in and signs that Standard Offer Contract, PEF is obligated by rule to accept that contract, file it with the Commission and to perform under that contract whether PEF wants to or not?

A. Yes.

Q. And are you aware, sir, that with respect to I think all but one of the contracts that we have with renewable energy providers, those providers have used the Standard Offer Contract as a baseline for negotiations and then worked on a negotiated contract that better fits their needs?

A. I don't have personal knowledge of that. I will accept that if that is a representation you're making, yes.

Q. Okay. And even you recognize, sir, that something such as capacity factors and capacity payments would rather be left for negotiation, that one size doesn't fit all there, don't you?

A. Yes.

Q. Mr. Marz, you would agree with me I believe, wouldn't you, that if PEF's customers pay for something, they should get the full value of what they're paying for; right?

A. Yes.

Q. And if the intent of the Standard Offer Contract is to at least give the customers the value of what they would otherwise get with the avoided unit, shouldn't that intent be met?

A. May I hear that question again?

Q. Yes, sir. I'm asking you if the intent of the Standard Offer Contract is to make sure that Florida, that the Florida ratepayers at least get the value of the avoided unit that they would have otherwise had absent the Standard Offer Contract, don't you agree with me that that intent should be met?

A. If that is the intent, yes.

Q. Okay. And accept for me this question, if that -- accept this assumption for this question. If that intent is in fact the intent and it's reflected in a statute or rule, policymakers would be able to change that intent if they wanted to by changing that statute or rule; correct?

A. Again, accepting that that, if that is the intent, yes.

Q. Okay. Now I'm, I'm not an expert in this field nor an engineer, so I'm going to use some simple hypotheticals, if you would bear with me.

Would you agree with me, sir, that if someone owes you $10 and they fail to pay you but I cover them and pay you the $10 instead, you have not been economically harmed?

A. Yes.

Q. Well, wouldn't you also agree with me then, sir, that, all things being equal, if a renewable energy producer wants to sell its renewable energy credit for $10, it shouldn't care who it sells it to as long as it gets its $10, if all other things are equal?

A. Again, as in the premise in your question, yes.

Q. Okay. I do have a question that I raised earlier. If you could turn with me to your, your

Exhibit 1, Page 22 of 49 in your prefiled testimony.

A. Yes, sir.

Q. Now I see at the bottom there Alternate 6.2. Am I understanding your Alternate 6.2 is saying that you accept a right of first refusal so long as it's under the parameters that you reflect there on Page 22 of 49?

A. If you look at my testimony on Page 17, I have two alternatives. The first is that Section 6.2 be taken out. The alternative, the second alternative is if the Commission were to choose to maintain Section 6.2, I propose certain alterations to it.

And just one other thought. I understand that Mr. Gammon in his rebuttal had moved from, had suggested ten days as a period. And from the perspective of PCS Phosphate that is acceptable so that you could change the three days in here to ten days.

Q. Okay. So if I understand then correctly, if we changed the three days to ten as they appear there on 6.2 and the Commission accepted that, that dispute would be over.

A. If the Commission chose to leave that provision in, yes, sir.

Q. Okay. Again, bear with me for a second for my, for my simple hypothetical. Would you agree with me that if you need a battery to start your car and the

battery is dead, you're not going to be able to start your car?

A. Yes.

Q. Okay. Would you also agree with me that if you need power to start up your power plant and that power is not there, then you're not going to be able to start up your power plant?

A. Yes.

MR. BURNETT: Okay. I'd like to, Madam Chair, if I may, show the witness a document.

COMMISSIONER EDGAR: You may approach.

BY MR. BURNETT:

Q. Mr. Marz, do you have that document in front of you?

A. Yes, sir.

Q. And is that an accurate representation of Page 22 of 49 of your Exhibit 1?

A. For now I will assume you're referring to the highlighted portion, which is paragraph 6.3, and to that, yes. I have not compared all the others, but.

Q. Yes, sir. Just that highlighted section.

A. That's fine. Yes.

Q. Okay. By, by striking out the requirement there that I've highlighted in 6.3 that the renewable energy provider shall not rely on interruptible standby

service for starting up their requirements, aren't you, aren't you exposing our customers and our company to the same risk that I used in my simple hypothetical there with the car battery?

A. You may be.

Q. I'm sorry, sir. I didn't hear you.

A. You may be.

Q. Okay. Mr. Marz, would you agree with me that if I have good cause to believe that I may not get the power that I'm paying for from the power company, let's say, I should have the right to take my concerns somewhere to make sure that I'm going to get the power that I'm paying for, especially if I'm depending on that power?

MR. BREW: Excuse me. That's a little bit vague. Can you --

COMMISSIONER EDGAR: Mr. Burnett, can you rephrase?

MR. BURNETT: I'll give it a try.

BY MR. BURNETT:

Q. You would agree with me, sir, that if I'm paying to get power, I'm a customer sitting at home and I'm paying to get power from the power company and I have good cause to believe that I'm not going to get the power I'm paying for, I should have a forum to be able

to address that or a mechanism to address my concerns; right?

A. Generally speaking, yes.

Q. Okay. Well, generally speaking then, shouldn't PEF have the same right to make sure it's going to get the power it's paying for from a renewable energy producer if it has good cause to believe it will not, especially if PEF is depending on that power?

A. Yes.

MR. BURNETT: Okay. Madam Chair, may I approach?

COMMISSIONER EDGAR: You may.

Mr. Burnett, while she is passing that out, do we need to mark the prior document or this one?

MR. BURNETT: No, ma'am. They're all in evidence. These are just to make things easier.

COMMISSIONER EDGAR: All right. Thank you.

BY MR. BURNETT:

Q. Mr. Marz, I showed you there Section 7.4. It's Page 24 of 49 of your prefiled testimony and exhibit, and I'll depend on you to tell me if I've, if that's accurate or not.

A. It is the Page 24 of 49 in what has been marked as, I believe -- is it Exhibit 7 or 8? I don't recall.

Q. Yes, sir.

A. Exhibit MJM-1 to my supplemental direct testimony in this case. Yes.

Q. Yes, sir. Okay. Thanks.

Sir, by the proposed changes you make to Section 7.4, aren't you effectively denying Progress Energy Florida the ability to come in and ask a renewable energy producer to prove that their unit can actually deliver the power that our customers are paying for if there were a situation to where a previous test had been conducted six months before?

A. Under the provisions of Section 7.4 that is correct. However, you need to -- I did not look at this provision on its own. There are also provisions, for example, if the unit has a force majeure outage, following that force majeure you are able to request an additional capacity test. If the unit were to go down for a reason of force majeure of, let's say, two or three months, at the conclusion of that within the force majeure provisions you do have the right to request a capacity test.

Q. Well, I appreciate that. But I think you said that's correct to my original question with this particular --

A. In this particular section, yes.

Q. Okay. Mr. Marz, if I'm going to, if I'm going to pay a plant to sell me power for a number of years, is it unreasonable to ask that plant to show me that it could run for 24 hours without there being a problem when it first comes into service?

A. If that is the design of the plant, it is not unreasonable.

Q. Okay. Let me ask you this, sir. Another hypothetical, if you pay $2,000 for a car that would get you to work 350 days of the year or $2,000 for a car that would get you to work only 335 days of the year, which one would you rather have?

A. Tongue slightly in cheek, I would suggest neither because I'd prefer to only go to work about 220 days a year.

Q. I understand that. But if you had --

A. If I have to go 350 days a year, I would prefer the one that was going to get me there all 350.

Q. I understand that, and I agree with you, there, sir.

Well, if PEF's customers can pay for a power plant that will be in service 350 days of the year for the same price that they can get a plant that will only be there for 335 days of the year, shouldn't they have the 350-day plant if they're paying the same price?

MR. BREW: Excuse me. Are we talking about a plant that's available or running?

MR. BURNETT: Either is fine with me, sir. Available.

THE WITNESS: If you are paying the same for the two plants, you would prefer to have the one that is either available or running 350 days a year because you get more bang for your buck, so to speak.

MR. BURNETT: Madam Chair, may we approach?

COMMISSIONER EDGAR: You may.

BY MR. BURNETT:

Q. Mr. Marz, if you'd look at an excerpt of Page 27 of 49 of your Exhibit 1 that I just showed you, and I've highlighted a section there at 10.2. If, if the renewable producer is getting paid like a unit that would only be out for 15 days, aren't the ratepayers having to cover that extra 15 days that you're getting out of this? So aren't you effectively getting paid to be there for 350 but you're only actually there 335?

A. If the underlying assumption is that I am getting paid as if I were there 350 and the potential is that I'm only there 335, yes.

MR. BURNETT: Okay. Now I'd like to -- Madam Chair, if I may.

COMMISSIONER EDGAR: Yes.

BY MR. BURNETT:

Q. Sir, I'm showing you what is Page 29 of 49 of your Exhibit 1 to your prefiled testimony. I've highlighted a section there in 11.1. My understanding of this, and please tell me if I'm incorrect, I want to make sure I'm understanding this right, is that the renewable energy producer will not have to post a security that would be in place for the entire life of the contract; is that correct?

A. In terms of this provision, that is correct.

Q. Okay. I'm going to, I'm going to borrow a term from Commissioner Argenziano here, but will you please explain to these Commissioners and the people listening at home why it's fair for them to bear the risk of default and for them to bear the expense of curing default instead of the entity that's causing the default like you would have here if the renewable energy producer failed to perform and there's no security there?

A. If you'll bear with me just a minute. There are two separate provisions that effectively deal with -- one, you have labeled completion performance security and then there is the termination provision or a termination fee that is designed to recoup to the extent that a customer has entered into a payment

provision that requires you to make capacity payments prior to that plant coming up. That provision is permitted under the rule, as is a retention of security until the plant or the renewable facility is completed and proves through the capacity test process that it can operate at the capacity level specified in the contract.

So there are two separate provisions. This one is targeting the completion of the plant and its successful ability to meet the capacity levels specified in the contract. Under the rule, if you'll notice I've got in a bracketed section there adjusted to conform to FPSC Rule 25-17.0832(4)(f)(1). And in that section it specifies that upon completion of the plant and a successful completion of the capacity test, the completion security is to be returned to the renewable energy provider. There are separate provisions which are tied to the termination payment that you are entitled to obtain security for. In the event that you have made the early capacity payments and the facility does not deliver, you may then recoup those from the renewable producer.

Q. Well, I think I understood that, but let me make sure that I understand your testimony, sir.

Is it your testimony here today that at all times that this plant would be -- that this, whatever

the plant is that signs the standard offer contract, that at all times it would be running from the day it starts the contract until the day the contract ends, that Florida customers, our customers would be protected and there would be some security that the utility could draw upon if that entity defaulted and didn't deliver the power it said it would?

A. Depending upon the creditworthiness of the particular provider and how the creditworthiness provisions are set up. Looking at the other provisions of the rule in the contract the answer is yes.

Q. Well, you said depending on the creditworthiness, and I'm just trying to keep it simple and break it down, sir. My question was is there a fund of money out there that Progress Energy Florida will be able to draw on at any time during the life of this contract to cover the cost of replacement power if this unit fails to deliver what it is supposed to?

A. I guess I was adding another caveat in there. For example, in certain instances it depends -- and I would have to go back and look carefully at the creditworthiness provisions here. Some entities may not be required to post credit or cash collateral, per se, because of their status. For example, frequently AAA companies are given what is referred to as an unsecured

line of credit to cover -- because they are considered good for a particular amount of money.

Now if, for example, this company or the entity that you are purchasing from is a BBB minus, in all instances the chances are they are going to have had to have posted actual cash collateral or something else, so the answer then is yes.

Do you understand, sir?

Q. I do understand. And just to make sure, again, for the people listening and for me that I understand, so what you're saying is if an entity has good enough credit, the answer to my question is no, that amount of money will not be there?

A. It will not be being held by Progress Energy. The assumption is if you are AAA rated credit, the money is there.

Q. Okay. Well, you raised an interesting point, because I think this is my last line of questioning with you. In your Section 11.8 that you add as a new section, a new proposed section to the contract, you propose that if Progress Energy Florida's credit rating dropped to a certain level that it should be required to post a security, do you not?

A. Yes, sir.

Q. Do you know who would pay to post that

security, who would bear the cost of that?

A. Progress Energy.

Q. And do you know who pays for the expenses that Progress Energy reasonably incurs in the operation of its business?

A. The ratepayers ultimately would pay through working capital, if that type of -- if that type of an adjustment is permitted by the Commission.

MR. BURNETT: Thank you. That's all I have.

COMMISSIONER EDGAR: Other questions from staff?

MS. HARTMAN: We have a few questions.

CROSS EXAMINATION

BY MS. HARTMAN:

Q. Good morning, Mr. Marz. Can you briefly describe the TREC marketplace for me?

A. By TREC marketplace, I assume you are referring to -- sometimes they're called renewable energy credits?

Q. Right.

A. Which are the attributes of renewable, or I guess I would say nonenvironmentally damaging power production sources, such as wind, hydro. In the case of Florida it would include some of these manufacturing facilities such as PCS Phosphate. And those -- to my

knowledge, those markets will vary right now across the country. Some places have them, some places they are more active than others.

Q. Okay, thank you.

Could you tell me who are the likely TREC buyers and sellers?

A. Depending on the market, for example, in Florida the likely buyers right now would, in all likelihood, be the utilities. If the markets develop as some people would like to see them develop, there could be any number of buyers and sellers of those renewable energy credits, ranging from utilities, the renewable generators, to third-party trading shops such as Goldman Sachs' shop, or UBS if they develop as some of the other markets have.

Q. Do you know if the TREC marketplace has changed over the last three years?

Let me clarify. Do you know if a larger volume of TRECs have been offered by more sellers within the last three years?

A. I do not know.

Q. Do you know if within the last three years there has been a faster turnaround time in auction markets?

A. Again, in reference to what you're referring

to as TRECs, I do not know.

Q. Okay. Does the right of first refusal affect the value of TRECs in the marketplace?

A. I would believe that it does, and part of that belief comes from looking at what happens in the capacity markets, for example. At the pipeline regulated side, for example. Local distribution companies have a right of first refusal when their contract comes up for renewal. And what you will notice is there are very few bidders on that capacity, because everybody knows ultimately the LDC is going to come in and in all probability take that contract at the maximum length at the maximum rate.

Q. Might buyers in the TREC marketplace be less likely to submit bids or offers on those TRECs they know are subject to the right of first refusal?

A. I would anticipate they would be less likely to, yes.

MS. HARTMAN: Thank you. That's all my questions.

COMMISSIONER EDGAR: Mr. Brew.

MR. BREW: No redirect, Your Honor.

COMMISSIONER EDGAR: Commissioners?

Do we have exhibits?

MR. BREW: Yes, Commissioner. I'd like to

move for admission exhibits that have been marked for identification as 8, 9, and 10.

COMMISSIONER EDGAR: Exhibits 8, 9, and 10 will be entered into the record at this time.

(Exhibit Numbers 8, 9, and 10 admitted into the record.)

COMMISSIONER EDGAR: Mr. Marz, you're excused. Thank you.

THE WITNESS: Thank you.

COMMISSIONER EDGAR: Commissioners, do you want to push forward or do you want a short stretch?

Okay. Mr. Burnett.

MR. BURNETT: I don't mean to upset you, ma'am, but may we take just two minutes? I can be back in two minutes.

COMMISSIONER EDGAR: I tell you what, let's take five, because I could use a stretch myself. So we will take five minutes, and we will be back.

(Recess.)

COMMISSIONER EDGAR: We are back on the record.

Mr. Burnett, I believe it was your turn.

MR. BURNETT: Yes, ma'am. We would call Mr. Gammon in rebuttal.

DAVID W. GAMMON

was called as a witness on behalf of Progress Energy Florida, and having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BURNETT:

Q. Mr. Gammon, you realize you are still sworn in under oath?

A. Yes, I do.

Q. Have you filed prefiled rebuttal testimony in this proceeding?

A. Yes.

Q. Do you have a copy of your prefiled rebuttal testimony with you?

A. Yes, I do.

Q. Do you have any changes to make to your rebuttal testimony?

A. No.

Q. If I asked you the same questions in your rebuttal testimony today, would you give the same answers that are in your prefiled rebuttal testimony?

A. Yes.

MR. BURNETT: Madam Chair, we request that the prefiled rebuttal testimony be entered into the record as if it was read today.

COMMISSIONER EDGAR: The prefiled rebuttal

testimony of the witness will be entered into the record as though read.

PROGRESS ENERGY FLORIDA

Docket No. 080501-EQ

REBUTTAL TESTIMONY OF DAVID W. GAMMON

March 25, 2009

I. INTRODUCTION

Q. Please state your name, position and business address.

A. My name is David W. Gammon. I am a Senior Power Delivery Specialist for Progress Energy Florida, Inc. ("PEF" or "the Company"). My business address is P.O. Box 14042, St. Petersburg, Florida 33733.

Q. Did you file direct testimony in this case?

A. Yes, I did.

Q. Have you reviewed the testimony and exhibits filed by Martin Marz, the witness testifying for White Springs Agricultural Chemicals, Inc., d/b/a/ PCS Phosphate – White Springs ("PCS Phosphate")?

A. Yes, I have.

Q. Did you agree with Mr. Marz's testimony?

A. No, I do not for reasons that I have stated previously. Further, PCS's continued objections to PEF's Standard Offer Contract have made it more difficult for other

renewable generators because there is not an approved Standard Offer Contract in place. For example, Vision Power came to PEF in 2008 and expressed a desire to execute PEF's Standard Offer Contract. Due to the fact that the Standard Offer Contract was not approved at the time, however, PEF was not able to submit the agreement as a Standard Offer Contract, but rather had to submit the agreement as a negotiated contract.

In an effort to resolve PCS's ongoing dispute with every standard offer contract that PEF files, PEF has attempted to agree to a number of PCS's suggested changes even though PEF believes they are unnecessary. In my rebuttal testimony, I will first address Mr. Marz's proposed revisions to PEF's Standard Offer Contract that PEF can accept. I will then address the remaining suggested revisions sequentially and explain the reasons that PEF cannot accept these changes.

II. ACCEPTED CHANGES

Q. Could you please list the changes that Mr. Marz has suggested with which PEF is willing to agree?

A. Yes.

Exhibit MJM – 1, Page 21 of 49; all suggested changes.

Exhibit MJM – 1, Page 25 of 49; Changes suggested in Section 7.6.

Exhibit MJM – 1, Pages 34, 35 and 36 of 49; generally PEF will agree to make the default provisions bilateral, although PEF and PCS would need to finalize the details of such changes.

Exhibit MJM – 1, Page 41 of 49; PEF will agree to making this provision bilateral, but PEF and PCS would need to finalize the details of such changes.

Exhibit MJM – 1, Page 42 of 49; all suggested changes.

Exhibit MJM – 1, Page 46 of 49; all suggested changes.

III. REMAINING CHANGES

Q. Can you please discuss the remaining changes proposed by Mr. Marz?

A. Yes. I will address them in order. The first proposed changes that PEF cannot accept is in Exhibit MJM – 1, page 22 of 49. There are two changes on this page. The first is to Section 6.2 addressing the first right-of-refusal for RECs. Mr. Marz proposes to either strike the first right-of-refusal language or make some changes to the language. As I read Mr. Marz's suggested alternative language for Section 6.2, I see two changes. First, the phrase "... on terms and conditions acceptable to the RF/QF" was added to the description of the bona fide offer. Second, the response time was reduced from 30 days to 3 business days. In the same spirit of attempting to resolve PCS's ongoing protest, PEF is willing to accept Mr. Marz's phrase of "... on terms and conditions acceptable to the RF/QF." Further, PEF is willing to accept a 10 business day response time given that the three days that Mr. Martz suggests is unreasonably short.

The second proposed change on Page 22 of 49 is the deletion of Section 6.3. As I have stated in my prior testimony, if the generating unit that is the subject of the standard offer contract was off-line when PEF interrupted its interruptible customers,

then the generating unit could not return to service, nor would it be supplying power to PEF's customers at precisely the time when the generation is required the most. The standby service purchased must be firm stand-by service to assure there is power available to start the unit. Without such a provision in place, PEF's customers would not be receiving the value they would be paying for. For this reason, PEF is not willing to make Mr. Marz's suggested change to delete Section 6.3.

Q. Can you address the changes proposed by Mr. Marz in Exhibit MJM – 1 on Page 24 of 49 regarding Committed Capacity Tests?

A. PCS has suggested the addition of a sentence to the end of Section 7.4 relating to committed capacity tests. PEF can accept that proposed change up to the phrase "... a twelve (12) month period must be for cause."; however, PEF cannot accept Mr. Marz's suggested changes to the remainder of that sentence. The remainder of that sentence would restrict PEF's ability to request a Committed Capacity Test for cause. Logically, PEF should be allowed to request a Committed Capacity Test anytime within that 12 month window if there is reasonable cause to do so, and PCS should be neutral to such a provision unless it expects in advance to have problems with its unit that would constitute such cause.

The later part of the proposed sentence in this section suggests that PEF must pay any of the generator's incremental costs associated with a Committed Capacity Test. The Standard Offer Contract already provides for energy payments for any energy delivered to PEF. PEF's ratepayers should not have to pay any additional

energy costs to verify that a firm renewable generator can meet its contractual obligations.

Q. Can you address the changes proposed by Mr. Marz in Exhibit MJM – 1 on Page 25 of 49 in Section 8.2 regarding the Committed Capacity Test?

A. Yes. Section 8.2 defines the requirements for a RF/QF to pass a Committed Capacity Test including a requirement to operate at the Committed Capacity for 24 consecutive hours. Mr. Marz has suggested the addition of the phrase "or for such other period as the Parties may agree" and this change is not acceptable to PEF. The purchase of capacity and energy through the Standard Offer Contract is to avoid or defer the construction of an avoided unit and the purchased generation should be able to operate like the unit that is being avoided. Through his proposed changes here, Mr. Martz is suggesting that PEF's customers should pay avoided unit pricing but not receive the full benefit they would get with the actual avoided unit.

Q. Can you address the changes proposed by Mr. Marz in Exhibit MJM – 1 on Page 27 of 49 in Section 10.2 regarding the number of scheduled maintenance days allowed per year?

A. Yes. Again, the Standard Offer Contract is intended to avoid or defer the construction of a combined cycle unit as defined in Schedule 9 of PEF's 2008 Ten-Year-Site-Plan. The planned outage factor for the avoided unit is 4.1% or 15 days per year. The scheduled maintenance in the Standard Offer Contract should be limited to

the planned outage factor of the avoided unit. Again, PEF's customers should get the full value of what they are paying for.

Q. Can you address the changes proposed by Mr. Marz in Exhibit MJM – 1 on Page 29 of 49 in Section 11.1 regarding the Performance Security?

A. Yes. In his testimony filed in Docket No. 070235-EQ, Mr. Marz opined that the Performance Security be set "associated with the expected level of loss". Now, Mr. Marz has apparently changed his mind and is suggesting that the Performance Security is not required. PEF agrees with Mr. Martz's first position, however as I explained in my direct testimony, the required performance security amount does not cover all the costs of the replacement energy, but merely offsets some of the costs that are otherwise borne by PEF's customers. The required performance security amount protects PEF's customers and offsets some of the costs for replacement capacity and energy that are otherwise borne by PEF's customers in the event that the renewable generator fails.

Q. Can you address the changes proposed by Mr. Marz in Exhibit MJM – 1 on Page 31 and 32 of 49 regarding the creditworthiness?

A. Yes. This entire section appears to be adding creditworthiness requirements to PEF when such requirements are unnecessary and are illogical. As I have explained before in my previous testimony, PEF is merely acting as an agent for our customers in the context of a standard offer contract where PEF is a "captive" counterparty. Unlike PCS who can choose whether or not it wants to enter into a standard offer

contract with PEF, PEF must accept valid standard offer contracts and must collect the funds to pay for approved QF and renewable contracts from our customers to pay those funds to the QF or renewable supplier. PEF's creditworthiness is irrelevant in this situation.

Q. Does this conclude your testimony?

A. Yes.

BY MR. BURNETT:

Q. Mr. Gammon, can you briefly summarize your prefiled rebuttal testimony?

A. I can. My testimony specifically addresses Progress Energy Florida's standard offer contract which provides a comprehensive baseline of acceptable terms and conditions for renewable energy providers. Progress Energy Florida's standard offer contract has been approved by this Commission time and time again without protest and with no one challenging its substance.

Recently, however, one company has protested Progress Energy Florida's standard offer contract. It should be noted that PCS Phosphate doesn't use PEF's standard offer contract, but instead has a contract with PEF using a different mechanism.

For the past two years, PCS Phosphate has challenged PEF's standard offer contract. Since the beginning of their protest, and having worked with PCS in good faith, PCS has made 12 of PCS's proposed 20 changes to the standard offer contract. There are eight changes that PCS has not made because we can't accept them for two critical reasons. First, the changes would hurt PEF's customers financially and, second, PEF's customers would not get the full value of what they paid for should the changes occur.

In my direct and rebuttal testimony, I discuss the eight remaining unacceptable changes that PCS Phosphate wants to be made to the standard offer contract. My testimony explains why these changes would hurt PEF's customers and put them at risk. My testimony walks you through each suggested provision and explains in detail why PEF disagrees, and I'm happy to walk through that analysis here with you today.

Simply said, a standard offer contract is a contract that PEF must enter into without negotiation with anyone and everyone who wants to sign it. Because of this, PCS has suggested changes, changes that harm PEF's customers are especially improper and should be rejected.

Thank you, Commissioners. This concludes my summary and I look forward to answering any questions that you may have.

MR. BURNETT: Madam Chair, we tender Mr. Gammon for cross-examination.

COMMISSIONER EDGAR: Mr. Brew.

MR. BREW: Commissioner, I've got no questions for Mr. Gammon on his rebuttal.

COMMISSIONER EDGAR: Other questions from staff?

MS. HARTMAN: We have no questions on

rebuttal.

COMMISSIONER EDGAR: Commissioners, any questions for this witness.

Seeing none. And I see no additional exhibits.

MR. BURNETT: That's right. And to the extent I haven't done so already, I would move his rebuttal testimony into evidence. No exhibits, though.

COMMISSIONER EDGAR: Okay. I believe that we did that, but so noted for the record.

Thank you. You are excused.

Staff, any other matters at this time?

MS. HARTMAN: No, no more matters at this time.

COMMISSIONER EDGAR: Okay. Anything from the parties?

MR. BREW: No.

MR. BURNETT: No, ma'am.

COMMISSIONER EDGAR: Okay. Then, Ms. Hartman, will you go over the dates for us, please.

MS. HARTMAN: The next critical dates are the hearing transcripts should be ready and available April 27th; the briefs are due May 18th; Staff's recommendation is scheduled to be filed June 18th for the agenda of June 30th with an order issuing July 20th.

COMMISSIONER EDGAR: Thank you very much. Okay.

Seeing no other matters, thank you to all, and this hearing is adjourned.

(The hearing concluded at 10:59 a.m.)

STATE OF FLORIDA)

: CERTIFICATE OF REPORTERS

COUNTY OF LEON)

WE, JANE FAUROT, RPR, and LINDA BOLES, RPR, CRR, Official Commission Reporters, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that we stenographically reported the said proceedings; that the same has been transcribed under our direct supervision; and that this transcript constitutes a true transcription of our notes of said proceedings.

WE FURTHER CERTIFY that we are not a relative, employee, attorney or counsel of any of the parties, nor are we a relative or employee of any of the parties' attorneys or counsel connected with the action, nor are we financially interested in the action.

DATED THIS 27th DAY OF April, 2009.

JANE FAUROT, RPR
Commission Reporter
(850) 413-6732

LINDA BOLES, RPR, CRR
Commission Reporter
(850) 413-6734

Comprehensive Exhibit List for Entry into Hearing Record

Hearing I.D. #	Witness	I.D. # As Filed	Exhibit Description	Entered
Staff				
1		Exhibit List	Comprehensive Exhibit List	
2		Staff's Composite Exhibits - #2 stipulated	**Interrogatories** 1. PEF's Responses to Staff's First Set of Interrogatories (Nos. 1 - 6) *[Bates Nos. 00000001 – 00000008]* **Request for Production of Documents** 2. PCS Phosphate's Responses to Staff's First Request for Production of Documents (No. 1) *[Bates Nos. 00000009 – 00000056]*	
3		Staff's Exhibit #3 stipulated	PCS Phosphate's Responses to Staff's First Set of Interrogatories (Nos. 1 - 8)	
Progress Energy Florida (Direct)				
4	David W. Gammon	DWG - 1	Protest of PCS Phosphate-White Springs (Dkt# 070235)	
5	David W. Gammon	DWG - 2	Direct testimony of David Gammon (Dkt# 070235)	
6	David W. Gammon	DWG - 3	Direct testomony of Martin J. Marz on behalf of PCS Phosphate-White Springs (Dkt# 070235)	

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 080501-EI EXHIBIT 1
COMPANY FL PSC Staff
WITNESS Comprehensive Exhibit List
DATE 04-16-09

Comprehensive Exhibit List for Entry into Hearing Record				
Hearing I.D. #	**Witness**	**I.D. # As Filed**	**Exhibit Description**	**Entered**
7	David W. Gammon	DWG - 4	Rebuttal testimony of David Gammon (Dkt# 070235)	
PCS Phosphate (Direct)				
8	Martin J. Marz	MJM - 1	Proposed Changes to PEF's Standard Offer Contract	
9	Martin J. Marz	MJM - 2	Capacity Factor of PEF's Combined Cycle Units	
10	Martin J. Marz	MJM - 3	Excerpts from Vandolah Power Company and PEF Tolling Agreement	

HEARING EXHIBITS				
Exhibit #	**Witness**	**Party**	**Description**	**Moved In/Due Date of Late Filed**

HEARING EXHIBITS				
Exhibit #	**Witness**	**Party**	**Description**	**Moved In/Due Date of Late Filed**

HEARING EXHIBITS				
Exhibit #	**Witness**	**Party**	**Description**	**Moved In/Due Date of Late Filed**

EXHIBIT NO. _____

DOCKET NO: 080501-EI

WITNESS: VARIOUS

PARTY: PROGRESS ENERGY FLORIDA

DESCRIPTION: STAFF'S STIPULATED COMPOSITE EXHIBITS - 2

DOCUMENTS:

Interrogatories

1. PEF's Responses to Staff's First Set of Interrogatories (Nos. 1 - 6) *[Bates Nos. 00000001 – 00000008]*

Request for Production of Documents

2. PCS Phosphate's Responses to Staff's First Request for Production of Documents (No. 1) *[Bates Nos. 00000009 – 00000056]*

PROFFERED BY: STAFF

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 080501-EI EXHIBIT 2
COMPANY FL PSC Staff
WITNESS Composite Exhibits #2, Stipulated
DATE 04/16/09

1

PEF's Responses to Staff's First Set of Interrogatories (Nos. 1 - 6)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for waiver of Rule 25-17.250(1) And (2)(a), FAC, 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. 080501-EI Submitted for Filing: March 31, 2009

PROGRESS ENERGY FLORIDA'S RESPONSES TO STAFF'S FIRST SET OF INTERROGATORIES (NOS. 1-6)

Progress Energy Florida, Inc. ("PEF"), responds to Staff's First Set of Interrogatories to PEF (Nos. 1-6), as follows:

INTERROGATORIES

1. Identify all facilities that have executed Standard Offer Contracts with PEF within the last ten years, indicating the facility owner, project size, generation technology, and contract execution date.

Answer: In July, 2008 Vision Power executed PEF's Standard Offer Contract and PEF subsequently filed the executed Standard Offer Contract with the PSC. PSC staff felt that because PEF's Standard Offer Contract was not approved that PEF should re-file the contract as a negotiated contract. PEF did so and the contract was approved by the PSC. The Vision Power contract is for 40 MW and is expected to gasify biomass and utilize the gas in a combined cycle unit.

2. Identify all facilities that have executed negotiated contracts with PEF within the last ten years, indicating the facility owner, project size, generation technology, and contract execution date.

Answer:

Facility Owner	Project Size (MW)	Generation Technology	Contract Execution Date
Biomass Gas & Electric	75	Gasified Waste Wood	July 25, 2007
Biomass Gas & Electric #2	75	Gasified Waste Wood	December 7, 2007
Florida Biomass Energy Group	116	Pyrolysis of an energy crop	April 28, 2006
G2 Energy		Landfill Gas	September 28, 2005
Horizon Energy	60	Gasification of municipal solid waste	August 5, 2008
Jefferson Power	8	Mass burn of waste wood	June 5, 2002
Timber Energy Resources	12.5	Mass burn of wood waste	June 1, 2002
Vision Power	40	Gasification of biomass	July 23, 2008

3. Please refer to page ten of the direct testimony of witness Gammon, regarding a change in the requirement for planned outage notices. How is this change expected to impact the renewable energy provider?

Answer: This change, from requiring a detailed plan to a good faith estimate, reduces the burden on the renewable energy supplier.

3a. Would this change effect the daily operations of PEF?

Answer: It may. PEF attempts to schedule the maintenance of its own generating facilities and the maintenance of the generating facilities that it has under contract in the spring and fall when loads are their lowest. With a small time window, the maintenance outages must be scheduled to ensure that enough generation is available to meet load at all times. If a renewable supplier, particularly a large renewable supplier, opted to move its maintenance outage with little or no notice to PEF, then PEF may find itself without enough generation to meet load and would have to purchase additional power in the market assuming it was available.

4. Does the 20% reserve margin have any impact on the capacity factors for the various units in the generating fleet utilized by PEF?

Answer: Typically, no. PEF maintains a 20% planning reserve margin to prudently plan how our generation will serve our load requirements with a safety margin for reliability. The capacity factors of our generating units are determined first by the system load and then by each unit's cost compared to all of the units in the generating fleet, and other resources in the portfolio. PEF strives to serve our load obligation in a least cost manner, where the least expensive units run first, and have a higher capacity factor.

5. Why is it important that PEF know what type of fuel a renewable energy provider is using?

Answer: PEF needs to know the type of fuel a renewable supplier is using to ensure that the renewable provider qualifies for the Standard Offer Contract as prescribed in Rule 25-17.25. Whereby, Rule 25-17.210 defines renewable generation as using the following as its primary energy source: 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; where, biomass is defined as a fuel source that is comprised of, but not limited to, combustible residues or gases from forest products manufacturing, agricultural and orchard crops, waste products from livestock and poultry operations and food processing, urban wood waste, municipal solid waste, municipal liquid waste treatment operations, and landfill gas.

6. Please refer to page 16 of Witness Gammon's testimony. Is the load curve for PEF sustained at the maximum for a period of several hours?

Answer: Yes, in the summer months the load remains high for several hours per day.

6a. Please explain why the general body of ratepayers would be negatively impacted if the contracted facility were to provide 90 MW rather than 100MW over non-peak periods?

Answer: PEF's ratepayers are paying for installed firm capacity that represents a unit that PEF did not build, but would have been available 24 hours a day, 7 days a week (except for planned and forced outages). Utilizing the combination of a firm capacity and energy purchase power contract, a parallel operating agreement, interconnection standards and performance standards allows purchased power to come close in representing an avoided unit. Furthermore, system events can occur at any time. It may be necessary to request an on-line contracted facility to deliver its full capacity amount during non-peak periods for system reliability, which would represent how the avoided unit would have run. As such, the ratepayer impact can be better seen in an example. If we assume that the avoided unit capacity payment rate is $10/kW-month, then the monthly capacity payment for 100 MW equals the product of $10/kW-month, 100 MW and 1,000 kW/MW or $1,000,000 per month. If the contracted facility can only provide 90 MW at any given time, then the ratepayers are paying $1,000,000 per month, but are only receiving 90% of a product they are paying full price for.

AFFIDAVIT

STATE OF FLORIDA)
)
COUNTY OF PINELLAS)

Before me, the undersigned authority, personally appeared DAVID GAMMON, who

(X) is personally known to me, or

( ) produced _____ as identification and who, being duly sworn, deposes and says that the foregoing answers to Interrogatory Nos. 1 through 6 of Staff's First Set of Interrogatories to Progress Energy Florida, Inc., in Docket No. 080501-EI are true and correct to the best of his knowledge, information and belief.

David Gammon

Senior Power Delivery Specialist
Title

Notary Public
State of Florida

My commission Expires:

DARA TRIBIANO
Notary Public - State of Florida
My Comm. Expires Oct 26, 2012
Commission # DD 819750
Bonded Through National Notary Assn.

2

PCS Phosphate's Responses to Staff's First Request for Production of Documents (No. 1)

2009

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for waiver of Rule 25-17.250(1) 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. 080501-EI
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 100kW tariff, by Progress Energy Florida, Inc.	DOCKET NO. 070235-EQ **Dated: March 23, 2009**

WHITE SPRINGS AGRICULTURAL CHEMICALS, INC.
d/b/a PCS PHOSPHATE – WHITE SPRINGS' OBJECTIONS AND RESPONSES TO FPSC STAFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to Florida Administration Code R. 28-106.206, Rule 1.340 of the Florida Rules of Civil Procedure, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate - White Springs ("PCS Phosphate") hereby serves its objections and responses to the Florida Public Service Commission Staff's ("Staff") First Request of Production of Documents (1) and states as follows:

GENERAL OBJECTIONS

PCS Phosphate objects to any definitions or instructions that are inconsistent with PCS Phosphate's discovery obligations under applicable rules. If some question arises as to PCS Phosphate's discovery obligations, PCS Phosphate will comply with the applicable rules. Additionally, PCS Phosphate generally objects to Staff's discovery requests to the extent that they call for data or information protected by the attorney-client privilege, the work product doctrine, the accountant-client privilege, the trade secret privilege, or any other applicable privilege or protection afforded by law. Finally, PCS Phosphate reserves the right to

supplement any of its responses to Staff's discovery requests if PCS Phosphate cannot locate the answers immediately due to their magnitude and the work required to aggregate them, or if PCS Phosphate later discovers additional responsive information during the course of this proceeding.

