

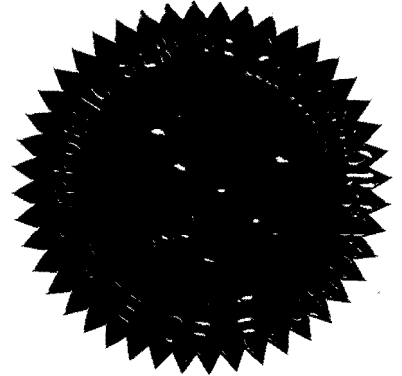
BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080193-EQ

In the Matter of:

PETITION FOR APPROVAL OF RENEWABLE  
ENERGY TARIFF AND STANDARD OFFER  
CONTRACT, BY FLORIDA POWER & LIGHT  
COMPANY.

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VOLUME 1

Pages 1 through 219

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PROCEEDINGS: HEARING

BEFORE: COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER KATRINA J. McMURRIAN  
COMMISSIONER NANCY ARGENZIANO

DATE: Thursday, January 22, 2009

TIME: Commenced at 9:37 a.m.  
Concluded at 2:27 p.m.

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR, CRR  
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DOCUMENT NUMBER-DATE

00965 FEB-6 09

FPSC-COMMISSION CLERK

## 1 APPEARANCES:

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12 MARY ANNE HELTON, DEPUTY GENERAL COUNSEL, FPSC  
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15 Commission.

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## 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 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 080193-EQ. The purpose of the hearing is set forth more fully in the notice.

COMMISSIONER EDGAR: Thank you. And we'll take appearances.

MR. ANDERSON: Good morning. Bryan Anderson appearing for Florida Power & Light Company, 700 Universe Boulevard, Juno Beach, Florida 33410.

COMMISSIONER EDGAR: Thank you.

MS. KAUFMAN: Good morning, Commissioners. Vicki Gordon Kaufman. I am with the law firm of Keefe, Anchors, Gordon & Moyle, 118 North Gadsden Street, Tallahassee 32301. I'm appearing on behalf of Wheelabrator Technologies, Inc.

COMMISSIONER EDGAR: Thank you. And staff.

MS. HARTMAN: Jean Hartman for Commission staff.

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

COMMISSIONER EDGAR: Thank you. Okay. Staff, preliminary matters.

MS. HARTMAN: Staff would request identification of

1 the exhibit list as Exhibit 1, staff's composite exhibit as  
2 Exhibit 2 and prefiled exhibits marked as Exhibits 3 through  
3 11.

4 COMMISSIONER EDGAR: And we will so mark.

5 (Exhibits 1 through 11 marked for identification.)

6 MS. HARTMAN: Staff also requests that Exhibits 1 and  
7 2 be moved into the record.

8 COMMISSIONER EDGAR: Exhibits 1 and 2 will be moved  
9 into the record.

10 (Exhibits 1 and 2 admitted into the record.)

11 MS. HARTMAN: Staff would also note that staff has  
12 asked the parties to stipulate to including the deposition of  
13 FPL witness Korel Dubin in the record but were unable to reach  
14 an agreement because of Wheelabrator's objection. Staff would  
15 also note that FPL's rebuttal testimony contains Wheelabrator  
16 witness John Dalton's deposition as an exhibit. Staff suggests  
17 that the Commission consider moving both depositions into the  
18 record. The Dubin deposition would need to be identified. The  
19 Dalton deposition has already been identified as hearing ID  
20 Number 5 in the Comprehensive Exhibit List.

21 COMMISSIONER EDGAR: Okay. And comments from the  
22 parties. Ms. Kaufman.

23 MS. KAUFMAN: Yes. Thank you, Commissioner Edgar.  
24 As contrasted with some of the proceedings that you've been in  
25 this week, this is a short matter with only two witnesses, and

1 we object to the introduction of the depositions. The  
2 witnesses are here to present their live testimony before you  
3 and to be cross-examined, and we think it is appropriate that  
4 that occur and that the depositions be used for, you know, they  
5 may be used for impeachment or other appropriate matters but  
6 that they not be entered into the record.

7 COMMISSIONER EDGAR: Mr. Anderson.

8 MR. ANDERSON: FPL supports the introduction into the  
9 record of both depositions. First and most pragmatically we  
10 feel that this may streamline the proceeding since a lot was  
11 done with the depositions and transcripts and so I believe good  
12 information for the Commission.

13 Just from a legal perspective, it's important to note  
14 that Wheelabrator is offering Mr. Dalton as an expert witness.  
15 And under the very clear rules of Florida Civil Procedure, use  
16 of depositions in court proceedings, Rule 1.330, use of  
17 depositions, the deposition of a witness, whether or not a  
18 party, may be used by any party for any purpose that the court  
19 finds, in this case the Commission, if the witness is an expert  
20 or skilled witness. And so, you know, clearly this is an  
21 appropriate use specifically contemplated under the rules. It  
22 will help streamline the proceedings and we support entry. I  
23 think the same reasoning applies to Ms. Dubin, who, of course,  
24 is an expert or skilled witness as well as a fact witness, and  
25 those would be our thoughts.

1 COMMISSIONER EDGAR: Ms. Kaufman, any additional  
2 comment?

3 MS. KAUFMAN: Yes, Commission, Commissioner. Excuse  
4 me. I think that the rule that Mr. Anderson cites does not  
5 require the entry of the deposition. I think that it's within  
6 your discretion. We would suggest to you that it is  
7 appropriate that the witnesses appear before you live and be  
8 cross-examined, and we continue to object to the entry of the  
9 depositions as inappropriate in this matter.

10 COMMISSIONER EDGAR: Inappropriate because? I'm not  
11 sure I caught the why.

12 MS. KAUFMAN: Because, the reason is because --

13 COMMISSIONER EDGAR: I'm sorry. I mean, I caught the  
14 not required but I'm not sure I caught the why inappropriate.

15 MS. KAUFMAN: Well, I think because the witnesses are  
16 here to appear live and the depositions may be used for  
17 impeachment and other purposes, but I don't think that it's  
18 appropriate to use them when the witnesses are here for  
19 cross-examination for the substance of the entire deposition,  
20 and so we would object to their entry.

21 COMMISSIONER EDGAR: Okay. Thank you. And,  
22 Ms. Hartman, can you speak to your request?

23 MS. HARTMAN: I mean, I think it's clear that the  
24 rule allows it.

25 COMMISSIONER EDGAR: Ms. Helton.

1 MS. HELTON: Madam Chairman, it's within your  
2 discretion, I agree with Ms. Kaufman, to allow the depositions  
3 into the record pursuant to the rule that has been referenced  
4 by the parties here today. The Commission practice has  
5 historically been to allow deposition transcripts into the  
6 record to help streamline the proceedings. So I do believe  
7 that that is a valuable tool that the Commission has, and my  
8 recommendation is that you do have the discretion to allow the  
9 deposition transcripts into the proceeding.

10 COMMISSIONER EDGAR: Okay. I'm going to allow. We  
11 are going to admit both of the deposition transcripts into the  
12 record, and my reasoning is for efficiency and recognizing that  
13 the witnesses are here and will still be made available. So  
14 with that, we need to, my understanding is, mark the Dubin  
15 deposition transcript, which would be Number 12?

16 MS. HARTMAN: Yes.

17 COMMISSIONER EDGAR: Okay. So Exhibit Number 12 will  
18 be Dubin Deposition Testimony. We will enter that into the  
19 record at this time, as well as Exhibit 5, the Dalton  
20 deposition transcript.

21 (Exhibit Number 12 marked for identification and  
22 admitted into the record.)

23 (Exhibit Number 5 admitted into the record.)

24 Okay. Any other matters before we move to opening  
25 statements?

1 MS. HARTMAN: Staff has none.

2 COMMISSIONER EDGAR: Okay. Mr. Anderson.

3 MR. ANDERSON: Thank you. Good morning. FPL  
4 appreciates the opportunity to appear before you today  
5 regarding our 2008 standard offer contract specifically with  
6 respect to renewable energy suppliers. I'd like to preface my  
7 remarks by saying FPL recognizes very much the value of  
8 renewable energy. We're very supportive of the development of  
9 new renewable generation in Florida. We're always happy to  
10 purchase for the benefit of our customers capacity and energy  
11 from both new and existing renewable facilities. We believe  
12 that renewable energy is an important part of diversifying the  
13 state's energy resources.

14 That said, the Commission and many parties including  
15 FPL are addressing the details of potential new renewable  
16 energy policies for the State of Florida in other proceedings.  
17 The purpose of this proceeding is for the Commission to  
18 determine whether FPL's standard contract complies with the  
19 existing Florida Statutes and the extensive and detailed rules  
20 of the Commission governing these contracts. You'll recall  
21 these are rules which the Commission just worked through after  
22 long, long workshops, lots of input from renewable providers,  
23 IOUs, customer groups just within the last couple of years.  
24 The record will show that FPL's standard offer contract  
25 faithfully implements the Legislature's and the Commission's

1 policy direction. Because our standard offer contract is  
2 reasonable and complies with the applicable statutes and rules,  
3 we will request that the Commission approve our standard offer  
4 contract.

5 A couple of steps back. What is a standard offer  
6 contract? A standard offer contract is one of the two key  
7 tools for FPL's purchases of renewable energy from prospective  
8 renewable suppliers. Under the Commission's rules, FPL and  
9 other utilities are required to continuously offer a standard  
10 contract that is based on two fundamental concepts.

11 First, the price is not to exceed the utility's full  
12 avoided costs. Second, the terms and conditions, and this is  
13 the heart of this particular case, are modeled on the  
14 characteristics of the utility's next planned generating unit  
15 as set forth in its Ten Year Site Plan. Together these  
16 features protect utility customers from paying excess costs for  
17 capacity energy while preserving electrical reliability.

18 I mentioned there are two key tools for purchases.  
19 The second one is negotiated contracts, which, as stated in the  
20 Commission's rules, are favored by the Commission. Negotiated  
21 contracts must comply with the avoided cost standard. But when  
22 they're negotiated working with a prospective vendor, we can  
23 vary together the operating terms and conditions based upon the  
24 unique characteristics of a particular renewable generator's  
25 facilities, be it solar, be it solid waste, whatever the

1 characteristics are. Upon completion of the negotiations, then  
2 we bring to the Commission such contracts for your  
3 consideration and your approval. And that review and approval  
4 of the negotiated contracts ensures, again, the customers don't  
5 pay more than avoided cost and that electrical reliability is  
6 protected.

7           Now how do the concepts of the standard offer  
8 contract on one hand and negotiated contracts on the other hand  
9 relate to this case? These are central to understanding and  
10 deciding this proceeding, we feel. The heart of the case is  
11 that FPL's standard offer contract is properly based upon the  
12 economics and operating characteristics of our next planned  
13 generating unit. And in addition, we're always willing to  
14 negotiate variations to that contract and to submit the  
15 resulting contracts to the Commission for approval. In  
16 contrast, Wheelabrator in this case has offered a host of  
17 criticisms of the standard offer contract. I believe though  
18 the evidence will show that these criticisms are misplaced.  
19 Each of the criticisms is the kind of point that can and is  
20 raised in the give and take of negotiated contracts, but they  
21 should not be incorporated into the standard offer contract  
22 which is intended to be available to all generators, renewable  
23 generators of different sizes and types.

24           A few quick examples. Our next planned generating  
25 unit which is in the standard offer contract is a natural



1 gas-fired combined cycle generating unit. Stated in our Ten  
2 Year Site Plan we provide all the operating characteristics of  
3 it in our Ten Year Site Plan. Therefore, under the rules the  
4 standard offer contract mirrors those economics and the  
5 operating characteristics. That's why, and these points here  
6 go to what you see in the Prehearing Order at the statement of  
7 issues, that's why our standard offer contract contains an  
8 equivalent availability factor, for example, of 97 percent. We  
9 don't pick that out of the air. That's equal to the expected  
10 reliable operation of our next planned generating unit.

11 Our standard offer contract contemplates turbine trip  
12 testing because that's what you do with that kind of turbine to  
13 make sure that when it operates, if it goes too fast, it cuts  
14 out and doesn't fly apart. It's basic safety reliability  
15 testing and characteristic of that type of unit and that's why  
16 it's specified in the contract. Our standard offer contract  
17 contemplates that scheduled maintenance will be handled in a  
18 cooperative way that fits with meeting customer electricity  
19 requirements and the availability of other generating units.

20 Think about it. A purchase from a renewable provider  
21 under contract, so it's a kind of fit in the same place in a  
22 way with other things we do for customers, so logically if  
23 there's a large one particularly, you want to make sure that  
24 you're working together so that the maintenance doesn't occur  
25 at peak periods and things like that and that's why the

1 contract says things like that.

2           The standard offer contract contemplates that the  
3 company may reduce output from or curtail purchases in the same  
4 way that we would basically reduce our own output or curtail if  
5 system conditions require it for safety reasons or economic  
6 reasons. All these things are in the agreement. And as you'll  
7 see, they're also, a lot of them are right in your rules.

8           Each of these provisions is a direct result of  
9 regulatory requirements and the intended function of the  
10 standard offer contract, yet these seemingly unobjectionable  
11 features as well as others are the subject of the complaint in  
12 this case.

13           During the hearing and the briefs we'll go through  
14 all the details, but here's the key observation I'd like to  
15 leave you with. The solution to Wheelabrator's concerns should  
16 not be to change the standard offer contract because the  
17 provisions they're complaining about are by and large exactly  
18 what is required in order to comply with Commission regulations  
19 and make the contract standard and available to all types of  
20 renewable generators. Rather, the points that Wheelabrator  
21 raises are entirely appropriate to raise in a negotiated  
22 contract setting with FPL or any other potential purchaser of  
23 capacity and energy.

24           To be clear, FPL has purchased and FPL customers have  
25 paid for more than \$860 million of firm capacity and energy

1 from Wheelabrator's existing facilities. They're good  
2 facilities, they're reliable facilities. We're very happy to  
3 do business with Wheelabrator. These purchases are made by FPL  
4 on behalf of our customers with no markup or profit just like  
5 any other purchased power agreement. Only the actual costs  
6 paid to Wheelabrator are paid by customers.

7           Wheelabrator and FPL are currently engaged in  
8 contract negotiations to replace two large existing contracts  
9 for more than 95 megawatts of renewable energy. Those  
10 contracts expire August of this year and December of next year.  
11 Nearly all the points raised by Wheelabrator in this case are  
12 exactly the types of points that FPL is willing to and does  
13 discuss in contract discussions. However, due to the specific  
14 Commission requirements that govern standard offer contracts  
15 which must be applicable to any potential supplier,  
16 Wheelabrator's requests to change the standard offer contract,  
17 which is the beginning point of individual negotiations, are  
18 not well-founded and should not be adopted.

19           We have here today Kori Dubin, an experienced FPL  
20 manager who has appeared many times before this Commission.  
21 She's here to answer your questions and to address compliance  
22 and reasonableness of our contract. We hope that this  
23 proceeding provides the Commission, Wheelabrator and the public  
24 greater insight into the role of the standard offer contract.  
25 A lot of information has been provided in this case. The

1 depositions were longer than just about any fuel case or things  
2 too. We look forward to further enhancing public understanding  
3 and that's the spirit we're here today about the standard offer  
4 contract.

5 Our goal is that the Commission, the parties and our  
6 customers have comfort and confidence that this contract is  
7 reasonable and complies with Florida law. Therefore, FPL will  
8 be requesting that the Commission's order in this proceeding  
9 enter findings consistent with the positions stated in our  
10 Prehearing Order and approve FPL's proposed 2008 renewable  
11 standard offer contract. Thank you.

12 COMMISSIONER EDGAR: Thank you.

13 Ms. Kaufman.

14 MS. KAUFMAN: Thank you, Commissioner Edgar and  
15 Commissioners. As I said, I'm Vicki Kaufman and I'm appearing  
16 on behalf of Wheelabrator Technologies. Wheelabrator is a  
17 longtime provider of renewable energy in this state, as  
18 Mr. Anderson mentioned. We have two waste-to-energy plants in  
19 Broward County and we operate the City of Tampa's  
20 waste-to-energy facility as well as a waste wood/tires/landfill  
21 gas-to-energy facility in Auburndale, and Wheelabrator also has  
22 16 waste-to-energy plants across the United States.  
23 Wheelabrator is proud of and has an excellent reputation as a  
24 renewable provider and wants to continue to provide renewable  
25 energy from its existing plants here in Florida as well as

1 bring new plants online to help meet the needs of Florida in  
2 the area of renewable energy, an area that I know that you are  
3 all familiar with and have heard an awful lot about in the past  
4 weeks and months in your RPS proceeding. And in that  
5 proceeding and in the recommendations I understand you're going  
6 to be making to the Legislature you recognized how important  
7 renewable resources are and you recommended very aggressive  
8 goals to the Legislature that Florida get 20 percent of its  
9 energy from renewable facilities by 2020, and you did some step  
10 goals including that the state get 7 percent of its energy by  
11 2012 from renewable facilities.

12           This case, of course, specifically concerns Florida  
13 Power & Light's standard offer contract. The concept of a  
14 standard offer contract really began a long time ago, I guess,  
15 with the advent of PURPA in the '80s. However, in the context  
16 of this case, in the context of the Legislature's direction to  
17 you and in the context of your renewable goals, we need to  
18 focus on renewable energy and the needs of the state. The  
19 Legislature's fairly recent and clear directive to you that the  
20 development of renewable resources must be encouraged and that  
21 the economic viability of existing facilities must be  
22 protected, that's what they've told you and I believe you've  
23 clearly recognized that in your RPS docket.

24           But I think as we begin this proceeding it's worth  
25 looking at Section 366.91(1) that was enacted in 2005 to

1 refresh ourselves as to what the Legislature has said regarding  
2 renewable energy. And so I just want to quote briefly, the  
3 Legislature finds that it's in the public interest to promote  
4 the development of renewable energy resources in this state,  
5 close quote. And then the Legislature went on in that same  
6 section to list many valuable properties that renewable energy  
7 can bring to Florida. And they said, quote, renewable energy  
8 has the potential to help diversify fuel supply types to meet  
9 Florida's growing dependency on natural gas for electric  
10 production, minimize the volatility of fuel costs, encourage  
11 investment in the state, improve environmental conditions and  
12 make Florida a leader in new and innovative technology, close  
13 quote.

14 And similarly in Section 366.92 the Legislature said,  
15 quote, it is the intent of the Legislature to promote the  
16 development of renewable energy, protect the economic viability  
17 of Florida's existing renewable energy facilities, diversify  
18 the types of fuel used to generate electricity in Florida,  
19 lessen Florida's dependence on natural gas and fuel oil for the  
20 production of electricity, minimize the volatility of fuel  
21 costs, encourage investment within the state, improve  
22 environmental conditions -- and in addition -- close quote. In  
23 addition, I know that you're all aware of the Governor's  
24 executive orders, and he has spoken often and strongly on the  
25 need to encourage and bring more renewable energy to the state

1 in order to reduce greenhouse gas emissions and he also  
2 articulated very aggressive goals for doing that.

3 Now in order to encourage the development of  
4 renewable energy in the state, the legislation I just discussed  
5 requires each investor-owned utility to continuously offer a  
6 purchase contract to renewable energy providers, that is, a  
7 standard offer contract that renewable producers can actually  
8 execute and bring to market, a contract that they can sign,  
9 that they can finance and that they can do that without going  
10 through time-consuming and lengthy negotiations.

11 Mr. Anderson said to you that there are two paths to  
12 a contract. We agree. One path may be a negotiated path, but  
13 the other path clearly required by the Legislature is a viable  
14 standard offer contract. One does not supplant the other.  
15 Just because FPL or parties may wish to negotiate, that does  
16 not mean that that obviates the need for an appropriate  
17 standard offer contract. It has to be continuously available.  
18 And I think that, that as a matter of statutory interpretation  
19 we probably would all agree that the Legislature does not enact  
20 laws with no meaning. When they said that they wanted a  
21 continuously available standard offer contract, I think that  
22 means a contract that's continuously available that renewable  
23 providers can execute in order to bring the benefits of  
24 renewable energy to Florida. Mr. Anderson says that FPL has a,  
25 such a contract available. Well, I guess I don't quarrel with

1 that. It's available, it's, it's, it's in this docket, it's  
2 sitting in someone's file drawer.

3 But I think the most telling fact in this entire case  
4 that you're going to hear about, and it is a fact that I don't  
5 believe FPL denies, is that since the enactment of the  
6 legislation that I just discussed earlier, not a single  
7 renewable provider has executed Florida Power & Light's  
8 standard offer contract, not a single megawatt has been  
9 purchased or sold under any version of the contract. So we  
10 suggest to you that this, this must mean that this contract  
11 cannot possibly be compliant with the goals of the Legislature.

12 You will hear Wheelabrator's expert witness  
13 Mr. Dalton testify in regard to some changes that Wheelabrator  
14 proposes to make the standard offer contract a viable,  
15 financeable document that will promote renewable generation as  
16 the Legislature has envisioned and as it has directed you to  
17 encourage. This includes a more reasonable capacity factor  
18 which renewable facilities can actually meet and which does not  
19 hold renewable facilities to a higher standard than FPL's own  
20 units or to a projected standard that we don't even know if  
21 these future FPL units will ever meet. We recommend or  
22 Mr. Dalton will discuss a revision of such factors to recognize  
23 the value that renewable facilities offer as well as the  
24 ability to receive capacity payments at lower levels as the  
25 statute provides.



1           We also recommend changes that renewable facilities  
2 not be subject to what the contract contains now, which is a  
3 unilateral right of FPL to interrupt or to require the  
4 renewable facility to cease production, which obviously  
5 interferes with the revenue stream for the renewable generator  
6 and increases the already high capacity factor, even makes it  
7 even higher. And Mr. Dalton will also discuss with you why the  
8 30-day right of first refusal for the TREC is inappropriate and  
9 should be removed from the contract.

10           Finally, Wheelabrator contends that there are some  
11 other provisions that are unreasonable and these relate to  
12 maintenance. The maintenance provision in the standard offer  
13 contract essentially allows FPL to dictate the renewable  
14 facility's maintenance schedule, which in turn has the  
15 potential to interfere with the renewable facility's ability to  
16 operate. These provisions are simply onerous, they're  
17 unnecessary and they hold renewable providers to standards  
18 higher than FPL's own units.

19           Mr. Anderson's response or in his opening remarks are  
20 two-fold. The first one is come negotiate with us. As I said,  
21 while that's an avenue to a contract, it's just one avenue and  
22 it doesn't obviate the requirement of a viable standard offer  
23 contract. And I would suggest to you that not only has no  
24 renewable provider signed a standard offer contract, FPL has  
25 not successfully negotiated for approval a renewable contract

1 either. So there has been as far as I'm aware no contracts  
2 approved, that you have approved since the new legislation  
3 under either one of those paths.

4           The ability to negotiate certainly does not guarantee  
5 that the parties will reach agreement, and there's no  
6 requirement that if you enter into negotiations with a utility,  
7 that at the end of the day there's going to be a deal. So  
8 while you may negotiate, that doesn't mean that at the end of  
9 the day you're actually going to bring forward a contract. And  
10 I don't think that you will find anywhere in the legislation  
11 where the Legislature has suggested or stated that a negotiated  
12 contract is somehow preferable or takes the place of a standard  
13 offer contract that they have required, nor have they said that  
14 the standard offer contract is simply a template for  
15 negotiations. I think they want a viable contract out there.

16           Finally, Mr. Anderson directs you to your rules. And  
17 if I understood him, he said these rules require that you  
18 approve our contract. We disagree and we think that you have  
19 to fundamentally return to the statute that's being implemented  
20 here and what it is you're trying to accomplish. We think that  
21 with Mr. Dalton's suggestions and your direction to FPL you can  
22 put in place a standard offer contract that meets the goals of  
23 the Legislature and the requirement that a standard offer  
24 contract be available and that you will see some renewable  
25 generators come forward and find -- and sign it, help us meet

1 the aggressive goals that you have set.

2 Wheelabrator also appreciates the opportunity to  
3 appear before you this morning and to discuss these issues with  
4 you, we think they're very important to the State of Florida,  
5 and we look forward to you listening to our witness and to all  
6 the evidence in the case. Thank you.

7 COMMISSIONER EDGAR: Thank you, Ms. Kaufman.

8 Okay. We will go ahead and swear in the witnesses.  
9 We will do both together. So if each of you would stand  
10 together with me and raise your right hand.

11 (Witnesses collectively sworn.)

12 Mr. Anderson.

13 MR. ANDERSON: FPL would call Kori Dubin as its  
14 witness.

15 KOREL M. DUBIN  
16 was called as a witness on behalf of Florida Power & Light  
17 Company and, having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. ANDERSON:

20 Q Good morning, Ms. Dubin.

21 A Good morning.

22 Q You were just sworn. Would you tell us your name and  
23 business address.

24 A My name is Korel Dubin. My business address is  
25 Florida Power & Light Company, 9250 West Flagler Street, Miami,

1 Florida 33174.

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

3 A I'm employed by Florida Power & Light as Senior  
4 Manager of Purchased Power.

5 Q Have you prepared and caused to be filed eight pages  
6 of prefiled direct testimony in this proceeding?

7 A Yes, I have.

8 Q Any errata?

9 A No, I do not.

10 Q Do you have any changes or revisions to your prefiled  
11 direct testimony?

12 A I do not.

13 Q If I asked you the same questions contained in your  
14 prefiled direct testimony, would your answers be the same?

15 A Yes, they would.

16 MR. ANDERSON: FPL asks that Ms. Dubin's prefiled  
17 direct testimony be inserted into the record as though read.

18 COMMISSIONER EDGAR: The prefiled direct testimony  
19 will be inserted into the record as though read.

20 MR. ANDERSON: I also note for the record there are  
21 no exhibits attached to the direct testimony.

22

23

24

25

1           **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2                   **FLORIDA POWER & LIGHT COMPANY**

3                           **TESTIMONY OF KOREL M. DUBIN**

4                                   **DOCKET NO. 080193-EQ**

5                                   **NOVEMBER 3, 2008**

6  
7   **Q.     Please state your name and business address.**

8   A.     My name is Korel M. Dubin. My business address is 9250 West  
9           Flagler Street, Miami, Florida 33174.

10 **Q.     By whom are you employed and what is your position?**

11 A.     I am employed by Florida Power & Light Company ("FPL" or the  
12           "Company") as the Senior Manager of Purchased Power in the  
13           Resource Assessment and Planning Department.

14 **Q.     What are your present job responsibilities?**

15 A.     My responsibilities include providing analyses and support to assist  
16           the Company in determining whether and on what terms to extend or  
17           replace expiring purchase power contracts; negotiating new power  
18           purchase agreements; and contract administration and payment  
19           processing.

20 **Q.     Would you please describe your educational background and**  
21 **professional experience?**

22 A.     I received a Bachelor of Arts in Political Science from Emory  
23           University in 1980 and in 1982 I received a Master of Business  
24           Administration from Barry University. In June 1982, I joined Florida

1 Power and Light Company's Fossil Fuel Section of the Fuel Resources  
2 Department. From 1982 through 1985 my responsibilities included  
3 administration of fuel supply and operations contracts, development of  
4 procurement procedures, research/analysis of transportation options  
5 and by-product sales, and support for regulatory filings. In December  
6 of 1985 I joined the Rates and Research Department as a Rate Analyst.  
7 Since 1985, my primary responsibilities have been in the area of the  
8 adjustment clauses. I have held various positions of increasing  
9 responsibility in the Rates and Research Department and the  
10 Regulatory Affairs Department where I was responsible for the  
11 development and preparation of the Company's Fuel, Capacity,  
12 Conservation and Environmental Cost Recovery filings. I remain a  
13 Company witness in these clause dockets. In May 2008 I became  
14 Senior Manager of Purchased Power in the Resource Assessment and  
15 Planning Department.

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

17 A. My testimony is provided in support of FPL's Standard Offer Contract  
18 ("SOC") approved by Florida Public Service Commission Order No.  
19 PSC-08-0544-TRF-EQ and to address the Wheelabrator Technologies,  
20 Inc. ("Wheelabrator") protest of that order. My testimony explains  
21 that FPL's Standard Offer Contract is reasonable and is fully  
22 compliant with the applicable statute enacted by the Florida  
23 Legislature and rules adopted by this Commission. The Standard

1 Offer Contract encourages the development of renewable resources in  
2 the State. The rates in the Standard Offer Contract are at avoided cost,  
3 as required by law. The terms and conditions contained in the contract  
4 are reasonable and fair to the renewable generators and utility  
5 customers. The Standard Offer Contract terms and conditions are  
6 necessary to protect the customer, and without these provisions the  
7 customers would incur higher costs and may have less reliable service.  
8 FPL is supportive of development of new renewable generation in  
9 Florida, and is happy to purchase for the benefit of its customers  
10 capacity and energy from both new and existing renewable generating  
11 facilities, as well as other qualified facilities.

12 **Q. Please describe FPL's overall outlook and approach to its**  
13 **Standard Offer Contract and to complying with the Commission's**  
14 **regulatory requirements for such contracts.**

15 A. FPL is supportive of development of new renewable generation and  
16 other qualified facility generation in Florida, as well as continued  
17 operation of existing renewable generating facilities and qualified  
18 facilities.

19  
20 FPL's focus in preparing, submitting and administering its Standard  
21 Offer Contract is to make available a fair and reasonable agreement  
22 providing an avenue for FPL to make purchases from such facilities,  
23 for the benefit and in a manner protective of FPL's customers. FPL

1       also views its Standard Offer Contract as providing a reasonable base  
2       from which project owners and developers may, if they choose, seek to  
3       negotiate with FPL agreements more closely tailored to the needs of  
4       facilities with different fuel types, sizes and operating characteristics,  
5       among other unique features.

6       **Q.   Wheelabrator's protest states that "FPL's proposed standard**  
7       **offer contract will not encourage the development of renewable**  
8       **resources in the state as required by section 366.91, Florida**  
9       **Statutes, and the Commission's rules, but rather would discourage**  
10      **such development." Do you agree with this statement?**

11     A.   No, I do not. The Commission through an extensive series of  
12       workshops, hearings, and rulemaking adopted rules to implement the  
13       requirements of 366.91. These rules require the Investor Owned  
14       Utilities ("IOUs") to continuously make available Standard Offer  
15       Contracts based on a portfolio approach of utility fossil-fueled units;  
16       establish a methodology for calculating capacity payments using a  
17       value of deferral methodology based on the utility's full avoided costs  
18       and need for power; require IOUs to expand the capacity and energy  
19       payment options to facilitate the financing of renewable generation  
20       facilities; allow for reopening the contract in the event of future carbon  
21       taxes; clarify ownership of transferable renewable energy credits;  
22       provide for an expedited dispute resolution process; and require annual  
23       reporting from all utilities. These rules strongly encourage the



1 development of renewable resources in Florida, and provide a range of  
2 unilateral options to the renewable generator. FPL's Standard Offer  
3 Contract complies with these rules, and hence complies with F.S.  
4 366.91 and encourages the development of renewable generation in the  
5 State.

6 **Q. Wheelabrator's protest states that "FPL's proposed standard**  
7 **offer contract contains terms and conditions that are onerous,**  
8 **burdensome, unilateral, and commercially unreasonable." Do you**  
9 **agree with this statement?**

10 A. No, I do not agree with this statement. Wheelabrator has provided a  
11 laundry list of terms and conditions which it deems commercially  
12 unreasonable, without support. Wheelabrator fails to recognize that  
13 the Standard Offer Contract is not the result of the give and take of  
14 commercial negotiations between an unrestricted buyer and seller, but  
15 is in actuality a unilateral "put" right of a renewable generator. As  
16 such, it is necessary that the contract as a whole and in specific  
17 contract provisions be constituted in such a way as to protect the  
18 customers of the utility in a contract that may be entered into by  
19 project developers and owners that have facilities with a broad range  
20 of sizes, fuel types, types of generation, geographical location, and  
21 performance characteristics.

1   **Q.    Have any of the contract provisions that Wheelabrator is**  
2       **protesting been reviewed and approved previously by the**  
3       **Commission?**

4   **A.    Yes, many of Wheelabrator's assertions are simply a rehash of old**  
5       arguments. Many of the terms and conditions contained in Standard  
6       Offer Contracts have explicitly been established and deemed prudent  
7       in hearings before this Commission. For example, Wheelabrator's  
8       assertion, that FPL's performance requirement that the renewable  
9       generator maintain a 97% Equivalent Availability factor to receive full  
10      capacity payments unfairly penalizes renewable generators, ignores the  
11      fact the Commission has already addressed this issue. FPL's 2014  
12      Combined Cycle ("CC") avoided unit has a projected annual  
13      Equivalent Availability of 97 % as shown on page 93 Schedule 9 of  
14      FPL's 2008 Ten Year site Plan. In other words if necessary the  
15      generating capacity of FPL's CC avoided unit is available to contribute  
16      to FPL's system reliability 97 % of the hours in a year. By FPL setting  
17      its minimum performance requirement to a 97% Equivalent  
18      Availability factor in order for the QS to receive full capacity  
19      payments (see payment provision C of Appendix B in FPL's Standard  
20      Offer Contract) FPL is ensuring, that its customers receive the same  
21      level of reliability that they would otherwise receive from the CC  
22      avoided unit. The Commission specifically evaluated and approved  
23      FPL's pay for performance sliding scale methodology in calculating

1 capacity payments as a contract provision that is beneficial to  
2 customers. In Order No.24989 Docket No. 910004-EU dated August  
3 29, 1991 the Commission stated that FPL's proposed adjustment to the  
4 monthly capacity payment made to cogenerators that exponentially  
5 reduces the QF's capacity payment in a month is reasonable when the  
6 twelve-month rolling average of the on peak capacity factor is below  
7 the avoided unit minimum. The Commission added that this  
8 adjustment broadens the range of performance in which the QF can be  
9 paid for performance while also encouraging the QF to provide  
10 capacity during FPL's peak periods. The Commission, in its findings  
11 encourages the QF to provide capacity during peak periods and  
12 provides the customers with the same level of reliability that they  
13 would receive from the avoided unit.

14  
15 Another example where the Commission has explicitly made a  
16 determination has to do with Tradable Renewable Energy Credits  
17 ("TRECs"). Wheelabrator asserts that "FPL's proposed contract  
18 contains an excessive time frame for FPL to exercise its right of first  
19 refusal as to tradable renewable energy credits" and goes on to say that  
20 this "provision is commercially unreasonable, discourages the  
21 development of renewable resources, and should be rejected."  
22 Wheelabrator adds that "this contractual provision also violates rule  
23 25-17.280, [F.A.C.], which prohibits FPL from placing any conditions

1 on a renewable generator's ownership of TRECs." Wheelabrator  
2 ignores Commission order No PSC-07-0492-TRF-EQ in Docket No.  
3 070234-EQ dated June 11, 2007 that states that:

4 "FPL acknowledged that TRECs are the property of the  
5 renewable generator, and also has included the right of first  
6 refusal with specific timelines for responding. Such a  
7 condition will insure that Florida's ratepayers enjoy all the  
8 attributes associated with renewable generation without  
9 imposing a financial penalty to the owner of the renewable  
10 generation facility." (Emphasis added)

11 **Q. Please summarize your testimony.**

12 A. As discussed above, the terms and conditions included in the Standard  
13 Offer Contract are reasonable. The Standard Offer Contract terms and  
14 conditions are necessary to protect the customer, and without these  
15 provisions the customers would incur higher costs and may have less  
16 reliable service. A Standard Offer Contract by its nature is required to  
17 offer a one-size-fits-all approach to a purchase power agreement.  
18 While some project developers/lenders may feel more comfortable  
19 with a more individualized approach and as a result pursue an  
20 individually negotiated contract, other developers may prefer the  
21 Standard Offer Contract.

22 **Q. Does that conclude your testimony?**

23 A. Yes.

1 BY MR. ANDERSON:

2 Q Have you prepared a summary of your direct testimony?

3 A Yes, I have.

4 Q Would you please provide your summary to the  
5 Commission?

6 A Yes. Thank you.

7 Good morning, Commissioners. My testimony is  
8 provided in support of FPL's 2008 standard offer contract  
9 approved by the Commission and to address Wheelabrator's  
10 protest of FPL's standard offer contract. FPL's standard offer  
11 contract is reasonable and fully compliant with the applicable  
12 statute enacted by the Florida Legislature and rules adopted by  
13 this Commission. The standard offer contract encourages the  
14 development of renewable resources in the state. The rates in  
15 the standard offer contract are at avoided cost as required by  
16 law. The terms and conditions contained in the contract are  
17 reasonable and fair to the renewable generator and utility  
18 customers. The standard offer contract terms and conditions  
19 are necessary to protect the customer and without these  
20 provisions the customers would incur higher costs and may have  
21 less reliable service.

22 FPL is supported -- supportive of development of new  
23 renewable generation and other qualified facility generation in  
24 Florida as well as continued operation of existing renewable  
25 generating facilities and qualifying facilities.

1           The Commission through an extensive series of  
2 workshops, hearings and rulemaking adopted rules to implement  
3 the requirements of Florida Statute 366.91. These rules  
4 require the investor-owned utilities to continuously make  
5 available a standard offer contract based on a portfolio  
6 approach of utility fossil-fueled units, establish a  
7 methodology for calculating capacity payments using a value of  
8 deferral methodology based on the utility's full avoided cost  
9 and need for power, require IOUs to expand the capacity and  
10 energy payment options to facilitate the financing of renewable  
11 generating, generation facilities, allow for reopening the  
12 contract in the event of future carbon taxes, clarify ownership  
13 of, and clarifying ownership of transferable renewable energy  
14 credits, provide for an expedited dispute resolution process  
15 and required annual reporting from all utilities. These rules  
16 strongly encourage the development of renewable resources in  
17 Florida and provide a range of unilateral options to the  
18 renewable generator.

19           FPL's standard offer contract complies with these  
20 rules and hence complies with Florida Statute 366.91 and  
21 encourages the development of renewable generation in the  
22 state. FPL's focus in preparing, submitting and administering  
23 its standard offer contract is to make available a fair and  
24 reasonable agreement providing an avenue for FPL to make  
25 purchase from such facilities for the benefit and in a manner

1 protective of FPL's customers.

2 FPL also views its standard offer contract as  
3 providing a reasonable base for which project owners and  
4 developers may, if they choose, seek to negotiate with FPL  
5 agreements more closely tailored to the needs of the facilities  
6 with different fuel types, sizes, operating characteristics  
7 among other unique features.

8 Wheelabrator has provided a laundry list of terms and  
9 conditions which it deems unreasonable without support.  
10 Wheelabrator fails to recognize that the standard offer  
11 contract is not the result of give and take of commercial  
12 negotiations. The standard offer contract as a whole and in  
13 specific contract provisions must be constituted in such a way  
14 as to protect customers of a utility in a contract that may be  
15 entered into by project developers and owners that have  
16 facilities with a broad range of sizes, fuel types, types of  
17 generation, geographical location and performance  
18 characteristics. A standard offer contract by nature is  
19 required to offer a one-size-fits-all approach to purchased  
20 power. While some project developer lenders may feel more  
21 comfortable with a more individualized approach and as a result  
22 pursue an individually negotiated contract, other developers  
23 may prefer the standard offer contract. That concludes my  
24 summary.

25 MR. ANDERSON: Ms. Dubin is available for

1 cross-examination.

2 COMMISSIONER EDGAR: Ms. Kaufman.

3 MS. KAUFMAN: Thank you, Commissioner.

4 CROSS EXAMINATION

5 BY MS. KAUFMAN:

6 Q Good morning, Ms. Dubin.

7 A Good morning, Ms. Kaufman.

8 Q Let's talk for a minute about your familiarity with  
9 Wheelabrator. You are familiar with them; correct?

10 A Yes.

11 Q And I think that Mr. Anderson mentioned that you  
12 currently have two contracts with Wheelabrator; correct?

13 A That is correct.

14 Q They have a North Broward facility and a South  
15 Broward facility; correct?

16 A Yes, that is correct.

17 Q And you'd agree, wouldn't you, that they are a  
18 well-known and an established provider of renewable energy?

19 A They are a well-known and established renewable  
20 generator. FPL has been doing business with them for 20 some  
21 odd years and has purchased energy and capacity from them.  
22 Customers have paid, I think, close to a billion dollars over  
23 the 20-year contracts.

24 Q And they've been a reliable provider; correct?

25 A That is correct.



1 Q You were here for my opening remarks, were you not?

2 A Yes, I was.

3 Q And you heard me discuss Section 366.91 and 366.92?

4 A Yes.

5 Q And you would agree with me, would you not, that the  
6 Legislature has made it clear through the enactment of these  
7 statutes that it's important for the state to encourage the  
8 development of renewable energy?

9 A Yes. FPL certainly agrees with that.

10 Q And you heard me, I'm sure, give the laundry list of  
11 items that the Legislature has designated as important in  
12 regard to why they want renewable energy to be developed and  
13 encouraged in this state, and I assume you agree with those.

14 A Yes.

15 Q Now would you also agree with me that Section 366.92  
16 requires and says that it's important that the economic  
17 viability of existing renewable facilities be protected?

18 A Yes.

19 Q Are you familiar with the Governor's executive order  
20 of July 2007 in which he addresses renewable energy goals?

21 A I'm familiar with it. Yes.

22 MS. KAUFMAN: I'd like to distribute an exhibit,  
23 Madam Chairman. I guess this would be Number 13.

24 COMMISSIONER EDGAR: Yes. And we'll go ahead and  
25 title it Florida Executive Order 07-127.

1 (Exhibit 13 marked for identification.)

2 MS. KAUFMAN: Thank you, Madam Chair.

3 BY MS. KAUFMAN:

4 Q Ms. Dubin, if you could turn to Page 4, the pages are  
5 not numbered, but Section 3 and let me know when you're there.

6 A I'm sorry. On the first page?

7 Q It's on the fourth page, Section 3. Do you see the  
8 first bullet?

9 A Yes.

10 Q And would you agree with me that the Governor has  
11 stated in that first bullet that it is his hope or his goal  
12 that utilities produce at least 20 percent of their electricity  
13 from renewable sources?

14 A Yes.

15 Q Now you talked a little bit in your opening about the  
16 purpose of a standard offer contract; right?

17 A Yes.

18 Q Okay. And you would agree with me, would you not,  
19 that the purpose of a standard offer contract is to have a  
20 contract available that requires no negotiation?

21 A I think the standard offer contract, there's two  
22 purposes. One is to have an available standard offer contract,  
23 and second that it can be used as the basis for contract  
24 negotiations.

25 Q Ms. Dubin, if you could answer yes or no first, I

1 would appreciate that. Let me repeat the question.

2 A Okay.

3 Q Would you agree that one of the purposes of a  
4 standard offer contract is to have a contract available that  
5 requires no negotiation with the utility?

6 A Yes, I would agree with that.

7 Q Okay. And would you agree that negotiations can  
8 often be time consuming?

9 A Yes.

10 Q And I'm speaking of contract negotiations.

11 A Yes. Of course.

12 Q And would you also agree with me that these contract  
13 negotiations require resources to be devoted to them by both  
14 sides?

15 A Yes. And that, that's why it's important that we  
16 also can use the standard offer contract as a tool for contract  
17 negotiations because it can cut out a lot of negotiating time.  
18 There's a lot of good information there, a lot of good  
19 provisions that can be used as the basis for a negotiated  
20 contract so that it can be used, the operating and  
21 characteristics that can be used are good to be, to streamline  
22 contract negotiations. And then where there's specific  
23 characteristics of a renewable generator, those changes can be  
24 made in a give and take in negotiations.

25 Q I understand your position, Ms. Dubin. But will you

1 agree with me that when you engage in contract negotiations, it  
2 requires both sides, the generator and the utility, to devote  
3 substantial resources to attempting, in attempting to come to a  
4 conclusion?

5 A Yes.

6 Q And would you also agree with me that the parties may  
7 engage in negotiations, they may devote time and resources to  
8 those meetings and conference calls and what not, and they may  
9 at the end of the process not reach agreement?

10 A Yes.

11 Q Okay. You agree, and you may have said this in your  
12 summary, but you agree, don't you, that FPL is required  
13 pursuant to the legislation to have a standard offer  
14 continuously available?

15 A Yes.

16 Q And has FPL had a standard offer continuously  
17 available since 2006?

18 A Most of the time. There was a point in time in 2006  
19 where the standard offer contract was protested and therefore  
20 it wasn't available for a period of time.

21 Q Okay. So if a renewable generator had wanted you,  
22 had wanted to sign a standard offer contract with you in 2006,  
23 you're saying you did not have one available?

24 A There was a --

25 Q Excuse me. If you could try yes or no, I would

1 appreciate it.

2 A Okay.

3 Q Do you need me to repeat the question?

4 A Yes, please.

5 Q Okay. I'll try. Are you telling us that there was a  
6 period of time during 2006 when FPL did not have a standard  
7 offer contract available for renewable generators?

8 A We had, we had, yes, we had a contract available, but  
9 there was a protest and there was a point in time where, and  
10 I'm not quite sure of the language, but I, it was on hold or  
11 something along those lines because of a protest.

12 Q Well, isn't it true that FPL withdrew its standard  
13 offer contract in 2006?

14 A I think there were some modifications made to it and  
15 refiled, I believe.

16 MS. KAUFMAN: Okay. I've got another exhibit, Madam  
17 Chairman.

18 COMMISSIONER EDGAR: Okay.

19 MS. KAUFMAN: This would be Number 14?

20 COMMISSIONER EDGAR: Yes, ma'am. We'll mark it as  
21 14.

22 MS. KAUFMAN: And I, we could call it, if it's all  
23 right, FPL Notice of withdrawal.

24 COMMISSIONER EDGAR: Yes.

25 (Exhibit 14 marked for identification.)

1 BY MS. KAUFMAN:

2 Q Have you had time to look this over, Ms. Dubin?

3 A Yes, I have.

4 Q Okay. If you would refer to the bottom of the first  
5 page. Do you see the sentence where it begins, "At this time"?

6 A Yes.

7 Q Okay. Would you read that sentence for us?

8 A If I might start above where it talks about the  
9 protest, I believe, to put it in context.

10 Q Well, Ms. Dubin, if you would be so kind as to answer  
11 my questions and then explain, I think we could move faster.

12 A Okay.

13 Q Thank you.

14 A "At this time, FPL believes it is appropriate to  
15 withdraw its current petition for approval of renewable energy  
16 tariffs and standard offer contracts with the commitment that  
17 FPL will promptly refile renewable energy tariffs and standard  
18 offer contracts when the FICA request has been resolved, or as  
19 soon as otherwise may be appropriate."

20 Q So you would agree that FPL withdrew its contract in  
21 this case; correct?

22 A Yes. FPL withdrew its contract as there was a  
23 protest going on. And if I might read the next sentence which  
24 also says that FPL wishes to make clear that it remains  
25 receptive to negotiating with prospective renewable energy

1 providers, and that FPL is prepared to submit any resulting  
2 agreements for Commission approval as approved (sic.) for under  
3 applicable laws and regulations.

4 Q So I understand your testimony to be that you were  
5 willing to negotiate.

6 A Yes.

7 Q But you had no standard offer contract available at  
8 that time.

9 A No. It was withdrawn because of the protest going  
10 on.

11 Q Now since 2006 you have had various versions of a  
12 standard offer contract available; correct?

13 A Yes.

14 Q Okay. And I mentioned this in my opening and I'm  
15 correct, am I not, that you have not had a single renewable  
16 provider sign one of these contracts, have you?

17 A No, we have not.

18 Q Okay. Now your direct testimony, and you mentioned  
19 this in your summary, the bottom of Page 2 going over to the  
20 top of Page 3, you say, "The standard offer contract encourages  
21 the development of renewable resources in the state"; right?

22 A Yes.

23 Q Well, since not a single provider has executed a  
24 contract, in what way does the standard offer contract you have  
25 available encourage the development of renewable resources?

1           A     I think it encourages it in several ways. Now let's  
2 go back to 2006 when the, when we're talking about that time  
3 frame. We had a lot of renewable generation under contract.  
4 So, for example, Wheelabrator was not going to go to a standard  
5 offer contract and also solid waste authority. Other contracts  
6 are, were already in existence, so they would not avail  
7 themselves of a standard offer contract because they were  
8 already contracted for.

9                     In addition, because of this protest there was a  
10 period of time when the, when we did not have a, where, where,  
11 excuse me, generators, renewable generators could not avail  
12 themselves of the standard offer contract. And currently the  
13 standard offer contract that we have is being used as the basis  
14 for contract negotiations just in the way of one part of it the  
15 way it's intended to work. We have several renewable  
16 generators that we're discussing contracts with, and in each  
17 one of those cases we have used the standard offer contract as  
18 the starting point.

19           Q     So do you disagree with the premise that the standard  
20 offer contract is supposed to be a viable, executable contract  
21 that you would expect renewable facilities to sign?

22           A     No, I don't agree with -- I do agree that the  
23 standard offer contract is that, yes.

24           Q     Okay. But despite that, nobody signed it.

25           A     No, for the reasons I stated.



1           Q     I want to talk for a moment about your current  
2 contracts with Wheelabrator. We discussed this some in your  
3 deposition; correct?

4           A     Yes.

5           Q     And I think you already said that Wheelabrator has  
6 two contracts right now with Florida Power & Light; correct?

7           A     Yes. It's actually, it's actually four. It's two  
8 1987 agreements, one for Broward North, one for Broward South,  
9 and then there's a 1991 amendment for each one of those  
10 facilities as well.

11          Q     I want to talk about the original contracts. Those  
12 are standard offer contracts; correct?

13          A     Yes, they are.

14          Q     That Wheelabrator and FPL executed.

15          A     Yes.

16                MS. KAUFMAN: And, Madam Chairman, I'd like to  
17 distribute those contracts. And I'm also for ease of  
18 reference, if it's all right, going to distribute the sort of  
19 corresponding pages from the current standard offer so that  
20 Ms. Dubin and the Commissioners will have all three documents  
21 in front of them.

22                COMMISSIONER EDGAR: Ms. Kaufman and Mr. Anderson, I  
23 have had a request administratively for a very short break to  
24 take care of some paperwork. So I'm -- why don't you go ahead  
25 and distribute, but we will go on break and I'm sorry to do

1 this when we've just gotten started, but a couple of things we  
2 need to take care of technically. So we're going to take a  
3 15-minute break and come back at 20 minutes -- roughly 15  
4 minutes, come back at 20 minutes to. If you would, go ahead  
5 and distribute, and then we'll mark and deal with that when we  
6 go back on. And so we are on break.

7 (Recess taken.)

8 We will get started again here in just a moment.

9 Okay. We are back on the record. I apologize for  
10 the interruption. Thank you for your patience. Ms. Kaufman,  
11 right before our short break you were going to pass out some  
12 documents, and if you would go ahead and take it from there.

13 MS. KAUFMAN: I did. Madam Chair, I passed out three  
14 documents, and I would ask that two of them you would mark as a  
15 composite exhibit. Those would be Standard Offer Contract for  
16 the Purchase of Firm Capacity and Energy from a Qualifying  
17 Facility. They actually both have the same title but they're  
18 from, one is for the North Broward facility and one is for the  
19 South Broward. So if that could be Number 15.

20 COMMISSIONER EDGAR: Okay. We will mark this as  
21 composite Number 15 with these two documents contained therein.

22 (Exhibit 15 marked for identification.)

23 MS. KAUFMAN: And then the third document I  
24 distributed, if we could mark that as 16. Those are excerpts  
25 from the FPL 2008 Standard Offer Contract.

1 COMMISSIONER EDGAR: Okay. Exhibit 16, Excerpt 2008  
2 FPL SOC.

3 MS. KAUFMAN: Yes, ma'am. Thank you.

4 (Exhibit 16 marked for identification.)

5 MR. ANDERSON: If I might be heard for just a moment.

6 COMMISSIONER EDGAR: Mr. Anderson.

7 MR. ANDERSON: Thank you. From a process perspective  
8 I'd like to remind people that the initial testimony, we're  
9 still on direct cross-exam here, was only seven pages and did  
10 not discuss in detail the responses to Wheelabrator's points at  
11 all. All those were raised in Mr. Dalton's testimony and then  
12 responded to in rebuttal. The significance is that we're here  
13 to answer questions, but I'm going to pay a little more close  
14 attention to the scope of examination. Because if we're going  
15 to get into talking about the specifics, for example, of  
16 availability factors and this and that, that's not the direct  
17 testimony, that's the rebuttal, and I think it will be better  
18 framed that way. But just as a word to the group.

19 COMMISSIONER EDGAR: Okay. Thank you, Mr. Anderson.  
20 So noted. Ms. Kaufman, just please try to keep in mind with  
21 your questions the direct versus the rebuttal.

22 MS. KAUFMAN: I will try to do that, Madam Chairman.  
23 I would note that Ms. Dubin has told us in her opening comments  
24 and remarks that she's talked extensively about their proposed  
25 standard offer contract. So I do have a number of questions

1 that relate to that and I think that they are appropriate and  
2 they are within the scope. But I guess we'll, we'll deal with  
3 that as we go.

4 COMMISSIONER EDGAR: We'll see where it takes us.

5 MS. KAUFMAN: Thank you so much.

6 BY MS. KAUFMAN:

7 Q Ms. Dubin, do you have the three documents that I've  
8 distributed, the two contracts that the Chairman has marked as  
9 Exhibit 15 and then your, your 2008 contract that's marked as  
10 Exhibit 16?

11 A Yes, I do.

12 Q And Exhibit 16 is not the entire contract, it's just  
13 excerpts, just so the record is clear.

14 You are familiar with Exhibit 15, correct, the  
15 current Wheelabrator FPL contracts?

16 A Yes, I am.

17 Q And you, you looked at those during your deposition,  
18 did you not?

19 A Yes, I did.

20 Q Okay. What is the capacity factor in the current  
21 Wheelabrator FPL contract, Exhibit Number 15?

22 A The current one is, I believe, 70 percent. It's at  
23 the bottom range.

24 Q So in the current contracts that you have, the two,  
25 the capacity factor required is 70 percent.

1           A     Yes.

2           Q     And the capacity factor that's required in your 2008  
3 standard offer is 97 percent; correct?

4           A     The high end is 97 percent, yes.

5           Q     Okay.

6           A     The distinction is the 97 percent is for 100 percent  
7 of the capacity payment. The bottom range there goes down to  
8 80 percent.

9           Q     And in the current contracts the 70 percent is, is  
10 for 100 percent of the capacity payment; correct?

11          A     Yes, I believe so.

12          Q     Now I think I asked you if, I might have asked you in  
13 your deposition if you're familiar with the operating  
14 characteristics of renewable generators, and I believe you  
15 answered somewhat. Does that seem right?

16          A     Yes, somewhat. I'm familiar with the ones that are  
17 under contract with FPL.

18          Q     Okay. Would you agree that it would be very  
19 difficult for a renewable, a renewable generator to meet a  
20 97 percent capacity factor on a 12-month average?

21               MR. ANDERSON: I'd object. And it's not that we  
22 don't want to talk about this, but this is exactly what I was  
23 talking about. This is the heart and soul of the rebuttal  
24 testimony.

25               COMMISSIONER EDGAR: Ms. Kaufman.

1 MS. KAUFMAN: Well, Chairman, Ms. Dubin is here and  
2 she said in her opening remarks supporting the reasonableness  
3 and the fact that they believe that this contract before you  
4 complies with the rules, and I think I'm entitled to inquire as  
5 to the basis for her assertions. Those are in her prefiled  
6 direct and they were discussed at some length in her summary.

7 COMMISSIONER EDGAR: Mr. Anderson, anything further?

8 MR. ANDERSON: No. Again, we're happy to answer the  
9 question either time. But the right time under, under the law  
10 would be where the 97 percent issue is discussed in the, in the  
11 rebuttal testimony. It was raised in Mr. Dalton's direct,  
12 responded to in Ms. Dubin's rebuttal, so that's the right place  
13 in this proceeding for those, those questions, and we feel that  
14 would be the right approach.

15 COMMISSIONER EDGAR: Ms. Kaufman.

16 MS. KAUFMAN: Well, Ms. Dubin says right on Page 2,  
17 just to pick out one example from her direct, my testimony  
18 explains that FPL's standard offer is reasonable, fully  
19 compliant with the applicable statute. I think I'm entitled to  
20 inquire into her basis and into any of the terms in the  
21 contract that's before you. She's raised that in her direct.

22 COMMISSIONER EDGAR: Ms. Helton.

23 MS. HELTON: Madam Chairman, I've listened to the  
24 arguments of both parties and I agree with Ms. Kaufman. It  
25 seems to me that if Ms. Dubin has raised assertions concerning

1 the appropriateness of the standard offer contract under the  
2 rules and the statutes, that Ms. Kaufman is entitled to ask the  
3 witness about that.

4 COMMISSIONER EDGAR: Overruled. We will proceed.

5 BY MS. KAUFMAN:

6 Q I'm trying to recall the last question, Ms. Dubin.

7 I think that you had agreed with me that in your  
8 current 2008 standard offer contract you are requiring a 97  
9 percent availability factor; correct?

10 A Yes.

11 Q And then I believe I asked you if you would agree  
12 with me that based on what you knew about renewable facilities  
13 it would be extremely difficult for a renewable facility to  
14 meet that 97 percent availability on a 12-month rolling  
15 average.

16 A I don't know if it's extremely difficult. I do know  
17 that the Wheelabrator's Broward North facility has achieved a  
18 97 percent billing capacity factor from May 2008 through  
19 November 2008.

20 Q They haven't done it in a 12-month block of time,  
21 have they?

22 A I have not seen that. But they have, they have in  
23 current history performed at over 97 percent.

24 Q But in order to proceed at full capacity they have to  
25 do that for 12 consecutive months; correct?

1           A     Yes, that is correct.

2           Q     And they have not --

3           A     And that is because the next planned generating unit  
4 has that availability factor. And of course the standard offer  
5 contract goes back to customers should pay no more and have no  
6 less reliable service than they would with that next planned  
7 generating unit, which is a combined cycle unit.

8           Q     Okay. And did you, just so I'm clear, I asked you  
9 the question of whether you are aware of whether it would be  
10 extremely difficult for a renewable facility to meet that  
11 97 percent on a 12-month rolling average, and I think you said  
12 you didn't know one way or the other.

13          A     When you say extremely difficult, I do know that they  
14 have been performing at that level. We'd like to see them  
15 continue to perform at that level and perhaps they will on a  
16 12-month average basis meet that.

17          Q     But you don't -- but, first of all, you don't know  
18 that they have performed at that level for 12 months; correct?

19          A     They have not. But since May of 2008 they have.

20          Q     Okay. And you don't know I guess as you sit here  
21 today whether the, a renewable facility could perform at that  
22 level for 12 months.

23          A     They have since May, so I don't see any reason why  
24 they couldn't continue that and perhaps have it included in  
25 their average.



1           Again, the 97 percent availability of their billing  
2 capacity factor is one to have 100 percent of the payment.

3           Q     And then 70 percent was to have 100 percent of the  
4 payment; correct?

5           A     Yes. In the older contract based on a different  
6 avoided unit, different point in time, different planned  
7 generating unit.

8           Q     If you assume that it is difficult or it would be  
9 difficult for a renewable facility to meet that 97 percent for  
10 12 months and get the 100 percent capacity factor, do you think  
11 that might explain why you haven't had any renewable facility  
12 sign this contract?

13          A     I don't think I agreed that it would be difficult.  
14 97 percent is, is the, is what they have been performing at  
15 since May. The 97 percent is what, what they need to get to  
16 get 100 percent capacity payment. They get a capacity payment  
17 at 80 percent. 80 percent capacity, billing capacity means  
18 that they can be off for 73 days a year and still receive a  
19 capacity payment. That is, that is very good. That's very  
20 attractive.

21          Q     Okay. If you, if you could listen to my question and  
22 answer it and then explain as you need to.

23                 If we assume that it would be very difficult for a  
24 renewable facility to meet that 97 percent factor to receive  
25 the full payment on a 12-month rolling average, might that not

1 be the reason that you have not seen a single renewable  
2 generator sign this contract?

3 A It might, it might not. But the point is is that the  
4 standard offer contract has to be based on avoided cost on  
5 FPL's next planned generating unit, and that means that it's a  
6 97 percent billing capacity factor. Again though that's the  
7 high end. 80 percent is the low end. And there are various --  
8 the standard offer contract also provides very attractive  
9 pricing in that it can, can do very different payment streams  
10 to get those capacity payments. They can do levelized over a  
11 year, they can do early. So there's very, very different ways  
12 to meet that.

13 But, again, standard offer contract has to be priced  
14 at avoided cost so that customers pay no more than they would  
15 if FPL had built the next planned generating unit.

16 Q And this standard offer contract that we're here  
17 talking about today is one you've offered to the marketplace  
18 that you think that renewable generators would find attractive,  
19 but no one has signed it; right?

20 A No one has signed it currently. However, we are  
21 using it as the basis for several contract discussions.

22 Q Ms. Dubin, are you familiar with this Commission's  
23 RPS docket?

24 A Familiar, yes.

25 Q Okay. And are you familiar with the Navigant Group

1 and what the Commission tasks them to do?

2 A Yes. FPL has a team that has been working on that  
3 and I have a very cursory role in that. I had not been  
4 participating.

5 Q Okay. Would you accept, subject to check, that what  
6 Navigant was asked to do at least in part was to utilize some  
7 reasonable assumptions and come up with the technical potential  
8 for renewable power going forward?

9 MR. ANDERSON: FPL would object to this line of  
10 questioning for two reasons. First, it is not relevant. But,  
11 second, it is plainly not within the scope of Ms. Dubin's  
12 direct testimony. This case is about compliance with existing  
13 laws. It does not involve the consideration of renewable,  
14 renewable portfolio standards and those things which are the  
15 subject of other and future consideration. So two reasons:  
16 First, I don't think it's relevant. Second, it's clearly far,  
17 far beyond the scope.

18 COMMISSIONER EDGAR: Ms. Kaufman, relevance and  
19 scope.

20 MS. KAUFMAN: Yes. Madam Chair, number one, it's  
21 highly relevant again because Ms. Dubin touts the  
22 reasonableness of her standard offer contract. And I think  
23 that if I'm permitted to pursue this line, I can develop the  
24 fact that it is not reasonable based on experts that this  
25 Commission has retained. And I think it goes, that goes to

1 scope as well. She is telling us in her testimony that this is  
2 a reasonable, attractive contract for the marketplace and that  
3 the capacity factors and other terms and conditions are those  
4 that renewable developers would find attractive, and I think  
5 that I'm entitled to probe and impeach that with information  
6 from other Commission dockets.

7 COMMISSIONER EDGAR: Ms. Helton.

8 MS. HELTON: I'm a little bit concerned about  
9 discussions concerning experts the Commission may or may not  
10 have hired in other dockets. We don't have those experts  
11 here testifying today. I mean, I see some basis behind  
12 Ms. Kaufman's questioning with respect to the appropriateness  
13 of furthering the renewable goals that the Legislature has set  
14 forth in Sections 366 point, I think it's 91 and 92. However,  
15 bringing in other dockets, that's, that's not within the scope  
16 of this proceeding. So I guess my suggestion to you, Madam  
17 Chairman, was maybe we could go down the line a little bit and  
18 see where it leads, but I am very uncomfortable about talking  
19 about other dockets here.

20 COMMISSIONER EDGAR: Excuse me. Objection is  
21 sustained. Relevance in my mind is perhaps debatable, but I am  
22 going to sustain on the basis of scope.

23 BY MS. KAUFMAN:

24 Q Well, Ms. Dubin, let's turn back then to the current  
25 contract, which is Exhibit 16. And let's take a look at

1 Section 8.4.8 which is on the third page in, excuse me, fourth  
2 page in. And, Commissioners, the sheet at the top is entitled,  
3 numbered 9.036. Are you there?

4 A I am.

5 Q Okay. And if we look at Section 8.4.8, that gives  
6 FPL the right to curtail a renewable generator up to 18 times  
7 per year; correct?

8 A Yes, it does.

9 Q In other words, it can tell the renewable generator  
10 we're not going to take your power up to 18 times per year.

11 A Yes. If there's -- and the purpose of this is  
12 because if there are reliability reasons, safety reasons,  
13 cost-effective reasons, that FPL would have the right to back  
14 that down.

15 And I might add that the language here is, is, is  
16 just about verbatim out of the Commission rules on this. It's  
17 to protect customers to make sure that they're not paying more  
18 for this power than they would if FPL had generated out of its  
19 own unit. FPL would, if we were operating, if we had built the  
20 unit, the next generating unit, we would treat it the same. We  
21 would back it down for reliability reasons, we would back it  
22 down for safety reasons, we would back it down if it wasn't  
23 cost-effective.

24 Again, standard offer contract, the terms and  
25 provisions here are to protect the customers. The customers

1 are treated the same as they would if the avoided unit had been  
2 built.

3 Q Ms. Dubin, you just gave us quite a laundry list of  
4 circumstances under which you might require the renewable  
5 generator to back down. If you look at 8.4.8, do you see any  
6 of those circumstances set out there?

7 A No, I don't.

8 Q If FPL exercised its right to curtail 18 times per  
9 year as this provision 8.4.8 sets out, that would actually make  
10 the 97 percent factor even higher, wouldn't it?

11 A Yes, it would. Again, I think it's important to  
12 point out that the standard offer contract has to be a  
13 one-size-fits-all for all types of renewable generators, for  
14 all types of, of generators, and that's why this provision is  
15 here.

16 Q And I guess you'd agree with me that up to today we  
17 haven't found any generator whose size it fits; right?

18 A No. And, again, we are, are using it for contract  
19 negotiations. Yes.

20 Q Right. But nobody has executed this contract, just  
21 so we're clear.

22 A No one has executed this contract. Yes.

23 Q Okay. If you -- excuse me.

24 A May I just also add, you know, that we do use it for  
25 negotiation purposes, but also we also have customers or,

1 excuse me, vendors that are already under contract so they  
2 wouldn't avail themselves of it right now. They're already  
3 contracted with FPL.

4 Q But you did say in your testimony that you think this  
5 is going to encourage the development of renewable generation;  
6 right?

7 A Yes.

8 Q So that would, that would be, I assume that you meant  
9 on a going-forward basis.

10 A Yes.

11 Q Okay. If you would turn to Page 7 of your direct,  
12 please, and if you would look at Lines 1 to 2 there, you are  
13 talking about the sliding scale for payments, which I think you  
14 mentioned in another answer.

15 A Yes.

16 Q Okay. And on Line 2 you are, if I understand your  
17 testimony, you're supporting that sliding scale as approved in  
18 Order Number 24989.

19 A Yes.

20 Q Okay. That order was entered in 1991; correct?

21 A That is correct.

22 Q Okay. So I have to do the math. What is that, 18  
23 years ago; correct?

24 A Yes.

25 Q Okay. So clearly it predates the Section 366.91 and

1 92 renewable generator language we've been talking about here?

2 A Predates it, yes.

3 Q Okay. And that order doesn't discuss or mention or  
4 even touch upon in any way renewable generation or the  
5 encouragement of renewable generation or the benefits it brings  
6 to the state; correct?

7 A No. It more goes to customers and protection of the  
8 customers and being able to have customers pay for, you know,  
9 for capacity, and providing a sliding scale is a good way to  
10 encourage that.

11 Q And it doesn't talk at all about renewable  
12 generation. I just want to be clear.

13 A No, it does not.

14 Q Let me talk to you for a moment about the maintenance  
15 provisions in your, in your 2008 contract.

16 A Yes.

17 Q The current Wheelabrator contract, current  
18 FPL/Wheelabrator contracts have maintenance provisions in them;  
19 right?

20 A Yes.

21 Q And if you would take a look at Exhibit 15, I believe  
22 that they are on Page 5 in both of the contracts. Am I right  
23 about that, Page 5 of 13?

24 A Yes.

25 Q And if I can just paraphrase, the current arrangement



1 for maintenance under this standard offer contract between  
2 Wheelabrator and FPL is essentially that the parties will work  
3 cooperatively to coordinate their maintenance schedules; right?

4 A Yes, that is correct.

5 Q Okay. This provision and this coordination hasn't  
6 created any problems over the course of your relationship with  
7 Wheelabrator, has it?

8 A No, it has not.

9 Q You have been able to cooperatively schedule  
10 maintenance to the satisfaction of both FPL and Wheelabrator?

11 A Yes, we have. Again, the standard offer contract  
12 though is not just open to Wheelabrator. It's open to all  
13 types of generators and hence has to capture all kinds of  
14 characteristics.

15 Q Well, this contract that we're looking at is a  
16 standard offer contract too; right?

17 A Yes, it is.

18 Q Okay. If you take a look at your provision in your  
19 2008 contract, I think it's Section 8.2 that deals with  
20 maintenance. And that's the third page, Commissioners, sheet  
21 9.035.

22 A Yes.

23 Q And basically to paraphrase, that provision says that  
24 maintenance can only be scheduled during periods that FPL  
25 approves; correct?

1 A Periods that FPL approves and --

2 Q Is that a yes or a no? I'm sorry.

3 A I'm sorry. Yes. It's periods that FPL approves.

4 And the reason being is, is that the maintenance, you wouldn't  
5 want maintenance in the middle of July. You would want those,  
6 the units available to provide service, provide energy to FPL's  
7 customers when you need it. So it would make sense to  
8 coordinate and to have the maintenance scheduled at an  
9 appropriate time where customers get the benefit of the energy  
10 not being offline when, when, in the summertime, for example,  
11 when it's needed.

12 And that is the same way that we would schedule  
13 maintenance for the next planned generating unit. So, again,  
14 the, we're treating this so customers would get the same  
15 benefit from the standard offer contract from purchasing from a  
16 generator that they would if we had built the unit.

17 Q And, again, you've given us quite an explanation of  
18 your view of this provision. None of that information appears  
19 in Section 8.2, does it? It just says that the QS shall  
20 schedule maintenance only during periods approved by FPL;  
21 correct?

22 A Yes.

23 MR. ANDERSON: At this point I'd like to interject  
24 and very, very specifically. Let's just review the lines of  
25 the questioning over the past few minutes, the 97 percent

1 issue. That's Pages 14 to 17 of Ms. Dubin's rebuttal. The  
2 Section 8.4.8 was Pages 8 to 9 of the rebuttal; the sliding  
3 scale for capacity payments, Page 12 to 13 of rebuttal;  
4 maintenance, Page 14 of rebuttal. And, you know, to maintain  
5 the correct order of proof, the correct time for that  
6 interrogation is at that time.

7 I respectfully request that, you know, the, that  
8 these, these questions are far beyond the scope of direct.  
9 They're appropriate questions in reference to the rebuttal  
10 testimony and that's the right time to do that so that we  
11 streamline this proceeding and not get into discussions at a  
12 later time of what has gone before and what needs to be done in  
13 reference to rebuttal testimony. But this is right down the  
14 line out of the rebuttal.

15 COMMISSIONER EDGAR: I'm always in favor of  
16 streamlining.

17 Ms. Kaufman, can you point for my benefit to where in  
18 the direct you are basing these questions on?

19 MS. KAUFMAN: Yes, Madam Chair. And if I could make  
20 a preliminary comment.

21 COMMISSIONER EDGAR: You may.

22 MS. KAUFMAN: Okay. And that is I appreciate  
23 Mr. Anderson suggesting as to how I should conduct my cross.  
24 However, I'm entitled to inquire in regard to the  
25 reasonableness of what Ms. Dubin is proposing, and the fact

1 that she may address that in rebuttal does not mean that I am  
2 not entitled to inquire of her on direct. She made some  
3 general statements in direct just as we discussed earlier with  
4 Ms. Helton in regard to the reasonableness, the compliance of  
5 this contract with your rules, and I am entitled to inquire as  
6 to the specific provisions.