DOCUMENTS REQUESTED

1. Please provide a copy of the document referenced as the "EEI Master Agreement" on page 19 of the testimony that was provided by Martin J. Marz on behalf of PCS Phosphate - White Springs in docket No. 070235-EQ.

Response:

Attached is a copy of the EEI Master Power Purchase and Sale Agreement (Bates Nos. PCS0001 – PCS0043).

Respectfully submitted,

s/ James W. Brew
James W. Brew
F. Alvin Taylor
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson Street, NW
Eighth Floor, West Tower
Washington, DC 20007-5201

Attorneys for
White Springs Agricultural Chemicals, Inc.
d/b/a PCS Phosphate - White Springs

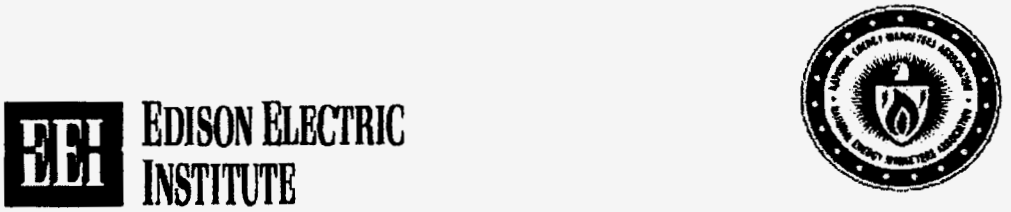
CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing has been furnished by Electronic Mail and/or U.S. Mail this 23rd day of March 2009, to the following:

Jean E. Hartman Senior Attorney Florida Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850	John T. Burnett Progress Energy Service Company, LLC P.O. Box 14042 Saint Petersburg, FL 33733-4042 john.burnett@pgnmail.com
PCS Administration (USA), Inc. Karin S. Torain Suite 400 1101 Skokie Boulevard Northbrook IL 60062	Paul Lewis, Jr. Progress Energy Florida, Inc. 106 East College Avenue, Suite 800 Tallahassee, FL 32301-7740 paul.lewisjr@pgnmail.com

s/ James W. Brew
James W. Brew

Master Power Purchase & Sale Agreement



Version 2.1 (modified 4/25/00)

MASTER POWER PURCHASE AND SALES AGREEMENT

TABLE OF CONTENTS

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* ("*Master Agreement*") is made as of the following date: _____ ("Effective Date"). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." The Parties to this *Master Agreement* are the following:

Name ("_____" or "Party A")

All Notices:

Street: _____

City: _____ Zip: _____

Attn: Contract Administration
Phone: _____
Facsimile: _____
Duns: _____
Federal Tax ID Number: _____

Invoices:
Attn: _____
Phone: _____
Facsimile: _____

Scheduling:
Attn: _____
Phone: _____
Facsimile: _____

Payments:
Attn: _____
Phone: _____
Facsimile: _____

Wire Transfer:
BNK: _____
ABA: _____
ACCT: _____

Credit and Collections:
Attn: _____
Phone: _____
Facsimile: _____

With additional Notices of an Event of Default or Potential Event of Default to:
Attn: _____
Phone: _____
Facsimile: _____

Name ("Counterparty" or "Party B")

All Notices:

Street: _____

City: _____ Zip: _____

Attn: Contract Administration
Phone: _____
Facsimile: _____
Duns: _____
Federal Tax ID Number: _____

Invoices:
Attn: _____
Phone: _____
Facsimile: _____

Scheduling:
Attn: _____
Phone: _____
Facsimile: _____

Payments:
Attn: _____
Phone: _____
Facsimile: _____

Wire Transfer:
BNK: _____
ABA: _____
ACCT: _____

Credit and Collections:
Attn: _____
Phone: _____
Facsimile: _____

With additional Notices of an Event of Default or Potential Event of Default to:
Attn: _____
Phone: _____
Facsimile: _____

The Parties hereby agree that the General Terms and Conditions are incorporated herein. and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff Tariff _____ Dated _____ Docket Number _____

Party B Tariff Tariff _____ Dated _____ Docket Number _____

Article Two

Transaction Terms and Conditions [] Optional provision in Section 2.4. If not checked. inapplicable.

Article Four

Remedies for Failure to Deliver or Receive [] Accelerated Payment of Damages. If not checked. inapplicable.

Article Five

Events of Default: Remedies

[] Cross Default for Party A:

[] Party A:_____ Cross Default Amount $_____

[] Other Entity:_____ Cross Default Amount $_____

[] Cross Default for Party B:

[] Party B:_____ Cross Default Amount $_____

[] Other Entity:_____ Cross Default Amount $_____

5.6 Closeout Setoff

[] Option A (Applicable if no other selection is made.)

[] Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows:_____

_____

[] Option C (No Setoff)

Article 8

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

[] Option A
[] Option B Specify: _____
[] Option C Specify: _____

(b) Credit Assurances:

[] Not Applicable
[] Applicable

(c) Collateral Threshold:

[] Not Applicable
[] Applicable

If applicable, complete the following:

Party B Collateral Threshold: $ _____: provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: $_____

Party B Rounding Amount: $_____

(d) Downgrade Event:

[] Not Applicable
[] Applicable

If applicable, complete the following:

[] It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party B is not rated by either S&P or Moody's

[] Other:
Specify:_____

(e) Guarantor for Party B:_____

Guarantee Amount:_____

8.2 Party B Credit Protection:

(a) Financial Information:

[] Option A
[] Option B Specify: _____
[] Option C Specify: _____

(b) Credit Assurances:

[] Not Applicable
[] Applicable

(c) Collateral Threshold:

[] Not Applicable
[] Applicable

If applicable, complete the following:

Party A Collateral Threshold: $ _____: provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: $_____

Party A Rounding Amount: $_____

(d) Downgrade Event:

[] Not Applicable
[] Applicable

If applicable, complete the following:

[] It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party A is not rated by either S&P or Moody's

[] Other:
Specify:_____

(e) Guarantor for Party A:_____

Guarantee Amount:_____

Article 10

Confidentiality — [] Confidentiality Applicable — If not checked, inapplicable.

Schedule M

[] Party A is a Governmental Entity or Public Power System
[] Party B is a Governmental Entity or Public Power System
[] Add Section 3.6. If not checked, inapplicable
[] Add Section 8.6. If not checked, inapplicable

Other Changes — Specify, if any: _____

IN WITNESS WHEREOF. the Parties have caused this Master Agreement to be duly executed as of the date first above written.

Party A Name	Party B Name
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute ("EEI") and National Energy Marketers Association ("NEM") member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

1.1 "Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.2 "Agreement" has the meaning set forth in the Cover Sheet.

1.3 "Bankrupt" means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.4 "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.5 "Buyer" means the Party to a Transaction that is obligated to purchase and receive, or cause to be received, the Product, as specified in the Transaction.

1.6 "Call Option" means an Option entitling, but not obligating, the Option Buyer to purchase and receive the Product from the Option Seller at a price equal to the Strike Price for the Delivery Period for which the Option may be exercised, all as specified in the Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to sell and deliver the Product for the Delivery Period for which the Option has been exercised.

1.7 "Claiming Party" has the meaning set forth in Section 3.3.

1.8 "Claims" means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

1.9 "Confirmation" has the meaning set forth in Section 2.3.

1.10 "Contract Price" means the price in $U.S. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Transaction.

1.11 "Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.

1.12 "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P, Moody's or any other rating agency agreed by the Parties as set forth in the Cover Sheet.

1.13 "Cross Default Amount" means the cross default amount, if any, set forth in the Cover Sheet for a Party.

1.14 "Defaulting Party" has the meaning set forth in Section 5.1.

1.15 "Delivery Period" means the period of delivery for a Transaction, as specified in the Transaction.

1.16 "Delivery Point" means the point at which the Product will be delivered and received, as specified in the Transaction.

1.17 "Downgrade Event" has the meaning set forth on the Cover Sheet.

1.18 "Early Termination Date" has the meaning set forth in Section 5.2.

1.19 "Effective Date" has the meaning set forth on the Cover Sheet.

1.20 "Equitable Defenses" means any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

1.21 "Event of Default" has the meaning set forth in Section 5.1.

1.22 "FERC" means the Federal Energy Regulatory Commission or any successor government agency.

1.23 "Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer's markets; (ii) Buyer's inability economically

to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff: provided. however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P.

1.24 "Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs). resulting from the termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.25 "Guarantor" means, with respect to a Party, the guarantor, if any, specified for such Party on the Cover Sheet.

1.26 "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published). plus two percent (2%) and (b) the maximum rate permitted by applicable law.

1.27 "Letter(s) of Credit" means one or more irrevocable. transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody's, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.28 "Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Terminated Transaction. determined in a commercially reasonable manner.

1.29 "Master Agreement" has the meaning set forth on the Cover Sheet.

1.30 "Moody's" means Moody's Investor Services, Inc. or its successor.

1.31 "NERC Business Day" means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice. payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.32 "Non-Defaulting Party" has the meaning set forth in Section 5.2.

1.33 "Offsetting Transactions" mean any two or more outstanding Transactions, having the same or overlapping Delivery Period(s), Delivery Point and payment date, where under one or more of such Transactions, one Party is the Seller, and under the other such Transaction(s), the same Party is the Buyer.

1.34 "Option" means the right but not the obligation to purchase or sell a Product as specified in a Transaction.

1.35 "Option Buyer" means the Party specified in a Transaction as the purchaser of an option, as defined in Schedule P.

1.36 "Option Seller" means the Party specified in a Transaction as the seller of an option , as defined in Schedule P.

1.37 "Party A Collateral Threshold" means the collateral threshold, if any, set forth in the Cover Sheet for Party A.

1.38 "Party B Collateral Threshold" means the collateral threshold, if any, set forth in the Cover Sheet for Party B.

1.39 "Party A Independent Amount" means the amount , if any, set forth in the Cover Sheet for Party A.

1.40 "Party B Independent Amount" means the amount , if any, set forth in the Cover Sheet for Party B.

1.41 "Party A Rounding Amount" means the amount, if any, set forth in the Cover Sheet for Party A.

1.42 "Party B Rounding Amount" means the amount, if any, set forth in the Cover Sheet for Party B.

1.43 "Party A Tariff" means the tariff, if any, specified in the Cover Sheet for Party A.

1.44 "Party B Tariff" means the tariff, if any, specified in the Cover Sheet for Party B.

1.45 "Performance Assurance" means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.

1.46 "Potential Event of Default" means an event which, with notice or passage of time or both, would constitute an Event of Default.

1.47 "Product" means electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.

1.48 "Put Option" means an Option entitling, but not obligating, the Option Buyer to sell and deliver the Product to the Option Seller at a price equal to the Strike Price for the Delivery Period for which the option may be exercised, all as specified in a Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to purchase and receive the Product.

1.49 "Quantity" means that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller as specified in the Transaction.

1.50 "Recording" has the meaning set forth in Section 2.4.

1.51 "Replacement Price" means the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Product specified in a Transaction but not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or at Buyer's option, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

1.52 "S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.53 "Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or at Seller's option, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer's liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

1.54 "Schedule" or "Scheduling" means the actions of Seller, Buyer and/or their designated representatives, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Period at a specified Delivery Point.

1.55 "Seller" means the Party to a Transaction that is obligated to sell and deliver, or cause to be delivered, the Product, as specified in the Transaction.

1.56 "Settlement Amount" means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2.

1.57 "Strike Price" means the price to be paid for the purchase of the Product pursuant to an Option.

1.58 "Terminated Transaction" has the meaning set forth in Section 5.2.

1.59 "Termination Payment" has the meaning set forth in Section 5.3.

1.60 "Transaction" means a particular transaction agreed to by the Parties relating to the sale and purchase of a Product pursuant to this Master Agreement.

1.61 "Transmission Provider" means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point in a particular Transaction.

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

2.1 Transactions. A Transaction shall be entered into upon agreement of the Parties orally or, if expressly required by either Party with respect to a particular Transaction, in writing, including an electronic means of communication. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement (i) based on any law requiring agreements to be in writing or to be signed by the parties, or (ii) based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

2.2 Governing Terms. Unless otherwise specifically agreed, each Transaction between the Parties shall be governed by this Master Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), , the Party A Tariff, if any, and the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmations accepted in accordance with Section 2.3) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Master Agreement and any terms of the Transaction shall be resolved in favor of the terms of such Transaction.

2.3 Confirmation. Seller may confirm a Transaction by forwarding to Buyer by facsimile within three (3) Business Days after the Transaction is entered into a confirmation ("Confirmation") substantially in the form of Exhibit A. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller in writing of such objections within two (2) Business Days of Buyer's receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Seller fails to send a Confirmation within three (3) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer of such objections within two (2) Business Days of Seller's receipt thereof, failing

which Seller shall be deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party objects to the other Party's Confirmation within two (2) Business Days of receipt, Seller's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Seller's Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer's Confirmation was sent prior to Seller's Confirmation, in which case Buyer's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

2.4 Additional Confirmation Terms. If the Parties have elected on the Cover Sheet to make this Section 2.4 applicable to this Master Agreement, when a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g., price or special transmission conditions), which modify or supplement the general terms and conditions of this Master Agreement (e.g., arbitration provisions or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 2.3 unless agreed to either orally or in writing by the Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.

2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Master Agreement.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price; provided, however, with respect to Options, the obligations set forth in the preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with its terms. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

3.2 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services

with its Transmission Providers, as specified by the Parties in the Transaction, or in the absence thereof, in accordance with the practice of the Transmission Providers, to deliver the Product to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive the Product at the Delivery Point.

3.3 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Transaction and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

4.1 Seller Failure. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Product or by Buyer's failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2 Buyer Failure. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by Seller's failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default. An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(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 by such Party herein 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 (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article Four) 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/collateral requirements agreed to pursuant to Article Eight hereof;

(f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;

(g) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);

(h) with respect to such Party's Guarantor, if any:

(i) if any representation or warranty made by a 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 and such failure shall not be remedied within three (3) Business Days after written notice;

(iii) a Guarantor becomes Bankrupt;

(iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or

(v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

5.3 Net Out of Settlement Amounts. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article Eight, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective.

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written

explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs.

Option A: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option B: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party or any of its Affiliates to the Non-Defaulting Party or any of its Affiliates under any other agreements, instruments or undertakings between the Defaulting Party or any of its Affiliates and the Non-Defaulting Party or any of its Affiliates and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option C: Neither Option A nor B shall apply.

5.7 Suspension of Performance. Notwithstanding any other provision of this Master Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under any or all Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days with respect to any single Transaction unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

ARTICLE SIX: PAYMENT AND NETTING

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments and, if "Accelerated Payment of Damages" is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). As soon as practicable after the end of each month,

each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment. Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.

6.4 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all Transactions through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Master Agreement, including any related damages calculated pursuant to Article Four (unless one of the Parties elects to accelerate payment of such amounts as permitted by Article Four), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.5 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article Four, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security. Unless the Party benefiting from Performance Assurance or a guaranty notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article Five, all amounts netted pursuant to this Article Six shall not take into account or include any Performance Assurance or guaranty which may be in effect to secure a Party's performance under this Agreement.

6.7 Payment for Options. The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller. Upon exercise of an Option, payment for the Product underlying such Option shall be due in accordance with Section 6.1.

6.8 Transaction Netting. If the Parties enter into one or more Transactions, which in conjunction with one or more other outstanding Transactions, constitute Offsetting Transactions, then all such Offsetting Transactions may by agreement of the Parties, be netted into a single Transaction under which:

(a) the Party obligated to deliver the greater amount of Energy will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and

(b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties.

Each single Transaction resulting under this Section shall be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting Transaction occurs, outstanding obligations under the Offsetting Transactions which are satisfied by such offset shall terminate.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR

OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Party A Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.1(a) is specified on the Cover Sheet, Section 8.1(a) Option C shall apply exclusively. If none of Sections 8.1(b), 8.1(c) or 8.1(d) are specified on the Cover Sheet, Section 8.1(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party B's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Party B diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party A may request from Party B the information specified in the Cover Sheet.

(b) Credit Assurances. If Party A has reasonable grounds to believe that Party B's creditworthiness or performance under this Agreement has become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice Party B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party A plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold, then Party A, on any Business Day, may request that Party B provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold (rounding upwards for any fractional amount to the next Party B Rounding Amount) ("Party B Performance Assurance"), less any Party B Performance Assurance already posted with Party A. Such Party B Performance Assurance shall be delivered to Party A within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party B, at its sole cost, may request that such Party B Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party B's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party B Rounding Amount). In the event that Party B fails to provide Party B Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.1(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party A as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party B to Party A, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party B, then Party A may require Party B to provide Performance Assurance in an amount determined by Party A in a commercially reasonable manner. In the event Party B shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party B shall deliver to Party A, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party A.

8.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.2(a) is specified on the Cover Sheet, Section 8.2(a) Option C shall apply exclusively. If none of Sections 8.2(b), 8.2(c) or 8.2(d) are specified on the Cover Sheet, Section 8.2(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party A's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party B may request from Party A the information specified in the Cover Sheet.

(b) Credit Assurances. If Party B has reasonable grounds to believe that Party A's creditworthiness or performance under this Agreement has become unsatisfactory, Party B will provide Party A with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice Party A shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party B. In the event that Party A fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party B plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A's Independent Amount, if any, exceeds the Party A Collateral

Threshold (rounding upwards for any fractional amount to the next Party A Rounding Amount) ("Party A Performance Assurance"), less any Party A Performance Assurance already posted with Party B. Such Party A Performance Assurance shall be delivered to Party B within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party A, at its sole cost, may request that such Party A Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party A's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount). In the event that Party A fails to provide Party A Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.2(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party B as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party A to Party B, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party A, then Party B may require Party A to provide Performance Assurance in an amount determined by Party B in a commercially reasonable manner. In the event Party A shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party A shall deliver to Party B, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party B.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a "Pledgor") hereby grants to the other Party (the "Secured Party") a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding

Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE NINE: GOVERNMENTAL CHARGES

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Master Agreement in accordance with the intent of the parties to minimize all taxes , so long as neither Party is materially adversely affected by such efforts.

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any government authority("Governmental Charges") on or with respect to the Product or a Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 6 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

ARTICLE TEN: MISCELLANEOUS

10.1 Term of Master Agreement. The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until terminated by either Party upon (thirty) 30 days' prior written notice; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Master Agreement that by its terms survives any such termination and, provided further, that this Master Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated under Section 5.2 of this Agreement.

10.2 Representations and Warranties. On the Effective Date and the date of entering into each Transaction, each Party represents and warrants to the other Party that:

(i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

(iii) the execution, delivery and performance of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

(iv) this Master Agreement, each Transaction (including any Confirmation accepted in accordance with Section 2.3), and each other document executed and delivered in accordance with this Master Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.

(v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

(vi) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

(vii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

(viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) and as to whether this Master Agreement and each such Transaction (including any Confirmation accepted in accordance with Section 2.3) is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

(ix) it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code;

(x) it has entered into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Transaction to which it is a Party;

(xi) with respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and

(xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

10.3 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Quantity of the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

10.4 Indemnity. Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided in Section 10.3. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

10.6 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10.7 Notices. All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

10.8 General. This Master Agreement (including the exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation accepted in accordance with Section 2.3) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party's successors and permitted assigns.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement. If requested, a Party shall provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be

made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10 Forward Contract. The Parties acknowledge and agree that all Transactions constitute "forward contracts" within the meaning of the United States Bankruptcy Code.

10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement to a third party (other than the Party's employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

SCHEDULE M

(THIS SCHEDULE IS INCLUDED IF THE APPROPRIATE BOX ON THE COVER SHEET IS MARKED INDICATING A PARTY IS A GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM)

A. The Parties agree to add the following definitions in Article One.

"Act" means _____.[1]

"Governmental Entity or Public Power System" means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.

"Special Fund" means a fund or account of the Governmental Entity or Public Power System set aside and or pledged to satisfy the Public Power System's obligations hereunder out of which amounts shall be paid to satisfy all of the Public Power System's obligations under this Master Agreement for the entire Delivery Period.

B. The following sentence shall be added to the end of the definition of "Force Majeure" in Article One.

If the Claiming Party is a Governmental Entity or Public Power System. Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.

C. The Parties agree to add the following representations and warranties to Section 10.2:

Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Master Agreement. with respect to this Master Agreement and each Transaction. as follows: (i) all acts necessary to the valid execution. delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System's ordinances. bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such

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[1] Cite the state enabling and other relevant statutes applicable to Governmental Entity or Public Power System.

positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Master Agreement by Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) the Public Power System's obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Governmental Entity or Public Power System' obligations hereunder and under each Transaction or (c) are to be made solely from a Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by the Governmental Entity or Public Power System will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Governmental Entity or Public Power System otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

D. The Parties agree to add the following sections to Article Three:

Section 3.4 Public Power System's Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Agreement, Governmental Entity or Public Power System shall provide the other Party hereto (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Governmental Entity or Public Power System of this Master Agreement and (ii) an opinion of counsel for Governmental Entity or Public Power System, in form and substance reasonably satisfactory to the Other Party, regarding the validity, binding effect and enforceability of this Master Agreement against Governmental Entity or Public Power System in

respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.

Section 3.5 No Immunity Claim. Governmental Entity or Public Power System warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

E. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

Section 3.6 Governmental Entity or Public Power System Security. With respect to each Transaction, Governmental Entity or Public Power System shall either (i) have created and set aside a Special Fund or (ii) upon execution of this Master Agreement and prior to the commencement of each subsequent fiscal year of Governmental Entity or Public Power System during any Delivery Period, have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this Master Agreement for such fiscal year; any breach of this provision shall be deemed to have arisen during a fiscal period of Governmental Entity or Public Power System for which budgetary approval or certification of its obligations under this Master Agreement is in effect and, notwithstanding anything to the contrary in Article Four, an Early Termination Date shall automatically and without further notice occur hereunder as of such date wherein Governmental Entity or Public Power System shall be treated as the Defaulting Party. Governmental Entity or Public Power System shall have allocated to the Special Fund or its general funds a revenue base that is adequate to cover Public Power System's payment obligations hereunder throughout the entire Delivery Period.

F. If the appropriate box is checked on the Cover Sheet, the Parties agree to add the following section to Article Eight:

Section 8.4 Governmental Security. As security for payment and performance of Public Power System's obligations hereunder, Public Power System hereby pledges, sets over, assigns and grants to the other Party a security interest in all of Public Power System's right, title and interest in and to [specify collateral].

G. The Parties agree to add the following sentence at the end of Section 10.6 - Governing Law:

> NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF _____[2] SHALL APPLY.

[2] Insert relevant state for Governmental Entity or Public Power System.

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

"Ancillary Services" means any of the services identified by a Transmission Provider in its transmission tariff as "ancillary services" including, but not limited to, regulation and frequency response, energy imbalance, operating reserve-spinning and operating reserve-supplemental, as may be specified in the Transaction.

"Capacity" has the meaning specified in the Transaction.

"Energy" means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

"Firm (LD)" means, with respect to a Transaction, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article Four.

"Firm Transmission Contingent - Contract Path" means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product in the case of the Seller from the generation source to the Delivery Point or in the case of the Buyer from the Delivery Point to the ultimate sink, and (ii) such interruption or curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the applicable transmission provider's tariff. This contingency shall excuse performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of "Force Majeure" in Section 1.23 to the contrary.

"Firm Transmission Contingent - Delivery Point" means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission to the Delivery Point (in the case of Seller) or from the Delivery Point (in the case of Buyer) for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product, in the case of the Seller, to be delivered to the Delivery Point or, in the case of Buyer, to be received at the Delivery Point and (ii) such interruption or curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the applicable transmission provider's tariff. This transmission contingency excuses performance for the duration of the interruption or curtailment, notwithstanding the provisions of the definition of "Force Majeure" in Section 1.23 to the contrary. Interruptions or curtailments of transmission other than the transmission either immediately to or from the Delivery Point shall not excuse performance

"Firm (No Force Majeure)" means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to which performance is owed shall be entitled to receive from the Party which failed to perform an

amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

"Into _____ (the "Receiving Transmission Provider"), Seller's Daily Choice" means that, in accordance with the provisions set forth below, (1) the Product shall be scheduled and delivered to an interconnection or interface ("Interface") either (a) on the Receiving Transmission Provider's transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which Interface, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area; and (2) Seller has the right on a daily prescheduled basis to designate the Interface where the Product shall be delivered. An "Into" Product shall be subject to the following provisions:

1. Prescheduling and Notification. Subject to the provisions of Section 6, not later than the prescheduling deadline of 11:00 a.m. CPT on the Business Day before the next delivery day or as otherwise agreed to by Buyer and Seller, Seller shall notify Buyer ("Seller's Notification") of Seller's immediate upstream counterparty and the Interface (the "Designated Interface") where Seller shall deliver the Product for the next delivery day, and Buyer shall notify Seller of Buyer's immediate downstream counterparty.

2. Availability of "Firm Transmission" to Buyer at Designated Interface; "Timely Request for Transmission," "ADI" and "Available Transmission." In determining availability to Buyer of next-day firm transmission ("Firm Transmission") from the Designated Interface, a "Timely Request for Transmission" shall mean a properly completed request for Firm Transmission made by Buyer in accordance with the controlling tariff procedures, which request shall be submitted to the Receiving Transmission Provider no later than 30 minutes after delivery of Seller's Notification, provided, however, if the Receiving Transmission Provider is not accepting requests for Firm Transmission at the time of Seller's Notification, then such request by Buyer shall be made within 30 minutes of the time when the Receiving Transmission Provider first opens thereafter for purposes of accepting requests for Firm Transmission.

Pursuant to the terms hereof, delivery of the Product may under certain circumstances be redesignated to occur at an Interface other than the Designated Interface (any such alternate designated interface, an "ADI") either (a) on the Receiving Transmission Provider's transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which ADI, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area using either firm or non-firm transmission, as available on a day-ahead or hourly basis (individually or collectively referred to as "Available Transmission") within the Receiving Transmission Provider's transmission system.

3. Rights of Buyer and Seller Depending Upon Availability of/Timely Request for Firm Transmission.

A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider

and Buyer purchases such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

i. If the Firm Transmission purchased by Buyer within the Receiving Transmission Provider's transmission system from the Designated Interface ceases to be available to Buyer for any reason, or if Seller is unable to deliver the Product at the Designated Interface for any reason except Buyer's non-performance, then at Seller's choice from among the following, Seller shall: (a) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, require Buyer to purchase such Firm Transmission from such ADI, and schedule and deliver the affected portion of the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, or (b) require Buyer to purchase non-firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by Seller, or (c) to the extent firm transmission is available on an hourly basis, require Buyer to purchase firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of such hourly firm transmission from the Designated Interface or an ADI designated by Seller.

ii. If the Available Transmission utilized by Buyer as required by Seller pursuant to Section 3A(i) ceases to be available to Buyer for any reason, then Seller shall again have those alternatives stated in Section 3A(i) in order to satisfy its obligations.

iii. Seller's obligation to schedule and deliver the Product at an ADI is subject to Buyer's obligation referenced in Section 4B to cooperate reasonably therewith. If Buyer and Seller cannot complete the scheduling and/or delivery at an ADI, then Buyer shall be deemed to have satisfied its receipt obligations to Seller and Seller shall be deemed to have failed its delivery obligations to Buyer, and Seller shall be liable to Buyer for amounts determined pursuant to Article Four.

iv. In each instance in which Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI pursuant to Sections 3A(i) or (ii), and Firm Transmission had been purchased by both Seller and Buyer into and within the Receiving Transmission Provider's transmission system as to the scheduled delivery which could not be completed as a result of the interruption or curtailment of such Firm Transmission, Buyer and Seller shall bear their respective transmission expenses and/or associated congestion charges incurred in connection with efforts to complete delivery by such alternative scheduling and delivery arrangements. In any instance except as set forth in the immediately preceding sentence, Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI under Sections 3A(i) or (ii), Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with such alternative scheduling arrangements.

B. Timely Request for Firm Transmission Made by Buyer but Rejected by the Receiving Transmission Provider. If Buyer's Timely Request for Firm Transmission is rejected by the Receiving Transmission Provider because of unavailability of Firm Transmission from the Designated Interface, then Buyer shall notify Seller within 15 minutes after receipt of the Receiving Transmission Provider's notice of rejection ("Buyer's Rejection Notice"). If Buyer timely notifies Seller of such unavailability of Firm Transmission from the Designated Interface, then Seller shall be obligated either (1) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, to require Buyer to purchase (at Buyer's own expense) such Firm Transmission from such ADI and schedule and deliver the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, and thereafter the provisions in Section 3A shall apply, or (2) to require Buyer to purchase (at Buyer's own expense) non-firm transmission, and schedule and deliver the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by the Seller, in which case Seller shall bear the risk of interruption or curtailment of the non-firm transmission; provided, however, that if the non-firm transmission is interrupted or curtailed or if Seller is unable to deliver the Product for any reason, Seller shall have the right to schedule and deliver the Product to another ADI in order to satisfy its delivery obligations, in which case Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with Seller's inability to deliver the Product as originally prescheduled. If Buyer fails to timely notify Seller of the unavailability of Firm Transmission, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface, and the provisions of Section 3D shall apply.

C. Timely Request for Firm Transmission Made by Buyer, Accepted by the Receiving Transmission Provider and not Purchased by Buyer. If Buyer's Timely Request for Firm Transmission is accepted by the Receiving Transmission Provider but Buyer elects to purchase non-firm transmission rather than Firm Transmission to take delivery of the Product, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

D. No Timely Request for Firm Transmission Made by Buyer, or Buyer Fails to Timely Send Buyer's Rejection Notice. If Buyer fails to make a Timely Request for Firm Transmission or Buyer fails to timely deliver Buyer's Rejection Notice, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

4. Transmission.

A. Seller's Responsibilities. Seller shall be responsible for transmission required to deliver the Product to the Designated Interface or ADI, as the case may be. It is expressly agreed that Seller is not required to utilize Firm Transmission for its delivery obligations hereunder, and Seller shall bear the risk of utilizing non-firm transmission. If Seller's scheduled delivery to Buyer is interrupted as a result of Buyer's attempted transmission of the Product beyond the Receiving Transmission Provider's system border, then Seller will be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for damages pursuant to Article Four.

B. Buyer's Responsibilities. Buyer shall be responsible for transmission required to receive and transmit the Product at and from the Designated Interface or ADI, as the case may be, and except as specifically provided in Section 3A and 3B, shall be responsible for any costs associated with transmission therefrom. If Seller is attempting to complete the designation of an ADI as a result of Seller's rights and obligations hereunder, Buyer shall co-operate reasonably with Seller in order to effect such alternate designation.

5. Force Majeure. An "Into" Product shall be subject to the "Force Majeure" provisions in Section 1.23.

6. Multiple Parties in Delivery Chain Involving a Designated Interface. Seller and Buyer recognize that there may be multiple parties involved in the delivery and receipt of the Product at the Designated Interface or ADI to the extent that (1) Seller may be purchasing the Product from a succession of other sellers ("Other Sellers"), the first of which Other Sellers shall be causing the Product to be generated from a source ("Source Seller") and/or (2) Buyer may be selling the Product to a succession of other buyers ("Other Buyers"), the last of which Other Buyers shall be using the Product to serve its energy needs ("Sink Buyer"). Seller and Buyer further recognize that in certain Transactions neither Seller nor Buyer may originate the decision as to either (a) the original identification of the Designated Interface or ADI (which designation may be made by the Source Seller) or (b) the Timely Request for Firm Transmission or the purchase of other Available Transmission (which request may be made by the Sink Buyer). Accordingly, Seller and Buyer agree as follows:

A. If Seller is not the Source Seller, then Seller shall notify Buyer of the Designated Interface promptly after Seller is notified thereof by the Other Seller with whom Seller has a contractual relationship, but in no event may such designation of the Designated Interface be later than the prescheduling deadline pertaining to the Transaction between Buyer and Seller pursuant to Section 1.

B. If Buyer is not the Sink Buyer, then Buyer shall notify the Other Buyer with whom Buyer has a contractual relationship of the Designated Interface promptly after Seller notifies Buyer thereof, with the intent being that the party bearing actual responsibility to secure transmission shall have up to 30 minutes after receipt of the Designated Interface to submit its Timely Request for Firm Transmission.

C. Seller and Buyer each agree that any other communications or actions required to be given or made in connection with this "Into Product" (including without limitation, information relating to an ADI) shall be made or taken promptly after receipt of the relevant information from the Other Sellers and Other Buyers, as the case may be.

D. Seller and Buyer each agree that in certain Transactions time is of the essence and it may be desirable to provide necessary information to Other Sellers and Other Buyers in order to complete the scheduling and delivery of the Product. Accordingly, Seller and Buyer agree that each has the right, but not the obligation, to provide information at its own risk to Other Sellers and Other Buyers, as the case may be, in order to effect the prescheduling, scheduling and delivery of the Product

"Native Load" means the demand imposed on an electric utility or an entity by the requirements of retail customers located within a franchised service territory that the electric utility or entity has statutory obligation to serve.

"Non-Firm" means, with respect to a Transaction, that delivery or receipt of the Product may be interrupted for any reason or for no reason, without liability on the part of either Party.

"System Firm" means that the Product will be supplied from the owned or controlled generation or pre-existing purchased power assets of the system specified in the Transaction (the "System") with non-firm transmission to and from the Delivery Point, unless a different Transmission Contingency is specified in a Transaction. Seller's failure to deliver shall be excused: (i) by an event or circumstance which prevents Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Seller; (ii) by Buyer's failure to perform; (iii) to the extent necessary to preserve the integrity of, or prevent or limit any instability on, the System; (iv) to the extent the System or the control area or reliability council within which the System operates declares an emergency condition, as determined in the system's, or the control area's, or reliability council's reasonable judgment; or (v) by the interruption or curtailment of transmission to the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Seller's performance. Buyer's failure to receive shall be excused (i) by Force Majeure; (ii) by Seller's failure to perform, or (iii) by the interruption or curtailment of transmission from the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Buyer's performance. In any of such events, neither party shall be liable to the other for any damages, including any amounts determined pursuant to Article Four.

"Transmission Contingent" means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller's proposed generating source to the Buyer's proposed ultimate sink, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Seller or Buyer is attempting to secure is from source to sink is unavailable, this contingency excuses performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller

or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of "Force Majeure" in Article 1.23 to the contrary.

"Unit Firm" means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller's failure to deliver under a "Unit Firm" Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by Buyer's failure to perform. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four.

EXHIBIT A

MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER

This confirmation letter shall confirm the Transaction agreed to on _____, ___ between _____ ("Party A") and _____ ("Party B") regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: _____

Buyer: _____

Product:

[] Into _____, Seller's Daily Choice

[] Firm (LD)

[] Firm (No Force Majeure)

[] System Firm

(Specify System: _____)

[] Unit Firm

(Specify Unit(s): _____)

[] Other _____

[] Transmission Contingency (If not marked, no transmission contingency)

[]	FT-Contract Path Contingency	[]	Seller	[]	Buyer
[]	FT-Delivery Point Contingency	[]	Seller	[]	Buyer
[]	Transmission Contingent	[]	Seller	[]	Buyer
[]	Other transmission contingency				

(Specify: _____)

Contract Quantity: _____

Delivery Point: _____

Contract Price:

Energy Price: _____

Other Charges: _____

Delivery Period: _____

Special Conditions: _____

Scheduling: _____

Option Buyer: _____

Option Seller: _____

Type of Option: _____

Strike Price: _____

Premium: _____

Exercise Period: _____

This confirmation letter is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated _____ (the "Master Agreement") between Party A and Party B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

[Party A]	[Party B]
Name: _____	Name: _____
Title: _____	Title: _____
Phone No: _____	Phone No: _____
Fax: _____	Fax: _____

EXHIBIT NO. 3

DOCKET NO: 080501-EI

PARTY: PROGRESS ENERGY FLORIDA

DOCUMENT: PSC Phosphate's responses to Staff's First Set of Interrogatories in Docket 080501-EI – STIPULATED

PROFFERED BY: Staff

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 080501-EI EXHIBIT 3
COMPANY FL PSC Staff
WITNESS Staff's Ex. 3 - Stipulated
DATE 04/16/09

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for waiver of Rule 25-17.250(1) 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. 080501-EI
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 100kW tariff, by Progress Energy Florida, Inc.	DOCKET NO. 070235-EQ
	Dated: March 23, 2009

WHITE SPRINGS AGRICULTURAL CHEMICALS, INC.
d/b/a PCS PHOSPHATE – WHITE SPRINGS' OBJECTIONS AND RESPONSES TO FPSC STAFF'S FIRST SET OF INTERROGATORIES

Pursuant to Florida Administration Code R. 28-106.206, Rule 1.340 of the Florida Rules of Civil Procedure, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate - White Springs ("PCS Phosphate") hereby serves its objections and responses to the Florida Public Service Commission Staff's ("Staff") First Set of Interrogatories (1-8) and states as follows:

GENERAL OBJECTIONS

PCS Phosphate objects to any definitions or instructions that are inconsistent with PCS Phosphate's discovery obligations under applicable rules. If some question arises as to PCS Phosphate's discovery obligations, PCS Phosphate will comply with the applicable rules. Additionally, PCS Phosphate generally objects to Staff's discovery requests to the extent that they call for data or information protected by the attorney-client privilege, the work product doctrine, the accountant-client privilege, the trade secret privilege, or any other applicable privilege or protection afforded by law. Finally, PCS Phosphate reserves the right to

supplement any of its responses to Staff's discovery requests if PCS Phosphate cannot locate the answers immediately due to their magnitude and the work required to aggregate them, or if PCS Phosphate later discovers additional responsive information during the course of this proceeding.