7 We discussed at one point in this case combining  
8 direct and rebuttal, and Florida Power & Light, as is their  
9 right, declined. And having done that -- that is their right.  
10 But I do not think they can constrain my cross-examination in  
11 regard to Ms. Dubin's assertions that this is a reasonable,  
12 compliant contract by trying to restrict me from asking her  
13 about specific provisions just because she addresses those in  
14 her rebuttal.

15 COMMISSIONER EDGAR: And where in the direct are you  
16 basing your questions on?

17 MS. KAUFMAN: It's the same provisions that we talked  
18 about before, that the standard offer contract encourages the  
19 development of renewable resources, that FPL is supportive of  
20 the development of renewable resources. She has many general  
21 standards in regard to how this contract --

22 CHAIRMAN EDGAR: Can you point me to -- I'm sorry.  
23 Can you point me because I can't read at the same time I'm  
24 listening to you. I'm sorry. I just can't do both.

25 MS. KAUFMAN: I'm sorry. I'm sorry. I'm talking

1 quickly.

2 COMMISSIONER EDGAR: Can you point me where in direct  
3 one of these statements that you are basing these questions on?

4 MS. KAUFMAN: Page 2, Line 23, at the very bottom  
5 going over to the top of Page 3, she says the standard offer  
6 contract encourages the development of renewable resources in  
7 the state. And -- oh, I was going to give you another  
8 reference. I'm sorry.

9 COMMISSIONER EDGAR: That's all right. I was, I was  
10 thinking.

11 MR. ANDERSON: If I might add just one other thought.  
12 May I, Madam Chairman?

13 COMMISSIONER EDGAR: Always, Mr. Anderson.

14 MR. ANDERSON: Okay. Thank you. The order of proof  
15 is such that we begin and we end. All these points were raised  
16 --

17 COMMISSIONER EDGAR: Maybe.

18 MR. ANDERSON: -- were raised in Mr. Dalton's -- I  
19 hope for a satisfactory end. We were perfectly happy to put on  
20 Ms. Dubin once, but as following, being the second witness with  
21 direct and rebuttal combined together for precisely this  
22 reason, so this could all be done at once. What's incorrect  
23 here and unfair is to purport to interrogate on all the issues  
24 in the rebuttal testimony in the direct and then we come back  
25 around at the end of the case. That's not the correct order of

1 proof. And all these points, as I've indicated, are directly  
2 rooted in the rebuttal testimony. That's the time for that.  
3 And, again, we really risk not having a streamlined proceeding  
4 if we do not move through and limit to the correct scope of  
5 the, of the testimony.

6 MS. KAUFMAN: Madam Chair.

7 COMMISSIONER EDGAR: Ms. Kaufman.

8 MS. KAUFMAN: Yes. I was simply going to say that,  
9 you know, we're certainly as happy as anyone to try to  
10 streamline the proceeding. Nonetheless, we are entitled to  
11 inquire specifically -- Ms. Dubin makes general statements and  
12 I think we are entitled to go behind those statements and  
13 inquire -- we're here talking about the specific contract. It  
14 was FPL's strategy or whatever you want to term it and how they  
15 put their case together, that does not limit my right to test  
16 her questions and to deal with the specific provisions in the  
17 contract in the order that I choose to do it.

18 COMMISSIONER EDGAR: Ms. Kaufman, about how many more  
19 roughly questions do you have along this same line?

20 MS. KAUFMAN: I do not have too many more. I don't.  
21 I can't tell you exactly, but I have a couple more provisions  
22 that I want to talk to Ms. Dubin about. I'd say two.

23 COMMISSIONER EDGAR: Okay. Mr. Anderson, I note your  
24 objection. I'm going to overrule at this time.

25 Ms. Kaufman, please be cognizant of, because I think

1 this has occurred some, of trying not to ask the same question  
2 repeatedly.

3 MS. KAUFMAN: Yes. And it is not my intention to ask  
4 the same questions twice.

5 COMMISSIONER EDGAR: Okay. Let's proceed.

6 MS. KAUFMAN: Thank you.

7 BY MS. KAUFMAN:

8 Q Ms. Dubin, I think we were looking at the maintenance  
9 provision, and let me turn back to that, which is Section 8.2;  
10 correct?

11 A Yes.

12 Q And I believe that you had testified that this  
13 provision allows FPL to reject the renewable energy, the  
14 renewable generator's maintenance schedule; correct?

15 A Yes.

16 Q Okay. And it also permits you to limit the number of  
17 maintenance days; correct?

18 A Yes. That is correct.

19 Q Okay. I want to ask you about, I think, one more  
20 specific provision in the contract and that has to do with the  
21 trip test requirement.

22 A Yes.

23 Q Can you tell us what a trip test is?

24 A A trip test is a test that they do to, to test the,  
25 to test the turbine. I'm not an engineer, so let me -- but

1 it's kind of a way that has been described to me as to test the  
2 turbine, that if it continues to rotate, that it shuts off at a  
3 certain time so that, you know, as things continue to rotate,  
4 things could, blades and so forth could, could -- for safety  
5 reasons that they need to have like a shutoff or a trip.

6 Q The current standard offer between Wheelabrator and  
7 Florida Power & Light, those two contracts, they don't have a  
8 trip test requirement, do they?

9 A I don't believe they do. No.

10 Q And that has not created any problems between the  
11 parties under the current standard offer, has it?

12 A No, it has not. Again though the 2008 standard offer  
13 contract is based on a 2014 combined cycle unit as the avoided  
14 cost. So all of the characteristics of that are included in  
15 this contract and all the protections to the customers so that  
16 maintenance, testing and everything else are, are similar.

17 Q So does FPL, if and when its next planned unit comes  
18 online, they're going to conduct a trip test on that unit?

19 A Yes.

20 Q And would I be correct that if the unit fails the  
21 trip test, that there is no penalty to FPL for that; correct?

22 A Penalty. Can you describe penalty?

23 Q Is there -- well, let's back up. If the renewable  
24 generator doesn't meet the trip test requirements, then they're  
25 in default of the contract; correct?



1           A     Yes.

2           Q     Okay.  Now if FPL's projected unit doesn't meet the  
3 trip test requirement, is there any monetary penalty assessed  
4 against FPL?

5           A     It could be if it was included in the generating  
6 performance incentive.

7           Q     Okay.  But I think we've discussed before you'd agree  
8 that you don't even become eligible for that until after three  
9 years of operation; correct?

10          A     Yes, that's correct.

11          Q     So you do a trip test when the unit comes online;  
12 correct?

13          A     Yes.

14          Q     And if you did a trip test and the unit didn't  
15 perform, there wouldn't be any penalty to FPL; right?

16          A     It wouldn't be able to, it wouldn't be running.  
17 Penalty in that, in that form, no, I don't think so.

18          Q     Take a look at Page 6, Line 4 of your direct  
19 testimony.  Are you there?

20          A     Yes.

21          Q     Okay.  And you're characterizing Wheelabrator's  
22 concerns with the contract.  And you say, quote, they're simply  
23 a rehash of old arguments; correct?

24          A     Yes.

25          Q     Okay.  You'd agree with me, would you not, that since

1 the enactment of 366.91 and 92 relating to renewable providers  
2 that the Commission has not reviewed any of these terms that  
3 we're discussing today in the context of an evidentiary hearing  
4 like we're having today?

5 A The Commission has reviewed the standard offer  
6 contracts and the rules, I believe, in 2006.

7 Q Okay. But it has not reviewed them in the context of  
8 an evidentiary proceeding such as we're having today with  
9 expert witnesses; correct?

10 A I don't believe so. No.

11 Q On Page 7 of your direct at the bottom, well,  
12 actually beginning at Line 15 and going over to the top of  
13 Page 8.

14 A Yes.

15 Q You're discussing the right of first refusal for the  
16 RECs that you've included in the 2008 contract; correct?

17 A Yes.

18 Q Okay. And if I understand it, if a renewable  
19 generator wants to sell their renewable attribute to a party,  
20 before it can do that it must come to FPL and give FPL 30 days  
21 to decide if FPL would like to purchase the REC; is that right?

22 A Yes. The renewable generator owns the RECs, but if  
23 he has a bona fide offer, he gives FPL the right of first  
24 refusal for those RECs and the time period is 30 days.

25 Q So that if a renewable generator had the opportunity

1 to sell that REC within ten days, they, would you agree that  
2 they might not be able to consummate that transaction because  
3 first they have to come to FPL and give FPL 30 days to think it  
4 over?

5 A Again though --

6 Q Could you, again, if you could do the yes or no, I  
7 would appreciate it very much.

8 A Okay. The answer is yes. But it's important to note  
9 that, again, this is a standard offer contract, one that has to  
10 be a one-size-fits-all. And a provision like 30 days or longer  
11 periods or shorter periods are better tailored for a negotiated  
12 contract where there's give and take and there's discussion on  
13 how that best meets the parties in that, in that situation.

14 Q How did you come up with 30 days instead of five days  
15 or 120 days?

16 A Thirty days is a, is a, is a standard, it's about a  
17 month. And I believe the other, the other IOUs use the, use  
18 the same. It gives an opportunity -- if you just kind of go  
19 through the things that you'd have to do in order to make a  
20 decision on a REC, review it, get it approved and those types  
21 of things, it could take about 30 days.

22 Q Did you do any analysis of REC trading in the time  
23 periods that usually apply, REC auctions and RFPs?

24 A I did not.

25 Q Did anybody to your knowledge before they used this

1 30 days?

2 A I do not know. It was before I, I, I took over this  
3 position.

4 Q Now on your direct testimony, Page 4 at the top, and  
5 I think you have talked about this some, you say that, to  
6 paraphrase, FPL views its standard offer as providing a  
7 reasonable base from which project owners and developers may,  
8 if they choose, seek to negotiate; correct?

9 A Yes.

10 Q You would agree with me, would you not, that the fact  
11 that you may be willing to negotiate does not obviate your  
12 obligation to have a continuously available standard offer  
13 contract?

14 A No, it does not.

15 Q And the fact that you are willing to negotiate or may  
16 negotiate cannot take the place of complying with the statute?

17 A No. And the -- we do comply with the statute, and  
18 the, the other benefit of the standard offer contract is just  
19 that. It can be used as a basis for negotiation.

20 Q If a renewable generator came to you and said I'm  
21 really not that keen on the terms of the standard offer, I  
22 don't want to use that as a starting point, here's my template,  
23 can we talk about this, would FPL insist on using the standard  
24 offer contract to negotiate from?

25 A No. It would depend on the circumstances. But,

1 again, you know, if we had a renewable generator that came to  
2 us and the contract terms were good and, and that they were to  
3 the benefit of our customer, certainly we would entertain that.

4 Q You would agree, wouldn't you though, that the way  
5 you generally conduct your negotiations is by proffering the  
6 standard offer first?

7 A Yes.

8 MS. KAUFMAN: If I could have a moment, Madam Chair.

9 COMMISSIONER EDGAR: Yes, ma'am.

10 MS. KAUFMAN: Thank you.

11 (Pause.)

12 That concludes my direct -- my cross-examination.

13 Thank you, Madam Chair.

14 COMMISSIONER EDGAR: Thank you. Are there questions  
15 from staff for this witness?

16 MS. HARTMAN: No, there aren't.

17 COMMISSIONER EDGAR: Commissioners, any questions at  
18 this time for Ms. Dubin? No?

19 Mr. Anderson.

20 MR. ANDERSON: I don't think we're going to have  
21 redirect. But there is one point of factual accuracy that, if  
22 I might be permitted to, I'll review with the witness. Just we  
23 had something checked while we listened and so just so we have  
24 the record straight and correct. Is that okay?

25 COMMISSIONER EDGAR: Yes.

1           MR. ANDERSON: If I might borrow your -- here, I'll  
2 read you exactly what I'm going to review and I wanted you to  
3 see too. While we were listening to the questions about the  
4 average billing capacity factor for Broward North, we checked  
5 and determined that, with the person that prepares these  
6 reports that the May 97 percent ACBF number shown in the report  
7 is the basis for payment to Wheelabrator in that month and that  
8 the 97 percent ACBF number for May was calculated based on a  
9 12-month rolling average. The significant point is that we  
10 incorrectly stated on the record that that was a current month,  
11 and it actually is a 12-month rolling. And we just, I just  
12 wanted to provide that to the witness and give her the  
13 opportunity to make that correction on the record.

14           COMMISSIONER EDGAR: Ms. Kaufman.

15           MS. KAUFMAN: Madam Chairman, you know, I'm kind of  
16 stunned by Mr. Anderson's testimony here. I mean, he is not  
17 the sworn witness, Ms. Dubin is, and now I think he's  
18 proffering information that was received from another person  
19 that also is not on the stand. I think that is totally  
20 inappropriate. Ms. Dubin is the witness and she is the only  
21 witness in this case, and I don't think it's appropriate to  
22 reach outside and get information from someone that's not here  
23 and then let Ms. Dubin proffer it. I think that's totally  
24 inappropriate, as is Mr. Anderson's testimony.

25           MR. ANDERSON: And if I might respond, first and

1 foremost, I don't think it's important in the nature of this  
2 case whether the information one way or the other is in the  
3 record so much. But as an attorney with a duty of candor to  
4 the tribunal, knowing that an incorrect statement was made, I  
5 just wanted to make sure there was an opportunity for the  
6 correct information to be heard. So what I would do is just  
7 ask her the questions, whether she knows this person, whether  
8 she can reasonably rely upon it, whether, whether this would be  
9 a correction. But the important thing is we're just very  
10 focused on factual accuracy. We heard an incorrect statement  
11 concerning the 12-month rolling. We just wanted to be very  
12 clear what it is and is not. I don't view it as an important  
13 thing in the greater scheme of things other than the importance  
14 of making sure we are accurate.

15 COMMISSIONER EDGAR: I do not agree with the  
16 characterization of Mr. Anderson's comments as testimony. And,  
17 and recognizing that the goal, one of many, but one of the  
18 goals is an accurate record, Mr. Anderson, I will allow  
19 briefly.

20 MR. ANDERSON: Thank you. Thank you.

21 REDIRECT EXAMINATION

22 BY MR. ANDERSON:

23 Q Ms. Dubin, I just handed you a document. Would you  
24 please review that? Do you know whose handwriting that is?

25 A Yes. It's Mr. Lom who works for me for Florida Power

1 & Light.

2 Q Okay. And, but could you just tell us what  
3 information is contained in it, whether it's something you  
4 would reasonably rely upon in the conduct of your duties and  
5 whether you would wish to offer this as a correction or not in  
6 this proceeding?

7 A Yes, I --

8 CHAIRMAN EDGAR: Ms. Dubin, just a moment. And I was  
9 going to say, and then, Ms. Kaufman, I'll allow you that  
10 because it is a little unusual, that if you have a question to  
11 Ms. Kaufman, excuse me, to Ms. Dubin, I apologize, to  
12 Ms. Dubin, I will allow that too after Mr. Anderson has  
13 finished here in a moment. Did you have a comment that you  
14 wanted to make?

15 MS. KAUFMAN: Yes, Madam Chair. I understand your  
16 ruling, and I simply want to state my objection for the record  
17 that I think this is an inappropriate way to introduce evidence  
18 into the case. But I just want the record to reflect my  
19 objection.

20 COMMISSIONER EDGAR: So noted.

21 MS. KAUFMAN: Thank you.

22 COMMISSIONER EDGAR: Mr. Anderson.

23 MR. ANDERSON: That's the only question, and perhaps  
24 if the witness might just consider that and see what she says  
25 and we're done.



1 THE WITNESS: Yes. I misspoke. The billing capacity  
2 factor was calculated, for May was calculated based on a  
3 12-month rolling average. I had, I had, I had incorrectly  
4 characterized those as monthly amounts and they are 12-month  
5 rolling averages.

6 COMMISSIONER EDGAR: Ms. Kaufman, do you have any  
7 question to pose to Ms. Dubin on this point?

8 MS. KAUFMAN: I do, Madam Chairman. Thank you.

9 COMMISSIONER EDGAR: You may.

10 RE CROSS EXAMINATION

11 BY MS. KAUFMAN:

12 Q Ms. Dubin, when did you become aware of this error?

13 A I misspoke, Ms. Kaufman. I believe I knew that and  
14 I, I did get confused. I'm sorry.

15 Q And the information that you have looked at was  
16 provided by whom?

17 A Mr. Lom, who's a supervisor in, in resource planning.  
18 He reports to me and he is the contract administrator for the  
19 Broward Wheelabrator contracts, does all the payment processing  
20 and so forth.

21 Q And he wrote that information down for you right now  
22 on a yellow piece of paper for you to read into the record?

23 A I'm sorry. The information came from him, yes.

24 Q Thank you.

25 MR. ANDERSON: That's all we had. And thank you for

1 your forbearance, but we just wanted to make sure we were  
2 correct.

3 COMMISSIONER EDGAR: Anything from staff?

4 MS. HARTMAN: Nothing further.

5 COMMISSIONER EDGAR: Okay. Ms. Dubin, you are  
6 excused for the time being, but we will see you back at some  
7 point.

8 THE WITNESS: Thank you.

9 COMMISSIONER EDGAR: Ms. Kaufman.

10 MS. KAUFMAN: Madam Chair, yes. I would move  
11 Exhibits 13 through 16.

12 COMMISSIONER EDGAR: Mr. Anderson?

13 MR. ANDERSON: No objection. But as to Number 16,  
14 which is an excerpt from the standard offer contract, we wish  
15 to offer the entire standard offer contract for the record.

16 MS. KAUFMAN: I have no objection.

17 MR. ANDERSON: And we have copies.

18 MS. KAUFMAN: I was trying to just focus on the  
19 provisions I was concerned with.

20 COMMISSIONER EDGAR: And do we have that available?

21 MR. ANDERSON: We have it available. And we suggest  
22 it just remain Number 16, if that's agreeable to counsel. And  
23 instead of being excerpt, it would be the standard offer  
24 contract.

25 COMMISSIONER EDGAR: Okay. Thank you. We will

1 reidentify Exhibit 16 as the, as the 2008 FPL standard offer  
2 contract, not an excerpt obviously. And with that, 13, 14, 15  
3 and 16 are admitted into the record.

4 (Exhibits 13, 14, 15 and 16 admitted into the  
5 record.)

6 Ms. Kaufman, you may call your witness when you are  
7 ready.

8 MS. KAUFMAN: Thank you, Madam Chair. Wheelabrator  
9 would call Mr. John Dalton.

10 JOHN C. DALTON  
11 was called as a witness on behalf of Wheelabrator Technologies,  
12 Inc. and, having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. KAUFMAN:

15 Q Mr. Dalton, you were sworn; correct?

16 A Yes, I was.

17 Q Okay. If you would state your name and business  
18 address for the record, please.

19 A Certainly. My name is John C. Dalton. My business  
20 address is 706 West Street in Carlisle, Massachusetts, and the  
21 zip code is 01741.

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

23 A I am the President of Power Advisory, LLC.

24 Q Did you cause to be filed in this case 39 pages of  
25 testimony, Mr. Dalton?

1           A     Yes, I did.

2           Q     And do you have any changes or corrections to that  
3 testimony?

4           A     Yes. I have three typos that I would like to  
5 correct.

6           Q     If you would go ahead and do that, please.

7           A     Certainly. The first two are on Page 17. In Line 4,  
8 the second word is "RAEF," the A should be struck and it just  
9 should read "REF."

10                   On that same page, Page 17, Line 18, the last word in  
11 the sentence, "rated" should read "rate."

12                   And then finally on Page 32, Line 17, Option D, the D  
13 should be struck and it should read option -- excuse me. It  
14 reads currently now "Option C." The C should be struck and it  
15 should read "Option D."

16           Q     With those corrections, if I asked you the questions  
17 contained in your direct testimony, would your answers this  
18 morning be the same?

19           A     They would.

20                   MS. KAUFMAN: Madam Chair, we would ask that  
21 Mr. Dalton's prefiled testimony be inserted into the record as  
22 though read.

23                   COMMISSIONER EDGAR: The prefiled direct testimony  
24 will be inserted into the record as though read with the  
25 corrections noted.

1 MS. KAUFMAN: Thank you.

2 BY MS. KAUFMAN:

3 Q Mr. Dalton, you also have two exhibits attached to  
4 your testimony that have been marked as 3 and 4 already. Do  
5 you have any changes or corrections to either of those  
6 exhibits?

7 A Yes. I have one minor change to Exhibit JCD-2.

8 Q Can you tell us what that is?

9 A Certainly. That's in the last column which reads  
10 Year 2009 Estimated EAF. For Lauderdale Number 4, the first  
11 identified unit, that column should be blank. And for  
12 Lauderdale Number 5 where the, for that column, the Year 2009  
13 Estimated EAF which is currently blank in that column, it  
14 should read "93.5."

15 Q Okay. So essentially the 93.5 needs to be moved from  
16 the top line to the next line.

17 A That's correct.

18 Q Okay. And with that change, are your exhibits  
19 accurate and correct?

20 A Yes.

21

22

23

24

25

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

**WHEELABRATOR TECHNOLOGIES, INC.**

**TESTIMONY OF JOHN C. DALTON**

**DOCKET NO. 080193-EQ**

**DECEMBER 1, 2008**

**I. INTRODUCTION**

**Q. Please state your name, business address, and the nature of your business.**

A. My name is John C. Dalton. I am President of Power Advisory LLC (Power Advisory). My business address is 706 West Street, Carlisle, Massachusetts. Power Advisory is a management consulting firm focusing on the electricity sector and specializing in electricity market analysis and strategy, power procurement, energy policy development, and electricity project feasibility assessment.

Power Advisory's clients include power planning and procurement agencies, regulatory agencies, generation project developers, and electric utilities.

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

A. I am appearing on behalf of Wheelabrator Technologies, Inc. (Wheelabrator).

**Q. Please briefly describe Wheelabrator.**

A. Wheelabrator is a wholly-owned subsidiary of Waste Management Inc. Wheelabrator operates 16 waste-to-energy plants across the U.S. and built the first commercially successful waste-to-energy plant in the United States. In Florida, Wheelabrator owns and operates 2 waste-to-energy facilities in Broward County and built and operates the City of Tampa's waste-to-energy facility. Wheelabrator also

owns and operates a waste wood/tires/landfill gas-to-energy facility in Auburndale. Renewable energy facilities operated by Wheelabrator in Florida have a generating capacity of more than 200 megawatts of renewable energy.

**Q. What is your academic and professional background?**

A. I am an electricity market and policy expert with over 20 years of experience in the electricity sector. I specialize in energy market analysis, electricity policy analysis and development, power procurement and contracting, generation project evaluation, and strategy development. I am experienced in the evaluation and analysis of electricity markets and the competitive position of generation technologies and projects within these markets. I have considerable experience with the review of electric utility resource plans and resource planning methods.

I have developed and overseen the development of numerous market price forecasts across North America, including forecasts for the Florida Reliability Coordinating Council (FRCC) market area where Florida Power and Light Company (FPL) is located. These price forecasts were used to support generation project development efforts, project financings, regulatory policies, and power procurement efforts.

I have reviewed numerous electric utility avoided cost estimates and advised clients on the reasonableness of these estimates and the methodologies for developing them.

1 I have developed detailed financial pro formas of numerous generation  
2 projects employing a wide range of technologies to assess the projects' financial  
3 feasibility and economic value. These analyses often identified strategies for  
4 enhancing project values. I have developed models to estimate the pricing of  
5 competitors and establish bidding strategies.

6 I have assisted clients in drafting long-term power purchase agreements with  
7 appropriate allocations of project risks and contract terms to enable project financing  
8 and development, while maintaining appropriate incentives for efficient project  
9 operation. I have led the negotiations of power purchase agreements. I have  
10 extensive experience with the development of competitive bidding processes for  
11 conventional fossil, cogeneration, and renewable technologies and the development  
12 of successful proposals in response to such processes.

13 I have served as a consultant to the electricity sector for over 20years with  
14 various firms and prior to this period served as an economist with the Massachusetts  
15 Energy Facilities Siting Council where I reviewed electric utility demand forecasts  
16 and supply plans and applications for the construction of new energy facilities. Prior  
17 to this, I served as an economist with the Massachusetts Department of  
18 Environmental Protection where I assisted with the costing of emission control  
19 initiatives targeted at electric utilities and major industrial facilities.



1 I have testified in a number of proceedings across North America on issues  
2 ranging from the need for new electric generating facilities, electric utilities'  
3 competitive procurement practices, wholesale electricity market prices, transmission  
4 pricing policy, and the likely competitiveness of wholesale power markets.

5 I have a BA in Economics from Brown University and an MBA from Boston  
6 University and have taken courses in resource planning methods and regional  
7 planning at the Massachusetts Institute of Technology and Boston University. A  
8 copy of my curriculum vitae is attached as Exhibit No. \_\_\_\_ (JCD-1).

9 **Q. Do you have experience with the design and evaluation of SOC's?**

10 A. Yes. I have extensive experience in the design and evaluation of SOC's. I have  
11 provided presentations at conferences on the issues associated with the design of  
12 standard offers. In 2005, I led a team that assisted the Ontario Power Authority  
13 (OPA) with the design of its Standard Offer Program. In the two years since its  
14 Standard Offer Program was rolled out, the OPA has contracted for over 1,300 MW  
15 of renewable energy. This experience demonstrates that a program with the  
16 objective of encouraging broad participation can produce significant amounts of  
17 renewable generation.

18 The Ontario example also illustrates that many developers are interested in  
19 providing electricity from renewable resources; in contrast, the lack of market  
20 response to the FPL SOC indicates how adverse its provisions are for renewable  
21 energy facility (REF) developers. While it is important to recognize that the

1 significant market response to Ontario's standard offer program is driven in part by  
2 the greater renewable resource potential in Ontario, equally important is the design of  
3 the standard offer program and contract.

4 In October 2007, the OPA engaged Power Advisory to review its Standard  
5 Offer Program for photovoltaics and recommend modifications to the program. In  
6 June 2008, Power Advisory was engaged to assist the OPA with refining the Standard  
7 Offer Program given the significant market uptake.

8 In these various assignments, I have reviewed how standard offer programs  
9 and feed-in tariffs have been implemented in other markets; evaluated the range of  
10 possible contract prerequisites and milestones; reviewed security requirements; and  
11 evaluated appropriate standard offer pricing levels.

## 12 II. SUMMARY AND RECOMMENDATIONS

13 **Q. What is the purpose of your testimony in this proceeding?**

14 A. Wheelabrator has asked me to comment on FPL's April 1, 2008 Standard  
15 Offer Contract (SOC) and Tariff filing with the Florida Public Service Commission  
16 (Commission). I will offer a number of recommendations regarding how FPL's SOC  
17 should be modified so that it better promotes the objectives of the Florida Legislature  
18 set out in section 366.92(1), Florida Statutes. That section provides, in part, that:

19 It is the intent of the Legislature to promote the development of  
20 renewable energy in this state; protect the economic viability of  
21 Florida's existing renewable energy facilities. . . .

1 In addition, section 366.91(3) requires each public utility to “continuously offer a  
2 purchase contract to producers of renewable energy.” Clearly, the Florida Legislature  
3 has indicated the state needs additional renewable power.

4 **Q. What are your principal conclusions and recommendations?**

5 A. I have reached the following conclusions regarding FPL’s SOC:

- 6 • FPL’s SOC is a barrier to the development of renewable energy resources in  
7 Florida and does not encourage the development of these resources in the  
8 State, contrary to the direction of the Florida Legislature.
- 9 • FPL’s SOC frustrates the realization of the multi-faceted benefits renewable  
10 energy offers as the Florida Legislature outlined in section 366.92, Florida  
11 Statutes.
- 12 • By revising several provisions in the SOC to balance the risks to REF  
13 developers, a workable SOC can be crafted.
- 14 • The lopsided risk allocation in FPL’s SOC is a barrier to the development of  
15 REFs that results in FPL using its own facilities to meet customers’  
16 requirements.
- 17 • Under FPL’s SOC, REFs offer FPL customers lower risks than FPL-built  
18 facilities. Therefore, implementing my recommendations will not require FPL  
19 customers to bear more risks than they bear when served from FPL’s own  
20 facilities.

1           Based on these conclusions, I recommend that the Commission direct FPL to  
2           make the following changes to its SOC:

- 3           • Because energy payments are based on avoided costs, provisions 8.4.6 and  
4           8.4.8 should be revised to compensate REF developers when they are not  
5           permitted to deliver energy or their energy delivery is reduced by FPL.
- 6           • The Committed Capacity Test in section 3 should be revised to take into  
7           account the intermittent operating profiles of REFs. I recommend a four-hour  
8           test period for biomass facilities.
- 9           • The basis for REFs receiving capacity payments should be revised to better  
10          recognize the capacity value that they offer. I propose the capacity factor or  
11          Annual Capacity Billing Factor required to achieve full capacity payments be  
12          set at 89%, and that the minimum capacity factor to receive any capacity  
13          payment be set at 69%.
- 14          • The provisions in the SOC (e.g., right of first refusal) for Tradable Renewable  
15          Energy Certificates (TREC)s should be eliminated to avoid any adverse  
16          impact on their market value and comport with the Commission rule.

17           Finally, based on Florida's efforts to develop a Renewable Portfolio Standard,  
18           which will establish an obligation for additional renewable energy development, I  
19           recommend that the Commission consider changes to the methodology it uses to  
20           establish avoided costs for renewable energy facilities to recognize that the

appropriate avoided generation resource for these projects is another renewable energy resource, not a fossil fuel-fired generating resource.

### III. U.S. AND FLORIDA RENEWABLE ENERGY OBJECTIVES

**Q. In general, is renewable energy important to the energy future of Florida and the nation?**

A. Very definitely. The Department of Energy's (DOE) main website notes that "Energy security and demand plays an increasingly vital role in our national security and the economic output of our nation." In elaborating on this point, the DOE says **"Ensuring the productive and optimal use of energy resources, while limiting environmental impact.** ...The Department of Energy is harnessing the power of the earth itself to meet our energy needs. Advances in wind, hydro and geothermal energy allow us to take advantage of clean, abundant energy." (Emphasis in original)

An office of the DOE, the Office of Energy Efficiency and Renewable Energy (EERE), has a closer focus on the use of renewables. On its website, the EERE describes a set of portfolio priorities, some of which are relevant to this docket:

- PRIORITY 1. Dramatically Reduce or Even End Dependence on Foreign Oil.
- PRIORITY 3: Increase the Viability and Deployment of Renewable Energy Technologies.
- PRIORITY 4: Increase the Reliability and Efficiency of Electricity Generation, Delivery and Use.

**Q. Do you expect these policies to continue under President-Elect Obama?**

1 A. Yes. In fact, I expect policies to promote the development of renewable  
2 energy resources to accelerate and to receive more focus from the Obama  
3 Administration than from the present Administration.

4 President-Elect Obama has stated several overall objectives in his energy  
5 policy. One of these objectives is to decrease the United States' reliance on imported  
6 energy. Another is to make the United States a world leader on climate change. In  
7 the electricity industry, President-Elect Obama promotes both increasing energy  
8 efficiency and increasing penetration of renewable energy as preferred means of  
9 achieving these overall objectives.

10 One particularly relevant statement in President-Elect Obama's Energy Policy  
11 is that 10% of the electricity supply in the United States must come from renewable  
12 resources by 2010, and 25% by 2025. Implementation of this policy will require a  
13 significant increase in generation from renewables in a relatively short time.

14 **Q. On the state level, why, in your view, did the Florida Legislature direct public**  
15 **utilities to develop and offer standard offer contracts?**

16 A. The Florida Legislature has recognized the importance of renewable energy in  
17 meeting Florida's energy needs. In 2005, the Florida Legislature directed public  
18 utilities to develop standard offer contracts to promote the development of renewable  
19 energy resources. The benefits of renewable energy resources were clearly outlined in  
20 this legislation, which states that "renewable energy facilities have the potential to  
21 help diversify fuel types to meet Florida's growing dependency on natural gas for  
22 electric production, minimize the volatility of fuel costs, encourage investment within

1 the state, improve environmental conditions, and make Florida a leader in new and  
2 innovative technologies.” (Section 366.91, Florida Statutes).

3 **Q. Is there additional documentation regarding policymakers’ continued support**  
4 **for the development and encouragement of renewable energy in Florida?**

5 A. Yes. In July 2007, Governor Crist issued Executive Order Number 07-  
6 127(State of Florida, Office of the Governor, *Executive Order Number 07-127,*  
7 *Establishing Immediate Actions to Reduce Greenhouse Gas Emissions within Florida,*  
8 July 13, 2007). In the Preamble, Governor Crist emphasized Florida’s vulnerability to  
9 climate change due to its extensive coastline and population located near the coast.  
10 The Executive Order established a greenhouse gas emission reduction target and  
11 requested that the Commission take action to initiate a rulemaking that would require  
12 electric utilities to produce at least 20% of their electricity from renewable sources.

13 The Commission is currently in the process of promulgating a Renewable  
14 Portfolio Standard (RPS) rule.

15 **Q. Has Governor Crist recently reaffirmed his support for renewable energy?**

16 A. Yes. Governor Crist repeated his determination to reduce greenhouse gas  
17 emissions as recently as November 19, 2008, when he issued a letter reiterating the  
18 goal of the Executive Order cited above. In addition, the Governor praised  
19 “Entrepreneurs [who] ... make up Florida’s green tech industry. Together, they will  
20 increase our use of renewable and alternative energy and strengthen our economic  
21 future, while also protecting our natural environment and reducing our dependence on  
22 foreign oil.”(A Special Message from Governor Crist, November 19, 2008). A viable

SOC is an attractive option to the entrepreneurs Governor Crist references and can play a key role in delivering the identified benefits of renewable and alternative energy.

#### **IV. THE ROLE OF THE STANDARD OFFER CONTRACT IN FOSTERING THE DEVELOPMENT OF RENEWABLE ENERGY**

**Q. What are the basic elements of a standard offer contract?**

A. A SOC is a contract between the buyer (i.e., electric utility) and seller (i.e., an REF) that specifies the price the utility will pay to acquire power from the supplier. It also specifies other terms and conditions of the agreement between the parties. SOCs have been used since the early 1980s to achieve regulatory policy objectives. Both SOCs (and their European counterpart referred to as “feed-in tariffs”) typically have set terms with prices fixed for the term of the contract. The prices may be adjusted over the course of the contract but only according to a fixed formula, typically to allow full or partial escalation of the price. At the time of initiation of a SOC, the seller and buyer have good certainty regarding the price and terms over the contract life.

**Q. What role can the SOC serve in pursuit of the nation’s and the state’s renewable energy policy objectives?**

A. SOCs can promote the development of renewable energy resources by providing a procurement framework that better recognizes the development barriers REFs face. SOCs have several advantages over other methods of procuring renewables:



- 1       • They can provide greater certainty regarding pricing and the terms under which
- 2       the electric utility is willing to purchase power from the REF developer, which
- 3       reduces project development risks and costs. The pricing certainty they offer also
- 4       facilitates financing;
- 5       • They greatly lower administrative costs to the developer by providing a much
- 6       simpler process for the potential developer than a request for proposals (RFPs) or
- 7       a negotiated process;
- 8       • They give the REF developer greater certainty by setting out clear prerequisites
- 9       which, if met, will lead to a contract, reducing the risk of non-selection that
- 10      developers face in an RFP or engagement in protracted negotiations; and
- 11      • They can therefore open the possibility of renewable development to a broader
- 12      range of potential participants.

13   **Q.   How are standard offer contracts structured in other jurisdictions?**

14               Two basic approaches are possible with respect to pricing in standard offer

15   contracts:

- 16      • Value-based pricing, in which the purchaser determines the value of the
- 17      renewable energy supply based on its resource portfolio and proposes to purchase
- 18      renewable energy at a price reflecting that value; and
- 19      • Cost-based pricing, in which the purchaser desires to accelerate the contribution
- 20      of renewables to the resource portfolio and establishes a price that is high enough
- 21      to attract renewables. In this case, the intrinsic desirability of supply from

1 renewables is very important. This latter approach is taken in the context of what  
2 is called a “feed-in tariff,” which is widely used in some European jurisdictions.

### 3 V. FPL’S SOC

4 **Q. Is FPL’s approach consistent with other SOC’s with which you are familiar?**

5 A. No, not in all respects. The two most significant differences are the use of the  
6 next avoidable fossil fueled generating unit as the avoided cost benchmark pursuant  
7 to Commission rules (rule 25-17.250, F.A.C.) and the fact that FPL’s SOC allocates  
8 more risk to REF developers. Although the FPL approach is nominally based on  
9 value, it does not recognize the much different value that renewable generation brings  
10 to a utility as compared to the value of generation from fossil-fuel sources, like a  
11 combined cycle gas turbine (CCGT). In fact, the CCGT produces a different product  
12 from that a REF produces and is not directly comparable.

13 By effectively assuming the same characteristics from renewable generation  
14 as from a CCGT unit, the FPL SOC fails to recognize the different characteristics of  
15 generation from renewable energy. Furthermore, by basing the SOC energy payment  
16 options on the costs of the avoided fossil-fueled generating unit, FPL prevents its  
17 customers from realizing the benefit of minimizing the volatility of fuel cost, which is  
18 one of the renewable energy benefits the Florida Legislature cites.

19 **Q. Is FPL’s approach consistent with Florida’s policy objectives regarding**  
20 **renewable energy?**

1 A. No. It is the price certainty and environmental desirability of such generation  
2 that has led, in part, to the Florida Legislature's and the Governor's support for the  
3 development of renewable energy and the requirement that Florida utilities offer a  
4 standard offer contract for generation from renewables. Surprisingly, some of the  
5 energy payment options in FPL's SOC cause REFs with stable costs to price their  
6 output to mimic the volatility of the fossil fuel-fired generation that they would avoid.  
7 This appears to be directly contrary to the goal the Legislature seeks to achieve.

8 **Q. In your view, how well will the FPL SOC meet the state's renewable energy**  
9 **objectives?**

10 A. Contrary to claims FPL witness' Dubin makes and contrary to the intent of the  
11 Florida Legislature, FPL's SOC does not encourage the development of renewable  
12 energy resources in the State. The best indication of this is the fact that not a single  
13 renewable energy resource developer has executed FPL's SOC since January 2006  
14 when it was first put in place.

15 The net effect of FPL's SOC is to reduce the amount of renewable energy  
16 likely to be developed in Florida as well as to discourage existing facilities from  
17 providing additional renewable energy to FPL. This will frustrate the realization of  
18 the multi-faceted benefits REFs offer as listed above and as outlined in section  
19 366.91, Florida Statutes.

20 **Q. What are the implications for existing REFs, such as Wheelabrator?**

1 A. REFs such as Wheelabrator, which has proven its ability to provide reliable  
2 cost-effective renewable power and has facilities in the ground in Florida, are  
3 unlikely to sign FPL's SOC. There are a number of other utilities in Florida with  
4 whom Wheelabrator could contract for the sale of the output of its existing projects  
5 and where Wheelabrator might be more likely to develop new projects. As such, the  
6 terms and conditions in FPL's SOC could prevent FPL customers from realizing the  
7 benefits of existing and new projects.

8 **VI. SPECIFIC SOC TERMS THAT SHOULD BE REVISED**

9 **Q. Can you identify the specific terms and conditions in the FPL SOC that**  
10 **discourage the development of renewable energy facilities in Florida?**

11 A. Yes. Several of the terms and conditions of FPL's SOC are commercially  
12 unreasonable and onerous for renewable energy facility developers. I will discuss  
13 four terms and conditions that are particularly problematic.

- 14 • First, the SOC provides FPL with an open-ended right to not purchase power  
15 from the REF under certain operating conditions (sections 8.4.6, 8.4.8).
- 16 • Second, the Committed Capacity Test specified in the SOC (section 6.2) is  
17 onerous for REFs given their typical operating profiles.
- 18 • Third, in order to receive capacity payments REFs have to achieve unrealistic  
19 Annual Capacity Billing Factors (i.e., greater than 80% to receive any  
20 payment and 97% to receive full payment) (section 3 and Appendix B).

- 1 • Finally, the value that REFs can realize for the tradable renewable energy  
2 certificates that they generate are likely to be adversely affected by FPL's  
3 right of first refusal and the time period specified for it to exercise this right  
4 (section 17.6.2). Though I am not an attorney, this SOC provision appears to  
5 be inconsistent with rule 25-17.280, Florida Administrative Code.

6 As discussed above, a fundamental design element of a SOC is to provide a  
7 reasonable measure of certainty to the seller and a number of the terms and conditions  
8 in FPL's SOC require the REF owner to bear an open-ended risk. This significantly  
9 reduces the value of a SOC to the REF developer. At a minimum, it makes the SOC  
10 more difficult and costly to finance and obviously financing is essential to project  
11 development.

12 **Q. What are the implications of these shortcomings?**

13 A. As I noted earlier, FPL's SOC represents a barrier to the achievement of the  
14 renewable objectives the Florida Legislature has outlined. As such, a major vehicle  
15 for the promotion of renewable energy projects is not being effectively utilized.  
16 Therefore, the state of Florida and FPL's customers are not able to realize the full  
17 benefits renewable energy resources offer. However, by revising several provisions  
18 in the SOC, as described below, a reasonable and financeable SOC can be crafted.

19 **Q. Generally, what will the changes you recommend to FPL's SOC accomplish?**

20 A. The changes, outlined below, will more appropriately balance the risk  
21 between the parties. For the SOC to be an effective part of policy initiatives to  
22 promote the development of renewable energy resources in the state, it needs to be a  
23 contract that developers are willing to sign.

1 **Right to Refuse to Purchase**

2 **Q. What are your concerns with respect to the first provision you have identified?**

3 A. As drafted, the provision regarding FPL's ability to refuse to purchase from  
4 the ~~RAEP~~<sup>REF</sup> is very broad and could be used to significantly constrain the REF's  
5 operation. Under the SOC, FPL is not required to purchase energy from REFs  
6 "during any period in which, due to operational circumstances, acceptance or  
7 purchase of such energy would result in FPL's incurring costs greater than those  
8 which it would incur if it did not make such purchases." (Section 8.4.6).

9 The four options for energy payments available to REFs all ensure that REFs  
10 receive no more than the avoided energy cost. Therefore, the REF should not be  
11 curtailed as a result of the energy payment that it is receiving being higher than the  
12 cost of another resource.

13 The only exception to this might be if the REF elected Energy Payment  
14 Options B or D which fix these energy payment rates based on forecast energy prices.  
15 However, under these options the REF, in effect, is providing FPL customers with a  
16 "hedged" energy price. Curtailment of the REF if the actual as-available energy rate  
17 is less than these rates is not appropriate. These energy payments are a contractual  
18 commitment (i.e., the REF elected these energy payment options based on the ~~rate~~<sup>rate</sup>  
19 identified) in the same way that fuel price hedges FPL enters into are a contractual  
20 commitment.

21 **Q. How do you interpret the SOC curtailment provision?**

22 A. I interpret this provision to cover periods when the REF requires changes in  
23 unit dispatch beyond the impact of the energy the REF provides. The SOC indicates

1 that this would cover “a period during which the load being served is such that the  
2 generating units on line are base load units operating at their minimum continuous  
3 ratings and the purchase of additional energy would require taking a base load unit off  
4 line and replacing the remaining load served by that unit with peaking-type  
5 generation.” (Section 8.4.6).

6 This example suggests that FPL could elect not to purchase from the REF  
7 only when the purchase would result in an increase in costs as a result of a change in  
8 system dispatch beyond the direct impact of the REF on dispatch. However, I am  
9 concerned that this provision could be broadly interpreted to allow FPL to refuse to  
10 purchase energy from the REF when its sales price is higher than the variable cost of  
11 FPL’s marginal unit. While this is may be unlikely to happen, under Energy Payment  
12 Options B or D this could occur. I recommend that this provision be redrafted to  
13 provide greater clarity.

14 **Q. What language do you recommend for this provision?**

15 A. To ensure that this provision is interpreted narrowly and not used to unduly  
16 restrict the operation of REFs, I propose the following revision to the first sentence in  
17 section 8.4.6. FPL should be directed to replace the text after “FPL shall not be  
18 required to accept or purchase energy from the QS” with the following:

19 during any period in which, due to operational circumstances,  
20 acceptance or purchase of such energy would result in excessive costs  
21 to FPL, such as would occur if a baseload unit were required to be  
22 taken off line and its energy replaced partly with the energy purchased  
23 from the REF and partly with energy from FPL’s peak facilities or  
24 other such generation facilities that have variable costs which are  
25 markedly higher than those of the facility whose energy was replaced.

26  
27

1 **Q. Do you have any additional concerns with this provision?**

2 A. Yes. Even with the proposed revision, this provision represents an open-  
3 ended risk to REF owners. While protections are needed for FPL customers  
4 regarding uneconomic purchases, there appear to be no limits on the right of FPL to  
5 invoke this provision.

6 **Q. Isn't such a provision necessary to protect FPL customers?**

7 A. No. Basing an REF's energy payments on avoided costs reduces the pricing  
8 risks to customers and protects them from uneconomic purchases. However, section  
9 8.4.6 of FPL's SOC is a potential barrier to financing REFs given FPL's open-ended,  
10 unqualified right to not purchase power.

11 Energy revenues are critical to the financial viability of REFs. Most REFs  
12 have low marginal operating costs and high fixed costs, producing margins when they  
13 run. Therefore, their capital cost recovery is based on their hours of operation. (This  
14 provides strong incentives for maximizing their energy output.) This is especially  
15 true under the FPL SOC as currently drafted because its terms may result in many  
16 REF developers receiving no capacity payments at all. The SOC provides REF  
17 developers capacity payments based on the avoided costs of a CCGT only if they can  
18 achieve a 97% capacity factor (Annual Capacity Billing Factor).

19 Few (if any) renewable energy facilities are likely to be able to achieve a 97%  
20 capacity factor. Many REFs will have a difficult time achieving a greater than 80%  
21 capacity factor, which is required to receive any capacity payment, because of the  
22 nature of their operations. This may explain why no REFs have signed FPL's SOC.  
23 REF developers depend largely on anticipated as-available energy revenues to



1 recover their project costs. Requiring REFs to recover a significant portion of their  
2 costs based on as-available energy rates, while giving FPL an unlimited right to  
3 refuse these purchases, is unreasonable. Therefore, I recommend that REFs that are  
4 constrained under this provision be compensated based on their lost energy margins  
5 (i.e., the contract energy price less variable operating costs) that they forgo. This is  
6 equitable and necessary to provide REFs with the revenue certainty required to  
7 finance their projects.

8 **Q. Are there other provisions that allow FPL to reduce the output of REFs?**

9 A. Yes. Under section 8.4.8 of the SOC, FPL has the right to cause the REF to  
10 reduce output to a level below the Committed Capacity but not lower than the  
11 Facility's Minimum Load. This right is limited to 18 times per year with the duration  
12 of each request not to exceed four hours. This provision allows FPL to balance its  
13 system in times of low demand by cutting back the REFs, rather than by ramping  
14 down its own generation. Recall that the REFs energy payments are based on  
15 avoided costs. FPL's right to do this is subject to no economic test; it simply has the  
16 arbitrary power to curtail the REFs on 18 occasions.

17 This arbitrary power should, at a minimum, be subject to an economic test.  
18 However, I recommend that FPL be required to provide compensation to the REFs so  
19 affected based on the lost energy margins (i.e., the contract energy price less variable  
20 operating costs) that they forgo.

21

1 **Committed Capacity Test**

2 **Q. You have said that elements of the Committed Capacity Test in the SOC are**  
3 **unreasonable. What aspects of the Committed Capacity Test are unreasonable?**

4 A. The Committed Capacity Test (section 6.2) is “based on a test period of  
5 twenty-four (24) consecutive hours (the “Committed Capacity Test Period”) at the  
6 highest sustained net kW rating at which the Facility can operate without exceeding  
7 the design operating conditions...” While a twenty-four consecutive hour test, where  
8 the capacity amount is established based on the highest sustained net kW rating, may  
9 be appropriate for a natural gas-fired facility, it is not appropriate for a renewable  
10 energy facility where the output is inherently variable.

11 Given this variability, the capacity amount or value should be based on a  
12 narrower averaging period with the capacity amount or value based on an average  
13 that recognizes that, through a diversity of resources, the variability in output can be  
14 lessened.

15 Therefore, I recommend that the Committed Capacity Test be based on a  
16 shorter-duration test period and that the test procedures recognize the intermittent  
17 nature of REFs, such that rated capacity levels are sustained for shorter periods.  
18 Based on input from Wheelabrator regarding the operating characteristics of its  
19 facilities, a four-hour test is appropriate for biomass facilities.

20 **Q. Will implementation of this change result in FPL customers paying for capacity**  
21 **that they do not receive?**

1 A. No. This is addressed by the changes that I propose to the Annual Capacity  
2 Billing Factor thresholds and general methodology discussed below.

3 **Eligibility for Capacity Payments**

4 **Q. Please describe the changes you recommend to the Annual Capacity Billing**  
5 **Factor Thresholds.**

6 A. The SOC requires that REFs have an Annual Capacity Billing Factor (ACBF)  
7 of 97% or more to receive the full Base Capacity Payment and greater than 80% to  
8 receive any capacity payment. (Appendix B to FPL's SOC). This standard is  
9 unreasonable for REFs because it fails to recognize that REFs can provide some  
10 capacity value even at lower capacity factors than the SOC requires for capacity  
11 payments. The fact that generating resources with lower capacity factors or  
12 availability factors (for dispatchable units) can provide capacity value is recognized  
13 by many system operators in the United States. For example, capacity credits are  
14 often provided for wind projects even though they are intermittent and have capacity  
15 factors that are typically half or less of that FPL requires for an REF to receive any  
16 capacity credit. To the degree an intermittent wind project with a relatively low  
17 capacity factor is viewed as offering capacity value in some markets suggests that  
18 biomass projects, such as Wheelabrator offers, clearly have capacity value even  
19 though FPL would not recognize such value if these projects have an ACBF of 80%  
20 or less.

21 **Q. How do FPL's capacity factor requirements compare to those of other utilities?**

1 A. They are higher. For example, Progress Energy Florida (PEF), who is subject  
2 to the same SOC rules as FPL, does not set as high a requirement for an REF to  
3 receive capacity payments. PEF allows full capacity payments at an on-peak capacity  
4 factor of 89%, and provides capacity payments to a minimum capacity factor of 69%.  
5 (Progress Energy Florida, Standard Offer Contract, Section 4, pg. 9.415). PEF's  
6 avoided unit employs a similar CCGT technology as FPL.

7 **Q. Is there any difference between PEF and FPL in terms of success in signing**  
8 **contracts with REFs?**

9 A. Yes. PEF has signed contracts with three renewable projects that are currently  
10 under development. (Progress Energy Florida, Progress Energy Florida's Request for  
11 Renewable Capacity and Energy, Section VI FAQs.) The Florida Biomass Group is  
12 developing a 130 MW project which will use an energy crop called E-grass. Horizon  
13 Energy plans a municipal solid waste gasification plant to produce 60 MW of energy.  
14 Vision/FL, LLC is proposing to gasify a sweet sorghum bagasse and to generate 40  
15 MW of capacity and associated energy.

16 **Q. What about other contracts that FPL has?**

17 A. Interestingly, Wheelabrator's own current contracts with FPL contain capacity  
18 factor targets which range from 70 to 87% to receive full capacity payment and from  
19 50 to 70% to qualify for any capacity payment. Clearly, these capacity factor targets  
20 are much less stringent than specified in FPL's SOC and are more appropriate for  
21 biomass facilities.

22 **Q. Do FPL's own facilities perform up to the level it seeks to impose on REFs in the**  
23 **SOC?**

1 A. Based on the information that I have reviewed, it does not appear so. Recent  
2 experience indicates that the performance risks of FPL's own generating units are  
3 significant. FPL's 2007 Form 10-K indicates that "Since June 2006, FPL has  
4 experienced different types of compressor blade failures in three combustion turbine  
5 compressors (CTCs) at two of its fossil generating plants, resulting in significant  
6 damage to the combustion turbines." The Form 10-K also notes that FPL "has 32 of  
7 this type of CTCs in its generating fleet, which were all made by the same  
8 manufacturer." (p. 10).

9 Additionally, Exhibit No. \_\_\_\_ (JCD-2) presents the equivalent availability  
10 factors (EAFs) for FPL's CCGTs that are covered by the Generating Performance  
11 Incentive Factor (GPIF), as reported in its April 2008 filing. EAFs are a commonly  
12 used measure of generating unit availability that considers partial unit deratings as  
13 well as planned and forced outages. This exhibit, which relies on information  
14 presented by FPL, indicates that the reported EAFs of FPL's CCGTs, which range  
15 from 89.5% (forecast) to 90.9% (actual), are well below what FPL requires REFs to  
16 satisfy to receive full capacity payments. Thus, FPL seeks to hold other facilities to  
17 standards its own fleet does not meet.

18 **Q. Have other jurisdictions implemented frameworks that better recognize the**  
19 **capacity value REFs offer?**

20 A. Yes. The New York market, which is run by the New York Independent  
21 System Operator (NYISO), uses the concept of UCAP, or unforced capacity. For  
22 most generation types, the amount of Dependable Maximum Net Capacity (DMNC)  
23 they are credited with is equal to their average actual generation during the months of

1 the capacity periods, summer and winter. Their UCAP is then the DMNC times (1 -  
2 their demand-rated forced outage rate).

3 **Q. Are you recommending that FPL pay for value that it does not receive?**

4 A. Absolutely not. I recognize that section 366.91, Florida Statutes, provides that  
5 “capacity payments are not required, if due to the operational characteristics of the  
6 renewable energy generator or the anticipated peak and off-peak availability and  
7 capacity factor of the utility’s avoided unit, the producer is unlikely to provide **any**  
8 capacity value to the utility or the electric grid during the contract term” (emphasis  
9 added). The point is that capacity factors below that which FPL seeks to require do  
10 provide capacity benefits.

11 **Q. Has FPL satisfied the legislative provision cited above by establishing**  
12 **performance requirements that conform to the resource that is the basis of the**  
13 **avoided cost estimate?**

14 A. No. FPL has established performance requirements that are appropriate for  
15 the avoided resource, i.e., a CCGT. These performance requirements are not  
16 appropriate for REFs, and more importantly, fail to recognize that a generating  
17 resource can provide some capacity value at a capacity factor that is below the  
18 Annual Capacity Billing Factor threshold of 80% for capacity payments currently in  
19 the SOC. (Appendix B to the SOC).

20 For example, a renewable energy facility that operates during all on-peak  
21 hours and as such has a capacity factor of less than 50% still has significant capacity  
22 value. While it might not have the same capacity value as a CCGT, given that a  
23 portion of its capacity value is really the value of the energy that it produces, it still

1 provides capacity value to FPL. Specifically, the avoided capacity value of a CCGT  
2 has two components. The first is the pure capacity value which reflects the cost of a  
3 simple cycle gas turbine (SCGT). The second is the value of the capitalized energy  
4 savings produced by the CCGT. This is essentially the CCGT's incremental capital  
5 costs relative to a SCGT that utilities incur to realize the technology's greater  
6 efficiency and lower operating costs.

7 Furthermore, even resources that only operate intermittently can offer capacity  
8 value. Through the diversity offered by a portfolio of resources, intermittent  
9 resources can provide a measure of capacity value.

10 **Q. Would a lower capacity value in the SOC require FPL's customers to pay for**  
11 **additional capacity required to supplement what the renewable energy facilities**  
12 **offer?**

13 A. No, not if the analysis of the capacity value of these renewable energy  
14 facilities is performed properly and appropriately reflected in FPL's contracts. I am  
15 simply proposing that FPL pay for the value that it receives.

16 **Q. What changes do you propose to the provisions in FPL's SOC which pertain to**  
17 **the eligibility to receive capacity payments?**

18 A. I propose that the capacity factor or ACBF required to achieve full capacity  
19 payments be modified so that it conforms to that which PEF requires, i.e., 89%, and  
20 that the minimum capacity factor to receive any capacity payment be 69%. These are  
21 availability factors in the PEF SOC and are generally consistent with EAF targets for  
22 CCGT that FPL uses in its GPIF filings, but for a renewable energy facility  
23 availability factors and capacity factors are typically similar.

1 **Right of First Refusal**

2 **Q. Finally, you take issue with the requirement of a right of first refusal for an**  
3 **REF's TRECs contained in the FPL SOC. Please describe your concerns.**

4 A. The avoided cost benchmark FPL uses is a fossil fuel unit. REFs offer a  
5 number of benefits relative to the avoided cost units that they displace. The primary  
6 avenue of compensation to REFs for these renewable attributes is the sale of TRECs.  
7 As such, care must be taken to ensure that there are no contractual constraints that  
8 prevent REFs from realizing the full market value of these TRECs.

9 The Commission recognizes this in its rules regarding TRECs. Rule 25-  
10 17.280, Florida Administrative Code, states:

11 Tradable renewable energy credits and tax credits shall remain the  
12 exclusive property of the renewable generating facility. A utility shall  
13 not reduce its payment of full avoided costs or place any other  
14 conditions upon such government incentives in a negotiated or  
15 standard offer contract, unless agreed to by the renewable generating  
16 facility. (emphasis added)  
17

18 This rule appears to prohibit the provision in the SOC which provides FPL with a  
19 right of first refusal as to the purchase of the TRECs REFs generate.

20 **Q. Hasn't the Commission found that FPL's right of first refusal for TRECs is**  
21 **appropriate?**

22 A. While it is true that in Order No. PSC-07-0492-TRF-EQ at p. 5, the  
23 Commission noted that "such a condition will insure that Florida's ratepayers enjoy  
24 all of the attributes associated with renewable generation without imposing a financial  
25 penalty to the owner of the renewable generation facility," this provision has never be



1 tested in an evidentiary hearing and appears to be inconsistent with the Commission's  
2 rule.

3 **Q. Do you agree that a 30-day period for FPL to exercise a right of first refusal to**  
4 **purchase REFs' TRECs will not impose a financial penalty on the REF?**

5 A. No. I believe that a right of first refusal will adversely affect the value of  
6 TRECs. First, a right of first refusal is likely to make it more difficult for an REF to  
7 receive full market value for its TRECs. RFP processes where TRECs are often  
8 purchased and sold typically do not provide for a seller to withdraw its offer if  
9 another party exercises its right to purchase the commodity.

10 In addition, many RFP processes do not provide sufficient time for a 30-day  
11 right of first refusal, such as FPL's SOC contains. As such, a popular approach for  
12 the sale and purchase of TRECs is not likely to be available to REFs if there is such a  
13 right of first refusal. Furthermore, as the market in Florida for TRECs develops under  
14 the forthcoming RPS, it is likely that the term for parties to conclude the purchase and  
15 sale of TRECs will be compressed as is common in competitive markets. Therefore,  
16 the right of first refusal will reduce the market for the TRECs the REFs generate.  
17 Finally, under a bilateral sale, a purchaser is less likely to be interested in pursuing a  
18 TREC purchase if a third party is able to match its offer and purchase the TRECs.

19 **Q. What do you recommend with respect to FPL's right of first refusal?**

20 A. I recommend that FPL be required to remove this provision from its SOC  
21 given it is likely to have an adverse impact on the value of the TRECs REFs generate.

1   **Q.   Finally, Wheelabrator’s Protest states that “FPL’s proposed SOC will not**  
2       **encourage the development of renewable resources in the state as required by**  
3       **Section 366.91, Florida Statutes.” Would you comment on this statement?**

4   **A.**           FPL’s SOC understates the value of renewable resources. Section 366.91  
5       indicates that “payment provisions for energy and capacity” should be “based upon  
6       the utility’s full avoided costs.” The Commission has interpreted this requirement  
7       narrowly and in its Standard Offer Contract rules (F.A.C.25-17.250) specifies that the  
8       avoided unit “shall be based on the next avoidable fossil fueled generating unit of  
9       each technology type identified in the utility’s Ten-Year Site Plan.”

10               However, as discussed earlier, the Florida Legislature has clearly recognized  
11       the multi-faceted benefits of renewable energy resources. Many of the benefits the  
12       Legislature has identified, including increasing fuel diversity, minimizing volatility of  
13       fuel costs, and improving environmental conditions, indicate that renewable energy  
14       resources offer value greater than the fossil fuel resources that they would avoid.

15               This suggests that the avoided costs of a CCGT are not an appropriate value  
16       benchmark for REFs. Furthermore, the fact that Florida’s Governor Charlie Crist  
17       issued an Executive Order requesting the Commission to develop a Renewable  
18       Portfolio Standard (RPS) which will impose an obligation on electric utilities to  
19       purchase or develop renewable energy facilities indicates that the appropriate avoided  
20       cost benchmark is no longer a fossil generating unit. With such a renewable purchase  
21       or development obligation, the appropriate avoided cost benchmarks for the SOC  
22       become renewable energy facilities.

**VII. IMPACTS OF PROPOSED SOC CHANGES ON FPL CUSTOMERS**

**Q. Do the changes you recommend to FPL's SOC mean that FPL customers will bear more risk?**

A. No. FPL customers will not have to bear more risks. FPL would likely prefer that all risks be allocated to REF owners. However, if REF owners are allocated too much risk, as is currently the case, then these facilities will not be built and ratepayers will be left bearing the risks of FPL building and operating generation assets. Therefore, the appropriate risk comparison is between the risks that FPL customers bear if FPL contracts with REFs versus the risks that customers bear if FPL builds generation facilities to serve customer requirements.

**Q. Under the FPL SOC, as currently drafted, are the risks FPL customers assume for REF and FPL-owned facilities comparable?**

A. No. Under FPL's SOC as currently drafted, the REFs offer FPL customers lower risks than FPL facilities.

**Q. What are the major risks regarding generating facilities?**

A. The major risks of each type of generating facility can be categorized into development, construction, market, and operating risks.

**Q. How do the development risks FPL customers bear compare for REFs and FPL facilities?**

A. FPL facilities require customers to bear more development risks than do REFs. For example, REF owners, not FPL customers, bear virtually all project development costs and risks. If a proposed REF project's costs are higher than

1 anticipated at the time of contracting then the REF developer must absorb these costs  
2 and cannot pass them on to ratepayers. In contrast to an REF, if an electric utility  
3 cancels a proposed generation project, but can demonstrate that it was prudent in its  
4 project development activities, then it may be able to recover these costs from  
5 customers.

6 **Q. Is FPL seeking to recover development costs for a project it never built?**

7 A. Yes. FPL has requested recovery, through the creation of a “regulatory asset,”  
8 of the preconstruction costs, including various project development costs, of its  
9 Glades Power Park Units 1 and 2 in Docket No.070432-EI. FPL seeks recovery of  
10 \$34.5 million in development costs, which have no apparent benefit to ratepayers.  
11 The Commission has not yet acted on FPL’s request; however, an REF would have  
12 no recourse to the Commission in a similar situation.

13 **Q. Who bears the risks if REFs that execute contracts with utilities are not**  
14 **developed?**

15 A. These risks are typically borne by utility customers. However, the SOC has a  
16 number of provisions which protect customers by limiting this risk in the event that  
17 REFs are not developed. Specifically, FPL’s SOC requires that REF developers post  
18 \$30/kW of Committed Capacity of Completion/Performance Security. FPL customer  
19 risks are also mitigated by the size of FPL’s generation portfolio relative to the size of  
20 the REF. Most REFs are relatively small compared to FPL generating facilities.

21 **Q. How do the construction risks FPL customers bear compare for REFs and FPL**  
22 **facilities?**

1 A. Similarly, FPL customers bear more construction risks from FPL facilities  
2 than from REFs. REF developers, not FPL customers, are at risk for construction  
3 cost overruns. If commodity or other project costs escalate and result in higher  
4 construction costs, the price paid to REF developers does not increase. The developer  
5 must manage these construction cost risks and has no ability to come to the  
6 Commission and recover its actual costs, as does FPL.

7 On the other hand, if FPL can demonstrate that it prudently managed the  
8 construction project and that the cost increases were beyond its reasonable control,  
9 typically it can pass these higher costs through to customers.

10 **Q. How do the market risks FPL customers bear compare for REFs and FPL**  
11 **facilities?**

12 A. I define market risk to include whether there is a "market" for the power as  
13 well as the uncertainty regarding the price received for such power. FPL customers  
14 bear a large portion of the "market" risks for REFs but virtually all the market risks  
15 for FPL. The market risks that REF owners bear under FPL's SOC include the  
16 variability of natural gas and oil prices and the impact on FPL's as-available energy  
17 costs that they are paid unless they elect Option <sup>b</sup>~~e~~ for energy payments.

18 Specifically, prior to commercial operation of the avoided unit, the as-  
19 available energy price that REFs are paid is based on actual energy costs (Option A)  
20 or the year- by-year projection of as-available energy costs. Therefore, the revenues  
21 REFs earn vary with fuel prices. This is a significant risk, to which FPL is not  
22 exposed, because it can pass through to its customers any changes in fuel prices

1 through the annual fuel price adjustment mechanism and its capital cost recovery does  
2 not depend on fuel prices.

3 Similarly, FPL's customers bear virtually all of the market risks of its  
4 generating units. For example, if FPL elects to build a CCGT, anticipating that the  
5 lower heat rate of such a large facility will offset its higher capital costs and reduce  
6 overall costs, but market conditions then change, it will still recover for the unit. This  
7 will be the case even though the unit operates for fewer hours than a simple cycle gas  
8 turbine, with a lower capital cost but higher heat rate that might have been a more  
9 cost-effective capacity addition.

10 In that case, FPL customers will still pay the full cost of the CCGT facility as  
11 long as it was deemed to be prudently built; in effect, the customers bear this risk.  
12 Unlike the REF's cost recovery, FPL's capital cost recovery is not at risk based on the  
13 CCGT capacity factor. If FPL were to significantly overestimate the unit capacity  
14 factor, the facility's costs likely would still be embedded in its rate base at the time of  
15 its next rate case and FPL would earn a return on that asset. Under the SOC's Energy  
16 Payment Option C, where energy payments are based on the lesser of the variable  
17 cost of the avoided unit or as-available energy costs, the REF developer is completely  
18 at risk for the operating profile of the deemed avoided unit.

19 **Q. How do the operating risks FPL customers bear compare between REFs and**  
20 **FPL facilities?**

21 A. REFs also require FPL customers to bear less risk associated with the  
22 operations of the REF than they bear with FPL facilities. Changes in the operating  
23 costs (e.g., heat rate degradation) or availabilities of REFs do not affect FPL's cost

1 recovery, unless there is a catastrophic failure at a generating unit and FPL has been  
2 deemed to be imprudent.

3 As mentioned above, recent experience indicates that the performance risks of  
4 FPL's own generating units are significant. The cost impacts of the compressor blade  
5 failures to customers are not readily apparent. However, FPL noted that the  
6 compressor blade failures reduced the availability of the three units that had such  
7 failures by an average of about 5%. (FPL Response to Wheelabrator's Third Set of  
8 Interrogatories, No. 16). Given the high capacity factor of these units, it is likely that  
9 this reduction in unit availabilities caused the units operate less than they otherwise  
10 would have. Therefore, higher cost units would have been needed to provide  
11 replacement energy. Unless the Commission takes action, these higher costs are likely  
12 to be passed on to customers. The fact that this compressor blade failure was  
13 disclosed in FPL's Form 10-K suggests that it may have a material impact on FPL.

14 **Q. What conclusions do you draw from your discussion of relative risks?**

15 A. In sum, REFs offer FPL customers lower risks than FPL facilities with respect  
16 to all four risk categories discussed above. In capital markets, the more risky the  
17 investment, the greater the expected return that investors will demand before they are  
18 willing to invest. The net effect of the current risk allocation is that REF owners bear  
19 too much risk, at least at the rates offered in the SOC, and as a consequence there has  
20 been no meaningful REF development in FPL's service territory. Therefore, revising  
21 several terms of the SOC so that it represents a more balanced allocation of risk that  
22 allows REFs to be financed, does not require that FPL customers bear more risk than  
23 they would have if FPL provided similar supplies.

1 **Q. Are the risks that FPL bears related to its regulatory compact and reflected in**  
2 **the rates of return that it is allowed?**

3 A. Most definitely. I am not suggesting that FPL should be required to bear more  
4 risks or required to follow the REF model. My point is that FPL's SOC requires REF  
5 owners to bear too much risk given the rates and terms offered.

6 **Q. Are there other issues related to risk allocation?**

7 A. Yes. There is one additional issue that flows from the differences in these risk  
8 allocations. The pricing in FPL's SOC is based on its avoided costs and, more  
9 specifically, on avoided capacity costs that reflect FPL's cost of capital. Given that  
10 FPL's cost of capital reflects its business risk and not the risks REFs bear, the avoided  
11 cost payments to REFs understate the value of REFs and enhance the attractiveness of  
12 REFs to FPL customers (they get the same price, with less risk). Specifically, these  
13 avoided costs are appropriate for a party that has the same risks as FPL. However, as  
14 I have shown, FPL bears less risk than REF owners and as such the avoided costs do  
15 not reflect this risk allocation.

16 **Q. Has the Commission commented on the risk allocation to REFs and the**  
17 **implications for risks utility customers bear under utility contracts?**

18 A. Yes. While contract terms may differ among the Florida utilities, the overall  
19 risk allocation is generally similar. The Commission has recognized that the risks  
20 REFs bear generally protect customers:

21 . . . Full capacity payments are contingent upon the Florida  
22 Biomass generator maintaining a specific 12-month rolling average  
23 capacity factor. Below a specified minimum capacity factor, there is  
24 no capacity payment and energy will be purchased at "as available"  
25 rates.



1  
2 The agreement between PEF and Florida Biomass means that  
3 the utility and its body of ratepayers will not be subject to the high  
4 costs and risks that are associated with the research and design aspects  
5 of this project. Payments to Florida Biomass are entirely contingent  
6 upon the unit's demonstrated capacity and energy production. In  
7 contrast to savings in the cost for energy actually provided by Florida  
8 Biomass, possible future benefits cannot be quantified at present. At a  
9 minimum, benefits include fuel diversity, use of a renewable energy  
10 source, and fuel price stability.  
11

12 . . .  
13

14 [T]he contract contains provisions that protect PEF and the utility's  
15 ratepayers if the renewable generation project does not work as well as  
16 it is anticipated. Performance provisions of the contract require that the  
17 12-month rolling average of the monthly capacity factor will be above  
18 a specified minimum in order for Florida Biomass to receive full  
19 capacity payment.  
20

21 Order No. PSC-06-0743-PAA-EQ at 2-3, Docket No. 060387-EQ.  
22

23 **VIII. COMMENTS ON FPL WITNESS DUBIN'S DIRECT TESTIMONY**

24 **Q. FPL witness Dubin asserts that the terms in "the SOC are necessary to protect**  
25 **the customer, without these provisions the customers would have higher costs**  
26 **and less reliable service." (Dubin, Direct Testimony, p. 3) Do you agree?**

27 **A.** No, and witness Dubin provides no support for this broad generality. As I  
28 have demonstrated, the terms in FPL's SOC create a barrier to REF development in  
29 Florida while ignoring the fact that there is a desire for renewable energy to serve as  
30 an important component of FPL's and the state's energy portfolio.

31 Under the FPL SOC terms, there has been no visible SOC-driven REF  
32 development and no SOC's executed with FPL. With no SOC-driven generation  
33 development and limited generation development from RFPs, FPL is left to develop

1 generation facilities. Therefore, under these conditions, the appropriate comparison is  
2 not whether changes to the SOC would result in an increase in costs and risks relative  
3 to the existing contract, but whether under the changes that are needed to the SOC for  
4 it to be able to support generation development, the SOC requires FPL customers to  
5 bear greater risks than under FPL developed facilities.

6 **Q. FPL witness Dubin asserts that “FPL is supportive of development of new**  
7 **renewable generation in Florida and is happy to purchase for the benefit of its**  
8 **customers capacity and energy from both new and existing renewable generating**  
9 **facilities” (p. 4). Do you agree?**

10 A. No. I have identified four major deficiencies in FPL’s SOC. If FPL is truly  
11 supportive of the development of renewable generation in Florida and is “happy” to  
12 purchase for the benefit of its customers capacity and energy then it must make its  
13 SOC more balanced.

14 **Q. What are your principal conclusions and recommendations?**

15 A. I have reached the following conclusions as to FPL’s SOC:

- 16 • FPL’s SOC is a barrier to the development of renewable energy resources in  
17 Florida and does not encourage the development of these resources in the  
18 State contrary to the intent of the Florida Legislature.
- 19 • FPL’s SOC frustrates the realization of the multi-faceted benefits renewable  
20 energy offers as the Florida Legislature outlined in section 366.91-.92, Florida  
21 Statutes.

- 1           • By revising several provisions in the SOC to balance the risks to renewable  
2           energy facility (REF) developers, a workable SOC can be crafted.
- 3           • The lopsided risk allocation in FPL's SOC is a barrier to the development of  
4           REFs that results in FPL using its own facilities to meet customers'  
5           requirements.
- 6           • Under FPL's SOC, REFs offer FPL customers lower risks than FPL facilities.  
7           Therefore, making changes to the SOC will not require FPL customers to bear  
8           more risks than they bear when served from FPL's own facilities.

9           Based on these conclusions, I recommend that the Commission direct FPL to  
10          make the following changes to its SOC:

- 11          • Given that energy payments are based on avoided costs, provisions 8.4.6 and  
12          8.4.8 be revised to compensate REF developers' when they are constrained off  
13          or down by FPL.
- 14          • The Committed Capacity Test in section 3 should be revised to better consider  
15          the intermittent operating profiles of REFs. I recommend a four-hour test  
16          period for biomass facilities.
- 17          • The basis for REFs receiving capacity payments should be revised to better  
18          recognize the capacity value that they offer. I propose that the capacity factor  
19          or Annual Capacity Billing Factor required to achieve full capacity payments  
20          be set at 89% and that the minimum capacity factor to receive any capacity  
21          payment be set at 69%.

- 1           • The provisions in the SOC (e.g., right of first refusal) for Tradable Renewable  
2           Energy Certificates (TRECs) should be eliminated to avoid any adverse  
3           impact on their market value and comport with the Commission rule.

4           Finally, I recommend that the Commission consider changes to the methodology  
5           it employs to establish avoided costs for renewable energy facilities to recognize that  
6           the appropriate avoided generation resource for these projects is another renewable  
7           energy resource, not a fossil fuel-fired generating resource.

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

9   **A.    Yes.**

1 BY MS. KAUFMAN:

2 Q Have you prepared a summary of your testimony?

3 A I have.

4 Q If you would give that.

5 A Certainly.

6 Good morning, Commissioners. As I've said, my name  
7 is John Dalton. I'm President of Power Advisory, LLC. I was  
8 engaged by Wheelabrator Technologies, Inc., to provide an  
9 independent review of Florida Power & Light's standard offer  
10 contract.

11 I prepared direct testimony that provides this  
12 independent review. The starting point for my review is to  
13 look at the Florida Statutes regarding renewable energy that  
14 you heard Ms. Kaufman refer to in her opening comments and to  
15 try to determine from a policy perspective whether the standard  
16 offer contract has promoted the objectives of the Florida  
17 Legislature in enacting Section 366.91 that directed Florida's  
18 public utilities to promote the development of renewable energy  
19 by continuously offering a purchase contract to producers of  
20 renewable energy. A standard offer contract can be executed  
21 without time-consuming negotiations and indicates to renewable  
22 energy facility developers the terms and conditions under which  
23 an electric utility is willing to purchase power.

24 The legislation prescribed a standard offer contract  
25 to meet its goal of promoting renewable energy. Our new

1 president has directed, has indicated support for a national  
2 RPS and a cap-and-trade program for GHG emissions, both of  
3 which will require the development of additional renewable  
4 energy. Furthermore, the Commission is promulgating an RPS  
5 rule that's equally important and needs to be considered as  
6 well.

7           The statute that I reference indicates that the  
8 Legislature finds it is in the public interest to promote the  
9 development of renewable energy resources in this state.  
10 Enabling legislation clearly identified the benefits of  
11 renewable energy resources, indicating that they have the  
12 potential to help diversify fuel types to meet Florida's  
13 growing dependence on natural gas for electric production,  
14 minimize the volatility of fuel costs, encourage investment  
15 within the state, improve environmental conditions and make  
16 Florida a leader in new and innovative technologies. As  
17 indicated by this language, renewable energy resources offer  
18 distinct benefits relative to the fossil fuel-fired generating  
19 facilities that they would avoid.

20           Therefore, when reviewing FPL's standard offer  
21 contract, it's appropriate to evaluate whether the SOC has  
22 achieved this objective; that is, has it since 2006 promoted  
23 the development of renewable energy resources in Florida? The  
24 evidence indicates that FPL's standard offer contract has been  
25 a failure in this regard. FPL has not executed a single

1 standard offer contract since its standard offer contract was  
2 made available to renewable energy facility developers in 2006  
3 and has only executed one negotiated renewable energy contract  
4 in that time period.

5           This lack of market response to FPL's standard offer  
6 contract is a clear indication that changes are needed to FPL's  
7 standard offer contract if it is to promote the Legislature's  
8 objective of promoting the development of renewable energy  
9 resources in this state. In my prepared direct testimony I  
10 identified five changes that would help the FPL standard offer  
11 contract to meet this clear, this clear legislative goal. The  
12 first two pertain to Sections 8.4.6 and 8.4.8 of the standard  
13 offer contract.

14           Section 8.4.6 of the standard offer contract gives  
15 FPL the open-ended right to not purchase power from the  
16 renewable energy generator. Given the renewable generator's  
17 cost recovery is based in large part on these energy payments,  
18 this provision may prevent them from recovering the full  
19 avoided cost of FPL's next planned generating unit and  
20 represents a major contract risk which can represent a barrier  
21 to securing financing. Furthermore, when the renewable  
22 generator is interrupted under this provision, its capacity  
23 factor is reduced, making it more difficult to achieve the  
24 97 percent annual capacity billing factor target required to  
25 receive the full capacity payment.

1           Section 8.4.8 of FPL's standard offer contract also  
2 gives FPL the right to dispatch down the generating unit to no  
3 lower than its minimum load for four-hour increments 18 times  
4 over the year. While there are limits on how often this  
5 provision can be implemented, it still prevents a renewable  
6 generator from receiving the full avoided cost of FPL's next  
7 planned generating unit. I recommended that this language in  
8 Section 8.4.6 be clarified. And that when purchases from  
9 renewable facilities are interrupted under these provisions,  
10 that's Section 8.4.6 and Section 8.4.8, that renewable  
11 facilities receive a payment based on the difference between  
12 the otherwise applicable energy payment and their marginal  
13 operating costs. This would ensure that the standard offer  
14 contract payment provisions reflect the full avoided costs of  
15 FPL's next planned generating unit.

16           The third provision where I've recommended changes is  
17 the committed capacity test and in specific its requirement for  
18 renewable facilities which I believe is overly stringent. A  
19 four-hour test is sufficient to evaluate the claimed capability  
20 of a generating unit. Further, it does not appear that FPL  
21 units have to meet such a test. And if they don't meet such a  
22 test, if they fail such a test, there doesn't appear to be any  
23 penalty to them.

24           The annual capacity billing factor is the fourth area  
25 where I recommend changes. The annual capacity billing factor



1 target required to achieve a full capacity payment is too high.  
2 While it is based on the EAF of the next planned generating  
3 unit, a combined cycle gas turbine unit, evidence indicates  
4 that FPL's own CCGTs rarely achieve this EAF. FPL's generating  
5 performance incentive factor filing suggests that FPL's CCGTs  
6 have EAFs from 89 to 90 percent. As such, this annual capacity  
7 billing factor is too high and should be adjusted to a more  
8 reasonable level. I have suggested 89 percent, which is  
9 consistent with the EAFs that FPL's CCGTs achieve and is also  
10 used by Progress Energy in its standard offer contract.

11 The final provision in the standard offer contract  
12 where I recommend changes is to the tradeable renewable energy  
13 certificates, to the provisions that pertain to the tradeable  
14 renewable energy certificates. The right of first refusal for  
15 the tradeable renewable energy certificates should be  
16 eliminated to avoid placing any conditions on these TRECs which  
17 can adversely affect their value.

18 With the establishment of an RPS in Florida and the  
19 prospect of implementation --

20 COMMISSIONER EDGAR: Excuse me. Mr. Dalton, you are  
21 over your time limit.

22 THE WITNESS: Okay.

23 COMMISSIONER EDGAR: Can you wrap? That sounds like  
24 a good place to wrap.

25

1 BY MS. KAUFMAN:

2 Q I guess that concludes your summary; correct?

3 A It does.

4 MS. KAUFMAN: The witness is available for cross.

5 Thank you, Madam Chair.

6 COMMISSIONER EDGAR: Thank you.

7 Mr. Anderson.

8 CROSS EXAMINATION

9 BY MR. ANDERSON:

10 Q Good morning, Mr. Dalton.

11 A Good morning.

12 Q Welcome to Florida. I wish it was a little warmer  
13 for you today. You gave a deposition in this case; is that  
14 right?

15 A Yes, I did.

16 Q And I asked you a lot of questions about the  
17 particulars in your testimony at that deposition. Do you  
18 recall that?

19 A I do.

20 Q Okay. To be clear, all of that has already been  
21 admitted in the record, so I'm going to focus on just kind of a  
22 narrower line of questions with you this morning.

23 Do you agree, sir, that the rates, terms and other  
24 conditions contained in each utility's standard offer contract  
25 or contracts shall be based on the need for and equal to the

1 avoided cost of additional generation capacity of the  
2 purchasing utility, in this case FPL?

3 A There is a rule which indicates that.

4 Q And that's, that's what the rule says; right?

5 A That is what the rule says. But I guess I would just  
6 like to clarify one point. I think that based on my review my  
7 concern is that there is a contradiction in terms of some of  
8 the rules, and I've indicated this in terms of Section  
9 8.4.6 and 8.4.8. And my concern is that for a renewable energy  
10 facility which is only paid when it operates, if the utility  
11 has the right to interrupt that renewable energy facility and  
12 that renewable energy facility when it operates is earning a  
13 margin which it's going to use to recover its capital costs, if  
14 the utility has a right to interrupt that unit, then there is  
15 going to be a constraint on the, on the renewable energy  
16 facility's ability to recover the full avoided cost of the next  
17 planned generating unit.

18 Q Do you agree that the standard required to be  
19 complied with the standard offer contract is avoided cost?  
20 That's the standard; right?

21 A That is the standard.

22 Q Thank you. Second question, do you agree that the  
23 minimum performance standards for the delivery of firm capacity  
24 and energy by a renewable facility needs to be based upon the  
25 anticipated peak and offpeak availability and capacity factor

1 of the utility's avoided unit?

2 A That's what the rules indicate. And as I indicated  
3 in my statement, I think that, you know, one of the issues I  
4 have is that the EAF, which is a target of 97 percent, the  
5 analysis that I've done suggests that FPL's own combined cycle  
6 gas turbine units don't achieve this 97 percent equivalent  
7 availability factor, and therefore it's too stringent and  
8 shouldn't be applied to renewable energy facilities.

9 Q We asked you some questions about that at your  
10 deposition, and do you recall the questions where I pointed out  
11 that the most modern and newly installed units which have not  
12 been in service for three years and are not included in the  
13 GPIF, they do in fact have EAFs in the high 90s? Do you  
14 remember those questions?

15 A I do remember those questions. I believe that the  
16 average EAF of those three units was 95.8 percent. However --

17 Q Which is about 96 percent; right?

18 A Right. I mean, it's 95.8 percent. But I think that  
19 one point of distinction I would like to make with respect to  
20 those units, my understanding is those units went in service in  
21 2005 and 2007, is that there are two elements to FPL's EAF  
22 calculation. First is the planned outage and the second is  
23 the, the unforced outage.

24 The planned outage essentially is for maintenance  
25 intervals. Combined cycle gas turbine units take maintenance

1 based on their operating hours. And the -- I know that, for  
2 example, for June the major maintenance, the longest  
3 maintenance interval, outage interval occurs after close to  
4 40,000 hour operating hours. So for a unit that's got a  
5 capacity factor like these units, that's about five years.

6           So my concern with using those three units as a  
7 benchmark for the performance of FPL's combined cycle gas  
8 turbine units is that they probably haven't had, you know, the  
9 same level of maintenance outages that the units are going to  
10 require over their full useful life, and therefore they're not  
11 an appropriate benchmark to use to indicate the performance of  
12 FPL's combined cycle gas turbine units.

13           Q     You just recounted that the actual performance of  
14 FPL's newest units are about 96 percent on average; is that  
15 right?

16           A     Yes. I think the number I used was 95.8 percent.

17           Q     Okay. And then the equivalent availability factor  
18 that is shown by FPL in its Ten Year Site Plan for the next  
19 planned generating unit is 96.8 percent; right? About a  
20 1 percent difference.

21           A     That is correct.

22           Q     Okay.

23           A     I guess one other point I would like to make here is  
24 that EAF that FPL uses, it doesn't consider the maintenance  
25 outage, and my understanding is that a maintenance outage

1 essentially occurs when a generating unit goes out of service  
2 when it wouldn't otherwise be dispatched.

3           So for FPL, whose cost recovery isn't affected by  
4 when the unit runs, there's no implications in terms of the  
5 payments that they receive. But for a renewable energy  
6 facility that is only compensated when it runs, by not  
7 considering that maintenance outage factor and the target EAF  
8 you're unduly fairly (phonetic) penalizing them.

9           Q     You are aware that the Broward unit, the north unit  
10 has from May through November of 2008 on a 12-month rolling  
11 average basis performed at a billing capacity factor above  
12 97 percent for each of those months on a 12-month rolling  
13 basis; is that right?

14          A     Yes. I looked at those numbers. I guess I would  
15 like to clarify there as well. I spoke to the Wheelabrator  
16 folks yesterday and got some clarification. My understanding  
17 is that, that the actual nominal capacity of this unit is about  
18 64 megawatts; whereas, the contract capacity is about  
19 54 megawatts. So this difference between the nominal capacity  
20 which the unit is capable of achieving in some hours and its  
21 contract capacity provides a significant margin of error that  
22 allows the unit to achieve these high capacity factors. And I  
23 would say that the 97 percent or whatever the Wheelabrator  
24 capacity billing factor that it's achieved isn't necessarily  
25 reflective of, you know, an appropriate benchmark for a

1 renewable energy facility.

2 Q So it would be your position that it's unreasonable  
3 that FPL pay 100 percent of the capacity rate for this  
4 performance because it's a little easy to achieve? Is that the  
5 point?

6 A The point is that FPL wasn't paid anything for the  
7 10 megawatts that it held in reserve that enabled it to achieve  
8 this close to 97 percent annual capacity billing factor.

9 Q But that's a business decision of Wheelabrator in  
10 terms of specifying what capacity is eligible; right? That's  
11 not FPL's decision.

12 A Right. That's a business decision that Wheelabrator  
13 makes. But what it is essentially is it represents a higher  
14 hurdle for a renewable energy facility developer in terms of if  
15 they have to hold back, what is this, roughly one-sixth of the  
16 capacity to achieve the annual capacity billing factor target  
17 so that they can't get any capacity payments for one-sixth of  
18 their capacity to achieve this target, I think that's an  
19 indication that the target would be too high and it would  
20 represent a barrier to developing renewable energy facilities  
21 in Florida.

22 Q What's the expected capacity factor of something like  
23 a solar PV facility?

24 A That very much varies in terms of the different  
25 jurisdictions, but it can be, you know, anywhere from

1 14 percent to higher than that. If you've got a stronger solar  
2 resource, probably closer to 18 percent. And it depends again  
3 in terms of what technology specifically are we talking about?

4 Q Is it your testimony here today that, for example,  
5 FPL's standard offer contract, rather than be revised to meet  
6 your client's billing capacity, maybe the standard offer  
7 contract should be revised to meet a solar capacity too? Is  
8 that your testimony?

9 A No. I think the testimony that I've offered is --  
10 what I've said is I've stepped back and said there's an  
11 objective here to promote the development of renewable energy  
12 facilities in Florida. This objective doesn't appear to be  
13 being promoted by FPL's current standard offer contract.

14 And as someone who has lots of experience with  
15 respect to the development of standard offer contracts, what  
16 are the problems with this standard offer contract? What do I  
17 see as deficiencies from someone who would look at the standard  
18 offer contract, try to take it to a banker and say I want to  
19 get this project financed? What would a banker look at? What  
20 would, what would a lawyer be concerned with?

21 Q Wouldn't you agree though that a good number of the  
22 provisions that you've focused on really are a function of  
23 what's provided in the, in the rules we're all required to live  
24 by in our standard offer contracts?

25 A I'm sorry, Mr. Anderson. Could you repeat that



1 question, please?

2 Q Sure. You, you call out two particular contract  
3 provisions in your testimony; right? One about maintenance;  
4 right? I'm sorry. Let me, let me -- I'll try to reframe and  
5 go a little quicker here.

6 This is an efficient way to do this. I'm going to  
7 try to limit my examination to this exhibit and maybe one more  
8 because we have the deposition already in. I think this might  
9 be labeled 17. Is that all right?

10 COMMISSIONER EDGAR: Yes. We will number this as 17.  
11 Can you give me a title?

12 MR. ANDERSON: Let's call it please, Section  
13 8.4.6 and 8.4.8 questions.

14 CHAIRMAN EDGAR: So labeled.

15 (Exhibit 17 marked for identification.)

16 BY MR. ANDERSON:

17 Q Thank you. Do you have Exhibit 17 before you?

18 A Yes, I do.

19 Q Focusing your attention, please, at paragraph  
20 8.4.6 at the top of the page which is highlighted in yellow.  
21 Do you see that?

22 A I do.

23 Q For the convenience of everyone, everyone's document  
24 is highlighted.

25 Focusing on the first sentence it says, "After

1 providing notice to the QS, FPL shall not be required to accept  
2 or purchase energy from the QS during any period in which, due  
3 to operational circumstances, acceptance or purchase of such  
4 energy would result in FPL's incurring costs greater than those  
5 which it would incur if it did not make such purchases."

6 That's what it says; right?

7 A That is what it says.

8 Q And this is one of the provisions which you comment  
9 on in your testimony; right?

10 A That's correct.

11 Q Okay. Turn this page, please. Please look at Rule  
12 25-17.086, which is Page 2 of Exhibit 17. Looking at the first  
13 sentence it says, "Where purchases from a qualifying facility  
14 will impair the utility's ability to give adequate service to  
15 the rest of its customers or, due to operational circumstances,  
16 purchases from qualifying facilities will result in costs  
17 greater than those which the utility would incur if it did not  
18 make such purchases, or otherwise place an undue burden on the  
19 utility, the utility shall be relieved of its obligation under  
20 Rule 25-17.08 to purchase electricity from a qualifying  
21 facility." That's what the rules says; right?

22 A That's what it says.

23 Q And that language is just about the same as in the  
24 contract 8.4.6 which you're complaining of; right?

25 A It's very similar. But I guess what I've looked at

1 in terms of evaluating the standard offer contract is what's  
2 the underlying objective here? What are we trying to do?  
3 We're trying to promote the development of renewable energy  
4 facilities in Florida. And I'm flagging an issue that I think  
5 is one of the major barriers in terms of preventing the  
6 development of renewable energy facilities in Florida and  
7 people availing themselves of the standard offer contract.

8 Q And just focusing on this one for a moment. We all  
9 agree that this, I think, that this provision 8.4.6 faithfully  
10 captures the language in the rule, right, as a starting point?

11 A It's very similar.

12 Q Okay. And the question in this case is whether FPL's  
13 contract complies with the existing rule; isn't that right?

14 A That is one of the questions. I think it's also,  
15 another question is to what degree is it promoting the  
16 objectives of the Legislature.

17 Q But just stay with me focusing on this rule. Your  
18 testimony basically says something other or different than  
19 8.4.6 should be in the contract. And fundamentally it occurs  
20 to me that that's an argument better addressed in the context  
21 of a change to the rule if that were Wheelabrator's position or  
22 an RPS workshop or something; isn't that right? Isn't your  
23 quibble with the rule itself?

24 A No. I think that what I've offered is some  
25 clarifying language so that it's clear when this provision

1 could be exercised. And in addition, what I've suggested is  
2 when it, when it is exercised, that there should be some  
3 compensation to renewable energy facility developers. And the  
4 specific compensation is that they should be paid the  
5 difference between the payment that they would have otherwise  
6 received when they were interrupted and their marginal  
7 operating costs.

8 Q Do you know --

9 A And what I'm trying to do is just make them whole so  
10 that they have an opportunity to realize the full avoided cost  
11 of the next planned generating unit. And the statute indicates  
12 that payments should be based on the next planned generating  
13 unit, the avoided cost in the next planned generating unit.

14 Q Do you know how many hours that Wheelabrator's  
15 facilities have been ever curtailed or backed down at the  
16 request of FPL over the past 20 years?

17 A I don't. And I think that that's an important point  
18 because I think another strategy for addressing the risk here  
19 which renewable energy facility developers are very, would be  
20 very concerned with is limiting the number of hours this  
21 provision can be exercised. I'm not sure that that's  
22 necessarily the best strategy. But from -- stepping back as an  
23 expert, someone who's looking at what does it take to develop  
24 renewable energy facilities, this is a red flag, and I've  
25 offered a strategy to mitigate this risk.

1           Q     But you didn't ask your client whether in fact there  
2 had been zero hours of such interruption or backing down as far  
3 as they know.

4           A     I did not. But any developer would not be concerned  
5 with that. They would be worried is there an open-ended right  
6 that a counter party can exercise which could prevent us from  
7 recovering our capital costs and paying our debt?

8           Q     Okay. Let's move on to the second point real quick,  
9 8.4.8. And rather than me reading, because we all have the  
10 document in front of you, you see the point that is in yellow  
11 by 8.4.8? Could you just read that to yourself, please?

12          A     I've read it.

13          Q     Okay. Thank you. Turning back first, I'm just --  
14 please turn back with me one page, two, three, four pages.  
15 You'll see another portion marked in yellow. Do you see that?

16          A     Does it begin "We have retained"?

17          Q     Uh-huh.

18          A     Yes. I see that.

19          Q     Okay. This is from Order Number 12634, Docket Number  
20 820406-EU. And it states there, "We have retained," this is  
21 the Commission speaking, "the provisions of the original rule  
22 excusing a utility from its obligation to purchase under  
23 certain circumstances, and have added to it to make clear that  
24 a utility is not required to purchase from a QF when to do so  
25 would result in costs greater than those which the utility

1 would incur if it did not make such purchases. We believe this  
2 is most likely to happen during a utility's off-peak periods  
3 where it may be cycling its base load units and QF purchases  
4 would force it to shut down the units altogether." Have I  
5 correctly read that?

6 A Yes, you have. I guess the point I would like to  
7 make is that I understand why there's such a provision in the  
8 contract and I think that it's appropriate to have a provision  
9 that protects customers. But one needs to step back and look  
10 at what is a renewable energy facility developer going to look  
11 at here? And there's an open-ended risk. There's no  
12 restrictions in terms of the right to dispatch down these  
13 renewable energy facilities. And these renewable energy  
14 facilities are only paid when they run. And, therefore, what  
15 I've suggested is that there's a need to somehow constrain and  
16 limit this risk.

17 Q You did not check with your client how real a risk it  
18 was for it or if it ever cost it any dollars whatsoever; right?

19 A I did not have any discussions with Wheelabrator.  
20 But as I indicated earlier, Mr. Anderson, I think that the  
21 point here is that from a developer's perspective and more  
22 importantly from a financier's perspective they're looking at  
23 what are the rights that their counter party has to essentially  
24 prevent them from recovering their costs.

25 Q I'm skipping through a number of exhibits to the last

1 several, which again I'm going to try to run right through.

2 Okay. I've distributed, asked to be distributed to  
3 you what would be Exhibit 17; is that right?

4 COMMISSIONER EDGAR: I'm on 18.

5 MR. ANDERSON: 18. I'm sorry.

6 COMMISSIONER EDGAR: That's okay.

7 MR. ANDERSON: Okay.

8 COMMISSIONER EDGAR: Title?

9 MR. ANDERSON: Title would be staff recommendation.

10 COMMISSIONER EDGAR: Let's just add the date. Staff  
11 Rec 10/3/06.

12 MR. ANDERSON: Very good. Thank you.

13 (Exhibit 18 marked for identification.)

14 BY MR. ANDERSON:

15 Q We've distributed to you, Mr. Dalton, a document  
16 which is a staff recommendation to the Commission concerning  
17 the proposed amendments to the rules we're talking about. And  
18 I'd like to ask you to turn, please, to the third page of the  
19 document at the top of the page.

20 A Which is numbered Page 9 at the bottom?

21 Q Yes. That's exactly right. It's numbered nine at  
22 the bottom. And this is the staff recommendation to the  
23 Commission at the time of the adoption of the current rules.  
24 And I'd like just to read to you the top of the page.

25 "The IOUs and renewable generators agree that TRECs,"

1 that would be, what, tradeable renewable energy credits; is  
2 that right?

3 A That's correct.

4 Q "Belong to the renewable generators." That's  
5 something you agree with; right?

6 A That's correct.

7 Q "The credits will provide an additional revenue  
8 source for renewable generators"; correct?

9 A That's correct.

10 Q And that's something which, which your client has  
11 available to sell; correct?

12 A That's right.

13 Q Okay. And going on to say, "The IOUs and renewable  
14 generators agree that it is appropriate for standard offers to  
15 provide a right of first refusal for utilities to purchase  
16 TRECs from the renewable generator." Have I read that  
17 correctly?

18 A Yes. That's what it says.

19 Q Okay.

20 A I guess what I was asked to do by Wheelabrator was to  
21 look at the standard offer contract. And I frankly take a  
22 different opinion in terms of -- I think that a right of first  
23 refusal has an adverse impact on the value of a TREC, and  
24 essentially a right of first refusal is an option and there's  
25 no compensation for this option. And the economic literature



1 that I've reviewed suggests that in an instance where there is  
2 a right of first refusal and the right of first refusal can be  
3 exercised by someone like FPL who has best available  
4 information regarding what's the value of a TREC, then any  
5 prospective purchaser is going to be very concerned in terms of  
6 entering into negotiations to purchase a TREC. Because the  
7 situation essentially is that if FPL has the right of first  
8 refusal, it's only going to exercise that right of first  
9 refusal when that TREC is at market or below it.

10 Florida Power & Light knows what the value of the  
11 TRECs are because essentially it's the largest utility in the  
12 state. So it's not going to exercise its right to purchase it  
13 when the TREC is priced above market. So if I'm negotiating  
14 with Wheelabrator for the purchase of TRECs and I realize that  
15 FPL has got a right of first refusal and they have 30 days in  
16 which to exercise that right of first refusal, I'm going to say  
17 no thanks. I'm going to talk to somebody else. And what that  
18 means is the market for the sale of TRECs for Wheelabrator has  
19 been reduced and that's going to have an adverse impact on the  
20 value that it can realize for these TRECs.

21 COMMISSIONER EDGAR: Mr. Anderson, do you want to put  
22 these together or --

23 MR. ANDERSON: Let's do that. That would be great.  
24 Just call it, I think, Exhibit 19. And might these be 10/3/06  
25 and 1/9/07 Transcript Excerpts.

1 COMMISSIONER EDGAR: So marked.

2 (Exhibit 19 marked for identification.)

3 BY MR. ANDERSON:

4 Q You're working with Ms. Kaufman representing and  
5 working with Wheelabrator in this case; is that right?

6 A That's correct.

7 Q Okay. You're aware that Ms. Kaufman and her law firm  
8 and her partner Jon Moyle previously represented Wheelabrator  
9 not just in this case but in the rules here which were set by  
10 the Commission; right?

11 A That's my understanding.

12 Q Okay. And they had an opportunity to participate,  
13 Wheelabrator had a full opportunity to participate in that  
14 rulemaking; right?

15 A That's correct.

16 Q Okay. And they were represented by counsel?

17 A I don't have an understanding.

18 Q Okay. Then I'd like to direct your attention to the  
19 first of the two documents which is dated 10 -- October 3,  
20 2006. Do you see that? And first look at the transcript, Page  
21 23, where it says, "Thank you, Madam Chairman. Vicki Gordon  
22 Kaufman." And it goes on, "I'm appearing before you this  
23 morning on behalf of Wheelabrator Technologies, Inc." Do you  
24 see that? The page number is in the upper right-hand corner.

25 A And what, and that page, it was Page 23 I thought.

1 Q Yeah. Exactly right. It says, "Thank you, Madam  
2 Chairman. Vicki Gordon Kaufman."

3 A This is agenda, this is the item which is identified  
4 as Agenda Conference Item Number 3?

5 Q Yes. I'm sorry.

6 COMMISSIONER EDGAR: Wait a minute. I think -- yeah.

7 MR. ANDERSON: No. It's Item Number 4. Yeah.

8 COMMISSIONER EDGAR: Item Number 4 dated Tuesday,  
9 October 3, 2006.

10 MR. ANDERSON: Right.

11 COMMISSIONER EDGAR: And it's the one without the  
12 seal on the front page.

13 MR. ANDERSON: Right.

14 THE WITNESS: Very good. I have that.

15 COMMISSIONER EDGAR: Okay. All right.

16 THE WITNESS: I was looking at the wrong one. My  
17 apologies.

18 BY MR. ANDERSON:

19 Q Thank you for that clarification. But you agree it  
20 says Ms. Kaufman was appearing for Wheelabrator Technologies on  
21 that date, October 3, 2006; right?

22 A That's correct.

23 Q Okay. Now please turn where you see in the upper  
24 right-hand corner Page 25, and I'm just going to draw your  
25 attention to Lines 13 through 19 where -- this is again the

1 transcript of Ms. Kaufman. "On Page 9 your staff has a  
2 discussion of the renewable energy credits, and I know that  
3 that was discussed the last time this matter was before you.  
4 And we certainly don't have a problem with IOUs having the, I  
5 think what's been called the right of first refusal to those  
6 credits. We agree that they belong to the renewable generator.  
7 We don't have a problem with the right of first refusal."  
8 That's what Ms. Kaufman stated on behalf of Wheelabrator when  
9 these rules were set; is that right?

10 A That's what it says here. I guess what I would point  
11 out is I was hired by Wheelabrator as their expert in this case  
12 to give my expert opinion in terms of what are the provisions  
13 in the standard offer contract and what impacts they might have  
14 in terms of realizing the objectives of the legislation. I  
15 flagged this as an issue.

16 Q Okay. Now let's just turn to the other document,  
17 which is the Tuesday, January 9, 2007, Agenda Conference Item  
18 Number 3. Do you have that?

19 A Yes, I do.

20 Q Okay. Upper right-hand corner, Page 28. And looking  
21 down Line 22, "For the record" -- it states, "For the record,  
22 Jon Moyle, Jr., with the Moyle Flanagan law firm, appearing  
23 today on behalf of Wheelabrator Technologies"; right?

24 A I see that.

25 Q And then turning the page to Page 29, I had marked in

1 yellow the bottom lines where Mr. Moyle on behalf of  
2 Wheelabrator said, "Ms. Clark made a comment that she wanted to  
3 make sure that there is no comments or no issues about a right  
4 of first refusal. And I think the renewable energy generators  
5 have said, look, we are fine on a right of first refusal  
6 provided pricing can be worked out and that the time frame is  
7 limited so you don't have somebody wanting to buy and you have  
8 an issue where you have to go get the utilities to sign off  
9 before you can sell." That's what Mr. Moyle said at that  
10 agenda; right?

11 A That's correct. And I think that that's one of the  
12 issues that has been pointed out here is that 30 days which FPL  
13 has to exercise its right of first refusal. I think that what  
14 the experience indicates is that once you have a renewable  
15 portfolio standard, these TRECs are going to have more value.  
16 And when they have more value and they take on more of the  
17 characteristics of a commodity, their price is more likely to  
18 change over time. Essentially they're going to begin to mimic  
19 some of the characteristics of other energy like commodities,  
20 natural gas, power prices.

21 So the fact that someone has 30 days in which to  
22 exercise its right of first refusal becomes a problem and can  
23 become a real issue for a renewable energy facility because the  
24 price can move in that time frame. So a deal that made sense  
25 no longer makes sense.

1 MR. ANDERSON: Let me check my notes.

2 COMMISSIONER EDGAR: Yes, sir.

3 Commissioner Argenziano.

4 COMMISSIONER ARGENZIANO: Thank you, Madam Chair.

5 I think, you know, what I'm hearing you say, you  
6 have, your expert opinion is that you have some maybe real  
7 concerns or merits or things that need to be looked at. But I  
8 can't help but feel that it's more of a rule challenge or a  
9 statutory challenge that you're looking for. And I wonder if  
10 you have been hired also or do you have any suggested language,  
11 any specifics that you would suggest in a rule change. I'm not  
12 saying that we're doing that. I'm just wondering if you  
13 thought about that to the, either the rule or the statutes?

14 THE WITNESS: I did offer some changes in language to  
15 Section 8.4.6 in my prepared direct testimony. And what I  
16 tried to do was to limit the conditions under which FPL would  
17 be able to exercise that provision.

18 The other change that I've suggested where I haven't  
19 offered any language is that there be compensation that be  
20 provided to the renewable energy facility when they're  
21 interrupted. And I realize from the Commission's perspective  
22 that's problematic in terms of we're going to pay them for  
23 doing nothing?

24 What I'm -- the reason why I'm suggesting that  
25 compensation when they're not generating makes sense is it

1 limits the risk from the renewable developer's perspective and  
2 it allows FPL to make good decisions. You know, what  
3 essentially -- remember, these avoided costs are based on the  
4 next planned generating unit. So all we're saying is if you  
5 operate efficiently, you're going to get paid these full  
6 avoided costs.

7           And what FPL can then do is make a decision of if we  
8 have to compensate them so that they get their full avoided  
9 cost, does it still make sense for us to dispatch them down  
10 because we're going to have to take down a coal unit and that  
11 coal unit is going to be off for 12 hours. And we don't want a  
12 coal unit, given its variable operating costs, to be off for 12  
13 hours. So there are circumstances where it still would make  
14 sense to dispatch the unit down and compensate them.

15           COMMISSIONER ARGENZIANO: And I understand that. But  
16 what you're really asking is it translates that the customers  
17 would be paying for power that they didn't use and that becomes  
18 a real problem.

19           But couldn't, couldn't, and I'll ask FPL the same  
20 thing, couldn't the contract at 8.4.6 read or indicate that if  
21 the outages were caused by FPL, it wouldn't go towards the  
22 97 percent? Wouldn't that help, be helpful?

23           THE WITNESS: That would be one change that would  
24 definitely help. But one of the issues from a renewable energy  
25 developer's perspective is that because their marginal

1 operating costs are so low such as the Wheelabrator project  
2 where they're burning municipal solid waste and the payments  
3 that are getting paid are, you know, largely based on this  
4 combined cycle gas turbine unit which might be, you know,  
5 \$60 per megawatt hour, they might be receiving \$50 per megawatt  
6 hour of margin. If they're dispatched down, they don't get  
7 that margin.

8 COMMISSIONER ARGENZIANO: Thank you.

9 COMMISSIONER EDGAR: Mr. Anderson.

10 MR. ANDERSON: Yes. Just a quick --

11 COMMISSIONER ARGENZIANO: Oh, I'm so sorry.

12 MR. ANDERSON: Pardon me.

13 COMMISSIONER EDGAR: Hold for a moment, if you would.  
14 I apologize. Go ahead. That's a good point.

15 Commissioner McMurrian.

16 COMMISSIONER McMURRIAN: Sorry about that. I had a  
17 question along the same lines, I think, as Commissioner  
18 Argenziano. And I was listening intently to what Mr. Dalton  
19 said and I think I understand your points, too, Mr. Dalton.  
20 And I think following along that same logic, if a utility were  
21 to interrupt the renewable generator without some sort of just  
22 cause, do you believe that the renewable generator would have  
23 some sort of recourse before this Commission under our rules or  
24 the relevant statutes or anything like that?

25 THE WITNESS: I guess I don't want to give a legal



1 opinion. But I would think that the way the contract is  
2 currently written, there is, there are many conditions when the  
3 renewable, when the renewable energy facility could be  
4 dispatched down, which wouldn't provide any basis for a  
5 complaint with the Commission, and that's my underlying  
6 concern. Clearly if the provision were more tightly structured  
7 and more clearly limited when FPL could constrain down the  
8 resource, there would be greater opportunity for a renewable  
9 energy facility developer to come to the Commission and say  
10 they're inappropriately using this provision. My concern is  
11 it's crafted so openly right now that there wouldn't be any  
12 basis for a complaint.

13 COMMISSIONER McMURRIAN: Okay. And I guess in  
14 following up on the initial statement that Commissioner  
15 Argenziano asked you about wasn't this -- had you thought about  
16 changing the rule language? And I think you went back to the  
17 contract terms again in the 8.4.6 and 8.4.8, but -- so I wanted  
18 to follow up on that too.

19 I know that you were hired to look at the contract  
20 and that's what you did and you're, and you're suggesting those  
21 changes. But, I mean, as we've looked at some of the rule  
22 language, it follows pretty closely to some of the contract  
23 language there, and I'm sure you see that as well.

24 THE WITNESS: Yeah. No. I guess that's a fair  
25 point. And I realize, I understand that there's a reluctance

1 at this point to open up the rules. I think that I've  
2 identified that there were some, some problems in the way the  
3 contract, in the way the contract has been implemented and in  
4 particular the 97 percent annual capacity billing factor  
5 target. I believe that I view that as too high.

6 But there are some issues that I have with the rules  
7 themselves. I acknowledge that that's a problem, that there  
8 are, I think, some inconsistencies. And I think this becomes  
9 more of an issue when you have an RPS in place. So I think  
10 that with an RPS where there's a clear objective in terms of  
11 promoting the development of renewables, it's an appropriate  
12 time to step back and say is this standard offer contract, are  
13 these rules doing everything that they need to to promote the  
14 development of renewable energy in Florida? And I think that,  
15 you know, a standard offer contract in other jurisdictions has  
16 proven to be a very effective tool in terms of promoting the  
17 development of renewable energy facilities. I think that with  
18 some fine-tuning the rules, the standard offer contract in  
19 Florida could as well be an effective tool in terms of  
20 promoting the development of renewable energy facilities. I  
21 would suggest there is some fine-tuning within the rules that  
22 can be done that can make it more effective in terms of  
23 promoting renewable energy facilities in Florida.

24 COMMISSIONER McMURRIAN: Okay. And I think that gets  
25 back to that initial question.

1 But one other thing you just said, I guess, you think  
2 it's more important that we focus on the exact language in  
3 these standard offer contracts because we're doing an RPS than  
4 it would have been if we were still at the point before  
5 proposing some sort of RPS? I guess I was -- perhaps I had a  
6 misconception there. But I guess I would have off the top of  
7 my head, which is pretty foggy probably right now admittedly,  
8 probably would have thought that the standard offer contracts  
9 maybe carry some secondary importance to an RPS once we have  
10 an, if we get to the point where we actually have an RPS rule  
11 on the books.

12 THE WITNESS: I guess my thought with an RPS is  
13 you've established a standard, there's a target here. And my  
14 understanding in terms of the target is that it's 7 percent by  
15 2013. So in terms of some of the math that I did, it looks  
16 like that would require FPL to have about 1,200 megawatts of  
17 additional renewable under contract in that period.

18 How are they going to get there? I think a standard  
19 offer contract is a very effective tool in terms of satisfying  
20 an RPS.

21 COMMISSIONER McMURRIAN: Okay. So you think the  
22 standard offer contracts are going to be a very important part  
23 in helping meet the RPS targets? Okay.

24 THE WITNESS: They should be.

25 COMMISSIONER McMURRIAN: Okay.

1 THE WITNESS: It's one of the tools that's available  
2 that isn't being effectively utilized at this point based on  
3 the problems I've identified.

4 COMMISSIONER McMURRIAN: Okay. Thank you.

5 COMMISSIONER EDGAR: Mr. Anderson.

6 MR. ANDERSON: Thank you. I had something passed  
7 out. We do not need to ask those questions, and we'll pick  
8 those back up, if you like. And we're done.

9 COMMISSIONER EDGAR: Okay. So the document that you  
10 had started to distribute --

11 MR. ANDERSON: Yeah. We'll just --

12 COMMISSIONER EDGAR: -- you're going to pull those  
13 back and -- okay. We can do that.

14 MR. ANDERSON: And we have no further questions. We  
15 would offer the exhibits that we tendered.

16 COMMISSIONER EDGAR: Okay. We'll hold on that and  
17 take that up when we are done with this witness.

18 So let me ask this, are there questions from staff?

19 MS. HARTMAN: We have a couple of questions.

20 COMMISSIONER EDGAR: Okay. Let's go ahead.

21 CROSS EXAMINATION

22 BY MS. HARTMAN:

23 Q Mr. Dalton, do you believe that your suggested  
24 revisions to the standard offer contract are equally applicable  
25 to all renewable generating technologies such as solar and

1 wind?

2 A I would say in general. There's one provision where  
3 that probably isn't the case. And what I've suggested is that  
4 the, the annual capacity billing factor target be revised, and  
5 the changes that I'm proposing are such that they probably  
6 wouldn't enable wind or solar to receive any capacity payments.  
7 And I think a case could be made that there is some capacity  
8 value that's offered by solar resources, given that these units  
9 are going to be operating during periods when the system is  
10 probably realizing a peak or experiencing peak loads given the  
11 coincidence between sunny days, high loads, high solar output.

12 Q And have you suggested that the standard offer  
13 contract be revised to adopt a four-hour test period for  
14 biomass facilities?

15 A Well, that is, that is in fact what I suggested was  
16 that the test period that's used for the, for the committed  
17 capacity test be a four-hour period. I think that for a wind  
18 project or for a solar project that isn't going to necessarily  
19 work very well.

20 MS. HARTMAN: Thank you. That's, that's all we have.

21 COMMISSIONER EDGAR: Okay. Redirect?

22 MS. KAUFMAN: I just have a couple, Madam Chairman.

23 REDIRECT EXAMINATION

24 BY MS. KAUFMAN:

25 Q Mr. Dalton, Mr. Anderson asked you a couple of

1 questions about whether you had inquired of Wheelabrator as to  
2 whether they had been curtailed or told to ramp down, and I  
3 think you responded that you had not. What is -- is there any  
4 significance to whether or not they have been asked to ramp  
5 down in terms of the 8.4.8 and 8.4.6 you discussed?

6 A I don't think so. I think that the big issue here  
7 is, as I indicated, is that there's a contract right that FPL  
8 as a purchaser of power has, and that contract right is going  
9 to be viewed by prospective lenders and the lenders' counsel as  
10 a major risk in the contract, which is going to potentially  
11 prevent the renewable energy facility from recovering its costs  
12 and, if it were exercised for enough hours, could prevent it  
13 from making debt service payments. And if that's the case,  
14 then that's going to be a problem in terms of securing  
15 financing.

16 Q Mr. Anderson distributed an exhibit that we've  
17 numbered 17, and it's the one that the first page of it is  
18 tariff sheet 9.036. Do you have that?

19 A I have that.

20 Q If you would turn to the third page. He referred you  
21 to Order Number 12634.

22 A I have that in front of me.

23 Q Are you there? What is the date of this order?

24 A It appears to be October 28th, 1983. So that would  
25 be, help me out with my math, 25 years ago.

1 Q Okay. And what's the subject of this order?

2 A It's amendment of rules pertaining to cogeneration.  
3 So we're not talking about renewable energy facilities here.  
4 We're talking about cogeneration facilities. I think that  
5 that's an important distinction to make because the operating  
6 characteristics and the cost characteristics of a cogeneration  
7 facility are going to be much closer to FPL's avoided unit, and  
8 that isn't the issue with the renewable energy facilities and I  
9 think that that's an important distinction. I think that's a  
10 lot of the tension in this case is that there's very different  
11 cost recovery models here which make contract provisions very  
12 difficult for renewable energy facilities.

13 Q Do the excerpts, and I realize that there's only two  
14 pages here, but do the excerpts that Mr. Anderson has provided  
15 mention or have anything to do with renewable energy to the  
16 extent you can determine that?

17 A As I said, the title of the case appears to be in  
18 relation to cogeneration facilities, so there wouldn't be any  
19 real relevance in terms of renewable energy facilities. Though  
20 I do see that there is reference to PURPA, which applies to  
21 qualifying facilities which can be renewable facilities.

22 Q Mr. Anderson asked you some questions about the TREC  
23 and the right of first refusal. Do you recall those?

24 A Yes, I do.

25 Q Okay. Do you have any familiarity with how the TREC

1 market works?

2 A I do. And the market where it's more developed such  
3 as in the U.S. northeast where there are functioning renewable  
4 portfolio standards, the term between when an offer is made and  
5 when a party has to execute on that offer is much less than 30  
6 days. In some of the formal RFP processes that I've seen it's  
7 as little as five to eight days. I think in Massachusetts for  
8 some RFPs it's closer to two or three days.

9 Q And one last question still on Exhibit 17, Section  
10 8.4.8 that you discussed with Mr. Anderson, and we have talked  
11 about this somewhat. Do you see any standards in 8.4.8  
12 regarding when FPL may curtail? This is the first page of  
13 Exhibit 17.

14 A No. There don't appear to be any standards in terms  
15 of when that provision may be exercised.

16 MS. KAUFMAN: Thank you, Madam Chair. That is all  
17 the redirect that I have.

18 COMMISSIONER EDGAR: Thank you. Let's do the  
19 exhibits. I'm looking at exhibits marked 3 and 4. Seeing no  
20 objection, 3 and 4 will be entered into the record.

21 (Exhibits 3 and 4 admitted into the record.)

22 That brings me to 17, 18 and 19. Mr. Anderson.

23 MR. ANDERSON: Yes. We offer 17 through 19, please.

24 COMMISSIONER EDGAR: Any objections?

25 MS. KAUFMAN: No, ma'am.



1 COMMISSIONER EDGAR: Seeing none, 17, 18 and 19 will  
2 be entered into the record.

3 (Exhibits 17, 18 and 19 admitted into the record.)

4 The witness is excused. Thank you.

5 And, folks, I'd like to take a lunch break. It is  
6 12:30. Does 1:30 work? 1:30? I'm seeing nods. Okay. We  
7 will be on break for lunch and we will come back at 1:30 to  
8 call Ms. Dubin. We are on break.

9 (Recess taken.)

10 COMMISSIONER EDGAR: Okay. We are going to go back  
11 on the record and call this afternoon portion of our hearing to  
12 order.

13 We are at the rebuttal portion. Mr. Anderson, your  
14 witness.

15 **MR. ANDERSON:** Thank you.

16 FPL has one rebuttal witness, Ms. Dubin, who has  
17 previously been sworn.

18 KOREL M. DUBIN

19 was called as a witness on behalf of Florida Power & Light  
20 Company, and having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. ANDERSON:

23 Q Could you tell us your name, business address, and  
24 who you are employed by, all that stuff real quick.

25 A My name is Korel Dubin. I'm Senior Manager of

1 Purchased Power for Florida Power and Light Company. My  
2 address is 9250 West Flagler Street, Miami, Florida 33174.

3 Q Have you prepared and caused to be filed 28 pages of  
4 rebuttal testimony in this proceeding?

5 A Yes, I have.

6 Q Do you have any changes or revisions to your rebuttal  
7 testimony?

8 A No, I do not.

9 Q If I asked you the same questions contained in your  
10 rebuttal testimony, would your answers be the same?

11 A Yes, they would.

12 MR. ANDERSON: FPL asks that Ms. Dubin's rebuttal  
13 testimony be inserted into the record as though read.

14 COMMISSIONER EDGAR: The rebuttal testimony will be  
15 inserted into the record as though read.

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1           **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2                   **FLORIDA POWER & LIGHT COMPANY**

3                   **REBUTTAL TESTIMONY OF KOREL M. DUBIN**

4                   **DOCKET NO. 080193-EQ**

5                   **December 23, 2008**

6  
7       **Q.     Please state your name and business address.**

8       A.     My name is Korel M. Dubin and my business address is 9250 West  
9               Flagler Street, Miami, Florida 33174.

10      **Q.     By whom are you employed and what is your position?**

11      A.     I am employed by Florida Power & Light Company ("FPL" or "the  
12               Company") as Senior Manager of Purchased Power in the Resource  
13               Assessment and Planning Department.

14      **Q.     Have you previously filed testimony in this docket?**

15      A.     Yes, I have.

16      **Q.     Are you sponsoring an exhibit in this case ?**

17      A.     Yes, it consists of the following documents:

18               KMD-1 – Dalton Deposition Transcript

19               KMD-2 - Excerpts from Commission Order No. 12634

20               KMD-3 – Excerpt from Commission Order No. 13247

21               KMD-4 – Excerpt from Commission Order No. 24989

22               KMD-5 – Excerpt from Commission Order No. PSC-07-0492-TRF-EQ

23               KMD-6 – Excerpt from FERC Order issued October 1, 2003, Docket

24                       No. EL03-133-000

1 KMD- 7 – Excerpt from Ontario Power Authority Standard Offer  
2 Program Rules

3 **Q. What is the purpose of your rebuttal testimony?**

4 A. The purpose of my testimony is to respond to the testimony of the  
5 Wheelabrator Technologies Inc. ("Wheelabrator") witness John C.  
6 Dalton, which opposes FPL's Standard Offer Contract approved by  
7 the Florida Public Service Commission ("Commission") Order No.  
8 PSC-08-0544-TRF-EQ.

9 **Q. Please provide an overview of the points in your rebuttal**  
10 **testimony.**

11 A. My rebuttal testimony explains how FPL's Standard Offer Contract  
12 complies with Florida statutes, regulations and regulatory policy  
13 concerning Standard Offer Contracts, focusing on the several specific  
14 considerations raised in Mr. Dalton's testimony. A key theme that  
15 emerged from my review of Mr. Dalton's testimony is that  
16 Wheelabrator's suggestions for changes to FPL's Standard Offer  
17 Contract are contrary to well-established regulatory and statutory  
18 direction of the Commission and the Florida Legislature.

19  
20 The Commission's policy for Standard Offer Contracts generally, and  
21 FPL's Standard Offer Contract specifically, are premised on ensuring  
22 that customers do not pay more for capacity and energy under a  
23 Standard Offer Contract than would be paid if capacity and energy  
24 were to be provided by FPL's Next Planned Generating Unit, which in

1 this case would be a Mitsubishi "G" class natural gas fired combined  
2 cycle unit. As such, the provisions of FPL's Standard Offer Contract  
3 are framed in terms of the economics and operating characteristics of  
4 such a unit, consistent with long-standing Commission requirements.

5  
6 While Mr. Dalton suggests that some of the economic and operating  
7 specifications in the Standard Offer Contract are not consistent with  
8 particular renewable generating units, these criticisms miss the point  
9 of the contract, which is not to be based on the characteristics of any  
10 particular renewable technology. Rather, economic and operating  
11 accommodations for specific renewable energy technologies is best  
12 accomplished through negotiation – something FPL always stands  
13 ready to do.

14  
15 As such, Mr. Dalton's opposition to FPL's Standard Offer Contract is  
16 fundamentally misplaced, since Wheelabrator's position much more  
17 opposes the Commission Rules and Florida Statutes governing  
18 Standard Offer Contracts, which are not the proper subject of a  
19 protest matter like this case. Moreover, Mr. Dalton's and  
20 Wheelabrator's positions are much more like those that have been  
21 raised and rejected in prior Standard Offer Contract rulemakings.  
22 This can be seen in the fact that Mr. Dalton's five recommendations  
23 contained in his testimony to modify FPL's Standard Offer Contract  
24 are inconsistent with Commission Rules and would remove some of

1 the protections for FPL's customers that these Rules provide. And  
2 last my rebuttal testimony addresses some inconsistencies in the  
3 underlying support for Wheelabrator's testimony.

4 **Q. Please summarize your testimony.**

5 A. FPL supports development of renewable energy in Florida, and  
6 continues to work hard to purchase that which has been made  
7 available to it pursuant to negotiated contracts consistent with the  
8 Commission's preference for that approach. FPL notes that  
9 negotiated contracts permit accommodation of the specific attributes of  
10 individual types and sizes of renewable generating resources in a  
11 way that cannot be as readily done with the Standard Offer Contract  
12 which, by its nature, is required to be applicable to all types and sizes  
13 of renewable generating resources.

14  
15 For all of the reasons provided in my direct and rebuttal testimony,  
16 FPL requests that the Commission find that FPL's Standard Offer  
17 Contract complies with Florida Statutes, the Commission's  
18 regulations and is reasonable, and deny Wheelabrator's request that  
19 the Commission order changes to the contract that are not consistent  
20 with Florida law or the Commission's regulations, and are not  
21 reasonably protective of FPL's customers.

22 **Q. Mr. Dalton's testimony provides five recommendations to modify**  
23 **FPL's Standard Offer Contract. Who will be affected if**  
24 **Wheelabrator's recommendations are adopted?**

1 A. Initially, it appears there are three groups impacted by  
2 Wheelabrator's proposed changes to FPL's Standard Offer Contract:  
3 (1) Wheelabrator, which I assume feels it may profit or otherwise  
4 benefit if its proposed changes are adopted, (2) FPL's customers,  
5 who stand to pay more money and receive less assurance of  
6 reliability for Standard Offer Contract purchased power if  
7 Wheelabrator's proposed changes are adopted, and (3) FPL, which  
8 is concerned that (i) its Standard Offer Contract comply with  
9 applicable laws, regulation and Commission policy; (ii) customers do  
10 not pay more than is required for purchased power; and (iii) reliability  
11 of service under Standard Offer Contracts is not unreasonably  
12 compromised.

13

14 The interests of FPL and its customers are closely aligned. So, really  
15 there are only two competing interests here: (1) Wheelabrator, which  
16 wishes utility customers to pay more and accept less reliability for  
17 power sold under Standard Offer Contracts; and (2) FPL's customers,  
18 who reasonably expect the Commission Rules, Florida Statutes and  
19 FPL's corresponding Standard Offer Contract to protect their interest  
20 in not paying greater than avoided cost for reliable purchased power.

21 **Q. Please comment on Wheelabrator's first recommendation on**  
22 **page 38, lines 11 through 13 of Mr. Dalton's testimony that**  
23 **states "[g]iven that energy payments are based on avoided**  
24 **costs, provisions 8.4.6 and 8.4.8 be revised to compensate REF**

1        **developers when they are constrained off or down by FPL."**

2        A.     To begin with, it is important to recognize that these two contract  
3        provisions Mr. Dalton complains of are expressly provided for under  
4        applicable Commission rules and past regulatory decisions.  
5        Accordingly, Mr. Dalton's suggestions are contrary to law and should  
6        not be accepted. In addition, it is important to remember the concept  
7        that the Standard Offer Contract is modeled upon what customers  
8        would receive from a Next Planned Generating Unit. FPL would itself  
9        reduce output or curtail production from its next planned generating  
10       unit if necessary for reliability reasons, or due to availability of  
11       generation from a more cost-effective generating unit (or purchased  
12       power). These contract provisions are thus consistent with the  
13       underlying philosophy of the Standard Offer Contract, which is to  
14       protect customers by providing for Standard Offer Contract service  
15       consistent with economic and operating characteristics of FPL's next  
16       planned generating unit.

17       **Q.     You mentioned that Mr. Dalton's positions concerning Sections**  
18       **8.4.6 and 8.4.8 are not consistent with the Commission's**  
19       **regulations. Please explain that in more detail.**

20       A.     This is best shown by putting the provisions of FPL's Standard Offer  
21       Contract in juxtaposition with the Commission's requirements for  
22       Standard Offer Contracts.

23

24       Provision 8.4.6



1 Section 8.4.6 of FPL's Standard Offer Contract states that "FPL shall  
2 not be required to accept or purchase energy from the QS during any  
3 period in which, due to operational circumstances, acceptance or  
4 purchase of such energy would result in FPL's incurring costs greater  
5 than those which it would incur if it did not make such purchases."

6  
7 This contract provision is taken almost verbatim from Commission  
8 Rule 25-17.086 that states "[w]here purchases from a qualifying  
9 facility will impair the utility's ability to give adequate service to the  
10 rest of its customers or, due to operational circumstances, purchases  
11 from qualifying facilities will result in costs greater than those which  
12 the utility would incur if it did not make such purchases, or otherwise  
13 place an undue burden on the utility, the utility shall be relieved of its  
14 obligation under Rule 25-17.082, F.A.C., to purchase electricity from  
15 a qualifying facility." This striking similarity can also be seen on page  
16 11 of Mr. Dalton's Deposition Transcript (See KMD-1).

17  
18 Furthermore in Order No. 12634 (page 23) in Docket No. 820406-EU  
19 (See KMD-2) the Commission provided some clarification to Rule 25-  
20 17.086 "to make clear that a utility is not required to purchase from  
21 QF when to do so would result in costs greater than those which the  
22 utility would incur if it did not make such purchases." Wheelabrator  
23 ignores the fact that the Commission included this provision to protect  
24 customers by ensuring that customers do not pay more when the

1 utility purchases from a Qualifying Facility ("QF") than if the utility did  
2 not make the purchase. Wheelabrator states that FPL's Standard  
3 Offer Contract provision 8.4.6 is "problematic" when it appears that  
4 Wheelabrator's criticism is really of the Rule and Florida Statutes that  
5 govern FPL's and other utilities' Standard Offer Contract provisions.  
6 This can also be seen from Mr. Dalton's deposition on pages 12  
7 through 13 of the transcript (See KMD-1).

8  
9 Provision 8.4.8

10 Under section 8.4.8 of the Standard Offer Contract FPL has the right  
11 for a renewable facility that is less than 75 MW to require the  
12 renewable facility to reduce output to a level below the Committed  
13 Capacity. Wheelabrator fails to recognize that FPL's Standard Offer  
14 Contract provision 8.4.8 complies with Commission Order No. 13247  
15 (Page 13) in Docket No. 830377-EU (See KMD-3), where the  
16 Commission found that the "QF must agree to reduce generation or  
17 take other appropriate action as requested by the purchasing utility  
18 for safety reasons or to preserve system integrity." Again,  
19 Wheelabrator states that FPL's Standard Offer Contract provision  
20 8.4.8 is "problematic" when it appears that Wheelabrator's criticism,  
21 as with provision 8.4.6, is really with the Commission Rule and  
22 Florida Statutes that are the basis for FPL's Standard Offer Contract  
23 provisions. This can also be seen from Mr. Dalton's deposition on  
24 page 13 and 14 of the transcript (See KMD-1).

1 Q. Please comment on Wheelabrator's second recommendation on  
2 page 38, lines 14 through 16 of Mr. Dalton's testimony that  
3 states "[t]he Committed Capacity Test in section 3 should be  
4 revised to better consider intermittent operating profiles of  
5 REFs. I recommend a four-hour test for period biomass  
6 facilities." (Note – I believe Wheelabrator meant section 6.)

7 A. Under section 6.2 of the Standard Offer Contract FPL requires the  
8 REF to base the committed Capacity Test on a test period of 24  
9 hours. This provision is consistent with the committed Capacity  
10 Testing requirements that are characteristic of FPL's next Planned  
11 Generating Unit, which is a modern combined cycle base load unit  
12 capable of operating reliably 24 hours per day, 7 days per week. The  
13 amount of money paid to a facility owner under a Standard Offer  
14 Contract is designed to purchase capacity and energy delivered on a  
15 reliability basis comparable to such a unit, consistent with the  
16 Commission's basic approach for Standard Offer Contracts.

17

18 In contrast, Mr. Dalton's suggestion would have FPL and the  
19 Commission abandon this touchstone of reliability in favor of a  
20 considerably lesser standard of reliability which is not consistent with  
21 that provided by the next planned generating unit. In short customers  
22 get less and should pay less, all other things being equal, from a  
23 facility that is not as reliable as the Next Planned Generating Unit.

24

1 It is important to note that the Standard Offer Contract has to be open  
2 to all potential counterparties and generation types, and contract  
3 provisions like this Capacity Test provision are needed to help ensure  
4 reliable service to FPL's customers. The specific recommendation  
5 that Wheelabrator makes is more suited to a negotiated contract, not  
6 the Standard Offer Contract.

7  
8 This is supported by the Commission statement in Order No. 12634  
9 (page 7) in Docket No. 820406-EU (See KMD-2) that states "[a]t the  
10 outset, we wish to state that it is our preference that QFs and utilities  
11 negotiate individually tailored contracts. The rules we have adopted  
12 are intended to both encourage negotiated contracts and provide a  
13 fall back remedy in the event a contract cannot be negotiated."

14  
15 Consistent with the Commission's ruling, FPL views its Standard  
16 Offer Contract as providing a reasonable base from which project  
17 owners and developers may, if they choose, seek to negotiate with  
18 FPL agreements more closely tailored to the needs of facilities with  
19 different fuel types, sizes and operating characteristics, among other  
20 unique features, something FPL is always willing to do. Specifically, if  
21 a facility cannot satisfy the reliability requirements and characteristics  
22 of the Next Planned Generating Unit, this is something to handle in a  
23 negotiation context – the solution is not to incorrectly reduce the  
24 reliability characteristics of the Next Planned Generating Unit

1 provided for in the Standard Offer Contract.

2 **Q. Is the possibility of such negotiations merely theoretical?**

3 A. Not at all. Consistent with the Commission's policy direction, FPL  
4 has negotiated contracts and continues to negotiate purchased  
5 power contracts. Notably, FPL has for more than twenty years  
6 purchased hundreds of millions of dollars of firm capacity and energy  
7 from Wheelabrator's existing facilities. Those contracts were initially  
8 signed as Standard Offer Contracts with amendments that were  
9 successfully negotiated. Indeed, Wheelabrator and FPL are currently  
10 engaged in contract negotiations to replace the 1987 Broward South  
11 (50.6 MW of firm capacity and energy) and 1987 Broward North (45  
12 MW of firm capacity and energy) contracts that are scheduled to  
13 terminate on August 1, 2009 and December 31, 2010, respectively.  
14 FPL initiated contract discussions with Wheelabrator per a letter  
15 dated April 14, 2008. Since that time, FPL has held a conference call  
16 with Wheelabrator on June 26, 2008 and an in-person meeting on  
17 October 29, 2008. Currently, FPL is in the process of responding to a  
18 proposed term sheet from Wheelabrator.

19 **Q. Is it appropriate for specific items that Wheelabrator may wish to**  
20 **negotiate individually with FPL to be included in changes to the**  
21 **Standard Offer Contract?**

22 A. FPL is happy to discuss any specific terms in the context of individual  
23 negotiations that take into account the specific operating  
24 characteristics and economics of Wheelabrator's Florida renewable

1 energy facilities. However, it is not appropriate and is in fact contrary  
2 to the Standard Offer Contract approach adopted in Florida to include  
3 such generator-specific revisions in a utility's Standard Offer  
4 Contract. Again, that is because the Standard Offer Contracts starts  
5 from the perspective of describing the economics and operating  
6 characteristics of the Next Planned Generating Unit in order to  
7 ensure that customers pay no more than avoided costs for service  
8 comparable to that of the Next Planned Generating Unit. Any  
9 deviations that Wheelabrator or any renewable energy provider  
10 wishes to have from the Standard Offer Contract can and should be  
11 discussed on an individual negotiated contract basis, where all the  
12 pluses and minuses of a prospective supplier's facility can be  
13 considered in relation to the characteristics of FPL's next planned  
14 generating unit.

15 **Q. Please comment on Wheelabrator's third recommendation on**  
16 **page 38, lines 17 through 21 of Mr. Dalton's testimony that**  
17 **states "[t]he basis for REFs receiving capacity payments should**  
18 **be revised to better recognize value that they offer. I propose**  
19 **that the capacity factor or Annual Capacity Billing Factor**  
20 **required to achieve full capacity payments be set at 89% and**  
21 **that the minimum capacity factor to receive any capacity**  
22 **payment be set at 69%."**

23 **A.** This is again an effort to change the basis of FPL's Standard Offer  
24 Contract from the operating characteristics of the "G" type combined

1 cycle unit which comprises FPL's Next Planned Generating Unit. Mr.  
2 Dalton's suggestion is not founded at all in any reference to the  
3 characteristics of the Next Planned Generating Unit.

4  
5 Under Appendix B of the Standard Offer Contract FPL requires that  
6 the REF meet an Annual Capacity Billing Factor ("ACBF") equal to or  
7 greater than 97% to receive 100% of the capacity payment and a  
8 minimum of 80% to receive any type of payment. In Order No. 12634  
9 (pages 15 and 16) in Docket No. 820406-EU (See KMD-2) the  
10 Commission stated that "risk associated with the purchase of QF  
11 capacity should be explicitly recognized in the rate of payment so as  
12 to reduce the risk to the ratepayers." FPL's 2014 Combined Cycle  
13 ("CC") avoided unit has a projected annual Equivalent Availability of  
14 97 % as shown on page 93 Schedule 9 of FPL's 2008 Ten Year site  
15 Plan. In other words if necessary the generating capacity of FPL's  
16 CC avoided unit is available to contribute to FPL's system reliability  
17 97 % of the hours in a year. By FPL setting its minimum performance  
18 requirement to a 97% Equivalent Availability factor ("EAF") in order  
19 for the QF to receive full capacity payments, FPL is ensuring that its  
20 customers receive the same level of reliability that they would  
21 otherwise receive from the CC avoided unit.

22  
23 The Commission specifically evaluated and approved FPL's pay-for-  
24 performance sliding scale methodology in calculating capacity

1 payments as a contract provision that is beneficial to customers in  
2 Order No. 24989 (page 17) in Docket No. 910004-EU (See KMD-4).  
3 In that Order, the Commission found that this methodology broadens  
4 the range of performance in which the QF can be paid for  
5 performance while also encouraging the QF to provide capacity  
6 during FPL's peak periods. The Commission, in its findings  
7 encourages the QF to provide capacity during peak periods and to  
8 provide the customers with the same level of reliability that they would  
9 receive from the avoided unit.

10 **Q. Mr. Dalton states that "FPL seeks to hold other facilities to**  
11 **standards its own fleet does not meet." Is this true?**

12 **A.** No. In support of this statement, Mr. Dalton incorrectly compares the  
13 Standard Offer Contract EAF to those contained in FPL's Generating  
14 Performance Incentive Factor ("GPIF") filing which requires three  
15 years worth of operating history for GPIF generating units, not the  
16 expected EAF of the Next Planned Generating Unit. Therefore, the  
17 EAF comparisons that Mr. Dalton makes are not appropriate. It is  
18 also important to note, Wheelabrator's protesting petition challenges  
19 FPL's maintenance and trip test procedures. These procedures are  
20 consistent with manufacturers' recommendations and FPL's  
21 operating and maintenance practices.

22 **Q. Please explain how FPL calculates the EAF in the Standard Offer**  
23 **Contract.**

24 **A.** The EAF of 97% calculated in the Standard Offer Contract is



1 modeled after the Next Planned Generating Unit performance used in  
2 the recently approved Petition to determine need for West County  
3 Energy Center Unit 3. The unit is a 3-on-1 combined cycle unit which  
4 utilizes Mitsubishi Power Systems "G" technology advanced  
5 combustion turbines. The EAF of 96.8% is a project average value  
6 which consists of an average planned outage factor ("POF") of 2.1%  
7 and an average forced outage factor ("FOF") of 1.1%. The EAF does  
8 not include allowance for maintenance outages ("MOF") since  
9 maintenance outages are outages that would only be performed as  
10 system conditions permit.

11 **Q. Has FPL's own fleet of existing combined cycle units similar to**  
12 **the Next Planned Generating Unit performed at these levels?**

13 A. Yes, contrary to Mr. Dalton's assertions, FPL's most recent  
14 Greenfield units at Turkey Point Unit 5, Martin Unit 8 and Manatee  
15 Unit 3 have an average to date EAF, without MOF, of 98.6%, 91.3%  
16 and 97.6% respectively. The lower Martin Unit 8 EAF is due to a fuel  
17 gas heater outage which occurred shortly after placing the unit into  
18 commercial operation. Overall, taking into account the entire fleet of  
19 "F" technology combined cycle plants, which includes repowered  
20 facilities, the average EAF exceeds 94%. This supports the  
21 reasonableness of FPL's 96.8% value for the "G" technology Next  
22 Planned Generating Unit.

23 **Q. What is the basis for Mr. Dalton suggesting that FPL's Annual**  
24 **Capacity Billing Factor required to achieve full capacity**

1        **payments be set at 89% and that the minimum capacity factor to**  
2        **receive any capacity payment be set at 69%?**

3        A.    Mr. Dalton's point again seems to reflect a misunderstanding of the  
4        fundamental basis of FPL's Standard Offer Contract. FPL is required  
5        to base its Standard Offer Contract provisions on its own projections  
6        of the operating characteristics of its own Next Planned Generating  
7        Unit. There is no provision in Florida law, regulations or Commission  
8        decisions supporting use of the characteristics of another utility's  
9        Next Planned Generating Unit, or of a "state-wide" Next Planned  
10       Generating Unit. Mr. Dalton's suggestion seems to have arbitrarily  
11       taken his proposed Annual Capacity Billing Factors from Progress  
12       Energy's Standard Offer Contract. In doing this he has erred even  
13       further, because if one reviews Progress Energy's Tariff Sheet 9.442,  
14       Appendix A, one will see that Progress Energy requires an Annual  
15       Capacity Billing Factor of 91% to receive 100% of the payments, not  
16       the 89% as Wheelabrator's testimony claims. While Mr. Dalton has  
17       incorrectly characterized Progress Energy's Annual Capacity Billing  
18       Factor, even if he had stated this figure correctly his proposal is still in  
19       violation of the requirement that FPL's Standard Offer Contract be  
20       based on its own Next Planned Generating Unit, not that of another  
21       utility.