RESPONSES TO INTERROGATORIES

1. a. Should a renewable energy provider seek to generate the maximum possible energy whenever its renewable generating plant is able to run?

Response:

The physical ability to operate is not the sole factor determining renewable energy production. Although, generally speaking, any generator should attempt to maximize production whenever it is economically beneficial to do so, a renewable energy producer whose facilities are linked to a manufacturing process may find that its generation output is limited by manufacturing schedules and related considerations. Also, the prices, terms and conditions of its power sales agreement with its utility may serve to encourage or discourage renewable energy production by influencing the overall economics of such production.

b. Please provide the reasoning for the response given for Interrogatory 1a.

Response:

See Response to 1.a above.

2. a. Based on the answers provided in Interrogatories 1a and 1b, would the availability factor and the capacity factor tend to be about the same or how much would they differ?

Response:

Availability and capacity factors may not "tend to be about the same," and the divergence between these measurements may not be expected to be uniform. As discussed in response to Interrogatory 1.a., various variables may influence the operation of a particular renewable energy facility (e.g., type of facility, ability of utility to take power and scheduling of manufacturing process). These variables may have differing impacts on the availability and capacity factors of the facility. Utility facilities will have different availability and capacity factors as well, depending upon the type of unit, operating costs, dispatch protocols, and other variables.

b. Please provide the reasoning for the response given for Interrogatory 2a.

Response:

See Response to 2.a. above.

3. a. Do the generators in the PEF fleet operate in the same manner as the renewable generating plants?

Response:

No. Based on information and belief, PEF's units generally operate on an economic dispatch basis. Independent renewable generators in Florida are not centrally dispatched and do not run on the basis of utility economic dispatch.

b. Please explain the similarities and differences between the operation of PEF's generators and the operation of renewable energy provider's generators.

Response:

See Responses to 1.a., 2.a. and 3.a. above. Also, PEF recovers the capital costs of its units in base rates without regard to a particular unit's capacity factor. PEF power plant operating costs similarly are recovered in base rates or through adjustment clause mechanisms without regard to unit capacity factor. A renewable energy producer is not centrally dispatched, but production may be limited by other factors as discussed.

4. a. Please explain how renewable energy providers operate with regard to economic dispatch methodology.

Response:

A renewable generator will typically act consistent with economic dispatch if its output is bid into a centralized market, or if it has agreed to be subject to economic dispatch pursuant to a contractual arrangement with a utility. Absent those conditions, the renewable generator will not be subject to economic dispatch by a utility.

b. How are the generators operated by a renewable energy provider impacted by economic dispatch?

Response:

The avoided energy payments received by a renewable generating facility are based upon a calculation of the economic value of the electricity generated by the utility, *i.e.* the utility's avoided cost of generation.

c. Please provide the reasoning for the response given for Interrogatory 4b.

Response:

See Response to 4.b. above.

d. For the generators in the PEF's fleet, please explain how the availability factor and the capacity factor will be similar to that for a renewable generator?

Response:

Generators in PEF's fleet exhibit a range of availability and capacity factors for base load and peaking units that will differ from availability and capacity factors of renewable generators of varying technologies. The terms "availability factor" and "capacity factor" have standard industry meanings that apply equally to PEF's generation fleet and renewable energy producers. Those meanings are discussed in both the Direct and Supplemental Direct Testimony of Martin J. Marz.

5. a. Please explain why the generating units at the Hines Energy Facility and the Tiger Bay Facility are used by Mr. Marz in his testimony filed in support of PCS Phosphate as the basis for a comparison to the renewable energy provider's generating units.

Response:

Those units are not used as a comparison to renewable units. Rather, those units are gas-fired combined cycle units that would operate in a manner consistent with the avoided unit identified in both the 2007 and 2008 Ten Year Site Plans. Mr. Marz' testimony uses these to highlight the actual capacity factor of combined cycle units on the PEF system. They serve as a benchmark to judge the reasonableness of the proposed Capacity Factor used to establish a minimum capacity payment under the Standard Offer Contract.

b. Is the reserve margin of 20%, maintained by Florida investor-owned utilities to insure reliability, included in the comparisons mentioned in Interrogatory 5a?

Response:

No. The Capacity Factor referenced in Interrogatory 5.a. reflects the calculation of the actual capacity factor: MW generated divided by Capacity*Period Hours*100.

c. Does the reserve margin impact the capacity factor of the generating units operated by the renewable energy provider? Please explain your response.

Response:

No. Capacity Factor measures actual generation as compared to total generation available from the unit.

6. a. What is the meaning of the phrase "value of deferral contract" as associated with the Standard Offer Contract offered by PEF?

Response:

It refers to the calculation methodology specified in Rule 25-17.0832, F.A.C..

b. Is the PEF Standard Offer Contract a value of deferral contract? Please explain your agreement or disagreement.

Response:

Yes. Based on information and belief, the payment methodology is based upon the methodology provided in Rule 25-17-0832, F.A.C..

7. a. Should the PEF Standard Offer Contract include capacity testing periods for renewable generators? Please explain your answer.

Response:

Yes. Capacity tests after the initial test are a justifiable term of a Standard Offer Contract. As explained in the Direct Testimony of Martin Marz, an annual test is acceptable means for PEF to confirm the capacity of a facility. However, a second test in any one year, if requested by PEF, should only be for cause, be no sooner than 6 months after the most recent test and to the extent there are any incremental costs, those costs should be subject to reimbursement by PEF.

b. Is a committed capacity test of limited duration, such as two hours, adequate?

Response:

The "adequacy" of a committed capacity test of limited duration will depend on the technology utilized by the tested facility. The test period should, however, be of sufficient duration, to provide a full assessment of the capacity that the facility is capable of providing.

c. Please explain how the capacity available for a few hours could replace a like capacity portion of an avoided unit that is available on a 24 hour basis.

Response:

There is no claim in Mr. Marz' testimony that capacity available only for a few hours could replace a like portion of an avoided unit. A qualifying facility is not required to possess identical operating characteristics as the avoided unit (just as utility coal, nuclear and combustion turbine units do not possess like operating characteristics). The capacity value should be based on an assessment of the operating characteristics of the renewable generators particular unit. Several renewable technologies (e.g., waste heat, biomass) are available on a "24-hour basis" and PCS Phosphate supports favoring such renewable technologies that can respond during periods of high utility system demand.

d. How should the combined resources of the renewable generator combined with other PEF generators be utilized to ensure that electric energy is provided at least cost to the ratepayer?

Response:

Under the avoided cost terms of Rules 25-17.0825 and 25-17.0832, F.A.C., all renewable energy production is paid on a least cost basis to ratepayers (i.e., fossil-fueled based avoided costs), helps mitigate Florida's reliance on natural gas for electric generation, and improves environmental conditions. In a general sense, the FPSC pricing approach seeks to obtain all of the benefits of renewable energy solely by paying the utility's avoided cost. Removing impediments to the development of renewable resources would further Florida policies to obtain renewable resources at least cost and works in support of the policy of

increasing the use and availability of renewable resources. Commission policies that promote maximum renewable energy production by existing facilities that are already connected to the grid and require no further utility infrastructure investment and displace peaking generation, will promote a least cost strategy.

8. Please identify any witness(es) you intend to have testify in this proceeding and state the subject matter of each witness' testimony.

Response:

Mr. Martin J. Marz will testify as an expert on energy-related supply contracts and will offer testimony regarding PEF's proposed Standard Offer Contract's terms and conditions that present problems for developers of renewable generation and are contrary to standard industry practice.

Respectfully submitted,

s/ James W. Brew
James W. Brew
F. Alvin Taylor
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson Street, NW
Eighth Floor, West Tower
Washington, DC 20007-5201

Attorneys for
White Springs Agricultural Chemicals, Inc.
d/b/a PCS Phosphate - White Springs

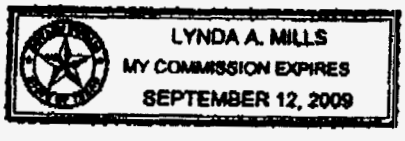
AFFIDAVIT

STATE OF TEXAS)

COUNTY OF HARRIS)

I hereby certify that on this 23rd day of MARCH, 2009, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared **Martin J. Marz,** who is personally known to me, and he/she acknowledged before me that he/she provided the answers to interrogatory number(s) 1 - 7 from STAFF'S FIRST SET OF INTERROGATORIES TO WHITE SPRINGS AGRICULTURAL CHEMICALS, INC. D/B/A PCS PHOSPHATE - WHITE SPRINGS (NOS. 1 - 7) in Docket No(s). 080501-EI, and that the responses are true and correct based on his/her personal knowledge.

In Witness Whereof, I have hereunto set my hand and seal in the State and County aforesaid as of this 28rd day of March, 2009.



Lynda A. Mills
Notary Public
State of Texas

My Commission Expires:
September 12, 2009

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing has been furnished by Electronic Mail and/or U.S. Mail this 23rd day of March 2009, to the following:

Jean E. Hartman Senior Attorney Florida Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850	John T. Burnett Progress Energy Service Company, LLC P.O. Box 14042 Saint Petersburg, FL 33733-4042 john.burnett@pgnmail.com
PCS Administration (USA), Inc. Karin S. Torain Suite 400 1101 Skokie Boulevard Northbrook IL 60062	Paul Lewis, Jr. Progress Energy Florida, Inc. 106 East College Avenue, Suite 800 Tallahassee, FL 32301-7740 paul.lewisjr@pgnmail.com

s/ James W. Brew
James W. Brew

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 Filed: July 2, 2007**

PETITION TO INTERVENE,
PROTEST OF PROPOSED AGENCY ACTION AND
PETITION FOR FORMAL ADMINISTRATIVE HEARING OF
WHITE SPRINGS AGRICULTURAL CHEMICALS, INC. D/B/A
PCS PHOSPHATE – WHITE SPRINGS

Pursuant to Sections 120.569 and 120.57(1), Florida Statutes, and Rules 25-22.039 and 28-106.201, Florida Administrative Code, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs ("PCS Phosphate"), through its undersigned attorney, files its Petition to Intervene and Protest to Commission Order No. PSC-07-0493-TRF-EQ, which approved the Standard Offer Contract of Progress Energy Florida ("PEF") for energy and capacity purchased from renewable energy and small qualifying facilities. In support thereof, PCS Phosphate states as follows:

1. The name and address of the affected agency is:

   Florida Public Service Commission
   2540 Shumard Oak Boulevard
   Tallahassee, Florida 32399-0850

2. The name and address of the petitioner is:

   White Springs Agricultural Chemicals, Inc.
   d/b/a PCS Phosphate – White Springs
   15843 SE 78th Street, P.C. Box 300
   White Springs, Florida 32096

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 080501-EI EXHIBIT 4
COMPANY PEF (Direct)
WITNESS David W. Gammon (DWG-1)
DATE 04/16/09

3. All pleadings, motions, orders and other documents directed to the petitioner should be served on:

James W. Brew
F. Alvin Taylor
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson Street, NW
Eighth Floor, West Tower
Washington, D.C. 20007-5201
Phone: (202) 342-0800
Fax: (202) 342-0807
jbrew@bbrslaw.com
ataylor@bbrslaw.com

Karin S. Torain
PCS Administration (USA), Inc., Suite 400
1101 Skokie Boulevard
Northbrook, IL 60062
Phone: (847) 849-4291
Fax: (847) 849-4663
KSTorain@Potashcorp.com

Notice of Receipt of Agency Action

4. PCS Phosphate received notice of the Commission's proposed agency action on or about June 12, 2007.

Statement of Affected Interests

5. PCS Phosphate is a manufacturer of fertilizer products with plants and operations in or near White Springs, Florida that are located within PEF's electric service territory.[1] PCS Phosphate receives electric service under various PEF tariffs. In addition, PCS Phosphate uses waste heat recovered from the manufacture of sulfuric acid to cogenerate electric energy. This electric energy production is

[1] PCS Phosphate mines phosphate ore on approximately 100,000 acres (160 square miles) located in Hamilton County, Florida, and employs approximately 1,185 individuals.

considered renewable energy pursuant to Section 366.91(2)(b), Florida Statutes. PCS both uses that renewable energy to offset its load and sells excess energy to PEF.

6. In the above-referenced docket, Commission Order No. PSC-07-0493-TRF-EQ (the "Order") approved PEF's Standard Offer Contract for purchasing firm capacity and energy from renewable energy producers and qualifying facilities with a capacity less than 100 MW. This Standard Offer Contract is intended to implement Section 366.91, Fla. Statutes, which articulates an express state policy to promote renewable energy production. The PEF Standard Offer Contract, however, will undermine rather than effectuate that policy. The Standard Offer Contract imposes unnecessary and onerous terms, and offers contract payments that are understated and inadequate. Collectively, those prices and terms will have a chilling effect on renewable energy development and production.

7. Further, PEF's standard offer capacity payments are linked to the utility's decision first announced in its 2007 Ten Year Siting Plan ("TYSP") to abandon a planned coal-fired generation addition for 2013. PEF instead will rely on increased power purchases and natural gas-fired generation. This change in course shown in the 2007 TYSP will lead to a PEF system that gets 44% of its energy from oil- and gas-fired generation (compared to 32% today). This year's TYSP charts a course wholly at odds with express Florida policy to reduce its already excessive reliance on natural gas and restore a more balanced generation fuel mix. That TYSP policy, which is not sustainable, understates the full avoided cost that should be reflected in the renewable standard offer.

Disputed Issues of Material Fact and Law

8. Disputed issues of material fact and law include, but are not limited to, the following:

9. *PEF's Avoided Costs Rates Are Understated*: On the same day that PEF submitted its petition to approve its Standard Offer Contract, the utility also submitted the 2007 version of its TYSP. For purposes of this proceeding, the 2007 TYSP contained one significant change from the 2006 TYSP. Specifically, in the new TYSP, PEF removed two supercritical coal-fired generating units from its planned generation capacity additions. Construction of these units, according to the 2006 TYSP, was scheduled to commence in June 2008 and June 2009, respectively.

10. As a direct result of the removal of these units from PEF's planned capacity addition, the next avoidable fossil fueled unit identified in PEF's TYSP will now be a combined cycle unit scheduled to come into service in 2013. Thus, because under the new TYSP there will be no unit to be "avoided" until 2013, PEF offers no "normal" monthly capacity payment to RF/QFs until 2013 (except for those received pursuant to the prepayment options for post-2013 capacity).

11. PEF's avoidance of the monthly capacity payment for calendar years 2010, 2011 and 2012 discourages the production of renewable energy for sale to PEF. Consequently, the Commission should have completed its review of PEF's TYSP before accepting PEF's Standard Offer Contract. This review of the TYSP should include a thorough inquiry into the basis of PEF's decision to remove the coal-fired facilities from the utility's planning horizon.

12. PEF's removal of the planned coal-fired units and determination to increase its reliance on natural gas and power purchases is openly at odds with the Florida goal to reduce reliance on natural gas for electric generation and improve the diversity of the fuels utilized by Florida's generators. PEF concedes in its 2007 TYSP that, as a result of its decision to remove the coal-fired facilities and construct primarily natural gas-fired units for its additional capacity needs, natural gas will be the energy source for 43.6% of PEF's energy needs in 2011, more than double the percentage in 2006. *See* PEF's 2007 TYSP, Schedule 62. This increased dependence on natural gas will undoubtedly lead to higher prices to PEF's customers. The Commission should carefully examine the validity and basis for PEF's removal of the coal-fired facilities, in both this proceeding and in the proceeding for PEF's 2007 TYSP before approving a Standard Offer payment schedule.

13. *PEF's Standard Offer Contract is Unnecessarily Complicated*: As currently constructed, the Standard Offer Contract consists of approximately seventy pages of contractual language that includes a number of excessive restrictions and unneeded obligations that will deter renewable energy investment and production. These are discussed in greater detail below. Any potential renewable energy producer confronted with the Standard Offer Contract must question whether the substantial undertaking required to satisfy the numerous conditions is worthwhile.

14. Contrary to the direction of Section 366.92, Florida Statutes, the proposed mess of terms and provisions will neither "promote the development of renewable energy" nor "minimize the costs of power supply to electric utilities and their customers."

15. In contrast to the unnecessarily burdensome procedures proposed by PEF for its Florida operations, the treatment of RF/QF analogous generators in North Carolina

and South Carolina by PEF's affiliated utility (Progress Energy Carolinas) demonstrates that a more straight-forward, uncomplicated approach can be implemented. Specifically, the tariff provisions in South Carolina only encompass three pages, and in North Carolina, five pages. Within this limited space, Progress Energy Carolinas is able to clearly set forth the payments that a supplier can expect to receive as well as the conditions necessary to receive those payments. This concise presentation of the conditions surrounding the provision of alternative energy supplies is much more conducive to the development and utilization of these resources than PEF's current proposal, as this simple approach reduces the burden placed on both the supplier and the utility. The Commission should require PEF to revise the Standard Offer Contract to simplify its terms and reduce the difficulty of compliance with those terms.

16. *The Standard Offer Contract Contains Unnecessary and Burdensome Requirements*: The Standard Offer Contract imposes significant obligations and restrictions on potential renewable energy suppliers with no corresponding responsibilities imposed on PEF. The Commission's approval of these contractual terms may reduce PEF's costs, but only by eliminating the likelihood that renewable suppliers will agree to contract with PEF. However, using potential cost saving to justify such onerous terms is at odds with the intent of the Florida Legislature. As Senator Michael S. Bennett explained to the Commission, the Florida Legislature "expected [the Commission] to take some serious steps that looked at the future of the State of Florida and understood the difference between price and cost."[2] Thus, to address its statutory obligation to promote the development of renewable energy, the

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[2] Transcript of November 9, 2006 hearing on the Proposed Amendments to Rule 25-17.0832, F.A.C., Firm Capacity and Energy Contracts, Docket No. 060555-EI at 10-11.

Commission needs to require PEF to modify the following terms:

(a) Section 2 – Right of Inspection: The Standard Offer Contract provides that PEF "shall have the right *at all times* to inspect the Facility and to examine any books, records, or other documents of the RF/QF that PEF deems necessary . . ." (emphasis added). This provision grants PEF an unlimited right to an RF/QF's facility and books that are not typical of wholesale power sales agreements. For example, in neither of the two power supply agreements that PEF filed with the Federal Energy Regulatory Commission ("FERC") in the last year[3] did PEF grant the capacity purchaser such unlimited access to its facilities or its records.

The unchecked access sought by PEF would complicate the ability of a supplier to operate its facility efficiently, especially in the case of a cogenerator like PCS Phosphate, whose primary business focus is its mining operations. To avoid this provision becoming a tool to dampen an RF/QF's desire to interact with PEF, the Commission should establish reasonable limits on PEF. For example, the Commission should restrict PEF's access to a facility to normal business hours and should impose a

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[3] PEF, filing as Florida Power Corporation, submitted two power supply agreements with FERC in the past year. The first was a five-year full requirements Cost-Based Power Sales Agreement with the City of Mount Dora, Florida ("Mount Dora Agreement") which was submitted on November 1, 2006 in FERC Docket No. ER07-141-000. The second agreement was a Cost-Based Power Sales Agreement with Seminole Electric Cooperative, Inc. ("Seminole Agreement") in which PEF committed to provide 150 MW of system intermediate capacity and associated energy, and 600 MW of seasonal capacity and associated energy, starting in 2014 and continuing for six years. This agreement was filed on March 30, 2007 in FERC Docket No. ER07-692-000. The Mount Dora Agreement and the Seminole Agreement are referred to collectively as the "PEF Supply Agreements." The sections of the Mount Dora Agreement and the Seminole Agreement cited herein are provided as Attachment A and Attachment B, respectively.

reasonableness requirement on PEF's exercise of any right to facility inspection and record examination.

In addition, the Standard Offer Contract places no obligation upon PEF to maintain books and records that support its energy payments and operational decisions directly affecting the RF/QF. By comparison, in the above-referenced FERC-filed wholesale PEF Supply Agreements, the recordkeeping requirements apply to symmetrically to both parties.[4]

(b) Section 5(a) – Conditions Precedent: Pursuant to this section, within twelve months of the execution of this contract, the supplier must, *inter alia*, have (i) obtained firm transmission service, (ii) obtained all required Project Consents, (iii) obtained all required Financing Documents, (iv) obtained all required Project Contracts, and (v) satisfied the insurance requirements. While many of these provisions can be satisfied by an existing facility, they may be infeasible for an entity that is seeking to develop a new generating facility to meet PEF's power needs. For example, a project developer often may not enter into a firm transmission service agreement or a fuel supply agreement such a long time before its project has been completed. Furthermore, some of requirements that must be fulfilled, including most of the Project Consents, are not fully within the developer's control. Indeed, PEF likely will have control over the satisfaction of several of the Conditions Precedent, e.g., the electrical interconnection and operating agreement and the transmission service agreement, thus providing it with the direct ability to affect a developer's capacity to satisfy the Conditions Precedent.

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[4] *See* Seminole Agreement, §§ 9.4 and 9.5, and Mount Dora Agreement, Article 17.

(c) Section 6.2 – Ownership and Offering For Sale of Renewable Energy Attributes: By granting PEF an unconditional right of first refusal to purchase any Environmental Attributes, the Standard Offer Contract ignores the possibility that an existing RF/QF may have a pre-existing commitment for its Environmental Attributes. As a result, the RF/QF could not satisfy this term of the Standard Offer Contract and would be precluded from supplying PEF. To remedy this oversight, the Commission should require PEF to incorporate an exception for those cases where a RF/QF has sold or otherwise committed its Environmental Attributes prior to the execution of the Standard Offer Contract.

(d) Section 6.3 – Use of Interruptible Standby Service for Start-up: PEF offers no reason for restricting a RF/QF's ability to utilize interruptible stand-by service tariffs. There is no legitimate basis for this provision, which serves only to increase the rates that PEF can collect from the RF/QF or unreasonably limit RF/QF access to this service. This requirement should be stricken from the Standard Offer Contract.

(e) Section 7.3 – Committed Capacity Test Results: PEF's requirement that an RF/QF "demonstrate[] at least one hundred percent (100%) of Committed Capacity" is an unreasonable requirement that contradicts standard industry practice. Typically, unit-specific power purchase agreements either will accept as satisfactory a test result that is within a few percentage points of the committed capacity (e.g., 97%) or adjust the capacity results to reflect operational and environmental conditions. This adjustment approach is especially appropriate in the context of RF/QF facilities for which the fuel sources are not comparable to the fossil and nuclear fuels of traditional power plants, and because cogeneration RF/QF

facilities may be subject to operational constraints imposed by the affiliated industrial operations.

(f) Section 8.2 – Test Period: Similar to the Committed Capacity Test Results provision, the test period set forth by PEF to establish a facility's capacity is incompatible with the nature of renewable energy facilities. For example, a solar- or wind-powered facility that is subject to the vagaries of the weather cannot be expected to maintain a steady capacity for a twenty-four hour period. In order to comply with its dual responsibility to promote renewable energy while minimizing costs, the Commission must recognize that the RF/QF facilities favored by the Florida Legislature are not the same as PEF's historic fossil- and nuclear-fueled units, and thus the Standard Offer Contract must be revised to accommodate the operational realities of RF/QF facilities. In fact, renewable energy production facilities that demonstrate utility-like performance capabilities should receive preferred rather than punitive treatment.

(g) Section 10.1 – Detailed Annual Plan: PEF's requirement that an RF/QF facility prepare a "detailed plan of the electricity to be generated by the Facility and delivered to PEF for each month of the following calendar year" imposes an impractical obligation upon an RF/QF. Solar- and wind-powered RF/QFs cannot forecast weather conditions in detail for the next year. Likewise, an RF/QF with an associated industrial load cannot predict in detail its precise generation output for the forthcoming year, as the output will be affected by market conditions for the industrial product.

(h) Section 10.4 – Requirement to Provide "total electrical output": Many RF/QFs, especially a cogenerator like PCS Phosphate, produce electric energy

in support of an industrial or commercial operation. PEF's requirement that the RF/QF provides its "total electrical output" to PEF effectively mandates a "buy all/sell all" arrangement that undercuts the net metering options provided by Rule 25-17.082(3)(a), Florida Administrative Code. This provision of the Standard Offer Contract is contrary to existing practice and Commission rules for cogenerators, and should be rejected.

(i) Section 10.5.4 – 24/7 Operating Personnel: Due to their operational nature or the sophistication of their administrative software, some RF/QF facilities do not require operational personnel to remain on duty around the clock. As a result, PEF's requirement that "operating personnel are on duty at all times, twenty-four (24) hours a calendar day and seven (7) days a week" may impose an unnecessary operating expense that could make an RF/QF economically infeasible. PEF has not shown that this provision, which unnecessarily intrudes on a renewable producer's operational and business practices, is required for any legitimate reason. It should be deleted from the Standard Offer Contract.

(j) Section 10.5.6 – Three Day Fuel Supply: PEF again attempts to impose a requirement that is unnecessary, burdensome, and may be inapplicable to many RF/QFs in any event. Unlike a traditional utility's coal- or nuclear-fired generating facility, RF/QFs that utilize solar, wind and waste heat energy do not keep a fuel supply conveniently stashed in some on-site storage area. The Commission must require PEF to delete this provision, or, at a minimum, incorporate sufficient flexibility within this and other sections of the Standard Offer Contract to accommodate the different characteristics of RF/QFs.

(k) Section 11.1 – Performance Security: There are two substantial problems with PEF's collateral requirements. First, the requirements are entirely one-sided. Although the term "Eligible Collateral" is defined to include collateral of both the RF/QF and PEF, Section 11 clarifies that this "dual" nature of the collateral is in reality a sham, as there is no actual requirement for PEF to provide any form of collateral for the benefit of the RF/QF. Thus, even though an RF/QF may be owed significant monies by PEF for the capacity and energy provided, PEF bears no obligation to provide any guarantee to the RF/QF under the contract.

The second critical issue is the actual amount of collateral required from the RF/QF. Pursuant to Table 2, an RF/QF with the highest credit rating and providing 20 MW of capacity would be required to commit $900,000/year initially just to sell power to PEF. PEF has offered no explanation for why such a significant sum is necessary. The inequitable nature of this provision is contrary to how PEF has transacted when it supplies capacity and energy. In the earlier referenced PEF Supply Agreements, the "Acceptable Creditworthiness" provisions apply to both parties.[5] Additionally, neither party is required to provide any collateral so long as it maintains "Acceptable Creditworthiness," and the amount of collateral required is tied to the purchaser's bills, and not to a credit rating. As with PEF's own wholesale power transactions, credit requirements should be flexible and commensurate with the financial capabilities of the parties. For large entities possessing strong financial parameters, no credit requirements should be necessary or required.

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5 *See* Seminole Agreement, §§ 9.6 – 9.10 and Mount Dora Agreement, Article 8(a)-(f).

(l) Section 12 – Termination Fee: PEF imposes a significant obligation on an RF/QF with no corresponding obligation on itself. While PEF should recover "prepaid" capacity payments when the associated capacity was not actually provided due to the legitimate termination of the contract, PEF also must be accountable to RF/QF if a contract is terminated due to PEF's fault. To this end, the Commission should recognize that an RF/QF developer incurs many financial obligations that are tied to the revenues from the Standard Offer Contract. To protect the developer's investment, the Commission should, in the event of contract termination due to PEF's fault, require PEF to pay a termination fee corresponding to the costs that the RF/QF incurred in reliance on PEF's fulfillment of the Standard Offer Contract.

(m) Section 14 – Default: As an extreme example of the one-sided nature of the Standard Offer Contract, not a single one of the fourteen events of default listed in this section applies to PEF. For example, pursuant to Section 14(i), the RF/QF is in default if it breaches any material provision of the Standard Offer Contract but there is no penalty for PEF's breach of any material provision. Likewise, PEF can declare the RF/QF in breach if bankruptcy proceedings are initiated against the RF/QF, but the RF/QF has no protection if PEF befalls a similar fate. Indeed, the Standard Offer Contract does not even provide a clear basis for the RF/QF to declare PEF in default if PEF simply refused to compensate the RF/QF for the capacity and energy provided.

The Commission must recognize that no rational supplier would accept this section. As an example of this section's incompatibility with standard industry practice, in the Edison Electric Institute's Master Power Purchase & Sale Agreement,

the events of default apply to both parties equally and clearly states that a failure to make a required payment is grounds for default. PEF employs a similar approach in the PEF Supply Agreements, where thirteen of the fourteen total specified events of default apply equally to both parties.[6] The Commission must afford an RF/QF with the same protections and remedies provided to PEF.

(n) Section 17 – Insurance: Although an RF/QF is required to maintain insurance coverage, there is no corresponding obligation for PEF to provide analogous coverage for the RF/QF. The Commission should require PEF to explain why any insurance requirement is necessary, as it bears no insurance obligation in its wholesale power supply agreements with Seminole Electric Cooperative and the City of Mount Dora, Florida. To the extent the Commission concludes that any insurance requirement is necessary, the insurance obligations should apply equally to PEF and the renewable energy supplier.

(o) Section 18.1 – *Force Majeure*: PEF would not permit an RF/QF to claim force majeure for an equipment breakdowns and other issues unless the RF/QF "can conclusively demonstrate" to PEF's satisfaction that the event was not foreseeable or negligent. *Force Majeure* provisions are a basic element of wholesale power transactions, and there is no basis for PEF to impose more onerous terms on renewable energy producers than the terms common to industry practice. To remedy this fault, the Commission should modify the Standard Offer Contract to apply equally to both parties and remove PEF's discretion to arbitrarily reject an RF/QF's claim of force majeure. To this end, the Commission could replace the force majeure provisions in the Standard Offer Contract with the force majeure provisions of either

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[6] *See* Seminole Agreement, § 12.1, and Mount Dora Agreement, Article 15.

of the PEF Supply Agreements, as they impose symmetrical terms on both contractual parties.[7]

(p) Section 19 – Representations and Warranties: As with so many other sections of the Standard Offer Contract, only the RF/QF has to make any representations, warranties or covenants. PEF has provided no explanation for why the RF/QF should be required to make these representations and it should have to bear no corresponding obligation. In the PEF Supply Agreements, PEF made similar representations and warranties to those it seeks from the renewable energy supplier,[8] so there is no apparent reason why PEF cannot make the same representations in its Standard Offer Contract. Moreover, to the extent PEF seeks to obtain more detailed representations from a renewable supplier than it provides when it supplies power, PEF should be required to justify any differences.

(q) Section 20.4 – Assignment: The Standard Offer Contract prevents an RF/QF from assigning the agreement to any entity, including any affiliate or successor in interest, unless it receives PEF's approval. Moreover, PEF does not even have to satisfy a reasonableness standard in order to justify its rejection of a proposed assignment. PEF, on the other hand, has no restriction on its ability to transfer the agreement.

The Commission should revise the assignment language so that it is symmetrical and applies evenly to both parties. In addition, neither party should be able to unreasonably withhold its consent to an assignment. These suggested changes would be consistent with standard industry practice as well as the PEF Supply

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7 *See* Seminole Agreement, § 17, and Mount Dora Agreement, Article 27.

8 *See* Seminole Agreement, § 11, and Mount Dora Agreement, Article 13.

Agreements,[9] which could be utilized as a model for developing more equitable language.

(r) Section 20.14 – Record Retention: Although the RF/QF must retain its performance records for five years, PEF is under no concurrent obligation to retain any of its records relevant to the agreement. The Commission should impose the same obligation of PEF as PEF would impose on an RF/QF.

Ultimate Facts Alleged

17. The absence of any capacity payment to RF/QFs for the 2008 through 2012 period is a direct result of PEF's decision to remove the two coal-fired generating facilities from its 2007 TYSP.

18. The Commission has accepted PEF's Standard Offer Contract, including the absence of capacity payments for the 2008 through 2012 period, before it completed its evaluation of PEF's TYSP.

19. PEF's RF/QF program generally, and its proposed Standard Offer Contract specifically, will discourage the development of and investment in renewable resources in contradiction of the intent of the Florida Legislature.

20. PEF's RF/QF program generally, and its proposed Standard Offer Contract specifically, will increase PEF's dependence on natural gas and thus decrease its fuel diversity, in contradiction of the intent of the Florida Legislature.

21. PEF's increased reliance on natural gas will discourage renewable energy development and increase energy costs for all PEF customers.

22. PEF's RF/QF program generally, and its proposed Standard Offer

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[9] *See* Seminole Agreement, § 18.5, and Mount Dora Agreement, Article 18.

Contract specifically, is unnecessarily complicated and burdensome.

23. PEF's proposed Standard Offer Contract imposes on renewable suppliers onerous and one-sided obligations that do not comport with standard industry practice.

Laws Entitling Petitioner to Relief and Relation to Alleged Facts

24. The rules and statutes entitling PCS Phosphate to relief include but are not necessarily limited to the following: Sections 120.569 and 120.57(1), Florida Statutes, which entitle PCS Phosphate to an administrative hearing for the reasons presented above; Section 366.91 and 366.92, Florida Statutes, which enumerate the requirements to promote the development of renewable energy resources; and Rules 25-17.200 through 25-17.310, Florida Administrative Code, by which the Commission has implemented the requirements of Section 366.91.

Request for Relief

WHEREFORE, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs respectfully requests

(1) that the Commission enter an order allowing it to intervene as a full party in this docket;

(2) that the Commission conduct an administrative hearing to determine

(a) whether PEF's proposed capacity rates accurately reflect its true avoided costs;

(b) whether the terms and conditions of the proposed Standard Offer Contract will discourage the development of renewable energy resources; and

(3) that the Commission grant PCS Phosphate such other relief as may be deemed appropriate.

Respectfully submitted this 2nd day of July, 2007,

/s/ James W. Brew

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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 U.S. Mail this 2nd day of July 2007 to the following individuals:

/s/ James W. Brew

Attachment A

ORIGINAL

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November 1, 2006

Honorable Magalie Roman Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Regarding: *Florida Power Corporation*; Cost-Based Power Sales Agreement with the City of Mount Dora, Florida; Docket No. ER07-141-000

Dear Secretary Salas:

Florida Power Corporation ("FPC"), doing business as Progress Energy Florida, Inc., hereby files, pursuant to Section 205 of the Federal Power Act, a cost-based power sales agreement with the City of Mount Dora, Florida ("Mount Dora"). FPC respectfully requests that the Commission accept this power sales agreement ("Agreement") for filing sixty days after the date of this filing and grant an effective date for the Agreement of January 1, 2007, which is the date that service commences under the Agreement.

A. DESCRIPTION OF THE MOUNT DORA AGREEMENT

The Agreement provides that FPC will provide and Mount Dora will purchase capacity and energy to serve all of Mount Dora's load requirements for a five-year period beginning January 1, 2007 through December 31, 2011. Article 3 of the Agreement provides that FPC and Mount Dora may agree to a minimum three-year extension (or a longer extension) of the Agreement if it is mutually agreeable to the parties.[1] The product that FPC is selling to Mount Dora shall be as firm as FPC's

1 Any extension of this Agreement, including the rates for the extension, would be submitted to the Commission for filing in accordance with the Commission's requirements.

POWER SALES AGREEMENT
BETWEEN
FLORIDA POWER CORPORATION,
DOING BUSINESS AS
PROGRESS ENERGY FLORIDA, INC.
AND
CITY OF MOUNT DORA, FLORIDA

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POWER SALES AGREEMENT BETWEEN FLORIDA POWER CORPORATION, DOING BUSINESS AS PROGRESS ENERGY FLORIDA, INC. AND CITY OF MOUNT DORA

This Agreement for the purchase and sale of electric capacity and energy (the "Agreement") dated as of October 17, 2006, is made and entered into by Florida Power Corporation, doing business as Progress Energy Florida, Inc. (the "Company") and the City of Mount Dora, Florida (the "Customer"). The Company and the Customer are sometimes herein referred to individually as a "Party" and collectively as the "Parties."

WHEREAS

1. The Company is a public utility as defined in the Federal Power Act and sells electric capacity and energy to other utilities for resale;

2. The Customer is a municipally-owned electric distribution utility; and

3. The Parties desire that the Company sell to the Customer and the Customer purchase from the Company all of its requirements for electric capacity and energy pursuant to the terms and conditions set out in this executed Agreement.

NOW THEREFORE

In consideration of the mutual covenants and agreements herein contained, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

When used in this Agreement, terms with initial capitalization shall have the following meanings:

determined based on the highest aggregate kW usage as measured at the Point(s) of Delivery during any two (2) consecutive 15-minute periods of each billing period, as compensated for incurred Losses from the Point(s) of Receipt.

(ii) The total monthly billing energy shall be determined based on the accumulation of 15-minute metered values as measured at the Point(s) of Delivery for each billing period and compensated for Losses from the Point(s) of Receipt.

ARTICLE 7.
TRANSMISSION SERVICE

(a) It is the Customer's responsibility to arrange and pay for transmission and ancillary services for the delivery of energy under this Agreement from the Point(s) of Receipt to the Point(s) of Delivery. There shall be no reduction in the Customer's payment obligation as a result of curtailments, interruptions, or reductions of transmission service or ancillary service.

(b) Until the commencement date of the Delivery Period (and during the Delivery Period, on an as-needed basis), the Company shall, at the option of the Customer, act as the transmission agent for the Customer under the terms of a separately negotiated agreement.

ARTICLE 8.
PAYMENT OF INVOICES; CREDIT SECURITY

(a) The capacity and energy supplied under this Agreement shall be subject to a true-up of the Monthly Fuel Charge in accordance herewith. The Company shall deliver to the Customer an invoice identifying and itemizing (i) the Capacity Charge for that month; (ii) the estimated Monthly Fuel Charge for that month which is equal to the product of the Monthly Energy Delivered multiplied by the estimated Fuel Charge for the calendar month (which is the actual Fuel Charge for the previous calendar month); (iii) a

true-up of the estimated Monthly Fuel Charge included in the previous calendar month's bill (where the true-up credit or charge, as applicable, is equal to the actual Fuel Charge of the previous calendar month minus the estimated Fuel Charge of the previous calendar month multiplied by the Monthly Energy Delivered for the previous calendar month); (iv) the Non-Fuel Energy Charge. Invoices supplied hereunder shall be rendered monthly by the Company as soon as reasonably practical after the first day of each month for the prior month's capacity and energy and shall be due when rendered and payable within thirty (30) days from the date the Customer receives the invoice. An example of the Company's invoices is provided as **EXHIBIT C**. All payments made to the Company by the Customer hereunder shall be by electronic funds transfer or other mutually agreeable method(s) to the account designated by the Company. Invoices not paid within said thirty (30) days shall be deemed delinquent and shall accrue interest at the Interest Rate. In the case of a disputed invoice, the Customer shall (1) pay the invoice to the Company during the thirty (30) day payment period and (2) provide to the Company, prior to the expiration of the thirty (30) day payment period, written notification of the amount of the invoice that is in dispute and the reasons therefor. The Company and the Customer shall fully cooperate with each other to resolve the dispute within thirty (30) days from the date that the Company receives written notification of the dispute. If the Parties cannot resolve the dispute within the time period, either Party may seek to resolve it pursuant to **ARTICLE 16** hereof. If the Customer does not pay an invoice or dispute it pursuant to the provisions set out above, the Company may exercise its rights as set out in this **ARTICLE 8** and in **ARTICLE 15** hereof.

(b) The Parties shall at all times 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 as set out in **ARTICLE 8(a)** and **ARTICLE 15(a)(i)** hereof and:

(i) the Parties shall each 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 unsecured senior long term debt) by Standard & Poor's of at least BBB- and/or a Long Term Issuer or Underlying Rating, if there is no Long Term Issuer Rating, from Moody's Investor Services of at least Baa3; or

(ii) if a Party does not have commercial credit ratings as 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).

(c) "Performance Assurance" shall mean one of the following: (a) as to either Party, an unconditional and irrevocable Letter of Credit or a cash deposit equal to the amount that the Parties estimate that the Customer would owe to the Company for the three months of the calendar year in which the Customer's bills are expected to be the highest; or (b) as to the Customer, advance payment for each month's service based on the Company's estimate of the amount that the Customer will owe for that month, paid not less than five (5) days prior to the beginning of the month, and trued up at the time of the second succeeding month's advance payment to reflect the actual amount the Customer owes. The Company shall pay interest on any prepayments made pursuant to this **ARTICLE 8(c)** at the Interest Rate.

(d) If a Party that originally demonstrates Acceptable Creditworthiness subsequently fails to maintain Acceptable Creditworthiness, as determined by the Non-Affected Party, the Non-Affected Party shall notify the Affected Party within five Business Days of the date on which it no longer meets the Acceptable Creditworthiness standards and shall request them to provide Performance Assurance to the Non-Affected Party within thirty (30) Business Days of the date on which it ceased to maintain Acceptable Creditworthiness.

(e) If an Affected Party fails to provide Performance Assurance as set out in this **ARTICLE 8**, then:

(i) in the event that the Customer is the Affected Party, the Company may suspend service to Customer, provided that the Company notifies the Customer in writing of its intent to suspend service at least thirty (30) days prior to the date on which service is to be suspended to give the Customer time to correct the deficiency ("Cure Period"). The Company's right to suspend service hereunder shall be in addition to its right to take action for default pursuant to ARTICLE 15 hereof;

(ii) in the event that the Company is the Affected Party, the Customer may terminate this Agreement, provided that the Customer notifies the Company in writing of its intent to terminate service at least thirty (30) days prior to the date on which termination is to occur to give the Company time to correct the deficiency ("Cure Period"). The Customer's right to terminate service hereunder shall be in addition to its right to take action for default pursuant to ARTICLE 15 hereof.

(f) If a Party to this contract that has previously been deemed to not exhibit Acceptable Creditworthiness is subsequently upgraded to Acceptable Creditworthiness pursuant to **ARTICLE 8(b)**, or the Party's audited financial statements demonstrate, after being evaluated by the Non-Affected Party in a commercially reasonable manner, that they are considered to be of Acceptable Creditworthiness, then the Non-Affected Party shall notify the Affected Party within five Business Days of the date that it shall return any Performance Assurance being held by the Non-Affected Party within thirty (30) Business Days of the date on which it gained Acceptable Creditworthiness.

ARTICLE 9.
TAXES

(a) **General**. The Company and the Customer shall each use reasonable efforts to minimize taxes applicable to the transactions to be carried out under the terms of this Agreement. Either Party, upon written request of the other, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if such Party is exempt from taxes, and shall use reasonable efforts to obtain and cooperate with obtaining any exemption from or reduction of tax.

(b) **Applicable Taxes**.

(i) The Company shall be responsible for all existing and any new sale, use, transportation, excise, business and operation, *ad valorem*, or other similar tax, imposed or levied by any governmental authority relating to the energy prior to its delivery to Customer at the Point(s) of Receipt.

(ii) The Customer shall be responsible for all existing and any new sale, use, transportation, excise, *ad valorem*, or other similar tax imposed or levied by any governmental authority relating to the sale, use or consumption of energy at and after its receipt by Customer at the Point(s) of Receipt.

reasonable attorney's fees), damage or injury to persons, and property judgments in a total amount that is in excess of $100,000 per incident. In no event shall this Article 11 apply to a failure by a Party to perform any term or condition of this Agreement, including, but not limited to, a failure to pay the other Party under this Agreement, an Event of Default under this Agreement or a breach of this Agreement.

ARTICLE 12.
PERMITS AND EASEMENTS

The Customer shall furnish the Company with all Customer permits and other easements or licenses which are necessary for the construction and maintenance by the Company of the facilities required for delivery of service to the Customer's Point(s) of Delivery. The obligations of each Party to the other Party under this Agreement are subject to and conditioned upon the other Party securing and retaining all permits and easements and other rights and approvals that the other Party is required to secure under this Agreement and which are necessary for the Company or the Customer (as applicable) to perform under this Agreement.

ARTICLE 13.
REPRESENTATIONS AND WARRANTIES

(a) As a material inducement to enter into this Agreement, each Party represents and warrants to the other Party that as of the Effective Date of the Agreement:

(i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and has all requisite power and authority to enter into this Agreement and consummate the transactions contemplated herein;

(ii) it has all regulatory authorizations necessary for it to legally perform its obligations hereunder or will obtain such authorizations in a timely manner prior to the time that performance by such Party which requires such authorization becomes due;

(iii) the execution, delivery, and performance of this Agreement will not conflict with or violate any rule, statute or regulation of any court, agency, or regulatory body, or any contract, agreement or arrangement to which it is a party or by which it is otherwise bound;

(iv) this Agreement constitutes a legal, valid, and binding obligation of such Party enforceable against it in accordance with its terms, and each Party has all rights such that it can and will perform its obligations to the other Party in conformance with the terms and conditions of this Agreement, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and general principles of equity;

(v) it has negotiated and entered into this Agreement in the ordinary course of its respective business, in good faith, for fair consideration on an arm's-length basis;

(vi) it is not bankrupt and there are no proceedings pending or being contemplated by it, or to its knowledge, threatened against it which would result in it being or becoming bankrupt;

(vii) there are no pending, or to its knowledge, threatened legal proceedings against it that could materially adversely affect its ability to perform its obligations under this Agreement.

(b) EXCEPT AS PROVIDED HEREIN, THE PARTIES MAKE NO OTHER REPRESENTATIONS, WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, RELATING TO THEIR PERFORMANCE OR OBLIGATIONS UNDER THIS AGREEMENT, AND EACH PARTY DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE 14.
TITLE AND RISK OF LOSS

Title to and risk of loss related to the energy sold hereunder shall transfer from the Company to the Customer at the Point(s) of Receipt. The Company warrants that it will deliver the energy purchased hereunder free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Point(s) of Receipt.

ARTICLE 15.
DEFAULT

(a) Each of the following shall be an "Event of Default" under this Agreement:

(i) The failure of either Party to make any payment to the other Party as required by this Agreement within thirty (30) days of the date when such payment became due and payable.

(ii) The failure by either Party to perform any obligation to the other Party under this Agreement, other than obligations for the payment of money, provided that the defaulting Party shall have been given not less than thirty (30) days' notice of such failure by the non-defaulting Party and such defaulting Party

shall have unsuccessfully attempted to correct such default or shall have failed to use its reasonable best efforts to correct such default.

(iii) The insolvency or bankruptcy of a Party or its inability or admission in writing of its inability to pay its debts as they mature, or the making of a general assignment for the benefit of, or entry into any contract or arrangement with, its creditors other than the Company's or the Customer's mortgagee, as the case may be.

(iv) The application for, or consent (by admission of material allegations of a petition or otherwise) to, the appointment of a receiver, trustee or liquidator for any Party or for all or substantially all of its assets, or its authorization of such application or consent, or the commencement of any proceedings seeking such appointment against it without such authorization, consent or application, which proceedings continue undismissed or unstayed for a period of sixty (60) days.

(v) The authorization or filing by any Party of a voluntary petition in bankruptcy or application for or consent (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction or the institution of such proceedings against any Party without such authorization, application or consent, which proceedings remain undismissed or unstayed for sixty (60) days or which result in adjudication of bankruptcy or insolvency within such time.

(vi) Any representation or warranty made by the defaulting Party in the Agreement shall prove to have been false in any material respect when made.

(vii) The failure of the Customer to provide Performance Assurance as required under **ARTICLE 8**.

(b) Whenever an Event of Default occurs, the non-defaulting Party may give the defaulting Party written notice to remedy the default. In the Event of Default, the non-defaulting Party shall have all the rights it may have at law or in equity, including the right to terminate this Agreement.

ARTICLE 16.
DISPUTE RESOLUTION

In the event of any dispute arising out of or relating to this Agreement which the Parties are unable to settle within thirty (30) days after the dispute arose, either Party may refer the dispute to a meeting of senior management, in which case each Party shall nominate a senior officer of its management to meet at a mutually agreed time and place not later than forty-five (45) days after the dispute arose to attempt to resolve the dispute. If a resolution cannot be reached within fifteen (15) days after the meeting of senior officers or within sixty (60) days after the dispute arose, then either Party may pursue its rights at law or in equity with respect to such dispute. Unless directed otherwise by a court or government agency of competent jurisdiction or unless otherwise provided by the express terms of this Agreement, no Party shall cease or delay performance of its obligations under this Agreement during the existence of any dispute or the pendency of any proceeding to resolve it, and the Parties shall pay to each other all amounts owing.

ARTICLE 17.
AUDIT RIGHTS

Each Party shall have the right, at its own expense, to audit and to examine any supporting documentation related to any bill submitted or payment requested under this

Agreement for capacity and energy provided to Customer. Any audit hereunder shall be undertaken by the requesting Party, or its representatives, at reasonable times and in conformance with generally accepted auditing standards. The right to initiate an audit shall extend for a period of two (2) years following the end of the month in which service is rendered. Any audit initiated by a Party shall extend for no longer than a period of one (1) year. Each Party shall fully cooperate with any audit by the other Party and retain all necessary records or documentation for the entire length of the audit period. If any audit discloses that an overpayment or underpayment has been made, the amount of any undisputed portion of such overpayment or underpayment shall promptly be paid by the obligated Party, with interest calculated at the Interest Rate from the date on which the payment should have been made to the date on which the payment or repayment is actually made. Upon the mutual agreement of the parties that resolves a disputed portion of such overpayment or underpayment, such overpayment or underpayment shall be paid by the obligated Party, with interest calculated at the Interest Rate from the date on which the payment should have been made to the date on which the payment or repayment is actually made. This provision and the rights of the Parties to audit shall survive the termination of this Agreement.

ARTICLE 18.
ASSIGNMENT

(a) Except as provided herein, neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may not be unreasonably withheld. Any assignment of this Agreement in violation of this **ARTICLE 18** shall be, at the option of the non-assigning Party, void.

(b) Either Party (the "**Assigning Party**") may, without the consent of the other Party:

(i) transfer or assign this Agreement to an Affiliate of the Assigning Party which Affiliate's creditworthiness is equal to or higher than that of the Assigning Party based either on Standard and Poor's or Moody's ratings or, if the Affiliate does not have a such a rating, on credit assurances reasonably acceptable to the non-assigning Party, provided that such Affiliate is financially and operationally capable, including maintaining the same level of reliability and delivering capacity and energy at the same monthly charges as the Customer would have received had the assignment not been made, of performing its obligations under this Agreement; or

(ii) transfer or assign its rights and obligations under this Agreement to any person or entity (the Assignee) succeeding to all or substantially all of the Assigning Party's assets, provided that the Assignee's creditworthiness is equal to or higher than that of the Assigning Party and it is financially and operationally capable of performing its obligations under this Agreement.

(c) An assignment or transfer pursuant to **ARTICLE 18(b)** may be made only if:

(i) any required regulatory approvals that may be required are obtained in connection with such transfer or assignment;

(ii) the Assignee agrees in writing to be bound by the terms and conditions of this Agreement; the Assignee has Acceptable Creditworthiness as defined in **ARTICLE 8(b)** or provides Performance Assurance pursuant to **ARTICLE 8(c)**; and the Assignee is financially and operationally capable of performing its obligations under this Agreement; and

(iii) the non-assigning Party is not obligated to perform its obligations hereunder in favor of the Assignee to the extent the Assignee shall not perform the obligations of the Assigning Party.

(d) If either Party terminates its existence as a corporate entity by merger, acquisition, sale, consolidation or otherwise, or if all or substantially all of such Party's assets are transferred to another person or business entity, without complying with this **ARTICLE 18**, the other Party shall have the right, enforceable in a court of competent jurisdiction, to enjoin the first Party's successor from using the property in any manner that interferes with, impedes, or restricts such other Party's ability to carry out its ongoing business operations, rights, and obligations.

(e) This **ARTICLE 18** and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

ARTICLE 19.
MATERIAL ADVERSE EVENT

(a) A Material Adverse Event is any of the following events:

(i) This Agreement is not approved or accepted for filing by the FERC without modification or condition.

(ii) A Regional Transmission Organization or regional reliability organization or a restructuring of the electric utility industry in the State of Florida prevents, in whole or in part, either Party from performing any provision of this Agreement in accordance with its terms or imposes obligations on a Party that materially affect the costs that a Party incurs to comply with this Agreement.

(b) Either Party may provide written notice to the other Party of the occurrence of a Material Adverse Event within sixty (60) days of the occurrence of the

Company:

Progress Energy Florida
100 Central Avenue
MAC-BT8G
St. Petersburg, Florida 33701
Attention: Director, Origination & Account Management - FRCC

Customer:

City of Mount Dora
P.O. Box 176
Mount Dora, Florida 32757
Attention: Electric Utility Manager

Either Party may specify a different person to be notified and / or different address by written notice.

ARTICLE 26.
NO AGENCY RELATIONSHIP

Nothing in this Agreement is intended or shall be deemed to constitute a partnership, agency, or joint venture relationship between the Company and the Customer.

ARTICLE 27.
FORCE MAJEURE

Neither Party shall be in breach of this Agreement for failure to perform its obligations hereunder if such failure is the result of a Force Majeure Event. A "Force Majeure Event" under this Agreement shall mean an event, occurrence, or circumstance beyond the reasonable control of, and without the fault or negligence, of the Party claiming Force Majeure, including, but not limited to, acts of God, labor disputes (including strikes), acts of public enemies, orders or absence of necessary orders and permits of any kind which have been properly applied for, from the Government of the United States or from any State or Territory, or any of their departments, agencies or officials, or from any civil or military authority, extraordinary delay in transportation,

inability to transport, store or reprocess spent nuclear fuel, lightning, severe weather, epidemics, earthquakes, fires, hurricanes, tornadoes, storms, floods, washouts, war, civil disturbances, explosions, sabotage, injunction, blight, blockade, quarantine, breakage of machinery or equipment; or any other similar cause or event which is beyond the Party's reasonable control and which, wholly or in part, prevents the Party claiming Force Majeure from performing its obligations under this Agreement. Mere economic hardship of a Party does not constitute Force Majeure. Any Party which claims that its performance is being delayed or prevented as a result of a Force Majeure shall proceed with due diligence to overcome the events or circumstance of the Force Majeure and shall use all reasonable efforts to mitigate the effects of the Force Majeure.

ARTICLE 28.
ENTIRE AGREEMENT

The Agreement shall be the final expression of the Parties' agreement and shall be the complete and exclusive statement of the terms thereof. No statements or agreements, oral, or written, made prior to the date hereof, shall vary or modify the written terms set forth herein and neither Party shall claim any amendment, modification, or release from any provision hereof by reason of a course of action or mutual agreement unless such agreement is in writing, is signed by both Parties and specifically states it is an amendment to the Agreement.

ARTICLE 29.
SEVERABILITY

Except as expressly set forth herein, if any term or provision of this Agreement is held illegal or unenforceable by a court with jurisdiction over the Agreement, all other terms in this Agreement will remain in full force, and the illegal or unenforceable provision shall be deemed struck. In the event that the stricken provision materially

Attachment B

ORIGINAL

BRUDER, GENTILE & MARCOUX, L.L.P.

ATTORNEYS AT LAW

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ROBERT T. STROH
GIUSEPPE PINA

GEORGE F. BRUDER
RETIRED 1997

March 30, 2007

Honorable Philis J. Posey
Acting Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Regarding: ***Florida Power Corporation*;**
Cost-Based Power Sales Agreement with
Seminole Electric Cooperative, Inc.;
Docket No. ER07-692-000

Dear Acting Secretary Posey:

Florida Power Corporation ("FPC"), doing business as Progress Energy Florida, Inc., hereby files, pursuant to Section 205 of the Federal Power Act, a cost-based power sales agreement with Seminole Electric Cooperative, Inc. ("SECI"). FPC respectfully requests that the Commission accept this power sales agreement ("Agreement") for filing within 90 days after the date of this filing and grant an effective date for this Agreement of June 28, 2007, which is 90 days after the date of this filing.

A. BACKGROUND

FPC is an investor-owned utility that provides generation, transmission and distribution services to retail customers in the State of Florida. It also is a power supplier for a number of wholesale customers in the State of Florida, including SECI.

SECI is a Florida corporation and a generation and transmission cooperative. SECI has a need for system intermediate capacity and energy and seasonal system peaking capacity and energy to serve its future load requirements beginning January 1, 2014. Pursuant to the Agreement submitted here, FPC has agreed to provide that power supply to SECI under a long-term agreement beginning January 1, 2014 through December 31, 2020. The firmness of the power supply that FPC will be providing to SECI is as firm as FPC's service to its firm native load customers.

AGREEMENT FOR SALE AND PURCHASE

OF

CAPACITY AND ENERGY

BETWEEN

FLORIDA POWER CORPORATION
DOING BUSINESS AS
PROGRESS ENERGY FLORIDA, INC.

AND

SEMINOLE ELECTRIC COOPERATIVE, INC.

DATED AS OF

September 22, 2006

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AGREEMENT FOR SALE AND PURCHASE OF CAPACITY AND ENERGY

This Agreement ("Agreement") is made and entered into as of this 22nd day of September, 2006 by and between Seminole Electric Cooperative, Inc., a Florida corporation ("Customer"), and Florida Power Corporation, a Florida corporation, doing business as Progress Energy Florida, Inc. ("Company"). The Company and the Customer are sometimes herein referred to individually as a "Party" and collectively as the "Parties."

WHEREAS

1. The Company is a public utility as defined in the Federal Power Act and sells electric capacity and energy to other utilities for resale;
2. the Customer is a generation and transmission cooperative; and
3. the Parties desire that the Company sell to the Customer and the Customer purchase from the Company electric capacity and energy pursuant to the terms and conditions of this executed Agreement.

NOW THEREFORE

In consideration of the mutual covenants and agreements herein contained, the Parties do hereby mutually agree as follows:

SECTION 1 -DEFINITIONS

For the purposes of this Agreement, the terms defined in this section shall have the following meanings. Except where the context otherwise requires, definitions and other terms expressed in the singular shall include the plural and vice versa.

1.1 "Acceptable Creditworthiness" shall have the meaning set forth in Section 9.7 hereto.

1.2 "Agreement" shall have the meaning set forth in the introductory paragraph hereto.

1.3 "Assigning Party" shall have the meaning set forth in Section 18.5 hereto.

1.4 "Assurance Notice" shall have the meaning set forth in Section 9.9 hereto.

1.5 "Billing Month" shall mean a calendar month billing cycle for invoicing.

1.6 "Binding Arbitration Notice" shall have the meaning set forth in Section 18.3 hereto.

1.7 "Business Day" shall mean any day except Saturdays, Sundays, and Federal Reserve Bank holidays.

1.8 "Change in Environmental Law" shall have the meaning set forth in Section 15.1 hereto.

§35.19a, or if the Dispute is resolved after the termination of this Agreement, any amount owed plus interest shall be paid immediately.

9.4 Audit Rights. Each Party shall have the right, at its own expense, to audit and to examine any supporting documentation related to any bill submitted or payment requested under this Agreement for capacity and Corresponding Energy provided by Company to Customer. Any audit hereunder shall be undertaken by the requesting Party, or its representatives, at reasonable times and in conformance with generally accepted auditing standards. The right to initiate an audit shall extend for a period of two (2) years following the end of the calendar year in which service is rendered. Each Party shall fully cooperate with any audit by the other Party and retain all necessary records or documentation for the entire length of the audit period (and thereafter if an audit is in progress until such audit is completed). If any audit discloses that an overpayment or underpayment has been made, the amount of such overpayment or underpayment shall promptly be paid by the owing Party, with interest calculated at the rate set for refunds under the Federal Power Act pursuant to 18 C.F.R. §35.19a from the date on which the payment should have been made to the date on which the payment or repayment is actually made. This provision and the rights of the Parties to audit and resolve audit-related Disputes as set forth in Section 18.3 shall survive the termination of this Agreement.

9.5 Books and Records. Each Party shall keep complete and accurate records and memoranda of its actions taken hereunder and shall maintain such records, memoranda, and data as may be necessary to determine or justify with reasonable accuracy any item relevant to this Agreement.

9.6 Creditworthiness. Both Parties shall at all times maintain Acceptable Creditworthiness. If a Party no longer maintains Acceptable Creditworthiness, it may be required to provide Performance Assurance to the other Party in accordance with Section 9.9.

9.7 Acceptable Creditworthiness. To maintain Acceptable Creditworthiness, a Party must not be in default of its obligations as set out in this Agreement and it must meet one of the following criteria:

(a) The Party has a credit rating of at least Baa2 (Moody's) or BBB (Standard and Poors); or

(b) The Party provides its most recent financial statements to the other Party and is able to demonstrate that the Party meets standards that are at least equivalent to the standards underlying credit ratings of Baa2 (Moody's) or BBB (Standard and Poors); provided that if the Party is found not to be creditworthy by the other Party based upon an evaluation made in a commercially reasonable manner, the other Party will inform the Party of the reasons for that determination; or

(c) The Customer, which is a borrower from the RUS, has a Times Interest Earned Ratio of 1.05 or better and a Debt Service Coverage Ratio of 1.00 or better in the

most recent calendar year, or is maintaining the Times Interest Earned Ratio and Debt Service Coverage Ratio as established in the Customer's RUS mortgage.

9.8 Performance Assurance. "Performance Assurance" shall mean one of the following: (a) as to either Party, an unconditional and irrevocable Letter of Credit or a cash deposit equal to the amount that the Parties estimate that the Customer would owe to the Company for the three months of the calendar year in which the Customer's bills are expected to be the highest; or (b) as to the Customer, advance payment for each month's service based on the Company's estimate of the amount that the Customer will owe for that month, paid not less than five (5) days prior to the beginning of the month, and trued up at the time of the second succeeding month's advance payment to reflect the actual amount the Customer owes. The Company shall pay interest on any prepayments made pursuant to this Section 9.8(b) at the rates established pursuant to 18 C.F.R. §35.19a(a)(2)(iii).

9.9 Failure to Maintain Acceptable Creditworthiness. If either Party that originally demonstrates Acceptable Creditworthiness subsequently fails to maintain Acceptable Creditworthiness, such Party shall notify the other Party within five (5) Business Days of the date on which it no longer meets the Acceptable Creditworthiness standards described herein. Upon receipt of such notice, the other Party may give written notice ("Assurance Notice") demanding that the affected Party provide Performance Assurance to the other Party within thirty (30) Business Days of the date of receipt of the Assurance Notice.

9.10 Failure to Provide Performance Assurance. If the affected Party under Section 9.9 fails to provide Performance Assurance as described herein, the non-affected Party may suspend performance hereunder to the affected Party, provided that the non-affected Party notifies the affected Party in writing of its intent to suspend performance at least thirty (30) days prior to the date on which performance is to be suspended. The non-affected Party's right to suspend performance hereunder shall be in addition to its right to take action for default pursuant to Section 12 hereof.

SECTION 10 - CONTINUITY OF SERVICE

10.1 The Company shall exercise due care and diligence to supply electric capacity and Corresponding Energy hereunder free from interruption; provided, however, the Company shall not be responsible for any failure to supply electric capacity and Corresponding Energy, nor for interruption, reversal or abnormal voltage of the supply, if such failure, interruption, reversal or abnormal voltage results from an event of Force Majeure. Each Party shall promptly notify the other Party of any applicable communication equipment failure or signal problem. The Parties shall work together to avoid any interruption of service upon a failure of electronic transmittal of a schedule.

SECTION 11 - REPRESENTATIONS AND WARRANTIES

11.1 Representations and Warranties.

(a) As a material inducement to enter into this Agreement, each Party represents and warrants to the other Party that as of the Effective Date of the Agreement, subject to the conditions precedent provided for in Section 3.2:

(i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and has all requisite power and authority to enter into this Agreement and consummate the transactions contemplated herein;

(ii) it has all regulatory authorizations necessary for it to legally perform its obligations hereunder or will obtain such authorizations in a timely manner prior to the time that performance by such Party which requires such authorization becomes due;

(iii) the execution, delivery, and performance of this Agreement will not conflict with or violate any rule, statute or regulation of any court, agency, or regulatory body, or any contract, agreement or arrangement to which it is a party or by which it is otherwise bound;

(iv) subject to subsection (ii) above, this Agreement constitutes a legal, valid, and binding obligation of such Party enforceable against it in accordance with its terms, and each Party has all rights such that it can and will perform its obligations to the other Party in conformance with the terms and conditions of this Agreement, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and general principles of equity;

(v) it has negotiated and entered into this Agreement in the ordinary course of its respective business, in good faith, for fair consideration on an arm's-length basis;

(vi) it is not bankrupt and there are no proceedings pending or being contemplated by it, or to its knowledge, threatened against it which would result in it being or becoming bankrupt;

(vii) there are no pending, or to its knowledge, threatened legal proceedings against it that could materially adversely affect its ability to perform its obligations under this Agreement.

EXCEPT AS PROVIDED HEREIN, THE PARTIES MAKE NO OTHER REPRESENTATIONS, WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, RELATING TO THEIR PERFORMANCE OR OBLIGATIONS UNDER THIS AGREEMENT, AND EACH PARTY DISCLAIMS ANY

IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

SECTION 12 - DEFAULT

12.1 Default. Each of the following shall be an "Event of Default" under this Agreement:

(a) The failure of either Party to make any payment to the other Party as required by this Agreement within thirty (30) days of the date when such payment became due and payable.

(b) The failure by either Party to perform any obligation to the other Party under this Agreement, other than the obligations described in Sections 12.1(a) and (g) herein.

(c) The insolvency or bankruptcy of a Party or its inability or admission in writing of its inability to pay its debts as they mature, or the making of a general assignment for the benefit of, or entry into any contract or arrangement with, its creditors other than the Company's or the Customer's mortgagee, as the case may be.

(d) The application for, or consent (by admission of material allegations of a petition or otherwise) to, the appointment of a receiver, trustee or liquidator for any part or for all or substantially all of its assets, or its authorization of such application or consent, or the commencement of any proceedings seeking such appointment against it without such authorization, consent or application, which proceedings continue undismissed or unstayed for a period of sixty (60) days.

(e) The authorization or filing by any Party of a voluntary petition in bankruptcy or application for or consent (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction or the institution of such proceedings against any Party without such authorization, application or consent, which proceedings remain undismissed or unstayed for sixty (60) days or which result in adjudication of bankruptcy or insolvency within such time.

(f) Any representation or warranty made by the defaulting Party in the Agreement shall prove to have been false in any material respect when made.

(g) The failure of a Party to provide Performance Assurance as required by Section 9.9.

12.2 Cure Period for Certain Events of Default. When an Event of Default occurs under Section 12.1(b), the non-defaulting Party will give the defaulting Party written notice of the Event of Default and an opportunity to remedy the Event of Default. If the Event of Default shall not have been fully cured within thirty (30) days from the date of the notice or other mutually agreed upon time, the non-defaulting Party shall have all the rights it may have at law or in equity, including the right to terminate this Agreement and to

the claim, suit or action) by the Party claiming the indemnity. Each indemnifying Party shall also reimburse the other Party for any reasonable expenses and attorney's fees incurred by such Party as a result of the Party's failure to comply with this provision.

16.3 Other Indemnification. In addition to the provisions of Section 16.2, each Party shall indemnify, defend and hold harmless the other Party and its officers, directors, trustees, affiliates, agents, members, employees, contractors, and subcontractors from and against any Claims arising in any manner directly or indirectly connected with or growing out of, the operation of its own facilities, except to the extent such Claims are the result of the other Party's, its agents', servants', or employees' negligence or willful misconduct, or the failure to perform and/or comply with any material provisions of this Agreement. Claims shall mean all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting liabilities, including, but not limited to, losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement. This Section 16.3 shall not be applicable to any Claims arising directly or indirectly from or out of any event, circumstance, act or incident associated with the Transmission Provider's obligations to deliver power and other services under the OATT to the Customer or under any other agreement for transmission-related services between the Transmission Provider and Customer.

SECTION 17 - FORCE MAJEURE

17.1 Force Majeure. Neither Party shall be in breach of this Agreement for failure to perform its obligations hereunder if such failure is the result of a Force Majeure Event. A "Force Majeure Event" under this Agreement shall mean an event, occurrence, or circumstance beyond the reasonable control of, and without the fault or negligence, of the Party claiming Force Majeure, including but not limited to, acts of God, labor disputes (including strikes), acts of public enemies, orders or absence of necessary orders and permits of any kind that affect performance hereunder and which have been properly applied for, from the Government of the United States or from any State or Territory, or any of their departments, agencies or officials, or from any civil or military authority, extraordinary delay in transportation, lightning, epidemics, earthquake, fires, hurricanes, tornadoes, storms, floods, washouts, drought, war, civil disturbances, explosions, sabotage, injunction, blight, famine, blockade, quarantine; breakage of machinery or equipment; or any other similar cause or event which is beyond the claiming Party's reasonable control and which, wholly or in part, prevents the Party claiming Force Majeure from performing its obligations under this Agreement. Mere economic hardship of a Party does not constitute Force Majeure. Notwithstanding the above, the Company may not use this Force Majeure provision to interrupt or curtail service under this Agreement unless (a) Company has already interrupted all of its non-Firm Native Load; and (b) it is at the same time interrupting or curtailing its Firm Native Load, so that the service hereunder is equivalent thereto, as provided for in this Agreement.

17.2 Mitigation. A Party suffering an occurrence of Force Majeure shall remedy with all reasonable dispatch the cause or causes preventing such Party from carrying out its duties

and obligations as required in this Agreement; provided, that the settlement of strikes, lockouts, or other industrial disturbances affecting a Party's facilities shall be entirely within the discretion of the Party, and it shall not be required to make settlement of strikes, lockouts, or other industrial disturbances by acceding to the demands of the opposing party or parties when such course is unfavorable in the judgment of such Party.

SECTION 18 - MISCELLANEOUS

18.1 Curtailment and Interruption. Whenever the integrity of the Company's system or the supply of the electricity is threatened by conditions on its system or on the systems with which it is directly or indirectly interconnected, or whenever it is necessary or desirable to aid in the restoration of service, the Company may in conformance with Prudent Electric Utility Practice and its obligations under this Agreement and with the application of standards no more interruptive than service to its other Firm Native Load customers, curtail or interrupt electric capacity or energy deliveries hereunder or reduce voltage for such deliveries to some or all of the service to Customer and such curtailment, interruption or reduction in and of itself shall not constitute negligence by the Company and absent negligence or willful misconduct the Company shall not be liable for such curtailment, interruption or reduction in service under this Agreement.

18.2 Governing Law. This Agreement is made under and shall be governed by, and construed in accordance with, the laws of the State of Florida without giving effect to any principles of conflicts of laws where the giving of effect to any such principles would result in the laws of any other state or jurisdiction being applied to this Agreement.

18.3 Dispute Resolution. Except as provided in Sections 14.1 and 15, the dispute resolution procedures set forth in this Section 18.3 shall govern the resolution of any dispute, controversy or claim arising out of, under, or relating to this Agreement (a "Dispute") unless mutually agreed to by the Parties. The Parties agree to first negotiate in good faith to attempt to resolve any Dispute that arises under this Agreement. In the event that the Parties are unsuccessful in resolving a Dispute through such negotiations, the controversy may be submitted to binding arbitration as provided below.

(a) Good-Faith Negotiations. The process of "good-faith negotiations" requires that each Party set out in writing to the other its reason(s) for adopting a specific conclusion or for selecting a particular course of action, together with the sequence of subordinate facts leading to the conclusion or course of action. The Parties shall attempt to agree on a mutually agreeable resolution of the Dispute. Upon request, each Party shall promptly make available to the other such information, including existing studies and raw data, to the extent related to the Dispute. The related information to be made available must include both studies and raw data that support the position advocated and existing studies and raw data that are related to, but do not support, the position advocated. A Party shall not be required as part of these negotiations to provide any information which is confidential or proprietary in nature unless it is satisfied in its discretion that the other Party will maintain the confidentiality of and will not misuse such

(c) Confidentiality and Non-Admissibility of Statements Made in, and Evidence Specifically Prepared for, Good Faith Negotiations and Binding Arbitration. Each Party hereby agrees that all statements made in the course of good faith negotiations, as contemplated in Section 18.3(a), and in binding arbitration, as contemplated in Section 18.3(B), shall be confidential, and shall not be disclosed to or shared with any third parties (other than the arbitrator, potential arbitrators or any other person whose presence is necessary to facilitate the negotiation and/or binding arbitration process). Furthermore, each Party agrees that any documents or data specifically prepared for use in good faith negotiations and/or binding arbitration shall not be disclosed to any third party, except those parties whose presence is necessary to facilitate the binding arbitration process. Each Party agrees and acknowledges that no statements made in or evidence specifically prepared for good faith negotiations, under Section 18.3(a) shall be admissible for any purpose in any subsequent binding arbitration.

18.4 No Amendments Without Consent. Except as otherwise provided herein, this Agreement shall not be amended, changed, altered, or modified except by a written instrument duly executed by an authorized representative of each Party.

18.5 Assignment.

(a) Except as provided herein, neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may not be unreasonably withheld. Any assignment of this Agreement in violation of this Section shall be, at the option of the non-Assigning Party, void.

(b) Either Party ("the "Assigning Party") may, without the consent of the other Party:

(i) transfer or assign this Agreement to an affiliate of the Assigning Party which affiliate's creditworthiness is equal to or higher than that of the Assigning Party based either on Standard and Poor's or Moody's ratings or, if the affiliate does not have such a rating, on credit assurances reasonably acceptable to the non-Assigning Party, provided that such affiliate is financially and operationally capable, including maintaining the same level of reliability and delivering capacity and energy at the same monthly charges as the Customer would have received had the assignment not been made, of performing its obligations under this Agreement; or

(ii) transfer or assign its rights and obligations under this Agreement to any person or entity (the Assignee) succeeding to all or substantially all of the Assigning Party's assets, provided that the Assignee's creditworthiness is equal to or higher than that of the Assigning Party and it is financially and operationally capable of performing its obligations under this Agreement.

(c) An assignment or transfer pursuant to this Section 18.5 may be made only if:

(i) any required regulatory approvals that may be required are obtained in connection with such transfer or assignment;

(ii) the Assignee agrees in writing to be bound by the terms and conditions of this Agreement; the Assignee has Acceptable Creditworthiness as defined in Section 9.7 or provides Performance Assurance pursuant to Section 9.8; and the Assignee is financially and operationally capable of performing its obligations under this Agreement; and

(iii) the non-Assigning Party is not obligated to perform its obligations hereunder in favor of the Assignee to the extent the Assignee shall not perform the obligations of the Assigning Party.