22       Q.    **Please comment on Wheelabrator's fourth recommendation on**  
23       **page 39, lines 1 through 3 of Mr. Dalton's testimony that states**  
24       **"[t]he provisions in the SOC (e.g., right of first refusal) for**

1       **Tradable Renewable Energy Certificates (TRECs) should be**  
2       **eliminated to avoid any adverse impact on their market and**  
3       **comport with the Commission rule."**

4     A.     While Mr. Dalton proposes to eliminate the TREC right of first refusal,  
5       this is a valuable right protecting FPL's customers that has been  
6       expressly considered and approved by the Commission. Under  
7       section 17.6.2 of the Standard Offer Contract FPL has a right of first  
8       refusal with respect to any and all bona fide offers to purchase any  
9       RECs received by the REF and FPL agrees to exercise that option  
10      within 30 days of receiving notification by the REF of a bona fide  
11      offer. In Order No. PSC-07-0492-TRF-EQ (page 5) in Docket No.  
12      070234-EQ (See KMD-5), the Commission notes that a right of first  
13      refusal "will insure that Florida's ratepayers enjoy all of the attributes  
14      associated with renewable generation without imposing a financial  
15      penalty to the owner of the renewable generation facility." FPL's 30  
16      day provision for the right of first refusal permits FPL a reasonable  
17      period of time to conduct due diligence and assess the value of bona  
18      fide offers for TRECs, and respond to the seller. This period and  
19      time provision permits FPL to ensure that it protects its customers  
20      interests by only exercising the right of first refusal if it is in the best  
21      interests of FPL customers, based upon assessment of then-existing  
22      TREC market conditions. Finally, if this provision does not meet the  
23      requirements of an individual seller of capacity and energy, it is like  
24      other provisions subject to potential negotiation within the context of

1 an individual contract.

2 **Q. Please comment on Wheelabrator's fifth recommendation on**  
3 **page 39, lines 4 through 7 of Mr. Dalton's testimony that states**  
4 **"[f]inally, I recommend that the Commission consider changes**  
5 **to the methodology it employs to establish avoided cost for**  
6 **renewable energy facilities to recognize that the appropriate**  
7 **avoided generation resource for these projects is another**  
8 **renewable energy resource, not a fossil fuel-fired generating**  
9 **resource."**

10 **A.** Throughout Mr. Dalton's testimony, Wheelabrator continues to insist  
11 that the Standard Offer Contract characteristics (pricing, capacity  
12 tests, EAF etc.) should be based on the characteristics of the  
13 renewable generator. This, however, is totally inconsistent with  
14 Commission Rules, Florida Statutes, and Federal laws which *require*  
15 FPL and other utilities to base Standard Offer Contracts on avoided  
16 cost based on the Next Planned Generating Unit. Avoided cost is the  
17 value of the energy and capacity based upon the unit avoided by the  
18 utility. In other words, avoided cost is independent of the type or  
19 characteristics of the QF, depending only upon the unit avoided by  
20 the utility. The Federal Energy Regulatory Commission ("FERC") has  
21 specifically expressed this in its Order Granting Petition for  
22 Declaratory Order in Docket No. EL03-133-000 that was actually  
23 requested by Wheelabrator.

1 On June 13, 2003, American REF-Fuel Company, Covanta Energy  
2 Group, Montenay Power Corporation, and Wheelabrator filed a  
3 petition for a declaratory order in which they were seeking the  
4 FERC's interpretation of implementing the Public Utility Regulatory  
5 Act ("PURPA") of 1978. Specifically, they were seeking an order  
6 declaring that avoided cost contracts entered into pursuant to PURPA  
7 do not inherently convey to the purchasing utility any renewable  
8 energy credits or RECs, contending that the power purchase price  
9 that the utility pays under such a contract compensates a QF only for  
10 the energy and capacity produced by that facility. In the FERC Order  
11 issued October 1, 2003 (See KMD-6), FERC clarified what is and is  
12 not included in avoided cost. In Paragraph 22, FERC states that  
13 "avoided costs were intended to put the utility into the same position  
14 when purchasing QF capacity and energy as if the utility generated  
15 the energy itself or purchased energy from another source. In this  
16 regard, the avoided cost that a utility pays a QF does not depend on  
17 the type of QF, i.e., whether it is a fossil-fuel-cogeneration facility or a  
18 renewable-energy small power production facility. The avoided cost  
19 rates, in short, are not intended to compensate the QF for more than  
20 capacity and energy." (Emphasis added.)

21 **Q. Mr. Dalton's testimony on page 35, lines 4 through 5, states that**  
22 **"[m]y point is that FPL's SOC requires REF owners to bear too**  
23 **much risk given the rates and terms offered." Please comment**  
24 **on this statement.**

- 1 A. Wheelabrator fails to recognize that the Standard Offer Contract is  
2 premised on the characteristics of FPL's Next Planned Generating  
3 Unit, as is required by law. The Standard Offer Contract is not the  
4 result of the give and take of commercial negotiations between an  
5 unrestricted buyer and seller, but is in actuality a unilateral "put" right  
6 of a renewable generator. This means that if the renewable generator  
7 signs the contract, the utility is obligated to purchase on behalf of its  
8 customers capacity and energy precisely as prescribed in the  
9 contract. As such, it is necessary that the contract as a whole and in  
10 specific contract provisions be constituted in such a way as to protect  
11 and limit the risk for the *customers* of the utility in a contract that may  
12 be entered into by project developers and owners that have facilities  
13 with a broad range of sizes, fuel types, types of generation,  
14 geographical location, and performance characteristics.  
15 Furthermore, Wheelabrator fails to acknowledge that the Standard  
16 Offer Contract also provides contract provisions that benefit the REF  
17 such as being able to tailor their capacity payment stream, i.e., Early  
18 Capacity Payments, Levelized Capacity Payments, Early Levelized  
19 Capacity, or the Flexible Payment Option to meet its specific needs.
- 20 **Q. Mr. Dalton's testimony on page 15, lines 1 through 7, states that**  
21 **"REFs such as Wheelabrator, which has proven its ability to**  
22 **provide reliable cost-effective renewable power and has**  
23 **facilities in the ground in Florida, are unlikely to sign FPL's SOC.**  
24 **There are a number of other utilities in Florida with whom**

1       Wheelabrator could contract for the sale of the output of its  
2       existing projects and where Wheelabrator might be more likely  
3       to develop new projects. As such, the terms and conditions in  
4       FPL's SOC could prevent FPL customers from realizing the  
5       benefits of existing and new projects." Please comment on  
6       these statements.

7     A.   Mr. Dalton appears to be unfamiliar with the fact that FPL has  
8       successfully contracted for and purchased for years about 300 MW of  
9       renewable energy some of which is pursuant to negotiated contracts,  
10      as is consistent with the Commission's policy direction favoring  
11      negotiated contracts described earlier in my rebuttal testimony.  
12      Given the availability and encouragement of negotiated contracts to  
13      best fit the needs of individual sellers of renewable energy, it would  
14      be surprising if the business and regulatory flexibility of negotiated  
15      contracts was not preferred to simply signing the Standard Offer  
16      Contract. Moreover, Mr. Dalton's comment suggests that he has not  
17      read the other Florida Investor Owned Utilities' ("IOUs") Standard  
18      Offer Contracts. If he had, he would see that the other IOUs, who  
19      because they are subject to the same Commission Rules and Florida  
20      Statutes as FPL, have many of the same terms and conditions as  
21      FPL. Moreover, these are the same terms and conditions that  
22      Wheelabrator is protesting. For example all the IOUs' Standard Offer  
23      Contracts have contract provisions that allow the utilities to not accept  
24      or reduce the generation from a REF. All of the IOUs have a

1 provision for the Right of First Refusal for RECs. And Progress  
2 Energy's provision for a Committed Capacity Test is based on a test  
3 period of twenty-four (24) hours, exactly like FPL's. So Mr. Dalton's  
4 statements appear to be unfounded and again seem to point to the  
5 fact that Wheelabrator's opposition to FPL's Standard Offer Contract  
6 is really opposition to the Commission Rules and Florida Statutes that  
7 are the basis for all Florida IOUs' Standard Offer Contracts.

8 **Q. Is Mr. Dalton's testimony inconsistent with Wheelabrator's**  
9 **responses to FPL's First Set of Interrogatories?**

10 A. Yes, it is. In response to Interrogatory No 3, Wheelabrator states:  
11 "Further, information regarding proceedings outside the state of  
12 Florida is not relevant to the subject matter of this docket, is not  
13 reasonably calculated to lead to the discovery of admissible  
14 evidence, and is overbroad." In response to Interrogatory No 6,  
15 Wheelabrator states: "Further, information regarding negotiations  
16 outside the state of Florida is not relevant to the subject matter of this  
17 docket, is not reasonably calculated to lead to the discovery of  
18 admissible evidence, and is overbroad." In response to Interrogatory  
19 No 7, Wheelabrator states: "Further, information regarding contracts  
20 outside the state of Florida is not relevant to the subject matter of this  
21 docket, is not reasonably calculated to lead to the discovery of  
22 admissible evidence, and is overbroad." And, in response to  
23 Interrogatories Nos. 8 and 9, Wheelabrator states: "Further,  
24 information regarding facilities outside the state of Florida is not



1 relevant to the subject matter of this docket, is not reasonably  
2 calculated to lead to the discovery of admissible evidence, and is  
3 overbroad." It is clear from Wheelabrator's interrogatory responses  
4 that they assert that proceedings, negotiations, contracts and  
5 facilities outside the state of Florida are irrelevant, yet the underlying  
6 support for Wheelabrator's testimony is a Standard Offer Contract  
7 program in Ontario and a capacity value calculation from New York.  
8 Information outside the State of Florida is either irrelevant or not. It  
9 cannot be both ways.

10 **Q. In Mr. Dalton's testimony, when referring to his "extensive**  
11 **experience in the design and evaluation of SOCs" he only**  
12 **references the Ontario Power Authority ("OPA") Standard Offer**  
13 **Program. Is the OPA Standard Offer Program comparable to**  
14 **Standard Offer Contracts in Florida?**

15 **A.** No. The OPA program that Mr. Dalton' says he is experienced with is  
16 not subject to U.S. jurisdiction, or Florida jurisdiction concerning  
17 Standard Offer Contracts. As such, it does not have the basic  
18 characteristics of FPL's Standard Offer Contracts that I have  
19 described in my testimony. The OPA program in my view is more of  
20 an example of a feed-in tariff which is not analogous to the Standard  
21 Offer Contract that FPL is mandated to continuously offer in Florida.  
22 For example, one fundamental difference is that the OPA program  
23 provides a very large premium for certain renewables while the  
24 Standard Offer Contract under Florida law and regulation is required

1 to be priced at avoided cost, without any premium for any particular  
2 technology. I will distinguish between the purpose of (i) a Standard  
3 Offer Contract and (ii) a feed-in tariff.

4  
5 Standard Offer Contracts

6 According to Rule 25-17.200, F.A.C., the "purpose of [the Standard  
7 Offer Contract] rules is to promote the development of renewable  
8 energy; protect the economic viability of Florida's existing renewable  
9 energy facilities; diversify the types of fuel used to generate electricity  
10 in Florida; lessen Florida's dependence on natural gas and fuel oil for  
11 the production of electricity; minimize the volatility of fuel costs;  
12 encourage investment within the state; improve environmental  
13 conditions; and, at the same time, minimize the costs of power supply  
14 to electric utilities and their customers." Furthermore, as stated in my  
15 direct testimony, FPL's focus in preparing, submitting and  
16 administering its Standard Offer Contract is to make available a fair  
17 and reasonable agreement providing an avenue for FPL to make  
18 purchases from such facilities, for the benefit and in a manner  
19 protective of FPL's customers. FPL also views its Standard Offer  
20 Contract as providing a reasonable base from which project owners  
21 and developers may, if they choose, seek to negotiate with FPL  
22 agreements more closely tailored to the needs of facilities with  
23 different fuel types, sizes and operating characteristics, among other  
24 unique features.

## Feed-in Tariffs

"Feed-in tariffs have become a term of art to refer to the style of incentives adopted (most notably) by Germany to increase the adoption of renewable energy resources. Under the German feed-in tariff legislation, renewable energy technologies are guaranteed interconnection with the electricity grid, and are paid a premium rate that is designed to generate a reasonable profit for investors over a 20-year term. The rates are differentiated by technology such that each renewable resource type (e.g. solar, wind, biomass, etc.) can profitably be developed. This approach stands in contrast to the Public Utilities Regulatory Act (PURPA) in the US, under which long-term contracts are based on the avoided cost of conventional fuels."

### Feed-in Tariffs and Renewable Energy in the USA – a Policy Update,

Wilson Rickerson, Florian Bennhold, and James Bradbury (May 2008), at page 2. Following this logic, a feed-in tariff represents a *mandatory premium rate* purchase requirement of certain renewables through fixed-rate long-term contracts to electric utilities. The OPA Standard Offer Program is representative of such a feed-in tariff as (i) certain eligible facilities are guaranteed interconnection with the electricity grid, (ii) certain eligible facilities are paid a premium rate (i.e., 42.0 cents per kWh for photo-voltaic energy) over a 20-year contract term, and (iii) the rates are differentiated by technology type.

1  
2       Aside from the fact that the OPA Standard Offer Program concerns a  
3       feed-in tariff rather than a Standard Offer Contract, the OPA Standard  
4       Offer Program is not within the jurisdiction of the United States, much  
5       less Florida.

6     **Q.    Would facilities like Wheelabrator's in Broward County be**  
7       **eligible for the OPA Standard Offer Program?**

8     A.    No. As shown on page 30 of OPA's Standard Offer Program Rules  
9       (See KMD-7), Municipal Solid Waste facilities are specifically  
10       excluded from the definition of "Renewable Biomass." The same  
11       OPA program that Mr. Dalton's touts as an example of a program that  
12       encourages broad participation would exclude his own client.

13    **Q.    On page 13 lines 15 through 18 of Mr. Dalton's direct testimony**  
14       **he states "[f]urthermore by basing the SOC energy payment**  
15       **options on the costs of the avoided fossil-fueled generating unit,**  
16       **FPL prevents its customers from realizing the volatility of fuel**  
17       **cost, which is one of the renewable energy benefits the Florida**  
18       **Legislature cites." Do you agree?**

19    A.    No. In fact, Mr. Dalton acknowledges in his direct testimony on page  
20       13 lines 5 through 7 that FPL pursuant to Commission Rule 25-  
21       17.250 identifies its next avoidable fossil fueled generating unit as the  
22       avoided cost benchmark for purposes of its Standard Offer Contract.

23    **Q.    On page 14 lines 11 through 14 of Mr. Dalton's direct testimony**  
24       **he states that "FPL's SOC does not encourage the development**

1 of renewable energy resources in the State. The best indication  
2 of this is the fact that not a single renewable energy resource  
3 developer has executed FPL's SOC since January 2006 when it  
4 was first put in place. Do you agree?

5 A. No, what Mr. Dalton fails to recognize in his testimony is that FPL's  
6 petitions to the FPSC for approval of its Standard Offer Contracts and  
7 Tariff schedules have been protested by interveners since 2006  
8 making it difficult for any potential renewable generator to avail  
9 themselves of FPL's Standard Offer Contract. As a case in point,  
10 subsequent to FPL's filing of its Standard Offer Contract on April 3,  
11 2006 the Florida Industrial Cogeneration Association ("FICA")  
12 petitioned the FPSC on June 26, 2006 for a formal hearing and for  
13 leave to intervene in the IOUs' Standard Offer Contract Dockets  
14 protesting Commission Order No. 06-0486-TRF-EQ. This Order had  
15 approved the IOUs' Standard Offer Contracts. On September 21,  
16 2006 the Commission recommended that due to FICA's protest of  
17 Order No. 06-0486-TRF-EQ the Standard Offer Contracts were not in  
18 effect. Mr. Dalton was unaware of this protest as can be seen from  
19 Mr. Dalton's deposition transcript page 26 (See KMD-7). In the  
20 following year, on April 2, 2007, FPL petitioned the Commission for  
21 approval of its new Standard Offer Contract and Tariff schedules. On  
22 July 2, 2007 FICA filed an amended petition and for leave to  
23 intervene in their protest of Order No. 07-0492-TRF-EQ which had  
24 preliminarily approved FPL's Standard Offer Contract. And then this

1 year, on April 1, 2008 FPL petitioned the FPSC for approval of its  
2 newest Standard Offer Contract and Tariff Schedules. On August 19,  
3 2008 the Commission issued Order No. 08-0544-TRF-EQ approving  
4 FPL's Standard Offer Contract and twenty-one days later, on  
5 September 9, 2008, Wheelabrator petitioned the Commission for a  
6 formal hearing and protested the approval, providing little time for a  
7 renewable generator to avail themselves of the Standard Offer  
8 Contract.

9  
10 In addition, Mr. Dalton's testimony fails to mention that for 2008,  
11 through November, FPL has purchased 1,145,999 MWH of  
12 renewable energy under firm capacity contracts, with firm generating  
13 capacity of 157.6 MW. Additionally through November 2008, FPL  
14 purchased approximately 341,039 MWH of renewable energy from  
15 As-Available producers, with generating capacity of 126.05 MW. FPL  
16 is always interested in adding to these purchases of renewable  
17 energy upon terms and conditions beneficial to its customers and in  
18 compliance with applicable laws and regulations.

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

20 **A.** Yes, it does.

1 BY MR. ANDERSON:

2 Q You are sponsoring some exhibits to your rebuttal  
3 testimony?

4 A Yes.

5 Q Are those 58 pages of exhibits labeled KMD-1 though  
6 KMD-7 attached to your testimony?

7 A Yes.

8 Q These have been preidentified on Staff's Exhibit List  
9 as 5 through 11.

10 Have you prepared a summary of your rebuttal  
11 testimony?

12 A Yes, I have.

13 Q Please provide your summary to the Commission.

14 A Good afternoon, Commissioners.

15 The purpose of my testimony is to respond to the  
16 testimony of Wheelabrator Witness John Dalton, which opposes  
17 FPL's 2008 standard offer contract approved by the Commission.  
18 FPL's standard offer contract complies with Florida Statutes  
19 and Commission rule.

20 The Commission policy for standard offer contracts  
21 generally, and FPL's standard offer contracts specifically, are  
22 premised on ensuring that customers do not pay more for energy  
23 and capacity under a standard offer contract than would be paid  
24 if capacity and energy were to be provided by FPL's next  
25 planned generating unit, which in this case would be a natural

1 gas-fired combined cycle unit. As such, the provisions of  
2 FPL's standard offer contract are framed in terms of the  
3 economics and operating characteristics of such a unit  
4 consistent with longstanding Commission requirements.

5 A key theme that emerged from my review of Mr.  
6 Dalton's testimony is that Wheelabrator suggestions for changes  
7 to FPL's standard offer contract are contrary to this  
8 well-established regulatory and statutory direction of the  
9 Commission and the Florida Legislature. Throughout  
10 Mr. Dalton's testimony, Wheelabrator continues to insist that  
11 the standard offer contract characteristics -- pricing,  
12 capacity tests, equivalent availability factors, et cetera --  
13 should be based on the characteristics of the renewable  
14 generator.

15 This, however, is totally inconsistent with the  
16 Commission rules, Florida Statutes, and federal laws which  
17 require FPL and other utilities to base standard offer  
18 contracts on avoided cost based on the next planned generating  
19 unit. Avoided cost is based on the value of energy and  
20 capacity of the unit avoided by the utility. In other words,  
21 avoided cost is independent of the type or characteristics of a  
22 qualifying facility, depending only upon the unit avoided by  
23 the utility.

24 For all the reasons provided in my direct and  
25 rebuttal testimony, FPL requests that the Commission find that



1 FPL's standard offer contract complies with Florida Statutes,  
2 the Commission regulations and is reasonable, and deny  
3 Wheelabrator's request that the Commission order changes to the  
4 contract that are not consistent with Florida law or the  
5 Commission's regulations and are not reasonably protective of  
6 FPL's customers.

7 That concludes my summary.

8 **MR. ANDERSON:** Ms. Dubin is available for  
9 cross-examination.

10 **COMMISSIONER EDGAR:** Thank you.

11 Ms. Kaufman.

12 **MS. KAUFMAN:** Thank you, Madam Chairman.

13 CROSS EXAMINATION

14 BY MS. KAUFMAN:

15 **Q** Ms. Dubin, let's look at your rebuttal testimony,  
16 bottom of Page 2, going over to the top of Page 3. You say  
17 there that FPL's next planned unit is a Mitsubishi G-class  
18 natural gas-fired combined cycle, right?

19 **A** Yes.

20 **Q** You would agree with me, would you not, that none of  
21 these units are on your system yet, right?

22 **A** No.

23 **Q** I'm correct that you do not have these units on your  
24 system?

25 **A** Yes, you are correct, we do not have them on our

1 system.

2 Q So when you're talking about the operating  
3 characteristics of these units, these are projected or hoped  
4 for operational parameters, correct?

5 A Yes. Consistent with the rules for the standard  
6 offer contract, it's based on a projected -- your next planned  
7 generating unit.

8 Q Now, if these units do eventually come on-line, and  
9 if they do not meet the projected operating characteristics  
10 that you've put in your standard offer contract, I'm correct,  
11 am I not, that FPL is not going to suffer any financial penalty  
12 in that regard, are they?

13 A No, but there is no indication that they wouldn't  
14 operate that way. These are very efficient units, and a  
15 G-class -- the F-class units that we do have we are seeing  
16 very, very efficient operating statistics on.

17 Q But you would agree that until they come on-line,  
18 until they start operating, we're not going to know for sure  
19 what their operating characteristics are?

20 A Yes, I agree they are projections.

21 Q Okay. However, if a renewable generator doesn't meet  
22 these projected or hoped for operating characteristics, then  
23 they would be penalized in terms of lower capacity payments,  
24 correct?

25 A Yes, that is correct.

1           **Q**     Take a look at your rebuttal testimony at Page 15,  
2 please. Page 15, Line 15, as a matter of fact.

3           **A**     Yes.

4           **Q**     You talk about the average to date EAF, correct?

5           **A**     Yes.

6           **Q**     And you do not know, do you, what that time period  
7 is, the average to date?

8           **A**     It's fairly recently, I am not quite sure. To date  
9 would be the date my testimony was filed, which was, I believe,  
10 December 23rd.

11          **Q**     But as we sit here today, you don't know what time  
12 period that covers? I mean, you know the ending date, but you  
13 don't know what the time period is.

14          **A**     Those units went into commercial operations recently.  
15 Recently, in the last -- you're right, Ms. Kaufman, I'm not  
16 quite sure, but it is recent.

17          **Q**     And am I also correct that you don't know the  
18 scheduled major inspection and maintenance levels on those  
19 units that you're talking about on Page 15?

20          **A**     I'm sorry, could you repeat the question, please.

21          **Q**     I'll try. I think I asked you in your deposition  
22 whether you knew when the scheduled major inspections and  
23 maintenance were going to occur on these units, and you do not  
24 know that, do you?

25          **A**     No, I do not know.

1           Q     Now, still on Page 15, if you look up at Line 7,  
2 actually 6 and 7, you're talking about the EAF, correct? And,  
3 again, this is a projected value?

4           A     Yes, it is a projected value.

5           Q     And I'm also correct, am I not, that this does not  
6 include maintenance time?

7           A     It includes some maintenance. It doesn't include the  
8 maintenance outage factor, but it includes the 2-1/2 percent  
9 for the planned outage factor, and 1.1 percent for the forced  
10 outage factor.

11          Q     Now, I know that you were here and you heard Mr.  
12 Dalton talk about the fact that these class of units have a  
13 long maintenance period after, I think he said, five years.  
14 Did you hear that?

15          A     Yes.

16          Q     And these units have not reached that stage yet, have  
17 they?

18          A     I'm sorry, these units have not reached the --

19          Q     They have not come up to that first big maintenance  
20 outage, if you will.

21          A     Yes, I guess that is correct.

22          Q     Now, Mr. Dalton has an exhibit attached to his  
23 testimony, JCD-2; are you familiar with that?

24          A     Yes, I am.

25          Q     And this exhibit, would you agree, looks at the

1 historical availability factors of some of FPL's units,  
2 correct?

3       **A**     Yes, it does.

4       **Q**     And as opposed to the projections that we just talked  
5 about, this reflects the actual operation of these units,  
6 correct?

7       **A**     That is correct, yes. I think it's important to  
8 point out, though, that these are very different units. They  
9 may be combined cycle units, but we are talking about one that  
10 is a G unit which is much, much more efficient. So to compare  
11 these, the comparison may not make sense. You're talking about  
12 a unit that's very, very efficient.

13               In my testimony, I had included Turkey Point Unit 5,  
14 and Martin Unit 8, and Manatee Unit 3, which are much more  
15 closely identified in terms of an efficiency unit which has  
16 EAFs that are much closer to what we're talking about.

17       **Q**     You don't take issue with the data that's in JCD-2,  
18 do you?

19       **A**     Oh, no, I don't.

20       **Q**     And this reflects the actual operation of these  
21 units, correct?

22       **A**     Yes, it does.

23       **Q**     And if we were to look back at your ten-year site  
24 plans, we would find what you had projected the EAF for these  
25 units would be, wouldn't we?

1           **A**     Yes.

2           **MS. KAUFMAN:** And I have an exhibit that I'd like to  
3 distribute, Madam Chair. I'm going to have my assistant --

4           **COMMISSIONER EDGAR:** And to the Court Reporter, if  
5 you would. Yes; thank you.

6           **MS. KAUFMAN:** He's new. (Laughter.)  
7 Madam Chair, I think this would be Number 20.

8           **COMMISSIONER EDGAR:** Yes, ma'am, 20.

9           **MS. KAUFMAN:** And we could just call it Ten-Year Site  
10 Plan Excerpt.

11           **COMMISSIONER EDGAR:** We will so mark.

12           **MS. KAUFMAN:** Thank you.

13           (Exhibit Number 20 marked for identification.)

14 BY MS. KAUFMAN:

15           **Q**     I have not included, obviously, the entire ten-year  
16 site plan, Ms. Dubin, in an effort to not overwhelm the record  
17 here, but I have included the title pages. And if you would  
18 flip to the third page.

19           **A**     Yes, I'm there.

20           **Q**     And that is your projection. It's Schedule 9 for the  
21 Sanford 5 unit, correct?

22           **A**     Yes.

23           **Q**     And if you look down about three-quarters of the way,  
24 you'll see the EAF that FPL projected, correct?

25           **A**     Yes.

1           **Q**     And what was that?

2           **A**     96 percent.

3           **Q**     And then when we look at Mr. Dalton's Exhibit JCD-2,  
4 we see, don't we, that the unit only performed at 88.4 percent?

5           **A**     No. Not that -- there was an estimate of 88.4. I  
6 believe the actual is 91.5.

7           **MS. KAUFMAN:** Yes. Thank you. Mr. Dalton just  
8 corrected me, as well. Sorry.

9 BY MS. KAUFMAN:

10          **Q**     So the unit actually operated at 91.5 percent, but  
11 you projected it would operate at 96, correct?

12          **A**     That is correct.

13          **Q**     So that if this had been your avoided unit, the  
14 renewable generator would have been held to 96 percent, whereas  
15 the unit didn't perform at 96 percent, did it?

16          **A**     No, it did not. But I think it's important to point  
17 out that I believe these factors came out of the GPIF filing,  
18 and there are some adjustments for that, including MOF,  
19 Maintenance Outage Factor. And also I think it's important to  
20 point out that the standard offer contract and the statutes and  
21 rules that require the standard offer contract have us look  
22 toward the next planned generating unit. Those are the rules  
23 that govern the standard offer contract. It is done on a  
24 projected basis.

25          **Q**     And my point simply, Ms. Dubin, is that if the

1 renewable generator had been held to the 96 percent, it would  
2 be required to perform at a higher level than your own unit  
3 did, correct?

4       **A**     For this particular case, yes.

5       **Q**     I want to just go back and clear up one thing and be  
6 sure the record is clear. And if you need to, you can refer to  
7 Exhibit 16, but I'm fairly sure that you're familiar with  
8 Section 8.4.8 that we have discussed at some length, which is  
9 what I call the curtailment provision.

10       **A**     Yes.

11       **Q**     And I'm correct, am I not, that during the periods  
12 when FPL curtails the renewable facility, the renewable  
13 facility does not receive any payment for those periods?

14       **A**     Yes, that would be correct. I might also point out  
15 that I have checked with our operating folks and have learned  
16 that Wheelabrator has not been interrupted or curtailed, so I  
17 think it's important to note that.

18       **Q**     Hasn't been interrupted or curtailed in the past.  
19 You don't know what's going to occur in the future, do you?

20       **A**     No, I agree.

21       **Q**     And you could still invoke that provision if you so  
22 chose, correct?

23       **A**     Yes. Under the circumstances that we discussed  
24 before, safety, reliability, cost effectiveness, yes.

25       **Q**     Well, I hate to go back there, but just turn to



1 8.4.8 for one moment, Ms. Dubin.

2 A Okay.

3 Q I think that you would agree with me that none of  
4 those factors that you just described appear in that section,  
5 correct; safety, reliability?

6 A That is correct.

7 Q I think one provision that we haven't discussed yet  
8 is what is called the committed capacity test, which is  
9 Section 6.2, which appears on Page 9.034 of the contract?

10 A Okay.

11 Q I wanted to be sure you were there. Can you tell us  
12 what a committed capacity test is?

13 A It's a test that's done for 24 consecutive hours to  
14 ensure that the unit is there and producing during that 24-hour  
15 period.

16 Q Is FPL's Mitsubishi unit going to go through a  
17 committed capacity test?

18 A Yes.

19 Q And if it fails that test, is there any financial  
20 penalty to FPL?

21 A I'm not sure that there's any financial penalties. I  
22 do think that there could be some financial problems down the  
23 road. There are certain requirements, or certain manufacturer  
24 guidelines on testing and that kind of thing, and I believe  
25 that certain insurance and everything on units are based on

1 that, as well. So it would be contrary to the manufacturer's  
2 guidelines and procedures to not do a 24-hour testing if that's  
3 what their equipment calls for.

4 Q So you might have some recourse against the  
5 manufacturer of the unit?

6 A I think that it would be FPL's responsibility to do  
7 the testing on the unit in accordance with the manufacturer's  
8 recommendations.

9 Q But if the unit did not pass the committed capacity  
10 test, there's no financial penalty to FPL, correct?

11 A Correct.

12 Q Whereas if the renewable facility doesn't pass that  
13 test, again, they're not going to receive the full capacity  
14 payments, right?

15 A That is correct. Keep in mind, though, that again,  
16 all of the provisions in the standard offer contract are there  
17 so that customers are treated the same whether it's an avoided  
18 unit or it's a purchased power agreement. The committed  
19 capacity test is based on a combined cycle unit that's going to  
20 be -- the reliability is going to be there. It's going to be  
21 there 24 hours a day, 7 days a week. So you would ask that  
22 that same level of reliability be there for the renewable  
23 generator.

24 Q It's projected to meet that criteria, right? We  
25 don't know if it really will.

1           **A**     Yes.

2                     And, again, the standard offer contract, the rules  
3 that guide it are based on projections.

4           **Q**     If you will turn to Page 10 of your rebuttal,  
5 beginning at Line 8. First of all, you're relying on Order  
6 12634 that I think we have discussed previously, a 1983 order,  
7 correct?

8           **A**     Yes.

9           **Q**     And in the passage there from 8 to 13, you're not  
10 intending to suggest that the Legislature preferred or has  
11 indicated a preference for a negotiated contract as opposed to  
12 a standard offer, are you?

13           **A**     No, I'm not. But I did want to point out that the  
14 Commission has mentioned a preference. And a negotiated  
15 contract or standard offer contract, they both promote  
16 renewables, and either one is good; but it is important to  
17 point out that the Commission did see that they had a  
18 preference for a negotiated contract.

19           **Q**     So is it your view that the standard offer contract  
20 is an inferior document to be turned to only if negotiations  
21 are unsuccessful?

22           **A**     No, not at all. A standard offer contract, again, is  
23 a one-size-fits-all. So if there are specific characteristics  
24 for a specific renewable generator, rather than adjusting the  
25 standard offer contract for that one particular generator, the

1 way to do it is to, instead, negotiate that contract and have  
2 it tailored more to that specific generator.

3           If you end up tailoring the standard offer contract  
4 to Wheelabrator, for example, then you make it perhaps more  
5 difficult for someone else who wants to enter into the standard  
6 offer contract. Maybe then they're not geared to them and they  
7 have to then negotiate even further on something to get it  
8 towards them. Again, the standard offer contract is a  
9 one-size-fits-all, and that is just it standard so that it can  
10 include all kinds of sizes, geographical locations, all kinds  
11 of characteristics of a renewable generator.

12           **Q**     And not to beat a dead horse, or I forget exactly the  
13 phrase that Commissioner Argenziano used, we have yet to find  
14 that generator whose size this contracts fits, correct?

15           **A**     We have not had anyone sign up for it, no. But,  
16 again, I think it's important to note that we have had  
17 contracts in place so that there has not been someone to say --  
18 you know, I think over 300 megawatts of renewable generation in  
19 place during that time frame, so those generators would not be  
20 coming to us for a standard offer contract.

21           **Q**     Wouldn't you hope that you would have additional  
22 generators come to you?

23           **A**     Oh, absolutely.

24           **Q**     And you have not, have you?

25           **A**     We have not had anyone sign up for the standard offer

1 contract. But, again, we have several renewable generators  
2 that are talking to us and using the standard offer contract as  
3 a starting point.

4 **Q** One more swat at the horse. Nobody has signed the  
5 standard offer?

6 **A** No one has signed the standard offer.

7 **MS. KAUFMAN:** My apologize, Commissioner Argenziano,  
8 if I misquoted you there.

9 **COMMISSIONER ARGENZIANO:** Chair, just to clarify the  
10 record, that is Commissioner Carter's phrase.

11 **MS. KAUFMAN:** Oh, was it? I'm so sorry. I  
12 apologize, again.

13 **COMMISSIONER ARGENZIANO:** I frequently tell him it is  
14 against the law to do that.

15 **COMMISSIONER EDGAR:** That is beat a dead horse to  
16 death, I think.

17 **MS. KAUFMAN:** Okay. I'll note that definitely.

18 BY MS. KAUFMAN:

19 **Q** I want to just talk for a moment about the TREC, and  
20 we talked a little bit about the right of first refusal, I  
21 guess, before lunch. I apologize if I did ask you this before  
22 lunch, but I think you said that you are just somewhat familiar  
23 with how the TREC market operates?

24 **A** Yes.

25 **Q** Are you aware that oftentimes TRECs are sold at

1 auction?

2       **A**     Yes.

3       **Q**     And sometimes utilities issue an RFP to which  
4 providers respond?

5       **A**     Yes.

6       **Q**     And do you know what the general turnaround time is  
7 in a TREC auction, do you have a feel for that?

8       **A**     I think they can vary depending on the situation.

9       **Q**     And under the right of first refusal, the renewable  
10 generator can't even come to you until they have what is called  
11 a bona fide offer from someone else to purchase the TREC,  
12 right?

13       **A**     That's the way that right of first refusal works,  
14 yes.

15       **Q**     So in an auction situation, the holder of the TREC  
16 would actually have to be selected or win the auction before  
17 they could come back to you, correct?

18       **A**     Yes, I believe so.

19       **Q**     And at that time you would have the option, I guess,  
20 to buy the TREC and the renewable generator would have to  
21 default on their bid?

22       **A**     I guess there would be certain circumstances where  
23 you would be able to work that through. Again, we have a  
24 standard right of first refusal in the contract. If a  
25 renewable generator wanted to negotiate a contract with various

1 specifics on these types of things where you have set  
2 guidelines on how each one would be handled during each  
3 situation, that is also something that can be tailored to that  
4 particular generator and negotiate in a contract.

5       **Q**     Well, is there any reason that the ability of the  
6 renewable generator to sell its TREC has to be individually  
7 negotiated, that you couldn't come up with a reasonable  
8 provision in the contract, in the standard offer?

9       **A**     Yes, and I believe it's there. It's a right of first  
10 refusal with a 30-day turnaround.

11       **Q**     Okay. And I think that you acknowledged that in some  
12 circumstances that might cause the renewable generator perhaps  
13 to default on a bid?

14       **A**     I don't know if they would default on a bid. It  
15 could certainly be a situation where they have -- you know, FPL  
16 would have 30 days, and they would come to us for the right of  
17 first refusal, and say we decide not to buy the REC, or we know  
18 we don't need any at that point. We're not going to wait  
19 30 days to tell them, certainly not, so there is certain  
20 flexibility within --

21       **Q**     How much days are you going to wait to tell them of  
22 the 30?

23       **A**     It depends on the circumstance.

24       **Q**     Are you aware that oftentimes in auctions and also  
25 with RFPs that the owner of the TREC has to put a deposit down

1 to participate in the auction?

2       **A**     Yes.

3       **Q**     And are you also aware that that deposit is subject  
4 to being forfeited?

5       **A**     It could be, yes.

6       **MS. KAUFMAN:** I have another document, Madam  
7 Chairman, that I would ask be marked. And this would be 21?

8       **COMMISSIONER EDGAR:** Yes.

9       **MS. KAUFMAN:** And we can call it Evolution Bid  
10 Document.

11       **COMMISSIONER EDGAR:** Okay. Marked as Number 21,  
12 Evolution Bid Document.

13       **MS. KAUFMAN:** Thank you.

14       (Exhibit Number 21 marked for identification.)

15       BY MS. KAUFMAN:

16       **Q**     Ms. Dubin, if you'd take a look at this document for  
17 me. This is an auction document from Evolution who  
18 participates or runs these kind of auctions in Massachusetts.  
19 If you would -- when I say these sorts of auctions, I mean  
20 auctions for TRECs, sorry.

21               If you would turn over to the second page. The  
22 paragraph -- it's actually the second full paragraph that  
23 starts bidders interested in participating. And it says  
24 bidders interested in participating are asked to submit bids to  
25 Evolution Markets via telephone prior to 1:45 p.m. Eastern on



1 February 13th, 2008. Bidders are then given the opportunity to  
2 improve upon the best bid by 2:00 o'clock. Bids must be  
3 binding until 5:00 p.m. Eastern Time on the day following the  
4 auction date. Do you see that?

5       **A**     Yes.

6       **Q**     So would you agree me that in this situation the  
7 bidding is actually open for less than 48 hours?

8       **A**     Yes.

9       **Q**     And would you also agree that it would be pretty  
10 difficult to win the bid, come to FPL, and wait 30 days for  
11 FPL's response as to whether they were interested?

12       **A**     I think that it's a right of first refusal, the  
13 seller still owns the REC, and could be involved in this  
14 situation and inform FPL and work out whatever solution might  
15 work for it.

16               I understand that it's a quick turnaround. Again,  
17 the reason that we have the right of first refusal in the  
18 standard offer contract, and go back to what the Commission  
19 said, it will ensure that Florida ratepayers enjoy all of the  
20 attributes associated with renewable generation without  
21 imposing a financial penalty to the owner of the renewable  
22 generating facility. They own the RECs, there's a right of  
23 first refusal.

24       **Q**     Can you explain how a renewable provider could submit  
25 a binding bid in this situation and come back to FPL for FPL to

1 exercise their right of first refusal?

2       **A**     It would have to be worked out, and this might be  
3 something that could be negotiated on how a right of first  
4 refusal would work in a bid situation.

5       **Q**     Okay. But in this particular situation, wouldn't you  
6 agree that it would be pretty difficult for the renewable  
7 generator under your standard offer terms to participate in  
8 this auction?

9       **A**     It may or may not be, I'm not sure. I think that it  
10 could possibly be worked out.

11       **Q**     How would they work it out?

12       **A**     It's a right of first refusal. They own it, they can  
13 bid on it, they could ask FPL if we were interested in it, if  
14 we were or not. I mean, you know, they could let FPL know we  
15 have a short time line on this. The 30 days is an outset.

16               Again, this is something that is also something that  
17 could be negotiated in terms of guidelines to handle right of  
18 first refusal in a bid situation. It's certainly -- again, the  
19 standard offer contract is just that, a standard offer,  
20 something standard for all parties, all generators, all types  
21 of things to fit into.

22       **Q**     Let me just close on this document with this  
23 question. In your opinion, and after looking at this, do you  
24 think that a renewable generator could submit a binding bid in  
25 this auction situation while still having to come to FPL

1 regarding the right of first refusal?

2       **A**     I think that --

3       **Q**     If you could do the yes or no, we would speed it up.  
4 Do you they could submit a binding bid in this process?

5       **A**     Without reviewing all the details of this, I would  
6 think that there would be a way to work it out, yes.

7       **Q**     Well, what is your understanding of the meaning of  
8 the word binding? When somebody submits a binding bid, doesn't  
9 that mean that the bid as submitted is what they have to stand  
10 behind?

11       **A**     Yes.

12       **Q**     So a renewable provider submits a binding bid, there  
13 is 48 hours, but you're saying they still can somehow come to  
14 you and you can work that out so that their bid will be  
15 binding?

16       **A**     This is the first time I have seen this document, and  
17 let me say that I think that there could be a way to try to  
18 work it out to caveat the bid or something else in order to be  
19 able to make it work, yes.

20       **Q**     It would be pretty difficult, don't you think?

21       **A**     I didn't say it was easy, but I think it can be done.

22       **MS. KAUFMAN:** I've got another document. Madam  
23 Chairman, I guess this will be 22.

24       **COMMISSIONER EDGAR:** Yes.

25       **MS. KAUFMAN:** I guess we could call it AEPS RFP key

1 dates. Is that too long?

2 **COMMISSIONER EDGAR:** No, that's fine. AEPS RFP Key  
3 Dates.

4 **MS. KAUFMAN:** Yes, thank you.

5 (Exhibit Number 22 marked for identification.)

6 BY MS. KAUFMAN:

7 **Q** And, Ms. Dubin, this is and RFP for some RECs from  
8 PECO Energy Company. To speed this along, I have just put on  
9 the top the bidding schedule. If you would take a look at  
10 that.

11 **A** Yes.

12 **Q** And would you agree with me that the bids for these  
13 TRECs opened on February 3rd, correct?

14 **A** Yes.

15 **Q** And then the second line from the bottom, the bidders  
16 are notified of the award of the bid on February 11th, correct?

17 **A** Yes.

18 **Q** So, essentially, there's eight days here between the  
19 submission of the binding bid and the award, correct?

20 **A** Yes.

21 **Q** And, again, I would ask you, don't you agree that it  
22 would be very difficult for a renewable generator to  
23 participate in this process if they have to accord FPL 30 days  
24 to exercise any right of first refusal?

25 **A** Yes, it could be difficult. I think that the point

1 is that a right of first refusal in the standard offer contract  
2 is just that, it's a standard right of first refusal of  
3 30 days. I think that details like this can be included in a  
4 negotiated settlement -- excuse me, in a negotiated contract  
5 where you can just do that, tailor it so that you have a right  
6 of first refusal under a situation where you are going out for  
7 bid. Right of first refusal where you have a -- there's an  
8 RFP -- under different circumstances there can be right of  
9 first refusals that are included in a negotiated contract.

10       **Q**     So are you saying that in negotiations you would  
11 expect the renewable facility, the renewable generator to try  
12 to anticipate all the auctions and RFPs it might want to  
13 participate in and then try to craft some scenario that would  
14 fit each situation?

15       **A**     I think that there can be several situations where  
16 you would be able to go and buy RECs and that under each one of  
17 those situations where it was an RFP or an unsolicited offer  
18 that you could put provisions in a contract that would cover  
19 each one of those so that there are certain guidelines to  
20 handle those type of right of first refusals. It may be that  
21 one that is a bid situation might have a different time frame  
22 on it, or some other different guidelines on how to work that.  
23 But, again, that would be in a negotiated contract. What we  
24 have at the standard offer contract is just that, a standard  
25 which many can go for.

1           **Q**     Do you expect that with the advent of the RPS  
2 proceedings here in Florida recently there will be a lot more  
3 activity in the TREC market in Florida?

4           **A**     Yes, I would think so.

5           **Q**     And would you expect that renewable generators would  
6 be very interested in being able to sell at auction or at RFP  
7 their TRECs?

8           **A**     Yes.

9           **Q**     And would you agree that they might not always prefer  
10 to sell those to Florida Power and Light?

11          **A**     It could be. It could be Florida Power and Light. I  
12 think it's important to note that other IOUs also have the  
13 right of first refusals and with the same -- the same right of  
14 first refusal and have renewables signing up for them. So I  
15 think that there is some give and take. I think that the right  
16 of first refusal in the standard offer contract could work for  
17 some, can work for some, and I think in other cases a  
18 negotiated right of first refusal may be tailored to a specific  
19 renewable generator and may work better that way.

20          **Q**     And, again -- well, nobody has signed the standard  
21 offer contract, so you don't have any experience dealing with  
22 the auction or RFP TREC situation, correct, in the context of  
23 your standard offer?

24          **A**     In the context of the standard offer contract, no.  
25 But I might add that I believe the other IOUs have had

1 generators sign up for their standard offer contract and they  
2 have the same exact right of first refusal.

3 Q Is there any reason that you can't shorten the  
4 30 days to five days?

5 A I think that can be a negotiated point. I think in  
6 the standard offer contract we looked at trying to find a  
7 balance of what might work for various different reliable  
8 generators. I think the 30 days is a good balance.

9 Q I thought that you had testified earlier that the  
10 30 days was to give FPL time to consider the offer and process  
11 it.

12 A And to evaluate it and make sure that it's right, and  
13 make sure it's right for FPL's customers, yes.

14 Q So the 30 days is to give FPL enough time to process  
15 the request, is that true?

16 A To evaluate the request and make sure that it's the  
17 right thing to do, yes.

18 MS. KAUFMAN: If you will give me one second.

19 I think that I'm done.

20 COMMISSIONER EDGAR: Okay.

21 (Pause.)

22 MS. KAUFMAN: Thank you, Madam Chairman, for your  
23 indulgence. I have nothing further.

24 COMMISSIONER EDGAR: Commissioner McMurrian.

25 COMMISSIONER McMURRIAN: Thank you.

1 Ms. Dubin, we've talked a lot about Section 8.4.8 of  
2 the contract, and I have had heard Ms. Kaufman a couple of  
3 times ask about the including factors that you mentioned a  
4 couple of times regarding safety and liability and that sort of  
5 thing. Has FPL considered including those factors in the  
6 standard offer contract? And then the second question would be  
7 if it has or has not, what was the outcome of that  
8 consideration?

9 **THE WITNESS:** To actually spell those out in the  
10 provision?

11 **COMMISSIONER McMURRIAN:** Yes.

12 **THE WITNESS:** I think, and I can't quite get my hands  
13 on it, but it is spelled out in the rules underlying the  
14 standard offer contract. So perhaps they are not in the  
15 standard offer contract itself, but they are in the rules  
16 pertaining to it.

17 **COMMISSIONER McMURRIAN:** Okay. So the factors you  
18 listed earlier, like safety and liability and things you think  
19 are referenced in the rules?

20 **THE WITNESS:** Yes.

21 **COMMISSIONER McMURRIAN:** Okay. Thank you.

22 **COMMISSIONER EDGAR:** Questions from staff?

23 CROSS EXAMINATION

24 BY MS. HARTMAN:

25 **Q** Ms. Dubin, would you agree that the curtailment or



1 the constraint to energy production that's allowed in the  
2 standard offer contract under Sections 8.4.6 and 8.4.8, would  
3 you say that they are subject to no economic test?

4       **A**     I'm sorry, that they are subject to no economic test?

5       **Q**     Yes. Or I can say it another way. Do you agree that  
6 the curtailment is subject to an economic test?

7       **A**     Yes, it is.

8       **Q**     Can you explain that a little bit for me.

9       **A**     Their curtailment could be -- the underlying  
10 principles of the standard offer contract, and particularly in  
11 this provision, is to make sure that you are not charging  
12 customers more than they otherwise would be charged. So just  
13 as, you know, we would back down our own unit for economic  
14 reasons, we would do the same with a purchased power contract  
15 to make sure that the customers are not, you know, paying more  
16 but for this purchased power contract.

17           So in that regard, again, FPL's system is always run  
18 on economic dispatch putting the most efficient, most  
19 cost-effective units run first, and that's the way that we make  
20 sure that we continue to provide economic service to customers.  
21 So, again, we wouldn't -- if we would have to back down a unit  
22 in order to take this purchased power contract and it would  
23 cost the customers more, we wouldn't do that. Just as if we  
24 had that avoided unit, we would back that unit down if it costs  
25 more.

1           **Q**     I want to ask you a little bit about Wheelabrator's  
2 proposal that FPL revise its standard offer contract to provide  
3 compensation to renewable generating facilities beyond payment  
4 for capacity and energy. Can you tell me a little bit how does  
5 the proposed revision fit into the analysis of avoided cost?

6           **A**     It wouldn't. It would charge customers more for  
7 receiving less.

8           **Q**     Okay. And I have one last question for you.

9                   Regarding TRECs, can you explain how the right of  
10 first refusal is in compliance with the Commission rules, in  
11 particular Rule 25-17.280?

12           **A**     It's in compliance in that it -- could you tell me  
13 the number again, I just want to make sure I can put that in  
14 front of me.

15           **Q**     For the rule?

16           **A**     Yes.

17           **Q**     Rule 25-17.280.

18           **A**     I'm sorry, I don't have that particular -- if  
19 somebody could hand it to me. Thank you.

20                   I should know it off the top of my head.

21                   Thank you.

22                   The right of first refusal is in compliance with the  
23 rule in that the RECs remain the property of the renewable  
24 generating facility and then will be offered to FPL at the same  
25 price that they would otherwise be sold. Again, the Commission

1 took a look at that and felt that it was important for  
2 customers to be able to receive the attributes of the RECs.

3 **MS. HARTMAN:** Thank you. Staff has no further  
4 questions.

5 **COMMISSIONER EDGAR:** Commissioner Argenziano.

6 **COMMISSIONER ARGENZIANO:** Yes. Just to ask the same  
7 question of Ms. Dubin. Would there be a problem or couldn't  
8 FPL when it comes to the -- I'm sorry, let me get myself;  
9 8.4.6, if it were FPL's interruptions, couldn't that then be --  
10 or not count against the 97 percent capacity, couldn't that be  
11 done?

12 **THE WITNESS:** I'm not sure it can be done under the  
13 standard offer contract the way it is now. The calculations of  
14 those payments are based on an algebraic formula that's  
15 included in the rules, and right now that formula does not  
16 include that adjustment. It can, however, be something that  
17 could be handled -- and I hate to beat a dead horse, but it  
18 could be something that could be in a negotiated settlement.

19 **COMMISSIONER ARGENZIANO:** Okay. Thank you.

20 **COMMISSIONER EDGAR:** Mr. Anderson.

21 **MR. ANDERSON:** One question.

22 REDIRECT EXAMINATION

23 BY MR. ANDERSON:

24 **Q** Ms. Dubin, do you have the full FPL standard offer  
25 contract before you?

1           **A**     Somewhere here.  Yes, I do.

2           **Q**     Please turn to the page that has 8.4.6 on it that we  
3 are talking about before, okay?

4           **A**     I'm there.

5           **Q**     Okay.  And, in particular, Commissioner McMurrian was  
6 asking you some questions before about Section 8.4.8, had the  
7 company considered including provisions about safety,  
8 reliability, system integrity.  What I would like you to do,  
9 please, is turn to the prior page of the contract and look at  
10 Section 8.4.5.  And I believe this was distributed to the  
11 Commissioners also, the entire contract.  Do you see 8.4.5?

12          **A**     Yes, I do.

13          **Q**     Okay.  Could you please read out loud Section 8.4.5?

14          **A**     "FPC shall at all times be excused from its  
15 obligation to purchase energy and capacity hereunder, and FPL  
16 shall have the ability to require the QFs to curtail or reduce  
17 deliveries of energy to the extent necessary to maintain the  
18 reliability and integrity of any part of FPL's system, or in  
19 the event that FPL determines that a failure to do so is likely  
20 to endanger life or property, or is likely to result in  
21 significant disruptions of electric service to FPL's customers.  
22 FPL shall give the QFs prior notice, if practicable, of its  
23 intent to refuse, curtail, or reduce FPL's acceptance of energy  
24 pursuant to this section and will act to minimize the frequency  
25 and duration of such occurrences."

1           **Q**     So it's fair to say that provisions limiting FPL's  
2 ability to do this to the extent necessary it says to maintain  
3 reliability, integrity, and safety, that's already contained in  
4 the contract, right?

5           **A**     Yes, it is.

6           **MR. ANDERSON:** That's all we have. Thank you.

7           **COMMISSIONER EDGAR:** Okay. Let's take up the  
8 exhibits.

9           **MS. KAUFMAN:** Madam Chair, Wheelabrator would move  
10 20, 21, and 22, I believe.

11           **COMMISSIONER EDGAR:** Okay. Before we do that, let's  
12 go ahead and enter into the record 6, 7, 8, 9, 10, and 11.

13                   And then, Mr. Anderson, any objections on documents  
14 marked Exhibits 20, 21, or 22?

15           **MR. ANDERSON:** None.

16           **COMMISSIONER EDGAR:** Okay.

17           **MS. HELTON:** Madam Chairman, I didn't hear you say  
18 Number 5, Exhibit Number 5.

19           **COMMISSIONER EDGAR:** We did that at the beginning.

20           **MS. HELTON:** Oh, I'm sorry.

21           **COMMISSIONER EDGAR:** That's okay. So 5 was entered  
22 in at the beginning.

23                   Hearing no objection, we will enter 20, 21, and  
24 22 into the record at this time. I think that takes care of  
25 the exhibits.

1           (Exhibit Numbers 6 through 11, and 20 through 22  
2 admitted into the record.)

3           **COMMISSIONER EDGAR:** Are there any other matters to  
4 take up at this time? No?

5           Okay. Then the witness can be excused. Thank you  
6 very much.

7           **THE WITNESS:** Thank you.

8           **COMMISSIONER EDGAR:** My understanding is that the  
9 transcript is to be available February 6th; the briefs are due  
10 February 26th.

11           And seeing no further business, we are adjourned.

12           **MR. ANDERSON:** Thank you.

13           (The hearing concluded at 2:27 p.m.)  
14  
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25

1 STATE OF FLORIDA )

2 : CERTIFICATE OF REPORTERS


3 COUNTY OF LEON )


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

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

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

18 DATED THIS 6th DAY OF February, 2009.

19   
20 JANE FAUROT, RPR  
21 FPSC Official Commission  
22 Reporter  
23 (850) 413-6732

24   
25 LINDA BOLES, RPR, CRR  
FPSC Official Commission  
Reporter  
(850) 413-6734

## Comprehensive Exhibit List for Entry into Hearing Record

Hearing Entry #	Witness	SLIDE # AS FILED	Exhibit Description	Entered
<b>Staff</b>				
1		Exhibit List	Comprehensive Exhibit List	
2		Staff's Composite Exhibits - 2 stipulated	<b><u>Interrogatories</u></b>  1. FPL's Responses to Staff's First Set of Interrogatories (Nos. 1-11) [Bates Nos. 00000001-00000017]  2. WTI's Responses to Staff's First Set of Interrogatories (Nos. 1-7) [Bates Nos. 00000018- 00000032]	
<b>Wheelabrator Technologies, Inc. (Direct)</b>				
3	John C. Dalton	JCD-1	Resume	
4	John C. Dalton	JCD-2	Equivalent Availability Factors for FPL CCGTs	
<b>Florida Power &amp; Light (Rebuttal)</b>				
5	Korel M. Dubin	KMD-1	Dalton Deposition Transcript	
6	Korel M. Dubin	KMD-2	Excerpts from Commission Order No. 12634	
7	Korel M. Dubin	KMD-3	Excerpt from Commission Order No. 13247	
8	Korel M. Dubin	KMD-4	Excerpt from Commission Order No. 24989	

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080193-EQ EXHIBIT 1

COMPANY FL PSC Staff Comprehensive

WITNESS Exhibit List

DATE 01-22-09



**for Entry into Hearing Record**

[illegible]

EXHIBIT NO. \_\_\_\_\_

DOCKET NO: 080193-EQ

WITNESS: VARIOUS

PARTY: FLORIDA POWER & LIGHT

DESCRIPTION: STAFF'S STIPULATED COMPOSITE EXHIBITS - 2

DOCUMENTS:

**Interrogatories**

1. FPL's Responses to Staff's First Set of Interrogatories (Nos. 1-11) [Bates Nos. 00000001-000000017]
2. WTI's Responses to Staff's First Set of Interrogatories (Nos. 1-7) [Bates Nos. 00000018-000000032]

PROFFERED BY: STAFF

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080193-EQ EXHIBIT 2

COMPANY FLPSC Staff

WITNESS Staff's Stipulated Composite Exhibits

DATE 01/22/09

**FPL's Responses to  
Staff's First Set of Interrogatories  
(Nos. 1-11)**

**Q.** Please refer to the 2008 Renewable Generation Request for Proposal issued by FPL on April 10, 2008. In that document, the background information states that FPL received five bids in response to the request for proposal for renewable resources issued in 2007, and ultimately accepted none. Please identify and describe the five responsive bids and fully explain the reason(s) why each responsive bid was not accepted.

**A.** Five bid proposals were received by FPL in response to the 2007 renewable RFP solicitation. A description for each of the bids is summarized in the attached EXCEL document.

Written notification was sent to all of the bidders that FPL would not be negotiating a contract with them based on their proposed pricing. The reasons given were that the pricing in the bidders' proposals exceeded the payments in FPL's Standard Offer Contract filed with the FPSC in 2007, and that FPSC Order No. PSC-08-0116-PAA-EQ issued on February 22, 2008 declined to approve FPL's proposal to purchase renewable energy attributes from a renewable energy facility and recover those costs through a recovery clause.

**2007 RENEWABLE RFP**  
**PROPOSALS**  
**INFORMATION SUMMARY**

<b><u>COMPANY NAME</u></b>	<b><u>TYPE OF UNIT</u></b>	<b><u>TYPE OF PROPOSAL</u></b>	<b><u>LOCATION</u></b>	<b><u>PRIMARY FUEL</u></b>	<b><u>SUMMER CAPACITY (MW)</u></b>	<b><u>PROJECTED ANNUAL ENERGY(MWH)</u></b>	<b><u>DELIVERY START DATE</u></b>	<b><u>DELIVERY END DATE</u></b>
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hearing Exhibit - 00000000

**Q. Did Wheelabrator respond to the FPL's 2007 Renewable Generation Request for Proposal?**

- a. If yes, please include in your answer a description of the response, including but not limited to, site locations, nameplate rating, fuel sources, technology types, net capacity offered, projected availability, and projected net energy for load.**
- b. If yes, please fully explain why the response did not result in a capacity purchase contract.**

**A. No, Wheelabrator did not respond to FPL's 2007 Renewable Generation Request for Proposal. However, FPL is in the process of negotiating a contract with Wheelabrator independent of the RFP.**

**Q.** Was the Renewable Generation Request for Proposal issued by FPL on April 10, 2008, largely duplicative of the Renewable Generation Request for Proposal issued by FPL in 2007? Describe any material differences between the 2008 request for proposal and the 2007 request for proposal.

**a.** If there were material changes between the 2008 request for proposal and the 2007 request for proposal, were any changes made to accommodate needs of renewable generators? If so, please explain how such change was expected to expedite the sale of capacity and/or energy by the renewable generator.

**A.** FPL's 2007 Renewable RFP solicitation required Bidders to include in their proposals pricing for all renewable energy attributes associated with the generating facility including, for example, any Renewable Energy Credits pursuant to any applicable PPA. The 2008 Renewable RFP solicitation removed this requirement but included an option for FPL to purchase the renewable energy attributes associated with the generating facility should Florida implement a Renewable Portfolio Standard ("RPS") during the term of the contract and the renewable energy attributes qualify towards satisfying such RPS.

The purpose of this change was to comply with of Order No. PSC-08-0116-PAA-EQ issued on February 22, 2008 that declined to approve FPL's proposal to purchase renewable energy attributes from a renewable energy facility and recover those costs through a recovery clause.

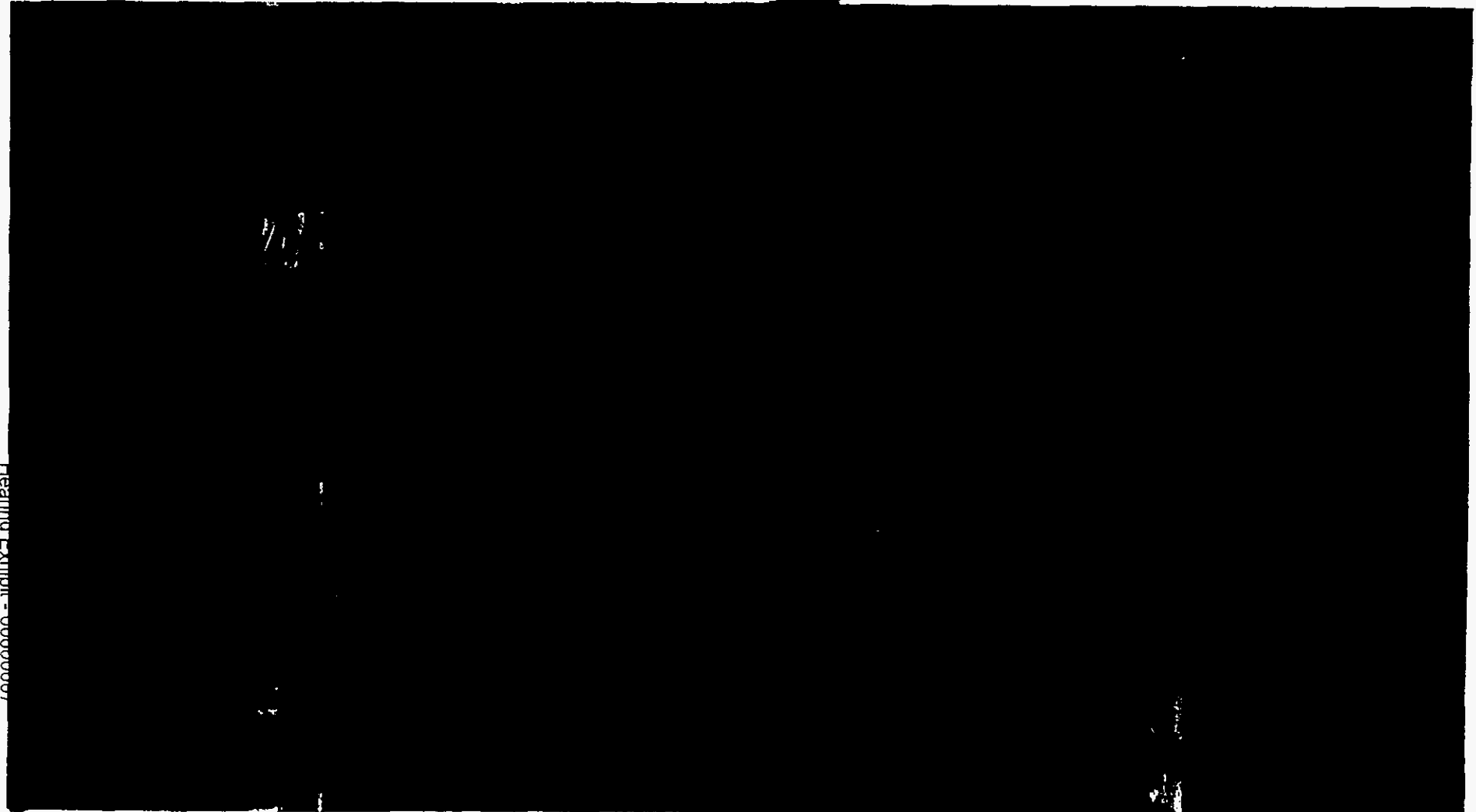
**Q.** In the 2008 New Renewable Generation Request for Proposal issued by FPL, under the section titled "Solicitation of Additional Renewables", FPL states that it seeks information regarding renewable firm capacity and/or energy sources with expected in-service dates beyond 2014. Has FPL been able to obtain the information? Please explain FPL findings regarding costs and/or availability for renewable sources of energy that are anticipated, whether they are anticipated prior to 2014 or thereafter.

**A.** Yes we received proposals in response to the 2008 Renewable RFP solicitation. The attached document, includes the expected in-service dates and cost information associated with each of the bid proposals received in response to FPL's 2008 Renewable RFP. Two of the bid proposals offered firm capacity and energy and the other four energy only.



RENEWABLE 2008 RFP PROPOSALS

<u>COMPANY NAME</u>	<u>TYPE OF FACILITY</u>	<u>FUEL SOURCE</u>	<u>LOCATION</u>	<u>TYPE OF PROPOSAL</u>	<u>SUMMER FIRM CAPACITY (MW)</u>	<u>PROJECTED ANNUAL ENERGY(MWH)</u>	<u>DELIVERY START DATE</u>	<u>DELIVERY END DATE</u>
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Heating Exhibit - 00000000

**Q. Has the Renewable Generation Request for Proposal issued by FPL on April 10, 2008 closed?**

- a. If yes, what was the final date for proposals to be received?**
- b. What is the current status of FPL's evaluation process?**

**A.**

- a. Yes, the FPL's Renewable RFP solicitation period has closed. Proposals were due to FPL on June 9, 2008.
- b. FPL is currently reevaluating the economics of the proposals based on updated load and fuel assumptions.

**Q. The 2008 Renewable Generation Request for Proposal issued by FPL provides a list of qualifications for facilities that would constitute the basis for proposals made in response to the RFP.**

**a. Within the time frame when the request for proposal was open, did the facilities operated by the Wheelabrator company located in Florida meet the requirements that were listed in the request for proposal?**

**b. If waste heat generation would not meet the request for proposal's requirements, list any known remedy or remedies that would allow waste heat generation facilities to meet the request for proposal's requirements.**

**c. If any qualification issues have been identified beyond waste heat generation being a disqualifier, please set out those issues and provide an explanation as to possibilities for resolution.**

**A.**

**a. Yes.**

**b. See response to part a.**

**c. The only qualification requirement imposed on bidders to the RFP was that proposals had to be from Qualifying Renewable Generation facilities**

**Q. Did Wheelabrator respond to the 2008 Renewable Generation Request for Proposal issued by FPL? If yes, please provide a description of the response, and general information as to the negotiations between FPL and Wheelabrator.**

**A. No.** Wheelabrator did not respond to FPL's 2008 Renewable RFP solicitation. However, FPL is in the process of negotiating a contract with Wheelabrator independent of the RFP.

**Q. Please refer to the FPL Standard Offer Contract for renewable energy, in particular, Section 8.4.2 under Electricity Production and Plant Maintenance Schedule. In the contract, FPL requires that "a unit functional trip test shall be performed . . . and [results] provided to FPL prior to returning the equipment to service."**

- a. Please explain why FPL has included the requirement for the trip test. Please explain the benefits to FPL and/or customers of the utility that are afforded by this requirement.**
- b. Are there any industry standards that FPL relied upon in formulating this requirement?**
- c. Is FPL's requirement that the trip test be performed similar to other utility's requirements for similar facilities?**

**A.**

- a. These tests are required to help assure the safe and reliable operation of the unit. They are performed after an outage before unit start-up and periodically thereafter to ascertain that tripping mechanisms, protective controls, and backup systems function properly. FPL and its customers benefit from these tests for several reasons including but not limited to the safe and reliable operation of the unit, helping prevent costly equipment damage, and preventing unnecessary unit trips.**
- b. FPL uses equipment manufacturer recommendations for developing trip test requirements.**
- c. FPL uses equipment manufacturer recommendations for developing trip test requirements. FPL is aware of another Florida utility, Progress Energy Florida, having trip test requirements in their Standard Offer Contract.**

**Q. Please explain how FPL determines that a given generating resource will function as part of the "base load generating fleet."**

- a. What are the main differences between the resources designated "base load" and those designated "intermediate"?**
- b. Under what circumstances might generation from base load units be reduced from the maximum capability of the unit?**

**A.**

a. FPL does not "designate" given generating resources to function as part of a "base load generating fleet." Rather, system load levels, outages, reliability requirements and economics determines when a particular generating resource is operated and at what level. Generally, the main difference between generating resources that operate as base load generation and those that operate as intermediate generation is the generator's variable cost incurred by FPL's customers to produce power. Simply put, if a generating resource has a lower variable cost (produces energy cheaper) than other generating resources, it will generally run more hours during the year and at a higher load factor than the other generating resource. As an example, FPL's nuclear generating resources have very low variable cost and as such, run every hour they are available and at their maximum available capability, subject to only operating limitations

b. When reliability or economic conditions dictate.

**Q. The FPL 2008 Renewable Standard Offer Contract specifies a minimum performance standard of 97% availability for full capacity payments.**

**a. Please fully explain how 97% availability was determined to be the minimum performance standard.**

**b. Please explain why the 97% availability should be maintained as a minimum requirement for full capacity payment for a period of not less than 10 years.**

**c. FPL and other Florida regulated utilities report, on Schedule A4 on a monthly basis, the equivalent availability factor, the capacity factor, and the net output factor for each generating unit that is operated by the utility. Please provide an explanation for each of these terms, including the formula for calculation of each category of entry provided in the monthly reports.**

**d. Based on a review of Schedule A4, the capacity factor reported is generally less than the availability factor. Please confirm this observation regarding the availability and capacity factors, and explain this outcome.**

**e. Specifically explain how the contract reflects, in the minimum requirement for full capacity payments, any influence that the capacity factor is generally less than the availability factor.**

**A.**

**a.** The minimum performance standard of 97% to receive full capacity payments is the Annual Average Equivalent Availability Factor (EAF) of the 2014 Combined Cycle Unit i.e. the avoided unit in FPL's Standard Offer Contract as shown in Schedule 9, page 93 of FPL's 2008 Ten Year Site Plan filed on April 1, 2008

**b.** By setting the EAF minimum performance standard of 97% for the Renewable Generator to receive full capacity payments FPL ensures that FPL's customers will receive the same reliability value as the avoided unit from the PPA under the terms of the Standard Offer Contract.

**c.**

<b>Term</b>	<b>Definition</b>	<b>Formula</b>
Equivalent Availability Factor	Measure of the percent capacity available to produce power during a given period	$100 - \text{FOF}^1 - \text{MOF}^2 - \text{POF}^3$
Capacity Factor	Net generation which the unit produced during a given period as a percentage of the total net generation capacity of the unit during the same period	$[\text{Net output}^4 / (\text{Period hours} \times \text{NSC}^5)] \times 100$
Net Output Factor	Measure of how heavily loaded a unit has been when it was on-line	$[(\text{Net output}^4 + \text{MWH off-line}^6) / (\text{Service hours} \times \text{NSC}^5)] \times 100$

Florida Power & Light Company

<sup>1</sup>[(Full forced outage hours + equivalent partial forced outage hours)/period hours] x 100

<sup>2</sup>[(Full maint. outage hours + equivalent partial maint. outage hours)/period hours] x 100

<sup>3</sup>[(Full planned outage hours + equivalent partial planned outage hours)/period hours] x 100

<sup>4</sup>Total net megawatt-hours generated

<sup>5</sup>Net Summer Continuous Capability rating of the unit

<sup>6</sup>Auxiliary power consumed when unit is not on-line

d. This observation is correct. Generally, capacity factor is less than the equivalent availability factor of a unit. This is due to the fact that a unit's total available capacity could be higher than is actually used for dispatch during the same time frame. For example, a unit's 100% generating capacity may be available to produce power for a specific time period, but only called upon to produce 50% of its total generating capacity during the same time period. In this case, the unit's capacity factor (50%) would be lower than its equivalent availability factor (100%).

e. See response to part b of the question



**Q.** As a general practice, does FPL reduce output from non-utility generators under contract? If yes, please fully explain the circumstances that might cause a request by FPL that a renewable generator reduce output.