(d) If either Party terminates its existence as a corporate entity by merger, acquisition, sale, consolidation or otherwise, or if all or substantially all of such Party's assets are transferred to another person or business entity, without complying with this Section 18.5, the other Party shall have the right, enforceable in a court of competent jurisdiction, to enjoin the first Party's successor from using the property in any manner that interferes with, impedes, or restricts such other Party's ability to carry out its ongoing business operations, rights, and obligations.

(e) Notwithstanding the foregoing, the Customer's interest in this Agreement may be assigned, transferred, mortgaged or pledged by Customer without Company's consent for the purpose of creating a security interest for the benefit of the United States of America, acting through RUS (and thereafter the RUS, without the approval of Company or its Lenders, may cause the RUS's interest in this Agreement to be sold, assigned transferred or otherwise disposed of to a third party).

18.6 Successors. This Agreement shall be binding on and inure to the benefit of the Parties and their respective successors, assigns, and legal representatives, including any entity with which or into which a Party may be merged or which may succeed to the assets or business of a Party.

18.7 Title. Title to and risk of loss related to the energy sold hereunder shall transfer from Company to Customer at the Point(s) of Receipt. Company warrants that it will deliver capacity and Corresponding Energy hereunder free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Point(s) of Receipt.

18.8 Agency. Nothing in this Agreement is intended or shall be deemed to constitute a partnership, agency, or joint venture relationship between the Company and the Customer.

18.9 Headings. Section Headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

18.10 Contract Construction. For purposes of construing this Agreement, it is agreed and understood that both Parties are equally responsible for drafting same.

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

Filed: January 14, 2008

DIRECT TESTIMONY OF DAVID W. GAMMON

ON BEHALF OF PROGRESS ENERGY FLORIDA, INC.

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I. INTRODUCTION, QUALIFICATIONS AND PURPOSE

Q. Please state your name and business address.

A. David W. Gammon, P.O. Box 14042, St. Petersburg, Florida 33733.

Q. By whom are you employed and in what capacity?

A. I am employed by Progress Energy Florida, Inc. ("PEF" or "the Company") as a Senior Power Delivery Specialist.

Q. What are your job responsibilities?

A. I am currently employed as a Senior Power Delivery Specialist for PEF. This position has responsibility for all cogeneration contracts and renewable energy contracts. In this position, I have responsibility for all of PEF's Qualifying Facility ("QF") power purchases, including the development of Standard Offer Contracts. My responsibilities further include administering all long-term QF contracts, negotiating extensions, resolving disputes, and administering payments to cogeneration and renewable suppliers.

Q. Please describe your educational background and professional experience.

A. I received a Bachelor of Science in Engineering degree from the University of Central Florida in 1980 and a Master of Business Administration from the University of South Florida in 2001. I am a registered Professional Engineer in the State of Florida.

My employment with Progress Energy Florida/Florida Power Corporation has been related to QF purchases since 1991. Prior to this position, I have had other

positions at Florida Power Corporation including Project Engineer in Energy Management Resources and Project Engineer in Relay Design. My employment with Florida Power Corporation began in 1977.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to address the structure and history of PEF's Standard Offer Contracts for QF and Renewable Energy Producers ("Renewables"). I also explain why certain terms and conditions are included in PEF's current Standard Offer Contract.

Q. Please summarize your testimony.

A. PEF is required by law to have a Standard Offer Contract available for QFs and Renewables. A QF or a Renewable can accept PEF's Standard Offer Contract without any negotiation, and PEF is compelled to abide by the terms and conditions of that contract for any and all counterparties who wish to agree to sell power under it. While almost all QFs and Renewables elect to enter into a negotiated power purchase contract with PEF instead of utilizing PEF's Standard Offer Contract, the Standard Offer Contract provides a comprehensive baseline of acceptable terms and conditions for energy providers to use in their negotiations with PEF, and PEF has had excellent success in obtaining power purchase agreements with QFs and Renewables by using its Standard Offer Contract as a "first draft" against which negotiated contracts are developed.

As of late, PEF has made a number of changes to its Standard Offer Contract in order to comply with recent rule changes and to incorporate feedback that PEF has received from QFs and Renewables. By making these changes, PEF has developed a Standard Offer Contract that both promotes Renewables to engage into negotiations with PEF and that strikes a balance between the interests of PEF and its customers and such energy producers.

Q. Are you sponsoring your testimony with any exhibits?

A. No.

II. STANDARD OFFER CONTRACTS, RULES AND TARIFFS

Q. Please briefly give an explanation of what a Standard Offer Contract is and the history of the development of Standard Offer Contracts.

A. Standard Offer Contracts were developed pursuant to the Public Utility Regulatory Policy Act ("PURPA"), which was passed by Congress in 1978. Utilities in Florida have had Standard Offer Contracts approved by the Florida Public Service Commission ("FPSC" or "Commission") in effect since 1984, offering the same contract terms to any and all suppliers, although different terms can be developed through negotiation.

Because the Standard Offer Contract is offered to all renewable suppliers, its terms must be broad enough to cover all possible circumstances. The particular contractual needs of a specific type of supplier, such as a solar supplier, may be different than the contractual needs of another supplier, such as a biomass facility, but

the Standard Offer Contract must be available to all suppliers regardless of the resource used. The fact that different types of suppliers may benefit from different terms is the reason that the terms and conditions in a Standard Offer Contract have to be broad-based and comprehensive.

Q. Can you also provide a brief history of the development of the rules governing Standard Offer Contracts for Renewable Generation?

A. The rules regarding Standard Offer Contracts have been in place since 1984. As the rules have evolved and changed over time, the Commission has given careful consideration to the development of contractual terms to balance the needs of suppliers and utility customers. Accordingly, the rules have been amended several times. Most recently, the Standard Offer Contract rules were amended in 2006 to specifically address renewable energy generation. All of the rule changes were made according to the rulemaking procedures in place at the time, and comments from all interested parties were solicited, heard and thoughtfully evaluated by the Commission.

Q. You mentioned a rule change in 2006 regarding renewable energy. What particular aspects of the Commission's rules promote renewable generation?

A. There are numerous provisions of the Commission's rules that promote renewable generation. They include:

- Removing the previous cap limiting Renewables to 80 MW or less.

- Requiring updated Standard Offer Contracts be filed by each utility each year by April 1.
- Requiring a separate Standard Offer Contract for each technology type identified in the utility's Ten Year Site Plan ("TYSP").
- Requiring that a Standard Offer Contract be continuously available to Renewables.
- Providing the Renewable the option to choose the term of the Standard Offer Contract between ten years and the economic life of the avoided unit.
- Allowing a portion of the energy payment under a Standard Offer Contract to be fixed.
- Removing subscription limits in the Standard Offer Contract.
- Requiring a provision in the Standard Offer Contract to reopen the contract in the event of changes in environmental and governmental regulations.
- Requiring that Renewable Energy Credits ("RECs") remain the exclusive property of the Renewable.
- Requiring prior approval by the Commission before equity adjustments for imputed debt can be made to a utility's avoided cost.
- Providing for dispute resolution between a Renewable and a utility.

Q. What changes did PEF make in its tariff to comply with the FPSC's 2006 rule revisions?

A. In order to comply with the rule changes and in response to comments received during recent contract negotiations with Renewables, numerous changes were made

to PEF's Standard Offer Contract. PEF's Standard Offer Contract now includes the following:

- The Standard Offer Contract is based on the next avoidable fossil fueled generating unit identified in PEF's TYSP, as required by Rule 25-17.250(1), F.A.C., which is the 2013 combined cycle unit.

- The Standard Offer Contract is available to both Renewables and QFs less than 100 kW, as provided by Rule 25-17.250(1), F.A.C.

- The Standard Offer Contract is offered on a continuous basis, as required by Section 366.91, F.S., and Rule 25-17.250(2), F.A.C.

- The Standard Offer Contract allows a Renewable or QF to choose any contract term from 10 years up to 25 years, which is the projected life of the avoided unit, as required by Section 366.91, F.S., and Rule 25-17.250(3), F.A.C.

- The Standard Offer Contract includes normal payments, early payments, levelized payments, and early levelized payments, as required by Rule 25-17.250(4) and (6), F.A.C.

- The Standard Offer Contract contains no preset subscription limits for the purchase of capacity and energy from Renewables, as required by Rule 25-17.260, F.A.C.

- The Standard Offer Contract contains a provision to reopen the contract based on changes resulting from new environmental or regulatory requirements that affect the utility's full avoided costs of the unit on which the contract is based, as required by Rule 25-17.270, F.A.C.

- The maximum number of capacity tests specified in the Standard Offer Contract is reduced from six times per year to two times per year.

Q. Other than the changes listed above, is the Standard Offer Contract substantially the same as previously-approved versions?

A. Yes. Although there were other changes made to PEF's Standard Offer Contract, in addition to those described above, including grammatical changes, capitalization of defined terms, renumbering of sections, and the like, the bulk of the Standard Offer Contract has remained unchanged since it was last reviewed and approved by the Commission in 2003.

Q. One of the requirements of Rule 25-17.250, F.A.C., is that the utility make separate Standard Offer Contracts available for each type fossil-fueled generating unit in that utility's TYSP. Has PEF done that?

A. Yes. PEF's 2007 TYSP contained five proposed generating units. Of those five units, Hines Energy Complex Unit #4 and the Bartow Repowering were already under construction, making them ineligible for a Standard Offer Contract. Another proposed generating unit is a nuclear facility, and it is also ineligible for a Standard Offer Contract. The remaining eligible generating units were a 2013 combined cycle unit and a 2014 combined cycle unit. In compliance with Commission rule, PEF's current Standard Offer Contract is based on the 2013 combined cycle unit.

Q. Has the FPSC approved PEF's TYSP on which the Standard Offer Contracts in this case are based?

A. Yes. PEF's TYSP was approved by the Commission on December 17, 2007.

III. SPECIFIC PROVISIONS OF THE STANDARD OFFER CONTRACT

A. Payments

Q. How are "avoided costs" derived for both energy and capacity payments in PEF's Standard Offer Contract?

A. The "avoided costs" for capacity are calculated using the data from the TYSP and in accordance with the formula in Rule 25-17.0832(6), F.A.C. The formula in Rule 25-17.0832(6), F.A.C., utilizes the value of deferral method to determine the capacity cost. Simply stated, the value of deferral method determines the savings produced by deferring the construction of generation.

The avoided energy cost is determined in accordance with Rule 25-17.0832(5), F.A.C., which states that the avoided energy cost is determined using the heat rate of the avoided unit when the avoided unit would have operated; and, when the avoided unit would not have operated, the avoided energy cost is equal to the as-available rate. For purposes of the Standard Offer Contract, it is assumed that the avoided unit would operate in any hour when the as-available rate is greater than the energy cost calculated using the heat rate of the avoided unit. Therefore, the energy payment rate is determined hourly by comparing the as-available rate to the energy cost using the avoided unit heat rate and then using the lower of those two values. This methodology to determine the hourly rate has been used in Standard Offer Contracts for a number of years.

The as-available energy cost is PEF's marginal cost of energy before the sale of interchange energy and is calculated in accordance with Rule 25-17.0825, F.A.C., and PEF's Rate Schedule COG-1.

Q. Does PEF's Standard Offer Contract include a provision requiring a renewable energy generator to maintain a 71% or greater capacity factor in order to qualify for a capacity payment and a 91% capacity factor or greater in order to qualify for the full capacity payment?

A. Yes.

Q. Why is it appropriate to require a renewable generator to maintain a 91% or greater capacity factor to qualify for the full capacity payment?

A. It is appropriate to require a Renewable to maintain a 91% capacity factor to qualify for the full capacity payment because 91% is the projected availability of the avoided unit. Under the Standard Offer Contract, the supplier has the right to deliver to PEF whenever it chooses. To ensure that PEF's customers receive the capacity that they are paying for and have contracted to receive, the Standard Offer Contract must require the supplier to deliver to PEF at the same capacity factor during the on-peak hours (91%) that the avoided unit would deliver. Said another way, the Standard Offer Contract requires the supplier to be available 91% of the on-peak hours.

Q. Why is the specified capacity factor included in PEF's Standard Offer Contract?

A. The specified capacity factor ensures that PEF's customers are receiving equivalent capacity compared to the avoided unit and are therefore receiving what they are paying for. In addition, the specified capacity factor ensures that PEF can count on the Standard Offer Contract to meet its capacity and reserve margin requirements.

B. Right of Inspection

Q. PEF's Standard Offer Contract includes a provision granting PEF a right to inspect a renewable generator's facility and books. Why is this provision included?

A. A right to inspection provision is included because it assures PEF has the ability to inspect a facility and/or its books to determine a supplier's compliance with the terms of the Standard Offer Contract, if PEF has reason to believe that the supplier may not be complying with the contract. For instance, if a renewable supplier has contracted to use biomass as its fuel to qualify as a renewable generator, but PEF has reason to believe that it may be using only natural gas, then an inspection and/or review of the facility and its books would verify the type of fuel that was being consumed. The intention of this provision is not for PEF to be a nuisance or hindrance to a facility by repeatedly and unreasonably inspecting a facility and/or its books, but for PEF to have the ability to inspect when necessary. This has been a requirement in previous versions of PEF's approved Standard Offer Contract.

C. Conditions Precedent

Q. Does PEF's Standard Offer Contract include a provision outlining conditions precedent for a renewable energy generator to meet?

A. Yes.

Q. Why is this provision included in PEF's Standard Offer Contract?

A. A provision regarding conditions precedent is included in the Standard Offer Contract to provide protection to PEF's customers. Most facilities that enter into a QF or renewable contract with PEF are new facilities. The conditions precedent section provides milestones that the supplier must meet to ensure that the project continues to move forward and that the facility will be on-line when expected. In other words, the conditions precedent section gives PEF assurances that a project will stay on course for successful completion, and it gives PEF advance notice that it may need to make other plans to secure replacement capacity to meet customer demand if a counterparty cannot comply with those conditions.

D. Renewable Energy Credits

Q. Does PEF's Standard Offer Contract include a provision specifying that PEF has the right of first refusal to purchase any RECs?

A. Yes, as have previous versions of PEF's approved Standard Offer Contract.

Q. Could a renewable generator negotiate a different arrangement regarding RECs?

A. Yes. As with most provisions of the Standard Offer Contract, the supplier has the right to negotiate different terms than those contained in the Standard Offer Contract. PEF has done so a number of times, most recently in its contracts with the Florida Biomass Group and Biomass Gas and Electric.

E. Use of Interruptible Standby Service for Start-up

Q. PEF's Standard Offer Contract includes a provision restricting the use of a renewable energy generator's ability to use interruptible stand-by service tariffs. Why is this provision included?

A. This provision is part of PEF's Standard Offer Contract to ensure that the supplier's generation is available when it is needed most. If the generating unit was off-line when PEF interrupted its interruptible customers, then the generating unit could not return to service because it would not have power from PEF. The standby service purchased must be firm stand-by service to assure there is power available to start the unit. This has been a requirement in previously-approved versions of PEF's Standard Offer Contract.

F. Committed Capacity Test Results

Q. Does PEF's Standard Offer Contract include a provision requiring that a renewable energy generator demonstrate that it can deliver at least 100% of Committed Capacity?

A. Yes.

Q. Why is this provision included in PEF's Standard Offer Contract?

A. This provision is included simply to ensure that PEF's customers receive the capacity that they have contracted to purchase. If a contract is for 100 MW, but the facility can only reliably deliver 90 MW, then PEF's customers are being short-changed. This provision has been included in previously-approved versions of PEF's Standard Offer Contract.

G. Test Period

Q. Does PEF's Standard Offer Contract include a provision setting the test period to establish a facility's capacity?

A. Yes.

Q. Why is this provision part of PEF's Standard Offer Contract?

A. This provision is included to ensure that PEF's customers receive all the capacity that they have contracted to purchase. Under the provisions of the Standard Offer Contract, the supplier selects a time when it will perform a Committed Capacity Test. During that period, the supplier is to run the facility consistent with industry standards without exceeding its design parameters, and supplying the normal station service load. The capacity of the facility is the minimum hourly net output of the facility. Although this has been a requirement in previously-approved versions of PEF's Standard Offer Contract, as I have previously explained, PEF has lowered the number of tests PEF can request in a year from six to two, in response to suggestions from Renewables.

H. Detailed Annual Plan

Q. PEF's Standard Offer Contract includes a provision requiring that a renewable energy facility prepare a detailed plan of the electricity to be generated and delivered to PEF. Why is this provision included?

A. The Standard Offer Contract requires the supplier to provide an estimate of its deliveries to PEF. These estimates are required so that PEF can coordinate the planned outages of the supplier with the outages of its own facilities and the other facilities under contract with PEF. This has been a requirement in previously-approved versions of PEF's Standard Offer Contract.

I. Total Electrical Output

Q. PEF's Standard Offer Contract includes a provision requiring a renewable energy facility to provide its "total electrical output" to PEF. Why is this provision included?

A. In the event the supplier is selling its output to PEF and another party, contract provisions to accommodate partial deliveries to both parties would need to be negotiated. These types of negotiations are unique to each facility, exist with multiple purchasers, and are outside of the scope of the Standard Offer Contract. Such provisions would be handled through a negotiated contract. This provision requiring "total electric output" has been included in previously-approved versions of PEF's Standard Offer Contract.

J. Operating Personnel

Q. Does PEF's Standard Offer Contract include a provision requiring that a renewable energy facility have operating personnel on duty 24 hours a day, seven days a week?

A. Yes.

Q. Why is this provision included in PEF's Standard Offer Contract?

A. The Standard Offer Contract is a firm contract, so the facility needs to have operating personnel on duty 24 hours a day, seven days a week to comply with the requests of PEF's generation dispatcher. Personnel must be available to respond to requests to reduce output or alter the power factor to maintain system reliability. In rare cases, the unit may need to be taken off-line to prevent overloads to the transmission system, or be brought on-line, if possible, to address local or system-wide reliability issues. A similar requirement has been included in previously-approved versions of PEF's Standard Offer Contract.

K. Three Day Fuel Supply

Q. Does PEF's Standard Offer Contract include a provision requiring a three day supply of fuel?

A. Yes.

Q. Why is this provision part of PEF's Standard Offer Contract?

A. This provision is included because it helps to ensure that during an extreme operating event, such as a cold snap or after a natural disaster such as a hurricane, the supplier will be able to continue operating for 72 hours. Just as with other generating plants, Renewables should be required to maintain a fuel inventory to assure availability of the unit if for some reason the fuel supply is interrupted. Accordingly, this requirement has been included in previously-approved versions of PEF's Standard Offer Contract.

Q. What if a facility does not store its fuel on site, such as wind or solar power?

A. If a facility uses a fuel that cannot be stored, such as wind, then this provision obviously would not apply. If such a facility wished to utilize PEF's Standard Offer Contract with the exception of this provision, the simple solution would be to simply delete this section and enter into an otherwise identical negotiated contract with PEF.

L. Performance Security

Q. PEF's Standard Offer Contract includes a provision setting performance security. Why is this provision included?

A. Performance securities are typically found in all firm energy and capacity contracts and have been included in approved Standard Offer Contracts for many years. They are used to help ensure that if a supplier can no longer meet its obligations under the contract, then the purchaser has funds available to cover a portion of the replacement cost of energy. The performance security typically does not cover all the costs of the replacement energy, but it does offset some of the costs that are otherwise borne by

PEF's customers. These provisions are important to appropriately shift some of the risk of default away from PEF's customers and to the party that is not meeting its obligations under a purchase power contract.

M. Termination Fee and Insurance

Q. Does PEF's Standard Offer Contract include provisions setting a termination fee and requiring insurance?

A. Yes.

Q. Why are these provisions included in PEF's Standard Offer Contract?

A. Both of these provisions are required by Commission rule. The termination fee is required by Rule 25-17.0832(4)(e)10, F.A.C. The termination fee is designed to ensure the repayment of capacity payments to the extent that the capacity payments made to the supplier exceed the capacity that has been delivered. For example, early capacity payments, as defined in applicable rules, are capacity payments made before the in-service date of the avoided unit. In this example, those payments made before the avoided unit's in-service date must be secured to ensure that if the supplier does not operate for the term of the contract, PEF's customers are refunded the payments for the capacity that they did not receive. A termination fee has always been a part of the Standard Offer Contract. The insurance provision is required by Rule 25-17.087(5)(c), F.A.C., and helps to protect the utility and its customers from liability claims resulting from the operations of the supplier.

N. Default

Q. PEF's Standard Offer Contract includes a provision listing events of default. Can you explain the purpose of this provision?

A. Like all contracts for capacity and energy, the Standard Offer Contract contains a listing of events of default so that the parties know the circumstances under which the contract can be terminated for non-performance. These provisions are basic to any purchase power contract that I have ever seen and have been a requirement in previously-approved versions of PEF's Standard Offer Contract.

O. *Force Majeure*

Q. Does PEF's Standard Offer Contract include a provision setting forth *force majeure* terms?

A. Yes.

Q. Why is this provision included in PEF's Standard Offer Contract?

A. *Force Majeure* sections have always been included in PEF's Standard Offer Contracts and every other power purchase agreement that I have seen. These provisions define the responsibilities of the parties in the event that something outside the control of the parties makes one party unable to perform its obligations under the contract. The *force majeure* language is designed to limit damages for such an event outside the control of the parties but also to limit the financial exposure of PEF's customers.

P. Representations and Warranties

Q. Does PEF's Standard Offer Contract include a provision requiring the renewable energy generator make representations, warranties or covenants?

A. Yes.

Q. Why is this provision a part of PEF's Standard Offer Contract?

A. This provision is a standard contract term that helps ensure that the supplier entering into the Standard Offer Contract can do so legally, is responsible for its compliance with environmental laws, has any governmental approvals required, and so forth. These kinds of provisions have been contained in previously-approved versions of PEF's Standard Offer Contract.

Q. Assignment

Q. PEF's Standard Offer Contract includes a provision prohibiting assignment without approval from PEF. Why is this provision included?

A. A provision prohibiting assignment without approval is included because it is not uncommon for a contract to be sold and assigned, possibly numerous times. The requirement for PEF's approval of any such assignments ensures that PEF can assess the purchasing party's ability to perform under the contract. This, of course, allows PEF to mitigate some degree of risk that would otherwise be borne by its customers. This provision has been a part of previously-approved versions of PEF's Standard Offer Contract.

R. Record Retention

Q. Does PEF's Standard Offer Contract include a provision specifying that the renewable energy facility must retain its performance records for five years?

A. Yes.

Q. Why is this provision part of PEF's Standard Offer Contract?

A. This provision is included so that in the event that a dispute arises regarding the operation of the supplier, the supplier's records will be available for five years. PEF retains these records for a minimum of five years as well. Record retention has been a requirement in previously-approved versions of PEF's Standard Offer Contract and has allowed PEF to successfully resolve would-be disputes with counterparties in the past.

IV. FINANCING

Q. Does PEF's Standard Offer Contract permit the financing of renewable energy projects?

A. Yes. Most renewable energy projects require financing, and PEF's current Standard Offer Contract does more than ever to help projects obtain financing. Typically, the issue with financing is the certainty of the payment stream to the power generator. To address this issue, the capacity payments in the current Standard Offer Contract can be front-end loaded to help with financing and a portion of the energy payment can be fixed as well.

Q. Have any generators signed a Standard Offer Contract with PEF in the past two years?

A. No, but this is not surprising. Given the fact that power producers almost always have unique projects, circumstances, and needs, some modifications, even if minor in nature, usually have to be made to PEF's Standard Offer Contract, which will result in a negotiated contract.

Q. Have any generators signed significant negotiated contracts with PEF in the past two years?

A. Yes. In 2006, PEF entered into a negotiated contract for 116.6 MW with the Florida Biomass Energy Group LLC and in 2007 PEF entered into two negotiated contracts with Biomass Gas & Electric for 75 MW each. These contracts show that while PEF's Standard Offer Contract provides a good baseline of acceptable terms and conditions for energy producers to work with, negotiated contracts best address the unique concerns of renewable suppliers. Thus, the combination of PEF's Standard Offer Contract and the ability for energy producers to negotiate contracts against that Standard Offer Contract advances and promotes the use of renewable energy in PEF's service territory.

V. CONCLUSION

Q. Does this conclude your testimony?

A. Yes.

BRICKFIELD BURCHETTE
RITTS & STONE, PC

WASHINGTON, D.C.
AUSTIN, TEXAS

February 15, 2008

VIA FEDERAL EXPRESS

Ann Cole
Division of Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RE: Case No. 070235-EQ, 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.

Dear Ms. Cole:

Enclosed please find for filing in the above-referenced case an original and fifteen (15) copies of the *Direct Testimony of Martin J. Marz on behalf of White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs*.

Copies have also been served to all other parties and staff, as shown on the attached Certificate of Service, in accordance with Order No. PSC-07-0962-PCO-EQ.

If you have any questions, please give me a call.

Very truly yours,

James W. Brew
F. Alvin Taylor
Attorneys for
PCS Phosphate – White Springs

Enclosures: a/s

Cc: Active Parties

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 080501-EI EXHIBIT 6
COMPANY PEF
WITNESS David W. Gammon (DWG-3)
DATE 04/10/09

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

Filed: February 18, 2008

DIRECT TESTIMONY OF MARTIN J. MARZ

J. POLLOCK
INCORPORATED

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

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1. INTRODUCTION, QUALIFICATIONS AND PURPOSE

Q. Please state your name and business address.

A. Martin J. Marz; 1525 Lakeville Drive, Suite 217, Kingwood, Texas 77345.

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

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

Q. What is your educational background?

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

Q. Please describe your professional experience.

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

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

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

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

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

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

Q. What is the purpose of your testimony?

A. I was asked to review the PEF Standard Offer Contract for Renewable Energy Producers or Qualifying Facilities less than 100 KW. Based on that review, and consistent with the existing administrative rules, I am recommending changes to the contract in order to further the State of Florida's objective to encourage renewable energy generation. My testimony is not intended to provide an exhaustive review of each and every element of PEF's Standard Offer Contract,

but does provide an assessment of the most serious issues presented by the Standard Offer Contract.

2. SUMMARY

Q. Please summarize your conclusions and recommendations.

A. Florida has enacted a state policy to promote the development of renewable energy sources. Utility standard offer contracts are the basic vehicle for facilitating that development. The State's program aims to allow a renewable energy producer either to accept a standard offer contract or negotiate a project specific contract that satisfies the requirements of the Commission's rules. Both options should be viable choices. The problem is that PEF's Standard Offer Contract is not designed to be acceptable to any renewable energy producer. As I explain, the PEF contract contains provisions that are unreasonable, overly one-sided, not consistent with reasonable commercial practice, and are overly complex. Additionally, certain of the price terms require a level of performance well in excess of that achieved by PEF's existing combined cycle generating facilities and actually serve as a barrier to renewable energy development.

PEF maintains that it intends its Standard Offer Contract to be the starting point for negotiating a project specific arrangement. This approach, however, both defeats the basic purpose of a standard offer contract and forces an extended and unwarranted negotiation over the removal or modification of the one-sided standard offer terms and conditions. My testimony recommends basic revisions that are required for the Standard Offer Contract to serve its intended purpose.

These recommendations do not unduly burden PEF as they are consistent with standard industry practice and PEF's own practice in a non-standard offer context.

Q. Please summarize your conclusions and recommendations.

A. My conclusions and recommendations are as follows:

Price Terms

1. The required performance capacity factor of 71% (Section 4) is inconsistent with the avoided unit (estimated capacity factor of 62.9%) and with the operation of PEF's existing combined cycle units (which operate at a capacity factor of approximately 50%);
2. The proposed Availability Factor (Section 4) is mis-specified because it would require the renewable energy producer[1] to achieve a minimum 91% annual capacity factor rather than require the renewable energy producer to make capacity available 91% of the time to obtain a capacity payment.
3. As proposed by PEF, in order to receive the full capacity payment, a renewable energy producer must satisfy a 91% capacity factor, not just the minimum capacity factor of 71%. The 91% capacity factor is excessively high.
4. A renewable energy producer should be entitled to a full capacity payment if it is available for generation in a manner consistent with PEF's own units and achieves the same annual capacity factor as the avoided unit would have.

[1] I will refer to both renewable energy resources and small qualifying facilities of less than 100 Kw as renewable energy producers.

Non-price Terms

1. The imposition of a Right of First Refusal (ROFR) that PEF demands for Renewable Energy Credits owned by a renewable producer is not justified.
2. Capacity Testing –
    i. These provisions appear to be predicated upon a combined cycle unit, and ignore the distinctive features and requirements of most renewable energy producer facilities;
    ii. PEF should be required to provide written notice of the requested test, and to pay for test energy delivered during the test.
3. Creditworthiness Provisions –
    i. These provisions are one-sided and are not consistent with established commercial practice and thus must be revised to provide protection to both parties in the transaction.
    ii. The collateral requirements are onerous and do not appropriately reflect default risk for both parties.
4. PEF's inspection of the generation elements of a renewable energy producer should be subject to reasonable notice and a normal business hours requirement.
5. The default provisions of the Standard Offer Contract are one-sided and do not provide reciprocal rights to claim an event of default for such matters as non-payment, breach of representations and

warranties, failure to comply with obligations under the terms of the contract and creditworthiness.

6. A renewable energy producer should be provided a corresponding opportunity to examine the books and records of the buyer (who will be handling billing and payment). Also, PEF's inspection of books and records should be subject to a reasonable notice and a normal business hours requirement.

7. The contract's assignment limitation is one-sided and is not commercially reasonable. This provision needs to be revised to permit either party to assign with approval from the other party, or, in the event of certain corporate reorganizations, without the other party's approval.

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

9. The conditions precedent need to be revised to more accurately reflect the timing necessary to obtain the necessary approvals and to acknowledge that certain of the items are not within control of the renewable energy producer.

10. The force majeure provisions needs to be revised to reflect a balanced commercial approach to the concept.

11. Annual plan (i.e., renewable energy performance estimates) provisions (Section 10.1) must be more must be more reasonable and flexible.

They must recognize the nature of renewable production and should be predicated upon good faith estimates of energy to be delivered.

12. The insurance provisions in Section 17 need to be removed given that the provision is tied to the construction of the Facility's interconnection and not the Facility itself. This provision is more appropriate in the interconnection agreement.

13. The maintenance scheduling provisions of Section 10.2 should be removed because they are inappropriate for renewable energy producers, which tend to be much smaller in size than utility avoided generating facilities. It is reasonable to require renewable energy producers to provide planned maintenance information, including subsequent updates as they become known, and I have added provisions to that effect in Section 10.1.

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

3. REASONABLENESS OF STANDARD OFFER CONTRACT AND LIKELIHOOD THAT THE STANDARD OFFER CONTRACT WILL BE USED BY RENEWABLE PRODUCERS.

Q. Does the Standard Offer Contract serve the purpose of being an agreement that anyone is likely to enter into without serious negotiations?

A. No. PEF witness David W. Gammon testifies that the Standard Offer Contract provides a "first draft" against which negotiated contracts are developed. Gammon Testimony at 2. Having reviewed the Standard Offer Contract, I

understand fully why he makes that statement. As I discuss, the Standard Offer Contract has numerous provisions that would discourage a renewable energy producer from accepting the Standard Offer Contract. The areas that are one-sided in favor of PEF extend across many aspects of the general terms and conditions. Given the nature of the Standard Offer Contract, I would not expect any renewable energy producer to enter into the agreement on an "as is" basis. Presenting an unbalanced standard offer contract of this nature defeats the intended purpose of such a contract.

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

A. In my estimation, a standard contract is one that sets out the general terms and conditions of the agreement in a balanced manner and permits the parties to focus on items critical to each party that may require more extensive negotiations. Prime examples of such agreements include the Edison Electric Institute Master Power Purchase and Sale Agreement ("EEI Master Agreement"), the North American Energy Standards Board Base Contract for the Sale and Purchase of Natural Gas ("NAESB Agreement") and even the International Swaps and Derivatives Association's ISDA Master Agreement ("ISDA Master") covering swaps and derivative transactions. The above all fit into the category of "standardized agreements" that are comparable in purpose to the PEF Standard Offer Contract, that is, standardized commercial agreements that are susceptible to being entered into without major negotiations and redrafts of the general terms and conditions, such as creditworthiness, default, representations and warranties, assignment and audit provisions.

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

A. In many respects, yes. Those contracts were designed to make it easier for a diverse group of parties, including regulated utilities, power marketers, independent power producers, and commodities traders to enter into a number of transactions providing for the sale, purchase and delivery of electricity and natural gas under standardized terms other than price. The agreements all share a similar objective, which is to provide commercially-reasonable protection to both sides while ensuring the quick consummation of transactions on a relatively uniform basis. A Standard Offer Contract for renewable energy producers should accomplish the same objective. It should not take extensive negotiations or substantial redrafting to achieve a workable agreement.

Q. Should the PEF Standard Offer Contract be revised in a manner that makes it more amenable to a less complex negotiation and drafting process?

A. Yes, and with that objective in mind, I have reviewed the Standard Offer Contract and set forth my proposed changes that I explain below in Exhibit MJM–1, a redlined version of PEF's Standard Offer Contract, dated May 22, 2007.[2] In this exhibit, I have only corrected the provisions in the contract itself, and have not

[2] 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.

edited the appendices included with the contract. PEF should incorporate corresponding changes to those appendices.

4. PRICE TERMS

Q. What is the PEF avoided cost unit?

A. According to the Standard Offer Contract, the avoided unit is a natural gas combined cycle plant with a capacity of 618 MW. This unit is scheduled to enter commercial operations in 2013. However, specific details regarding this unit, such as its location, are not specified in PEF's 2007 Ten Year Site Plan.

Q. What does PEF specify as the minimum availability factor to qualify for a capacity payment in the Standard Offer Contract?

A. The minimum availability factor required to qualify for a capacity payment is 71%. *See* Standard Offer Contract Original Sheet No. 9.415.

Q. Does a renewable energy producer that achieves an availability factor of 71% receive a full capacity payment?

A. No. To receive a full monthly capacity payment, the renewable energy unit must achieve an availability rate of 91% for the month.

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

A. The calculation of the capacity payment in the Standard Offer Contract is not predicated upon the availability rate of a facility, as it should be, but rather upon a capacity factor. Appendix A to the Standard Offer Contract establishes the manner for calculating the capacity payment. It provides that "[i]n the event that

the [Annual Capacity Billing Factor ("ACBF")] is less than 71%, then no Monthly Capacity Payment shall be due." *See* Standard Offer Contract, Original Sheet 9.442. The ACBF is derived by dividing electric energy actually received by PEF from the renewable energy producer by the sum of the Committed Capacity and the hours in the period. *See* Standard Offer Contract, Original Sheet 9.443. This is the formula for the calculation of a capacity factor, which is quite distinct from an availability factor.[3]

It appears that PEF has confused the concept of availability factor with a capacity factor. The difference between the two factors is important to renewable energy producers. An availability factor defines a unit's availability to provide energy to the system, not how or when it actually generates the energy. A unit's availability factor is the sum of the service hours plus reserve stand-by hours divided by period hours times 100. *See* North American Electric Reliability Corporation, Generation Availability Data System, GADS Data Reporting Instruction, F-9. Service hours are those hours when the unit is synchronized with the transmission system, and reserve shut down hours are those hours where the unit is available to generate but is not synchronized with the system.[4]

In contrast, a capacity factor is the product of the MWs of generation during the period divided by the committed capacity times the period hours,

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[3] 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.

[4] 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.

expressed as a percentage. Thus, a capacity factor addresses the actual unit usage, whereas an availability factor addresses a unit's potential to produce energy.

Q. How does the "availability factor" in the Standard Offer Contract compare to the capacity factor of the avoided unit and PEF's existing combined cycle units?

A. According to PEF's Ten Year Site Plan, the capacity factor for the avoided unit, "uncommitted #1" is 62.9%, which is less than the "availability factor" required in the Standard Offer Contract for a renewable producer to qualify for any level of a capacity payment. Moreover, PEF's existing combined cycle units, the Hines Energy Facility and the Tiger Bay Facility, only achieved a weighted average capacity factor of 49.5% in 2006. *See* Exhibit MJM–2. Similarly, for the period 2004-2006, the average PEF combined cycle capacity factor averaged slightly above 47%. *Id.* The avoided unit's estimated capacity factor and the average capacity factor for PEF's existing combined cycle plants are well below the capacity factor that PEF expects a renewable energy producer to achieve in order to qualify for a capacity payment of less than 100%. To achieve a full capacity payment, the renewable facility must achieve a capacity factor of 91%. The requirement in the Standard Offer Contract that a renewable energy producer must achieve a 91% capacity factor to receive a full capacity payment is unreasonable in light of, and inconsistent with, the capacity factor of PEF's existing combined cycle units. This imposes upon renewable energy producers a standard that PEF does not achieve in its own operations. The high capacity

factor requirement serves to discourage renewable producers from entering into a Standard Offer Contract.

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

A. A capacity payment is simply a payment made to reserve the right to call upon a particular asset to provide the payer with service when required.

Q. How should the appropriate capacity factor be determined for purposes of making a capacity payment to a renewable energy producer?

A. A renewable energy producer should receive a capacity payment equal to 100% of the avoided cost capacity amount calculated on PEF Appendix D as long as the renewable energy producer achieves an availability factor no less than the availability factor of the avoided unit.