A. Yes and No. There are some non-utility generators FPL regularly reduces output from and there are others FPL rarely or never reduces the output from.

FPL would request a renewable generator to reduce output for reliability reasons. Additionally, if FPL had dispatch rights that included economic dispatch, FPL would request a renewable generator to reduce output if more economical generation was available to serve FPL customers.

AFFIDAVIT

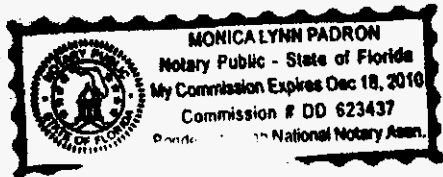
STATE OF FLORIDA )

COUNTY OF MIAMI-DADE )

I hereby certify that on this 4<sup>th</sup> day of December, 2008, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Korel M. Dubin, who is personally known to me, and she acknowledged before me that she provided the answers to interrogatory numbers 1 through 7, 9, 10(a), 10(b), 10(e), and 11 from STAFF'S FIRST SET OF INTERROGATORIES TO FLORIDA POWER & LIGHT (NOS. 1-11) in Docket No. 080193-EQ, and that the responses are true and correct based on her personal knowledge.

Korel M. Dubin  
Korel M. Dubin

In Witness Whereof, I have hereunto set my hand and seal in the State and County aforesaid as of this 4<sup>th</sup> day of December, 2008.



Monica Lynn Padron  
Notary Public  
State of Florida, at Large

My Commission Expires:

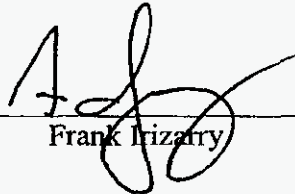
December 18, 2010

AFFIDAVIT

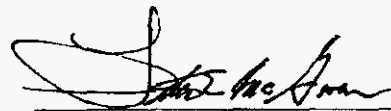
STATE OF FLORIDA )

COUNTY OF PALM BEACH )

I hereby certify that on this 2 day of DECEMBER, 2008, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared , who is personally known to me, and he acknowledged before me that he provided the answers to interrogatory numbers 8, 10(c), and 10(d) from STAFF'S FIRST SET OF INTERROGATORIES TO FLORIDA POWER & LIGHT (NOS. 1-11) in Docket No. 080193-EQ, and that the responses are true and correct based on his personal knowledge.

  
\_\_\_\_\_  
Frank Irizarry

In Witness Whereof, I have hereunto set my hand and seal in the State and County aforesaid as of this 2 day of DECEMBER, 2008.

  
\_\_\_\_\_  
Notary Public  
State of Florida, at Large

My Commission Expires:

3/12/2010



**WTI's Responses to  
Staff's First Set of Interrogatories  
(Nos. 1-7)**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for approval of  
renewable energy tariff and  
standard offer contract, by  
Florida Power & Light Company

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Docket No. 080193-EQ

**WHEELABRATOR TECHNOLOGIES, INC.'S OBJECTIONS AND RESPONSES TO  
THE FLORIDA PUBLIC SERVICE COMMISSION STAFF'S  
FIRST SET OF INTERROGATORIES (NOS. 1-7)**

Wheelabrator Technologies, Inc. (Wheelabrator), pursuant to rules 1.280 and 1.340, Florida Rules of Civil Procedure, and rule 28-106.206, Florida Administrative Code, submits the following Objections and Responses to the Staff of the Florida Public Service Commission's (Staff's) First Set of Interrogatories (Nos. 1-7) propounded and served on November 14, 2008:

**I. General Objections.**

Wheelabrator asserts the following general objections to Staff's First Set of Interrogatories (Nos. 1-7):

1. Wheelabrator objects to each and every individual discovery request, to the extent it calls for 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, whether such privilege or protection appears at the time response is first made or is later determined to be applicable for any reason. Wheelabrator in no way intends to waive any such privilege or protection.

2. Wheelabrator objects to each individual request to the extent it requires production of information that is proprietary, confidential business information without provisions in place to protect the confidentiality of the information. Wheelabrator in no way intends to waive claims of confidentiality.

3. Wheelabrator objects to any definitions or instructions accompanying the discovery requests to the extent that they are inconsistent with and expand the scope of discovery specified in the Florida Rules of Civil Procedure that are incorporated into the Model Rules of Procedure or the Commission's rules on discovery. If some question arises as to Wheelabrator's discovery obligations, Wheelabrator will comply with applicable rules and not with any of the definitions or instructions accompanying the discovery requests that are inconsistent with or exceed the requirements of those rules. Furthermore, Wheelabrator objects to any discovery request that calls for Wheelabrator to create data or information that it otherwise does not have because there is no such requirement under the applicable rules and law.

4. Wheelabrator objects to any definition or instruction in any discovery request that seeks interrogatory answers containing information from persons or entities who are not parties to this proceeding or that are not subject to discovery under applicable rules.

5. It is possible that not every relevant document may have been reviewed or considered in developing Wheelabrator's responses to the discovery requests. Rather, Wheelabrator will provide the information that Wheelabrator has obtained after a good faith, reasonable and diligent search conducted in connection with these discovery requests. To the extent that the discovery requests propose to require more, Wheelabrator objects to the requests individually and collectively on the grounds that compliance would impose an undue burden or expense on Wheelabrator.

6. Wheelabrator objects to each discovery request to the extent that it seeks information that is not relevant to the subject matter of this docket and is not reasonably calculated to lead to the discovery of admissible evidence.

7. Wheelabrator objects to each and every discovery request to the extent it is vague, ambiguous, overly broad, burdensome, imprecise, or utilizes terms that are subject to

multiple interpretations but are not properly defined or explained for purposes of such discovery requests.

8. Wheelabrator objects to each discovery request to the extent that the information requested constitutes "trade secrets" which are privileged pursuant to sections 90.506 and 366.093(3)(a), Florida Statutes.

9. Wheelabrator objects to providing information to the extent that such information is already in the public record before the Florida Public Service Commission and available to FPL through normal procedures.

10. Wheelabrator expressly reserves and does not waive any objections it may have to the admissibility, authenticity or relevancy of the information provided in its responses to the subject discovery requests.

### **RESPONSES**

1. Please refer to your protest of Order No. PSC-08-0544-TRF-EQ, filed on September 9, 2008. Please refer to paragraph 11(a) of your protest.

a. What availability would be appropriate to require of a renewable generator, such as the type of generator that Wheelabrator expects to propose?

**RESPONSE:** Wheelabrator's renewable energy facilities (REFs) have historically operated with availabilities ranging from 87-93%, depending upon the annual maintenance schedule.

As discussed in the Direct Testimony of John C. Dalton, Wheelabrator proposes that the availability requirement for biomass generation, such as Wheelabrator offers, be set at 89% to receive full capacity payments and greater than 69% to receive any capacity payments. A revised formula using these values proposed above and the terms defined in Appendix B of the SOC follows:

In the event that the ACBF is equal to or greater than 69%, but less than 89%, then the Monthly Capacity Payment shall be calculated by using the following formula:

$$MCP = BCP \times [.04 \times (ACBF - 64)] \times CC$$

In the event that the ACBF is equal to or greater than 89% then the Monthly Capacity Payment shall be calculated by using the following formula:

$$MCP = BCP \times CC$$

Further, as specified in Mr. Dalton's testimony, a number of system operators reflect capacity value for renewable generation facilities that have capacity factors that are less than half of those FPL requires for full capacity payments. These system operators often consider the coincidence of the generator output with peak loads when establishing capacity credit. This methodology is employed by the New York Independent System Operator as discussed in Mr. Dalton's testimony. Because the proposal outlined above does not give any capacity credit to resources if they have an ACBF of less than 69%, it is conservative since it does not recognize the capacity value that these resources may offer.

b. Explain how the appropriate availability was determined by Wheelabrator.

**RESPONSE:** The availability targets are consistent with those Progress Energy Florida uses in its current Standard Offer Contract (SOC) which is based on the same type of avoided fossil-fueled generating unit as used in FPL's current SOC avoided cost analysis. Furthermore, this availability level is consistent with the equivalent availability factor (EAF) target for the combined cycle gas turbines (CCGTs) that are considered in FPL's Generating Performance Incentive Factor.



c. Wheelabrator states that the requirement of 97% availability is inconsistent with the energy payments proposed by FPL. Please explain how Wheelabrator reached this conclusion.

**RESPONSE:** The 97% availability target required to receive the full value of the Base Capacity Payment offered by FPL is higher than the equivalent availability factors realized by many of FPL's own CCGTs which establish, in part, the energy payments FPL proposes. Therefore, this 97% availability is inconsistent with the energy payments proposed by FPL.

d. Assuming that 97% availability is appropriate, explain what energy payments would be appropriate and how those payments should be determined.

**RESPONSE:** The critical issue with respect to ensuring consistency between energy and capacity payments is that the same generating technology be used for each. FPL's avoided costs are based on the next avoidable fossil fueled generating unit of each technology type identified in the utility's Ten-Year Site Plan. However, as discussed in the Direct Testimony of John C. Dalton, Wheelabrator believes that a fossil fueled generating unit is not an appropriate avoided cost benchmark given the benefits that renewable energy resources offer relative to fossil fueled generation and the pending Commission rulemaking proceeding to adopt a Renewable Portfolio Standard (RPS) rule which will place an obligation on electric utilities to purchase the output of or develop additional renewable energy resources.

e. Assuming that the availability proposed by Wheelabrator is appropriate, explain what energy payments would be appropriate and how those payments are determined.

**RESPONSE:** See response to Interrogatory No. 1d above.

2. In its protest, Wheelabrator alleges that FPL's requirement that committed capacity testing procedures will be based on a test period of twenty-four hours is commercially unreasonable.

a. Describe the modified committed capacity testing procedures that Wheelabrator believes would be reasonable.

**RESPONSE:** FPL's committed capacity testing procedures require that the generator results be based on a test period of 24-hours. Due to the variability of the fuel utilized by the REF, it is likely that the facility will see variations in heat input to the units over a 24-hour period, which makes a 24-hour test commercially unreasonable and unlikely to produce useful data. A test period of 4 hours is much more appropriate for the type of equipment operated by the REF and the fuel source being utilized.

b. Fully explain how the modifications set out above were determined.

**RESPONSE:** Because REFs are generally dependent upon a constantly variable fuel source, they cannot be expected to generate a constant energy output with a variable heat input. It is not commercially feasible to fire the units with a constant heat input over a 24-hour period based upon the design of the facility and equipment installed.

For intermittent resources such as solar PV and concentrating solar, a formal capacity test is less important. For these resources, capacity value can be established by assessing the facility's average output level over a period when peak demands typically occur. This approach is used by a number of system operators to assess the capacity value of intermittent resources.

c. Please provide a list of the impacts to FPL and its customer base that result from the adoption of Wheelabrator's proposed modifications.

**RESPONSE:** There will be no significant impact to FPL or FPL's customer base as a result of adopting a 4-hour test period instead of the 24-hour test period proposed by FPL. FPL's methodology for establishing capacity payments ensures that if renewable energy facilities are to receive capacity payments, they have high capacity factors and as a result are likely to be operating during peak periods.

d. Please explain why FPL and its customer base should be required to manage these impacts.

**RESPONSE:** First, as noted above, there are no significant impacts to manage. Further, biomass-based renewable energy resources, such as Wheelabrator's, are reliable, have low marginal costs, and provide firm power that is there when needed. As discussed, for renewable resources, particularly those whose output is intermittent, the methodology for establishing capacity payments is more important than the capacity test in ensuring that customers receive the capacity that they pay for.

e. For any material impact to FPL and/or its customer base, please explain in detail if the impact should be mitigated, and how this mitigation should be done.

**RESPONSE:** There is no material impact to FPL or its customer base from adoption of any of the proposed modifications to the committed capacity testing procedures.

3. In paragraph 9 of its protest, Wheelabrator states that it is "engaged in the production of renewable energy in Florida through base load waste-to-energy generation." In paragraph 11 (f), Wheelabrator refers to a "base load renewable resource."

a. Please define the term "base load" as used in the protest of Wheelabrator.

**RESPONSE:** Base load refers to the operating profile of the waste-to-energy generating units operated by Wheelabrator. Specifically, a base load unit has a relatively flat and stable operating profile such that the purchasing utility can have a high degree of confidence that the unit will be available when needed and as such has a capacity value that is often equivalent to its rated capacity.

b. Are "base load renewable resources" dispatchable?

**RESPONSE:** Base load renewable resources can be dispatchable. However, given that they often have low variable cost energy, it may be uneconomic to dispatch these units. Furthermore, many base load generating units' technologies are not be well suited to the cycling up and down that is required for dispatchable operations. This is also true for many coal-fired generating and nuclear units that are used for base load operation. But nonetheless, these facilities provide value to the system by providing reliable energy from a generating resource with low variable costs, which typically has limited fuel price volatility.

c. Please fully explain how Wheelabrator would expect that FPL would include the waste-to-energy generation, from Wheelabrator's proposed unit, in base load economic dispatch. Your response should describe how the renewable generation would be utilized at peak times, as well as at times of minimal load in designated shoulder months.

**RESPONSE:** Wheelabrator expects that FPL would dispatch its waste-to-energy facilities as base load generating facilities which implies that they would be operated whenever they are available. In fact, the SOC assumes that the facilities would be operated and dispatched by FPL whenever they are available except for periods when FPL exercises its rights in provisions 8.4.6 and 8.4.8 to constrain off or constrain down these units.

4. Wheelabrator alleges that FPL's requirements regarding the renewable generator's maintenance schedule are unreasonable.

a. Please fully explain what maintenance schedule arrangements would be considered reasonable by Wheelabrator.

**RESPONSE:** An REF should be required to inform FPL before October 1<sup>st</sup> of each year of the duration and magnitude of any planned outages. The REF should be required to promptly update this schedule when changes are necessary and use best efforts to coordinate its scheduled outages with FPL.

Generally, the type of boilers used in a waste-to-energy facility, such as Wheelabrator's, requires three maintenance outages per year for cleaning and repairs. In a multiple boiler situation, all units cannot be shut down at the same time and then run at 100% for several months; they must continuously receive and dispose of solid waste. Therefore, maintenance outages must spread throughout the year to the greatest extent possible. Even though some flexibility exists in scheduling and coordinating boiler outages and turbine overhauls with FPL, the REF must retain the ability to set and maintain an outage schedule according to the requirements of the equipment and its solid waste customer base. The current FPL SOC does not allow any such flexibility.

b. Please fully explain how those arrangements would be consistent with FPL's system for economic dispatch of base load units.

**RESPONSE:** When generating units are unavailable as a result of a scheduled or forced outage, other units are operated to provide the required energy. Scheduled maintenance is a normal part of generating unit operations. Wheelabrator's requirements for scheduling maintenance will not adversely affect FPL's system for economic dispatch.

Further, utilities generally schedule their systems a week in advance and then a day in advance. The notification of an upcoming outage gives FPL sufficient time to plan for its system. In addition, the number of megawatts supplied by renewable facilities is quite small compared to generation from FPL's own units; thus, these facilities should have a very small impact on system dispatch.

5. In its petition, Wheelabrator mentions several waste-to energy facilities that it has built, or owns, or operates, in some combination. Have the Florida waste-to-energy projects undertaken by Wheelabrator been based on negotiated contracts with other parties, or have they been based on standard offer contracts?

**RESPONSE:** They have been negotiated, using the standard offer contract as a starting point.

a. Are any of the Wheelabrator waste-to-energy facilities in Florida supplying base load energy to a public, municipal, or cooperative retail electric providers?

**RESPONSE:** No, energy is provided to FPL and TECO.

b. For any such base load facilities in Florida, please fully explain how the issues in questions 1 through 4 above have been managed or resolved between the parties. If information to be included in your response is confidential, please request confidential treatment so that your response does not lack essential information.

**RESPONSE:** Wheelabrator has more than 16 years of reliable operating experience in the waste-to-energy industry. Its contracts contain reasonable operating and reliability parameters which allow it to provide low cost renewable energy. None of Wheelabrator's existing contracts contain the stringent testing, maintenance and availability provisions contained in FPL's standard offer contract at issue in this case.

6. Wheelabrator objects to FPL's proposed Standard Offer Contract, stating that the "contract contains an excessive time frame for FPL to exercise its right of first refusal as to tradable renewable energy credits (TREC's)."

a. Explain what time frame would not be excessive in the view of Wheelabrator.

**RESPONSE:** FPL should not be automatically permitted any time frame in which to exercise a right of first refusal. Rule 25-17.280, Florida Administrative Code, states:

*Tradable renewable energy credits and tax credits shall remain the exclusive property of the renewable generating facility. A utility shall not reduce its payment of full avoided costs or place any other conditions upon such government incentives in a negotiated or standard offer contract, unless agreed to by the renewable generating facility. (emphasis added)*

This rule makes it clear, that *unless* the renewable generating facility agrees, FPL may not place any constraints, including a right of first refusal, on the TREC's.

b. Please fully explain Wheelabrator's claim that the terms relating to first right of refusal are commercially unreasonable.

**RESPONSE:** Unilateral imposition of a right of first refusal not only violates the Commission's rule quoted above, it is commercially unreasonable because it inhibits the generator's right to dispose of the REC it owns when and as it chooses. Often solicitations for RECs are made in the open market and there is a very short turnaround time for response. The requirement that Wheelabrator first offer the REC to FPL would inhibit its ability to respond to such solicitations.

Economic research indicates that most rights of first refusal give the right holder (i.e., FPL in the case of TRECs) what is known as a "last-mover advantage." This allows the right holder (i.e., FPL) to move in and take good deals if they become available to third parties. And if, as is the case with respect to the TRECs, the right holder (i.e., FPL) holds most of the other attributes or the incumbent user of the asset, the fact that he has such a last mover advantage may discourage third parties from investing in trying to purchase the asset.

7. Please refer to paragraphs 11 (e) and (f) of Wheelabrator's protest.

a. Is it Wheelabrator's position that FPL should be required to purchase all energy that a renewable generator decides to provide to the point of interconnection, regardless of demand, voltage support, or other issues of reliability or economy?

**RESPONSE:** No. For issues of system reliability, FPL should be able to interrupt or dispatch down purchases from the renewable generator. However, as discussed in the Direct Testimony of John C. Dalton, the margins earned from the energy sales are typically a critical component of the renewable generator's capital cost recovery. Therefore, interrupting purchases or dispatching down a generating facility adversely affects the margins earned by a renewable

generator. An unrestricted right to interrupt such purchases or dispatch down the renewable generator may be a barrier to financing. As such, Wheelabrator believes that the renewable generator should be compensated for the lost margins from such forgone sales.

In addition, where the renewable generator is to be interrupted or constrained down for economic reasons, the renewable generator should be compensated based on its foregone energy margins. As discussed in the Direct Testimony of John C. Dalton, the energy rates that renewable generators receive are established based on avoided costs. Therefore, it is unlikely that the renewable generator would be interrupted or dispatched down because its sales price is higher than the as-available energy price and not viewed as economic. This would only occur if the renewable generator elected energy payment options B or D in the SOC which fix these energy rates. These energy rates were established based on anticipated future as-available energy rates. Interrupting a renewable generator because the current as-available energy rate is less than anticipated energy rate requires the renewable generator to bear the risk associated with changes in these rates. This is inappropriate and is potentially a barrier to the financing of these projects.

As anticipated by section 8.4.6 of FPL's Standard Offer Contract, there may be instances when the operation of a renewable generator would cause FPL to change its dispatch and require the operation of a higher cost unit. In such an instance, the renewable generator should be interrupted or constrained down and compensated for the forgone energy margins.

b. If the response to the question above is yes, please explain in detail how this manner of operation should be integrated with economic dispatch operations overall.

**RESPONSE:** As discussed, the renewable generator should be interrupted or dispatched down when system reliability requires this and compensated based on the foregone energy margins.



c. If the response to the question above is no, please explain how any decision to reduce generation or energy purchase should be made.

**RESPONSE:** Dispatch decisions should be based on system economics where FPL attempts to minimize system operating costs subject to contract commitments, except to the degree that the resulting system operation would threaten system reliability. FPL must be able to operate the system to maintain reliability. Where this requires that a renewable generator be interrupted or constrained down, it should be compensated for the foregone energy margins.

s/ Vicki Gordon Kaufman

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Attorneys for Wheelabrator, Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail and U.S. mail this 4<sup>th</sup> day of December, 2008, to the following:

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s/Vicki Gordon Kaufman  
Vicki Gordon Kaufman

## John Dalton

**John Dalton**  
President

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[jdalton@poweradvisoryllc.com](mailto:jdalton@poweradvisoryllc.com)

### Professional History

- Navigant Consulting
- Reed Consulting Group
- R.J. Rudden Associates Inc., 1987-1988
- Massachusetts Energy Facilities Siting Council, 1984-1987
- Massachusetts Department of Environmental Protection, 1981-1984

### Education

- Boston University, MBA, 1987
- Brown University, AB, Economics, 1980

A senior electricity market analyst and electricity policy consultant with over twenty-years of experience in energy market analysis, power procurement, project valuation, and strategy development. Experienced in the evaluation and analysis of electricity markets and the competitive position of generation technologies and projects within these markets including the assessment of the competitiveness of the underlying market, the development of power market price forecasts, the implementation of power procurement processes, and the development and evaluation of renewable energy policies. Frequent speaker on these subjects at energy industry conferences.

### Professional Experience

#### Market Assessment

- » Developed and supported numerous market price forecasts for wholesale power markets across North America. Price forecasts were used to support generation project development efforts, project financings and acquisitions, regulatory policy development, and power procurement efforts.
- » Demonstrated the need for electric generation projects in filings submitted to various state and provincial regulatory agencies. Evaluated the cost of a wide range of different generation technologies for a number of clients. Defended analyses in prepared and oral testimony before these state agencies.
- » Conducted wholesale power market analyses across North America for a wide range of market participants. Analysis included identifying likely competitors and pricing, security provisions, and general terms and conditions of various power supply options. Evaluated pricing required to compete in the market.
- » Advised the Ontario Electricity Financial Corporation with the management of its non-utility generation contracts. Advice included addressing the policy issues associated with balancing concerns with the sanctity of existing contracts and the desire to minimize stranded debt as well as to use the contracts as a source of competitive discipline for the incumbent provincial electric utility.

### FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080193-EQ EXHIBIT 3

COMPANY Wheelabrator Technologies, Inc. (Direct)

WITNESS John C. Dalton (JCD-1)

DATE 01/22/09

- » Advised numerous generation project developers across North America on opportunities offered by participating in the relevant wholesale power market and various power supply procurement RFPs. Evaluated market risks and outlined strategies for managing these risks most efficiently.
- » Analyzed and critiqued the supply planning methodologies of electric and gas utilities, focusing on the appropriateness of the supply planning models and methods. Provided recommendations for improving supply planning methods which were designed to assist the utilities in addressing the uncertainties associated with long-range planning. Prepared recommendations for the refinement of demand forecasting methods for electric and natural gas utilities. Analyzed and evaluated the statistical and quantitative projection methods used, including end-use and econometric forecasting techniques.
- » Evaluated electric generating technologies on the basis of the capital and operating costs, technological risk, and environmental impact, identifying a preferred alternative in light of these considerations. Defended the selection process before a regulatory agency.
- » Prepared strategic plan for a number of electric and natural gas market participants which evaluated the state/provincial and federal regulatory climate for cogeneration and generation projects, market prices and risks and recommended a competitive strategy.

**Market Structure Development and Evaluation**

- » Advised the governments of Ontario, New Brunswick, Nova Scotia, Western Australia, and Manitoba regarding the restructuring of their wholesale power markets and possible market structures to achieve a workably competitive wholesale market.
- » Responsible officer for market design project for the Province of New Brunswick. Navigant Consulting assisted the Market Design Committee and its subcommittees in providing the Minister of Natural Resources and Energy with recommendations on the implementation of electricity restructuring. Issues addressed included developing a market design that addresses concerns with the potential for the exercise of market power and enables New Brunswick to integrate with its interconnected markets. The Market Design Committee addressed development of the electricity market including its design, structure and rules. Navigant Consulting provided advice on the issues to be addressed, prepared issue papers and presentations, created strawmen for resolution of issues, and developed guidelines and direction for the creation of market design rules and protocols.
- » Project manager for an assignment with the Province of New Brunswick to assist with the development of its ten-year energy policy. The cornerstone of this energy policy was the framework for restructuring its wholesale and retail electric markets. Advised regarding developments in other wholesale and retail markets and the prospects for meaningful competition in New Brunswick's wholesale and retail markets. Navigant Consulting advised regarding benefits offered by wholesale and retail competition; strategies for protecting New Brunswick consumers from market dislocations and higher prices; appropriate regulatory frameworks for the wires businesses and the prospects for achieving a workably competitive wholesale market in New Brunswick and the resulting market design requirements; and policies for addressing stranded costs raised by market restructuring.
- » Markets and economics expert for a project with Western Power, the state-owned fully integrated utility that serves the vast majority of Western Australia. Advised regarding potential changes to the wholesale and retail electric power markets to enhance the competitiveness of these markets. Alternative market structures were evaluated and assessed in an effort to determine the market structure that offers the greatest societal net benefits. Offered proposed market structure changes that would accommodate government policy objectives of allowing greater levels of retail contestability and new entrants to satisfy the market's need for additional capacity. Evaluated restructuring reforms that had been implemented in a range of different markets that were of a similar size as Western Australia.

- » Advised the Energy Strategy Working Group regarding the development of an electricity restructuring policy for the Province of Nova Scotia. Reviewed the experience with respect to the wholesale and retail market restructuring in California, New England, PJM, and Alberta and based on this experience outlined lessons learned and potential implications for electric restructuring Nova Scotia. Outlined the arguments for considering the restructuring of Nova Scotia's electricity market, reviewed contrasting market models, and discussed the critical constraints on wholesale and retail market restructuring in Nova Scotia.
- » Provided numerous presentations regarding the experiences with the restructuring of wholesale power markets and the lessons learned. Markets evaluated have included California, Alberta, New York, New England, PJM, Victoria, and England and Wales.

**Power Procurement Support**

- » Advised on the development of over 20 RFPs for power supplies and demand-side resources for electric utilities across North America, serving as project manager for well over half of these RFPs. Support covered the full range of RFP support services including advising regarding the appropriate form of the RFP and evaluation process to secure resources that best satisfy the client's objectives, drafting the RFP, developing the evaluation framework, marketing the RFP process to prospective bidders and negotiating with bidders.
- » Advised on commercial issues for power purchase agreements.
- » Offered testimony before the Massachusetts Department of Public Utilities on a utility RFP process. Authored reports on the evaluation of proposals.
- » Managed numerous competitive solicitations for renewable energy resources and energy efficiency projects. Projects involved the development of frameworks for evaluating these energy alternatives and for comparing them on a consistent basis with conventional electricity supplies. Analyses considered the relative environmental impacts, reliability benefits, and cost-effectiveness of alternatives.
- » Acted as Project Manager for several assignments to serve as the independent evaluator of conventional generation, renewable resource and demand-side RFPs. Responsible for determining whether proposals satisfy the threshold requirements in the RFP and for scoring all proposals. Also responsible for identifying the short-list of proposals, conducting bid clarification meetings with shortlisted bidders, and recommending to the selection of winning bidders.

**Transmission Facility Review and Pricing Proceeding Support**

- » Advised the staff of the Ontario Energy Board on the evaluation of the proposal for a 1,250 MW HVDC line between Quebec and Ontario and served as a participating staff member for the Massachusetts Energy Facilities Siting Board's evaluation of the 2,000 MW HVDC interconnection between Massachusetts and Quebec.
- » Advised OEB staff on the review of evidence presented by Hydro One in its application for two 240 kV transmission lines to alleviate the Queenston Flow West constraint.
- » Advised clients in Saskatchewan, Newfoundland and Labrador, and Alberta on transmission pricing issues. Testified in the Alberta Transmission Congestion Pricing Principles proceeding.
- » Led a consulting team that assisted with the preparation of the East-West Electrical Transmission Grid Study. Authored subsequent updates to this study for Natural Resources Canada.

- » Advised a client regarding the elements of a comprehensive electricity export policy framework. Advice focussed on economic and social issues arising from the development of export oriented transmission infrastructure to support the development generation for export.
- » Provided testimony on Northeast power markets and transmission issues and consequential damages in a civil case in New York. Evaluated the implications of the loss of a transmission facilities on the power system adequacy.
- » Advised a number of clients on the issues associated with the development of merchant transmission facilities. Projects included reviewing the status of merchant project development efforts, merchant project structures, key success factors for merchant plant development and a review of merchant plant development opportunities world wide.

**Renewable Energy Policy Development and Evaluation**

- » Advised governments of Ontario, New Brunswick, Nova Scotia, and Manitoba on policies for the promotion of renewable energy technologies.
- » Advised the Ontario Select Committee on Alternative Fuels on the most promising renewable technologies, identified barriers to their development and adoption and proposed policies for overcoming these barriers.
- » Directed a project for a group of municipalities in Manitoba that evaluated the economic opportunity offered by wind projects in Manitoba and identified policies to promote the development of Manitoba's wind resources.
- » Advised the Ontario Power Authority on the development of a standard offer for renewable energy technologies.
- » Delivered a presentation on Canadian policies to promote the development of wind energy projects. Presentation reviewed federal and all relevant provincial programs and policies to promote the development of wind energy projects.
- » Developed recommendations for the Manitoba Sustainable Energy Association on policies to promote the adoption of renewable energy technologies in Manitoba. Reviewed the relative advantages and disadvantages of standard offers versus RFPs and made recommendations regarding the appropriate applications of each.
- » Advised numerous electricity generation development companies on the implications and opportunities presented by renewable energy policies. Developed strategic plans for a wide range of renewable energy technologies including large scale wind, landfill gas, biomass, anaerobic digestion, and small hydro.
- » Evaluated electricity wholesale market and REC prices that would apply to landfill gas projects and reviewed US federal policies that benefited these projects including the production tax credit.
- » Reviewed the general market for the development of renewable energy projects in Canada and contrasted market conditions with those in other countries.
- » Led the development of a multi-client study that evaluated the opportunities for wind project development in Ontario under existing federal and provincial programs.

- » Contrasted state RPS programs by identifying eligible technologies, eligibility requirements for projects in different jurisdictions, strategies for assessing compliance, RPS targets, and penalty provisions for failure to achieve the target.

**Financial Studies**

- » Performed detailed analyses of numerous generation projects' financial feasibility. Analyses considered alternative financing schemes and identified strategies for enhancing project values.
- » Served as Project Manager for assignments requiring the development of valuation estimates for numerous energy projects. Projects typically entailed modeling revenues and costs to predict cash flows and calculate the cumulative present worth of after-tax cash flows. The overall viability of projects were assessed by reviewing the status of project permitting efforts and financial commitments, the major provisions of power purchase agreements and steam purchase agreements.
- » Evaluated the economic and financial feasibility of a number of different generation projects for project developers, project hosts, and a gas utility. Assisted in the development of a cogeneration feasibility assessment model.

**Speaking Engagements**

- » "Strategies for Enhancing the Value of Your Asset", IBC Conference, (November, 1999)
- » "Electricity Restructuring Lessons Learned: Implications for Ontario", Ontario Energy Marketers Association (April, 2001)
- » "Electricity Power Prices in the Deregulated Ontario Market, 2001 CERI Conference, (October, 2001)
- » "Electricity Restructuring in the US and Eastern Canada", World Bank/CREG/CERI Conference, (November, 2001)
- » "Prices and Price Volatility in the Ontario Wholesale Power Market" PowerFair 2002, (May, 2002)
- » "Pricing Fundamentals in the Ontario Wholesale Power Market" PowerFair 2003, (August, 2003)
- » "The Economics of Power Generation in Atlantic Canada", 2003 Atlantic Power Summit (October, 2003)
- » "Future Opportunities in the Maritimes", 2003 Ontario Energy Contracts Conference, (November, 2003)
- » "A Perspective on Ontario's Evolving Wholesale and Retail Power Market Structures", PowerFair 2004, (May, 2004)
- » "Canadian Policies to Promote Wind Project Development" EUCI's 4<sup>th</sup> Wind Energy and Power Markets Conference (September, 2004)
- » "Effectively Navigating Ontario's RFP Processes" Power ON Conference, (October, 2004)
- » "Enhancing the Performance of the Maritimes Market", 2004 Atlantic Power Summit, (November, 2004)
- » "What Will the Ontario Landscape Look Like?", 2005 Ontario Energy Contracts Conference, (January, 2005)

## **Resume of John Dalton**

Docket No. 080193-EQ  
Resume – John Dalton  
Exhibit \_\_\_\_ (JCD-1), Page 6 of 6

- » “Policies to Promote the Adoption of Renewable Energy Technologies in Manitoba”, Manitoba Sustainable Energy Association, (April, 2005)
- » “Outlook for Ontario Electricity Supply & Pricing”, PowerFair 2005, (May, 2005)
- » “Key Risks Affecting Ontario Electricity Consumers”, AMPCO General Member Seminar (November, 2005)
- » “What Kind of Market Structure Would Spark New Investment?” Canadian Institute’s Generation Adequacy in Ontario Conference (April 19, 2006)
- » “Where are Electricity Pricing Going” Insight Information, Ontario Power Forum (June 15, 2006)
- » “Transmission Planning and Policy Development: An Update”, APPrO Conference (November 15, 2006)
- » “Recent Developments in Transmission Access and Pricing” Insight Information’s Grid Reliability and Competition in the Power Sector ( December 12, 2006)
- » “Renewables in Ontario” Insight Info Conference (June 14, 2007)
- » “Report Card on Ontario’s Electricity Market” Ontario Energy Association Annual Conference (September 6, 2007)



Docket N. 080193-EQ  
 Equivalent Availability Factors for FPL CCGTs  
 Exhibit\_\_\_\_(JCD-2), Page 1 of 1

Plant	Equivalent Availability Factors FPL CCGT Units			
	Year 2007*			Year 2009**
	Unit No.	Target EAF (%)	Adjusted	Estimated EAF (%)
			Actual EAF (%)	
Lauderdale	4	82.6	83.6	93.5
Lauderdale	5	92.2	94.6	
Martin	4	94	92.8	92
Martin	8			83.2
Sanford	4	90.2	91.8	90.2
Sanford	5	91.3	91.5	88.4
Average		90.1	90.9	89.5

\* Source: Docket No. 080001-EI, Generating Performance Incentive  
 Factor Performance Results for January 2007 - December  
 2007, Testimony and Exhibits of: F. Irizarry pg. 5,  
 Original Sheet No. 6.203.005 (April 3, 2008)

\*\* Source: Docket No. 080001-EI, Generating Performance Incentive  
 Factor January 2009 - December 2009, Testimony and  
 Exhibits of: F. Irizarry pg. 10, Original Sheet No. 7.201.010  
 (Sept. 2, 2008)

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080193EQ EXHIBIT 4  
 COMPANY Wheelabrator Technologies, Inc.  
 WITNESS John C. Dalton (JCD-2)  
 DATE 01/22/09

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Testimony and Exhibits of John C. Dalton has been furnished by U.S. mail this 1<sup>st</sup> day of December, 2008, to the following:

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s/Vicki Gordon Kaufman  
Vicki Gordon Kaufman

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Docket No: 080193-EQ

Served December 10, 2008

IN RE: Florida Power & Light Company's  
Petition for Approval of Renewable  
Energy Tariff and Standard Offer Contract

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DEPOSITION OF JOHN C. DALTON  
(via telephone)

WEDNESDAY, DECEMBER 17, 2008  
2:11 p.m. - 3:23 p.m.

700 UNIVERSE BOULEVARD  
JUNO BEACH, FLORIDA  
- - -

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080193-EQ EXHIBIT 5

COMPANY FL Power & Light (Rebuttal)

WITNESS Korel M. Dorbin (KMD-1)

DATE 01/22/09

Reported By:  
Eleanor M. Evensen, RPR  
Notary Public, State of Florida  
West Palm Beach Office #61866

1 APPEARANCES:

2 **On behalf of FPL:**

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4 FLORIDA POWER & LIGHT COMPANY  
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8 **On behalf of the Witness:**

9 VICKI GORDON KAUFMAN, ESQUIRE (via telephone)  
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ALSO PRESENT:

Kory Dubin, FPL Senior Manager Purchase Power (via  
telephone)  
Sabrina Spradley, FPL

- - -  
I N D E X  
- - -

WITNESS: DIRECT CROSS REDIRECT RECROSS

JOHN C. DALTON

BY: MR. ANDERSON 4  
BY: MS. HARTMAN 27

- - -  
E X H I B I T S

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P R O C E E D I N G S

- - -

Deposition taken before ELEANOR M.  
EVENSEN, Registered Professional Reporter, in the  
above cause.

- - -

Thereupon,

JOHN C. DALTON

having been first duly sworn or affirmed by Notary  
Public Janelle L. Korba, was examined and testified as  
follows:

THE WITNESS: I do.

(Dalton Group Composite Exhibit No. 1 was  
marked for identification)

DIRECT EXAMINATION

BY MR. ANDERSON:

Q. Good afternoon, Mr. Dalton, how are you?

A. Thank you, I'm doing well.

Q. My name is Bryan Anderson. I'm an attorney  
for Florida Power and Light Company, and I'll be  
asking you some questions this afternoon with respect  
to the testimony you filed in the Standard Offer  
Contract Case in docket 0801913-EQ down in Florida.

You're familiar with your testimony, of  
course, right?

1 A. Yes, I am.

2 Q. Okay. This afternoon I'll ask you to answer  
3 the questions out loud with words. As you know this  
4 is a telephonic deposition and we need to all take  
5 special pains to speak clearly.

6 Does that make sense to you?

7 A. It does.

8 Q. If my questions are unclear or you wish them  
9 restated, please let me know. Otherwise I'll assume  
10 you understood my question. Okay?

11 A. Understood.

12 Q. All right. Let me ask at the outset,  
13 Mr. Dalton, are you familiar with the Florida Public  
14 Service Commission's rules applicable to qualified  
15 facilities?

16 A. Generally. I've focused more in terms of the  
17 rules that apply to Standard Offer Contract.

18 Q. And that's my next question, are you also  
19 familiar with the rules that are applicable to the  
20 Standard Offer Contract with renewables and things,  
21 right?

22 A. Yes, I am.

23 Q. Have you reviewed prior commission orders  
24 which were involved in the development of the Standard  
25 Offer Contracts and things over there?

1 MS. KAUFMAN: Do you have something specific,  
2 Bryan you are referring to?

3 BY MR. ANDERSON:

4 Q. Did you understand my question, Mr. Dalton?

5 A. Yes. I'm trying to think in terms of what  
6 specifically I have reviewed. I mean I've seen the  
7 rules. I might have, at some point, reviewed any  
8 decision that was issued with the rules. But, I'm not  
9 clear in terms of, you know, all the decisions I might  
10 have seen.

11 Q. Other than this Standard Offer Contract  
12 proceeding have you participated in any other Florida  
13 Public Service Commission proceeding?

14 A. No, I have not.

15 Q. Have you participated, for example, in the  
16 pending Renewable Portfolio Standard Rule-Making  
17 workshops or proceedings?

18 A. I have not participated in that proceeding.

19 Q. Do you consider yourself an expert in Florida  
20 Renewable Energy Policy?

21 A. I would say I reviewed what I thought was the  
22 relevant Florida Statute and reviewed various  
23 executive orders issued by the Governor.

24 Q. Are you an expert in the technological  
25 capability of various forms of renewable energy in



1 Florida?

2 A. I am an expert in terms of the general  
3 capabilities of renewable energy. I realize that in  
4 Florida there are some, you know, specific  
5 circumstances based on kind of resource availability  
6 which I don't have, I wouldn't necessarily consider  
7 myself an expert on.

8 I think in probably the area where it's going  
9 to have the most significant impact would be with  
10 respect to intermittent resources such as wind and  
11 solar.

12 Q. Do you consider yourself competent here today  
13 to testify from the perspective of wind or solar  
14 energy developers in your criticisms of the Standard  
15 Offer Contract?

16 A. Yes, I do.

17 Q. And what were you retained to do in this  
18 particular case?

19 A. I was retained by Wheelabrator to comment on  
20 the Standard Offer of Contract, which was filed by  
21 Florida Power and Light.

22 Q. I'd like to walk you through a number of the  
23 points that you have raised in your prefiled direct  
24 testimony and ask you some questions about them, okay?

25 A. Certainly.

1           Q.    Is it fair to say that one of the things  
2           that, concerns you have raised is the idea that FPL is  
3           entitled to not make purchases under the Standard  
4           Offer Contract when doing so would cause FPL to incur  
5           costs greater than it would otherwise incur?

6           MS. KAUFMAN:  Can you refer him to a specific  
7           page, Bryan, when you're talking about his  
8           testimony?

9           MR. ANDERSON:  I just asked the question and  
10          I was going to see if he could answer the  
11          question.

12          THE WITNESS:  Could you repeat it please?  
13          BY MR. ANDERSON:

14          Q.    Do you have any quarrel with FPL's contract  
15          provisions stating that the company need not make  
16          purchases when doing so would cause FPL to incur costs  
17          greater than it would incur otherwise?

18          MS. KAUFMAN:  I'm going to object.  If you  
19          want to refer him to a specific contract that he  
20          can take a look at and answer more specifically.

21          MR. ANDERSON:  Vicki, we just don't need to  
22          do this.  There is no requirement that I point  
23          him to any document.  He either understands the  
24          question or not.

25          If he does not quarrel with those provisions

1 he can say so and we can move on.

2 THE WITNESS: I guess there are two  
3 provisions identified --

4 MS. KAUFMAN: My only point, Bryan, is if you  
5 are talking about specific provisions in the  
6 contract, I just want to be sure that the record  
7 is clear, when you say "those provisions" I think  
8 it's vague.

9 BY MR. ANDERSON:

10 Q. Mr. Dalton, can you answer the question?

11 A. Yes. There were two provisions identified in  
12 my testimony which I was concerned with, which I  
13 believe you might be referring to, and these would be  
14 sections 8.4.6 and 8.4.8.

15 Q. Specifically looking at -- do you have our  
16 tariff sheet in front of you, original sheet number  
17 9.036 which contains 8.4.6 and 8.4.8? It's labeled:  
18 Exhibit A1, the first page of the Dalton Group  
19 Exhibit 1 that I provided you; do you have that?

20 A. That's sheet number 9.0.36?

21 Q. Yes, sir, that's right. And just to be  
22 clear, we are talking about the first sentence of  
23 8.4.6; is that right?

24 A. I see that.

25 Q. And the second point you raised is the first

1 sentence of 8.4.8; is that right?

2 A. That's correct.

3 Q. Okay. I'm going to read to you that first  
4 sentence 8.4.6. It states: "After providing notice  
5 to the QS, FPL shall not be required to accept or  
6 purchase energy from the QS during any period in  
7 which, due to operational circumstances, acceptance of  
8 purchase of such energy would result in FPL's  
9 incurring costs greater than those which it would  
10 incur if did not make such purchases."

11 Did I read that accurately?

12 A. It appears you did.

13 Q. I'd like you to look at page A2 of Dalton  
14 Group Exhibit 1; do you have that?

15 A. I'm not sure in terms of the reference you're  
16 making.

17 Q. I sent you a packet of documents.

18 A. Okay.

19 Q. You have that in front of you?

20 A. Yes, I do.

21 Q. And the first page is Exhibit A1; is that  
22 right? We just looked at that together.

23 A. Yes.

24 Q. Now turn the page. You see where it says  
25 Exhibit A2?

1 A. Yes.

2 Q. Okay. And you see behind that sheet labeled  
3 A2: Commission Rule 25-17.086, Periods during which  
4 purchase are not required. Do you have that?

5 A. I see it.

6 Q. Okay. Now, I would like you to read the  
7 first sentence of that rule to yourself. Just let me  
8 know when you are done.

9 A. Okay, read it.

10 Q. Do you agree that language you just read in  
11 Commission Rule 25-17.086 is almost identical to the  
12 language in FPL's tariff, which was paragraph 8.4.6,  
13 that first sentence I read to you?

14 A. I would say that it's similar.

15 Q. Could you explain any differences?

16 A. It appears that the Rule 25-17.086 reference  
17 is given to impairing the ability, the utility's  
18 ability to give adequate service to the rest of the  
19 customers. And that reference isn't made in section  
20 8.4.6.

21 Q. So that's additional language which probably  
22 could be included in the agreement, but is not, right?

23 A. That is additional language.

24 Q. Okay. Let's please look back at the tariff  
25 sheet we looked at before, which was Exhibit A1,

1 original sheet number 9.036; do you have that?

2 A. Yes, I do.

3 Q. Now we'll look at section 8.4.8 again, and  
4 make sure you have that in front of you?

5 A. I have it in front of me.

6 Q. Good, thanks.

7 I'm sorry, I misreferenced you. I still want  
8 you to look at 8.4.6 higher on the page; do you see  
9 that?

10 Just higher on the same page 8.4.6 is what  
11 I'm directing you to again; you see that?

12 A. I see that.

13 Q. Okay. I'd like you now to please look at  
14 Exhibit A3 in the package of materials I sent to you,  
15 and flip to the second page in Exhibit A3, which in  
16 the top right corner says: Order number 12634, and  
17 docket number 820406-EU, page 23; do you have that?

18 A. Yes, I do.

19 Q. And I'm just going to read to you the  
20 paragraph there, first full paragraph. Is it correct  
21 that the commission in this order at page 23 stated:  
22 "We have retained the provisions of the original rule  
23 excusing a utility from its obligation to purchase  
24 under certain circumstances, and have added to it to  
25 make clear the utility is not required to purchase

1 from a QF when to do so would result in costs greater  
2 than those which the utility would incur if it did not  
3 make such purchases." Is that right?

4 A. When you say: "Is that right?"

5 Q. Have I correctly read that portion of the  
6 Commission's order?

7 A. That's correct.

8 Q. Okay. Now we're ready to look back on the  
9 tariff sheet number 9.036, section 8.4.8. It states:  
10 If the facility has a committed capacity of less than  
11 75 megawatts, FPL may require during certain periods  
12 by oral, written, or electronic notification that the  
13 QS cause the facility to reduce output to a level  
14 below the committed capacity, but not lower than the  
15 facility's minimum load;" is that right?

16 A. That's correct.

17 Q. Please look now at Exhibit A4 in the Dalton  
18 Group Exhibit.

19 Do you have that? I'd like you to look at  
20 the second page behind the label A4 where it says  
21 order number 12347, docket number 830377-EU, page 13;  
22 do you see that?

23 A. You want me to go to the second page?

24 Q. Yes, sir, where it says page 13 in the upper  
25 right-hand corner?

1 A. Yes, I have that in front of me.

2 Q. I'm going to draw your attention to the  
3 second full paragraph. Just check and make sure I'm  
4 reading this correctly: "We do find, however, that  
5 the following additional performance criteria are  
6 reasonable and should be adopted, colon" -- and skip  
7 down to number 3 there -- "the QF must agree to reduce  
8 generation or take other appropriate action as  
9 requested by the purchasing utility for safety reasons  
10 or to preserve system integrity." Have I read that  
11 correctly?

12 A. That's correct.

13 Q. Please turn to Exhibit B1 in the Dalton Group  
14 Exhibit 1. It's one page, labeled Original Sheet  
15 number 9.032 from the Standard Offer Contracts; do you  
16 have that?

17 A. That was Exhibit B1?

18 Q. Yes, sir, that's right. It's labeled up in  
19 the right-hand corner: Original Sheet Number 9.032.  
20 Do you have that?

21 A. I have that.

22 Q. And this is from the Standard Offer Contract  
23 also that you reviewed, right?

24 A. Just confirming that.

25 Q. Thanks.



1           A.    Yes, that appears to be from the Standard  
2 Offer Contract.

3           Q.    Thanks. Please look down under number 3,  
4 Minimum Specifications. And then we see several  
5 subparagraphs 1 through 5 on this particular page. Do  
6 you see those paragraphs?

7           A.    This is under Minimum Specifications?

8           Q.    Yes, sir.

9           A.    Yes, I see those.

10          Q.    Drawing your attention to paragraph 5 it  
11 states: "The following are the minimum performance  
12 standards for the delivery of firm capacity and energy  
13 by the QS to qualify for full capacity payments under  
14 this contract. Says availability on peak 97 percent,  
15 all hours 97 percent." Is that right?

16          A.    That's right.

17          Q.    This is one of the provisions that you  
18 comment on in your testimony; is that right?

19          A.    That's correct.

20          Q.    Please look at Exhibit B2 in Dalton Group  
21 Exhibit 1. And turn to the second page. Please let  
22 me know when you are there.

23          A.    I'm on the second page.

24          Q.    Thank you. This Exhibit B2, you will agree,  
25 is the Commission Rule 25-17.0832, Firm Capacity

1 Energy Contracts; I presume this is something you  
2 reviewed; is that right?

3 A. Yes, I did.

4 Q. Looking at that second page, middle of the  
5 page, there is a subparagraph E; are you there?

6 A. E, Minimum Specifications?

7 Q. Yes, sir. It goes on to state, and I quote,  
8 "Each Standard Offer Contract shall, at minimum,  
9 specify," and there is a colon, right?

10 A. That's correct.

11 Q. And I'd like to draw your attention down to  
12 the eighth thing to be provided, which states: (8)  
13 The minimum performance standards for the delivery of  
14 the firm capacity and energy by the qualifying  
15 facility during the utility's daily seasonal peak and  
16 off-peak periods. These performance standards shall  
17 approximate the anticipated peak and off-peak  
18 availability and capacity factor of the utility's  
19 avoided unit over the terms of contract." Right?

20 A. That's correct.

21 Q. So that's the standard to be applied in  
22 stating what the minimum performance standard is,  
23 right?

24 A. That's right.

25 Q. In your work on this case, you have learned,

1 I'm sure, that the standard offer contract is based on  
2 FPL's next plan generating units; is that right?

3 A. That's correct.

4 Q. And the type of unit which is used for the  
5 purposes of this contract, do you agree, is a  
6 three-on-one combined cycle unit?

7 A. That's my understanding.

8 Q. Utilizing Mitsubishi Power Systems  
9 G-Technology Advanced combustion turbines?

10 A. I knew it's a G class unit, I didn't know  
11 it's a Mitsubishi.

12 Q. Are you familiar with the term "equivalent  
13 availability factor"?

14 A. Yes, I am.

15 Q. Are you aware those are F-Technology units --  
16 I'm sorry, I skipped over a point.

17 Are you familiar with FPL's operations of its  
18 most recent greenfield units at Turkey Point unit  
19 five, Martin unit eight, and Manatee unit three?

20 A. I'm generally familiar.

21 Q. Those are F-series units; are you aware of  
22 that?

23 A. I wasn't aware in terms of whether they were  
24 G-class or an F-class.

25 Q. Are you aware that each of the three-units I

1 mentioned, Turkey Point unit five, Martin unit eight,  
2 Manatee unit three, have an average to date equivalent  
3 availability factor of 98.6 percent, 91.3 percent, and  
4 97.6 percent respectively?

5 A. I wasn't aware of that.

6 Q. You were not aware of that; is that right?

7 A. I was not aware of that.

8 MR. ANDERSON: Off the record for a moment.

9 (Break in the proceedings)

10 MR. ANDERSON: Back on the record.

11 BY MR. ANDERSON:

12 Q. I believe it's your view, isn't it, that  
13 other utilities in Florida are available with whom  
14 Wheelabrator can contract for the sale of the output  
15 of its existing projects?

16 A. That's correct.

17 Q. Do you agree that the Standard Offer  
18 Contracts of all the other investor-owned utilities in  
19 Florida are subject to the same rules we have been  
20 talking about?

21 A. They are subject to the same rules, obviously  
22 it's up to the individual utility to draft the  
23 specific provisions within the contract.

24 Q. Have you prepared any detailed written  
25 analysis or comparison of the terms and conditions of

1 the various Florida utilities contracts?

2 A. Is your question have I compared an analysis  
3 comparing the terms offered by different utilities?  
4 Obviously I've focused on -- I have focused on FPL's  
5 Standard Offer Contract.

6 Q. What I asked is have you prepared a detailed  
7 written analysis of any differences between the  
8 various Florida utilities Standard Offer Contracts?

9 A. No, I have not.

10 Q. Is it your view that regulatory proceedings  
11 outside of the State of Florida are not relevant to  
12 the subject matter of this docket?

13 A. Yes, I would say that's a very broad  
14 question, and I would think that regulatory  
15 proceedings that have a direct bearing in terms of,  
16 you know, avoided costs, that would have a bearing on  
17 this docket.

18 Q. Did you help prepare or did you review  
19 Wheelabrator's responses to FPL's first set of  
20 interrogatories numbers 1 through 15 in this  
21 proceeding?

22 A. Yes, I helped prepare some of those  
23 responses.

24 Q. Are you aware that in its response  
25 Wheelabrator stated information regarding proceedings

1 outside the State of Florida is not relevant to the  
2 subject matter of this docket, is not reasonably  
3 calculated to lead to the discovery of admissible  
4 evidence, and is overbroad, and that was in response  
5 to FPL interrogatory number three?

6 Did you review or approve the language I just  
7 read?

8 A. I was not involved in terms of drafting that  
9 response.

10 Q. And you agree no witness, other than you, has  
11 submitted any testimony on behalf of Wheelabrator,  
12 right?

13 A. That's correct.

14 Q. Do you agree or contend that information  
15 regarding negotiations of Standard Offer Contracts  
16 outside the State of Florida is not relevant to the  
17 subject matter of this docket, is not reasonably  
18 calculated to lead to discovery of admissible  
19 evidence, and is overbroad?

20 MS. KAUFMAN: I'm going to object because you  
21 are asking for a legal opinion there,  
22 Mr. Anderson.

23 MR. ANDERSON: I'll ask another question.

24 BY MR. ANDERSON:

25 Q. Mr. Dalton, do you rely upon your knowledge

1 or background regarding negotiations in any state  
2 other than Florida in providing your testimony here  
3 today?

4 MS. KAUFMAN: I'll object, that's overbroad.

5 In regard to what? Any of his testimony?

6 BY MR. ANDERSON:

7 Q. Please respond to the question.

8 A. Can you repeat the question?

9 Q. Let me try again.

10 Have you helped anybody ever with a contract  
11 negotiation for a Standard Offer Contract?

12 A. I have helped draft Standard Offer Contracts.

13 Q. How about have you helped the people  
14 negotiate renewable energy contracts?

15 A. Yes, I have.

16 Q. Do you rely on your background and experience  
17 negotiating those contracts in offering your opinions  
18 here today?

19 A. Yes, I do.

20 Q. That's what puzzles me, because the responses  
21 that you reviewed and approved say that negotiations  
22 outside the State of Florida are not relevant to the  
23 subject matter of this docket; do you agree with that?

24 MS. KAUFMAN: I'll object. That's not what

25 Mr. Dalton testified.

1 MR. ANDERSON: He can answer the question.

2 MS. KAUFMAN: I just want you to  
3 appropriately characterize what he said, Bryan.

4 THE WITNESS: As I said earlier, I did not  
5 approve this response. I didn't draft the  
6 response.

7 BY MR. ANDERSON:

8 Q. Is your position that contracts outside the  
9 State of Florida are not relevant to the subject  
10 matter of this docket?

11 MS. KAUFMAN: Again, I object, you are asking  
12 for a legal conclusion.

13 MR. ANDERSON: I'll ask a different question.

14 BY MR. ANDERSON:

15 Q. Did you rely upon any information considering  
16 past experience with contracts outside the State of  
17 Florida in offering your testimony we are talking  
18 about today?

19 A. Yes, I did.

20 Q. Did you review or approve the stated  
21 requested response that states -- this is number seven  
22 -- that information regarding contracts outside the  
23 State of Florida is not relevant to the subject matter  
24 of this docket?

25 A. I didn't draft that response.



1 Q. You refer in your testimony to the Standard  
2 Offer Contract Program in Ontario; is that right?

3 A. That's correct.

4 Q. And a capacity value calculation from New  
5 York?

6 A. Correct.

7 Q. Can you explain why it's Wheelabrator's  
8 position why you refer and rely on those things while  
9 the things which we have just talked about state that  
10 other states are not relevant?

11 MS. KAUFMAN: Again, I'm going to object, you  
12 are asking him for a legal conclusion, and he is  
13 not -- that's not within the bounds of his  
14 testimony.

15 MR. ANDERSON: Let's take two steps back,  
16 Vicki. I'm entitled to ask the witness what the  
17 basis of his opinion is.

18 MS. KAUFMAN: I agree.

19 MR. ANDERSON: And your client provided  
20 interrogatory responses that none of this is  
21 relevant and none of this needs to be provided,  
22 and your witness contradicts you.

23 So, I'm very troubled by that, and that's why  
24 I'm asking these questions and I'm entitled to an  
25 answer.

1 MS. KAUFMAN: I don't agree with your  
2 characterization of my client's position, but we  
3 don't need to argue about that on the record.  
4 And I agree you are entitled to ask Mr. Dalton  
5 the basis for his opinion.

6 What I disagree with is you asking him to  
7 give you his legal view as to whether objections  
8 are appropriate or what is relevant and what's  
9 not relevant.

10 MR. ANDERSON: Vicki, I'll stop asking these  
11 questions if you will agree that his testimony  
12 concerning other states or other contracts should  
13 be stricken.

14 MS. KAUFMAN: Then I'm not going to agree to  
15 that, Bryan, but I'd be happy to talk to you  
16 offline.

17 MR. ANDERSON: All right.

18 BY MR. ANDERSON:

19 Q. Mr. Dalton, could you tell us what your  
20 understanding is of a feed-in tariff?

21 A. I guess I would distinguish a feed-in tariff  
22 from a Standard Offer Contract in that a feed-in  
23 tariff typically is based on costs, whereas Standard  
24 Offer Contracts are more typically based on values.

25 Q. Would you agree that feed-in tariffs usually

1 involve paying a premium rate for renewable energy?  
2 A view over the economic value of the generation?

3 A. That's a very open-ended statement in terms  
4 of premium rate. One needs to step back and say what  
5 is the specific rate for the feed-in tariff.

6 Q. Let's be specific then. You are familiar  
7 with the Ontario Power Authority Renewable Energy  
8 Standard Offer Program Contract?

9 A. Yes, I am.

10 Q. Is that a feed-in tariff type of program?

11 A. No, it's not.

12 Q. Could you look at your direct testimony  
13 please, page 14? Do you have that in front of you?

14 A. I have it in front of me.

15 Q. Could you please look at lines 11 through 14  
16 where you state: FPL SOC does not encourage  
17 development of the renewable energy resources in the  
18 state. The best indication of this is the fact that  
19 not a single renewable energy resource developer has  
20 executed FPL's SOC since January 2006, when it was  
21 first put in place. Is that accurate, what I read?

22 A. That's what the testimony says.

23 Q. And that's your view in this case, right?

24 A. That's right.

25 Q. Are you aware FPL's Standard Offer Contract

1 and tariff schedule have been protested by intervenors  
2 since 2006?

3 A. I know that Wheelabrator protested, I  
4 believe, the 2007 Standard Offer Contract filing.

5 Q. Are you aware that in the prior year, 2006,  
6 that after FPL filed its Standard Offer Contract on  
7 April 3, 2006, the Florida Industrial Co-Generation  
8 Association petitioned the FPSC for a hearing on the  
9 Standard Offer Contract?

10 A. I'm not aware of that.

11 Q. Are you aware that Florida Public Service  
12 Commission on September 21, 2006, recommended that, or  
13 found that due to the protest that the Standard Offer  
14 Contracts were not in effect?

15 A. I was not aware of that.

16 Q. And, as you said for this year's Standard  
17 Offer Contract it's your client, Wheelabrator, that  
18 has filed the petition, right, protesting the Standard  
19 Offer Contract?

20 A. That's correct.

21 MR. ANDERSON: Off the record.

22 (Discussion held off the record.)

23 MR. ANDERSON: Mr. Dalton, FPL does not have  
24 anymore questions for you. We really thank you  
25 very much for your time today.

1 Do any other parties have questions?

2 MS. HARTMAN: This is Jean Hartman, I have a  
3 couple of questions.

4 CROSS EXAMINATION (John C. Dalton)

5 BY MS. HARTMAN:

6 Q. Mr. Dalton, my name is Jean Hartman and I'm  
7 the commission attorney assigned to this docket, and I  
8 appreciate your time this afternoon.

9 A. Good afternoon.

10 Q. Afternoon. If at any point during my  
11 questions you don't -- you need a break or if you need  
12 some clarification regarding any of the terms I use,  
13 could you please let me know, otherwise I'll assume  
14 you understand everything I'm saying.

15 A. I'll do that.

16 Q. If I could please refer you to Rule  
17 25-17.0324 E8?

18 That is in the packet Mr. Anderson  
19 distributed, Vicki.

20 MS. KAUFMAN: I'm not sure if it's in the  
21 packet.

22 MR. ANDERSON: May I assist? That was group  
23 Exhibit B2, page 2.

24 MS. KAUFMAN: Thank you.

25 MS. HARTMAN: Thank you.

1 BY MS. HARTMAN:

2 Q. I'm referring to the section: These  
3 performance standards shall approximate the  
4 anticipated peak and off-peak availability and  
5 capacity factor of the utility's avoided unit over the  
6 term of the contract.

7 A. I see that.

8 Q. Okay. If a renewable energy facility  
9 operating under contract cannot maintain the committed  
10 capacity output for more than four hours due to  
11 intermittent nature of the facility, how can that  
12 performance of the contracted generator be said to  
13 approximate a generator capable of operating at a full  
14 rating for as long as several consecutive days if it  
15 is needed?

16 A. I guess the point of distinction that I would  
17 make here, and I would -- what I would do is step back  
18 and look at the objectives of the Standard Offer  
19 Contract rules based on the direction provided by the  
20 legislature. In there the legislative found it was in  
21 the public interest to promote the development of  
22 renewable energy resources in the state.

23 So, with that as kind of a guiding overriding  
24 principle, I would think that it is appropriate to  
25 better reflect and consider the performance

1 characteristics of renewable energy resources.

2 I think that where we have been to date we  
3 found there is a subjective to promote renewable  
4 energy in Florida, and the market response I think has  
5 not been what everyone would like, and as a result  
6 people are looking at other policies.

7 So, what I've suggested is that it is  
8 appropriate to give consideration to a broader  
9 portfolio of renewable energy resources, and reflect  
10 that while maybe biomass energy resources have a hard  
11 time sustaining output for 24-hour periods for  
12 capacity test, that it is more appropriate to consider  
13 a shorter 4-hour window for the performance of that  
14 test, and to recognize that by being more permissive  
15 in allowing a shorter capacity test period you are  
16 more likely to be encouraging the development of  
17 renewables.

18 And that while one unit output might be  
19 reduced slightly in a specific hour, through a  
20 portfolio of resources you might get another unit that  
21 is performing more than its rated capacity or the  
22 average over that 4-hour period.

23 Q. Thank you. How would the inherently variable  
24 generations for which you propose a shorter averaging  
25 period of 4 hours fit into a utility's operation which

1 would be based on a continuous 24-hour basis?

2 A. I'm not sure if I follow the question. I  
3 think that what I've suggested is that what we are  
4 talking about here is what is the appropriate basis  
5 for determining capacity payment, and that's been kind  
6 of the focus on my comments.

7 There is another issue in terms of the  
8 variability of output and what that means for energy  
9 payments, but is your focus in terms of the capacity  
10 value of the resource?

11 Q. Well, how do you get those two together then,  
12 capacity and payment?

13 MS. KAUFMAN: I'm going to ask Ms. Hartman if  
14 you can maybe clarify the question? But  
15 Mr. Dalton, if you understand you can answer it.

16 THE WITNESS: Would the court reporter read  
17 the question back to me?

18 (A portion of the record was read by the  
19 reporter.)

20 MS. HARTMAN: I think you want to go back to  
21 the first question I asked or, I'm sorry, the  
22 question right before that.

23 THE WITNESS: That's correct, that would help.

24 BY MS. HARTMAN:

25 Q. Let me just state it again. How would you



1 propose a shorter averaging period of 4 hours, how  
2 would you propose that fit into a utility's operation  
3 which may be based on a continuous 24-hour  
4 performance?

5 A. I think that the focus here is on what is the  
6 capacity value and what is the appropriate payment for  
7 capacity values. And I think that the issue is when  
8 is the utility likely to experience peak loads and  
9 what is going to be the availability of generations  
10 during this peak load period.

11 So, typically peak loads are experienced over  
12 relatively narrow windows of time. So, you know, you  
13 wouldn't expect peak loads to be sustained, for  
14 example, for a 24-hour period. My thought is that  
15 using a 4-hour capacity test doesn't necessarily have  
16 to adversely affect the reliability of the system by  
17 resulting in payment for capacity that, in effect,  
18 isn't there.

19 I think that the second element of this is  
20 the capacity test and then there's the payment for  
21 capacity. And what I propose essentially insures that  
22 a very similar approach is employed by FPL. I've just  
23 used availability provisions that were more inline  
24 with what other utilities have offered, and more  
25 inline with the actual historical operating

1 performance of FPL's combined cycle gas turbine fleet,  
2 as reported in the GPIF filing.

3 Q. Thank you. Did you help prepare or review  
4 Wheelabrator's response to staff interrogatory number  
5 one?

6 A. Let me get that in front of me.

7 Q. Okay.

8 A. Yes, I did.

9 Q. Thank you. Is it correct then that in  
10 response to staff interrogatory number one to  
11 Wheelabrator, or that Wheelabrator proposed an  
12 availability requirement of 89 percent for biomass  
13 generation?

14 A. Yes. What we proposed was that if you  
15 achieve a capacity factor of 89 percent or greater,  
16 then you would be eligible for the full capacity  
17 payment.

18 Q. In response to Part B of that interrogatory  
19 Wheelabrator refers to the Progress Standard Offer  
20 Contract, and states that the proposed availability  
21 target is consistent with that used by Progress.

22 Could you please explain the reasoning for  
23 Wheelabrator's suggestion that the requirement  
24 included in the Progress Energy Contract is  
25 appropriate for Wheelabrator's Standard Offer Contract

1 to supply capacity and energy for FPL?

2 A. I guess what I was trying to do is looking at  
3 the 97 percent capacity factor requirement in the FPL  
4 contract, based on many different contracts I've  
5 reviewed never seen such a high capacity factor or  
6 availability factor requirement to receive a full  
7 capacity payment.

8 So, I went to look at what other utilities  
9 offered. And both FPL and Progress Energy have the  
10 same avoided unit. They're both combined cycle gas  
11 turbine units. And I just noted that Progress Energy  
12 only required an 89 percent capacity factor to receive  
13 a full capacity payment.

14 The second thing that caused me to believe  
15 that was an appropriate target was the receipt of full  
16 capacity payment, was that consistent with the  
17 equivalent availability factors that are represented  
18 in the GPIF filing for FPL for the various combined  
19 cycle gas turbine unit.

20 Q. I wanted to talk to you a little bit about  
21 the similarities and differences between the Progress  
22 avoided unit and the FPL avoided unit.

23 Do you know if they have the same capacity  
24 rating?

25 A. I don't know if they have the same capacity

1 rating. I would expect that probably the most  
2 important unit is the determinant of what is going to  
3 be the underlying availability of the technologies is  
4 the technology itself, and the fact they're a combined  
5 cycle gas turbine is probably, to my mind, the most  
6 relevant.

7 Q. And I think you answered the question earlier  
8 but let me ask, do you know if they have the same  
9 manufacturer?

10 A. I don't know if they have the same  
11 manufacturer.

12 Q. Do you know if there are any differences in  
13 burners, oxygen flow, or other elements of combustion  
14 technology?

15 A. I don't know.

16 Q. Okay. Do you know if there are differences  
17 in fuel supply? And by that I mean do you know if  
18 there are -- they have different contracts for  
19 transportation or chemical content?

20 A. I'm not aware of that. These would be  
21 avoided units and, obviously for the FPL unit, it is  
22 going to be in service in -- I believe scheduled to be  
23 in service in 2014. So, I suspect that those  
24 contractual arrangements are currently in place.

25 Q. Regarding the nature and use of the Standard

1 Offer Contract, Mr. Dalton, you provided several  
2 suggestions for change and said in your view should be  
3 made to FPL's Standard Offer Contract; is that  
4 correct?

5 A. That's correct.

6 Q. Could you explain, in general, the reasons  
7 that underlie the suggestions you have made?

8 A. Certainly. I think that the starting point  
9 is recognizing what is the underlying objective here.  
10 And that's to promote the development of renewable  
11 energy resources in the state.

12 And, obviously, what has driven that  
13 objective is the recognition of the broad-based  
14 benefits that renewable energy resources offer.

15 And based on my review of the Standard Offer  
16 Contract and my experience with Standard Offer  
17 Contracts and power contracts in general, I came to  
18 the opinion that there were a number of contract  
19 provisions prior generation developers, renewable  
20 energy project facility developers bear considerable  
21 risk causing them to be reluctant to enter into the  
22 Standard Offer Contract.

23 And these are specifically outlined in my  
24 testimony. And I can go through each one of those  
25 different provisions, if you would like.

1 Q. No, thank you.

2 Would your suggested changes -- well, let me  
3 back up.

4 Would your suggested changes -- sorry, I need  
5 to go off record for a second. Hold on please.

6 (Break in the proceedings.)

7 MS. HARTMAN: Sorry. Back on.

8 BY MS. HARTMAN:

9 Q. Would your suggested changes have a similar  
10 impact for renewable generations if Wheelabrator had a  
11 different technology or didn't use waste to energy  
12 generations?

13 I'm sorry, I need to go offline for a second.

14 (Break in the proceedings)

15 MS. HARTMAN: I'm sorry, back on the line.

16 BY MS. HARTMAN:

17 Q. Mr. Dalton, would your suggested changes have  
18 similar impact for renewable generations using other  
19 technologies, such as solar or wind?

20 A. I would say that if you look at my proposed  
21 changes, and there is four fundamental changes that  
22 are proposed to the Standard Offer Contract, there's  
23 only one which might be viewed as not being as  
24 understanding of the specific circumstances of solar  
25 or wind, and that would be the provisions pertaining

1 to the annual capacity billing factor.

2 And the issue there was in establishing its  
3 capacity value FPL has used a combined cycle unit, and  
4 a combined cycle that capital costs which are used to  
5 establish the capacity value for a combined cycle  
6 unit.

7 One element of those costs really isn't  
8 strictly a pure form of capacity. So, if one were to  
9 have standard such as employed in New England or in  
10 New York where capacity value is established based on  
11 your availability during narrow periods which reflect  
12 when peak demand conditions are experienced, if one  
13 were to have such a framework in place, the  
14 appropriate capacity payment would need to be lower  
15 and some of the value associated with capacity in the  
16 current capacity payment would need to be allocated to  
17 energy payments.

18 And I viewed this such financial engineering  
19 for the purposes of this testimony is beyond the  
20 appropriate scope. And so what I offered was changes  
21 for this provision which would cover, you know, many  
22 of the existing renewable energy facilities in  
23 Florida.

24 And it is my understanding that biomass  
25 facilities represent about two-thirds of the renewable

1 capacity in Florida, so I thought it was appropriate  
2 to offer a recommendation that would recognize their  
3 likely operating profile. And which, in turn, was  
4 consistent with provisions that progress energy used,  
5 and as well consistent with the operating performance  
6 of some of FPL's combined-cycle gas turbine units.

7 But the other three provisions that I have  
8 suggested should be revised. Those would be changes I  
9 think that would enable the development of a broad  
10 range of renewable technologies in Florida. And if  
11 the commission were to determine that those were  
12 appropriate changes, I think it would have a favorable  
13 affect in terms of promoting the legislature's  
14 objectives of promoting the development of renewable  
15 energy sources in Florida.

16 MS. HARTMAN: Thank you, I have no other  
17 questions.

18 MS. KAUFMAN: Back on the notary thing, I  
19 have done this three times to Miss Janelle and  
20 each time it has bounced back.

21 THE WITNESS: If you send it to me I guess  
22 I've got it, I'll make sure it gets sent.

23 MS. KAUFMAN: Very good. And I guess we  
24 should go back on the record to state that  
25 Mr. Dalton does not waive reading and signing.



1 MR. ANDERSON: Could you state your address,  
2 Mr. Dalton, so we have that for the record?

3 THE WITNESS: 706 West Street, Carlisle,  
4 Massachusetts. Carlisle is spelled  
5 C-A-R-L-I-S-L-E. And the ZIP code is 01741.

6 MR. ANDERSON: And I have nothing further.  
7 We're off the record.

8 (Discussion held off the record.)

9 MS. KAUFMAN: What is your turnaround,  
10 Ms. Court Reporter?

11 COURT REPORTER: Turnaround is requested by  
12 Mr. Anderson e-mail by Friday.

13 (Discussion held off the record.)

14 MS. KAUFMAN: Why don't I talk to Bryan then,  
15 I don't need it expedited.

16 (Witness excused.)

17 (Deposition was concluded.)

18

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C E R T I F I C A T E

THE STATE OF FLORIDA

COUNTY OF PALM BEACH

I hereby certify that I have read the foregoing deposition by me given, and that the statements contained herein are true and correct to the best of my knowledge and belief, with the exception of any corrections or notations made on the errata sheet, if one was executed.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
JOHN C. DALTON

#61866

ERRATA SHEET

IN RE: FPL PETITION FOR APPROV. CR: ELEANOR EVENSEN

DEPOSITION OF: JOHN C. DALTON

TAKEN: 12/17/2008

# 61866

Do Not Write On Transcript - Enter Changes Here

CHANGE	LINE	CHANGE	REASON

Please forward the original signed errata sheet to this office so that copies may be distributed to all parties.

Under penalty 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: \_\_\_\_\_ SIGNATURE OF DEPONENT: \_\_\_\_\_

REPORTER'S CERTIFICATE

STATE OF FLORIDA  
COUNTY OF PALM BEACH

I, ELEANOR M. EVENSEN, Registered Professional Reporter and Notary Public in and for the State of Florida at Large, do hereby certify that I was authorized to and did report said deposition in stenotype; and that the foregoing pages are a true and correct transcription of my shorthand notes of said deposition.

I further certify that said deposition was taken at the time and place hereinabove set forth and that the taking of said deposition was commenced and completed as hereinabove set out.

I further certify that I am not an attorney or counsel of any of the parties, nor am I a relative or employee of any attorney or counsel of party connected with the action, nor am I financially interested in the action.

The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or direction of the certifying reporter.

DATED this 18th day of December, 2008.

\_\_\_\_\_  
ELEANOR M. EVENSEN  
# 61866

1  
2  
3 DECEMBER 18, 2008

4 Mr. John Dalton  
5 706 West Street  
6 Carlisle, Massachusetts  
7 01741

# 61866

8 RE: Florida Power & Light Company's Petition for  
9 Approval of Renewable Energy Tariff and Standard  
10 Offer Contract.

11 Please take notice that on December 17,  
12 2008, you gave your deposition in the above-referred  
13 matter. At that time, you did not waive signature.  
14 It is now necessary that you sign your deposition.

15 Please call our office at the below-listed  
16 number to schedule an appointment between the hours of  
17 9:00 a.m. and 4:30 p.m. Monday through Friday at the  
18 Esquire office located nearest you.

19 If you do not read and sign the deposition  
20 within a reasonable time (i.e., thirty (30) days  
21 unless otherwise directed), the original, which has  
22 already been forwarded to the ordering attorney, may  
23 be filed with the Clerk of the Court. If you wish to  
24 waive your signature, sign your name in the blank at  
25 the bottom of this page and return it to us at 515  
North Flagler Drive, P-200, West Palm Beach, Florida,  
33401.

Very truly yours,

Eleanor M. Evensen  
Esquire Deposition Services

I do hereby waive my signature:

(Witness Name) - - - - -

cc: Via transcript (Bryan Anderson, Esquire)  
(Vicki Kaufman, Esquire)  
(Jean Hartman, Esquire)

File copy

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080193-EP EXHIBIT 6

COMPANY FL Power + Light (Rebuttal)

WITNESS Korel M. Dubin (KMD-2)

DATE 01/22/09

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

RECEIVED  
OCT 24 1963

In re: Amendment of Rules . . . ) DOCKET NO. 820408-KU  
25-17.80 through 25-17.89 ) ORDER NO. 12634  
relation to cogeneration. . . ) ISSUED: 10-27-83

The following Commissioners participated in the disposition of this matter:

JOSEPH P. CRESSE  
JOHN R. MARKS, III  
KATIE NICHOLS

## FINAL ORDER

**BY THE COMMISSION:**

## **Background**

In 1978 the Public Utility Regulatory Policies Act (PURPA) was enacted as part of a group of measures known as the National Energy Act. Certain provisions of PURPA established a federal policy encouraging cogeneration and small power production and required the Federal Energy Regulatory Commission and state regulatory commissions to implement that policy through the exercise of their regulatory authority over electric utilities. In March 1980, FERC issued its regulations. Tracking PURPA, the federal regulations established an obligation on the part of electric utilities to buy electricity from and sell electricity to cogenerators and small power producers who met certain fuel efficiency standards, hereinafter referred to as Qualifying Facilities (QFs). These transactions were to be conducted at rates which were just, reasonable, in the public interest, and non-discriminatory to QFs. FERC concluded that if rates for the purchase of electricity from QFs by utilities were set at full avoided cost for both energy and capacity, the rates would meet the criteria just mentioned and cogeneration and small power production would be encouraged to the maximum extent possible. FERC required state regulatory commissions to implement its regulations within one year. Thus, in April 1981, the Florida Public Service Commission adopted Rule 25-17.80 through Rule 25-27.89, Florida Administrative Code<sup>1</sup>. These rules, inter alia, required investor-owned electric utilities in Florida to buy energy at a rate which reflected the full decremental fuel cost avoided by the utility by the purchase of energy from QFs. A capacity credit was apparently required if a QF's operation was sufficiently reliable to anticipate that its capacity contribution would result in the avoidance of additional capacity construction by an electric utility. The level of any capacity payment was to be negotiated according to six criteria relating to the size and operational characteristics of the QF. Several controversies arose in connection with the implementation of the original rules. Hearings were held on each utility's tariff and a protracted dispute between Florida Power and Light Company and Resources Recovery, Dade County, Inc., was brought to us for resolution. In the course of resolving these questions, in Dockets Nos. 810296-KU and 820114-KU, we made several further

<sup>1</sup>In Florida Power & Light Co., Inc. v FPSC, (Case No. 60,671, March 17, 1983), the Florida Supreme Court ruled that the rules were invalid because the Commission lacked statutory authority to adopt them. The appeal is still pending. The issue it presents has been laid to rest with the passage of Section 366.05(9), Florida Statutes, which specifically empowers the Commission to set rates for cogenerators and small power producers.

The hearings on the proposed rules were held on May 16, 18 and 19, 1983. Due to the complexity of the issues, the interest aroused by them, and the number of witnesses involved, the Commission conducted the hearing in a manner similar to that required by Section 120.57, Florida Statutes. In addition to their prefiled testimony, several witnesses filed rebuttal testimony setting forth their evaluation of the positions taken by other parties. Sworn testimony was received from the following witnesses: R. Trapp for the Commission Staff, S. Payne for the Commission Staff, J. Cundelan for ITT, R. Graf for Nichols, A. Herman for Nichols, M. W. Howell for Gulf, J. Carting for Gulf, L. Brook for Dade County, A. Wenner for Dade County, E. Parmesano for Dade County, D. Nestas for TECO, S. Nixon for FPC, J. Seelke for FPL, R. Denis for FPL, F. Seidman for IMC, et al, G. R. Araknecht for IMC, et al, H. Cook for IMC, et al, E. Loyless for IMC, et al, R. Spann for RRD, B. Capehart, R. Wiley for FCG, J. Haskins for Gulf, and The Mayor of Boca Raton. All parties had the opportunity to cross examine all of the witnesses who testified.

Broward and Palm Beach Counties intervened after the hearings were completed.

At the conclusion of the hearing, the Commission outlined an alternative to the proposals it had received from the parties. The Commission requested all parties to critique this proposal, in addition to the others presented at the hearing, in the post-hearing comment period.

Staff circulated its proposed final rule, and the Commission alternative, and all parties had ten days thereafter to submit written comments. At its regularly scheduled agenda conference on July 5, 1983, the Commission tentatively approved a final rule. Oral arguments were held on the tentatively approved rule on July 12, 1983. At the conclusion of oral arguments, the Commission requested all parties to submit additional written comments by July 26, 1983. At our regularly scheduled agenda conference on August 2, 1983, we approved the final rules which were filed with the Secretary of State on August 15, 1983.

#### The Rules

We now turn to a discussion of the issues raised by each rule and our resolution of them. At the outset, we wish to state that it is our preference that QFs and utilities negotiate individually tailored contracts. The rules we have adopted are intended to both encourage negotiated contracts and provide a fall back remedy in the event a contract cannot be negotiated.

#### Rule 25-17.80 Definitions and Qualifying Criteria

This rule establishes the criteria a cogenerator or small power producer must meet to obtain Qualifying Facility status. We have continued our adoption of the FERC criteria. The criteria establish minimum fuel efficiency standards and prohibit an investor-owned utility from having a controlling equity interest in a QF. To help those unfamiliar with the criteria, a brief description of the fuel efficiency standards and the ownership test have been added to the rule. We have made a substantive addition to the rule by including a provision which allows a cogenerator or small power producer who cannot meet the FERC criteria to petition the Commission for Qualifying Facility status for the purpose of receiving energy and capacity payments pursuant to these rules. [Rule 25-17.80(1)]. As indicated in the rule, such a petition would be judged by whether the cogenerator or



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unit one year. We adopt the testimony of Mr. Trapp on this point. We agree with Mr. Trapp that there must be a link between the price paid for QF capacity and the value of other supply side alternatives available to a utility to meet its service obligation. It is this linkage that ensures that cogeneration and small power production will remain a cost effective conservation measure.

As originally proposed, the rule would have required a very strict link between the price paid for QF capacity and the value of deferral. The rule as originally proposed:

1) Required a utility to contract for the purchase of QF capacity if the latter would result in the avoidance or deferral of construction of the utility's next planned unit;

2) Required a QF to sign a contract no later than the commitment date of the utility's avoided unit;

3) Required a QF to begin delivery of firm capacity no later than the in-service date of the utility's avoided unit;

4) Required a QF to maintain a 70% capacity factor;

5) Conditioned the obligation to make capacity payments on total QF capacity contractually committed to a utility being equal to the capacity of the utility's avoided unit;

6) Conditioned the rate of payment for QF capacity on the amount of capacity, the capacity factor, the ability to dispatch, the ability to coordinate outages, availability during peak, and technological similarities of the QF and the utility.

In essence, the rule as originally proposed created a subscription period for QF capacity. For example, if a utility's next planned unit was 425 MW, capacity payments would be offered to the first 425 MW of QF capacity to sign a contract. However, no capacity payment would be made unless 425 MW of QF capacity had been contractually committed by the date on which the utility would otherwise have committed to the construction of the avoided unit. Then, the rate of payment was to be negotiated based on further distinctions among QFs; in any event, the rate of payment could not exceed 80% of the theoretical value of deferral.

Upon further reflection, however, we decided that requiring such a strict MW-for-MW link between QF capacity and a utility's next planned unit would not sufficiently encourage cogeneration and small power production, as it shrouds capacity payments in too much uncertainty. We have, therefore, dropped the requirement of an MW-for-MW link from the final rule. We emphasize that by doing so, we have increased the risk assumed by the ratepayers. The final rule is a gamble that by offering to buy capacity on the terms and conditions specified in the rule, sufficient capacity will materialize to permit actual avoidance or deferral of additional generating capacity by Florida utilities.

[ We remain steadfast in our belief that the risk associated with the purchase of QF capacity should be explicitly recognized in the rate of payment so as to reduce the risk to the

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ratepayers. Specifically, there is the risk that an insufficient amount of capacity will be available when it is needed to permit the actual avoidance or deferral of additional generating capacity by the utility who has purchased the QF capacity. There is also the risk that after utilities are obligated to purchase QF capacity, it will not be needed during the time it will be available because a utility's generation expansion plan has been deferred for reasons unrelated to cogeneration, e.g., declining load forecasts due to slower growth or improved conservation or the availability of a less expensive source of supply. Moreover, because our rule requires that a QF commit itself for only ten years, while generating capacity owned by a utility is expected to provide service for at least thirty years, there is a risk that there will be an insufficient amount of QF capacity at the end of the initial contract period. We have accounted for these risks by including a generic risk factor in the calculation of the value of deferral, the basis for capacity payments. The theoretical value of an annual deferral is reduced by 20%.

Many of the QFs who intervened in this proceeding contended that inclusion of a generic risk factor in the value of deferral calculations constituted payment of less than full avoided cost and therefore is not permitted by the FERC regulations. What this argument overlooks is that the FERC regulations encompass an if-then test: if QF capacity avoids capacity related expenditures by a utility, then the QF must be compensated at full avoided cost. Further, the FERC Regulations permit a state regulatory commission to link the value or quality of QF capacity to varying payment levels. This rule simply says that QF capacity provided at a certain level of reliability for a certain length of time with certain risks associated with it is generically worth 80% of the theoretical value of deferral. Stated another way, we believe that the law permits the kind of trade-off we have settled on: payment of 80% of the theoretical value of deferral as much as seven years before the in-service date of the avoided unit without the certainty that any costs will actually be avoided or deferred. Note that a QF has an opportunity to obtain 100% of the theoretical value of deferral in a separately negotiated contract. Obviously one would expect a QF to make contractual commitments that exceed the eligibility requirements for the standard offer in exchange for capacity payments that exceed those specified in the standard offer.

The value of deferral is, in essence, a calculation of the value of deferring the revenue requirements of a new generating plant by one year. Essentially, it compares the difference in annual revenue requirements if the revenue requirements stream begins in year X as compared to beginning in year X+1.

To calculate the value of deferral, the plant to be deferred must be identified, and the anticipated in-service date, as well as the plant's projected costs, must be ascertained. Thus, the rule provides for an annual implementation hearing. At this hearing, we will determine the next planned, needed, generating plant in the state, its anticipated in-service date, and its projected costs. Based on these findings, the capacity payment for QF capacity sold pursuant to a utility's standard offer will be determined. Thereafter, we will annually review our findings with respect to the statewide avoided unit, its timing and cost.

To give QFs as much choice as the situation permits, the rule allows a QF to select one of two payment options tied to the value of deferral. Regardless of the option selected, the statewide avoided unit and its anticipated in-service date current at the time a QF accepts a utility's standard offer, is fixed for the

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25-17.84, a utility has the same obligation to provide adequate service to its customers who are QFs as it does to all customers. Firm service to a QF should not be qualitatively different than firm service to any other customers.

[ We have retained the provisions of the original rule excusing a utility from its obligation to purchase under certain circumstances, and have added to it to make clear that a utility is not required to purchase from a QF when to do so would result in costs greater than those which the utility would incur if it did not make such purchases. We believe this is most likely to happen during a utility's off-peak periods where it may be cycling its base load units and QF purchases would force it to shut down the units altogether.

Rule 25-17.87 Interconnection and Standards

We have substantially expanded this rule to establish general safety and interconnection standards that will apply in the absence of a determination by a utility that either less stringent or more stringent standards are necessary in a particular case. Several QFs expressed concern that a utility vested with this discretion would impose costly, unnecessary interconnection requirements on a QF. We expect utilities to act reasonably in this regard and impose only those requirements reasonably necessary to maintain system integrity and safety. In the event a QF believes it is being unfairly treated, it may petition the Commission for relief. [Rule 25-17.87(3)].

It is, therefore,


ORDERED by the Florida Public Service Commission, that all electric utility companies subject to the provisions of Rules 25-17.80 through 25-17.87, Florida Administrative Code, shall submit a tariff in compliance with these rules, by December 12, 1983, for consideration in Docket No. 830377-EU. It is further

ORDERED that all electric utility companies subject to the provisions of Rules 25-17.80 through 25-17.87, Florida Administrative Code, shall submit details of the methodology to be used to calculate avoided energy costs as set forth in Rule 25-17.825, Florida Administrative Code, by December 12, 1983, for consideration in Docket No. 830377-EU. It is further

ORDERED that notice, as required by 18 CFR Section 292.403(a), be given that the Florida Public Service Commission will seek a waiver of 18 CFR Section 292.304(h)(4), which permits a Qualifying Facility to engage in sales on a simultaneous purchase and sale basis. It is further

ORDERED that this docket be closed.

By ORDER of the Florida Public Service Commission, this 27th day of October, 1983.

  
Steve Tribble  
COMMISSION CLERK

( S E A L )

RED

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Docket No. 080193-EQ  
Order No 13247  
Exhibit KMD-3, Page 1 of 2

In re: Proceedings to Implement } DOCKET NO. 830377-EU  
Cogeneration Rules } ORDER NO. 13247  
ISSUED: 5-1-84

The following Commissioners participated in the disposition of this matter:

JOSEPH P. CRESSE  
JOHN R. MARKS, III  
KATIE NICHOLS

FINAL ORDER

BY THE COMMISSION:

On September 2, 1983 the Commission substantially revised Rule 25-17.80 through Rule 25-17.89, F.A.C. hereinafter referred to as the cogeneration rules. The revisions codified refinements of the Commission's cogeneration policy developed in Docket Nos. 810296-EU, 820114-EU, and 820165-EU; developed a methodology for determining the cost effectiveness of utility payments for the purchase of firm capacity and energy from cogenerators and small power producers; and established a statewide standard offer for the purchase of firm capacity and energy from cogenerators and small power producers (hereinafter referred to as Qualifying Facilities or QFs).

This docket was opened by the Commission's own motion pursuant to Rule 25-17.83(4) on August 16, 1983 to determine the statewide avoided unit for the purpose of determining the need for, timing, and pricing of firm capacity and energy purchases from QFs. Also, certain other aspects of implementation of the revised rules were addressed in this proceeding.

Several parties formally intervened in these proceedings. They were: Florida Power Corporation; Florida Power & Light Company; Florida Public Utilities Company; Gulf Power Company; Tampa Electric Company; Farmland Industries, Inc.; Florida Crushed Stone Company; International Minerals and Chemical Corporation; U.S. Sugar Corporation; W. R. Grace & Company; Resources Recovery, Dade County; Metropolitan Dade County; Conserv, Inc.; Broward County; U.S. Steel Corporation; Royster Company; Dothan Oil Mill Company; and St. Regis Paper Company.

On January 6, 1984, a prehearing conference was held. With the above listed intervenors in attendance, the parties agreed to a prehearing memorandum which established 45 substantive issues and 1 legal issue to be addressed at the hearing.

Public hearings were held on January 18 and 19, 1984 and on February 14 and 23, 1984. Sworn testimony was received from 11 witnesses on behalf of the intervenors listed above as well as testimony by the Commission staff.

In-Service Date of Statewide Avoided Unit

Rule 25-17.83(4) requires the Commission to designate a statewide avoided unit for the purpose of determining the need for, timing, and pricing of firm capacity and energy purchases from QFs. This approach to pricing QF capacity and energy reflects the Commission's long standing policy that the need for additional capacity by Florida utilities should be determined from a statewide perspective rather than simply focusing on the isolated needs of the individual Florida utility systems. This policy is derived from Section 366.04(3), Florida Statutes, which states:

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080193-EQ EXHIBIT 7  
COMPANY FL Power + Light (Rebuttal)  
WITNESS Korel M. Dubin (KMD-3)  
DATE 01/22/09

3070-84

ORDER NO. 13247

DOCKET NO. 030377-EU

PAGE 13

rolling average basis, QFs should also be required to maintain a 70 percent capacity factor during on peak hours on a 12 month rolling average basis. Since approximately 75 percent of the hours in the year, 6570 hours out of a total of 8760, are considered to be off peak hours, the utilities fear that a QF could generate all its required energy during off peak hours and hence make no contribution to the deferral of additional capacity construction.

While we are somewhat sympathetic to this concern, we are unconvinced that an absolute 70 percent on peak capacity factor is necessary. We note that during cross examination none of the utility witnesses were able to produce a specific study showing that they would be unable to defer additional capacity construction unless they received an average of 70 percent of their contracted cogeneration capacity during on peak hours. Accordingly, we decline to adopt this additional requirement at this time but will continue to monitor the performance of QFs with respect to our goal of deferring additional capacity construction in Florida.

We do find, however, that the following additional performance criteria are reasonable and should be adopted:

- (1) The QF must agree to provide monthly generation estimates by October 1 for the next calendar year; and
- (2) The QF must agree to promptly update the yearly generation schedule when any changes are determined necessary; and
- (3) The QF must agree to reduce generation or take other appropriate action as requested by the purchasing utility for safety reasons or to preserve system integrity; and
- (4) The QF must agree to coordinate scheduled outages with the purchasing utility; and
- (5) The QF must agree to comply with the purchasing utility's reasonable requests regarding daily or hourly communications.

In addition to the above performance criteria, we find that capacity payments to a QF should not commence until the QF has attained commercial in-service status. This additional requirement is necessary to protect ratepayers from the risk associated with speculative construction by QFs over which this Commission has no control. The commercial in-service date of a QF will be defined as the first day of the month following the successful completion of the QF maintaining an hourly kilowatt output, as metered at the point of interconnection, equal to or greater than the QF's contractually committed capacity for a 24 hour period. We fully expect each QF to coordinate the selection of and operation of its facility during this test period with the purchasing utility to insure that the performance of the QF during this 24 hour period is reflective of the anticipated day to day operation of the QF.

We further find that during the first twelve months during which these performance criteria are imposed, the QF's capacity factor should be calculated by dividing the sum of the kilowatt hours sold by the QF to the purchasing utility for the number of months since the performance criteria became applicable by the product of the number of hours in the months which have transpired times the maximum committed capacity of the QF. This calculation should be performed each month until enough months have transpired to calculate a true 12 month rolling average capacity factor.

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. D80193-EQ EXHIBIT 8

COMPANY FL Power + Light (Rebuttal)

WITNESS Korel M. Dubin (KMD-4)

DATE 01/22/09

37 of 38 DOCUMENTS

In Re: Planning Hearings on Load Forecasts Generation Expansion Plans, and  
Cogeneration Prices for Florida's Electric Utilities

DOCKET NO. 910004-EU; ORDER NO. 24989

Florida Public Service Commission

1991 Fla. PUC LEXIS 1386

91 FPSC 8:560

August 29, 1991

[\*1]

The following Commissioners participated in the disposition of this matter: THOMAS M. BEARD, Chairman; J. TERRY DEASON; BETTY EASLEY; MICHAEL McK. WILSON

OPINION: FINAL ORDER

BY THE COMMISSION:

As a result of the revision of the cogeneration rules (Docket No. 891049-EU), we initiated a proceeding to approve new standard offer contracts. Pursuant to Order No. 23625, each utility was required to file by October 30, 1990, its most recent ten-year generation expansion plan, a standard interconnection agreement, and one or more standard offer contracts designed to avoid the construction of capacity identified in its plan.

A hearing was conducted in this docket on May 20, 22, and 23, 1991. Pursuant to Order No. 24142, the scope of this hearing was limited to those issues necessary to approve firm capacity and energy tariffs, standard offer contracts, as-available energy tariffs, and standard interconnection agreements.

FPC'S FORECASTS, ASSUMPTIONS, AND GENERATION ALTERNATIVES

1. FPC'S RELIABILITY CRITERIA
2. FPC'S LOAD FORECAST
3. FPC'S CONSERVATION FORECAST
4. FPC'S FUEL FORECAST
5. FPC'S UNIT PERFORMANCE FORECAST

6. FPC'S PURCHASED POWER FORECAST

7. FPC'S STRATEGIC [\*2] CONCERNS

8. FPC'S AVOIDED UNIT GENERATING TECHNOLOGIES

9. FPC'S SUPPLY SIDE ALTERNATIVES

10. FPC'S APPROPRIATE GENERATION EXPANSION PLAN

1. FPC'S RELIABILITY CRITERIA

Florida Power Corporation (FPC) utilizes a dual criteria, consisting of a 0.1 Loss of Load Probability (LOLP) and a 10% winter reserve margin. These two reliability criteria have been used by FPC for some time and they are indicators of different system requirements. A reserve margin is an indicator of the system's ability to serve the system-wide seasonal peak demand. The percentage of reserve, usually expressed as a percentage of peak demand, is maintained in order to allow for variations in load and unit availability. The actual percentage planned is a judgement based on the utility's size and its interconnections to neighboring utilities. A LOLP criteria is an indicator of the system's ability to meet daily peak demands. This method considers the forced and planned outage rates of the utility's units, as well as the probability of emergency assistance, if needed.

While these two criteria are adequate, they can only be as good as the assumptions that go into the planning process. For example, the LOLP [\*3] calculation is very sensitive to assistance from other utilities. Both criteria are also sensitive to errors in load forecasts. These two areas seem to be the major cause of FPC's near term



for inclusion in its standard offer tariff that would allow for a credit to the QF if a benefit occurs to FPL as a result of the purchase of firm capacity and energy from the QF.

#### 8. FPL'S STANDARD OFFER TAX PROVISION

FPL originally proposed language in its tariff which made the QF liable for any taxes or impositions for which FPL would not have been liable if it had produced the energy and constructed the facility itself. Several intervenors criticized this language as being too vague. We agree that this language can and should be modified to be more favorable to the QFs while maintaining revenue neutrality for FPL's ratepayers. FPL has agreed to modify the language in section 12.12 to specify which taxes the QF will be responsible for paying, by substituting the language it has provided in Exhibit 26.

Exhibit 26 contains tariff language which specifies that, "In the event that FPL becomes liable for additional taxes, including interest and/or penalties arising from the Internal Revenue Service's determination . . . that FPL's early, levelized or early levelized capacity payments to the QF are not [\*60] fully deductible when paid (additional tax liability), FPL may bill QF monthly for the costs, including carrying charges, interest and/or penalties, associated with the fact that all or a portion of these early, levelized capacity payments are not currently deductible for federal and state income tax purposes . . . These costs would be calculated so as to place FPL in the same economic position as it would have been in if the entire early, levelized or early levelized capacity payments had been deductible in the period in which the payments were made. . . ." We approve the language in Exhibit 26.

FICA argued that the Commission should require utilities to seek an IRS ruling prior to assessing any possible tax effects on QFs. We expect that FPL will take reasonable and prudent steps to identify, clarify, and minimize the effects of such taxes. We will not, however, require FPL to seek an IRS ruling in all cases.

#### 9. FPL'S CAPACITY BENEFITS FOR EARLY DELIVERY

FPL's standard offer contract should and does recognize that a QF must deliver firm capacity and energy as a condition of receiving early capacity payments. Section 9 need not specify this condition because Section 4.1 (via [\*61] COG-2 tariff sheet 10.201) and Section 11 specify that capacity payments will not commence until the contract in-service date.

#### 10. FPL'S PERFORMANCE REQUIREMENTS (STIPULATED)

All parties to this docket have stipulated to FPL's position or have agreed not to object to the stipulation on this issue. Based upon our Staff's analysis, we will accept the stipulation of the parties that the operating performance requirements in FPL's standard offer contract reasonably reflect the performance of FPL's avoided unit.

#### 11. FPL'S SLIDING SCALE CAPACITY PAYMENTS

Appendix C to FPL's standard offer contract provides the computation of the monthly capacity payment made to cogenerators. FPL proposes an adjustment which exponentially reduces the QF's capacity payment in a month when the twelve-month rolling average of the on-peak capacity factor is below the avoided unit minimum. This adjustment broadens the range of performance in which the QF can be paid for performance while encouraging the QF to provide capacity during FPL's peak periods.

FPL's adjustment to capacity payments is reasonable. Therefore, we approve the capacity payment adjustment proposed in Appendix C of FPL's standard [\*62] offer contract for calculating monthly capacity payments to the QF.

#### 12. FPL'S MAINTENANCE SCHEDULING

The QF and the utility should work together to ensure that the QF's maintenance schedule is acceptable to both parties. However, FPL must have the ultimate ability to reject a QF's maintenance schedule to prevent planned outages when FPL needs the capacity.

The language in sections 6.1 and 6.2 of FPL's standard offer provides a mechanism for the QF and the utility to develop a mutually acceptable maintenance schedule. These sections allow the QF to perform its maintenance when it wishes, if possible. If the QF requests a maintenance schedule that would lessen FPL's reliability, FPL will advise the QF of an acceptable time period which is close to the one it requested. This approach is reasonable.

#### 13. FPL'S VIABILITY DOCUMENTS

FPL's original tariff requires: a) articles of incorporation or partnership agreement and recent annual report; b) description of the QF's experience; c) letters of intent on financing, fuel, and architect; d) evidence of property options or ownership; e) prospectus for securities or bond offerings; f) contract with municipality; g) description of facility; [\*63] h) technical and environmental data; and i) feasibility studies. FPL stated that it needs these documents to determine whether it is prudent and reasonable to rely on a particular QF. (TR 1592)



FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080193-EG EXHIBIT 9

COMPANY FL Power & Light (Rebuttal)

WITNESS Korel M. Dublin (KMD-S)

DATE 01/22/09

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for approval of renewable energy tariff standard offer contract, by Florida Power & Light Company.	DOCKET NO. 070234-EQ ORDER NO. PSC-07-0492-TRF-EQ ISSUED: June 11, 2007
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The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman  
MATTHEW M. CARTER II  
KATRINA J. McMURRIAN  
NANCY ARGENZIANO  
NATHAN A. SKOP

ORDER APPROVING STANDARD OFFER CONTRACT AND  
ASSOCIATED TARIFFS FILED BY FLORIDA POWER & LIGHT COMPANY

BY THE COMMISSION:

In its 2005 session, the Florida Legislature enacted Section 366.91, Florida Statutes, regarding renewable energy which states:

The Legislature finds that it is in the public interest to promote the development of renewable energy resources in this State. Renewable energy resources have the potential to help diversify fuel types to meet Florida's growing dependency on natural gas for electric production, minimize the volatility of fuel costs, encourage investment within the State, improve environmental conditions, and make Florida a leader in new and innovative technologies.

Section 366.91(3), Florida Statutes, enumerates requirements to promote the development of renewable energy resources. In summary:

- a) By January 1, 2006, each investor-owned electric utility (IOU) and municipal utility subject to the Florida Energy Efficiency and Conservation Act (FEECA) of 1980 must continuously offer to purchase capacity and energy from specific types of renewable resources;
- b) the contract shall be based on the utility's full avoided costs, as defined in Section 366.051, Florida Statutes;
- c) each contract must provide a term of at least ten years; and
- d) the Commission shall establish requirements relating to the purchase of capacity and energy by public utilities from renewable energy producers and may adopt rules to administer this section.

On March 8, 2007, proposed amendments to Part III, Rule 25-17.0832, Florida Administrative Code, and Part IV, Chapter 25-17, Florida Administrative Code (Rules 25-

**Future Carbon Regulations**

Rule 25-17.270, Florida Administrative Code, specifically requires standard offer contracts to allow either party to reopen a contract if avoided unit costs change as a result of new environmental and other regulatory requirements, such as carbon emission standards, enacted during the term of the contract. FPL's Standard Offer Contract is in compliance with this requirement. (See Section No. 17.6.3)

**Tradable Renewable Energy Credits (TRECs)**

Rule 25-17.280, Florida Administrative Code, requires that TRECs shall remain the exclusive property of the renewable generator. A utility shall not place any conditions upon such incentives in a standard offer contract, unless agreed to by the renewable generating facility.

[ FPL acknowledged that TRECs are the property of the renewable generator, and also has included a right of first refusal with specific timelines for responding. Such a condition will insure that Florida's ratepayers enjoy all of the attributes associated with renewable generation without imposing a financial penalty to the owner of the renewable generation facility. (See Section 17.6.2)

**Imputed Debt Equivalent Adjustments (Equity Adjustments)**

Pursuant to Rule 25-17.290, Florida Administrative Code, "an investor-owned utility shall not impose any imputed debt equivalent adjustments (equity adjustments) to reduce the avoided costs paid to a renewable generating facility unless the utility has demonstrated the need for the adjustment and obtained the prior approval of the Commission." FPL's original Petition filed May 2, 2007, with accompanying tariff sheets, requested approval to include an equity adjustment in the calculation of capacity payments to be made under its Standard Offer Contract. However, on May 17, 2007, FPL filed its Second Amended Petition withdrawing its request that the Commission approve an imputed debt equivalent adjustment in its standard offer contract.

**Conclusion**

Based on the above, we find that FPL's Standard Offer Contract and associated tariffs are in compliance with Rules 25-17.200 through 25-17.310, Florida Administrative Code, and are therefore approved, effective May 22, 2007. If a protest is filed within 21 days of the issuance of this Order, the tariffs shall remain in effect pending resolution of the protest. Potential signatories to the standard offer contract should be aware that FPL's tariffs and standard offer contract may be subject to a request for hearing, and if a hearing is held, may subsequently be revised. If no timely protest is filed, this docket shall be closed upon the issuance of a Consummating Order.

Based on the foregoing, it is

105 FERC ¶ 61,004  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, and Nora Mead Brownell.

American Ref-Fuel Company,  
Covanta Energy Group,  
Montenay Power Corporation, and  
Wheelabrator Technologies Inc.

Docket No. EL03-133-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued October 1, 2003)

1. On June 13, 2003, American Ref-Fuel Company, Covanta Energy Group, Montenay Power Corporation, and Wheelabrator Technologies Inc. (Petitioners) filed a petition for declaratory order in which they seek an interpretation of the Commission's regulations implementing Section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. § 824a-3 (2000). See 18 C.F.R. Part 292 (2003).
2. Petitioners, through direct and indirect subsidiaries, own and operate waste-to-energy power plants across the United States that are certified as qualifying facilities (QFs). Petitioners seek Commission interpretation of its avoided cost rules under PURPA. Specifically, Petitioners seek an order declaring that avoided cost contracts entered into pursuant to PURPA, absent express provisions to the contrary, do not inherently convey to the purchasing utility any renewable energy credits or similar tradeable certificates (RECs). They contend that the power purchase price that the utility pays under such a contract compensates a QF only for the energy and capacity produced by that facility and not for any environmental attributes associated with the facility.
3. As discussed below, we grant Petitioners' petition for a declaratory order, to the extent that they ask the Commission to declare that contracts for the sale of QF capacity and energy entered into pursuant to PURPA do not convey RECs to the purchasing utility (absent express provision in a contract to the contrary). While a state may decide that a sale of power at wholesale automatically transfers ownership of the state-created RECs, that requirement must find its authority in state law, not PURPA.

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080193-EQ EXHIBIT 10

COMPANY FL Power & Light (Rebuttal)

WITNESS Korel M. Dubin (KMD-6)

DATE 01/22/09

Docket No. EL03-133-000

(4) the costs or saving resulting from variations in line losses from those that would have existed in the absence of purchases from the QF.

22. Significantly, what factor is not mentioned in the Commission's regulations is the environmental attributes of the QF selling to the utility. This is because avoided costs were intended to put the utility into the same position when purchasing QF capacity and energy as if the utility generated the energy itself or purchased the energy from another source. In this regard, the avoided cost that a utility pays a QF does not depend on the type of QF, i.e., whether it is a fossil-fuel-cogeneration facility or a renewable-energy small power production facility. The avoided cost rates, in short, are not intended to compensate the QF for more than capacity and energy.

23. As noted above, RECs are relatively recent creations of the States. Seven States have adopted Renewable Portfolio Standards that use unbundled RECs. What is relevant here is that the RECs are created by the States. They exist outside the confines of PURPA. PURPA thus does not address the ownership of RECs. And the contracts for sales of QF capacity and energy, entered into pursuant to PURPA, likewise do not control the ownership of the RECs (absent an express provision in the contract). States, in creating RECs, have the power to determine who owns the REC in the initial instance, and how they may be sold or traded; it is not an issue controlled by PURPA.

24. We thus grant Petitioners' petition for a declaratory order, to the extent that they ask the Commission to declare that contracts for the sale of QF capacity and energy entered into pursuant to PURPA do not convey RECs to the purchasing utility (absent an express provision in a contract to the contrary). While a state may decide that a sale of power at wholesale automatically transfers ownership of the state-created RECs, that requirement must find its authority in state law, not PURPA.

The Commission orders:

The Commission hereby grants Petitioners' petition for declaratory order, as discussed in the body of this order.

By the Commission. Commissioner Brownell dissenting with a separate statement attached.

( S E A L )

Magalie R. Salas,  
Secretary.

ONTARIO POWER AUTHORITY

# Standard Offer Program Renewable Energy Final Program Rules

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080193-EQ EXHIBIT 11

COMPANY FL Power & Light (Rebuttal)

WITNESS Korel M. Dubin (KMD-7)

DATE 01/22/09



Ontario Power Authority™

(73) **"Renewable Biomass"** means organic matter that is derived from a plant and available on a renewable basis, including, without limitation, organic matter derived from dedicated energy crops, dedicated trees, agricultural food and feed crops and waste organic material from harvesting or processing agricultural products, forestry products (including spent pulping liquor) and sewage including manure, provided that:

- C**
- (a) such organic matter is not Municipal Solid Waste;
  - (b) such organic matter is not peat or a peat derivative;
  - (c) such organic matter shall not contain any treated by-products of manufacturing processes, including, without limitation, chipwood, plywood, painted or varnished wood, pressure treated lumber, or wood contaminated with plastics or metals;
  - (d) such organic matter shall not include hazardous waste or liquid industrial waste, nor contain any materials that can adversely affect anaerobic processes or cause liquids or solids produced through anaerobic processes to become hazardous waste; and
  - (e) supplementary non-renewable fuels used for start up, combustion, stabilization and low combustion zone temperatures shall be no more than 10.00% of the total fuel heat input in any calendar year for Electricity generation units with a Gross Nameplate Capacity of 500 kW or less and 5.00% of the total fuel heat input in any calendar year for Electricity generation units with a Gross Nameplate Capacity of greater than 500 kW;

(74) **"Renewable Generation Facility"** means a facility that generates Electricity that is delivered through an LDC-owned meter or other meter as provided by the Distribution System Code to a Distribution System or Load Customer from any one of the following sources: wind, Thermal Electric Solar, PV, Renewable Biomass, Bio-gas, Bio-fuel, landfill gas, or water;

(75) **"Retail Settlement Code"** means the code established and approved by the OEB, governing the determination of financial settlement costs for electricity retailers, consumers, generators and distributors, as amended from time to time;

(76) **"RPPI"** means the Renewable Power Production Incentive established and administered by the Government of Canada;

(77) **"Sales Taxes"** means GST and PST and excludes all other *ad valorem*, property, occupation, severance, production, transmission, utility, gross production, gross receipts, sales, use and excise taxes, taxes based on profits, net income or net worth and other taxes, governmental charges, licenses, permits and assessments;

(78) **"Secured Lender"** means a chargee, mortgagee, assignee, sublessee, grantee or similar counterparty under a Secured Lender's Security Agreement;

(79) **"Secured Lender's Security Agreement"** means an agreement or instrument, including a deed of trust or similar instrument securing bonds or debentures, containing a charge, mortgage, pledge, security interest, assignment, sublease or similar right with respect to all or any part of a Generator's right, title and interest in or to its Contract Facility and the relevant Contract or any benefit or advantage of any of the foregoing, granted by the Generator as security for any indebtedness, liability or obligation of the Generator, together with any amendment, change, supplement, restatement, extension, renewal or modification thereof;

(80) **"Settlement Period"** means the monthly or other periodic billing cycle for a relevant LDC;

(81) **"Site-Specific Losses"** means Electricity losses due to line resistance, the operation of transformers and switches, and other associated losses which may occur as a result of the difference between the location of a Contract Facility's meter and the assigned Connection Point. Loss factors for Site-Specific Losses shall be applied in accordance with the Retail Settlement Code and other applicable regulatory instruments;

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval) DOCKET NO: 080193-EQ  
of renewable energy tariff )  
and standard offer contract, )  
by Florida Power & Light )  
Company. ) FILED: December 22, 2008

COPY

TELEPHONIC DEPOSITION OF: KOREL M. DUBIN

AT THE INSTANCE OF: Wheelabrator, Inc.

DATE: January 7, 2009

TIME: Commenced at 3:35 p.m.  
Terminated at 6:15 p.m.

PLACE: Law Offices  
118 North Gadsden Street  
Tallahassee, Florida

REPORTED BY: SARAH B. GILROY, RPR, CRR  
Notary Public in and for  
the State of Florida at  
Large

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080193-EQ EXHIBIT 12  
COMPANY FL Power & Light  
WITNESS Dubin Deposition Testimony  
DATE 01/22/09

ACCURATE STENOGRAPHY REPORTERS, INC.  
2894-A Remington Green Lane  
Tallahassee, FL 32308  
(850) 878-2221 GOR



1 APPEARANCES:

2

3 REPRESENTING THE PETITIONER:

4 BRYAN S. ANDERSON, ESQUIRE  
5 Florida Power & Light Company  
6 700 Universe Boulevard  
7 Juno Beach, Florida 33408

8

9 REPRESENTING THE COMMISSION STAFF:

10 JEAN HARTMAN, ESQUIRE  
11 Public Service Commission  
12 2540 Shumard Oak Boulevard  
13 Tallahassee, Florida 32399

14

15 REPRESENTING WHEELABRATOR:

16 VICKI GORDON KAUFMAN, ESQUIRE  
17 Anchors Smith Grimsley  
18 118 North Gadsden Street  
19 Tallahassee, Florida 32301

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I N D E X

WITNESS

PAGE NO.

KOREL M. DUBIN

Direct Examination by Ms. Kaufman

4

Cross Examination by Ms. Hartman

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Cross Examination by Mr. Anderson

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INDEX OF EXHIBITS

(Exhibits provided by counsel for Wheelabrator)

NUMBER DESCRIPTION

1 Standard Offer Contract

2 Standard Offer Contract

3 F.S. 366.91

4 F.S. 366.92

5 TREC rule

CERTIFICATE OF OATH

86

CERTIFICATE OF REPORTER

87

ERRATA SHEET

88

READ AND SIGN LETTER

89

1 Thereupon,

2 KOREL M. DUBIN

3 was called as a witness, having been first duly sworn,  
4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MS. KAUFMAN:

7 Q I guess I will start. This is Vicki Gordon  
8 Kaufman. And I have duly noticed the deposition of  
9 Ms. Dubin in Docket No. 080193. And I guess we should  
10 take appearances.

11 MR. ANDERSON: This is Bryan Anderson from  
12 Florida Power & Light Company, 700 University  
13 Boulevard, Juno Beach, Florida, 33410. I'm  
14 appearing for Florida Power & Light.

15 MS. HARTMAN: This is Jean Hartman. And I'm  
16 appearing for the Board of Public Service  
17 Commission staff.

18 MS. KAUFMAN: Okay. Good deal.

19 MR. ANDERSON: Please note that FPL will want  
20 to order a copy of the deposition. And we will be  
21 reserving signature at the end.

22 MS. KAUFMAN: Okay. And when we're done, I'm  
23 sure the court reporter will get you all the  
24 information that you need to do that.

25 DIRECT EXAMINATION

1 BY MS. KAUFMAN:

2 Q Good afternoon, Ms. Dubin. How are you doing?

3 A Fine, thank you. Good afternoon.

4 Q As I said, I'm Vicki Kaufman. I know we've  
5 met before. And I'm going to be asking you some  
6 questions on behalf of Wheelabrator Technologies, Inc.  
7 And, you know, just a few ground rules. Number one,  
8 if at any time you can't hear me, because we are doing  
9 this telephonically, of course if any of the parties  
10 can't hear me or the witness, please let us know. If  
11 you don't understand my question, or you need me to  
12 repeat it, let me know that as well.

13 If you need a break, we will certainly  
14 accommodate that. And I think those are sort of the  
15 ground rules, if that's all right with you.

16 A Yes. Thank you.

17 Q Let me ask you first, Ms. Dubin, in addition  
18 to Mr. Anderson, is anyone else there with you?

19 A Yes. We have Raul Montenegro, the manager of  
20 the resource planning department, and Sabrina  
21 Spradley, the regulatory affairs department.

22 Q And Mr. Montenegro, can you tell me who he is  
23 and what his role is, if any, in this case?

24 A Raul Montenegro is a manager in the resource  
25 planning department, and he works for me, assisting me

1 with purchased power agreements and standard offer  
2 contracts and other responsibilities.

3 Q Did he have -- did he assist you with the  
4 standard offer contract that is in contention in this  
5 case?

6 A Yes.

7 Q In what way did he assist you?

8 A He assisted in helping to prepare the standard  
9 offer contract for the prior manager.

10 Q So if I understand you, he helped to prepare  
11 the standard offer contract we're going to talk about  
12 in a minute for the person that previously held your  
13 position?

14 A He did that, as well as helped with --  
15 assisted with some of the revisions that we made.

16 Q Revisions to the contract -- and if it's all  
17 right with you, I will call it the 2008 standard  
18 offer, for shorthand. He helped with revisions to the  
19 2008 standard offer?

20 A Yes. I believe we filed a revision in May of  
21 2008, a couple of pages, and he assisted with that.

22 Q Okay. In the notice of deposition, Ms. Dubin,  
23 I asked that you bring to the deposition any work  
24 papers or materials that you used to prepare your  
25 testimony. Did you bring any such documents with you?

1       A     Ms. Kaufman, I have with me my testimony, my  
2     interrogatories, the statute, and the standard offer  
3     contract.

4       Q     Did you use anything else in preparing your  
5     testimony in this case or in preparing any discovery  
6     responses?

7       A     No, I did not.

8       Q     And I should have asked this earlier. I  
9     apologize. But I sent around to the parties a list of  
10    exhibits that I intend to inquire about. Has counsel  
11    provided those to you?

12      A     Yes. I have them.

13      Q     Okay. Great.

14            MS. KAUFMAN: And, Ms. Hartman, do you have  
15    them?

16            MS. HARTMAN: I do. Thank you.

17            MS. KAUFMAN: Wanted to be sure we were all on  
18    the same page.

19    BY MS. KAUFMAN:

20      Q     Ms. Dubin, I'm going to take a look for a  
21    moment at your direct testimony. And on page 2 at  
22    line 13 you said that you have held your current  
23    position since May 2008; correct?

24      A     That is correct.

25      Q     And that your position is senior manager of

1 purchased power in the resource assessment and  
2 planning department; correct?

3 A That is correct.

4 Q Tell me, if you will, what your  
5 responsibilities are in that position.

6 A I am responsible for purchased power contracts  
7 for the company, and that includes all the contract  
8 administration, contract negotiations, and payment  
9 processing activities.

10 Q Is that the sum total of your responsibilities  
11 now?

12 A That pretty much covers it. There is -- the  
13 purchased power contract, standard offer contract, and  
14 the payment processing. Keep in mind that the  
15 purchased power contracts are hundreds of millions of  
16 dollars worth of contracts.

17 Q Do you appear any longer in the fuel  
18 adjustment docket as a witness?

19 A I finished up this past year.

20 Q So going forward you're not going to be a fuel  
21 adjustment witness?

22 A No, I will not be.

23 Q Given that you came on board in May 2008, did  
24 you have any responsibility for reviewing the standard  
25 offer contract that was filed by the company on April

1 1, 2008?

2 A Yes -- excuse me. Yes, I did. I had accepted  
3 the position in early March, and therefore I was  
4 transitioning in March and April. My position became  
5 effective in May. But for two months prior I was  
6 transitioning, and at that point reviewing the  
7 standard offer contract that was filed on April 1.

8 Q Now, you say you were reviewing it. Did  
9 someone else at Florida Power & Light draft it and  
10 provide a copy for your review?

11 A Yes. My predecessor, Ms. Perez Alonzo. She  
12 was responsible for it. She -- she and I met several  
13 times, reviewed it, went over everything with it, and  
14 it was filed April 1.

15 Q Did you suggest any changes to the draft that  
16 your predecessor brought to you?

17 A Not that I can recall.

18 Q So the contract was pretty much filed as your  
19 predecessor presented to you?

20 A Yes.

21 Q Can I assume that, Ms. Dubin, that you're  
22 familiar with the concept of a standard offer  
23 contract?

24 A Yes.

25 Q Okay. Would you tell us what your



1 understanding is of the purpose of a standard offer?

2 A Standard offer contract is there to promote  
3 renewable generation. It is one where a variety of  
4 different generators with different characteristics  
5 can sell to Florida Power & Light based on avoided  
6 costs.

7 Q Would you agree with me that the standard  
8 offer is intended to be a vehicle that a renewable  
9 generator can sign without the need to go through  
10 negotiations with the utility?

11 A That is possible. However, the one very  
12 important part of a standard offer contract is that it  
13 can be used as the basis of starting negotiations.  
14 It's one thing that the commission has also  
15 recognized, that it's a great starting point, and, in  
16 fact, that they preferred negotiations. But it  
17 certainly is a basis for that.

18 Q Would you agree, however, that one purpose of  
19 a standard offer contract is to provide a contract  
20 that a generator can sign without having to go through  
21 the negotiation process?

22 A Yes. That's possible as well.

23 Q And so would you agree with me that there are  
24 essentially two paths to a renewable -- a renewable  
25 contract with Florida Power & Light, the renewable

1 generator can sign a standard offer contract, or the  
2 renewable generator can attempt to negotiate with FPL?

3 A I would actually say there is three. There is  
4 those two, as well as the RFP process.

5 Q Okay. And would you agree that all three of  
6 those paths are valid ways to procure a contract with  
7 FPL?

8 A Yes.

9 Q Let me ask you, Ms. Dubin, if you are familiar  
10 with Wheelabrator Technologies?

11 A Yes, I am. We have actually four contracts  
12 for the Broward South, Broward North facilities, a  
13 1987 agreement for each of those and 1991 amendment  
14 for each of those. And since those contracts were  
15 signed, we paid -- our customers have paid  
16 Wheelabrator about \$860 million for power under those  
17 contracts.

18 Q Would you agree that Wheelabrator is a  
19 well-known and established provider of renewable  
20 energy?

21 A Yes.

22 Q And, to your knowledge, has Wheelabrator been  
23 a reliable provider for FPL?

24 A Wheelabrator has been a reliable source of  
25 energy for FPL customers over the years, yes,

1 absolutely.

2 Q You reference the contracts that FPL currently  
3 has with Wheelabrator. Do you know how many megawatts  
4 are being purchased under the 1987 North Broward  
5 contract?

6 A Yes. Just give me one minute. Fifty-five  
7 megawatts under the -- excuse me, 56 megawatts under  
8 the North agreement.

9 Q And then the '91 amendment added some  
10 megawatts; didn't it?

11 A The 56 megawatts, I'm sorry, is total.

12 Q Okay. Do you know what you were purchasing  
13 under the '97 agreement, and then how much was added?

14 A Under the -- I'm sorry, the '87 agreement?

15 Q I'm sorry, yes, '87.

16 A I believe it was 50.6, and then up to the  
17 total of 56.

18 Q And what about for the south -- Broward South?

19 A Broward South, the total is 54.1.

20 Q Do you know the breakdown between the '87  
21 contract and the '91 amendment?

22 A Ms. Kaufman, I don't. If you will give me one  
23 minute, I can look it up here.

24 Q Okay. Thanks.

25 A Ms. Kaufman, I'm not seeing it readily

1 available. But the total is 54.1

2 Q I assume that you're familiar with these  
3 contracts, the Wheelabrator FPL contracts; correct?

4 A Yes, I am. I'm responsible for making  
5 payments under them.

6 Q And they're long-standing contracts between  
7 the parties; correct?

8 A That is correct.

9 Q And in your view, have they served the parties  
10 well?

11 A I'm sorry. Could you repeat that?

12 Q Yes. In your view, have these contracts  
13 served the parties well?

14 A Yes.

15 Q And have they provided -- sorry.

16 A In fact, we're looking to renegotiate them  
17 when they expire in 2009 and 2010.

18 Q So I take it that you would agree that they  
19 have provided value to Florida Power & Light and their  
20 rate payors?

21 A Yes. They have provided value to FPL  
22 customers.

23 Q In the packet of documents that I provided,  
24 Ms. Dubin, if you look at the one that is labeled  
25 Dubin Deposition Exhibit No. 1.

1       A     Ms. Kaufman, if I might just go back to your  
2 previous question, I have the number now.

3       Q     All right. That would be great.

4       A     Broward North -- I think I quoted Broward  
5 South. Broward North, the '87 agreement, was for 45  
6 megawatts. The Broward South original agreement was  
7 for 50.6 megawatts.

8       Q     Okay. Thank you for that.

9       A     I'm sorry. You want to refer me to a  
10 document?

11      Q     Yes. If you could look at, in the package  
12 that I sent on to your counsel, if you can take a look  
13 at Deposition Exhibit No. 1.

14      A     Yes.

15      Q     And this is the contract between Wheelabrator  
16 and Broward North; correct?

17      A     Yes, it is.

18      Q     Okay. Can you flip through that and see if  
19 that looks complete?

20      A     Yes. I believe it does.

21      Q     And this is a standard offer contract;  
22 correct?

23      A     It's a standard offer contract from 1987, yes.

24      Q     Take a look at page 7 of that contract, if you  
25 would.

1 A I'm there.

2 Q In paragraph 8B like boy, would you agree that  
3 this contract requires a 70-percent capacity factor on  
4 a 12-month rolling average?

5 A Yes.

6 Q Okay. And if you could juggle Deposition  
7 Exhibit 2 as well, and take a look at that and assure  
8 yourself that the contract is complete.

9 A It looks to be.

10 Q Does that have the same 70 percent capacity  
11 factor, page 7, paragraph 8B?

12 A Yes. It has the 70 percent capacity factor  
13 for a 12-month rolling average basis for 24  
14 consecutive months, as the other one does as well.

15 MS. KAUFMAN: And for the parties, I'm going  
16 to be giving these exhibits to the court reporter  
17 to mark to attach to Ms. Dubin's deposition when  
18 we're finished.

19 BY MS. KAUFMAN:

20 Q These contracts also have maintenance  
21 provisions in them; don't they?

22 A Yes.

23 Q And I think, if you will turn to page 5 of 13,  
24 paragraph 5 deals with maintenance; does it not?

25 A Yes, it does.

1       Q     Are you aware of whether there have been any  
2 problems stemming from this maintenance provision in  
3 the current contract between the parties?

4       A     Not -- not to my knowledge, no.

5       Q     Now, in the standard offer contract that we  
6 are here about in this case, I know you're aware that  
7 one of Wheelabrator's issues is the maintenance  
8 provision that you've proposed; is that correct?

9       A     Yes.

10      Q     And do you have the -- your proposed standard  
11 offer contract?

12      A     Yes, I do.

13      Q     And I believe that it is paragraph 8.2 on  
14 sheet 9.035. Let me know when you get there.

15      A     I'm sorry. Could you mention the page number  
16 again, please.

17      Q     I believe it's sheet 9.035.

18      A     Yes.

19      Q     Okay. And would you agree with me that the  
20 maintenance requirements that are in paragraph 8.2 are  
21 very different from what is in the standard offer  
22 contract we just looked at?

23      A     Yes. There is -- there are differences. The  
24 standard offer contract that the 1987 agreements are  
25 on are based on a 21-year-old standard offer contract.

1 And this is more current based on newer information  
2 and also revised rules and -- on the standard offer  
3 contract, and also based on a difference of unit.

4 Q Let me go through this one at a time. What  
5 new information is it based upon?

6 A Well, new information, I mean that the whole  
7 standard offer contract, the rules regarding them have  
8 changed over the years. There have been various  
9 seatings, workshops, revised rules, and orders that  
10 apply to the standard offer contract over the years.  
11 And the standard offer contract today or the 2008 one  
12 reflects that.

13 Q Would you agree, still looking at paragraph  
14 8.2 here, that that provides that FPL can object to  
15 and reject the maintenance schedule of the renewable  
16 provider?

17 A Yes.

18 Q And are there -- do you see in there any  
19 restrictions or standards as to when and how FPL may  
20 do that?

21 A It's a point where the QF -- if I might read  
22 here, scheduled maintenance outages only during  
23 periods approved by FPL and such approval not  
24 unreasonably withheld.

25 Q Other than the standard of not unreasonably



1 withheld, are there any other standards in there that  
2 would tell us when FPL can reject the maintenance  
3 schedule of the renewable provider?

4 A It has the limitations on the scheduled  
5 outage, seven days, so forth. There is various  
6 criteria there for the maintenance schedule.

7 Q You refer to the updating of the standard  
8 offer rules as one of the reasons for the differences  
9 in this provision and the current provision in effect  
10 between Wheelabrator and FPL. Can you point us to any  
11 provision in the PSC's rules that require the  
12 maintenance clause that you have included in 8.2?

13 A The standard offer contract is based on the  
14 next available generating unit, the next planned unit.  
15 So the maintenance schedule would be the same  
16 characteristics that that unit would have. And that's  
17 why this is reflected that way here.

18 Q Well, let me see if I understand what you're  
19 saying. I think we agreed that FPL could reject the  
20 renewable energy provider's proposed schedule, but  
21 couldn't unreasonably withhold that approval. How  
22 does that relate to how you treat your own units? I'm  
23 not sure I see the connection there.

24 A Well, there is a connection that you wouldn't  
25 have your maintenance scheduled during your peak

1 periods. You want to make sure that the unit is  
2 reliable. It's available for customers when they need  
3 it. All of those characteristics that the avoided  
4 unit has, we would want the same protection for  
5 customers here.

6 Q And are you saying that that's what you  
7 consider when you decide whether or not to reject a  
8 renewable provider's maintenance schedule?

9 A What we look at is to make sure that the power  
10 is available to customers the same way it would be for  
11 the next available -- excuse me -- for the next  
12 planned generating unit.

13 Q So when a renewable energy provider provides  
14 you with their maintenance schedule, you do some kind  
15 of comparison with that and your units that you have  
16 on line?

17 A We take a look at it to see that it -- that  
18 the unit is not going to be unavailable when we would  
19 need it, just as a way that the next planned  
20 generating unit would be.

21 Q And could that not be accomplished under the  
22 provision in the standard offer that says the parties  
23 will coordinate their maintenance?

24 A We have these -- the 8.2 there is, again, to  
25 be consistent with our next planned generating unit.

1 It's so that customers receive the same protection,  
2 the same reliability that they would from that unit.

3 Q And could you not do that through coordinating  
4 cooperatively with the renewable facility, as you have  
5 done with Wheelabrator in the past?

6 A We could in a negotiated contract, certainly.  
7 Again, the standard offer contract is available to all  
8 types of generators with all different types of  
9 characteristics. And these protections are in there  
10 to cover all of this so that customers are protected.

11 Q And I take it from that remark that you don't  
12 think they would be protected if there were a  
13 cooperative discussion in regard to appropriate  
14 maintenance scheduling?

15 A Could you repeat that, please?

16 Q I will try. I said, I take it from your last  
17 answer that you don't think that that protection could  
18 be accomplished by cooperative discussions about the  
19 maintenance schedule of the providers, rather than  
20 these provisions in 8.2?

21 A Well, the provisions in 8.2 do provide some  
22 flexibility, and as -- you know, once the schedule for  
23 maintenance is established and approved by FPL, either  
24 party may request a subsequent change in the schedule.  
25 There is certainly flexibility here.

1           But, again, the standard offer contract has to  
2   be available to all types of generators. And these  
3   provisions are in here to protect customers and  
4   provide them the same reliability that they would have  
5   as they would if we had the next planned generating  
6   unit.

7           Q     I might have asked -- I'm sorry?

8           A     They could have a different maintenance  
9   agreement under a negotiated contract. That is  
10   certainly available to them.

11          Q     I might have asked you this before. But the  
12   provision in the standard offer contract you currently  
13   have with Wheelabrator dealing with maintenance has  
14   not raised any concerns or issues; has it?

15          A     Not that I have seen, and no reason for me to  
16   believe differently. But, again, this is a  
17   21-year-old contract.

18          Q     Still looking at the Broward North and Broward  
19   South agreements that you have with Wheelabrator  
20   today, do either of these contracts contain any  
21   provision regarding a trip test?

22          A     I don't believe that they include a section on  
23   trip tests, no.

24          Q     Are you aware that -- whether or not that has  
25   created any problems between the parties, the lack of

1 that trip test language?

2 A I am not aware of any problems occurring from  
3 that in these contracts. Again, it's a 21-year-old  
4 contract. And, again, the standard offer contract is  
5 one that has the provisions for a trip test, because  
6 the contract is available to all types of generators.  
7 And we have that language in there for protection of  
8 our customers.

9 Q Okay. If you would look at the same page that  
10 we were looking at in your proposed standard offer,  
11 9.035, I think the trip test provision is in section  
12 8.4.2, which is in the middle of the page there.

13 A Yes.

14 Q And it's the last sentence; right?

15 A Yes.

16 Q Now -- it's the last two sentences actually;  
17 correct?

18 A Yes.

19 Q And the last sentence says, the specifics of  
20 the unit functional trip test will be consistent with  
21 good engineering and operating practices; correct?

22 A Yes.

23 Q Okay. And so is there any reason that a  
24 different trip test requirement would not be  
25 consistent with that statement, that last sentence?

1       A     Different in what way?

2       Q     So long as it was consistent with good  
3 engineering and operational practices.

4       A     The language that's in here is based on  
5 manufacturer recommendations and guidelines and good  
6 engineering practices. Again, if a particular  
7 counterparty or generator wanted to negotiate this  
8 language, that's possible.

9            But the standard offer contract is there for  
10 all types of characteristics of all types of  
11 generators. And it's there so that customers receive  
12 the same reliability that they would if they had the  
13 next planned generating unit.

14       Q     In your current role, Ms. Dubin, is it  
15 necessary for you to be familiar with those parts of  
16 the Florida Statutes that are germane to your  
17 responsibilities?

18       A     I'm sorry. Could you repeat that?

19       Q     I will try. I want to turn to the statutes  
20 now. And I was just asking you, as a part of your job  
21 responsibilities, if you need to be familiar with  
22 those parts of the statutes that relate to what you  
23 do?

24       A     Yes.

25       Q     Okay. And I -- I think the next two exhibits,

1 No. 3 and No. 4 I have provided you with the statutes  
2 that I want to talk to you about. And Exhibit No. 3  
3 is 366.91; and Exhibit No. 4 is 366.92. And are you  
4 familiar with those?

5 A Yes, I am.

6 Q Let's take a look at 366.91 first.

7 A Yes.

8 Q That's No. 3.

9 A Yes.

10 Q Okay. Would you agree with me that the  
11 Commission -- the Commission, excuse me -- that the  
12 legislature has made it clear through the enactment of  
13 366.91 that it's important to the State of Florida to  
14 encourage the development of renewable generating  
15 resources?

16 A Yes. And Florida Power & Light certainly  
17 agrees with that.

18 Q And you would also agree with me; wouldn't  
19 you, that in that same subparagraph (1) the  
20 legislature has set out a number of reasons that it's  
21 important to encourage and develop renewable  
22 resources?

23 A Yes.

24 Q And would you agree that the legislature has  
25 found value in things like diversifying fuel supply,

1 minimizing fuel volatility, encouraging investment in  
2 the state, improving the environment, and making  
3 Florida a leader in new and innovative technology?

4 A Yes.

5 Q And in 366.92, which is Exhibit No. 4, in  
6 subparagraph (1), would you agree that the legislature  
7 has found that it's important to protect the economic  
8 viability of existing renewable generators?

9 A Yes.

10 Q Now, would you also agree with me that both  
11 section 366.91 and 366.92 require that FPL have a  
12 continuously available standard offer?

13 A Yes. And I would add to that that the  
14 contracts are based upon the utility's --

15 THE REPORTER: The utility's what?

16 BY MS. KAUFMAN:

17 Q You need to say the last part again.

18 A That the contracts -- that the statute also  
19 says that the contracts, pursuant to this statute, are  
20 based upon the utility's full avoided costs.

21 MR. ANDERSON: To clarify, were you talking  
22 about section 366.91 or 366.92 or both there,  
23 Vicki? 366.91 is the standard offer contract one,  
24 and 92 is the -- I'm not sure I heard you.

25 MS. KAUFMAN: I was talking about both of



1       them, Bryan.

2       BY MS. KAUFMAN:

3       Q     Now --

4       A     I was addressing 366.91. I don't know if you  
5       want to ask me the question again, Vicki.

6       Q     All right. Maybe we should start this line  
7       over so that the record is clear.

8             I just was asking you if you would agree that  
9       366.91 requires the utility to have a  
10      continuously-available standard offer contract?

11      A     And the answer is yes. And the contract is  
12      based on the utility's full avoided cost.

13      Q     And 366.92 requires that as well; does it not?

14      A     366.92 is the renewable portfolio standard.

15      Q     Right. And if you would take a look at  
16      (3)(a)1, the last sentence, that also refers to the  
17      continuous availability of the standard offer; doesn't  
18      it?

19             MR. ANDERSON: And what's the reference again?  
20      I'm sorry.

21             MS. KAUFMAN: 366.92(3)(a)1, last sentence.

22             MR. ANDERSON: And just to be clear, the point  
23      of that sentence basically says 91 --

24             MS. KAUFMAN: Bryan.

25             MR. ANDERSON: -- in place, and 92 changes.

1       92 you're not saying imposes additional obligation;  
2       are you?

3           MS. KAUFMAN: Mr. Anderson, I would like to  
4       hear from the witness if that would be all right.

5           MR. ANDERSON: If you're going to ask for a  
6       legal conclusion on interpretation of statutes, you  
7       and I can chat. Why don't you go ahead and ask  
8       your question; I will listen.

9       BY MS. KAUFMAN:

10       Q     Ms. Dubin, if you know, if you have an  
11      opinion, I'm not asking for a legal opinion here. If  
12      you don't know, you can say so. 366 -- I have to look  
13      at the reference again -- .92(3)(a)1, the last  
14      sentence also requires the availability of a  
15      continuous standard offer; doesn't it?

16       A     I believe it's .2, 366.91, saying, however,  
17      nothing in this section shall alter the obligation of  
18      each public utility to continually offer a purchased  
19      contract to produce renewable energy.

20       Q     The bottom line of this is, I think we are in  
21      agreement, and if we're not you let me know, is that  
22      FPL has an obligation to continuously offer a standard  
23      offer contract; would you agree?

24       A     Yes.

25       Q     Now, at the bottom of page 2 of your direct

1 testimony, going over to the top of page 3, you say,  
2 the standard offer contract encourages the development  
3 of renewable resources in the state; correct?

4 A Yes.

5 Q Okay. And first of all, I think we can agree  
6 on this as well. But would you agree with me that,  
7 since the enactment of the renewable energy provisions  
8 in 366.91, that not a single renewable provider has  
9 executed a standard offer contract with Florida Power  
10 & Light?

11 A We had a -- one contract with Manatee County,  
12 and that is still pending at this point in time. It  
13 was partially a standard offer contract, and part was  
14 a negotiated piece. And we are waiting to -- they've  
15 made some changes to their facility. And we're  
16 waiting to proceed with that.

17 Q And that -- I'm a little confused when you say  
18 it was part standard offer and part negotiated. Am I  
19 wrong in understanding that that was a negotiated  
20 contract?

21 A It is a negotiated contract.

22 Q Okay.

23 A The -- the entire contract was a standard  
24 offer contract with a -- an additional portion of it  
25 that was negotiated with -- was on the environmental

1 attributes.

2 Q Right. So I'm correct, though, am I not, that  
3 not a single renewable provider has executed a  
4 standard offer contract?

5 A Since the 2006, yes, you are correct. But,  
6 again, it has been used as the basis for contracts.

7 Q Well, let me ask you this: If you think that  
8 the current standard offer that you've got out there  
9 encourages the development of renewable resources in  
10 the state, to what do you attribute the fact that not  
11 a single renewable provider has executed one?

12 A Well, as is the Commission's preference, you  
13 know, what we've done is used the standard offer  
14 contract as the basis for negotiations for contracts.  
15 That certainly has worked and continues to work.

16 In addition to that, since 2006, when we had  
17 filed the standard offer contract there, the standard  
18 offer contract has continually been protested. And  
19 there has -- it's just made it very difficult for any  
20 generator to avail themselves of the standard offer  
21 contract.

22 Q Well, are you saying that, because the  
23 standard offer contracts have been subject to  
24 litigation, that you have not had one continuously  
25 available?

1       A     The one in 2006 was suspended, and the others  
2     have been protested. Yes, there has been -- it's made  
3     it very difficult for generators to avail themselves  
4     of it.

5       Q     Well, so, if a generator wanted to sign a  
6     standard offer contract with you, say, tomorrow, would  
7     they not be able to sign the 2008 contract that's the  
8     subject of this case?

9       A     They would be.

10      Q     So -- I'm just trying to understand if it's  
11     your view that you have had these contracts  
12     continuously available.

13      A     In 2006 the first protest, that there was a  
14     point in time where the Commission had deemed that the  
15     contract was not available. And since that time,  
16     since we have filed the April 2007 and 2008, there has  
17     been protest to them. It makes it difficult for a  
18     generator to avail themselves of a contract that's  
19     under protest.

20      Q     But as I said, if renewable generator X came  
21     to you this afternoon and said, what have you got in  
22     the way of a standard offer contract, you would  
23     proffer this 2008 contract, and you would execute it  
24     with them; would you not?

25      A     That is correct. In addition to that, if a

1 renewable generator came to me and said, we want to  
2 negotiate a contract, I would, as I have done,  
3 provided them with a standard offer contract to use as  
4 the basis for beginning negotiations.

5 Q You talked about that several times now, the  
6 standard offer being the basis for negotiations. And  
7 I know you mentioned that in your testimony as well.  
8 So is it your view that, really what the standard  
9 offer is is a template to start negotiations, as  
10 opposed to a viable contract?

11 A It is a viable contract, and it is also a tool  
12 or basis for negotiating a contract. And as the  
13 Commission has stated several times, that it's their  
14 preference to do that.

15 Q When a company wants to negotiate with you, do  
16 you proffer that standard offer contract to them and  
17 say, here is where we're going to start?

18 A Yes.

19 Q Okay. And if they said, well, we would  
20 prefer -- we don't have the resources, or for whatever  
21 reason, we would prefer a standard offer contract, you  
22 would proffer, in this instance, the 2008 contract;  
23 correct?

24 A Yes. That is correct.

25 Q If you would turn to page 6 of your direct

1 testimony.

2 A I'm there.

3 Q At line four you say that, many of the things  
4 that Wheelabrator says in this case are just a rehash  
5 of old arguments; correct?