Payments should be based on a correctly calculated unit availability factor. If payments, however, are based upon a capacity factor, as I explain above, PEF has established the capacity factor at an unreasonable level that even its own units do not achieve. In fact, if the capacity factor that PEF proposes to apply to renewable producers was applied to PEF's own facilities, the utility would not receive a capacity payment for any of its own combined cycle generation. If this method is followed rather than basing payments on availability, I recommend that the appropriate capacity factor should be the average of PEF's existing combined cycle units over a three year period.

5. NON-PRICE TERMS

Q. When you speak of non-price terms, what do you mean?

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

Q. Please discuss PEF's request for a Right of First Refusal of a renewable producer's Renewable Energy Attributes.

A. The Standard Offer Contract at Section 6.2 provides PEF with the right of first refusal to purchase any Renewable Energy Attributes associated with the Facility, and also limits the price that the seller may otherwise obtain in the market to a price no less than the price at PEF has purchased such credits.

Q. Does PEF witness Gammon address the renewable energy attributes and the right of first refusal in his testimony?

A. Yes. At pages 4 and 5 of his testimony, he acknowledges that the Commission's rules provide that "Renewable Energy Credits ("RECs") remain the exclusive property of the Renewable [energy producer]." Gammon Testimony at 5. At page 11 of his testimony, Mr. Gammon explains that the right of first refusal option simply is a provision that PEF has included in previous Standard Offer

Contracts. That is the sum total of PEF's justification for the ROFR provision in the Standard Offer Contract. Mr. Gammon's testimony does not attempt to justify the price floor on the sale of RECs by a renewable energy producer.

Q. Is the PEF proposal a reasonable provision that should be permitted in the Standard Offer Contract?

A. No. The provision seeks something of value to PEF (i.e., the right of first refusal for the purchase of the RECs) that is totally unrelated to PEF's avoided costs and for which PEF provides no compensation to the renewable energy producer. PEF similarly has not justified the price floor at which a renewable energy producer could sell its RECs. There is no rationale for either provision. This can only be explained by the fact that PEF, as the entity drafting the Standard Offer Contract, was free to ask for something to which it is not entitled. This provision should be deleted.

Q. Turning next to the provisions governing capacity test periods and annual capacity testing once the Facility is running, do you have any comments regarding those provisions of the agreement?

A. Yes. In this instance, the provisions (Sections 7.4 and 8.2) do not recognize that facilities that produce renewable energy are not, by definition, natural gas-fired combined cycle units. Renewable production facilities should not be required to operate the same, in all respects, as a standard gas-fired combined cycle facility. Wind, solar, biomass and facilities which rely upon waste heat produced in the manufacturing process to produce steam and electricity, like PCS Phosphate's, all have different performance characteristics. To encourage the development of the

renewable energy technologies, the Standard Offer Contract needs to establish reasonable, technology-appropriate testing requirements. In fact, PEF has recognized that capacity testing period may need to be different depending upon the facility. For example, in Exhibit M of PEF's contract with Vandolah Power Company L.L.C. (Vandolah), PEF only requires the capacity test to be run for a period of four hours, or less if agreed to by the parties. *See* Exhibit MJM–3. Thus, the twenty-four hour test period set forth in the Standard Offer Contract needs to be revised to be responsive to the needs of renewable energy producers and consistent with the flexibility PEF has exhibited with Vandolah.

Q. Have you proposed changes to the capacity testing period?

A. Yes. The proposed changes are contained in Exhibit MJM–1 at Section 8.2. The proposed provision takes into account the specific nature of the renewable resource being used to provide the energy. I have not designated a specific uniform testing time period because I am not seeking to target any one type of resource. Rather the testing procedure should be one that is amenable to different types of resources. By doing so, it makes the Standard Offer Contract more user friendly and more likely to be utilized by renewable energy producers.

Q. Do you have any other comments with regard to the annual capacity testing provisions in the Standard Offer Contract?

A. Yes. I have concerns regarding the proposed Committed Capacity Test provisions found in Section 7.4. These are also inappropriately one-sided, and do not provide for a designated notice period or payment for the energy produced during testing. The buyer should be required to provide reasonable notice of the

requested test date, and also should be required to pay for the test energy. In turn, the seller should be responsible for all other costs associated with the initial test, and permit buyer's representative to be on-site if the buyer so requests. To the extent either party requests a second test during the year, it should be at the expense of the requesting party. My proposed changes, including a ten (10) Business Day notice requirement for scheduling a test, are reflected in Section 7.4 of Exhibit MJM–1.

Q. Does the right of inspection contained within the Standard Offer Contract require revision?

A. Yes. The right of inspection contained in the Standard Offer Contract is not in any way limited. Under the terms of the Standard Offer Contract an inspection could literally occur at any time, day or night, of PEF's choosing. Limitations need to be placed upon the right to enter upon the renewable energy producer's site and inspect its facility. For example, such entry should also be upon reasonable notice. Again the proposed changes are found in Exhibit MJM–1.

Q. Why are such limitations necessary?

A. Entry of any third party personnel onto a facility such as PCS Phosphate's site raises numerous safety and liability issues. Notice must be provided so that the appropriate personnel can be available to escort the inspectors through the property to ensure adherence to all safety and other applicable on-site rules for third party visitors.

6. GENERAL TERMS AND CONDITIONS THAT ARE NORMALLY RECIPROCAL IN COMMERCIAL AGREEMENTS FOR THE PURCHASE AND SALE OF ENERGY PRODUCTS

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

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

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

A. The provisions are one-sided, giving PEF a particular right without providing the renewable energy producer with the corresponding right, or imposing an obligation on the renewable energy producer without imposing a reciprocal obligation upon PEF. There are times where it is appropriate to provide one party with a right or obligation and not the other party, but in terms of the general terms of a commercial agreement, items such as credit and collateral requirements, default, assignment, representations and warranties, conditions precedent (I would note that there may be more conditions precedent applicable to one party versus the other) and force majeure should be reciprocal. The failure to include these provisions in a reciprocal format is not conducive to achieving the objective of the use of a Standard Offer Contract, nor is it commercially reasonable.

Q. Do typical energy purchase and sale agreements (power, gas and financial transactions) customarily include symmetrical provisions that address the items you have mentioned above?

A. Yes. As examples, the EEI Master Agreement, the NAESB Agreement and the ISDA Master all include provisions that address credit and collateral requirements, default, assignment, representations and warranties, conditions precedent and force majeure as they apply to both parties. Likewise, in reviewing the documents provided by PEF, its negotiated contracts also have included reciprocity with respect to the above mentioned provisions. One expects all commercial agreements for the purchase and sale of energy products (physical or financial) to include such provisions on a reciprocal basis.

Q. Are the credit provisions within the Standard Offer Contract what you would expect in a typical power purchase agreement?

A. No. Typical provisions that require each party to establish its creditworthiness are completely absent from the Standard Offer Contract. The Standard Offer Contract requires a renewable energy producer to post security upon execution of the Standard Offer Contract and maintain such security until well after completion of the renewable unit and the initial capacity test (Section 11). It also requires the renewable energy producer to provide security to cover a "termination fee" (Section 12). However, there are no provisions that require PEF to establish its creditworthiness, permit the seller to review PEF's credit status or permit the seller to request collateral if PEF's creditworthiness is not, or falls below, investment grade.

Q. Do you recommend that Commission require PEF to revise the Standard Offer Contract to incorporate reciprocal creditworthiness and collateral?

A. Yes, each party in a commercial agreement should be required to meet creditworthiness standards and be subject to a collateral posting requirement if the party's creditworthiness is insufficient to support unsecured credit in an amount exceeding the potential liability to the other party. Such provisions are customary and generally included in all electric and gas purchase and sale contracts. Further, in typical commercial contracts, the point at which collateral is required is tied to the creditworthiness of the entity. There is usually an established threshold amount set such that once an entity's exposure to the other party reaches a certain level, collateral is required to be posted if the exposure exceeds that level (the threshold amount). The stronger the creditworthiness of a company, usually measured by the company's rating by Moody's, Standard & Poor's or Fitch, the higher the threshold amount (the threshold amount being the amount of unsecured credit a company is given). Under this type of arrangement, each company's exposure would be the amount of any termination payment it would be owed upon an early termination of the agreement and all of the transactions under that agreement.

Q. What does the Standard Offer Contract require?

A. Section 11 requires a renewable energy producer, upon execution of the agreement, to post collateral referred to as performance collateral. The amount of such collateral is contained in a chart in the Standard Offer Contract. There is, however, no indication of how the level of required security is calculated or what

it is based upon. The calculation of performance security should always be directly related to the potential loss incurred by non-performance by each side. In this instance, it is impossible to know or understand the manner in which the level of performance security was determined. The performance security requirement must be associated with the expected level of loss.

Q. What are you proposing for the Standard Offer Contract?

A. In Exhibit MJM–1 after existing Section 11, I have incorporated creditworthiness provisions taken from an existing PEF power supply agreement with the City of Mount Dora, Florida. I have chosen that particular provision because it is one that was acceptable to PEF and employs a simpler form than the EEI Master Agreement. My objective is to simplify the Standard Offer Contract and make it fairer for renewable energy producers. The provisions I propose do not differentiate between credit standing once an entity achieves investment grade. Although I do not recommend it, a more complex formula could be used, which establishes a threshold level of unsecured credit which, if exposure exceeds the threshold amount, collateral is required to be posted. If there is a preference for such an approach, the EEI Master Agreement provides an excellent model.

Q. Does the Standard Offer Contract include default provisions?

A. Yes, it does, but once again the default provisions found in Section 14 of the Standard Offer Contract are one-sided and not reciprocal. The only party that can breach the agreement and be subject to termination for such a breach is the renewable energy producer. There are no provisions that permit a declaration of default by the renewable energy producer against the buyer, PEF.

Q. What types of circumstances may give rise to a default by either party to an electric or gas purchase and sale agreement?

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

Q. Do you propose to revise the Standard Offer Contract to make the default provision reciprocal?

A. Yes. In Exhibit MJM–1 at Section 14, I have inserted default language based upon the language found in the EEI Master Agreement. In doing so, I have retained provisions found in the original Standard Offer Contract that are specifically applicable to renewable energy producers because there may be certain conditions of default that apply specifically to renewable generators and not to PEF. The addition of the reciprocal default provisions serves to make the contract more balanced, without denigrating the protections for PEF's customers.

Q. Do you propose other changes to the section governing default?

A. Yes. There are several provisions that are events of default that are sprinkled throughout the Standard Offer Contract. I have consolidated those provisions within the Section governing Default. From a contract drafting and implementation perspective, it is more efficient to locate all items giving rise to a claim of default in one central location. The provisions I moved are (i) Section 5(e), which deals with a renewable energy producer's ability to meet the initial capacity test date and the completion of the interconnection to the delivery point; (ii) Section 5(d); (iii) the last sentence of Section 7.7; and (iv) the last sentence of Section 3 of the Standard Offer Contract. All of these provisions addressed the obligation of a renewable energy producer to meet the avoided unit in-service date.

Q. Are there provisions contained within the default section dealing with calculating payments between the parties in the event of an early termination of the agreement?

A. Yes. There is a provision for a termination payment contained in the Standard Offer Contract. According to PEF witness Gammon, the Termination Fee is required by Rule 25-17.0832(4)(e)(10), and it is simply included pursuant to such section. Gammon Testimony at 17. The cited Rule permits the imposition of a provision to "ensure repayment of payments to the extent that annual firm capacity and energy payments made to the qualifying facility in any year exceed that year's annual value of deferring the avoided unit specified in the contract in the event that the qualifying facility fails to perform pursuant to the terms and

conditions of the contract." However, the amount of the Termination Security that PEF may retain should be limited to its potential liability arising from any early capacity payments. Also, there is no provision for a termination fee should the buyer default. Should the buyer (PEF) default, the renewable energy provider should also be entitled to damages under the contract.

Q. Does the Standard Offer Contract provide for the right of inspection of books and records?

A. Yes, it does, but once again the provision is one-sided, permitting only PEF the right to inspect the books and records of the renewable energy producer.

Q. Should the renewable energy producer have the right of inspection for books and records, and right of audit?

A. Yes, the renewable energy producer must have a right of inspection and audit of books and records that allows it to inspect and audit records regarding delivery of the product and pertaining to billing and payment. Providing utility access to the customer's records also must be limited to regular business hours and undertaken only upon reasonable notice to avoid disturbing normal operations of the business. In short, such right of audit should be predicated upon reasonable notice, occur during normal business hours and at the expense of the party seeking to undertake the audit.

Q. Why are the above modifications appropriate?

A. A renewable energy producer relies upon PEF to calculate the payment amounts for capacity and energy. As such, the right to inspect and audit those calculations

is important to the seller. Second, from a commercial perspective, having reciprocal rights to inspect and audit the payment and receipts is standard commercial practice. Third, in the case of an inspection or audit of the books and records, the party undertaking the inspection or audit is required to pay for the cost of inspection or audit.

Q. Are the proposed assignment provisions found in Section 20.4 reciprocal and reasonable?

A. No. This is another example of a one-sided provision that solely benefits PEF. Restrictions on any party's ability to assign an agreement may be reasonable, but such restriction should be reciprocal.

Q. Have you proposed revisions to the assignment language?

A. Yes. The proposed language is found in Exhibit MJM–1 at Section 20.4. The suggested language permits assignment by either party with prior written consent, which consent is at the sole discretion of the consenting party and also specifies certain exceptions as identified above.

Q. Are the representations and warranties section of the Standard Offer Contract reciprocal?

A. No. the representations and warranties section of the Standard Offer Contract requires only the renewable energy producer to provide representations and warranties. A number of the representations and warranties are included in the earlier referenced standardized form agreements, but unlike the PEF Standard Offer Contract, such representations and warranties are given by each party to the

other party to the contract. Specifically, it should be expected that each party is able to represent and warrant that (i) it is an organization in good standing and qualified to do business in Florida, (ii) that the contract is duly authorized, and that there are no approvals required or if so, that such approvals have been obtained, (iii) that there are no defaults that prohibit performance under the agreement, (iv) that the party is in compliance with all applicable laws, (v) that no suits are pending that would have a material adverse affect on the party's ability to perform and (vi) that all government approvals have or will be obtained and remain in force and effect. These representations and warranties are contained in existing PEF agreements that were provided to PCS Phosphate in this proceeding. I have proposed conforming changes in the representations and warranties section of Exhibit MJM–1 to make certain of them reciprocal.

Q. Do you have any comments on the provision governing force majeure?

A. Yes. The Standard Offer Contact language is one-sided and does not correspond to what is found in the existing master agreements. Specifically, the Standard Offer's provision requires that a renewable energy producer "conclusively demonstrate" to PEF's satisfaction that an event was not due to negligence or foreseeable. This language places a difficult burden on the renewable energy producer and grants PEF with a substantial amount of discretion. Likewise, the force majeure right is one that PEF may exercise, but it is not required to meet the same standard as the renewable energy producer in terms of establishing its claim of force majeure.

Further, there are certain provisions that have become standard in force majeure clauses that are missing in this particular provision. For example, typically, it is not an event of force majeure if the buyer suffers a loss of market or is unable to economically resell the power, or if the seller loses supply or has the opportunity to resell the product at a higher price. Neither is it an event of force majeure if delivery is interrupted due to transmission curtailment, unless the party claiming force majeure due to a transmission curtailment had obtained firm transmission service and curtailment is due to force majeure or uncontrollable force.

Q. Do you have any suggested revisions to the Standard Offer Contract in this regard?

A. Yes, consistent with the discussion above, I have provided changes to the force majeure language found in Section 18 of Exhibit MJM–1. I have removed the obligation to "conclusively demonstrate" that the event is not caused by the negligence of the party making the claim, nor is the event foreseeable. In its place, parties are required to "reasonably demonstrate" the nature of the event Additionally, I have provided language to exclude from the definition of Force Majeure the loss of market or supply, or price differences from the purchase or sales price.

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

A. Yes. Again these provisions only provide conditions precedent for one party, the renewable energy provider. Generally, there are also frequently conditions precedent that apply to both parties. An example in the Standard Offer Agreement is Section 5(a)(vi) requiring originally only the renewable energy producer to produce corporate constitutional documents, approvals and the like to PEF. I have made this item reciprocal. Additionally, certain of the items contained within this section of the Standard Offer Contract are not conditions precedent, such as Section 5(d), which requires the capacity delivery date to occur prior to the avoided unit's in-service date. This item actually should be in the Default provisions, because unexcused failure to achieve the capacity delivery date prior to the avoided unit's in-service date is an event of default. Likewise, Section 5(e) is another item that more appropriately belongs as an event of default.

Q. Turning to Section 10.1, the provision governing the Annual Plan, what does the section require of a renewable energy producer?

A. It requires that 60 days prior to the Capacity Delivery Date, and also prior to October 1 of each year thereafter, that the renewable energy producer submit "in writing a detailed plan of the amount of electricity to be generated . . . and delivered to PEF for each month of the following calendar year, including the time, duration and magnitude of any scheduled maintenance periods) or reductions in capacity." Standard Offer Contract, Original Sheet No. 9.421. PEF

witness Gammon describes the provision as simply requiring an estimate of deliveries to be made so that PEF can coordinate planned outages with outages at its own and other contracted providers of capacity. Gammon Testimony at 14. However, the contractual language requires a detailed monthly plan of energy delivered.

Q. Is it reasonable to expect that renewable energy producers are able to meet the detailed plan requirements set out in Section 10.1?

A. No. Renewable energy producers relying on wind, solar power or excess waste heat from a manufacturing process cannot predict weather or plant operations with precision for up to fifteen months in advance. If, as PEF asserts, the intended purpose of this provision is to assist in planning functions, adjustments to the contract are needed. I have proposed these changes on Exhibit MJM–1. With the changes proposed, I recommend that renewable producers provide PEF with a schedule describing when the renewable energy producer plans to take its facility down for maintenance during the year. Additionally, for information purposes only, the renewable energy producer would also be required to submit a good faith estimate of capacity and energy to be delivered to PEF. Deviations from these estimates should not be the basis for contract default. This approach would provide PEF with sufficient information concerning expected renewable energy production without imposing an unreasonable burden on renewable energy producers.

Q. Section 17 addresses the insurance requirement for a renewable energy producer. According to PEF, why is the provision included in the Standard Offer Contract?

A. According to PEF witness Gammon, insurance is required by Rule 25-17-087(5)(c). Gammon Testimony at 17. However, that particular rule governs the interconnection process, not the Standard Offer Contract. In my estimation, the insurance provisions that specifically apply to interconnection should be included in the interconnection agreement and not in the Standard Offer Contract. I have removed this provision from the Standard Offer Contract.

Q. Does the limitation restricting scheduled maintenance to fifteen days per year have the potential to cause a problem for the renewable energy producer?

A. Yes, Section 10.2, the section dealing with this issue, is unnecessary and unduly restrictive. This is another element that fails to acknowledge the distinctive nature of different renewable energy technologies. In its current form, the Standard Offer Contract allows PEF to object to a renewable energy producer's proposed maintenance schedule and gives the utility substantial control over the timing of the renewable energy producer's maintenance outages with no obligation to consider how that change affects the renewable energy facility or any associated commercial/ manufacturing facility. While scheduled maintenance of large utility scale generators normally aims to avoid peak periods, renewable energy producers' facilities are often sufficiently small that they should not materially affect PEF's planned operation of its own units. Except for very large (over 50 MW) facilities for which scheduling maintenance could be a legitimate

planning concern, it should be sufficient for an renewable energy producer to provide a good faith estimate of its maintenance plans, with an obligation to update that information as changes become known.

Q. Please discuss PEF's scheduled maintenance requirements for combined cycle units?

A. First, it is difficult to determine what PEF envisions as the expected scheduled maintenance requirements of the avoided unit as PEF has provided no evidence on this subject. However, an examination of PEF's tolling agreement with Vandolah provides insight as to the nature of the maintenance of these natural gas-fired units. In Section 4.3(1)(b) of the tolling agreement, PEF "acknowledges that Seller must perform Routine Maintenance Outages and Planned Maintenance Outages at the Facility" and that "[s]uch Planned Maintenance Outages and/or Routine Maintenance Outages include, but are not limited to, the Unit manufacturer's recommended and required maintenance, . . ."[5] *See* Exhibit MJM–3. In addition, unlike its apparent treatment of scheduled maintenance days for renewable energy producers, PEF agreed that "[t]he Facility and/or a Unit shall not be considered unavailable during Planned Maintenance Outages for purposes of calculating Monthly Capacity Payment." *Id.* at Section 4.3(1)(a).

Thus, because PEF has failed to address the nature of renewable energy generators or even act consistent with its treatment of combined cycle units, I recommend that Section 10.2 be deleted in its entirety, and I have revised Section

[5] The precise number of scheduled maintenance days PEF grants Vandolah cannot be determined since PEF redacted that information from the document provided to PCS Phosphate, even though PEF has not requested confidential treatment of that document in this proceeding.

10.1 to include more planned maintenance estimates and updates as discussed above.

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

A. No. PEF offers both firm and interruptible standby service (rate schedules SS-1 and SS-2). Under each Rate Schedule, facilities with on-site generation are eligible for service. PEF offers no valid reason for denying renewable energy producers access to SS-2 service. This contractual limitation serves only to increase the cost of standby service for a renewable energy producer. Section 6.3 of the Standard Offer Contract provides no significant benefit to the system, while increasing a renewable energy producer's cost of purchasing power from PEF.

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

A. In Section 8.2, in addition to changing the test period to reflect the generator manufacturer's testing recommendations, I have also inserted the requirement that the Committed Capacity Test results be adjusted to reference environmental conditions. This adjustment is needed to reflect how test results are impacted by ambient weather conditions. A similar provision was apparently accepted by PEF in its agreement with Vandolah.

In Section 9.1.3, I deleted the provision that no billing arrangement can result in a renewable energy producer selling more than the Facility's net output because no such restriction is contained in the applicable Commission rule (FPSC

Rule 25-17.082). Also, the term "net output" is undefined and could thus cause unnecessary confusion.

I deleted Section 10.5.6, which required a renewable energy producer to have a three day fuel supply on-site. Such a requirement is not applicable to most renewable generators and thus should not be included in a standard offer contract.

Q. Does this conclude your testimony?

A. Yes, it does.

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
	FILED: March 10, 2008

REBUTTAL TESTIMONY OF DAVID W. GAMMON

ON BEHALF OF PROGRESS ENERGY FLORIDA, INC.

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I. INTRODUCTION

Q. Please state your name, position and business address.

A. My name is David W. Gammon. I am a Senior Power Delivery Specialist for Progress Energy Florida, Inc. ("PEF" or "the Company"). My business address is P.O. Box 14042, St. Petersburg, Florida 33733.

Q. Did you file direct testimony in this case?

A. Yes, I did.

Q. Have you reviewed the testimony and exhibits filed by Martin Marz, the witness testifying for White Springs Agricultural Chemicals, Inc., d/b/a/ PCS Phosphate – White Springs ("PCS Phosphate")?

A. Yes, I have.

Q. Did you agree with Mr. Marz's testimony?

A. No, I do not. The theme of Mr. Marz's testimony that PEF's Standard Offer Contract does not encourage renewable energy development and his characterization of PEF's Standard Offer Contract as an "industry-type" contract that two parties can choose to utilize if it fits their needs are simply not true, as explained in detail below. PEF's Standard Offer Contracts are contracts that are mandated and pre-approved by the Public Service Commission ("PSC"). PEF is required to accept a signed Standard Offer Contract from a counterparty without any negotiation, unless it can be shown

that the supplier is not financially or technically viable; or, it is unlikely that the committed capacity and energy would be available by the date specified in the Standard Offer Contract. In contrast, an industry-type contract, as suggested by Mr. Marz, provides a forum for mutual negotiation where two parties can agree upon a contract that fits their needs. Either party can decide that part of the industry-type contract may not work for them and negotiate changes. Mr. Marz's suggestion that PEF's Standard Offer Contract should be a "one size fits all" document without regard for the fact that PEF must accept it without negotiation is both impractical and unrealistic.

II. PURPOSE OF STANDARD OFFER CONTRACT

Q. Do you agree with Mr. Marz that PEF's Standard Offer Contract does not encourage the development of renewable energy?

A. No, I do not. Mr. Marz has a fundamental misconception regarding the Standard Offer Contract. It is not a form contract with fill-in-the-blanks. Instead, it is a firm offer that PEF and its customers are obligated to make available, to enter into without negotiations, and to make payments under. As such, it is necessary that the Standard Offer Contract – both as a whole and within its specific provisions – be prepared in such a way as to protect PEF's customers. With this understanding, and acknowledging that the PSC has recognized these protections as appropriate for PEF's customers, the provisions of the Standard Offer Contract are reasonable.

Further, because the Standard Offer Contract is offered to all renewable producers with a broad range of sizes, fuel types, types of generation, geographical location, and performance characteristics, its terms must be broad enough to cover all possible circumstances; thus, some of its provisions may be inappropriate for a particular project or type of supplier and may require revision to meet a specific supplier's needs. PEF's Standard Offer Contract provides a good baseline of acceptable terms and conditions for energy producers to work with, and, if necessary, to revise in order to address the unique concerns of renewable suppliers. In PEF's recent experiences with Florida Biomass Group, LLC and Biomass Gas & Electric, changes to the Standard Offer Contract were successfully negotiated to accommodate the unique nature of these projects. In summary, Mr. Marz's theoretical contentions that PEF's Standard Offer Contract somehow inhibits renewable energy contracts are belied by actual fact and experience.

Q. Mr. Marz states that specific details of PEF's avoided unit, such as its location, are not specified in PEF's 2007 Ten Year Site Plan ("TYSP"). How do you respond?

A. The location was not specified because at the time the 2007 TYSP was filed, the determination had not been made. However, in the Standard Offer Contract, the calculation of avoided capacity payments and all necessary characteristics, including the location of the next generating unit of each generation type (base-load, intermediate, or peaker) in the TYSP, are specified. Thus, Mr. Marz's observation is

nothing more than a "red herring" that has no impact on the proper application of PEF's Standard Offer Contract.

III. PRICE TERMS

Q. Explain how PCS Phosphate is mistaken in alleging that PEF's required availability factor of 71% is inconsistent with the avoided unit and with the operation of PEF's existing combined cycle units.

A. The mistake can be seen in Mr. Marz's understanding of the purpose of a capacity payment. In his testimony, Mr. Marz states that in his understanding, a capacity payment is "simply a payment made to reserve the right to call upon a particular asset to provide the payer with service when required." That is not correct with respect to this Standard Offer Contract; nor is it correct with respect to most qualifying facilities ("QFs") or renewable energy contracts in Florida. The Standard Offer Contract can be characterized as a "must-take" contract. That is, PEF does not have the right to call on the capacity in a Standard Offer Contract when PEF chooses. Rather, PEF "must-take" and pay for energy and capacity whenever the renewable facility is generating. But, in order to be eligible for capacity payments, the renewable generator must be available to provide generating capacity in a manner similar to the capacity that would be available from the avoided unit. The availability factor of the avoided unit will be 91% of all hours and so that is the capacity factor required for the renewable generator to receive the full capacity payment. The capacity payment is reduced if the availability of the renewable generator is less than 91% but at least

71%. If the capacity factor is less than 71%, then the renewable supplier is not providing the capacity necessary to avoid the unit and therefore should not receive a capacity payment.

Mr. Marz's comment that the availability factors are unreasonable in light of the capacity factors of PEF's existing combined cycle units is also misplaced. The generation in PEF's fleet is dispatchable, whereas the generation provided under a Standard Offer Contract is not. PEF has the ability to start or stop its various generating units depending on PEF's system economics and reliability criteria. This "dispatchability" accounts for the weighted average capacity factor of the existing combined cycle units being less than 91% and for the capacity factor of the avoided unit being less than 91%. The avoided unit will be available for dispatch 91% of all hours, but for economic and reliability reasons maybe dispatched less often. PEF could have chosen to require the renewable supplier to have the same capacity factor as the avoided unit, but the renewable supplier would have been required to be dispatchable. That is, the renewable energy supplier would have been required to start or stop generating depending upon PEF's system economics and reliability criteria. Furthermore, once the renewable energy supplier was dispatched on, it may have been required to vary its output to match PEF's changing load. PEF felt that it would be much easier for the renewable energy supplier to simply operate whenever it could. This can be seen by the fact that PEF has entered into well over 20 contracts with QFs or renewable suppliers since the late 1980's and all have required capacity factors based upon the projected availability of the avoided unit, and nearly all have

required capacity factors between 80% and 93%. This includes the recent contracts with Florida Biomass Group LLC and Biomass Gas & Electric.

Q. Do you have any comments regarding PCS Phosphate's position that a renewable energy producer should be entitled to a full capacity payment if it achieves an availability factor no less than the availability factor of the avoided unit?

A. Yes. I agree that a renewable energy producer should be entitled to a full capacity payment when it achieves an availability factor equivalent to that of the avoided unit. In this instance, the avoided unit's projected availability is 91%, so since the Standard Offer Contract is not dispatchable and it is therefore presumed that the renewable energy supplier will deliver to PEF whenever it is available to operate, this is the level a renewable energy producer must achieve to receive a full capacity payment. This presumption that the renewable energy supplier will deliver to PEF whenever it is able to operate is meant to encourage renewables by eliminating the need to dispatch their output thereby reducing their operational requirements.

IV. NON-PRICE TERMS

A. Renewable Energy Credits ("RECs")

Q. Mr. Marz alleges that PEF's Standard Offer Contract provision 6.2 specifying that PEF has the right of first refusal to purchase RECs and setting a price floor is unreasonable and should be deleted. Do you agree?

A. No, I do not. This provision simply allows PEF the right to purchase the RECs and to pay what anyone else would pay. It should be immaterial to the renewable generator to whom the RECs are sold if a fair market price is paid by the purchaser. Rule 25-17.280, F.A.C., does not preclude a Standard Offer Contract from containing a provision granting a utility the right of first refusal. In fact, at the January 9, 2007, Agenda Conference at which the rule was adopted, PSC staff stated that utilities could include a right of first refusal provision in the Standard Offer Contract. Further, it just seems reasonable that if PEF's ratepayers are paying a renewable supplier for its energy and capacity, then they should also have the right to purchase renewable attributes at a market price rather than possibly being forced to purchase renewable attributes elsewhere, possibly out of state. I would note Section 6.2, found on Sheet No. 9.417 of the Standard Offer Contract, requires PEF to respond to a bona fide offer for the purchase of the RECs within 30 days so if PEF does not choose to purchase the RECs, the renewable generator or QF can sell to another party. Finally, the renewable energy producer can negotiate different terms than those contained in the Standard Offer Contract. PEF has done so a number of times, most recently in its contracts with the Florida Biomass Group and Biomass Gas & Electric.

B. Capacity Test Periods

Q. Please explain how PCS Phosphate is in error in alleging that the capacity testing provisions are predicated upon a combined cycle unit and ignore the distinctive features and requirements of renewable energy producers.

A. In order for PEF to avoid constructing a generating facility, it has to know that the replacement capacity can reliably be expected to replace that generating facility. A requirement that the replacement capacity be able to operate reliably over a 24 hour period is a reasonable test and is actually less than the reliability testing that would be required of the avoided unit. If a supplier cannot meet this requirement then it is not avoiding a combined cycle unit and should not be paid as if it was avoiding the unit.

Q. Mr. Marz suggests that Section 8.2 be revised to make the Committed Capacity Test results based on the manufacturer's recommendations for testing the facility or other agreed-upon procedures, to require results be adjusted to reference environmental conditions and to delete the requirement for a 24 consecutive hour test period and uses PEF's agreement with Vandolah as an example. How do you respond?

A. Again, Mr. Marz misunderstands the purpose of the Standard Offer Contract and the basis on which capacity payments are made. The Standard Offer is a firm offer that PEF and its customers are obligated to take without revision or negotiation and which, accordingly, must be constituted to protected PEF's customers. The Standard Offer Contract "avoids" a combined cycle unit and the capacity to be provided under the contract should be able to operate in a similar manner as the combined cycle unit would.

Mr. Marz erroneously makes comparisons to "tolling agreements" such as PEF's Vandolah Agreement. In a tolling agreement, the purchaser provides the fuel and dispatches the facility to operate when needed for system reliability or when it is

economically justified. The Vandolah Agreement is fundamentally a different type of agreement that was negotiated with compromises on many terms. It is unreasonable to pick and choose terms from the Vandolah Agreement and conclude that PEF should be amenable to these same terms in all Standard Offer Contracts.

Q. Please comment on Mr. Marz's suggested revisions to Section 7.4 to give 10 business days notice of a capacity test, that the test be done only once per year, and that PEF pay for the test energy generated during the test.

A. The 10 day notice seems reasonable. Regarding the number of tests per year, it should be noted that PEF has already lowered the requirement from six times per year to two times per year. Two tests per year is reasonable and necessary. If PEF has some reason to believe that a supplier cannot reliably delivery energy, PEF must not be required to wait up to 12 more months to ask for a test, which is necessary to ensure that PEF's ratepayers are not paying for capacity that is not being provided. Finally, as seen on Sheet No. 9.456 of the Standard Offer Contract, PEF would already be obligated to pay for the test energy generated during the test since the Standard Offer Contract provides for energy payments for any energy received from the supplier before or after the Avoided Unit In-Service Date.

C. Right of Inspection

Q. Mr. Marz's testimony alleges that the right of inspection provision is not limited and that inspection could occur at any time, day or night, and that notice is needed so that appropriate personnel can escort inspectors for safety and

liability reasons. Exhibit MJM-1 indicates that the provision should be deleted and replaced with a new paragraph in Section 20. Explain the purpose behind this provision and whether you agree with revising it.

A. While I do not agree with deleting the provision on page 15 of Exhibit MJM-1 and replacing it wholesale with the suggested paragraph, some revision of the existing provision, incorporating some elements of Mr. Marz's suggested language on page 41 of Exhibit MJM-1 may be acceptable. The intention of this provision is not and has never been for PEF to be a nuisance or hindrance to a facility by repeatedly and unreasonably inspecting a facility and/or its books, or to inspect in the middle of the night or during other periods when a renewable energy producer's representative would be unavailable. The intention is simply for PEF to have the ability to inspect when necessary. Accordingly, a revision to allow PEF inspection of a renewable energy producer's books and/or facility upon reasonable notice and during normal business hours is acceptable.

IV. GENERAL TERMS AND CONDITIONS

Q. **On page 18 of Mr. Marz's testimony, he argues that many provisions of the Standard Offer Contract are "one-sided," giving PEF a particular right without providing the renewable generator with a reciprocal right or imposing an obligation on the provider without imposing a reciprocal obligation on PEF. How do you respond to this argument?**

A. Mr. Marz himself acknowledges that there are times when it is appropriate to provide one party with a right or obligation and not the other, and the purpose of the Standard Offer Contract and the circumstances under which it is made constitutes one of those times. First, this is a purchase contract under which the supplier must build, operate and interconnect a generating facility, while the buyer pays for the delivered capacity and energy. Moreover, the utility is subject to the PSC's regulatory authority and is required by law and regulations to purchase capacity and energy pursuant to the contract. Cost recovery is assured through prior approval of the Standard Offer Contract or PSC approval of a negotiated contract.

Unlike the utility, the renewable generator is not subject to the pervasive jurisdiction of the PSC, so performance under the contract must be ensured by contract provisions such as completion security, conditions precedent, creditworthiness, and representations and warranties.

Finally, Mr. Marz's many references to the Edison Electric Institute Master Power Purchase and Sale Agreement, the North American Energy Standards Board Base Contract for the Sale and Purchase of Natural Gas, and the International Swaps and Derivatives Association's ISDA Master Agreement are inapplicable. As explained previously, these are not examples of firm offer contracts that must be accepted by PEF without further negotiations. Therefore, the terms contained in these agreements are irrelevant.

A. Performance Security

Q. Mr. Marz suggests that Section 11.1 of the Standard Offer Contract, Completion Performance Security, be revised to require collateral upon satisfaction of the Conditions Precedent and until completion of the facility and demonstration that it can deliver the amount of capacity and energy specified. What is currently required and do you agree with this revision?

A. Currently, the Standard Offer Contract requires the security be obtained simultaneous with the execution of the Standard Offer Contract and maintained throughout the term of the contract. Performance securities are needed throughout the term of the contract, beginning at its execution, to help ensure that if a supplier can no longer meet its obligations under the contract, then the utility has funds available to cover a portion of the replacement cost of energy needed to serve PEF customers. Without these provisions, the entire risk of default would be borne by PEF's customers, rather than by the party that is not meeting its obligations under a purchase power contract. Therefore, I do not agree with this revision.

Q. Please explain what would happen if, as PCS Phosphate suggests, the performance security was "associated with the expected level of loss."

A. Typically, the required performance security amount does not cover all the costs of the replacement energy, but merely offsets some of the costs that are otherwise borne by PEF's customers. If the performance security truly covered the expected level of loss, as PCS Phosphate suggests, the amounts specified in PEF's Standard Offer Contract would have to be significantly increased. The magnitude of the required

increase could be very large. For instance, if a renewable supplier signed a Standard Offer Contract for 100 MW with a 25 year term and then defaulted in contract-year 4, PEF would have to purchase and/or build 100 MW of capacity to provide energy for the remaining 21 years to replace the energy not delivered by the renewable supplier. Further, even if only the replacement cost is considered until another facility could be built, the security amount would have to be much larger.

B. Creditworthiness, Default, Representations and Warranties

Q. Mr. Marz suggests adding a new section entitled "creditworthiness" after Section 11, which would require both parties to maintain acceptable creditworthiness or provide performance assurance. Is this new section desirable?

A. No, this new section is neither necessary nor desirable. Creditworthiness is relevant to the issue of a party's ability to perform under the contract, which for PEF means the ability to pay for the capacity and energy delivered. PEF's ability to pay is addressed through the fact that the Standard Offer Contract is pre-approved by the PSC and therefore eligible for cost recovery from PEF customers through a cost recovery clause, making the creditworthiness of PEF irrelevant as it relates to Standard Offer Contracts. Further, as a regulated company, the PSC has oversight over PEF's financial condition, which is not true for renewable generators. The suggested provision is undesirable because it implies the need for further performance assurances that are, in fact, inferior to those already existing.

Q. In his testimony, Mr. Marz alleges that PEF's default provisions in Section 14 are one-sided and suggests rewriting them to impose requirements upon PEF (in 14.1), to eliminate some with respect to renewable energy producers (in 14.2), and to make some apply to both parties (15.11-15.13). How do you respond to each of these changes?

A. Once again, Mr. Marz fails to recognize that PEF's actions and activities are subject to the oversight of the PSC and the renewable generators are not. This results in some asymmetry in the provisions of the Standard Offer Contract. Regarding default provisions for PEF, these are not required because the PSC has already approved this contract for cost recovery so, as explained previously, there are no issues about payment or guarantees for payment. Since the default provisions are unnecessary, the changes to Sections 15.11 through 15.13 are not needed. I will address the elimination of the requirements for suppliers one-by-one from Mr. Marz's Exhibit MJM-1, Page 29.

- Sections 14.2 (a), (h) and (j) – These sections remain unchanged from the previous language.
- Section 14.2 (b) - The added language regarding *force majeure* or waiver is not necessary because the Capacity Delivery Date is the date that the supplier begins receiving capacity payments, not a deadline. The deletion of the 71% would mean that a supplier could deliver to PEF at a single digit capacity factor for years and PEF's ratepayers would still be obligated to make capacity payments under this contract. To be clear, the 71% capacity factor requirement is a 12-month rolling

calculation; in order to drop below 71%, a supplier would have been off-line for a total of 106 days out of the last 365.

- Section 14.2 (c) - The inclusion of this as an Event of Default demonstrates the importance of this provision to PEF. In the event of a hurricane, for instance, there may not be any way to deliver fuel for a few days. This provision ensures that PEF's ratepayers have capacity available in the event of such a situation.
- Sections 14.2 (d), (e), (f), (i), and (k) - These provisions are included elsewhere in Mr. Marz's marked-up Standard Offer Contract. The other locations for these provisions are unnecessary and these provisions should remain in this section.
- Section 14.2 (g) - This provision states that the supplier must get its permits by the Completed Permits Date. If the supplier cannot obtain its permits then it will not be able to make deliveries to PEF.

Q. What is your response to Mr. Marz's suggestion of rewriting Section 14 to consolidate those provisions within Section 14 that relate to the obligation of a renewable energy producer to meet the avoided unit in-service date?

A. Conceptually, I do not oppose simply moving existing language within Section 14, if doing so would provide clarity to renewable energy producers. However, I believe they are appropriately placed in the current contract.

Q. PCS Phosphate suggests revising Section 12.1.4 to read that upon termination arising from default on the part of the renewable energy producer, PEF shall be

entitled to retain only such portion of the termination fee sufficient to cover any liability arising from early payments. Do you agree with the suggested change?

A. No, the suggested change is not needed. In PEF's Standard Offer Contract, the Termination Fee already only covers the liability arising from early payments in accordance with Rule 25-17.0832(4)(e)10, F.A.C.

Q. **Do you agree with Mr. Marz that the representations and warranties in the Standard Offer Contract should be revised so each party would be expected to represent and warrant certain items?**

A. No, I do not. Again, as explained previously, because a Standard Offer Contract has been pre-approved by the PSC and because PEF is subject to the PSC's oversight, there is no need for the reciprocal changes to the representations and warranties that Mr. Marz suggests. Also, it is again important to keep in mind that PEF must accept the Standard Offer Contract without negotiation, so it is not unusual or unfair to have certain provisions that only apply to the renewable energy producer.

C. Assignment

Q. **Mr. Marz alleges that the assignment provision in Section 20.4 is one-sided and should be revised to permit assignment by either party with prior written consent, with certain exceptions. How do you respond?**

A. Conceptually, PEF does not object to the changes in the assignment provision proposed by Mr. Marz.

D. *Force Majeure*

Q. Do you have any comments regarding Mr. Marz's testimony that the *force majeure* provisions in Section 18 do not correspond to what is found in the existing master agreements or that they put a burden on the renewable energy producer while giving PEF discretion?

A. Yes. Again, because a Standard Offer Contract has been pre-approved by the PSC, there is no need for the reciprocal changes to the *force majeure* language that Mr. Marz suggests. As to the changes Mr. Marz suggests regarding PEF's loss of markets, PEF's economic use, or the renewable supplier's ability to sell at a higher price, while I do not think these are necessary or significant, PEF has no objection to incorporating these changes into the Standard Offer Contract. Similarly, because a Standard Offer Contract has been pre-approved by the PSC, there is no need for the reciprocal changes suggested by Mr. Marz, but PEF is willing to agree to these changes. Mr. Marz also suggests that the standard of "conclusively demonstrate" should be changed to "reasonably demonstrate." Again, this change, while largely immaterial in the context of the current contractual language, is acceptable to PEF.

E. Conditions Precedent

Q. Mr. Marz has suggested several revisions to Section 5 relating to Conditions Precedent. Please respond.

A. I will respond to each of the suggested changes:

- Section 5(a) – The revisions making the conditions precedent provisions apply to both parties are unnecessary. As explained previously, PCS Phosphate fails to

recognize that PEF's actions and activities are subject to the PSC's oversight and the renewable generators are not, resulting in some asymmetry in the provisions of the Standard Offer Contract.

- Sections 5(a)(i), (ii), (iii) and (iv) – Mr. Marz suggests that the form and substance in which information is provided be at the renewable generator's sole discretion. PEF does not object to this language as long as the provision that the renewable supplier has to certify that the conditions are met remains intact.
- Section 5(v) – PEF does not agree with deleting the requirement that a renewable generator obtain insurance as required by Section 17. This is further explained below.
- Section 5(a)(vi) - Once again, because a Standard Offer Contract has been pre-approved by the PSC and the PSC is subject to the oversight of the PSC, there is no need for the delivery of constitutional documents and corporate resolutions from PEF that Mr. Marz suggests.
- Section 5(a)(vii) – This section, as well as the last paragraph of Section 2, requires the supplier to obtain QF status from the PSC and to maintain that status throughout the term of the Standard Offer Contract. These provisions are reasonable because the Standard Offer Contract is only available to QFs or renewables that can be certified as a QF by the PSC. If a supplier cannot meet these requirements then another type of contract would be more appropriate.
- Section 5(b) – As explained above, the revisions making the conditions precedent apply to both parties are unnecessary.

- Section 5(c) – As explained above, the revisions making the conditions precedent apply to both parties are unnecessary. PEF does not object to the suggested change to allow termination of the contract with proper notice.
- Sections 5(d) and (e) – The provisions Mr. Marz suggests moving are properly considered conditions precedent and therefore should be included in that section. It is understood that failure to meet the conditions would amount to a default, so there is some logic to his suggestions. However, it would seem the provisions are appropriately placed in the current contract.

F. Annual Plan and Electricity Production and Plant Maintenance Schedule

Q. Mr. Marz states that it is unreasonable to expect renewable energy producers to meet the plan requirements set out in Section 10.1. Do you agree?

A. No. A renewable energy producer should be able to provide an estimate of its deliveries to PEF so that PEF can coordinate the planned outages of the supplier with the outages of its own facilities and the other facilities under contract with PEF to ensure at any given moment there is adequate generation to meet demand. Meeting the plan requirements in this section is critical to PEF's responsibility and ability to serve its customers and maintain system reliability. PEF must plan to serve its customers in a reliable manner while minimizing cost. Without the requirement to coordinate outages, a large renewable supplier could take an outage and jeopardize PEF's system reliability or force uneconomic purchases or sales to accommodate the renewable supplier's unforecasted outage or deliveries.

Q. What is your response to Mr. Marz's suggested revisions in Section 10.1 to change "detailed plan" to "good faith estimate"?

A. Conceptually, I do not oppose changing "detailed plan" to "good faith estimate" in Section 10.1. A "good faith estimate" would include a maintenance schedule with anticipated output levels during the maintenance periods.

Q. Mr. Marz suggests the deletion of Section 10.2, alleging it fails to acknowledge the distinctive nature of renewable energy technologies and is unduly restrictive. How do you respond?

A. This section is vitally important to PEF's responsibility and ability to serve its customers and maintain system reliability. PEF must coordinate the outages of its units with those of its suppliers to ensure at any given moment there is adequate generation to meet demand. By the deletion of Section 10.2, a large portion of PEF's generation could decide to take outages at the same time or a large supplier could choose to take an outage during a time of high demand. These potential situations would make it difficult for PEF to maintain system reliability. Obviously, PEF coordinates the outages of its own generation, including combined cycle units, so that the maximum amount of generation is available when it is likely to be most needed. For instance, PEF would avoid planning outages of its own units during the heat of the summer.

Q. Do you agree with Mr. Marz's deletion of Section 10.5.6, which requires a renewable energy producer to have a three day fuel supply on-site?

A. No, I disagree with deleting this provision. This provision is included in the Standard Offer Contract because it helps to ensure that during an extreme operating event, the supplier will be able to continue operating for 72 hours, using its on-site supply. The provision should not be deleted just because some renewable generators, such as a wind facility, cannot maintain a fuel inventory, because many renewable generators can. A wind facility has the option of proposing the deletion of those sections and negotiating other provisions that address its unique operating requirements. Further, in my experience, it is likely that a supplier using biomass, municipal solid waste or natural gas (remember the Standard Offer Contract applies to QFs as well) can meet this requirement and for those types of facilities the maintenance of a fuel inventory or a back-up fuel inventory is very important.

G. Insurance

Q. Do you agree with PCS Phosphate's suggested deletion of Section 17, regarding insurance?

A. No. First, as indicated in my direct testimony, Rule 25-17.087(5), F.A.C., requires insurance. That this rule governs the interconnection process and not the Standard Offer Contract makes no difference to the requirement; it is still a condition that has to be met prior to the interconnection and operation of the renewable generator's or QF's facility. In addition, the PSC's recent amendments to Rule 25-6.065, F.A.C., which will be effective in April, require insurance for the interconnection of systems greater than 10 kW. As part of the recent net metering and interconnection

rulemaking, the PSC thoroughly discussed and considered the issue of insurance and determined that insurance is required for all but the smallest systems.

H. Use of Interruptible Standby Service for Start-up

Q. Is PEF's requirement that a renewable energy producer utilize firm standby service for start up unreasonable, as PCS Phosphate alleges?

A. No, this provision is not unreasonable as it ensures the supplier's generation is available when it is needed most. As I stated in my direct testimony, if the generating unit was off-line when PEF interrupted its interruptible customers, then the generating unit could not return to service because it would not have power from PEF. This means the renewable supplier may not be able to provide power to PEF's customers at exactly the time it is most needed because its standby service has been interrupted. The standby service purchased must be firm stand-by service to assure there is power available to start the unit.

I. Energy

Q. Mr. Marz suggests revising Section 6.1 (which he moves to 9.1.3) to delete the provision that no billing arrangement can result in a renewable energy producer selling more than the Facility's net output. Do you agree with this change?

A. No. The Federal Energy Regulation Commission ("FERC") has long held the position that a QF cannot sell more than its net output as a QF. In a 1981 case involving Occidental Geothermal, Inc., FERC found that the "power production capacity" of a facility is "the maximum net output of the facility."

V. CONCLUSION

Q. Does this conclude your testimony?

A. Yes.

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
Filed: February 18, 2008

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

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

between

_____

and

PROGRESS ENERGY FLORIDA

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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:

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.

"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.

"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 100 kW.

"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.

"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~~ _____ 200__.

"Eastern Prevailing Time" or "EPT" means the time in effect in the Eastern Time Zone of the Unites 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, ifRF/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.

"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.

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

"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.

"LOI" 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 "MAP" 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 "QF" 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 ("PURPA"), 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 EPAct 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/QF" 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/QF 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/QF 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.

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 (kW)	
Net Output (kW)	
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 shall have the right at all times to inspect the Facility and to examine any books, records, or other documents of the RF/QF that PEF deems necessary to verify the Facility's Renewable Facility or Qualifying Facility status. 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 continuously maintained its status as a~~

~~Renewable Facility or a Qualifying Facility during the prior calendar year.~~

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	Natural Gas Combined Cycle
Avoided Unit Capacity	618 MW
Avoided Unit In-Service Date	June 1, 2013
Avoided Unit Heat Rate	7,442 BTU/kWh
Avoided Unit Variable O&M	$0.194 per kWh in mid-2013 dollars escalating annually at 2.25%
Avoided Unit Life	25 years
Capacity Payments begin	Avoided Unit In-Service Date unless Option B, C, or D is selected
Termination Date	May 31, 2023 (10 years)
Minimum Performance Standards – On Peak Availability Factor*	~~91~~ %
Minimum Performance Standards – Off Peak Availability Factor	~~91~~ %
Minimum Availability Factor Required to qualify for a Capacity payment	~~71~~ %
Expiration Date	April 1, 2008
Completed Permits Date	June 1, 2012
Exemplary Early Capacity Payment Date	January 1, 2008

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

5. Conditions Precedent

(a) Unless otherwise waived in writing by the other Party~~PEF~~, on or before the Drop Dead Date, each Party~~RF/QF~~ shall satisfy the following Conditions Precedent, as applicable:

(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 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) If one Party does not satisfy ~~Unless~~ all applicable Conditions Precedent ~~are satisfied by RF/QF~~ on or before the Drop Dead Date or such Conditions Precedent are not waived in writing by the other Party~~PEF~~, the other Party may, in its sole discretion, terminate this Contract upon no less than five (5) days written notice ~~shall terminated 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~~ Scheduling

~~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.~~ [Moved to Section 9.1.3]

~~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.~~

~~6.4~~ 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/QF'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 though 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.

7.4 In addition to the first Committed Capacity Test, PEF shall have the right to require the RF/QF, after notice no less than 10 Business Days prior to such proposed test, to validate the Committed Capacity by means of a Committed Capacity Test ~~at any time, up to two (2) times~~once 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. PEF shall pay for test energy generated during such Committed Capacity Test and RF/QF shall be responsible for other costs of such test. To the extent a second Committed Capacity Test is sought during the year, the Party requesting such test shall be responsible for the costs of such second test.

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 the manufacturer's recommendations for testing the Facility or such other procedures as agreed upon by the Parties,and adjusted to Reference Conditions ~~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.~~ 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 PEF'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-1 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-1 and shall not be included in the calculations in Appendix A hereto.

9.1.3 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 FPSC Rule 25-17.082~~Appendix D~~. [Moved from Section 6.1]

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 Avoided 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.

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. Estimated 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~~detailed plan~~ 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. An RF/QF agrees to provide updates to its planned maintenance periods as they become known. The Parties agree to discuss coordinating scheduled maintenance of electric production equipment.

~~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) days per calendar year in accordance with manufacturer's specifications. 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.

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-1 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 threephase 60 hertz alternating current, at a nominal operating voltage of _____ volts (_____ 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, PEP'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 2517.086 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 Maj eure event.~~

11. Completion/Performance Security

11.1 ~~Simultaneous with the execution of this agreement~~ Upon satisfaction of the Conditions Precedent, RF/QF shall deliver to PEF Eligible Collateral in an amount according to Table 2. RF/QF's Performance Security shall be maintained ~~throughout the Term although~~ until completion of the Facility and demonstration that the Facility can deliver the amount of capacity and energy specified in the Contract. ~~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 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	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 PEF' 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 + i1GDPIPD)

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.

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 times 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 this 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 senior long-term debt) by Standard & Poor's of at least BBB- and/or a 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 provice 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 mean 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 longer meets the creditworthiness standards and may request performance assurance from the affected Party. Such assurances shall be provided within five (5) days of the 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.

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 arising from an Event of Default of the RF/QF, 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%)~~such portion of the Termination Security sufficient to cover any liability arising from early payments under Options B, C, or D of Appendix D.

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

14.1 Events of Default

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 by such Party herein 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/collateral 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 a 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 and such failure shall not be remedied with three (3) Business Days after written notice;

(iii) a Guarantor becomes Bankrupt;

(iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the

satisfaction of all obligations of such Party under this Agreement without the written consent of the other Party; or

(v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

14.2 Event of Default with respect to RF/QF

Notwithstanding the occurrence of any Force Majeure as described in Section 18, each of the following shall constitute an Event of Default:

(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 unless otherwise excused by Force Majeure or waiver, 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%)~~;

(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 (72) 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 as an Event of Default in 14.1]

(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, encumbered, 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 as an Event of Default in 14.1]

(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 as an Event of Default in 15.1]

(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 as an Event of Default in 14.1]

(j) 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 as an Event of Default in 14.1]

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:

15.11 immediately terminate this Contract, without penalty ~~or further obligation~~, except as set forth in Section 15.2 by written notice to the ~~RF/QF~~other Party, and offset against any payment(s) due ~~fromto PEF to the RF/QF~~ the defaulting Party, any monies otherwise due from the ~~RF/QF to PEF~~the defaulting Party.

15.12 enforce the provisions of the Termination Security requirement pursuant to Section 12 hereof; and

15.13 exercise any other remedy(ies) which may be available to ~~PEF~~ such Party 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:

(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 *RF/QF* 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~~prevents one Party from ~~the performance by that Party of~~performing 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 inability economically to use or resell the capacity and energy purchased hereunder; or (iii) RF/QF's ability to sell the capacity at a price greater than the price herein. ~~RF/QF e~~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 ~~Facility~~control of a Party, or Party's ~~a RF/QF~~ 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 ~~the RF/QF~~such Party can reasonably~~conclusively~~ demonstrate, to the reasonable satisfaction of the non-claiming Party~~PEF~~, that the event was not reasonably foreseeable, was beyond the ~~RF/QF's~~Party's reasonable control and was not caused by the negligence or lack of due diligence of the ~~RF/QF~~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 is 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~~

~~The RF/QF~~Each Party hereto 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 ~~RF/QF~~Party 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 ~~PEF~~the other Party.

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 ~~the RF/QF~~such Party, does not require any approval, except as has been heretofore obtained, of the _____ (shareholders, partners, or others, as applicable) of ~~the RF/QF~~such Party or any consent of or approval from any trustee, lessor or holder of any indebtedness or other obligation of ~~the RF/QF~~such Party, 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 governing document) of ~~the RF/QF~~such Party, or any agreement, judgment, injunction, order, decree or other instrument binding upon ~~the RF/QF~~such Party, 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

~~The RF/QF~~Each Party has knowledge of all laws and business practices that must be followed in performing its obligations under this Contract. ~~The RF/QF~~Each Party 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 RF/QF or PEF~~such Party.

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 ~~the RF/QF~~each Party'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. ~~The RF/QF~~Each Party 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, ~~the RF/QF~~each Party 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 designer's/manufacturer's 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

~~The RF/QF may not assign this Contract, without PEF's prior written approval, which approval may be withheld at PEF's sole discretion.~~

Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurances as the non-transferring Party may reasonably request.

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.

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.
299 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.

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.

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 Audit and Facility Inspection

Each Party has the right, upon reasonable notice of not less than seven (7) Business Days, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge, payment or computation made pursuant to this Agreement.

Except in the case of an electrical emergency at or in proximity to RF/QF's site that is impacting PEF's system, PEF shall have the right upon no less than ten (10) business days prior written notice to inspect the Facility during normal business hours. In the case of an emergency as described above, PEF shall make reasonable efforts to contact the Facility and make arrangements for an emergency inspection. Such contact may be by phone call or e-mail.

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 Avoided 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.

(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.

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

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
Filed: February 18, 2008

PROGRESS ENERGY FLORIDA, INC.

Progress Energy Florida Combined Cycle Plants 2004 - 2006

Line		2004 (1)	2005 (2)	2006 (3)	Average (4)
1	**Annual MWhs**	5,885,806	6,956,112	8,173,754	7,005,224
2	**Operating Capacity**	1,334	1,916	1,885	1,712
3	**Weighted Heat Rates (1)**	7,476	7,305	7,272	7,351
4	**Weighted Capacity Factors (1)**	50.40	41.49	49.52	47.14

Source: SNL Financial
(1) Weighted by annual MWhs

Exhibit MJM-3

to the

DIRECT TESTIMONY OF
MARTIN J. MARZ

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

Excerpts from
Vandolah Power and PEF Tolling Agreement

Docket No. 070235-EQ
Filed: February 18, 2008

REDACTED

TOLLING AGREEMENT

Between

VANDOLAH POWER COMPANY L.L.C.

And

FLORIDA POWER CORPORATION,

d/b/a

PROGRESS ENERGY FLORIDA, INC.

August 29, 2007

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PEF 0097

EXHIBITS

TOLLING AGREEMENT

THIS TOLLING AGREEMENT (this "Agreement") entered into as of the 29th Day of August, 2007, (the "Agreement Date"), by and between Vandolah Power Company L.L.C. ("Seller"), a Delaware limited liability company, and Florida Power Corporation, d/b/a Progress Energy Florida, Inc. ("Buyer"). Seller and Buyer may be individually referred to herein as a "Party" and, collectively, as the "Parties."

RECITALS:

(A) Seller owns the Vandolah electric generating facility located in Hardee County, Florida as more particularly described in Exhibit A;

(B) Seller and Buyer desire to enter into a tolling arrangement whereby Buyer will deliver Fuel to Seller's Vandolah electric generating facility and Seller will convert such Fuel into Energy and/or Ancillary Services when scheduled by Buyer; and

(C) The Parties desire to enter into this Agreement to set forth their respective rights and obligations in connection with this tolling arrangement.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS

1.1 Defined Terms.

The following terms shall have the meanings set forth below.

(1) "Acceptable Credit Rating" means, with respect to any Person, Party or any entity a credit rating, on any date of determination, the respective ratings then assigned to such Party's or entity's unsecured, senior long-term debt (not supported by third party credit enhancement) of at least BBB- by S&P or Baa3 by Moody's. If there is no senior long term debt then the long term issuer rating for Moody's and the credit rating for S&P will be substituted. In the event of any inconsistency in ratings by the two rating agencies (a "split rating"), the lowest assigned rating shall control.

(2) "Acceptable Guarantor" means a Person that has an Acceptable Credit Rating and that is acceptable, as determined in a commercially reasonable manner, to the Secured Party.

(3) "Affiliate" means any Person that directly or indirectly controls, is controlled by, or is under common control with the Person in question.

(4) "AGC" means automatic generation control, which is the capability to make automatic adjustments to generation output in response to system changes through the use of a digital computer. This control is based on such factors as load, frequency, cost, and tie line flows.

the Operational Limitations herein provided. Buyer hereby acknowledges Seller's obligation and agrees to dispatch the Facility and to perform its duties and responsibilities under this Agreement consistent with Seller's obligation in this Section 4.2.

4.3 Maintenance Outages.

(1) Schedule of Planned Maintenance Outages.

(a) Seller shall not be obligated to deliver Energy and/or Ancillary Services pursuant to this Agreement during Planned Maintenance Outages. The Facility and/or a Unit shall not be considered unavailable during Planned Maintenance Outages for the purposes of calculating the Monthly Capacity Payment. Notwithstanding anything in this Section 4.3 or in any other provision of this Agreement, the duration of the Planned Maintenance Outages during any calendar year shall be limited as provided in Section 4.3(2) below, and the duration of any Planned Maintenance Outages which exceed the durations specified in Section 4.3(2), shall be deemed a Forced Outage, unless otherwise excused as an Excusable Event, as herein provided.

(b) Buyer acknowledges and agrees that Seller must perform Routine Maintenance Outages and Planned Maintenance Outages at the Facility in an effort to reduce and prevent Forced Derates and/or Forced Outages and to maintain the efficiency, performance, reliability and availability of the Units. Such Planned Maintenance Outages and/or Routine Maintenance Outages include, but are not limited to, the Unit manufacturer's recommended and required maintenance, Compressor Washes and any preventive maintenance that maintains or improves or that is reasonably anticipated to maintain or improve the efficiency, performance, reliability and availability of the Facility, or any Unit thereof. The Planned Maintenance Outage schedule (intervals and duration) shall be based on (i) the Unit manufacturer's equivalent start and run time guidelines, (ii) Prudent Industry Practice, (iii) any long-term service agreements and/or major maintenance agreements for the Units, (iv) the actual dispatch of the Units, (v) the Unit's point in the maintenance cycle and the potential impacts to the Unit and costs if the maintenance schedule is changed, (vi) technical bulletins and/or technical information letters from the Unit manufacturer, and (vii) all testing of the Units as herein specified or as otherwise necessary, in the reasonable discretion of Seller, for the efficiency, performance, reliability and availability of the Units (with items (i) through (vii) inclusive being collectively defined as "Guidelines For Planned Maintenance"). On or before March 31, 2011 and on or before each March 31st thereafter during the Contract Term, based on the foregoing Guidelines for Planned Maintenance, Seller shall provide to Buyer, in writing, its proposed schedule of Planned Maintenance Outages for the next calendar year and the reason for such Planned Maintenance Outages, and the expected duration thereof. Seller shall not schedule Planned Maintenance Outages during the Peak Months without Buyer's prior written consent. Notwithstanding the foregoing, Seller shall have the right to perform Routine Maintenance Outages at any time, subject to the prior consent of Buyer, at its sole discretion. The Parties shall have the right to mutually agree on reasonable adjustments to the Planned Maintenance Outage schedules at least forty-five (45) Days in advance of each Planned Maintenance Outage. No such 45-Day notice requirement shall be applicable in the case of the discovery of Emergent Work, as herein provided.

(c) Notwithstanding the provisions of 4.3(1)(b), if, based on a new technical bulletin and/or a new technical information letter, or other written notice from any original equipment manufacturer, including the Unit manufacturer, such original equipment manufacturer recommends that one or more Units (or any material component thereof) undergo an immediate and an unanticipated or unscheduled outage or derate, then Seller shall notify Buyer of the circumstances surrounding such maintenance and Seller will work together with Buyer to schedule the Planned Maintenance Outage notwithstanding the short notice involved. Subject to any mutual, written agreement regarding such maintenance, including the scope and duration of such maintenance, the Planned Maintenance Outage schedule for such year may be amended by mutual agreement to include the mutually agreed duration of such outage under the terms of Section 4.3(2) below. To the extent that the Parties do not mutually agree to add the duration of such work to the agreed durations of the Planned Maintenance Outages as specified in Section 4.3(2) below, then such work shall be treated as Emergent Work under the terms specified in Section 4.3(2) below. Notwithstanding the provisions of 4.3(1)(b), in no event shall Seller be required to keep a Unit in service after the manufacturer's recommended service interval for maintenance, and if a Unit reaches its service interval limit at any time, Seller may schedule a Planned Maintenance Outage, without Buyer's prior written consent. In any such case, once the maintenance is complete, the Seller's obligation to obtain Buyer's consent of any such Planned Maintenance Outages, as herein provided, shall resume.

(d) While in no event shall Seller schedule any Planned Maintenance Outages during the Peak Months as provided in Section 4.3(1)(b) above, to the extent the Facility or a Unit experiences a Forced Outage during a Peak Month and the anticipated duration of the Forced Outage is sufficient to allow for certain maintenance to be performed (that was otherwise scheduled as a future Planned Maintenance Outage), and if such maintenance will not extend the duration of the Forced Outage, then Seller, at its election, may perform such planned maintenance during the Forced Outage, with Buyer's prior written consent, not to be unreasonably withheld, and Seller shall have the right to treat such Forced Outage Days as Planned Maintenance Outage Days.

(2) **Duration of Planned Maintenance Outages**. Based on the Guidelines for Planned Maintenance, and unless otherwise agreed to by Buyer, Planned Maintenance Outages shall be limited to [redacted] If a Combustion Inspection and a Hot Gas Path Inspection are to be performed on a Unit during the same calendar year, the limits in Section 4.3(2)(iii) shall apply. If a Combustion Inspection and/or a Hot Gas Path Inspection are to be performed on a Unit during the same calendar year as a Major Inspection, the limits in Section 4.3(2)(iv) shall apply. Seller shall use commercially reasonable efforts to complete or cause to be completed any Planned Maintenance Outage within the schedule and time period agreed with the Unit manufacturer or otherwise agreed in the schedule of Planned Maintenance Outages. During each Planned Maintenance Outage, Seller shall keep Buyer apprised of the status and the expected duration of the Planned Maintenance Outage, and shall notify Buyer of the discovery of any Emergent Work, as applicable. To the extent that Seller utilizes less than the

maximum number of Days permitted for Planned Maintenance Outages during a calendar year, or in the event that during a calendar year the planned maintenance is accelerated such that permitted Days of Planned Maintenance Outage remain in a calendar year, then Seller may utilize the balance of such Days to perform such Emergent Work, upon prior written notice to Buyer. [redacted]

(3) **Compressor Wash**. If the maintenance schedule from the Unit manufacturer requires Seller to perform a Compressor Wash during a Peak Month, then Seller shall schedule each such Compressor Wash during the Non-Peak Hours of such Peak Month.

(4) **Maintenance-Related Charges**. If Seller is required to start and operate a Unit for maintenance purposes, then Buyer commits to work with Seller (both Parties exercising commercially reasonable efforts) so that such maintenance related start and operation can be completed when the Energy and/or Ancillary Services from the Facility are being dispatched by the Buyer for economic reasons, to the extent possible. Buyer shall provide, at its expense, all Fuel required for the start and operation of the Unit and schedule the quantity of Energy and/or Ancillary Services produced during such operation in a commercially reasonable manner. Buyer shall be entitled to all revenues associated with the sale of Energy and/or Ancillary Services from the Facility during the period of time the Unit is being operated for maintenance purposes, as herein provided. If, notwithstanding the Parties' commercially reasonable efforts, the Parties are unable to complete the maintenance related start and operation during a time when the Buyer has dispatched the Facility for economic reasons, then Seller shall provide reasonable notice to Buyer of the date of the maintenance related start and operation, and Buyer shall nevertheless issue a Dispatch Notice accordingly. [redacted]

[redacted]

4.4 **Station Load.**

Seller shall be responsible for Station Load at all times including during all Planned Maintenance Outages, Forced Derates, and Forced Outages, and during start up and shut down of a Unit, and any periods when the Facility has not been dispatched. The Parties further agree that Seller will net Station Load from the maximum capacity of the Facility to determine the Demonstrated Capacity of the Facility as provided in Exhibit M.

4.5 **Demonstrated Capacity and Heat Rate Tests.**

(1) In [redacted] of the Delivery Term thereafter, or any date as mutually agreed by the Parties, Seller shall conduct a performance test of the Facility to calculate the Demonstrated Capacity and the Heat Rate of the Facility. The Demonstrated Capacity Test and the Heat Rate Test will be performed in accordance with the requirements of the Test Procedures in Exhibit M, and Buyer, its representatives and designees shall be permitted to attend each Demonstrated Capacity Test and/or Heat Rate Test, at Buyer's sole cost, and provided no such tests shall be postponed or rescheduled on account of the inability of Buyer, its representatives and designees to attend, after Buyer receiving not less than ten (10) Days prior notice of such tests. The Compliance/Relative Accuracy Test Audits (RATA) test and any other tests which may be necessary to satisfy operational, vendor warranty, or Permit requirements such as Continuous Emissions Monitoring Systems (CEMS) tests, and all of the tests described in this Section 4.5, shall be known collectively as the "Facility Tests" and each as a "Facility Test". The Parties acknowledge and agree that it is the stated purpose and goal of the Parties to schedule the Facility Tests simultaneously and in the background of the dispatched operation of the Facility, at a time when the full output of the Facility would reasonably be expected to be dispatched by Buyer (for economic reasons) to serve load for the hours of the test. To the extent that the full output of the Facility cannot be dispatched by Buyer for economic reasons as herein contemplated, then Seller shall cooperate with Buyer to have the Units tested sequentially, as herein provided. If the Facility is not dispatched by Buyer for its economic purposes during a Facility Test (with Buyer being obligated to issue a Dispatch Notice to cover such Facility Test, as requested by Seller, even if such dispatch is un-economic to Buyer, to allow for the tagging and scheduling of the Energy produced during such Facility Test), then Seller shall reimburse Buyer as provided in Section 4.3(4) above.

(2) Buyer will have the right to request during the Delivery Term, upon not less than ten (10) Days prior written notice to Seller, that Seller conduct up to two (2) additional re-tests of the Heat Rate Test and/or the Demonstrated Capacity Test within 12 months of the last Facility Test, all in accordance with the requirements of Test Procedures. Buyer, its representatives and designees shall be permitted to attend each such re-test, to the extent herein provided. If Buyer requests that Seller conduct an additional Demonstrated Capacity Test and/or an additional Heat Rate Test, then the date of any such re-test properly requested by Buyer shall be established by the mutual agreement of the Seller and the Buyer, provided such test shall be at least ten (10) Days after Buyer's written request and not more than thirty (30) Days after Buyer's request. At

EXHIBIT M

TEST PROCEDURES

EXHIBIT M

1. General.

All tests pursuant to the Agreement shall be conducted by Seller. Seller shall give Buyer reasonable notice of the time and scope of all such tests, and Buyer and/or its designee shall have the right to be present and observe all test procedures and results, as further provided in Section 4.5(1) of the Agreement to which this Exhibit M is attached. To the extent that Buyer is permitted to request a re-test as provided in Section 4.5(2) of the Agreement, then the timing of such re-test will be determined as provided in Section 4.5(2) of the Agreement.

The Parties agree that, if possible, the Demonstrated Capacity Test and Heat Rate Test will be performed with all four Units operating simultaneously. However, to the extent that there are constraints that prevent this, including for example electricity transmission constraints, or, in the absence of constraints, to the extent that the Parties mutually agree, the Demonstrated Capacity Test and Heat Rate Test may be performed in a staggered fashion (including the possibilities that a Unit is tested alone, or simultaneously with one or two other Units) but with all four Units ultimately being tested. In this event, the results of each of the tests performed will be combined as described below to determine the Demonstrated Capacity and Tested Heat Rate (as herein defined) for the entire Facility as if all four Units had been tested simultaneously.

The Buyer agrees to issue a Dispatch Notice for all Energy produced during the Demonstrated Capacity Test and Heat Rate Test, and to the extent that no Dispatch Notice is issued, Buyer shall nevertheless take the Energy generated during the Facilities Tests, and Seller shall reimburse the Buyer for a portion of the costs as more particularly provided in Section 4.3(4) of the Agreement.

During the performance of all tests conducted pursuant to the Agreement, the Facility and equipment shall be operated as follows:

a. Utilizing the normal Facility operating and maintenance staff, except that additional personnel may be used for data collection, if required,

b. Utilizing permanent Facility equipment,

c. Within equipment design limits and in a manner consistent with equipment operating manuals,

d. In compliance with all applicable laws and Permit requirements,

e. Utilizing normal plant operating procedures and equipment configurations,

f. The Facility shall be tested on Gas only with all equipment in the normal operating condition, including the evaporative coolers and Gas heaters. To assure a proper test on the evaporative coolers, the Facility shall be tested when the ambient temperature is greater than or equal to 75°F, barometric pressure shall be assumed to be standard (14.7 psia).

g. Seller's instruments that measure the following conditions will be calibrated, if possible, prior to testing:
   - ambient temperature
   - relative humidity

h. Each Unit must be at full 100% load, with internal heat saturation demonstrated such that wheel space temperature shall not have changed by more than 5°F between successive fifteen (15) minute periods.

i. Data will be recorded by the plant historian electronically.

j. The electric grid must be in a stable condition. Abnormal conditions, such as the need for unusually high volt-amperes reactive (VAR) support, which may arise during the performance of any test will need to be evaluated by both Parties and may require the invalidation of the test. Such invalidation if required will not count as one of the limited re-tests for either Buyer or Seller.

k. All Facility systems must reach a steady state before the start of each test. Systems designed to operate intermittently shall be deemed to be in steady state of operation as long as the conditions which start and stop the operation of the system are not exceeded during the test period and the system is available for operation as designed.

Buyer and Seller shall mutually agree when situations arise during the conduct of any test that may warrant deviations from approved test procedures. Agreements reached during these consultations (such as whether to discard erroneous data) shall be recorded, acknowledged in writing, and shall be binding for all Parties.

2. Demonstrated Capacity Test.

The Demonstrated Capacity Test shall be conducted for the purpose of determining the Facility's net capacity at Reference Conditions.

To be completed, the Demonstrated Capacity Test shall be conducted on a Facility basis (although as described below it is possible that all four Units may not be tested simultaneously). The Facility's net electrical output shall be determined using the Energy Meters, as more specifically provided in Section 5.9.

The procedure to be used for the performance of the Demonstrated Capacity Test will depend on whether (A) all four Units are tested simultaneously, or (B) less than four Units are tested simultaneously.

Upon completion of the Demonstrated Capacity Test, Seller shall perform all calculations necessary to determine Demonstrated Capacity, and shall provide Buyer with the data used to perform such calculations, the source of such data, the resulting calculations, and the Demonstrated Capacity.