6 A Yes.

7 Q Would you agree with me that, since the  
8 enactment of the renewable standards in 366.91 and .92  
9 that relate specifically to renewable energy, the  
10 Commission has not reviewed the terms and conditions  
11 of your standard offer in an evidentiary hearing?

12 A In an evidentiary hearing?

13 Q Right, like the one we're about to have here.

14 A Yes. They have reviewed our standard offer  
15 contract and approved it.

16 Q But they -- but my question is, they have not  
17 done so in the context of a hearing where they have  
18 taken testimony from the parties; have they?

19 A No, they have not.

20 Q On that same page, about midway at line 13,  
21 you were talking about your 2014 combined cycle unit  
22 with a projected annual equivalent availability of 97  
23 percent. Do you see that?

24 A Yes, I do.

25 Q Do you have -- I should have asked this

1 question first. Do you have any familiarity with the  
2 operating characteristics of renewable facilities?

3 A I have some familiarity with them. What we're  
4 talking about here, though, is the avoided unit.

5 Q Understood. When you say some familiarity, do  
6 you have familiarity with their operating  
7 characteristics?

8 A Yeah, some.

9 Q Are you aware of any renewable generator that  
10 can meet an equivalent availability of 97 percent?

11 A I'm not sure that I know, but, again, we're  
12 talking about the next planned generating unit, which  
13 has equivalent availability of 97 percent.

14 Q So is your answer that you don't know whether  
15 or not a renewable -- any renewable generator could  
16 ever meet that standard?

17 A Of the equivalent availability?

18 Q Of 97 percent.

19 A I'm not sure.

20 Q Well, if it were true -- let's just pose this  
21 as a hypothetical -- if it were true that, because of  
22 the characteristics of renewable facilities, it would  
23 be highly unlikely that they could meet a 97 percent  
24 availability factor, do you think that the standard  
25 offer might fall a little short in the area of



1 encouraging renewable generation?

2 A The basis of the standard offer contract is  
3 to -- is to use the next planned generating unit  
4 characteristic so that customers pay no more and have  
5 the same reliabilities as they would under that  
6 contract as they would from the avoided units. That's  
7 what the 97 percent shows.

8 Q Okay. Let me ask the question again. If you  
9 can assume -- since I think you said that you don't  
10 know one way or another. But if you could assume that  
11 it would be highly unlikely that any renewable  
12 facility could meet that 97 percent, would you agree  
13 that there might be a problem with the standard offer  
14 encouraging renewable generation as the statute  
15 requires?

16 A No. The equivalent availability factor is  
17 used in coming up with the capacity billing factor.  
18 And the commission has reviewed it and looked at it  
19 and said that the sliding scale approach for capacity  
20 is appropriate, that customers, to make sure that  
21 customers receive the same capacity as they would  
22 under the avoided unit. I might add that Broward's  
23 annual billing capacity factors in -- gosh, since June  
24 under -- for the Broward North have been up over 97  
25 percent.

1       Q     So if you have a standard offer contract out  
2     there, and if it's very difficult for renewable  
3     facilities to meet the 97 percent mark, it's still  
4     your opinion that this somehow encourages renewable  
5     facilities? I just want to be sure I understand what  
6     you're saying.

7       A     What I'm saying is that the standard offer  
8     contract is based on the next planned generating unit.  
9     And FPL's customers should be able to rely on the  
10    protection of the standard offer contract to provide  
11    them with the same reliability and the same costs  
12    under purchase power contracts with a renewable  
13    generator as they would if they had the next planned  
14    generating unit.

15           As far as the 97 percent goes, you know, the  
16    Broward North has performed at that level. And to  
17    relax the standards in the standard offer contract are  
18    just asking customers to pay more to receive less.

19       Q     I will just ask one more time, and then we're  
20    going to move on. And that is that, as I said, you  
21    know, if there are -- it's very difficult for  
22    renewable generators to meet that standard, and no one  
23    signs the standard offer, it's your view that you have  
24    still encouraged the development of renewable  
25    generation?

1 MR. ANDERSON: Asked and answered several  
2 times on the same question. She answered the  
3 question. It is asking the question again and  
4 again.

5 MS. KAUFMAN: I just want to be sure I  
6 understand your position, Mr. Anderson.

7 BY MS. KAUFMAN:

8 Q So is your answer to that yes, Ms. Dubin?

9 A Yes.

10 Q Thank you. You talked a moment ago about the  
11 sliding scale. And you refer to that on page 7 of  
12 your -- I think it's your direct, lines 1 to 2?

13 A Yes.

14 Q And you refer to an order number -- an order  
15 there, order 24989; right?

16 A Yes.

17 Q I think -- and I think that you attached part  
18 of that to your rebuttal; didn't you?

19 A Yes.

20 Q What's the date of that order?

21 A 1991, August 1991.

22 Q And you would agree with me; wouldn't you,  
23 that certainly that order does not address in any way  
24 renewable generators or 366.91 or 92; right?

25 A I don't think I would agree with that. It

1 addresses the standard offer contracts that are  
2 pursuant to those.

3 Q Can you point me to anywhere in your excerpts  
4 where that order references renewable generation?

5 A I don't know that it says "renewable  
6 generation." I believe it's referred to the standard  
7 offer contract.

8 Q Of course you would agree; wouldn't you, that  
9 that order predates the statutory sections we've been  
10 discussing by, what, about 15 years?

11 A Yes. It's a 1991 order.

12 Q Now, still on the the same page of your  
13 direct, at the bottom of page 7, going over to the top  
14 of page 8, you're talking about tradable renewable  
15 energy credits; right?

16 A Yes.

17 Q And you talk about the right of first refusal  
18 that was included, or that you've included in your  
19 standard offer contract here. And you refer back;  
20 don't you, to your 2007 standard offer case; correct?

21 A Yes.

22 Q Do you know if Wheelabrator tried to  
23 participate in that case?

24 A I believe they may have.

25 Q Okay. Would you agree with me, or do you know

1 if that docket was subsequently closed without an  
2 evidentiary hearing?

3 A Yes. I believe it was.

4 Q Okay. So you would agree that the Commission  
5 hasn't reviewed that clause and its relationship to  
6 the rule in an evidentiary hearing?

7 A The Commission issued an order regarding the  
8 RECs, but there was not an evidentiary hearing.

9 Q The passage that you're quoting on page 8 from  
10 that order was a result of that docket being closed;  
11 correct? Without a hearing, I should add.

12 A Yes.

13 Q I'm going to turn now to your rebuttal. And  
14 on the bottom of page 2, going over to the top of page  
15 3, you're talking about your next planned unit as a  
16 Mitsubishi G class natural gas fired combined cycle;  
17 correct

18 A Correct.

19 Q Are any of these units on your system now?

20 A A G class?

21 Q Right.

22 A I don't believe so. I believe the ones that  
23 are close to it are the F units from west county.

24 Q This G class unit that you refer to in your  
25 testimony will be the first unit of its type on line

1 for you; right?

2 A Yes.

3 Q And so the operating characteristics that  
4 you've used are projected characteristics, if you  
5 will; correct? Because the unit isn't operating yet.

6 A They're projected in accordance with the rules  
7 regarding the standard offer contract and the ten-year  
8 site plan, yes.

9 Q On the next page, page 3 of your rebuttal --  
10 and we talked about this some -- your -- on line 12,  
11 you're referring to the fact that you -- and I mean  
12 FPL -- stands ready to negotiate; correct?

13 A Yes. We always stand ready to negotiate a  
14 contract to encourage renewable generators. And we  
15 had -- for the contracts that are prior to  
16 Wheelabrator, we had contacted them to begin in April  
17 of last year to start contract negotiations.

18 Q And we talked about the Manatee contract,  
19 negotiated contract that -- I might characterize it as  
20 being in the works, if you will. Have you submitted  
21 any other negotiated contracts to the Commission with  
22 renewable generators, other than the Manatee one?

23 A We have not, but we likely will be. We are --  
24 have some things in the works.

25 Q I think in one of your interrogatory responses

1 you mentioned that you are negotiating with Palm  
2 Beach?

3 A Yes, that is correct.

4 Q I don't want you to reveal any proprietary  
5 information. But to the extent you can, I recall that  
6 you listed Palm Beach and Wheelabrator as the entities  
7 with whom you're negotiating. Are you negotiating  
8 with any other facilities?

9 A We are beginning. And I can't discuss those  
10 at this point. But we have started negotiations  
11 with -- or are beginning discussions, if you will,  
12 with another counterpart.

13 Q So with one other company or facility?

14 A Yes.

15 Q When do you expect those negotiations to be  
16 concluded?

17 A Since the newest one that I just mentioned?

18 Q Yes, uh-huh.

19 A This year sometime.

20 Q On the next page of your rebuttal testimony,  
21 page 4, beginning at line 5, you talk about what you  
22 view as the Commission's preference for a negotiated  
23 contract.

24 A Yes.

25 Q Okay. You're not saying; are you, that

1     somehow your willingness to negotiate excuses you from  
2     having a viable standard offer; are you?

3         A     No. But the Commission has mentioned that  
4     they had a preference for us to negotiate contracts.  
5     They've mentioned that several different times in one  
6     order that I can think of offhand.

7         Q     Now, in the legislation that we looked at a  
8     little bit ago, the legislature didn't indicate a  
9     preference for negotiated contract; did it?

10        A     I believe they were silent to it.

11        Q     I assume that you've reviewed Mr. Dalton's  
12     testimony in this case?

13        A     Yes, I have.

14        Q     And I want to talk to you for a few minutes  
15     about some of your disagreements with Mr. Dalton.

16        A     Okay.

17        Q     You and Mr. Dalton have a disagreement  
18     regarding section 8.4.6 in your contract; correct?

19        A     Yes.

20        Q     Okay. And -- have you turned to that page,  
21     Ms. Dubin? I'm sorry. It's 9.036.

22        A     I'm there.

23        Q     And 8.4.6 is the first paragraph, and then you  
24     also have some disagreements with him on 8.4.8;  
25     correct?



1       A     Yes.

2       Q     Okay.  And I kind of want to look at those two  
3 together.  And let me look at 8.4.8 first.  And that  
4 clause gives FPL the ability to curtail purchases up  
5 to 18 times a year; correct?

6       A     Yes.

7       Q     And if FPL were to exercise that provision,  
8 and say they exercised it 18 times in a year.  Would  
9 you agree that that would actually increase the 97  
10 percent availability factor?

11      A     That it would increase the 97 percent  
12 availability factor?

13      Q     Because wouldn't the renewable generator have  
14 to generate additionally to make up for the times that  
15 you had curtailed it in order to meet that factor?

16      A     I believe that's the way the math would work  
17 out.

18      Q     Okay.  I just want to be sure that I'm  
19 understanding.

20      A     Quick to point out here that these two  
21 sections in the standard offer contract are just about  
22 verbatim from the Commission rules.  FPL, you know,  
23 would reduce the output of its next planned generating  
24 unit the same way that -- in that same way the  
25 generator would be curtailed as well.

1       Q     Understand. I'm just trying to understand the  
2 relationship between that and the ability to curtail  
3 the generator. Mr. Dalton had some suggested  
4 language, I guess I would call it, to replace your  
5 language in 8.4.6. Have you taken a look at that?

6       A     I might add that Mr. Dalton's language would  
7 also not just change the standard offer contract; it  
8 would change the Commission rules.

9       Q     Now what language are you talking about,  
10 Ms. Dubin?

11       A     He is suggesting a change to 8.4.6 and 8.4.8  
12 of FPL standard offer contracts. That language is  
13 almost verbatim from the Commission rules.

14       Q     Would you agree that the language that he  
15 suggests on -- for 8.4.6 put some, I will call them  
16 standards into the provision in your contract?

17       A     Put some standards --?

18       Q     As to when the -- I'm sorry. I was talking  
19 over you. Put some standards in as to when you may  
20 curtail.

21       A     Ms. Kaufman, if you might point me to his  
22 language in his testimony.

23       Q     Yes, let me do that. Hold on one second.  
24 It's on page 18, beginning at line 18.

25       A     Yeah, it modified the language that the

1 Commission rules have. And the Comission rules are  
2 pretty clear, in fact to be clear, they went ahead and  
3 issued an order also to make clear that the utility is  
4 not required to purchase from a QF when to do so would  
5 result in costs greater than those which the utility  
6 would incur if it did not make such purposes.

7 Q Is that order 12634?

8 A Yes, it is.

9 Q What's the date of that order, Ms. Dubin?

10 A 1982.

11 Q So, again, well before the renewable statute;  
12 correct?

13 A But the statute from the standard offer  
14 contract rules say that the -- and I will quote from  
15 25-17.086, where purchased from a qualifying facility  
16 will impair the facility's ability to get adequate  
17 service to the rest of its customers, but due to  
18 operational circumstances, purchases from qualified  
19 facilities will result in costs greater than those in  
20 which the utility would incur if they did not make  
21 such purchases or otherwise place an undue burden on  
22 the utility, the utility shall be relieved of  
23 its obligation under Rule 25-17.082.

24 Q What you just read us was from order number --

25 A No. What I just read is from Chapter

1 25-17.086.

2 Q And the order that you had previously  
3 referenced, 12634, is the order from 1983; correct?

4 A Yes. But it's almost the same exact language  
5 that the Commission rules have. The principle is  
6 still the same, you know, let's not charge customers  
7 more than they otherwise would be charged.

8 Q I'm still looking at 8.4.8, sheet number  
9 9.036.

10 A Okay.

11 Q Is there anything in that provision there that  
12 puts any standards at all on when you can require the  
13 renewable generator to reduce output?

14 A There is a notice in there. There is  
15 different information.

16 Q But it doesn't give us any information as to  
17 under what situations you may reduce output; does it?

18 A I believe 8.4.6 talks about the different  
19 situations or the different operational circumstances  
20 that can occur. And then 8.4.8 talks about reducing.  
21 And it talks about notifying -- notification to the  
22 qualified facility. And it's giving them at least  
23 four hours of notice, and it's based on actual  
24 conditions determined by our operations group.

25 Q So are you saying that when 8.4.8 refers in

1   that first line to certain periods, that that's --  
2   you're supposed to read that -- you're supposed to go  
3   back to 8.4.6 to figure out what those certain periods  
4   are?

5       A    I think the whole sections between 8.4.6,  
6   8.4.7, 4.8 all talk about curtailment.

7       Q    So is that a yes? Let me ask the question  
8   again. I might have talked over, and I apologize.

9           Are you saying that when 8.4.8 refers to, FPL  
10 may require during certain periods that the renewable  
11 generator curtail, that one needs to go back and read  
12 8.4.6 to figure out when FPL can exercise that right?

13       A    I think the whole section is under 8.4. It's  
14 called dispatch and control. The whole section from  
15 8.4.1 through the end of it talk about curtailment and  
16 reduction of power.

17       Q    So is that a yes? That's all I'm trying to  
18 understand, that 8.4.8 is, in essence, modified by  
19 8.4.6?

20       A    No, it's not modified; it's in addition to.

21       Q    Is it your view that the renewable generator  
22 would need to go back to 8.4.6 to figure out what you  
23 meant by "certain periods"?

24       A    There are certain periods that they would be  
25 notified by the company during those periods.

1       Q     Right.  And I'm just trying to understand if  
2     that gives FPL a unilateral right to do that, or if  
3     there are some standards applicable to those certain  
4     periods.  What is your view of that?

5       A     It's based on actual system conditions.  And  
6     I'm looking for reference here.  But, again, it would  
7     be situations for reliability reasons, for safety  
8     reasons, for cost reasons.  Those are all the  
9     situations where we would curtail or reduce power.

10      Q     But 8.4.8 doesn't say that; does it?

11      A     No.  But the whole section, again, is dispatch  
12     and control, 8.4.  And, again, let's remember why this  
13     section is here:  It's because, you know, where the  
14     next planned generating unit, FPL would reduce output  
15     or curtail production from that unit for reliability  
16     reasons, for cost reasons, just as we would curtail or  
17     reduce power on that next available generating unit,  
18     purchased power contracts have to be the same, to  
19     protect customers and treat them in the same manner.

20      Q     Am I correct that part of your rationale for  
21     this provision, you rely on order number 13247?

22      A     13247?

23      Q     Yes.  Did I get that right?

24      A     I think you had --

25      Q     I might have said it backwards.

1       A     Yes.    Yes.

2       Q     Okay.   So order number 13247.   And do you know  
3   the year of that order?

4       A     I believe it was 1983.   Again, the concept in  
5   that order, the previous one that you mentioned from  
6   '82, are all consistent with the current statute --  
7   excuse me -- the current Commission rules regarding  
8   curtailment that has to do with a standard offer  
9   contract.

10           And those rules are in place to ensure that  
11   customers are protected.

12       Q     If you look at your rebuttal, page 9,  
13   beginning at line 12.   And I think in this passage  
14   you're talking about the committed capacity test in  
15   section 6.2 of your standard offer?

16       A     Yes.

17       Q     What is the purpose of that test?

18       A     To ensure the reliability of the unit.

19       Q     When your Mitsubishi G series units come on  
20   line, are they going to have to pass this type of  
21   test?

22       A     Yes, their standard good engineering practices  
23   consistent with manufacturer recommendations.

24       Q     If they fail to pass the test, is there any  
25   penalty to FPL?

1       A     If they fail the committed capacity test?

2       Q     Right.

3       A     I believe there could be, in terms of GPIF.

4       Q     The GPIF is based on three years of historical  
5 data; correct?

6       A     That is correct.

7       Q     So if the committed capacity test is failed by  
8 your unit in year one, is there any penalty in that  
9 year to FPL?

10      A     Not through GPIF. But the testing of our  
11 units is to make them as efficient as possible and  
12 to -- you know, to make sure that we provide -- the  
13 appropriate economic dispatch is important to FPL in  
14 providing good service, reliable service,  
15 cost-effective service to our customers.

16      Q     But there would be no penalty to FPL. I guess  
17 that was a question.

18      A     The penalty is --

19      Q     Monetary penalty or otherwise? Let's just  
20 stick with monetary, make it easier.

21      A     I'm not sure that there is a penalty, per se,  
22 that way. Of course, you know, keeping our units  
23 running as efficiently as possible is always the  
24 appropriate operating of our system.

25      Q     Wouldn't you think that would be the case for



1 the renewable generator as well?

2 A Right. But, again, we put the renewable  
3 generator through the same type of testing that our  
4 units would be and treating it exactly the same.

5 Q Except that I think you said there is no  
6 penalty if your unit fails a committed capacity test;  
7 correct?

8 A There could be a penalty under GPIF. And,  
9 again, if we had to perform additional maintenance  
10 or -- or not have a unit in service or something along  
11 those lines, with the objective being to make our  
12 system as reliable and efficient as possible.

13 Q Well, if for some reason a unit didn't go into  
14 service, or you had to perform maintenance on it as a  
15 result of its failing to meet the committed capacity  
16 test, again, correct me if I'm wrong, there is no  
17 penalty to FPL for that; correct?

18 A Unless it's a GPIF unit, a formal penalty in  
19 that regard, that's correct.

20 Q Okay. Take a look at page 10 of your  
21 rebuttal, lines 8 through 13. And we have talked  
22 about this preference idea some, your view that the  
23 negotiated contract is preferable to the standard  
24 offer.

25 A Line 13? I'm sorry.

1 Q I'm sorry, page 10, lines 8 through 13. I was  
2 just trying to summarize what you said.

3 A Yes.

4 Q Is it your view that the legislature thinks or  
5 the legislature believes that the standard offer is  
6 somehow inferior to a negotiated contract?

7 MR. ANDERSON: Object to form, asking her to  
8 speculate what the legislature thinks.

9 MS. KAUFMAN: I will rephrase it, Bryan.

10 BY MS. KAUFMAN:

11 Q Do you think that section 366.91 indicates  
12 that the standard offer contract is inferior to the  
13 negotiated contract?

14 A No, nor does FPL. There is several purposes,  
15 as I stated before, for the standard offer contract.  
16 One is that it's a stand alone standard offer contract  
17 available to multiple or any generator with different  
18 characteristics, and it's a very good place to start  
19 for contract negotiations.

20 It's a very good tool, and it's a very good  
21 contract.

22 Q Flip over, if you would, to page 13, line 8 of  
23 your rebuttal.

24 A Yes.

25 Q You're talking about the minimum 80 percent to

1 receive capacity payment. Do you see that?

2 A Yes.

3 Q Okay. Can you tell us the basis for the 80  
4 percent?

5 A The basis for the 80 percent is the sliding  
6 scale approach for the capacity payment. It's  
7 a range, if you will, where minimum capacity payments  
8 can be paid to a -- to a generator. And as a capacity  
9 level is greater, they can receive more capacity  
10 payment.

11 Q And you reference some of the orders that we  
12 talked about earlier; correct?

13 A Yes.

14 Q Do any of those orders reference the 80  
15 percent?

16 A They don't reference the 80 percent. The  
17 Commission statute as well as the -- excuse me, the  
18 Florida Statutes, as well as the Commission rules,  
19 reference that the characteristics of this should be  
20 based on the next avoided unit.

21 Q Well help me understand -- I'm sorry.

22 A I'm sorry. That the 80 to 97 percent is the  
23 expected operating range of the 2014 combined cycle  
24 unit, which is the avoided unit

25 Q If you could turn -- I'm sorry. I know you've

1 got a lot of papers in front of you. Turn or find  
2 section 366.91 again, if you would.

3 A Sure. One minute.

4 Q Sure.

5 A I'm there.

6 Q Okay. If you look at sub (3) of the statute.

7 And do you see it's sort of in the middle of that

8 paragraph there is a line that starts with "however."

9 It says, however, capacity payments are not required?

10 A Yes.

11 Q And it goes on, let me just read it to you, if

12 that would be all right. However, capacity payments

13 are not required if, due to the operational

14 characteristics of the renewable energy generator or

15 anticipated peak or off-peak capacity factor of the

16 utility's avoided unit, the producer is unlikely to

17 provide any capacity value to the utility.

18 Did I read that correctly?

19 A Yes.

20 Q Can you envision a situation where capacity

21 value would be provided, but the renewable generator

22 would be below 80 percent?

23 A The point here is that the capacity should be

24 the same as the next available generating unit --

25 excuse me -- the next planned generating unit, the

1 avoided unit -- so that customers receive the same  
2 benefits under the purchased power agreement as they  
3 do from the avoided units.

4 Q Well can you envision a situation where  
5 customers would receive a capacity benefit, and the  
6 renewable generator would be operating below 80  
7 percent? That's possible; is it not?

8 A Excuse me. But, again, the standard here is  
9 to have the same characteristics as the -- excuse  
10 me -- the payments are based on the next avoided unit.

11 Q Flip over to page 14 of your rebuttal,  
12 beginning about line 10.

13 A Fourteen?

14 Q Yes, line 10.

15 A Okay.

16 Q You are referencing some of Mr. Dalton's  
17 testimony, where he took a look at the actual  
18 performance of some of your units; correct?

19 A Yes.

20 Q And we've discussed; haven't we, that GPIF  
21 information is historical information based on the  
22 actual operation of your units?

23 A Yes.

24 Q And that's what Mr. Dalton looked at and  
25 displayed in his exhibit GCD 2; correct?

1 A Yes.

2 Q Have you taken a look at GCD 2?

3 A Yes.

4 Q Okay. Are there any inaccuracies in that  
5 exhibit that you're aware of?

6 A Not any inaccuracies in the exhibit itself.  
7 But the conclusions that are made there are not  
8 correct. The units that are listed there are combined  
9 cycle units, yes. But they are not of the G caliber  
10 or F caliber, for example, of our west county units.

11 If you took a look at those units, which are  
12 much, much more efficient, and the GPIF wouldn't  
13 include them, because, as you mentioned, you would  
14 need three years of history to be included in GPIF,  
15 you would see that the next avoided unit, the 2014  
16 combined cycle unit, has very similar characteristics  
17 to the west county one and have the -- the very high  
18 equivalent availability and other statistics.

19 Q When you talk about -- you're still continuing  
20 to talk about this issue, turning over to page 15,  
21 line 5, and you talk about the EAF of 96.8 is a  
22 projected average value; right?

23 A Yes.

24 Q And when you say "projected average value," is  
25 it correct that that's what the manufacturer is

1 telling you the unit will do?

2 A It's what the unit will do, along with our  
3 operating and construction people, yes.

4 Q On that same passage, on page 15, you say that  
5 the numbers exclude maintenance outages; correct? I  
6 think this is on line 8.

7 A Yes, they do.

8 Q Do you know what the scheduled major  
9 inspection and maintenance intervals are for these  
10 units, the Mitsubishi G?

11 A I'm sorry. Ms. Kaufman, can you repeat that?

12 Q I will try. I think you've said that, in your  
13 testimony, that your calculations on page 15 at the  
14 top exclude maintenance outages; right?

15 A Yes, it does.

16 Q What I was asking you is, do you know what the  
17 maintenance intervals are for these units and how long  
18 they're down for maintenance or how long they are  
19 projected to be down for maintenance?

20 A I just don't have that information.

21 Q Okay.

22 A If I might, though, go back to a question that  
23 you asked me previously. I think I mentioned -- I was  
24 talking about west county units, but I also -- and  
25 about their efficiency. I also should be including

1 other units there that have have some actual  
2 performance, Turkey Point Unit, Martin 8, Manatee 3,  
3 which I had referenced in my testimony. I hadn't  
4 stated that before.

5 Q And those units you're talking about on the  
6 same page at like around line 14, 15; correct?

7 A Yes.

8 Q And, again, you're not including maintenance  
9 in there; right?

10 A No. The maintenance is not included in the  
11 ten-year site plan, which is used as the source for  
12 the standard offer contract, and, therefore, it does  
13 not include any maintenance.

14 Q Have these units that you're talking about on  
15 page 15, have they been down for maintenance yet?

16 A I believe they have, but I don't know the  
17 particulars of it.

18 Q So you don't know how long they were out or  
19 anything like that?

20 A No, I do not. You can see the equivalent  
21 availability of those units are extremely high, as  
22 well as consistent with our avoided units.

23 Q Flip over to page 17 -- wait. Let me go back  
24 a second. Hold on. Let me -- I'm sorry. Go back to  
25 page 15. I skipped one of my questions.



1           On line 15 at page 15, you talk about the  
2 average to date EAF. Do you see that?

3       A     I'm sorry. Page 15?

4       Q     Line 15.

5       A     Which line?

6       Q     Line 15. Do you see where I am?

7       A     Page 15, line 15? Yes.

8       Q     You're talking about on line 15 these units  
9 and their average to date EAF. Do you see that?

10      A     Yes.

11      Q     Okay. When you say "average to date," what  
12 period of time are you covering there?

13      A     From when the unit went into service to today.

14      Q     And is that different for each of the units?

15      A     They had different in-service dates, yes.

16      Q     Do you know what they are?

17      A     Not offhand, no. If I could, though, go back  
18 to your previous question on the maintenance of those  
19 units. The planned outage factors that -- listed on  
20 line 6 of the COF of 2.1 percent, that includes the  
21 maintenance there. So it includes -- that 2.1 percent  
22 is included in the base.

23      Q     Ms. Dubin, do you need to take a break? I  
24 want to be sure you're all right.

25      A     I'm okay if everyone else is.

1 Q Okay. We've just been going for about an hour  
2 and a half. I thought I would ask.

3 MR. ANDERSON: How much do you have left?

4 MS. KAUFMAN: I've got a bit more. I was kind  
5 of at a good break point is why I asked. Does  
6 anybody need to take a break? The court reporter  
7 is saying she does. Sorry. Five minutes? If  
8 y'all need longer, let me know.

9 MR. ANDERSON: Quarter after.

10 MS. KAUFMAN: I will keep the line open, and  
11 we will resume at quarter after.

12 (Short recess).

13 BY MS. KAUFMAN:

14 Q Take a look at page 17, line 5 of your  
15 rebuttal.

16 A I'm sorry. I didn't get the page number.

17 Q Seventeen. Page 17, line 5. And this is  
18 where you're talking about the TRECs.

19 A Yes.

20 Q And if you look at line 5, you have said that  
21 the -- well let me ask you this: Do you think that  
22 the TREC confers a valuable right?

23 A Confers a valuable right?

24 Q Right. That's a poorly-phrased question. I  
25 agree with you.

1           You would agree with me; wouldn't you, that  
2   the Commission rule -- and I have made that an  
3   exhibit, which is Exhibit No. 6 -- hang on one second.  
4   Because I did -- let's go off the record for a second.

5           (Discussion off the record).

6   BY MS. KAUFMAN:

7       Q     So, Ms. Dubin, you have Deposition Exhibit No.  
8     5, which is the TREC rule?

9       A     Yes.

10      Q     And you agree that that rule provides that the  
11     TRECs remain the exclusive property of the renewable  
12     generator?

13      A     Yes.

14      Q     Okay. Do you think that the TREC is a  
15     valuable commodity to the renewable generator?

16      A     Yes.

17      Q     In the standard offer contract --

18      A     I'm sorry. Ms. Kaufman, if I might finish  
19     that answer --

20      Q     I'm sorry. I thought you were done. Go  
21     ahead.

22      A     It is a -- has a value to it, and it remains  
23     the ownership of the seller. We're talking here about  
24     a right of first refusal.

25      Q     Anywhere in the standard offer contract that

1 we're about in this case, does FPL compensate the  
2 renewable generator in any way for the right of first  
3 refusal?

4 A For the right of first refusal?

5 Q Yes.

6 A We would compensate them for the RECs, because  
7 we purchased them. I might add, just as the right of  
8 first refusal is in all of the IOU standard offer  
9 contracts.

10 Q But you would agree that there is no  
11 compensation provided for that right -- whether or not  
12 you may think it's appropriate -- there is no  
13 compensation for that right provided in the standard  
14 offer; is there?

15 A It's part of the contract.

16 Q Well, the TREC is not energy, and it's not  
17 capacity; is it?

18 A It's not energy; it's not capacity. It's a  
19 right of first refusal for the RECs. So whether the  
20 seller gets paid by someone else or FPL, they're held  
21 harmless.

22 Q Just to be clear, my only point is, you are  
23 not intending to compensate the owner of the TREC in  
24 any way for giving FPL the right of first refusal?

25 A There is not a -- we do not have a payment for

1 having the right of first refusal, no, although they  
2 would be compensated if we purchased the RECs from  
3 them, just as they would from any other buyer.

4 Q And the right of first refusal in your  
5 contract is a 30-day time period; correct?

6 A Yes.

7 Q So just so I understand it, during that 30  
8 days the renewable generator who owns the REC may not  
9 sell it to anybody else; they must ask FPL first if  
10 FPL would like to purchase it?

11 A That's the right of first refusal, yes.

12 Q Do you have any familiarity with how RECs are  
13 bought and sold?

14 A Just that very little bit, but not -- I have  
15 not actually purchased them or sold them.

16 Q Well what's your understanding of how RECs are  
17 bought and sold?

18 A They're commodities, and they're bought and  
19 sold on the market.

20 Q Do you know if RECs are often the subject of  
21 competitive bids or requests --

22 A Excuse me?

23 Q Sorry?

24 A I'm sorry?

25 Q Let me state that again. I was going to ask,

1 do you know if RECs are often the subject of either  
2 competitive bids or requests for proposals?

3 A They could be.

4 Q Do you know what the typical turnaround time  
5 is in, for example, a request for proposal or an  
6 auction situation for a REC?

7 A They can vary.

8 Q Can they be less than 30 days?

9 A Yes. And they can be more than 30 days.

10 Q In a -- let's take a hypothetical situation,  
11 where there was a 15-day auction for a REC. In that  
12 situation, would you agree that your provision on RECs  
13 would require the renewable generator to come first to  
14 you -- you being FPL -- and then FPL would have 30  
15 days to decide whether they wanted the REC or not?

16 A Yes. Yes.

17 Q And --

18 A The 30-day right of first refusal for a REC  
19 associated with a standard offer contract -- and,  
20 again, this is for the benefit of FPL's customers.

21 Q Let's say that there was a 15-day auction; FPL  
22 took 20 days to let the renewable generator know that  
23 it did not want the REC. Then would you agree that  
24 the owner of the REC would have lost that opportunity  
25 to sell this asset?

1       A     It depends on the circumstances -- again,  
2     let's go back to what this provision is.  It's a  
3     provision in a standard offer contract, a standard  
4     offer contract that is available to all types of  
5     generators with all kinds of characteristics.

6           Now, if there is a seller out there or  
7     renewable generator out there that perhaps wants to  
8     negotiate this right of first refusal for the RECs and  
9     have a different time period or whatever it might be,  
10    that is certainly available to the renewable generator  
11    in a negotiated contract.

12       Q     Well, in this situation that I've just  
13    described, let's assume that, for whatever reason, the  
14    renewable generator prefers the standard offer  
15    contract route to a deal with FPL; okay?

16       A     Okay.

17       Q     All right.  And in that situation, if they  
18    were involved in a REC auction, where the turn around  
19    time was 15 days, you would agree that certainly it is  
20    possible that they would lose the ability to bid in  
21    that REC under this provision?

22       A     They have entered into a contract.  That can  
23    happen with any provision on any contract.  Something  
24    could be -- you know, there could be a standard offer  
25    contract.  There may be a better deal somewhere else,

1 a worse deal somewhere else. They entered into a  
2 contract.

3 Q I'm not disputing that. I was asking if you  
4 would agree under the scenario I described, that  
5 particular generator would have been unable to sell  
6 its REC at the 15-day auction?

7 A Possibly yes, possibly no. If they came to  
8 EPL and said, you know, here is your right of first  
9 refusal. By the way, we have, you know, 15 days here.  
10 We would appreciate it if you could get back to us  
11 soon, and we could tell them yes or no, and they could  
12 still have the opportunity to bid in that.

13 Q But certainly your contract doesn't  
14 contemplate that, nor does it require it; does it?

15 A The language is pretty simple there. I think  
16 there is flexibility.

17 Q Well let me understand that. So are you  
18 saying that that 30-day right of first refusal is  
19 flexible?

20 A No. I'm saying that, in a situation where we  
21 enter into a standard offer contract with a seller,  
22 and they come to us to give us the right of first  
23 refusal for a REC and say, by the way, we have a  
24 15-day turn around, and we can sell this to somebody  
25 else. We're coming to you first. We know you have 30



1 days. We would appreciate it if you could come to us  
2 sooner so that if you're not going to buy it, we have  
3 the opportunity to sell it somewhere else.

4 That's certainly something reasonable and  
5 something that FPL would certainly work with. Again,  
6 the contract provision is 30 days. We would be under  
7 no legal requirement to do that. But it certainly  
8 would be a situation where you could do that.

9 Again, if a vendor, a seller, wanted to have  
10 some different type of right of first refusal, that  
11 is -- with a different provision, you know, 15 days,  
12 60 days, whatever it might be, that also can be  
13 handled in a negotiated contract.

14 Q I think you answered my question when you said  
15 that FPL would have no legal right to respond more  
16 quickly than 30 days though; correct?

17 A I think I responded to your question in  
18 everything I said, not just that piece of it.

19 Q On page 21 of your rebuttal at line 8, you're  
20 talking about the fact that you have -- again, I use  
21 "you" to mean FPL -- has contracted for and purchased  
22 about 300 megawatts of renewable energy. Can you tell  
23 us from whom this energy has been purchased and how  
24 much? I think you've already told us about the  
25 Wheelabrator contracts. What makes up the rest of the

1 300 megawatts?

2 A Palm Beach, Wheelabrator, Solid Waste  
3 Authority --

4 THE REPORTER: I'm sorry.

5 BY MS. KAUFMAN:

6 Q Wait a second. If you could give us the name  
7 of the entity and the megawatts.

8 A What we had talked about previously from  
9 Broward, North and South. In addition to that, we  
10 have 47.5 megawatts from Palm Beach Solid Waste  
11 Authority. In addition to that we have -- we have as  
12 available.

13 Q Okay. So let me try to do the math. The  
14 Wheelabrator --

15 A Wheelabrator and Palm Beach total 157.6  
16 megawatts.

17 Q And the remainder of the 300, a little bit  
18 less than 150, you're talking about as-available  
19 energy?

20 A Yes.

21 Q Is that Palm Beach Solid Waste Facility, is  
22 that 47.5 megawatts a single contract?

23 A Yes, it is.

24 Q Is it a standard offer contract?

25 A No, it's not.

1 Q Is this the same one that you were talking  
2 about that you're renegotiating, or is that different,  
3 or that you were negotiating?

4 A We are in the process of renegotiating that,  
5 yes. The additional as-available is from Georgia  
6 Pacific, Tomoka Farms, and Elliott Energy Systems.

7 Q So on page 28 of your rebuttal, line 13, you  
8 give that 157.6 number that we just discussed. That's  
9 the Wheelabrator and Palm Beach capacity; correct?

10 A Yes.

11 Q If you would give me a minute, I'm going to  
12 look through my notes.

13 A Okay.

14 MS. KAUFMAN: I know we just took a break, but  
15 I want to take just five minute, and I may be done,  
16 if that would be all right. So 6:40. Thanks.

17 THE WITNESS: 5:40.

18 (Short recess).

19 MS. KAUFMAN: It's up to you, Jean, I guess.

20 MS. HARTMAN: I'm sorry. You're done?

21 (Discussion off the record).

22 MS. KAUFMAN: Yes. I am done. Thank you.

23 CROSS EXAMINATION

24 BY MS. HARTMAN:

25 Q Ms. Dubin, I'm going to go ahead and invoke

1 Ms. Kaufman's ground rules. If you don't hear me,  
2 please let me know. If you don't understand what I  
3 just said or need clarification, please let me know.  
4 If you need a break, please let me know.

5 A Yes. Thank you.

6 Q I wanted to ask you about FPL's determination  
7 of costs, those costs that relate to energy utilized  
8 to serve customer load. Within the daily operations  
9 of FPL, is it typical that the energy required to  
10 serve customer load will be obtained from any of  
11 several generators that are either operating or  
12 capable of operating?

13 A Yes.

14 Q Okay. Would there be a difference in costs  
15 associated with obtaining the energy, depending on  
16 which of the various generators would be supplying the  
17 energy?

18 A We provide energy based on economic dispatch,  
19 if that's what you're asking, yes, so that your most  
20 efficient units, your least costly units, would be  
21 introduced first and then going through the steps to  
22 more expensive units and less efficient.

23 Q Can you please describe the procedure used by  
24 FPL to determine the costs to provide energy needed to  
25 serve the customer load?

1       A     On the daily basis that's handled by our  
2 control room.

3       Q     Okay. And is this information updated  
4 continuously and hourly?

5       A     Yes. It's based on the LAMDA.

6       Q     Okay. Can you tell me why FPL includes the  
7 economic dispatch in its operations?

8       A     I'm sorry?

9       Q     I'm sorry. Go ahead. I was talking over you.  
10 I'm sorry. I will let you answer.

11      A     First of all, it makes sense to do that, to  
12 run your most efficient units first, least costly  
13 first. And we have an obligation to serve, and we  
14 have an obligation to serve our customers in the most  
15 economic way possible.

16      Q     Thank you. And I want to turn to costs  
17 involved when renewable generating facilities are  
18 among the generators available to provide energy  
19 needed to serve customer load. I think you have the  
20 statute in front of you, section 366.91.

21      A     Yes, I have it.

22      Q     Thank you. Can you tell me the subject of the  
23 statute?

24      A     The subject of the statute is renewable  
25 energy.

1       Q     Thank you. In paragraph 3 of this statute,  
2 about the third sentence in, there is a sentence that  
3 begins with, the contract shall contain payment  
4 provisions.

5       A     Yes.

6       Q     Can you read that sentence for me.

7       A     The contract shall contain payment provisions  
8 for energy and capacity which are based upon the  
9 utility's full avoided costs as defined in statute  
10 366.051. However, capacity payments are not required  
11 if, due to the operational characteristics of the  
12 renewable energy generator or the anticipated peak and  
13 off-peak availability and capacity factor of the  
14 utility's avoided unit.

15      Q     Okay. Do you also have section 366.051 --

16      A     Yes, I do.

17      Q     Okay. Can you please read from this section,  
18 beginning -- read the sentence, I guess, where the  
19 word -- with the words "a utility's full" --

20      A     Yes. A utility's full avoided cost -- I  
21 believe that's where you are, in the middle?

22      Q     Right. Thank you.

23      A     A utility's full avoided costs are the  
24 incremental cost of the utilities of the electric  
25 energy or capacity or both, which but for the purchase

1 from co-generators or small power producers, such  
2 utility would generate itself or purchase from another  
3 source.

4 Q Okay. And you discussed a little bit earlier  
5 about the analysis known as economic dispatch. Does  
6 that analysis relate to the definition of full avoided  
7 costs given in section 366.051?

8 A Yes, it does. The avoided costs would be what  
9 would be the next available generating -- excuse me --  
10 the next avoided generating unit. And that unit would  
11 be -- excuse me. I'm sorry. I got tongue twisted  
12 here.

13 It relates to economic dispatch in the fact  
14 that the avoided unit is one where -- and a purchase  
15 power agreement here would be the same costs, so that  
16 customers would not pay any more than they -- under a  
17 purchased power contract as they would if the -- if  
18 the unit was there.

19 Q Can you generally describe the procedure of  
20 economic dispatch?

21 A There are -- based on the control room -- this  
22 is kind of a simplified version of it. But let me see  
23 if I can take a shot at it. The system LAMDA, which  
24 basically is what each hour of cost is based on the  
25 units that are available up and running, and the

1 system controllers run those units based on those  
2 costs where the least expensive units are run first.

3 Q Okay. Great. Does the 2008 standard offer  
4 contract filed by FPL with the Commission comply with  
5 the requirement for payment of full avoided costs when  
6 energy is purchased from a renewable generator?

7 A Yes, it does.

8 Q Okay.

9 A In fact, it has several different ways in  
10 which the avoided cost -- excuse me -- several  
11 different ways to make payments on that, whether it --  
12 under that purchase power agreement -- excuse me --  
13 under the standard offer contract. It can be  
14 levelized payment, early payment, early levelized  
15 payments.

16 There are various cash flow, various different  
17 ways that generators can make payments -- excuse me --  
18 can get paid under those contracts. So it certainly  
19 does promote renewable generation.

20 Q Okay. Does FPL keep records of the hourly  
21 avoided costs that result from these economic dispatch  
22 analyses?

23 A I'm not sure that the system LAMDA is  
24 available. But there is policy information as  
25 available information that we provide to the



1 Commission at the end of the month.

2 Q Okay. Changing -- switching topics, I want to  
3 talk about curtailment for a little bit. If you could  
4 please refer to your rebuttal testimony, page 7. Let  
5 me know when you have it in front of you.

6 A I do.

7 Q Could you please read lines 1 through 5 for  
8 me.

9 A Sure. Section 8.4.6 of FPL's standard offer  
10 contract states that FPL shall not be required to  
11 accept or purchase energy from the QF during any  
12 period in which, due to operational circumstances,  
13 acceptance or purchase of such energy would result in  
14 FPL's incurring costs greater than those which it  
15 would incur if it did not make such purchases.

16 Q Thank you. Can you provide me with a  
17 simple -- simplified description of operational  
18 circumstances that could result in an outcome such  
19 that purchase of renewable energy would result in  
20 FPL's incurring greater costs than if renewable energy  
21 is not purchased? You need me to repeat that? It was  
22 kind of long.

23 A Yeah. Just trying to think of an example.  
24 You could have units up and running, and they're at a  
25 certain cost, and that cost is less than what the cost

1 of the purchased power contract is, and the unit is  
2 loaded and up and running. We're talking about that  
3 operational circumstance, your load could be such that  
4 in order to purchase from that contract, you would  
5 have to back down the unit, costing all kinds of  
6 additional costs.

7 Q Okay. And would this situation, would it be  
8 identified in any economic dispatch analysis of costs?

9 A Yes. It would be -- I'm just trying to think  
10 of what information is available. LAMDA is not kept.  
11 So it would have to be some kind of a simulation to  
12 show you that.

13 But it would -- I'm sure that there would be  
14 some type of a record that you could show that this  
15 unit was up and running, and that in order to -- in  
16 order to show that it would have to be backed down if  
17 that purchased power agreement -- purchased power,  
18 excuse me, was purchased instead.

19 Q Okay --

20 A Again, that's from our systems operations  
21 unit, a little bit out of my area. But I do know that  
22 there is information certainly available.

23 Q Okay. Thank you. If you could please refer  
24 to Mr. Dalton's testimony. Let me know when you have  
25 it. Would you go to page 20, please.

1       A     I'm there.

2       Q     Okay.  If you would look at line 12 with the  
3 sentence that begins, this provision.  If you could  
4 read that line for me, please, or I guess just to the  
5 end of the paragraph, those two sentences.

6       A     It says, this provision allows FPL to balance  
7 its system in times of low demand by cutting back the  
8 REF rather than by ramping down its own generation.

9       Q     Okay.  Can you read the next sentence.

10      A     All but the REF energy payments are based on  
11 avoided cost.  FPL's right to do this is subject to no  
12 economic test, but simply has the arbitrary power to  
13 curtail the REF on 18 occasions.

14      Q     Do you agree that curtailment is subject to no  
15 economic tests?

16      A     No.  The reason that provision is there in  
17 FPL's standard offer contract is the same reason why  
18 it's there in the Commission rules.  It's there to  
19 protect customers so that customers are not paying  
20 more for these purchased power agreements than they  
21 would have for the avoided unit or paying more than  
22 they would be.

23      Q     Okay.  Is this from economic analysis,  
24 dispatch analysis?

25      A     Is this -- when you say is this from economic

1 analysis, would we -- I'm sorry, if you could repeat  
2 that.

3 Q Your previous answer, is that based on  
4 economic dispatch analysis?

5 A Yes, based on the unit commitment program.  
6 And it's based on, again, that the economic dispatch,  
7 so that the most efficient units are run first, and  
8 that customers benefit by paying the least cost.

9 Q Thank you. I'm going to switch topics and  
10 talk about Mr. Dalton's -- Mr. Dalton's testimony on  
11 page 20. If you would turn to that.

12 And can you tell me, how does Mr. Dalton's  
13 suggested compensation -- and by that I mean for  
14 compensation beyond payment for capacity and energy.  
15 How does that fit into the analysis of costs that  
16 underlie economic dispatch based -- and I will -- yes,  
17 how does the -- let me try again.

18 How does the suggested compensation --  
19 Mr. Dalton's suggested compensation; that is,  
20 compensation beyond capacity and energy, how does that  
21 fit into the analysis of cost that underlies economic  
22 dispatch?

23 A It doesn't. What it does is it just charges  
24 customers more. And that's the whole point of the  
25 standard offer contract being based on the next

1 planned generating unit. If these -- if this unit is  
2 there -- excuse me. If the purchased power agreement  
3 is costing customers more, then it's against the  
4 standard offer contract.

5 The whole point of this provision is to have  
6 customers take no more for this purchased power than  
7 they would from the next planned generating unit. And  
8 under his proposal, basically, customers would pay  
9 more.

10 They would receive the same energy but pay  
11 more, basically paying them for not operating, which  
12 certainly doesn't make sense to me. And it would be  
13 violating the standard offer contract, as well as the  
14 Commission rules.

15 Q If I could ask you to go back to your rebuttal  
16 testimony on page 7, beginning at line 7.

17 A I'm there.

18 Q You're ahead of me. Okay. Beginning with  
19 line 7, can you -- can you read that paragraph for me?

20 A This contract provision is taken almost  
21 verbatim from Commission Rule 25-17.086 that states:  
22 Where purchases from a qualified facility will impair  
23 the utility's ability to give adequate services to the  
24 rest of its customers, or due to operational  
25 circumstances, purchases from qualifying facilities

1 will result in costs greater than those which the  
2 utility would incur if it did not make such purchases  
3 or otherwise place an undue burden on the utility, the  
4 utility shall be relieved of its obligation under Rule  
5 25-17.082 FAC to purchase electricity from a  
6 qualifying facility.

7 This striking similarity can also be seen on  
8 page 11 of Mr. Dalton's deposition transcript.

9 Q Could you please describe for me a situation  
10 that could develop that would have within it this  
11 undue burden. Can you give me an example of that  
12 situation that would arise?

13 A The burden I think would be the same situation  
14 as I described before, you know, backing down a unit,  
15 having a unit up and running and having to back it  
16 down in order to accept a purchased power contract.

17 Q You had referenced a couple of the  
18 Commission's admin rules in this paragraph. Can you  
19 explain the manner in which FPL complies with those  
20 rules in a situation where purchase from a renewable  
21 generator would place an undue burden on FPL.

22 A If we were in a situation where we would have  
23 to not accept purchases from a purchased power  
24 agreement, our systems operations people notify them  
25 as soon as possible that that situation is occurring.

1       Q     Okay. And I think we -- you said earlier that  
2     in the 2008 standard offer contract, the  
3     availability -- well, the available -- let me ask  
4     this. What availability is required of a renewable  
5     generator in FPL's 2008 standard offer contract?

6       A     To receive payments, the -- there is a sliding  
7     scale that the renewable generator has to operate  
8     between 80 and 97 percent; eighty being they would get  
9     a capacity payment, portion of the capacity payment;  
10    97 percent to get 100 percent of the capacity payment.  
11    It's a sliding scale based on performance.

12      Q     Okay. And tell me how FPL arrived at the --  
13    at 97 percent in the sliding scale in the standard  
14    offer contract.

15      A     Yes. The minimum requirements for a standard  
16    offer contract as described in the Commission rules  
17    says that you need to provide equivalent availability  
18    of the avoided unit. The equivalent availability  
19    factor of the avoided unit is 97 percent. Therefore,  
20    that unit is used for the capacity billing factor.

21           And the -- based on actual performance and  
22    analysis of our engineering and construction people,  
23    that the performance of that unit would be between 80  
24    and 97 percent. That's why the scale is set at that.

25      Q     Okay. And it's true that all the generating

1 units in the FPL fleet do not have an availability of  
2 97 percent; is that correct?

3 A I'm sorry?

4 Q Let me phrase it this way. Do all the  
5 generating units in the FPL fleet have an availability  
6 of 97 percent?

7 A No. There are different types of generating  
8 units. If you look at some of the newer units, the  
9 more efficient units, they have equivalent  
10 availability factors in that 96 to 98 percent range.  
11 30.5, one comes to mind I cited in my testimony. Then  
12 the newer units that are coming on, west county units,  
13 they will all have that equivalent availability  
14 factor.

15 Q Okay. From -- based on your experience at  
16 FPL, do you believe it's typical for a plant to have a  
17 reduced availability as the plant ages, say in the  
18 second and third decade of service and beyond that?

19 A It could. It really depends, you know, a lot  
20 of different variables there; what type of unit it is,  
21 what -- what fuel source it has, different maintenance  
22 criteria. There can be a lot of different variables  
23 there. But I would agree, as things get older, that  
24 is a possibility, yes.

25 Q Okay. But in the standard operating --



1 standard operating contract, FPL does not set the  
2 availability based on reduced availability associated  
3 with the older plants in service?

4 A No. As the rules call for, it's based on the  
5 next planned generating unit. And for FPL, as stated  
6 in our ten-year site plan, it's the 2014 combined  
7 cycle unit. And the characteristics of that unit are  
8 what's reflected in the standard offer contract, and  
9 all purchased power has to measure up to that.

10 Q Okay. What would support using a new or  
11 planned unit as a basis for requirement in a standard  
12 offer contract?

13 A I'm sorry. Could you repeat that please?

14 Q Sure. What would support using a newer  
15 planned unit as a basis for requirement set forth in  
16 the standard operating contract?

17 A The newer planned unit would be the one that  
18 we have listed there, based on the technology that's  
19 available, the cost of it, the performance of it. All  
20 of those characteristics of that unit are compared in  
21 our ten-year site plan to determine the next planned  
22 unit.

23 Q Okay. Would you please refer now to the  
24 information provided by Wheelabrator in response to  
25 staff interrogatory number six and let me know when

1 you're there.

2 A I'm sorry. Wheelabrator's responses to FPL --

3 Q No. I'm sorry. The Commission staff --

4 A You're talking about FPL's responses then?

5 Q No, Wheelabrator's. If you don't have it, I  
6 can ask the question in a different way.

7 A That's okay. I think somebody has handed me  
8 it here. Okay. I'm there.

9 Q Okay. Could you please explain for me how the  
10 right of first refusal of TRECs, how that is in  
11 compliance with Rule 25-17.280.

12 A Yes. First and foremost, the seller owns  
13 those RECs. And that certainly complies with rule.  
14 And that's basically what the rule says, is that the  
15 seller retains the right to ownership of the RECs.

16 The only thing the right of first refusal does  
17 is just that, is that it provides -- if the seller is  
18 going to sell to somebody else, they come to FPL  
19 first, and we match the price. They're held harmless,  
20 whether they receive payment from FPL or another  
21 buyer. It's just that simple.

22 And the purpose of it is, of course, so that  
23 the benefit is that FPL's customers have the RECs.

24 Are you still there?

25 Q I'm sorry. Would you say that the FPL

1 standard offer contract offers an opportunity to  
2 mitigate fuel cost volatility?

3 A Yes. It provides a different fuel source. It  
4 provides us a purchased power contract, and that --  
5 it's based on avoided costs, yes. But it's another  
6 factor in the mix.

7 MS. HARTMAN: Okay. That's all my questions.  
8 Thank you for your time.

9 THE WITNESS: Thank you.

10 MS. KAUFMAN: Bryan, do you have any  
11 questions?

12 MR. ANDERSON: I just have one question.

13 CROSS EXAMINATION

14 BY MR. ANDERSON:

15 Q Ms. Dubin, you were asked some questions by  
16 Ms. Kaufman assuming the 1987 standard offer contract  
17 you reviewed at page 7 of 13 and asked you some  
18 questions about a 70 percent factor. Would you  
19 comment further on that.

20 A Yes. One thing I think is important that the  
21 section that I read from and we're talking about is  
22 under the default section of that contract. And it  
23 talks about after April 1st, 1992, the QF fails to  
24 maintain a 70 percent capacity factor on the 12-month  
25 rolling basis for 24 consecutive months.

1           What I would like to add here is that, if you  
2 go to the original sheet number 9.040 in FPL's  
3 standard offer contract, item 12 is the default  
4 section, section C states, after the capacity delivery  
5 date, the facility fails for 12 months -- 12  
6 consecutive months paying the annual capacity billing  
7 factor as described in appendix B of at least 70  
8 percent.

9           Again, these two provisions are almost  
10 identical, and of course talking about the 70 percent,  
11 and it's in a situation of default.

12           So just to make it clear that, in that 1987  
13 standard offer contract, that that default provision  
14 that includes the 70 percent is also included in the  
15 2008 standard offer contract default section.

16           MR. ANDERSON: That's all we have. We would  
17 like to reserve signature, and we're happy to order  
18 a copy.

19           MS. KAUFMAN: Okay. Let's go off the record  
20 for a second.

21           (Discussion off the record).

22           (The deposition was concluded at 6:15 p.m.  
23 Reading and signing is not waived).

1  
2  
3 CERTIFICATE OF OATH  
45  
6 STATE OF FLORIDA )  
7 COUNTY OF LEON )  
89 I, the undersigned authority, certify that said  
10 designated witness personally appeared before me and was  
11 duly sworn.12 WITNESS my hand and official seal this 14<sup>th</sup> day  
13 of January, 2009.  
1415  
16 Sarah B. Gilroy  
17 SARAH B. GILROY  
18 1-800-934-9090  
19 850-878-2221  
20


## CERTIFICATE OF REPORTER

STATE OF FLORIDA       )  
COUNTY OF LEON       )

I, SARAH B. GILROY, Registered Professional Reporter,  
certify that the foregoing proceedings were taken before  
me at the time and place therein designated; that my  
shorthand notes were thereafter translated under my  
supervision; and the foregoing pages numbered 1 through  
86 are a true and correct record of the aforesaid  
proceedings.

I further certify that I am not a relative, employee,  
attorney or counsel of any 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 14<sup>th</sup> day of January, 2009.

  
\_\_\_\_\_  
SARAH B. GILROY, RPR, CRR  
Notary Public  
1-800-934-9090  
850-878-2221

My Commission Expires: 02-02-10  
My Commission Number: DD 075718

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## ERRATA SHEET

PAGE

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CORRECTION

WITNESS

ACCURATE STENOGRAPHY REPORTERS  
2894-A Remington Green Lane  
Tallahassee, Florida 32308  
850-878-2221

January 14, 2009

BRYAN S. ANDERSON, ESQUIRE  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, Florida 33408

re: Deposition of Korel M. Dubin

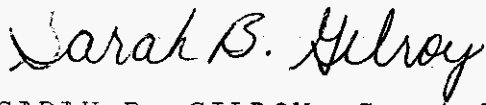
Dear Mr. Anderson:

Enclosed is your copy of the above deposition. As your witness did not waive reading and signing, please make the necessary arrangements for your witness to read your copy within 30 days, noting any corrections on the errata sheet, which I have attached as the last page of the deposition, and date and sign the errata sheet and return the sheet to Vicki Gordon Kaufman, Esquire.

If a signed errata sheet is not produced within 30 days, pursuant to the rules, the deposition may be used for any purpose allowed under the applicable rules.

Thank you for your assistance in this matter.

Sincerely yours,



SARAH B. GILROY, Court Reporter

cc: Vicki Gordon Kaufman, Esquire  
Jean Hartman, Esquire



# STATE OF FLORIDA

## OFFICE OF THE GOVERNOR

### EXECUTIVE ORDER NUMBER 07-127

#### Establishing Immediate Actions to Reduce Greenhouse Gas Emissions within Florida

**WHEREAS**, with nearly 1,350 miles of coastline and a majority of citizens living near that coastline, Florida is more vulnerable to rising ocean levels and violent weather than any other state; and

**WHEREAS**, global climate change is one of the most important issues facing the State of Florida this century; and

**WHEREAS**, Florida is the second fastest growing state in the union with respect to the annual increase of new greenhouse gas emissions; and

**WHEREAS**, immediate actions are available and required to reduce emissions of greenhouse gases within Florida; and

**WHEREAS**, efforts are underway at the national level to begin addressing greenhouse gas emissions; and

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080193-E EXHIBIT 13

COMPANY Wheelabrator Technologies, Inc.

WITNESS FL Executive Order 07-127

DATE 07/22/09

**WHEREAS**, Florida has committed to becoming a leader in reducing emissions of greenhouse gases which are causing changing Earth's climate; and

**WHEREAS**, Florida, together with international leaders and experts, is hosting the Serve to Conserve Climate Change Summit on July 12 and 13, 2007 in Miami, Florida;

**NOW, THEREFORE, I, CHARLIE CRIST**, as Governor of Florida, in obedience to my solemn constitutional duty to take care that the laws be faithfully executed, and pursuant to the Constitution and laws of the State of Florida, do hereby promulgate the following Executive Order, to take immediate effect:

Section 1. I hereby establish greenhouse gas emission reduction targets for the State of Florida as follows: by 2017, reduce greenhouse gas emissions to 2000 levels; by 2025, reduce greenhouse gas emissions to 1990 levels; by 2050, reduce greenhouse gas emissions by 80% of 1990 levels.

Section 2. I hereby direct the following actions by members of my Administration in order to produce immediate reductions in greenhouse gas emissions within Florida;

1. The Secretary of Environmental Protection shall immediately develop rules as authorized under Chapter 403, Florida Statutes, to achieve the following:
  - Adoption of a maximum allowable emissions level of greenhouse gases for electric utilities in the State of Florida. The standard will

require at minimum, three reduction milestones as follows: by 2017, emissions not greater than Year 2000 utility sector emissions; by 2025, emissions not greater than Year 1990 utility sector emissions; by 2050, emissions not greater than 20% of Year 1990 utility sector emissions (i.e., 80% reduction of 1990 emissions by 2050);

- Adoption of the California motor vehicle emission standards in Title 13 of the California Code of Regulations, effective January 1, 2005, upon approval by the U.S. Environmental Protection Agency of the pending waiver, which includes emission standards for greenhouse gases, submitted by the California Air Resources Board; and
- Adoption of a statewide diesel engine idle reduction standard.

2. The Secretary of Community Affairs shall immediately:

- Convene the Florida Building Commission for the purpose of revising the Florida Energy Code for Building Construction to increase the energy performance of new construction in Florida by at least 15% from the 2007 Energy Code. The Commission should consider incorporating standards for appliances and standard lighting in the Florida Energy Code. Target implementation date for the revised Florida Energy Code for Building Construction is January 1, 2009;
- Initiate rulemaking of the Florida Energy Conservation Standards, Chapter 9B-44, Florida Administrative Code, with an objective to increase the efficiency of applicable consumer products authorized

under s. 553.957, Florida Statutes, by 15% from current standards for implementation by July 1, 2009.

Section 3. I hereby request the Florida Public Service Commission to take the following actions for the electric utility sector in order to open the market to clean, renewable energy technologies, thus avoiding future greenhouse gas emissions:

- Not later than September 1, 2007, initiate rulemaking to require that utilities produce *at least 20% of their electricity from renewable sources* (Renewable Portfolio Standard) with a strong focus on solar and wind energy;
- Not later than September 1, 2007, initiate rulemaking to reduce the cost of connecting solar and other renewable energy technologies to Florida's power grid by adopting the Institute of Electrical and Electronics Engineers (IEEE) Standard 1547 for Interconnecting Distributed Resources with Electric Power Systems as the uniform statewide interconnection standard for all utilities; and
- Not later than September 1, 2007, initiate rulemaking to authorize a uniform, statewide method to enable residential and commercial customers who generate electricity from on-site renewable technologies of up to 1 megawatt in capacity to offset their consumption over a billing period by allowing their electric meters to turn backwards when they generate electricity (net metering).

Section 4. All state agencies departments under the direction of the Governor are hereby directed, and all other state agencies are hereby requested, to assist those carrying out the directions in this Executive Order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and have caused the Great Seal of the State of Florida to be affixed at Tallahassee, The Capitol, this 13<sup>th</sup> day of July, 2007



GOVERNOR

ATTEST:

  
SECRETARY OF STATE

RECEIVED  
JUL 13 2007  
GOVERNOR'S OFFICE

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

**In re: Petition of Florida Power & Light )  
Company for Approval of Renewable Energy )  
Tariffs and Standard Offer Contracts )**

**Docket No. 050806-EQ  
Dated September 21, 2006**

**NOTICE OF WITHDRAWAL OF  
PETITION FOR FLORIDA POWER & LIGHT COMPANY  
FOR APPROVAL OF RENEWABLE ENERGY  
TARIFFS AND STANDARD OFFER CONTRACTS**

As directed by the Commission in Order No. PSC-06-0486-TRF-EQ in Docket Nos. 050805-EQ, 050806-EQ, 050807-EQ and 050810-EQ (the "Standard Offer Contracts Order"), issued June 6, 2006, and in compliance with Order No. PSC-06-0555-FOF-EI in Docket No. 060225-EI (the "West County Need Determination Order"), issued June 28, 2006, Florida Power & Light Company ("FPL") petitioned the Commission for approval of its renewable energy tariffs and standard offer contracts on July 27, 2006. By filing the petition and its renewable energy tariffs and standard offer contracts, FPL fulfilled its obligation under the West County Need Determination Order to file "additional standard offer contracts for consideration of renewable energy providers" before the Commission's deadline of August 21, 2006.

The Standard Offer Contracts Order authorized Commission Staff to administratively approve the additional tariffs and standard offer contracts required by that order. However, the Standard Offer Contracts Order became the subject of a petition for formal hearing and for leave to intervene by the Florida Industrial Cogeneration Association ("FICA") on June 26, 2006. As a result of FICA's request, the Commission's order did not become final and, therefore, the Staff's authority to administratively approve the tariffs and contracts filed pursuant to the order is uncertain. At this time, FPL believes it is appropriate to withdraw its current petition for approval of renewable energy tariffs and standard offer contracts with the commitment that FPL

**FLORIDA PUBLIC SERVICE COMMISSION**

**DOCKET NO. 080193-EQ EXHIBIT 14**

**COMPANY** Wheelabrator Technologies, Inc.

**WITNESS** FPL Notice of Withdrawal

**DATE** 01/22/09

will promptly re-file renewable energy tariffs and standard offer contracts when FICA's request has been resolved, or as soon as otherwise may be appropriate.

FPL wishes to make it clear that it remains receptive to negotiating with prospective renewable energy providers, and that FPL is prepared to submit any resulting agreements for Commission approval as provided for under applicable laws and regulations. FPL reiterates its commitment to encouraging development of renewable energy, consistent with the direction of the Florida legislature and the Commission, for example by negotiating and being continuously available for negotiation of custom purchased power contracts with renewable energy providers, and by filing renewable energy tariffs and standard offer contracts with the Commission when appropriate.

Respectfully submitted,

By: s/ Bryan Anderson

Bryan Anderson  
Senior Attorney  
Authorized House Counsel No. 219511  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, Florida 33408-0420  
(561) 304-5253  
(561) 691-7135 Telecopier

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished via electronic delivery this 21<sup>st</sup> day of September, 2006, to the following:

Wm. Cochran Keating, IV, Esq.  
Florida Public Service Commission  
Gerald L. Gunter Building  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Florida Industrial Cogeneration Association (Zambo06)  
Richard A. Zambo  
c/o Richard A. Zambo, P.A.  
2336 S.E. Ocean Boulevard, #309  
Stuart, Florida 34996

s/ Bryan Anderson \_\_\_\_\_  
Bryan Anderson  
Senior Attorney  
Authorized House Counsel No. 219511  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, Florida 33408-0420  
(561) 304-5253  
(561) 691-7135 Telecopier



**STANDARD OFFER CONTRACT  
FOR THE PURCHASE OF  
FIRM CAPACITY AND ENERGY  
FROM A QUALIFYING FACILITY**

THIS AGREEMENT is made and entered into this 30<sup>th</sup> day of March 1987 by and between SES Broward Company, Limited Partnership, hereinafter referred to as "QF" and Florida Power & Light Company, hereinafter referred to as "FPL" or the "Company"; a private utility corporation organized under the laws of the State of Florida. The QF and FPL shall collectively be referred to herein as the "Parties".

**WITNESSETH:**

WHEREAS, QF desires to sell, and FPL desires to purchase electricity to be generated by the QF consistent with Florida Public Service Commission (FPSC) Rules 25-17.80 through 25-17.89 of Order No. 12443, Docket No. 820406-EU; and

WHEREAS, QF has signed an Interconnection Agreement with the utility in whose service territory the QF's generating facility is located, attached hereto as Appendix A; and

WHEREAS, the FPSC has approved this following Standard Offer Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility;

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

FLORIDA PUBLIC SERVICE COMMISSION  
DOCKET NO. 680193-EU EXHIBIT 15  
COMPANY Wheelabrator Technologies, Inc.  
WITNESS Standard Offer Contracts For N.T.S  
DATE 01/22/09 Broward Facilities

1. Facility

QF contemplates installing and operating a 76,000 KVA A. C. synchronous generator located East of U. S. Rt. 441 and North of Griffin Rd., Broward County, Florida. The generator is designed to produce a maximum of 64,100 kilowatts (KW) of electric power at an 85% power factor, such equipment being hereinafter referred to as "Facility."

2. Term of the Agreement

This Agreement shall begin immediately upon its execution by the parties and shall end at 12:01 A.M., August 1, 2009.

Notwithstanding the foregoing if construction and commercial operation of the Facility are not accomplished by QF before April 1, 1992, this Agreement shall be rendered of no force and effect.

3. Sale of Electricity by QF

FPL agrees to purchase all of the electric power generated at the Facility and transmitted to FPL by QF. The purchase and sale of electricity pursuant to this Agreement shall be construed as a net billing arrangement. The billing methodology may be changed at the option of the QF, subject to the following provisions:

- (a) not more frequently than once every twelve months;
- (b) to coincide with the next Fuel and Purchased Power Cost Recovery Factor billing period;
- (c) upon at least thirty days advance written notice to the Company;
- (d) upon the installation of any additional metering equipment reasonably

required to effect the change in billing and upon payment by the QF for such metering equipment and its installation;

(e) upon completion and approval of any alterations to the interconnection reasonably required to effect the change in billing and upon payment by the QF for such alterations; and

(f) where the election to change billing methods will not contravene the provisions of the tariff under which the Facility receives electrical service, or any previously agreed upon contractual provision between the QF and the Company.

#### **4. Payment for Electricity Produced by QF**

##### **4.1 Energy**

FPL agrees to pay the QF for energy produced by the Facility and delivered to the Company in accordance with the rates and procedures contained in Rate Schedule COG-2 attached hereto Appendix B and as may be amended from time to time. Prior to April 1, 1992 QF will receive energy payments based on FPL's actual avoided energy costs. After April 1, 1992 QF's energy payments will be based on the lesser of FPL's actual avoided fuel costs or the fuel cost of the Statewide Avoided Unit as defined in COG-2, such comparison to be made hourly.

##### **4.2 Capacity**

**4.2.1 Capacity Payment.** FPL agrees to pay QF for the capacity described in Paragraph 4.2.2 in accordance with the rates and procedures contained in Rate Schedule COG-2, as it may be amended and approved from time to time by the FPSC, and pursuant to the election of Option A of Rate Schedule COG-2.

The capacity payment will be made in accordance with the schedule provided below.

**MONTHLY CAPACITY PAYMENT RATE  
\$/KW/MONTH**

<u>YEAR</u>	<u>CAPACITY PAYMENT RATE</u>
8/1/1989 - 3/31/1990	9.04
4/1/1990 - 3/31/1991	9.53
4/1/1991 - 3/31/1992	10.05
4/1/1992 - 3/31/1993	14.80
4/1/1993 - 3/31/1994	15.60
4/1/1994 - 3/31/1995	16.44
4/1/1995 - 3/31/1996	17.33
4/1/1996 - 3/31/1997	18.27
4/1/1997 - 3/31/1998	19.25
4/1/1998 - 3/31/1999	20.29
4/1/1999 - 3/31/2000	21.39
4/1/2000 - 3/31/2001	22.55
4/1/2001 - 3/31/2002	23.76
4/1/2002 - 3/31/2003	<del>31.44</del>
4/1/2003 - 3/31/2004	33.13
4/1/2004 - 3/31/2005	34.92
4/1/2005 - 3/31/2006	36.81
4/1/2006 - 3/31/2007	38.80
4/1/2007 - 3/31/2008	40.89
4/1/2008 - 3/31/2009	43.10
4/1/2009 - 8/01/2009	45.43

**4.2.2 Committed Capacity.** It is the intent of QF to sell 30,600 KW of committed capacity, beginning on August 1, 1989. QF shall have the one time option of finalizing its committed capacity after initial Facility testing and specify when capacity payments are to begin. Such option shall be exercised by providing formal written notice, in accordance with Paragraph 9.7, informing FPL of any change in the committed capacity and beginning date above. In the event such notice is not received by FPL prior to the commercial in-service date of the Facility or April 1, 1990, whichever occurs first, the committed capacity specified in this Paragraph shall be considered as the QF's committed capacity.

**5. Electricity Production Schedule**

During the term of this Agreement, QF agrees to:

(a) Provide FPL prior to October 1 of each calendar year an estimate of the amount of electricity to be generated by the Facility and delivered to the Company for each month of the following calendar year, including the time, duration and magnitude of any planned outages or reductions in capacity;

(b) Promptly update the yearly generation schedule and maintenance schedule as and when any changes may be determined necessary;

(c) Coordinate its scheduled Facility outages with FPL; and

(d) Comply with reasonable requirements of FPL regarding day-to-day or hour-by-hour communications between the parties relative to the performance of this Agreement.