A. During the Demonstrated Capacity Test of all four Units simultaneously:

The Facility shall be started on Gas and all Units loaded to one hundred percent (100%) load. When the Units are operating at steady state, the test shall be initiated and shall run for a period of four (4) hours (or less, if mutually agreed by Buyer and Seller). Readings will be taken by the Historian from the Energy Meters and Gas Meter(s) at the beginning of each hour during the test period, and at the end of the final hour. Simultaneously with the data collection intervals above the plant Historian will record the ambient temperature and relative humidity. The Historian will provide these readings on an hourly average basis.

The Demonstrated Capacity shall be determined as follows. The average total net electrical output as measured by the Energy Meters during each hour shall be corrected from average ambient conditions during that hour to the Reference Conditions using the correction curves agreed to by Seller and Buyer and shown in Curve C1 in this Exhibit. The hourly readings will then be averaged over the total hours included in the test period to determine the Demonstrated Capacity of the Facility.

B. During a staggered test of the four Units to determine Demonstrated Capacity, the following additional criterion will be used:

The parasitic loads attributable to the non-running Units, as shown in Table T1, will be added to the Electrical Interconnect Meter readings prior to corrections for Demonstrated Capacity.

The Demonstrated Capacity of the Unit(s) tested will then be calculated as shown in the sample analysis sheet provided in Table T2. At the completion of the testing of all four Units, the corrected results from each test will be summed to determine the final Demonstrated Capacity of the Facility.

C. The dispatch of any additional Unit(s) during a Demonstrated Capacity Test:

If, during any portion of the Demonstrated Capacity Test, an additional Unit(s) is dispatched by Buyer, that portion of the Demonstrated Capacity Test will be voided, irrespective of whether it was being performed in conjunction with or absent a dispatch by Buyer. If that portion of the Demonstrated Capacity Test was being performed absent a dispatch by Buyer, any costs incurred by Seller for Gas or for a Start Charge, will be refunded by Buyer. The voided test will not count as a portion of a retest for either Party.

3. Heat Rate Test.

The Heat Rate Test shall be conducted for the purpose of determining the Facility's net heat rate at Reference Conditions (the "Tested Heat Rate" or "THR"). To the extent possible, the Heat Rate Test shall be conducted concurrently with the Demonstrated Capacity Test, even if the testing of Units is staggered. The Heat Rate Test shall be conducted solely on Gas.

The procedure used for the performance of the Heat Rate Test will depend on whether (A) all four Units are tested simultaneously, or (B) less than four Units are tested simultaneously.

Upon completion of the Heat Rate Test, Seller shall perform all calculations necessary to determine the Tested Heat Rate, and shall provide Buyer with the data used to perform such calculations, the source of such data, the resulting calculations, and the Tested Heat Rate.

A. During a Heat Rate Test of all four Units simultaneously, the THR will be determined as follows:

The total Gas use (in MMBtu on a HHV basis) measured each hour during the test period shall be divided by the total net electrical output (in MWh), during that hour. The resultant value shall be shall be corrected from average ambient conditions during that hour to the Reference Conditions using the correction curve shown as C2 in this Exhibit. The corrected hourly readings shall be averaged to determine the Tested Heat Rate.

B. During a staggered test of the four Units to determine Demonstrated Capacity, the following additional criterion will be used to determine the Tested Heat Rate:

The parasitic loads attributable to the non-running Units, as shown in Table T1, will be added to the Electrical Interconnect Meter readings prior to making the corrections to Reference Conditions for Tested Heat Rate.

The Heat Rate of the Unit(s) tested will then be calculated as shown in the sample analysis sheet provided in Table T2. At the completion of the testing of all four Units, the corrected results will be averaged to determine the Tested Heat Rate.

C. The dispatch of any additional Unit(s) during a Demonstrated Capacity Test:

If, during any portion of the Heat Rate Test, an additional Unit(s) is dispatched by Buyer, the test will be voided, irrespective of whether the test was being performed in conjunction with or absent a dispatch by Buyer. If the test was being performed absent a dispatch by Buyer, any costs incurred by Seller for Gas or Start Charges will be refunded by Buyer. The voided test will not count as a retest for either Party.

Exhibit M Attachments:

Table T1	Parasitic Loads
Table T2	Sample Analysis Report
Curve C1	553HA3298 Sheet 2 Effect of Ambient Temperature and Humidity on Output
Curve C2	553HA3298 Sheet 3 Effect of Ambient Temperature and Humidity on Heat Rate.

Table T1

Equipment parasitic load data:

		KW load by Units not in operation			
Equipment:	Area	Load in KW: (per component)	3	2	1
Aux Lube Oil Pump	Unit Specific	105	315	210	105
Aux Hydraulic Pump	Unit Specific	63.06	189.18	126.12	63.06
Mist Eliminator	Unit Specific	5.5	16.5	11	5.5
L/O Skid Cooling Fan	Unit Specific	12.2	36.6	24.4	12.2
Turning Gear Motor	Unit Specific	11.15	33.45	22.3	11.15
Potable Water Pump	Commons	6	4.5	3	1.5
Jockey pump	Commons	3.8	2.85	1.9	0.95
Air Compressor	Commons	73.3	54.9	36.6	18.3
UPS	Commons	20	15	10	5
Admin Building / CB / HVAC	Commons	120	90	60	30
Service water pump	Commons	22.8	17.1	11.4	5.7
Miscellaneous	Commons	125	93.75	62.5	31.25
		Assumed Parasitic Load	868.83	579.22	289.61
TBD based on transformer loading and respective losses, not applicable to unit(s) in operation.					
GSU	Unit Specific	86	258	172	86
Aux Transformer	Unit Specific	15	45	30	15
		Transformer Losses	303	202	101
TBD based on equip running during test based on actual run time.					
Well water Pump	Commons	485.5			
Evap Pump	Unit Specific	13.8			
Glycol pump	Unit Specific	379.6			
Glycol Fans	Unit Specific	191.25			
Exciter	Unit Specific	700			
Comp Vent Fans	Unit Specific	6.6			
Exhaust Frame Blowers	Unit Specific	65			
#2 Bearing Area Blower	Unit Specific	7.2			
		Total Additional Parasitic load	1171.830	781.220	390.610

Table T2 (Sample Only)

Vandolah Power Plant Dedicated Capacity/Tested Heat Rate Test Staggered Operation

SAMPLE ONLY

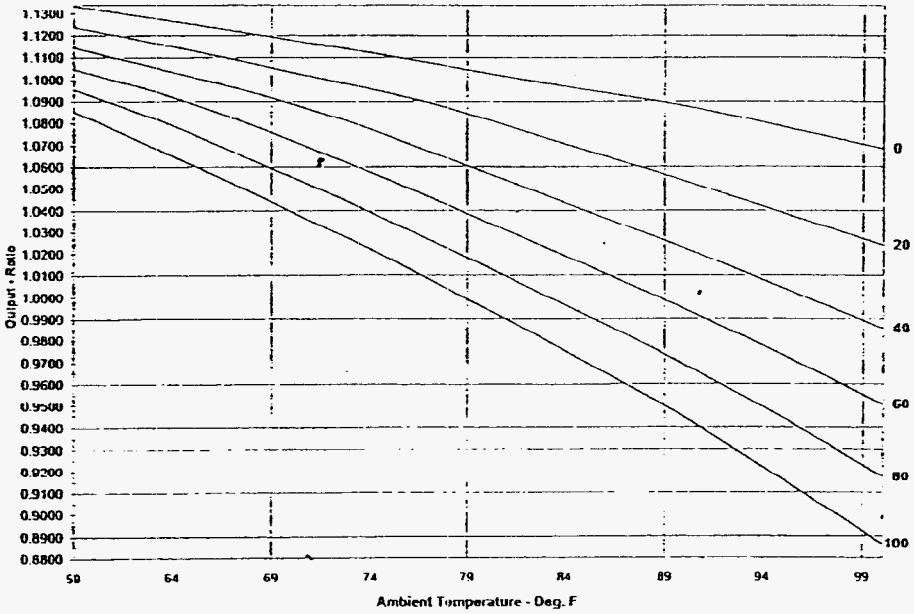
UNIT(s) Tested: 1 Date: June 5, 2012

						Weather Data				Results	
	Net Energy	Parasitic Load BOP	Net Tested Energy	Fuel Gas	Measured Heat Rate	Ambient Air temp	Ambient Humidity	Effect of Ambient Temperature and humidity on Output	Effect of Ambient Temperature and humidity on Heat Rate	Dependable Capacity	Tested Heat Rate (THR)
	a	b	c	d	e	f	g	h	i	j	k
	MW from Interconnect Meter	Table T1	a+b	DTH from Interconnect Meters	MMbtu/MW (d/c)	From Plant Weather Station		Curve C1	Curve C2	MW (c/h)	MMbtu/MW (e/i)
9:00 AM	161.38	1.18	162.56	1707.90	10.51	86.97	50.34	102.0%	99.6%	159.37	10.55
10:00 AM	161.50	1.18	162.68	1707.90	10.50	88.36	50.78	101.4%	99.7%	160.43	10.53
11:00 AM	160.00	1.18	161.18	1693.67	10.51	88.79	50.83	101.1%	99.7%	159.42	10.54
12:00 PM	160.38	1.18	161.56	1692.66	10.48	89.53	48.03	101.3%	99.7%	159.48	10.51
										159.68	**10.53**

Curve C1
553HA3293 Sheet 2
Effect of Ambient Temperature and Humidity on Output

General Electric Model PG7241(FA) Gas Turbine
VANDOLAH GR0682

E e P erfor nce
Effect of Ambient Temperature and Humidity on Output
Design Values Referenced on 553HA3298 Rev
Fuel: Natural Gas
Mode: Base



Ambient Temperature - Deg. F

Relative Humidity - Percent	59.0	63.6	68.1	72.7	77.2	81.8	86.33	90.89	95.44	100.00
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40	1.114379	1.104589	1.093978	1.081396	1.066309	1.051204	1.035441	1.019241	1.002573	0.985466
60	1.104999	1.093360	1.078954	1.062429	1.045369	1.027744	1.009571	0.990826	0.971436	0.950563
80	1.095547	1.080679	1.062983	1.044667	1.025708	1.006120	0.985952	0.964612	0.941998	0.917277
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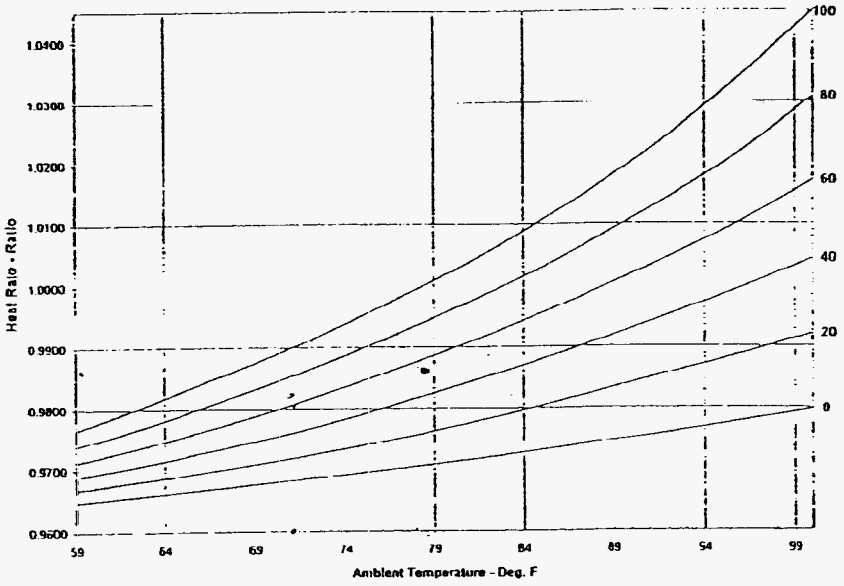
F. Mendez
02/06/02

553HA3298 Rev -
Sheet 2

Curve C2
553HA3298 Sheet 3
Effect of Ambient Temperature and Humidity on Heat Rate

General Electric Model PG7241(FA) Gas Turbine
VANDOLAH GR0682
Estimated Performance
Effect of Ambient Temperature and Humidity on Heat Rate
Design Values Referenced on 553HA3238 Rev
Fuel: Natural Gas
Mode: Base



Ambient Temperature - Deg. F

Relative Humidity - Percent	59.0	63.8	68.1	72.7	77.2	81.8	86.33	90.89	95.44	100.00
0	0.964776	0.965952	0.967243	0.968649	0.970146	0.971808	0.973592	0.975432	0.977542	0.979692
20	0.966730	0.968459	0.970400	0.972662	0.975162	0.978116	0.981306	0.984692	0.988296	0.992122
40	0.968910	0.971212	0.974010	0.977238	0.980946	0.984947	0.989271	0.993928	0.998954	1.004352
60	0.971242	0.974335	0.978007	0.982200	0.986768	0.991744	0.997151	1.003028	1.009475	1.017045
80	0.973859	0.977715	0.982215	0.987150	0.992559	0.998472	1.004896	1.012263	1.020673	1.030865
100	0.976615	0.981276	0.986417	0.992082	0.998303	1.005088	1.012934	1.021894	1.032940	1.044968

F. Mendez
02/06/02

553HA3298 Rev -
Sheet 3

EXHIBIT NO. 11

DOCKET NO: 080501-EI

PARTY: PROGRESS ENERGY FLORIDA

DOCUMENT: The deposition transcript of Martin J. Marz in Docket No. 080501-EI

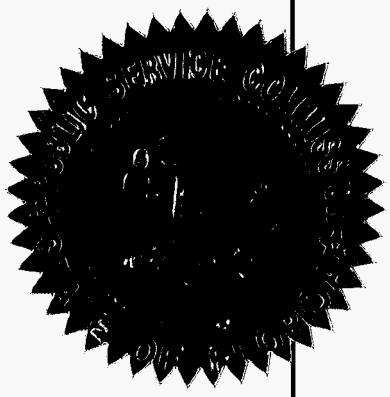
PROFFERED BY: Staff

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080501-EI

In the Matter of:

PETITION FOR WAIVER OF RULE 25-17.250(1) 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.
_____/



TELEPHONIC DEPOSITION OF:	MARTIN J. MARZ
TAKEN AT THE INSTANCE OF:	The Staff of the Florida Public Service Commission
PLACE:	Room 382D Gerald L. Gunter Building 2540 Shumard Oak Boulevard Tallahassee, Florida
DATE:	Wednesday, April 1, 2009
TIME:	Commenced at 1:05 p.m. Concluded at 1:54 p.m.
REPORTED BY:	LINDA BOLES, RPR, CRR Official FPSC Reporter (850) 413-6734

APPEARANCES:

JAMES W. BREW, ESQUIRE, Brickfield, Burchette, Ritts & Stone, P.C., 1025 Thomas Jefferson Street, N.W., Eighth Floor, West Tower, Washington, DC 20007-5201, appearing on behalf of PCS Phosphate.

JEAN HARTMAN, ESQUIRE, FPSC General Counsel's Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, appearing on behalf of the Commission Staff.

I N D E X

WITNESSES

PROCEEDINGS

MARTIN J. MARZ

was called as a witness and, after being duly sworn by the notary public present with the witness, testified as follows:

DIRECT EXAMINATION

BY MS. HARTMAN:

Q. Good afternoon, Mr. Marz. How are you?

A. Not bad. How about yourself?

Q. Very well. Mr. Marz, my name is Jean Hartman. I'm an attorney for the Florida Public Service Commission, and I'll be asking you some questions this afternoon with regard to the testimony and discovery responses filed in Commission Docket 080501-EQ regarding the protest of Progress Energy Florida's Standard Offer Contract.

You're familiar with your testimony and the discovery responses in this docket; correct?

A. Yes.

Q. Okay. Will you let, will you please let me know if my questions are unclear to you or if you need me to restate them?

A. Yes, I will.

Q. Thanks. And if you need a break, please let me know. Okay?

A. Yes.

Q. When I refer to Progress, I'm referring to Progress Energy Florida, Inc. Does that make sense to you?

A. Yes.

Q. Okay. And when I refer to the Suwannee unit, I'm referring to the combined cycle unit planned to be located at Suwannee, Florida, which is the unit that serves as the avoided cost basis for the Standard Offer Contract. Do you understand that?

A. Yes.

Q. Okay. For the purpose of your deposition today you were asked to have copies of your testimony and the discovery responses in this docket. Do you have them with you?

A. Yes, I do.

Q. Great. Could you please state your full name again and also give me your business address?

A. Yes. Martin, M-A-R-T-I-N, middle initial J, last name Marz, M-A-R-Z. Address is 1525 Lakeville, L-A-K-E-V-I-L-L-E, Drive, Suite 217, Kingwood, K-I-N-G-W-O-O-D, Texas. The zip is 77345.

Q. Okay. And with whom are you employed?

A. I am with J. Pollock, Incorporated. Would you like me to spell that as well?

Q. No, thank you. No, thank you.

A. I guess that's more for the court reporter, I guess.

Q. Yeah. She just shook her head no, but thank you.

Could you please state your job title?

A. I'm an Energy Advisor and Senior Consultant.

Q. Okay. And, Mr. Marz, did you cause testimony to be filed in Docket Number 080501-EQ on behalf of White Springs Agricultural Chemicals?

A. Yes.

Q. Is it your understanding that after the Suwannee unit comes online it will operate in a manner that is consistent with the Hines Energy Facility and the Tiger Bay Facility?

MR. BREW: Object to the form.

THE WITNESS: I guess I would say for purposes of my testimony my assumption is that it would, being a combined cycle plant, would operate in a manner similar to those facilities. Yes.

BY MS. HARTMAN:

Q. Okay. And are you familiar with the order of economic dispatch utilized by Progress Energy?

A. As to the specific order of economic dispatch, no.

Q. Okay. Do you know what order of economic dispatch applies to the Hines Energy Facility?

A. When you say order of economic dispatch, its location between dispatch versus other generators in the, in the Progress system?

Q. Yes. And my definition of economic dispatch is the order in which a utility utilizes generating units to provide energy to the grid.

A. Generally speaking, economic dispatch to me connotes that you will dispatch in the order of the least costly plants on a variable cost basis first, setting aside issues of must-run plants and plants that need to be run for various purposes within the system to stabilize portions of it.

Q. We agree. So using that as the definition, do you know what order of economic dispatch applies to Hines Energy Facility?

A. Specifically, no.

Q. Do you know what order of economic dispatch applies to Tiger Bay Facility?

A. No.

Q. Do you know what order of economic dispatch will apply to the Suwannee unit once it is in service?

A. No.

Q. Do you have -- do you know what order of

dispatch would apply to the order of Progress's Crystal River 4 or Crystal River 5 units?

A. No.

Q. Do you know if the capacity factor for the Hines Energy Facility units may be low because the units are low in the order of dispatch?

A. No, I do not.

Q. Okay. Do you know if the capacity factor for the Tiger Bay Facility unit may be low because the unit is low in the order of dispatch?

A. Again, I don't know why its capacity factor is what it is or its order of dispatch.

Q. Okay. Mr. Marz, are you familiar with the reserve margin maintained by Florida investor-owned utilities?

A. Generally speaking, I am familiar with the concept of a reserve margin maintained by utilities, yes. As to the exact number that they are required to maintain in Florida, I'm not sure exactly what that number is.

Q. Okay. Could you please provide a description of the reserve margin as you understand it?

A. It's basically, my understanding, the generation available to come online to meet load at any one time.

Q. Okay. Would you agree, subject to check, that the reserve margin means that Florida investor-owned utilities have 20 percent more capacity than is needed to supply maximum demand?

A. They have 20 percent more capacity available to meet their maximum demand, yes.

Q. Okay.

A. By definition, when you have a reserve margin, I'm not sure that I would describe it as unneeded. I guess that's where I have a little bit of a problem there.

Q. Okay. Could you please look at your supplemental direct testimony, Page 13, Line 19? And let me know when you're at that spot.

A. Page 13, Line 19?

Q. Yes.

A. Yes.

Q. You mention, you mentioned the capacity factor achieved by the Hines Energy Facility and the Tiger Bay Facility. Did you --

A. Yes.

Q. Did you propose to utilize historic capacity factors for the Hines Energy Facility and the Tiger Bay Facility as a, as a benchmark for minimum capacity factor payment provisions in the Standard Offer

Contract?

A. When I look at the testimony submitted over to Page 15, I gave, in this version I gave two recommendations. The first is that a capacity factor being used as a, for purposes of determining the level of capacity payment would be, first of all, the subject of negotiation. But, secondly, if there was a feeling of a need that one would need to be within the Standard Offer Contract, one should be used consistent with the capacity factor that was identified for the proposed unit.

Q. Did you account for the planning, for the planning requirement of a 20 percent reserve margin greater than the projected peak energy demand?

MR. BREW: I'll object as to the form.

BY MS. HARTMAN:

Q. Please go ahead and answer, if you can.

A. Could I -- would you mind having the court reporter repeat the question, please?

(Foregoing question read by the court reporter.)

THE WITNESS: Are you referring to in looking at a capacity factor?

BY MS. HARTMAN:

Q. Yes.

A. The capacity, the reserve margin does not impact the derivation of a capacity factor. It is, the capacity factor is the output of the unit divided by the available hours times the capacity of that unit. It's a measure of what the unit actually generates.

Q. Do you expect the units that are relatively low in order of dispatch to produce energy at full capacity levels under nonpeak conditions?

A. Did you say relatively low in the order of dispatch?

Q. Yes.

A. Do you mean with a -- and let me, let me ask a clarifying question. When you say low in the order of dispatch, that would suggest to me that it's going to be the first unit dispatched.

Q. No. The opposite.

A. Okay. A plant that is high in the order of dispatch is not going to run as frequently on peak periods. That is correct.

Q. Is it your view that the Suwannee unit will be at approximately the same place in the dispatch order as the Hines Energy Facility or the Tiger Bay Facility?

A. I, I do not know the answer to that.

Q. Considering the generating units of an investor-owned utility -- I'm sorry. Consider the

operating -- consider the generating units of an investor-owned utility operating under a requirement for a 20 percent reserve margin, do you agree that often there are many megawatts of generating capacity not running because there is no demand for the energy they would produce?

A. I would agree that if you, during all periods of time if you maintain at least a 20 percent reserve margin, that amount of megawatts would not necessarily get generated. Yes.

Q. Would that situation result in low capacity factors for some units because they are needed to run less?

A. Yes. To the extent a unit runs less but is available more, its capacity factor will be down.

Q. Okay. Given the reserve margin requirement for generating capacity that is 20 percent greater than peak demand and the fact that we don't know the order of dispatch with respect to the Hines Energy Center and Tiger Bay Facility, how, how could you arrive at a conclusion that one of those generating facilities would serve as a valid basis for setting the capacity factor of a nondispatchable renewable generator?

A. As I said earlier, I think ultimately determining the appropriate method to use in setting a

capacity payment for a renewable generator is probably something that is best left to negotiations between the parties. A renewable resource is not going to be the same as a gas combined cycle unit to begin with.

So from that perspective what I am looking for is something as kind of a benchmark to put into the Standard Offer Contract if it is deemed necessary and something that is consistent with the Commission's rules which reference both the availability and capacity factor of the avoided unit. And I was looking at both the Hines and Tiger Bay units as operating combined cycle units to see what percentage, what their capacity factor was like as a benchmark, recognizing also that you have the expected capacity factor for the Suwannee unit, which is above the, the actual capacity factor of both Hines and the Tiger Bay Facilities.

Q. Could you please turn to your supplemental direct testimony, Page 6, Lines 13 through 15, and let me know when you're there?

A. Yes.

Q. Okay.

A. I am there. I'm sorry.

Q. Thank you. And I believe you state that using the capacity factor of 65.3 percent in the Standard Offer Contract is consistent with Rule

25-17.0832(4)(e)(8).

A. Yes, I do. I'm sorry.

Q. Thank you. Could you please explain your reasoning for that statement?

A. When I look at that particular provision of the rule, it states "The minimum performance standards for the delivery of firm capacity and energy by the qualifying facility during the utility's daily seasonal peak and offpeak periods. The performance standard shall approximate the anticipated peak and offpeak availability and capacity factor of the utility's avoided unit over the term of the contract."

When I look at a capacity factor, when I looked at the 2008 ten-year plan, the reference to the Suwannee unit in that plan, the 65.3 percent is the capacity factor for that unit from the ten-year plan.

Q. Okay. Can you please look at White Springs' response to staff interrogatory number one?

A. Yes.

Q. The response mentions several factors that impact energy production for a renewable energy producer, including generation limited by manufacturing schedules.

A. Yes.

Q. How should the Standard Offer Contract

accommodate this situation?

A. I guess my solution there is that the Standard Offer Contract needs to contain flexibility to deal with the different types of renewable generators that may be seeking to make use of the contract, and that setting the level of the capacity payment is something that is ultimately going to be the product of negotiation and is going to depend upon a number of factors: The type of generation that the renewable energy producer is using; from the Progress perspective they are going to want to see when the capacity is actually produced as compared to their peak need times. So there are a number of factors that go into determining the level of capacity payment, if any, for a renewable generator, and I'm not sure that there is a one-size-fits-all solution within the Standard Offer Contract.

Q. Thank you. When a renewable generation provider has entered into a contract for committed capacity, how would the economics of renewable energy production influence the level of generation?

A. How will it influence the generation by the renewable producer?

Q. Yes.

A. The renewable producer should seek to generate when it's cost-effective for it to do so, given its

operating parameters, the nature of the facility; if it is, for example, tied to a manufacturing process, if it's a wind generator.

Q. Mr. Marz, are you done?

A. Yes. I'm sorry.

Q. That's okay. If a contract with a renewable generator is based on cost per kilowatt for capacity that is available 85 percent of the time but the renewable generator has a capacity factor of 65 percent, what is the impact on the ratepayer?

A. May I hear that question again, please?

Q. Sure. If a contract with a renewable generator is based on cost per kilowatt for capacity that is available 85 percent of the time but the renewable generator has a capacity factor of 65 percent, what is the impact on the ratepayer? And let me know if this needs to be a late-filed.

A. You're calculating the capacity payment as if the generator were available 85 percent of the time.

Q. Yes.

A. In terms of the contract itself.

Q. Yes.

A. If the facility does not run 85 percent of the time, are there any penalties in there that would impact a renewable, the amount of dollars the renewable energy

producer is paid?

Q. Should there be?

A. There could be, yes.

Q. Would that make up for the impact on the ratepayer?

MR. BREW: I'll object as to form.

THE WITNESS: It would serve to reduce the level of capacity payment made by the utility. If, for example, your, you had set a capacity, capacity payment at an assumed capacity factor of 85 percent, if you put a penalty in there that brings it down such that it matches the 65, that's how it would work.

BY MS. HARTMAN:

Q. Thank you. Mr. Marz, I want to ask you a couple of questions about TRECs and the TREC marketplace. And by TREC I mean tradeable renewable energy credit, but I'm going to just go ahead and call them TRECs. Does that make sense to you?

A. Yes.

Q. Are you familiar with the auctions and the marketplace where TRECs are bought and sold?

A. From a broad perspective. If you have reference to a particular market, the answer is no.

Q. Okay. Are, are there regional differences in TREC markets?

A. What do you mean by regional differences?

Q. Northwest to southeast, regions of the country.

A. I guess when you say differences, are you talking about pricing, the terms and conditions of contracts?

Q. Yes. Yes.

A. Generally, no.

Q. Would you describe the TREC marketplace as a relatively stable, fully developed market?

A. No.

Q. Do you consider the right of first refusal to be a condition placed upon the ownership of TRECs by the renewable energy provider?

A. Yes.

Q. Could you, could you briefly explain your answer?

MR. BREW: Are you asking for a legal conclusion?

MS. HARTMAN: No. Just a general function description.

THE WITNESS: It generally gives a party the right to match any other offer, any other bona fide offer that has been received by the person holding the, in this instance, the title of the TRECs.

BY MS. HARTMAN:

Q. Will the right of first refusal affect the value of TRECs in the marketplace?

A. It very well could. Yes.

Q. Could you explain, explain your answer?

A. Buyers, buyers or sellers in the market are going to be less likely, I would expect, to submit bids or offers on those TRECs that they know are subject to a right of first refusal.

Q. Okay. Have you reviewed or analyzed the TREC market to determine the usual trading time for TRECs?

A. No, I have not.

Q. Could I ask you to look at Page 19 of your testimony?

A. Sure.

Q. Where you reference the Vandolah agreement.

A. Yes.

Q. Is this agreement, is this an agreement for dispatchable generation or committed capacity?

A. I'll have to look at the agreement, so bear with me just a minute, please.

Q. Sure.

A. It's actually a tolling agreement.

Q. Okay. Could you explain the differences in your view between a contract for dispatchable generation

and a contract for committed capacity?

A. In the case of committed capacity, you are contracting for the right to call upon a particular facility as you need the capacity from that facility.

May I hear the reference to the first part of the question again?

Q. I -- the question --

A. The committed, the committed capacity was what I referenced just now. There was another phrase you used at the beginning.

Q. The difference between a contract for dispatchable generation and a contract for committed capacity.

A. When you say dispatchable generation, what do you mean?

Q. Subject to economic dispatch.

A. I guess without knowing more about what exactly is in the former, I'm not sure that I -- I can't answer the question. I'm sorry.

Q. Okay. In the Standard Offer Contract at issue is the renewable provider called upon for service or does the contract create an expectation that the renewable provider will provide the committed generation except when unable to do so?

A. It will be the latter event.

Q. If I -- I want to refer you to your supplemental direct testimony, Page 18, Lines 16 through 21.

A. Yes.

Q. Okay. If a renewable energy provider fails to deliver the contracted capacity, what would be the reasons for a delay of six months before scheduling another committed capacity test?

A. Over what type of time period are you referencing?

Q. Well --

A. The full six months, one hour?

Q. Well, let me clarify. Was it your testimony -- is it, is it your view that if a renewable provider failed to deliver the contracted capacity, Progress would have, would have to wait six months before scheduling a committed capacity test if a committed capacity test had just occurred?

A. I guess I'm struggling with the notion that if we'd just done a capacity test and everything has been working fine, absent an event of force majeure or a breach of contract, there shouldn't be an issue with the facility.

Q. What, what if there's a, what if there's a committed capacity test that the provider passes but

then fails to deliver the contracted capacity within six months? Is it your position that the provider wouldn't be required -- shouldn't have -- or should not have to have another committed capacity test within that six months?

A. When you say failed to deliver, I come back to that question again, what -- can you put a little color around what you mean by fail to deliver?

Q. Well, well, I'm not exactly sure what you mean.

Well, let me give you this hypothetical. There's a test, there's a test for -- there's a test January 1. February the provider fails to deliver the capacity. Is it your position that Progress could not, could not request another test for four more months?

A. As I've structured the language of the contract here right now, yes.

Q. Could you explain that?

A. Absent what I would describe as a willful breach of contract, I would anticipate that the renewable producer is going to go ahead and make capacity available. If there is a problem with this facility, it is going to look and make use of the force majeure provisions which would give it the right to declare an event of force majeure and either reduce down

the level of capacity to zero or some other number. And upon the event of force majeure ending -- actually in the force majeure language PEF or Progress could request an additional capacity test.

Q. If I could ask you to turn to your testimony on Page 20.

A. Sure.

Q. I wanted to talk about your thoughts about reciprocity in the contracts with respect to credit and collateral requirements, default, et cetera.

A. Yes.

Q. Why do you believe the standard offer should contain these terms of reciprocity when Progress is regulated by the Public Service Commission and the SEC?

A. In terms of credit requirements, I understand that Progress is regulated by both of those entities, but ultimately it is a business decision that Progress makes as to when and which of its suppliers to pay. So from that perspective the renewable producer is, is looking for assurance of payment just as Progress is looking for assurance of delivery of the capacity. There is nothing in the regulation that compels Progress to make a payment to any particular entity at any particular time.

Q. Are you -- do you know if these recommended

reciprocity requirements, if they are in other Standard Offer Contracts in other states?

A. I've looked at some of the Standard Offer Contracts in California and they are there, yes. Default goes both ways. Credit requirements would go both ways as well.

Q. How are ratepayers exposed to risk if your suggested reciprocity terms are not adopted?

A. It is the renewable producer that is exposed to the risk, and effectively increasing his level of risk will either cause him to look for a higher payment or choose not to develop the renewable resources.

Q. Would ratepayers be exposed to risk if your suggested reciprocity terms were adopted?

A. No.

Q. What is the impact on the ratepayer if a renewable generator with a 25-megawatt committed capacity enters into a contract with a capacity price based on a generation of 25 megawatts to be provided 90 percent of the time but the renewable provider can only perform at a 65 percent capacity factor?

A. I guess I would have to make some assumptions as to when that renewable generator is producing its power.

Q. Go ahead and make the assumptions.

A. And if it produces its power during the utility's time of peak need, there may be no impact from a negative perspective on the ratepayers and it may actually be to the betterment.

Q. Is that your full answer, Mr. Marz?

A. Yes.

Q. If a new unit comes online and has an availability of 89 percent, why would the projected capacity factor be set at 65 percent?

MR. BREW: Excuse me, Jean. Are you talking about a utility unit or a renewable unit?

MS. HARTMAN: Utility unit.

THE WITNESS: It will depend at a minimum on its order of economic dispatch, the requirements of the electric system.

BY MS. HARTMAN:

Q. If a renewable provider accepts the Standard Offer Contract based on an avoided unit that has an 89 percent availability and a 65 percent projected capacity factor and the renewable has a capacity of 25 megawatts and runs at an 85 percent capacity factor, how should the payment for renewable capacity be determined?

A. Under the Progress proposed agreement it would be as specified in, I believe it's Exhibit B to the

agreement. They would receive something less than a full capacity payment in those circumstances.

Q. Would your suggested changes to the Standard Offer Contract have a similar impact for renewable energy providers using different types of technology other than White Springs such as solar or wind power?

MR. BREW: Jean, this is Jay. I'm going to object to the form. Could you explain what you mean by similar so we can give you a definitive answer?

BY MS. HARTMAN:

Q. This is a Standard Offer Contract. My question was whether the changes would be primarily beneficial for a renewable energy provider that's waste heat or would it work for, or would the changes be equally applicable and helpful to solar power, wind power providers, renewable energy providers?

A. If, for example, a solar power or a wind generator has a capacity factor in the 20 or 25 percent range, if they accepted the standard contract even with the capacity factor set at 65 percent, I don't believe they would receive any capacity payment at all if that were the only change that were made.

Q. Okay. Any --

A. It gets back to the notion that the payment of a, the level of the capacity payment is contingent upon

the type of renewable generation being used and whether or not that type of generation provides -- what level of capacity it provides and when it provides that capacity. So from my perspective, the actual payment of the capacity payment should be, is more appropriately something that's subject to negotiation between the parties to reflect the value that may or may not be added from the individual renewable resource.

MS. HARTMAN: Thank you. That's, that's all my questions.

(Deposition concluded at 1:54 p.m.)

ERRATA SHEET
DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES HERE

IN RE: DOCKET NO. 080051-EI
NAME: MARTIN J. MARZ
DATE: April 1, 2009

PAGE	LINE	CHANGE

Under penalties of perjury, I declare that I have read my deposition and that it is true and correct subject to any changes in form or substance entered here.

DATE

MARTIN J. MARZ

STATE OF FLORIDA)
: CERTIFICATE OF REPORTER
COUNTY OF LEON)

I, LINDA BOLES, CRR, RPR, Official FPSC Commission Reporter, do hereby certify that I was authorized to and did stenographically report the foregoing deposition at the time and place herein stated.

I FURTHER CERTIFY that this transcript, consisting of 26 pages, constitutes a true record of the testimony given by the witness.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 7th day of April, 2009.

Linda Boles

LINDA BOLES, CRR, RPR
Official FPSC Hearings Reporter
850/413-6734

CERTIFICATE OF OATH

STATE ~~OF~~ DISTRICT OF COLUMBIA

COUNTY OF _____

I, the undersigned authority, certify that MARTIN JOHN MARZ personally appeared before me at 1025 THOMAS JEFFERSON ST, NW and was duly sworn by me to tell the truth.

WITNESS my hand and official seal in the City ~~of~~ DISTRICT OF COLUMBIA, County of _____, State of _____, this 1ST day of APRIL, 2009.

Pamela D. Ingram

Notary Public

State ~~of~~ DISTRICT OF COLUMBIA

PAMELA D. INGRAM
Notary Public, District of Columbia
My Commission Expires June 30, 2009

Personally known _____ OR produced identification ✓.

Type of identification produced Texas Driver License.

17 No attached exhibits
18
19
20
21
22 Under penalties of perjury, I declare that I have read my deposition and that it is true and correct subject to any changes in form or substance entered here.
23
24 4/15/09 Martin J. Marz
DATE MARTIN J. MARZ
25

1 STATE OF FLORIDA)
: CERTIFICATE OF REPORTER
2 COUNTY OF LEON)

3 I, LINDA BOLES, CRR, RPR, Official FPSC Commission Reporter, do hereby certify that I was
4 authorized to and did stenographically report the foregoing deposition at the time and place herein
5 stated.

6 I FURTHER CERTIFY that this transcript, consisting of 26 pages, constitutes a true record of the
7 testimony given by the witness.

8 I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor
9 am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I
10 financially interested in the action.

11 DATED THIS _____ day of _____, 2009.
12
13 _____
LINDA BOLES, CRR, RPR
14 Official FPSC Hearings Reporter
850/413-6734
15
16
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