**6. QF's Obligation If QF Receives Early Capacity Payments**

The QF's payment option choice pursuant to paragraph 4.2.1 may result in payment by FPL for capacity delivered prior to April 1, 1992. The Parties recognize that capacity payments paid through March 31, 1992, are in the nature of "early payment" for

a future capacity benefit to FPL. To ensure that FPL will receive a capacity benefit for which early capacity payments have been made, or alternatively, that the QF will repay the amount of early payments received to the extent the capacity benefit has not been conferred the following provisions will apply:

FPL shall establish a Capacity Account. Amounts shall be credited to the Capacity Account each month through March, 1992, in the amount of FPL's capacity payments made to the QF pursuant to QF's chosen payment option from Rate Schedule COG-2. The monthly balance in the Capacity Account shall accrue interest at an annual rate of 10.5%. Commencing on April 1, 1992, there shall be debited from the Capacity Account an Early Payment Offset Amount to reduce the balance in the Capacity Account. Such Early Payment Offset Amount shall be equal to that amount which FPL would have paid for capacity in that month, if capacity payments had been calculated pursuant to Option A in Rate Schedule COG-2 and the QF had elected to begin receiving payments on April 1, 1992, minus the monthly capacity payment FPL makes to QF pursuant to the capacity payment option chosen by QF in Paragraph 4.2.1.

The QF shall owe FPL and be liable for the credit balance in the Capacity Account. FPL agrees to notify QF monthly as to the current Capacity Account balance. Prior to receipt of advance capacity payments the QF shall execute a promise to repay any credit balance in the Capacity Account in the event the QF defaults pursuant to this Agreement. Such promise shall be secured by means mutually acceptable to the Parties and in accordance with the provision of Rate Schedule COG-2. The specific repayment assurance selected for purposes of this Agreement is a Surety Bond subject to the final approval by FPL 90 days prior to the payment of any early capacity payments. The total Capacity Account shall immediately become due and payable in the event of default by the QF. The QF's obligation to pay the credit balance in the Capacity Account shall survive termination of this Agreement.

7. Non-Performance Provisions

QF shall not receive a capacity payment during any month in which the twelve months rolling average of the QF's capacity factor does not equal or exceed 70% as defined in Rate Schedule COG-2. In addition, if for any month after April 1, 1992, the QF fails to achieve a 70% capacity factor on a 12 month rolling average basis and the QF has received capacity payments prior to April 1, 1992, the QF shall be liable for and shall pay FPL an amount equal to the Early Payment Offset Amount for the month; provided, however, that such calculation shall assume that the QF achieved a 70% capacity factor. Any payments thus required of QF shall be separately invoiced by FPL to QF after each month for which such repayment is due and shall be paid by QF within 20 days after receipt of such invoice by QF. Such repayment shall be debited from the Capacity Account as an Early Payment Offset Amount.

In no event shall the QF repay to FPL for non-performance any amounts which exceed the current balance in the Capacity Account.

8. Default

Should any one of the following conditions exist, FPL shall have the right to declare the QF in default under this Agreement.

(a) The QF ceases all electric generation for 12 consecutive months.

(b) After April 1, 1992, the QF fails to maintain a 70% capacity factor on a twelve month rolling average basis for 24 consecutive months.

(c) The QF ceases the conduct of active business; or if proceedings under the Federal Bankruptcy Act or insolvency laws shall be instituted by or for or against QF; or if a receiver shall be appointed for the QF or any of its assets or properties; or if any part of the QF 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 30 days thereof; or if the QF shall make an assignment for the benefit of creditors, or admit in writing its inability to pay its debts as they become due.

(d) The QF fails to give proper assurance of adequate performance as specified under this Agreement within 30 days after FPL, with reasonable grounds for insecurity, has requested in writing such assurance.

(e) The QF materially fails to perform as specified under this Agreement.

Once this contract is declared to be in default, upon written notice to the QF the then current balance in the Capacity Account shall be paid to FPL.

## **9. General Provisions**

**9.1 Permits.** QF hereby agrees to seek to obtain any and all governmental permits, certifications, or other authority QF is required to obtain as a prerequisite to engaging in the activities provided for in this Agreement. FPL hereby agrees to seek to obtain any and all governmental permits, certifications or other authority FPL is required to obtain as a prerequisite to engaging in the activities provided for in this Agreement.

**9.2 Indemnification.** QF agrees to indemnify and save harmless FPL, its subsidiaries, and their respective employees, officers, and directors against any and all liability, loss, damage, costs or expense which FPL, its subsidiaries, and their respective employees, officers and directors may hereafter incur, suffer or be required to pay by reason of negligence on the part of QF in performing its obligations pursuant to this Agreement or QF's failure to abide by the provisions of this Agreement. FPL agrees to indemnify and save harmless QF against any and all liability, loss, damage, cost or expense which QF may hereafter incur, suffer, or be required to pay by reason of negligence on the part of FPL in performing its obligations pursuant to this Agreement or



FPL's failure to abide by the provisions of this Agreement. QF agrees to include FPL as an additional Insured in any liability insurance policy or policies QF obtains to protect QF's interests with respect to QF's indemnity and hold harmless assurances to FPL contained in this Section.

9.3 Renegotiations Due to Regulatory Changes. Anything in this Agreement to the contrary notwithstanding, should FPL at any time during the term of this Agreement fail to obtain or be denied the FPSC's authorization, or the authorization of any other regulatory body which now has or in the future may have jurisdiction over FPL's rates and charges, to recover from its customers all of the payments required to be made to QF under the terms of this Agreement or any subsequent amendment to this Agreement, the parties agree that, at FPL's option, they shall renegotiate this Agreement or any applicable amendment. If FPL exercises such option to renegotiate, FPL shall not thereafter be required to make such payments to the extent FPL's authorization to recover them from its customers is not obtained or is denied. FPL's exercise of its option to renegotiate shall not relieve the QF of its obligation to repay the balance in the Capacity Account. It is the intent of the parties that FPL's payment obligations under this Agreement or any amendment hereto are conditioned upon FPL's being fully reimbursed for such payments through the Fuel and Purchased Power Cost Recovery Clause or other authorized rates or charges. Any amounts initially recovered by FPL from its ratepayers but for which recovery is subsequently disallowed by the FPSC and charged back to FPL may be set off or credited against subsequent payments made by FPL for purchases from the QF, or alternatively, shall be repaid by the QF.

9.4 Force Majeure. If either Party shall be unable, by reason of force majeure, to carry out its obligations under this Agreement, either wholly or in part, the

Party so failing shall give written notice and full particulars of such cause or causes to the other Party as soon as possible after the occurrence of any such cause; and such obligations shall be suspended during the continuance of such hindrance, which, however, shall be remedied with all possible dispatch; and the obligations, terms and conditions of this Agreement shall be extended for such period as may be necessary for the purpose of making good any suspension so caused. The term force majeure shall be taken to mean causes not within the reasonable control of the Party affected, including but not limited to acts of God, strikes, lockouts or other Industrial disturbances, wars, blockades, insurrections, riots, arrests and restraints of rules and people, environmental constraints lawfully imposed by Federal, state or local governmental bodies, explosions, fires, floods, lightning, wind, perils of the sea, accidents to equipment or machinery or similar occurrences; provided, however, that no occurrences may be claimed to be a force majeure occurrence if it is caused by the negligence or lack of due diligence on the part of the Party attempting to make such claim. QF agrees to pay the costs necessary to reactivate the Facility and/or the interconnection with FPL's system if the same are rendered inoperable due to actions of QF, its agents, or force majeure events affecting the Facility or the interconnection with FPL. FPL agrees to reactivate at its own cost the interconnection with the Facility in circumstances where any interruptions to such interconnections are caused by FPL or its agents.

9.5 Assignment. The QF shall have the right to assign its benefits under this Agreement, but the QF shall not have the right to assign its obligations and duties without FPL's prior written approval.

9.6 Disclaimer. In executing this Agreement, FPL does not, nor should it be construed, to extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with QF or any assignee of this Agreement.

**9.7 Notification.** All formal notices affecting the provisions of this Agreement shall be delivered in person or sent by registered or certified mail to the parties designated below. The parties designate the following to be notified or to whom payment shall be sent until such time as either party furnished the other party written instructions to contact another individual.

**To QF:**

SES Broward Company, L. P.  
c/o Signal Environmental Systems, Inc.  
Liberty Lane  
Hampton, New Hampshire 03842

**TO FPL:**

Florida Power & Light Company  
P.O. Box 029100  
Miami, Florida 33102  
Attention: Cogeneration and Small  
Power Production

**9.8 Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

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

**9.10 Complete Agreement and Amendments.** All previous communications or agreements between the Parties, whether verbal or written, with reference to the subject

matter of this Agreement are hereby abrogated. No amendment or modification to this Agreement shall be binding unless it shall be set forth in writing and duly executed by both Parties to this Agreement.

9.11 Incorporation of Rate Schedule. The Parties agree that this Agreement shall be subject to all of the provisions contained in FPL's published Rate Schedule COG-2 as approved and on file with the FPSC. The Rate Schedule is incorporated herein by reference.

9.12 Survival of Agreement. This Agreement as may be amended from time to time, shall be binding and inure to the benefit of the Parties' respective successors-in-interest and legal representatives.

IN WITNESS WHEREOF, QF, and FPL executed this Agreement this 30<sup>th</sup>  
day of March, 1987.

WITNESS:

Vicki Spivey

FLORIDA POWER & LIGHT COMPANY (FPL)

[Signature]  
Title: Senior Vice President  
Date: 3/30/87

WITNESS:

Com. F. M. III

SES Broward Company, Limited Partnership (QF)

[Signature] John J. Sullivan  
Title: President of SES Broward, Inc., a General Partner  
Date: March 13, 1987

4.5 MW

**STANDARD OFFER CONTRACT  
FOR THE PURCHASE OF  
FIRM CAPACITY AND ENERGY  
FROM A QUALIFYING FACILITY**

THIS AGREEMENT is made and entered into this 13<sup>th</sup> day of March 1987 by and between Broward Waste Energy Company, Limited Partnership, hereinafter referred to as "QF" and Florida Power & Light Company, hereinafter referred to as "FPL" or the "Company"; a private utility corporation organized under the laws of the State of Florida. The QF and FPL shall collectively be referred to herein as the "Parties".

**WITNESSETH:**

WHEREAS, QF desires to sell, and FPL desires to purchase electricity to be generated by the QF consistent with Florida Public Service Commission (FPSC) Rules 25-17.80 through 25-17.89 of Order No. 12443, Docket No. 820406-EU; and

WHEREAS, QF has signed an Interconnection Agreement with the utility in whose service territory the QF's generating facility is located, attached hereto as Appendix A; and

WHEREAS, the FPSC has approved this following Standard Offer Contract for the Purchase of Firm Capacity and Energy from a Qualifying Facility;

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

1. Facility

QF contemplates installing and operating a 70,000 KVA A.C. Synchronous generator located at 48th Street and West Powerline Road, Broward County, Florida. The generator is designed to produce a maximum of 39,500 kilowatts (KW) of electric power at an 85% power factor, such equipment being hereinafter referred to as "Facility."

2. Term of the Agreement

This Agreement shall begin immediately upon its execution by the parties and shall end at 12:01 a.m., December 31, 2010.

Notwithstanding the foregoing if construction and commercial operation of the Facility are not accomplished by QF before April 1, 1992, this Agreement shall be rendered of no force and effect.

3. Sale of Electricity by QF

FPL agrees to purchase all of the electric power generated at the Facility and transmitted to FPL by QF. The purchase and sale of electricity pursuant to this Agreement shall be construed as a (x) net billing arrangement or ( ) simultaneous purchase and sale arrangement. The billing methodology may be changed at the option of the QF, subject to the following provisions:

- (a) not more frequently than once every twelve months;
- (b) to coincide with the next Fuel and Purchased Power Cost Recovery Factor billing period;
- (c) upon at least thirty days advance written notice to the Company;
- (d) upon the installation of any additional metering equipment reasonably

required to effect the change in billing and upon payment by the QF for such metering equipment and its installation;

(e) upon completion and approval of any alterations to the interconnection reasonably required to effect the change in billing and upon payment by the QF for such alterations; and

(f) where the election to change billing methods will not contravene the provisions of the tariff under which the Facility receives electrical service, or any previously agreed upon contractual provision between the QF and the Company.

#### 4. Payment for Electricity Produced by QF

##### 4.1 Energy

FPL agrees to pay the QF for energy produced by the Facility and delivered to the Company in accordance with the rates and procedures contained in Rate Schedule COG-2 attached hereto as Appendix B, and as may be amended from time to time. Prior to April 1, 1992 QF will receive energy payments based on FPL's actual avoided energy costs. After April 1, 1992 QF's energy payments will be based on the lesser of FPL's actual avoided fuel costs or the fuel cost of the Statewide Avoided Unit as defined in COG-2, such comparison to be made hourly.

##### 4.2 Capacity

4.2.1 Capacity Payment. FPL agrees to pay QF for the capacity described in Paragraph 4.2.2 in accordance with the rates and procedures contained in Rate Schedule COG-2, as it may be amended and approved from time to time by the FPSC, and pursuant to the election of Option A of Rate Schedule COG-2.



The capacity payments will be made in accordance with the schedule provided below.

<u>YEAR</u>	<u>MONTHLY CAPACITY PAYMENT RATE \$/Kw/Mo</u>
4/1/1992 - 3/31/1993	18.58
4/1/1993 - 3/31/1994	19.58
4/1/1994 - 3/31/1995	20.64
4/1/1995 - 3/31/1996	21.75
4/1/1996 - 3/31/1997	22.93
4/1/1997 - 3/31/1998	24.17
4/1/1998 - 3/31/1999	25.47
4/1/1999 - 3/31/2000	26.85
4/1/2000 - 3/31/2001	28.30
4/1/2001 - 3/31/2002	29.83
4/1/2002 - 3/31/2003	<del>31.44</del>
4/1/2003 - 3/31/2004	33.13
4/1/2004 - 3/31/2005	34.92
4/1/2005 - 3/31/2006	36.81
4/1/2006 - 3/31/2007	38.80
4/1/2007 - 3/31/2008	40.89
4/1/2008 - 3/31/2009	43.10
4/1/2009 - 3/31/2010	45.43
4/1/2010 - 12/31/2010	47.88

4.2.2 Committed Capacity. It is the intent of QF to sell 45,000 KW of committed capacity, beginning on April 1, 1992. QF shall have the one time option of finalizing its committed capacity after initial Facility testing and specify when capacity payments are to begin. Such option shall be exercised by providing formal written notice, in accordance with Paragraph 9.7, informing FPL of any change in the committed capacity and beginning date above. In the event such notice is not received by FPL prior to the commercial in-service date of the Facility or April 1, 1990, whichever occurs first, the committed capacity specified in this Paragraph shall be considered as the QF's committed capacity.

5. Electricity Production Schedule

During the term of this Agreement, QF agrees to:

- (a) Provide FPL prior to October 1 of each calendar year an estimate of the amount of electricity to be generated by the Facility and delivered to the Company for each month of the following calendar year, including the time, duration and magnitude of any planned outages or reductions in capacity;
- (b) Promptly update the yearly generation schedule and maintenance schedule as and when any changes may be determined necessary;
- (c) Coordinate its scheduled Facility outages with FPL; and
- (d) Comply with reasonable requirements of FPL regarding day-to-day or hour-by-hour communications between the parties relative to the performance of this Agreement.

6. QF's Obligation if QF Receives Early Capacity Payments

The QF's payment option choice pursuant to paragraph 4.2.1 may result in payment by FPL for capacity delivered prior to April 1, 1992. The Parties recognize that capacity payments paid through March 31, 1992, are in the nature of "early payment" for

a future capacity benefit to FPL. To ensure that FPL will receive a capacity benefit for which early capacity payments have been made, or alternatively, that the QF will repay the amount of early payments received to the extent the capacity benefit has not been conferred the following provisions will apply:

FPL shall establish a Capacity Account. Amounts shall be credited to the Capacity Account each month through March, 1992, in the amount of FPL's capacity payments made to the QF pursuant to QF's chosen payment option from Rate Schedule COG-2. The monthly balance in the Capacity Account shall accrue interest at an annual rate of 10.5%. Commencing on April 1, 1992, there shall be debited from the Capacity Account an Early Payment Offset Amount to reduce the balance in the Capacity Account. Such Early Payment Offset Amount shall be equal to that amount which FPL would have paid for capacity in that month, if capacity payment had been calculated pursuant to Option A in Rate Schedule COG-2 and the QF had elected to begin receiving payment on April 1, 1992, minus the monthly capacity payment FPL makes to QF pursuant to the capacity payment option chosen by QF in paragraph 4.2.1.

The QF shall owe FPL and be liable for the credit balance in the Capacity Account. FPL agrees to notify QF monthly as to the current Capacity Account balance. Prior to receipt of advance capacity payments the QF shall execute a promise to repay any credit balance in the Capacity Account in the event the QF defaults pursuant to this Agreement. Such promise shall be secured by means mutually acceptable to the Parties and in accordance with the provision of Rate Schedule COG-2. The specific repayment assurance selected for purposes of this Agreement is:

\_\_\_\_\_ The total Capacity Account shall immediately become due and payable in the event of default by the QF. The QF's obligation to pay the credit balance in the Capacity Account shall survive termination of this Agreement.

7. Non-Performance Provisions

QF shall not receive a capacity payment during any month in which the twelve months rolling average of the QF's capacity factor does not equal or exceed 70% as defined in Rate Schedule COG-2. In addition, if for any month after April 1, 1992, the QF fails to achieve a 70% capacity factor on a 12 month rolling average basis and the QF has received capacity payments prior to April 1, 1992, the QF shall be liable for and shall pay FPL an amount equal to the Early Payment Offset Amount for the month; provided, however, that such calculation shall assume that the QF achieved a 70% capacity factor. Any payments thus required of QF shall be separately invoiced by FPL to QF after each month for which such repayment is due and shall be paid by QF within 20 days after receipt of such invoice by QF. Such repayment shall be debited from the Capacity Amount as an Early Payment Offset Amount.

In no event shall the QF repay to FPL for non-performance any amounts which exceed the current credit balance in the Capacity Account.

8. Default

Should any one of the following conditions exist, FPL shall have the right to declare the QF in default under this Agreement.

- (a) The QF ceases all electric generation for 12 consecutive months.
- (b) After April 1, 1992, the QF fails to maintain a 70% capacity factor on a twelve month rolling average basis for 24 consecutive months.
- (c) The QF ceases the conduct of active business; or if proceedings under the Federal Bankruptcy Act or insolvency laws shall be instituted by or for or against QF; or if a receiver shall be appointed for the QF or any of its assets or properties; or if any part of the QF 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 30 days thereof; or if the QF shall make an assignment for the benefit of creditors, or admit in writing its inability to pay its debts as they become due.

(d) The QF fails to give proper assurance of adequate performance as specified under this Agreement within 30 days after FPL, with reasonable grounds for insecurity, has requested in writing such assurance.

(e) The QF materially fails to perform as specified under this Agreement.

Once this contract is declared to be in default, upon written notice to the QF the then current balance in the Capacity Account shall be paid to FPL.

## 9. General Provisions

9.1 Permits. QF hereby agrees to seek to obtain any and all governmental permits, certifications, or other authority QF is required to obtain as a prerequisite to engaging in the activities provided for in this Agreement. FPL hereby agrees to seek to obtain any and all governmental permits, certifications or other authority FPL is required to obtain as a prerequisite to engaging in the activities provided for in this Agreement.

9.2 Indemnification. QF agrees to indemnify and save harmless FPL, its subsidiaries, and their respective employees, officers, and directors against any and all liability, loss, damage, costs or expense which FPL, its subsidiaries, and their respective employees, officers and directors may hereafter incur, suffer or be required to pay by reason of negligence on the part of QF in performing its obligations pursuant to this Agreement or QF's failure to abide by the provision of this Agreement. FPL agrees to indemnify and save harmless QF against any and all liability, loss, damage, cost or expense which QF may hereafter incur, suffer, or be required to pay by reason of negligence on the part of FPL in performing its obligations pursuant to this Agreement or

FPL's failure to abide by the provisions of this Agreement. QF agrees to include FPL as an additional insured in any liability insurance policy or policies QF obtains to protect QF's interests with respect to QF's indemnity and hold harmless assurances to FPL contained in this Section.

9.3 Renegotiations Due to Regulatory Changes. Anything in this Agreement to the contrary notwithstanding, should FPL at any time during the term of this Agreement fail to obtain or be denied the FPSC's authorization, or the authorization of any other regulatory body which now has or in the future may have jurisdiction over FPL's rates and charges, to recover from its customers all of the payments required to be made to QF under the terms of this Agreement or any subsequent amendment to this Agreement, the parties agree that, at FPL's option, they shall renegotiate this Agreement or any applicable amendment. If FPL exercises such option to renegotiate, FPL shall not thereafter be required to make such payments to the extent FPL's authorization to recover them from its customers is not obtained or is denied. FPL's exercise of its option to renegotiate shall not relieve the QF of its obligation to repay the balance in the Capacity Account. It is the intent of the parties that FPL's payment obligations under this Agreement or any amendment hereto are conditioned upon FPL being fully reimbursed for such payments through the Fuel and Purchased Power Cost Recovery Clause or other authorized rates or charges. Any amounts initially recovered by FPL from its ratepayers but for which recovery is subsequently disallowed by the FPSC and charged back to FPL may be set off or credited against subsequent payments made by FPL for purchases from the QF, or alternatively, shall be repaid by the QF.

9.4 Force Majeure. If either Party shall be unable, by reason of force majeure, to carry out its obligations under this Agreement, either wholly or in part, the

Party so failing shall give written notice and full particulars of such cause or causes to the other Party as soon as possible after the occurrence of any such cause; and such obligations shall be suspended during the continuance of such hindrance, which, however, shall be remedied with all possible dispatch; and the obligations, terms and conditions of this Agreement shall be extended for such period as may be necessary for the purpose of making good any suspension so caused. The term force majeure shall be taken to mean causes not within the reasonable control of the Party affected, including but not limited to acts of God, strikes, lockouts or other industrial disturbances, wars, blockades, insurrections, riots, arrests and restraints of rules and people, environmental constraints lawfully imposed by Federal, state or local government bodies, explosions, fires, floods, lightning, wind, perils of the sea, accidents to equipment or machinery or similar occurrences; provided, however, that no occurrences may be claimed to be a force majeure occurrence if it is caused by the negligence or lack of due diligence on the part of the Party attempting to make such claim. QF agrees to pay the costs necessary to reactivate the Facility and/or the interconnection with FPL's system if the same are rendered inoperable due to actions of QF, its agents, or force majeure events affecting the Facility or the interconnection with FPL. FPL agrees to reactivate at its own cost the interconnection with the Facility in circumstances where any interruptions to such interconnections are caused by FPL or its agents.

9.5 Assignment. The QF shall have the right to assign its benefits under this Agreement, but the QF shall not have the right to assign its obligations and duties without FPL's prior written approval.

9.6 Disclaimer. In executing this Agreement, FPL does not, nor should it be construed, to extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with QF or any assignee of this Agreement.

**9.7 Notification.** All formal notices affecting the provisions of this Agreement shall be delivered in person or sent by registered or certified mail to the parties designated below. The parties designate the following to be notified or to whom payment shall be sent until such time as either party furnished the other party written instructions to contact another individual.

For QF:

BROWARD WASTE ENERGY COMPANY,  
LIMITED PARTNERSHIP  
3530 West Busch Blvd.  
Tampa, Florida 33618  
Attention: Ted Sjoberg

For FPL:

FLORIDA POWER & LIGHT COMPANY  
P. O. Box 029100  
Miami, Florida 33102  
Attention: Cogeneration and Small  
Power Production

**9.8 Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

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

**9.10 Complete Agreement and Amendments.** All previous communications or agreements between the Parties, whether verbal or written, with reference to the subject



matter of this Agreement are hereby abrogated. No amendment or modification to this Agreement shall be binding unless it shall be set forth in writing and duly executed by both Parties to this Agreement.

9.11 Incorporation of Rate Schedule. The Parties agree that this Agreement shall be subject to all of the provisions contained in FPL's published Rate Schedule COG-2 as approved and on file with the FPSC. The Rate Schedule is incorporated herein by reference.

9.12 Survival of Agreement. This Agreement as may be amended from time to time, shall be binding and inure to the benefit of the Parties' respective successors-in-interest and legal representatives.

IN WITNESS WHEREOF, QF, and FPL executed this Agreement this 13<sup>th</sup>  
day of March, 1987

WITNESS:

FLORIDA POWER & LIGHT COMPANY (FPL)

[Signature]  
By: J. C. Collier, Jr.  
Title: Senior Vice President  
Date: March 13, 1987

WITNESS:

BROWARD WASTE ENERGY COMPANY,  
LIMITED PARTNERSHIP (QF)

[Signature]  
By: H.T.D. Sjoberg  
Title: President  
Date: March 5, 1987

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080193EQ EXHIBIT 16

COMPANY Wheelabrator Technologies, Inc.

WITNESS 2008 FPL SC

DATE 04/22/09

**STANDARD OFFER CONTRACT FOR THE PURCHASE OF  
CAPACITY AND ENERGY FROM A RENEWABLE ENERGY FACILITY OR A QUALIFYING  
FACILITY WITH A DESIGN CAPACITY OF 100 KW OR LESS (2014 AVOIDED UNIT)**

THIS CONTRACT is made and entered this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_ (herein after "Qualified Seller" or "QS") a corporation/limited liability company organized and existing under the laws of the State of \_\_\_\_\_ and owner of a Renewable Energy Facility as defined in section 25-17.210 (1) F.A.C. or a Qualifying Facility with a design capacity of 100 KW or less as defined in section 25-17.250, and Florida Power & Light Company (hereinafter "FPL") a corporation organized and existing under the laws of the State of Florida. The QS and FPL shall be jointly identified herein as the "Parties". This Contract contains five Appendices; Appendix A, QS-2 Standard Rate for Purchase of Capacity and Energy; Appendix B, Pay for Performance Provisions; Appendix C, Termination Fee; Appendix D, Detailed Project Information and Appendix E, contract options to be selected by QS.

**WITNESSETH:**

WHEREAS, the QS desires to sell, and FPL desires to purchase, firm capacity and energy to be generated by the QS consistent with the terms of this Contract, Section 366.91, Florida Statutes, and/or Florida Public Service Commission ("FPSC") Rules 25-17.082 through 25-17.091, F.A.C. and FPSC Rules 25-17.200 through 25-17.310.F.A.C.

WHEREAS, the QS has signed an interconnection agreement with FPL (the "Interconnection Agreement"), or it has entered into valid and enforceable interconnection/transmission service agreement(s) with the utility (or those utilities) whose transmission facilities are necessary for delivering the firm capacity and energy to FPL (the "Wheeling Agreement(s)");

WHEREAS, the FPSC has approved the form of this Standard Offer Contract for the Purchase of Firm Capacity and Energy from a Renewable Energy Facility or a Qualifying Facility with a design capacity of 100 KW or less; and

WHEREAS, the Facility is capable of delivering firm capacity and energy to FPL for the term of this Contract in a manner consistent with the provisions of this Contract; and

WHEREAS, Section 366.91(3), Florida Statutes, provides that the "prudent and reasonable costs associated with a QS energy contract shall be recovered from the ratepayers of the contracting utility, without differentiating among customer classes, through the appropriate cost-recovery clause mechanism" administered by the FPSC.

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

(Continued on Sheet No. 9.031)

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(Continued from Sheet No. 9.030)

## 1. QS Facility

The QS contemplates installing and operating a \_\_\_\_\_ KVA  
 \_\_\_\_\_ generator located at \_\_\_\_\_ (hereinafter called the  
 "Facility"). The generator is designed to produce a maximum of \_\_\_\_\_ kilowatts ("KW") of electric power at an 85%  
 lagging to 85% leading power factor. The Facility's location and generation capabilities are as described in the table below.

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)	
Type of Facility (Hydrogen produced from sources other than fossil fuels, biomass as defined in Section 25-17.210 (2) F.A.C. , solar energy, geothermal energy, wind energy, ocean energy, hydroelectric power, waste heat from sulfuric acid manufacturing operations: or <100KW cogenerator)	
Technology	
Fuel Type and Source	
Generator Rating (KVA)	
Maximum Capability (KW)	
Minimum Load	
Peaking Capability	
Net Output (KW)	
Power Factor (%)	
Operating Voltage (kV)	
Peak Internal Load KW	

The following sections (a) through (e) are applicable to Renewable Energy Facilities ("REFs") and section (f) is only applicable to Qualifying Facilities with a design capacity of 100 KW or less:

- (a) If the QS is a REF, the QS represents and warrants that the sole source(s) of fuel or power used by the Facility to produce energy for sale to FPL during the term of this Contract shall be such sources as are defined in and provided for pursuant to Sections 366.91(2) (a) and (b), Florida Statutes, and FPSC Rules 25-17.210(1) and (2), F.A.C. Fossil fuels must be limited to the minimum quantities necessary for start-up, shut-down and for operating stability at minimum load. The REF must be capable of generating the amount of capacity pursuant to Section 5 of this Agreement without the use of fossil fuels.
- (b) The Parties agree and acknowledge that if the QS is a REF, the QS will not charge for, and FPL shall have no obligation to pay for, any electrical energy produced by the Facility from a source of fuel or power except as specifically provided for in paragraph 1(a) above.

(Continued on Sheet No. 9.032)

(Continued from Sheet No. 9.031)

- (c) If the QS is a REF, the QS shall, on an annual basis and within thirty (30) days after the anniversary date of this Contract, deliver to FPL a report certified by an officer of the QS: (i) stating the type and amount of each source of fuel or power used by the QS to produce energy during the twelve month period prior to the anniversary date (the "Contract Year"); and (ii) verifying that one hundred percent (100%) of all energy sold by the QS to FPL during the Contract Year complies with Sections 1(a) and (b) of this Contract.
- (d) If the QS is a REF, the QS represents and warrants that the Facility meets the renewable energy requirements of Section 366.91(2)(a) and (b), Florida Statutes, and FPSC Rules 25-17.210(1) and (2), F.A.C., and that the QS shall continue to meet such requirements throughout the term of this Contract. FPL shall have the right at all times to inspect the Facility and to examine any books, records, or other documents of the QS that FPL deems necessary to verify that the Facility meets such requirements.
- (e) The Facility (i) has been certified or has self-certified as a "qualifying facility" pursuant to the Regulations of the Federal Energy Regulatory Commission ("FERC"), or (ii) has been certified by the FPSC as a "qualifying facility" pursuant to Rule 25-17.080(1). A QS that is a qualifying facility with a design capacity of less than 100 KW shall maintain the "qualifying status" of the Facility throughout the term of this Contract. FPL shall have the right at all times to inspect the Facility and to examine any books and records or other documents of the Facility that FPL deems necessary to verify the Facility's qualifying status. On or before March 31 of each year during the term of this Contract, the QS shall provide to FPL a certificate signed by an officer of the QS certifying that the Facility has continuously maintained qualifying status.

## 2. Term of Contract

Except as otherwise provided herein, this Contract shall become effective immediately upon its execution by the Parties and shall have the termination date stated in Appendix E, unless terminated earlier in accordance with the provisions hereof. Notwithstanding the foregoing, if the Capacity Delivery Date (as defined in Section 5.5) of the Facility is not accomplished by the QS before June 1, 2014, or such later date as may be permitted by FPL pursuant to Section 5 of this Contract, FPL will be permitted to terminate this Contract consistent with the terms herein without further obligations, duties or liability to the QS.

## 3. Minimum Specifications

Following are the minimum specifications pertaining to this Contract:

1. The avoided unit ("Avoided Unit") on which this Contract is based is a 1219 MW combined cycle unit.
2. This offer shall expire on April 1, 2009.
3. The date by which firm capacity and energy deliveries from the QS to FPL shall commence is June 1, 2014 (or such later date as may be permitted by FPL pursuant to Section 5 of this contract) unless the QS chooses a capacity payment option that provides for early capacity payments pursuant to the terms of this contract.
4. The period of time over which firm capacity and energy shall be delivered from the QS to FPL is as specified in Appendix E; provided, such period shall be no less than a minimum of ten (10) years after the in-service date of the Avoided Unit.
5. The following are the minimum performance standards for the delivery of firm capacity and energy by the QS to qualify for full capacity payments under this Contract:

	On Peak *	All Hours
Availability	97.0%	97.0%

\* QS Performance and On Peak hours shall be as measured and/or described in FPL's Rate Schedule QS-2 attached hereto as Appendix A

(Continued on Sheet No. 9.033)

(Continued from Sheet No. 9.032)

**4. Sale of Energy and Capacity by the QS**

4.1 Consistent with the terms hereof, the QS shall sell and deliver to FPL at the Delivery Point (defined below) and FPL shall purchase and receive from the QS all of the energy and capacity generated by the Facility. FPL shall have the sole and exclusive right to purchase all energy and capacity produced by the Facility. The purchase and sale of energy and capacity 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 QS to sell more energy and capacity than the Facility's net output. The billing methodology may be changed at the option of the QS, subject to the provisions of FPL Rate Schedule QS-2. For purposes of this Contract, Delivery Point shall be defined as either: (i) the point of interconnection between FPL's system and the transmission system of the final utility transmitting energy and capacity from the Facility to the FPL system, as specifically described in the applicable Wheeling Agreement, or (ii) the point of interconnection between the Facility and FPL's transmission system, as specifically described in the Interconnection Agreement.

4.2 The QS shall not rely on interruptible standby service for the start up requirements (initial or otherwise) of the Facility.

4.3 The QS shall be responsible for all costs, charges and penalties associated with the operation of the Facility.

**5. Committed Capacity/Capacity Delivery Date**

5.1 The QS commits to sell capacity to FPL at the Delivery Point, the amount of which shall be determined in accordance with this Section 5 (the "Committed Capacity"). Subject to Section 5.3 the Committed Capacity is set at \_\_\_\_\_ KW, with an expected Capacity Delivery Date no later than June 1, 2014.

5.2 Testing of the capacity of the Facility (each such test, a "Committed Capacity Test") shall be performed in accordance with the procedures set forth in Section 6. The Demonstration Period (defined herein) for the first Committed Capacity Test shall commence no earlier than six (6) months prior to the commencement date for deliveries of firm capacity and energy (as such is specified in Appendix E) and testing must be completed by 11:59 p.m., May 31, 2014. The first Committed Capacity Test shall be deemed successfully completed when the QS demonstrates to FPL's satisfaction that the Facility can make available capacity of at least one hundred percent (100%) of the Committed Capacity set forth in Section 5.1. Subject to Section 6.1, the QS may schedule and perform up to three (3) Committed Capacity Tests to satisfy the capacity requirements of the Contract.

5.3 FPL shall have the right to require the QS, by notice no less than 10 Business Days prior to such proposed test, to validate the Committed Capacity of the Facility by means of subsequent Committed Capacity Tests as follows: a) once per each Summer period and once per each Winter period at FPL's sole discretion, b) at any time the QS is unable to comply with any material obligation under this Contract for a period of thirty (30) days or more in the aggregate as a consequence of an event of Force Majeure, and c) at any time the QS fails in three consecutive months to achieve an Annual Capacity Billing Factor ("ACBF"), as defined in Appendix B, equal to or greater than 70%. The results of any such test shall be provided to FPL within seven (7) 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 deemed as the lower of the tested capacity or the Committed Capacity as set forth in Section 5.1.

5.4 Notwithstanding anything to the contrary herein, the Committed Capacity shall not exceed the amount set forth in Section 5.1 without the consent of FPL, such consent not unreasonably withheld.

5.5 The "Capacity Delivery Date" shall be defined as the first calendar day immediately following the date of the Facility's successful completion of the first Committed Capacity Test but no earlier than the commencement date for deliveries of firm capacity and energy (as such is specified in Appendix E).

5.6 The QS shall be entitled to receive capacity payments beginning on the Capacity Delivery Date, provided, the Capacity Delivery Date occurs on or before June 1, 2014 (or such later date permitted by FPL pursuant to the following sentence). If the Capacity Delivery Date does not occur on or before June 1, 2014, FPL shall be entitled to the Completion/Performance Security (as set forth in Section 9) in full, and in addition, FPL may, but shall not be obligated to, allow the QS up to an additional five (5) months to achieve the Capacity Delivery Date. If the QS fails to achieve the Capacity Delivery Date either by (i) June 1, 2014 or (ii) such later date as permitted by FPL, FPL shall have no obligation to make any capacity payments under this Contract and FPL will be permitted to terminate this Contract, consistent with the terms herein, without further obligations, duties or liability to the QS.

(Continued on Sheet No. 9.034)

(Continued from Sheet No. 9.033)

## 6. Testing Procedures

6.1 The Committed Capacity Test must be completed successfully within a sixty-hour period (the "Demonstration Period"), which period, including the approximate start time of the Committed Capacity Test, shall be selected and scheduled by the QS by means of a written notice to FPL delivered at least thirty (30) days prior to the start of such period. The provisions of the foregoing sentence shall not apply to any Committed Capacity Test required by FPL under any of the provisions of this Contract. FPL shall have the right to be present onsite to monitor any Committed Capacity Test required or permitted under this Contract.

6.2 Committed Capacity Test results shall be based on a test period of twenty-four (24) consecutive hours (the "Committed Capacity Test Period") at the highest sustained net KW rating at which the Facility can operate without exceeding the design operating conditions, temperature, pressures, and other parameters defined by the applicable manufacturer(s) for steady state operations at the Facility. If the QS is a REF the Committed Capacity Test shall be conducted utilizing as the sole fuel source fuels or energy sources included in the definition in Section 366.91, Florida Statutes. The Committed Capacity Test Period shall commence at the time designated by the QS pursuant to Section 6.1 or at such other time requested by FPL pursuant to Section 5.3; provided, however, that the Committed Capacity Test Period may commence earlier than such time in the event that FPL is notified of, and consents to, such earlier time.

6.3 For the avoidance of doubt, 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. Further, the QS shall affect deliveries of any quantity and quality of contracted cogenerated steam to the steam host during the Committed Capacity Test Period.

6.4 The capacity of the Facility shall be the average net capacity (generator output minus auxiliary) measured over the Committed Capacity Test Period.

6.5 The Committed Capacity Test shall be performed according to prudent industry testing procedures satisfactory to FPL for the appropriate technology of the QS.

6.6 Except as otherwise provided herein, results of any Committed Capacity Test shall be submitted to FPL by the QS within seven (7) days of the conclusion of the Committed Capacity Test.

## 7. Payment for Electricity Produced by the Facility

### 7.1 Energy

FPL agrees to pay the QS for capacity and energy produced by the Facility and delivered to the Delivery Point in accordance with the rates and procedures contained in FPL's approved Rate Schedule QS-2, attached hereto as Appendix A, as it may be amended from time to time and pursuant to the election of energy payment options as specified in Appendix E. The Parties agree that this Contract shall be subject to all of the provisions contained in Rate Schedule QS-2 as approved and on file with the FPSC.

### 7.2 Capacity

FPL agrees to pay the QS for the capacity described in Section 5 in accordance with the rates and procedures contained in Rate Schedule QS-2, attached hereto as Appendix A, as it may be amended and approved from time to time by the FPSC, and pursuant to the election of a capacity payment option as specified in Appendix E. The QS understands and agrees that capacity payments will be made under the early capacity payment options only if the QS has achieved the Capacity Delivery Date and is delivering firm capacity and energy to FPL. Once elected by the QS, the capacity payment option cannot be changed during the term of this Contract.

### 7.3 Payments

Payments due the QS will be made monthly and normally by the twentieth business day following the end of the billing period. A statement of the kilowatt-hours sold by the QS and the applicable avoided energy rate at which payments are being made shall accompany the payment to the QS.

(Continued on Sheet No. 9.035)



(Continued from Sheet No. 9.034)

**8. Electricity Production and Plant Maintenance Schedule**

8.1 During the term of this Contract, no later than sixty (60) days prior to the Capacity Delivery Date and prior to April 1 of each calendar year thereafter, the QS shall submit to FPL in writing a detailed plan of: (i) the amount of firm capacity and energy to be generated by the Facility and delivered to the Delivery Point for each month of the following calendar year, and (ii) the time, duration and magnitude of any scheduled maintenance period(s) and any anticipated reductions in capacity.

8.2 By October 31 of each calendar year, FPL shall notify the QS in writing whether the requested scheduled maintenance periods in the detailed plan are acceptable. If FPL objects to any of the requested scheduled maintenance periods, FPL shall advise the QS of the time period closest to the requested period(s) when the outage(s) can be scheduled. The QS shall schedule maintenance outages only during periods approved by FPL, such approval not unreasonably withheld. Once the schedule for maintenance has been established and approved by FPL, either Party may request a subsequent change in such schedule and, except when such event is due to Force Majeure, request approval for such change from the other Party, such approval not to be unreasonably withheld or delayed. Scheduled maintenance outage days shall be limited to seven (7) days per calendar year unless the manufacturer's recommendation of maintenance outage days for the technology and equipment used by the Facility exceeds such 7 day period, provided, such number of days is considered reasonable by industry standards and does not exceed two (2) fourteen (14) day intervals, one in the Spring and one in the Fall, in any calendar year. The scheduled maintenance outage days applicable for the QS are \_\_\_\_\_ days in the Spring and \_\_\_\_\_ days in the Fall of each calendar year, provided the conditions specified in the previous sentence are met. In no event shall maintenance periods be scheduled during the following periods: June 1 through and including October 31st and December 1 through and including February 28 (or 29<sup>th</sup> as the case may be).

8.3 The QS shall comply with reasonable requests by FPL regarding day-to-day and hour-by-hour communication between the Parties relative to electricity production and maintenance scheduling.

**8.4 Dispatch and Control**

8.4.1 The power supplied by the QS hereunder shall be in the form of three-phase 60 Hertz alternating current, at a nominal operating voltage of \_\_\_\_\_,000 volts ( \_\_\_\_\_ kV) and power factor dispatchable and controllable in the range of 85% lagging to 85% leading as measured at the Delivery Point to maintain system operating parameters, as specified by FPL.

8.4.2 At all times during the term of this Contract, the QS shall operate and maintain the Facility: (i) in such a manner as to ensure compliance with its obligations hereunder, in accordance with prudent engineering and operating practices and applicable law, and (ii) with all system protective equipment in service whenever the Facility is connected to, or is operated in parallel with, FPL's system. The QS shall install at the Facility those system protection and control devices necessary to ensure safe and protected operation of all energized equipment during normal testing and repair. The QS shall have qualified personnel test and calibrate all protective equipment at regular intervals 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 the results shall be provided to FPL prior to returning the equipment to service. The specifics of the unit functional trip test will be consistent with good engineering and operating practices.

8.4.3 If the Facility is separated from the FPL system for any reason, under no circumstances shall the QS reconnect the Facility into FPL's system without first obtaining FPL's approval.

8.4.4 During the term of this Contract, the QS shall employ qualified personnel for managing, operating and maintaining the Facility and for coordinating such with FPL. If the Facility has a Committed Capacity greater than 10 MW then, the QS 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. If the Facility has a Committed Capacity equal to or less than 10 MW then the QS shall ensure that operating personnel are on duty at least eight (8) hours per day from 8 AM EST to 5 PM EST from Monday to Friday, with an operator on call at all other hours.

8.4.5 FPL shall at all times be excused from its obligation to purchase energy and capacity hereunder, and FPL shall have the ability to require the QS to curtail or reduce deliveries of energy, to the extent necessary to maintain the reliability and integrity of any part of FPL's system, or in the event that FPL determines that a failure to do so is likely to endanger life or property, or is likely to result in significant disruption of electric service to FPL's customers. FPL shall give the QS prior notice, if practicable, of its intent to refuse, curtail or reduce FPL's acceptance of energy pursuant to this Section and will act to minimize the frequency and duration of such occurrences.

(Continued on Sheet No. 9.036)

(Continued from Sheet No. 9.035)

8.4.6 After providing notice to the QS, FPL shall not be required to accept or purchase energy from the QS during any period in which, due to operational circumstances, acceptance or purchase of such energy would result in FPL's incurring costs greater than those which it would incur if it did not make such purchases. An example of such an occurrence would be a period during which the load being served is such that the generating units on line are base load units operating at their minimum continuous ratings and the purchase of additional energy would require taking a base load unit off the line and replacing the remaining load served by that unit with peaking-type generation. FPL shall give the QS as much prior notice as practicable of its intent not to accept energy pursuant to this Section.

8.4.7 If the Facility has a Committed Capacity less than 75 MW, control, scheduling and dispatch of capacity and energy shall be the responsibility of the QS. If the Facility has a Committed Capacity greater than or equal to 75 MW, control, scheduling and dispatch of capacity and energy shall be the responsibility of the QS, except during a "Dispatch Hour", i.e., any clock hour for which FPL requests the delivery of such capacity and energy. During any Dispatch Hour: i) control of the Facility will either be by Seller's manual control under the direction of FPL (whether orally or in writing) or by Automatic Generation Control by FPL's system control center as determined by FPL, and ii) FPL may request that the real power output be at any level up to the Committed Capacity of the Facility, provided, in no event shall FPL require the real power output of the Facility to be below the Facility's Minimum Load without decommitting the Facility. The Facility shall deliver the capacity and energy requested by FPL, within \_\_\_\_\_ minutes, taking into account the operating limitations of the generating equipment as specified by the manufacturer, provided such time period specified herein is considered reasonable by industry standards for the technology and equipment being utilized and assuming the Facility is operating at or above its Minimum Load. Start-up time from Cold Shutdown and Facility Turnaround time from Hot to Hot will be taken into consideration provided such are reasonable and consistent with good industry practices for the technology and equipment being utilized. The Facility's Operating Characteristics have been provided by the QS and are set forth in Appendix D, Section IV of Rate Schedule QS-2.

8.4.8 If the Facility has a Committed Capacity of less than 75 MW, FPL may require during certain periods, by oral, written, or electronic notification that the QS cause the Facility to reduce output to a level below the Committed Capacity but not lower than the Facility's Minimum Load. FPL shall provide as much notice as practicable, normally such notice will be of at least four (4) hours. The frequency of such request shall not exceed eighteen (18) times per calendar year and the duration of each request shall not exceed four (4) hours.

8.4.9 FPL's exercise of its rights under this Section 8 shall not give rise to any liability on the part of FPL, including any claim for breach of contract or for breach of any covenant of good faith and fair dealing.

## 9. Completion/Performance Security

9.1 As security for the achievement of the Capacity Delivery Date and satisfactory performance of its obligations hereunder, the QS shall provide FPL either: (a) an unconditional, irrevocable, standby letter of credit(s) with an expiration date no earlier than the end of the first (1st) anniversary of the Capacity Delivery Date (or the next business day thereafter), issued by a U.S. commercial bank or the U.S. branch of a foreign bank having a Credit Rating of A- or higher by S&P or A3 or higher by Moody's (a "Qualified Issuer"), in form and substance acceptable to FPL (including provisions (i) permitting partial and full draws and (ii) permitting FPL to draw in full if such letter of credit is not renewed or replaced as required by the terms hereof at least thirty (30) business days prior to its expiration date) ("Letter of Credit"); (b) a bond, issued by a financially sound Company and in a form and substance acceptable to FPL, ("Bond"); or (c) a cash collateral deposited with FPL ("Cash Collateral") (any of (a), (b), or (c), the "Completion/Performance Security"). Such Letter of Credit, Bond or Cash Collateral shall be provided in the amount and by the date listed below:

\$30.00 per KW (for the number of KW of Committed Capacity set forth in Section 5.1) to be delivered to FPL within thirty (30) calendar days of the execution of this Contract by the Parties hereto.

"Credit Rating" means with respect to any entity, on any date of determination, the respective ratings then assigned to such entity's unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P, Moody's or other specified rating agency or agencies or if such entity does not have a rating for its unsecured, senior long-term debt or deposit obligations, then the rating assigned to such entity as its "corporate credit rating" by S&P.

"Moody's" means Moody's Investors Service, Inc. or its successor.

"S&P" means Standard & Poor's Ratings Group (a division of The McGraw-Hill Companies, Inc.) or its successor.

(Continued on Sheet No. 9.037)

(Continued from Sheet No. 9.036)

9.2 The specific security instrument provided for purposes of this Contract is:

- ☐ Letter of Credit.
- ☐ Bond.
- ☐ Cash Collateral.

9.3 FPL shall have the right to monitor (i) the financial condition of the issuer of a Letter of Credit in the event any Letter of Credit is provided by the QS and (ii) the insurer, in the case of any Bond. In the event the issuer of a Letter of Credit no longer qualifies as Qualified Issuer or the issuer of a Bond is no longer financially sound, FPL may require the QS to replace the Letter of Credit or the Bond, as applicable. The replacement Letter of Credit must be issued by a Qualified Issuer, within thirty (30) calendar days following written notification to the QS of the requirement to replace. Failure by the QS to comply with the requirements of this Section 9.3 shall be grounds for FPL to draw in full on the existing Letter of Credit and to exercise any other remedies it may have hereunder.

9.4 Notwithstanding the foregoing provisions of this Section 9, pursuant to FPSC Rule 25-17.091(4), F.A.C., a QS qualifying as a "Solid Waste Facility" pursuant to Section 377.709(3) or (5), F.S., respectively, may use an unsecured written commitment or promise to pay in a form reasonably acceptable to FPL, by the local government which owns the Facility or on whose behalf the QS operates the Facility, to secure its obligation to achieve on a timely basis the Capacity Delivery Date and the satisfactory performance of its obligations hereunder.

9.5 If an Event of Default under Section 12 occurs, FPL shall be entitled immediately to receive, draw upon, or retain, as the case may be, one-hundred percent (100%) of the then-applicable Completion/Performance Security.

9.6 If an Event of Default under Section 12 has not occurred and the QS fails to achieve the Capacity Delivery Date on or before June 1, 2015 or such later date as permitted by FPL pursuant to Section 5.6, FPL shall be entitled immediately to receive, draw upon, or retain, as the case may be, one-hundred (100%) of the Completion/Performance Security as liquidated damages free from any claim or right of any nature whatsoever of the QS, including any equity or right of redemption by the QS. The Parties acknowledge that the injury that FPL will suffer as a result of delayed availability of Committed Capacity and energy is difficult to ascertain and that FPL may accept such sums as liquidated damages or resort to any other remedies which may be available to it under law or in equity. If the Capacity Delivery Date occurs on or before June 1, 2015 or such later date as permitted by FPL pursuant to Section 5.6, then the QS shall be entitled to reduce the amount of the Completion/Performance Security to an amount equal to \$15.00 per KW (for the number of KW of Committed Capacity set forth in Section 5.1).

9.7 In the event that FPL requires the QS to perform one or more Committed Capacity Test(s) at any time on or before the first anniversary of the Capacity Delivery Date pursuant to Section 5.3 and, in connection with any such Committed Capacity Test(s), the QS fails to demonstrate a Capacity of at least one-hundred percent (100%) of the Committed Capacity set forth in Section 5.1, FPL shall be entitled immediately to receive, draw upon, or retain, as the case may be, one-hundred percent (100%) of the then-remaining amount of the Completion/Performance Security as liquidated damages free from any claim or right of any nature whatsoever of the QS, including any equity or right of redemption by the QS. In the event that FPL does not require the QS to perform a Committed Capacity Test or if the QS successfully demonstrates (in connection with all such Committed Capacity Tests required by FPL pursuant to Section 5.3) a Capacity of at least one-hundred percent (100%) of the Committed Capacity set forth in Section 5.1, in either case, on or before the first anniversary of the Capacity Delivery Date, then FPL shall return, as applicable, any remaining amount of the Completion/Performance Security within thirty (30) days of the first anniversary of the Capacity Delivery Date.

9.8 The QS, as the Pledgor of the Completion/Performance Security, hereby pledges to FPL, as the secured Party, as security for the achievement of the Capacity Delivery Date and satisfactory performance of its obligations hereunder, and grants to FPL a first priority continuing security interest in, lien on and right of set-off against all Completion/Performance Security transferred to or received by FPL hereunder. Upon the transfer or return by FPL to the QS of Completion/Performance Security, the security interest and lien granted hereunder on that Completion/Performance Security will be released immediately and, to the extent possible, without any further action by either party.

(Continued on Sheet No. 9.038)

(Continued from Sheet No. 9.037)

9.9 In lieu of any interest, dividends or other amounts paid or deemed to have been paid with respect to Cash Collateral held by FPL (all of which may be retained by FPL), FPL will transfer to the QS on a monthly basis the Interest Amount, as calculated by FPL.

"Interest Amount" means, with respect to each monthly period, the aggregate sum of the amounts of interest calculated for each day in that monthly period on the principal amount of Cash Collateral held by FPL on that day, determined by FPL for each such day as follows:

- (x) the amount of that Cash Collateral on that day; multiplied by
- (y) the Interest Rate in effect for that day; divided by
- (z) 360.

The "Interest Rate" will be: the Federal Funds Overnight rate as from time to time in effect.

"Federal Funds Overnight Rate" means, for the relevant determination date, the rate opposite the caption "Federal Funds (Effective)" as set forth for that day in the weekly statistical release designated as H.15 (519), or any successor publication, published by the Board of Governors of the Federal Reserve System. If on the determination date such rate is not yet published in H.15 (519), the rate for that date will be the rate set in Composite 3:30 P.M. Quotations for U.S. Government Securities for that day under the caption "Federal Funds/Effective Rate." If on the determination date such rate is not yet published in either H.15 (519) or Composite 3:30 P.M. Quotations for U.S. Government Securities, the rate for that date will be determined as if the Parties had specified "USD-Federal Funds-Reference Dealers" as the applicable rate.

#### 10. Termination Fee

10.1 In the event that the QS receives capacity payments pursuant to Option B, Option C, Option D or Option E (as such options are defined in Appendix A and elected by the QS in Appendix E) or receives energy payments pursuant to the Fixed Firm Energy Payment Option (as such option is defined in Appendix A and elected by the QS in Appendix E) then, upon the termination of this Contract, the QS shall owe and be liable to FPL for a termination fee calculated in accordance with Appendix C (the "Termination Fee"). The QS's obligation to pay the Termination Fee shall survive the termination of this Contract. FPL shall provide the QS, on a monthly basis, a calculation of the Termination Fee.

10.1.1 The Termination Fee shall be secured (with the exception of governmental solid waste facilities covered by FPSC Rule 25-17.091 in which case the QS may use an unsecured written commitment or promise to pay, in a form reasonably acceptable to FPL, by the local government which owns the Facility or on whose behalf the QS operates the Facility, to secure its obligation to pay the Termination Fee) by the QS by: (i) an unconditional, irrevocable, standby letter(s) of credit issued by Qualified Issuer in form and substance acceptable to FPL (including provisions (a) permitting partial and full draws and (b) permitting FPL to draw upon such letter of credit, in full, if such letter of credit is not renewed or replaced at least thirty (30) business days prior to its expiration date, ("Termination Fee Letter of Credit"); (ii) a bond, issued by a financially sound Company and in a form and substance acceptable to FPL, ("Termination Fee Bond"); or (iii) a cash collateral deposit with FPL ("Termination Fee Cash Collateral") (any of (i), (ii), or (iii), the "Termination Security").

The specific security instrument selected by the QS for purposes of this Contract is:

- ☐ Termination Fee Letter of Credit
- ☐ Termination Fee Bond
- ☐ Termination Fee Cash Collateral

10.1.2 FPL shall have the right to monitor the financial condition of (i) the issuer of a Termination Fee Letter of Credit in the case of any Termination Fee Letter of Credit and (ii) the insurer(s), in the case of any Termination Fee Bond. In the event the issuer of a Termination Fee Letter of Credit is no longer a Qualified Issuer or the issuer of a Termination Fee Bond is no longer financially sound, FPL may require the QS to replace the Termination Fee Letter of Credit or the Termination Fee Bond, as applicable. In the event that FPL notifies the QS that it requires such a replacement, the replacement Termination Fee Letter of Credit or Termination Fee Bond, as applicable, must be issued by a Qualified Issuer or financially sound company within thirty (30) calendar days following such notification. Failure by the QS to comply with the requirements of this Section 10.1.2 shall be grounds for FPL to draw in full on any existing Termination Fee Letter of Credit or Termination Fee Bond and to exercise any other remedies it may have hereunder.

(Continued on Sheet No. 9.039)

(Continued from Sheet No. 9.038)

10.1.3 After the close of each calendar quarter (March 31, June 30, September 30, and December 31) occurring subsequent to the Capacity Delivery Date, the QS shall provide to FPL within ten (10) days of the close of such calendar quarter with written assurance and documentation (the "Security Documentation"), in form and substance acceptable to FPL, that the amount of the most recently provided 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, FPL shall have the right to request, and the QS shall be obligated to deliver within five (5) days of such request, such Security Documentation. Failure by the QS to comply with the requirements of this Section 10.1.3 shall be grounds for FPL to draw in full on any existing Termination Fee Letter of Credit or Termination Fee Bond or to retain any Termination Fee Cash Collateral, and to exercise any other remedies it may have hereunder to be applied against any Termination Fee that may be due and owing to FPL or that may in the future be due and owing to FPL.

10.1.4 Upon any termination of this Contract following the Capacity Delivery Date, FPL shall be entitled to receive (and in the case of the Termination Fee Letter of Credit or Termination Fee Bond, draw upon such Termination Fee Letter of Credit or Termination Fee Bond) and retain one hundred percent (100%) of the Termination Security to be applied against any Termination Fee that may be due and owing to FPL or that may in the future be due and owing to FPL. FPL will transfer to the QS any proceeds and Termination Security remaining after liquidation, set-off and/or application under this Article after satisfaction in full of all amounts payable by the QS with respect to any Termination Fee or other obligations due to FPL; the QS in all events will remain liable for any amounts remaining unpaid after any liquidation, set-off and/or application under this Article.

10.2 The QS, as the Pledgor of the Termination Security, hereby pledges to FPL, as the secured Party, as security for the Termination Fee, and grants to FPL a first priority continuing security interest in, lien on and right of set-off against all Termination Security transferred to or received by FPL hereunder. Upon the transfer or return by FPL to the QS of Termination Security, the security interest and lien granted hereunder on that Termination Security will be released immediately and, to the extent possible, without any further action by either party.

10.3 In lieu of any interest, dividends or other amounts paid or deemed to have been paid with respect to Termination Fee Cash Collateral held by FPL (all of which may be retained by FPL), FPL will transfer to the QS on a monthly basis the Interest Amount, as calculated by FPL.

"Interest Amount" means, with respect to each monthly period, the aggregate sum of the amounts of interest calculated for each day in that monthly period on the principal amount of Cash Collateral held by FPL on that day, determined by FPL for each such day as follows:

- (x) the amount of that Termination Fee Cash Collateral on that day; multiplied by
- (y) the Interest Rate in effect for that day; divided by
- (z) 360.

The "Interest Rate" will be: the Federal Funds Overnight rate as from time to time in effect.

"Federal Funds Overnight Rate" means, for the relevant determination date, the rate opposite the caption "Federal Funds (Effective)" as set forth for that day in the weekly statistical release designated as H.15 (519), or any successor publication, published by the Board of Governors of the Federal Reserve System. If on the determination date such rate is not yet published in H.15 (519), the rate for that date will be the rate set in Composite 3:30 P.M. Quotations for U.S. Government Securities for that day under the caption "Federal Funds/Effective Rate." If on the determination date such rate is not yet published in either H.15 (519) or Composite 3:30 P.M. Quotations for U.S. Government Securities, the rate for that date will be determined as if the Parties had specified "USD-Federal Funds-Reference Dealers" as the applicable rate.

## 11. Performance Factor

FPL desires to provide an incentive to the QS to operate the Facility during on-peak and off-peak periods in a manner which approximates the projected performance of FPL's Avoided Unit. A formula to achieve this objective is attached as Appendix B.

(Continued on Sheet No. 9.040)



(Continued from Sheet No. 9.039)

**12. Default**

Notwithstanding the occurrence of any Force Majeure as described in Section 16, each of the following shall constitute an Event of Default:

- (a) The QS fails to meet the applicable requirements specified in Section 1 of this Contract;
- (b) The QS changes or modifies the Facility from that provided in Section 1 with respect to its type, location, technology or fuel source, without prior written approval from FPL;
- (c) After the Capacity Delivery Date, the Facility fails, for twelve (12) consecutive months, to maintain an Annual Capacity Billing Factor, as described in Appendix B, of at least 70%;
- (d) The QS fails to comply with any of the provisions of Section 9.0 hereof;
- (e) The QS fails to comply with any of the provisions of Section 10.0 hereof;
- (f) The QS 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 QS or if a receiver shall be appointed for the QS or any of its assets or properties; or if any part of the QS'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 30 days thereof; or if the QS shall make an assignment for the benefit of creditors, or admit in writing its inability to pay its debts as they become due;
- (g) The QS fails to give proper assurance acceptable to FPL of adequate performance as specified under this Contract within 30 days after FPL, with reasonable grounds for insecurity, has requested in writing such assurance;
- (h) The QS materially fails to perform as specified under this Contract, including, but not limited to, the QS's obligations under any part of Sections 8, 9, 10, and 14-18;
- (i) The QS 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 December 1, 2014;
- (j) The QS fails to comply with any of the provisions of Section 18.3 Project Management hereof;
- (k) Any of the representations or warranties made by the QS in this Contract is false or misleading in any material respect as of the time made;
- (l) The occurrence of an event of default by the QS under the Interconnection Agreement or any applicable Wheeling Agreement;
- (m) The QS fails to satisfy its obligations under Section 18.17 of this Contract;
- (n) The QS breaches any material provision of this Contract not specifically mentioned in this Section 12; or
- (o) If at any time after the Capacity Delivery Date, the QS 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 5.1 (as such level may be reduced by Section 5.3) within twelve (12) months following the occurrence of such event of Force Majeure.

(Continued on Sheet No. 9.041)

(Continued from Sheet No. 9.040)

**13. FPL's Rights in the Event of Default**

13.1 Upon the occurrence of any of the Events of Default in Section 12, FPL may:

- (a) terminate this Contract, without penalty or further obligation, except as set forth in Section 13.2, by written notice to the QS, and offset against any payment(s) due from FPL to the QS, any monies otherwise due from the QS to FPL;
- (b) collect the Termination Fee pursuant to Section 10 hereof; and
- (c) exercise any other remedy(ies) which may be available to FPL at law or in equity.

13.2 In the case of an Event of Default, the QS recognizes that any remedy at law may be inadequate because this Contract is unique and/or because the actual damages of FPL may be difficult to reasonably ascertain. Therefore, the QS agrees that FPL shall be entitled to pursue an action for specific performance, and the QS waives all of its rights to assert as a defense to such action that FPL's remedy at law is adequate.

13.3 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.

**14. Indemnification/Limits**

14.1 FPL and the QS shall each be responsible for its own facilities. FPL and the QS shall each be responsible for ensuring adequate safeguards for other FPL customers, FPL's and the QS's personnel and equipment, and for the protection of its own generating system. Subject to section 2.7 Indemnity to Company, or section 2.71 Indemnity to Company – Governmental, FPL's General Rules and Regulations of Tariff Sheet No. 6.020 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, "FPL Entities" and "QS 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) 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, act or incident, including the transmission and use of electricity, that is the result of, or proximately caused by, the Indemnifying Party or its contractors, agents, servants or employees.

14.2 Payment by an Indemnified Party will not be a condition precedent to the obligations of the Indemnifying Party under Section 14. No Indemnified Party under Section 14 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 14 in the event of a breach of the foregoing sentence by the Indemnified Party. Section 14 shall survive termination of this Agreement.

14.3 Limitation on Consequential, Incidental and Indirect Damages. TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER THE QS NOR FPL, NOR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, MEMBERS, PARENTS, SUBSIDIARIES OR AFFILIATES, SUCCESSORS OR ASSIGNS, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, MEMBERS, PARENTS, SUBSIDIARIES OR AFFILIATES, SUCCESSORS OR ASSIGNS, SHALL BE LIABLE TO THE OTHER PARTY OR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, MEMBERS, PARENTS, SUBSIDIARIES OR AFFILIATES, SUCCESSORS OR ASSIGNS, FOR CLAIMS, SUITS, ACTIONS OR CAUSES OF ACTION FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, MULTIPLE OR CONSEQUENTIAL DAMAGES CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS CONTRACT, OR ANY ACTIONS UNDERTAKEN IN CONNECTION WITH OR RELATED TO THIS CONTRACT, INCLUDING WITHOUT LIMITATION, ANY SUCH DAMAGES WHICH ARE BASED UPON CAUSES OF ACTION FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND MISREPRESENTATION), BREACH OF WARRANTY, STRICT LIABILITY, STATUTE, OPERATION OF LAW, UNDER ANY INDEMNITY PROVISION OR ANY OTHER THEORY OF RECOVERY. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY, AND SUCH DIRECT DAMAGES SHALL BE THE SOLE AND EXCLUSIVE MEASURE OF DAMAGES AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED; PROVIDED, HOWEVER, THAT THIS SENTENCE SHALL NOT APPLY TO LIMIT THE LIABILITY OF A PARTY WHOSE ACTIONS GIVING RISE TO SUCH LIABILITY CONSTITUTE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THE PROVISIONS OF THIS SECTION SHALL APPLY REGARDLESS OF FAULT AND SHALL SURVIVE TERMINATION, CANCELLATION, SUSPENSION, COMPLETION OR EXPIRATION OF THIS CONTRACT. NOTHING CONTAINED IN THIS AGREEMENT SHALL BE DEEMED TO BE A WAIVER OF A PARTY'S RIGHT TO SEEK INJUNCTIVE RELIEF.

(Continued on Sheet No. 9.042)

(Continued from Sheet No. 9.041)

**15. Insurance**

15.1 The QS 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 FPL on a standard "Insurance Services Office" commercial general liability form (such policy or policies, collectively, the "QS Insurance"). A certificate of insurance shall be delivered to FPL at least fifteen (15) calendar days prior to the start of any interconnection work. At a minimum, the QS 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 QS's equipment or by the QS's failure to maintain the Facility or the QS's equipment in satisfactory and safe operating condition. Effective at least fifteen (15) calendar days prior to the synchronization of the Facility with FPL's system, the QS Insurance shall be amended to include coverage for interruption or curtailment of power supply in accordance with industry standards. Without limiting the foregoing, the QS Insurance must be reasonably acceptable to FPL. Any premium assessment or deductible shall be for the account of the QS and not FPL.

15.2 The QS Insurance shall have a minimum limit of one million dollars (\$1,000,000) per occurrence, combined single limit, for bodily injury (including death) or property damage.

15.3 In the event that such insurance becomes totally unavailable or procurement thereof becomes commercially impracticable, such unavailability shall not constitute an Event of Default under this Contract, but FPL and the QS shall enter into negotiations to develop substitute protection which the Parties in their reasonable judgment deem adequate.

15.4 To the extent that the QS 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 FPL Entities and the QS Entities. Furthermore, to the extent the QS Insurance is on a "claims made" basis, the QS'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 QS Insurance is on an "occurrence" basis, such insurance shall be maintained in effect at all times by the QS during the term of this Contract.

15.5 The QS Insurance shall provide that it may not be cancelled or materially altered without at least thirty (30) calendar days' written notice to FPL. The QS shall provide FPL with a copy of any material communication or notice related to the QS Insurance within ten (10) business days of the QS's receipt or issuance thereof.

15.6 The QS shall be designated as the named insured and FPL shall be designated as an additional named insured under the QS Insurance. The QS Insurance shall be endorsed to be primary to any coverage maintained by FPL.

**16. Force Majeure**

Force Majeure is defined as an event or circumstance that is not within the reasonable control of, or the result of the negligence of, the affected party, and which, by the exercise of due diligence, the affected party is unable to overcome, avoid, or cause to be avoided in a commercially reasonable manner. Such events or circumstances may include, but are not limited to, 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, difficulties (not caused by the failure of the affected party to comply with the terms of a collective bargaining agreement), or actions or restraints by court order or governmental authority or arbitration award. Force Majeure shall not include (i) the QS's ability to sell capacity and energy to another market at a more advantageous price; (ii) 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; (iii) a failure of performance of any other entity, including any entity providing electric transmission service to the QS, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure event; (iv) failure of the QS to timely apply for or obtain permits.

(Continued on Sheet No. 9.043)



(Continued from Sheet No. 9.042)

16.1 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.

16.2 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 two (2) 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.

16.3 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.

16.4 If the QS suffers an occurrence of an event of Force Majeure that reduces the generating capability of the Facility below the Committed Capacity, the QS may, upon notice to FPL, temporarily adjust the Committed Capacity as provided in Sections 16.5 and 16.6. Such adjustment shall be effective the first calendar day immediately following FPL's receipt of the notice or such later date as may be specified by the QS. Furthermore, such adjustment shall be the minimum amount necessitated by the event of Force Majeure.

16.5 If the Facility is rendered completely inoperative as a result of Force Majeure, the QS 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, FPL shall have no obligation to make capacity payments hereunder.

16.6 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 QS shall temporarily set the Committed Capacity at the maximum capability that the Facility can reasonably be expected to operate.

16.7 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 provision of this Contract, upon such cessation or cure, FPL shall have the right to require a Committed Capacity Test to demonstrate the Facility's compliance with the requirements of this section 16.7. Any Committed Capacity Test required by FPL under this Section shall be additional to any Committed Capacity Test under Section 5.3.

16.8 During the occurrence of an event of Force Majeure and a reduction in Committed Capacity under Section 16.4, 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 B.

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

**17. Representations, Warranties, and Covenants of QS**  
The QS represents and warrants that as of the Effective Date:

**17.1 Organization, Standing and Qualification**

The QS 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 QS 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 FPL.

(Continued on Sheet No. 9.044)

(Continued from Sheet No. 9.043)

## 17.2 Due Authorization, No Approvals, No Defaults, etc.

Each of the execution, delivery and performance by the QS of this Contract has been duly authorized by all necessary action on the part of the QS, does not require any approval, except as has been heretofore obtained, of the \_\_\_\_\_ (shareholders, partners, or others, as applicable) of the QS or any consent of or approval from any trustee, lessor or holder of any indebtedness or other obligation of the QS, except for such as have been duly obtained, and does not contravene or constitute a default under any law, the \_\_\_\_\_ (articles of incorporation, bylaws, or other as applicable) of the QS, or any agreement, judgment, injunction, order, decree or other instrument binding upon the QS, or subject the Facility or any component part thereof to any lien other than as contemplated or permitted by this Contract. This Contract constitutes QS's legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, except as such enforceability may be limited by applicable bankruptcy laws from time to time in effect that affect creditors' rights generally or by general principles of equity (regardless of whether such enforcement is considered in equity or at law).

## 17.3 Compliance with Laws

The QS has knowledge of all laws and business practices that must be followed in performing its obligations under this Contract. The QS 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 QS or FPL.

## 17.4 Governmental Approvals

Except as expressly contemplated herein, neither the execution and delivery by the QS of this Contract, nor the consummation by the QS of any of the transactions 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 in respect of governmental authority, except in respect of 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 QS has no reason to believe that the same will not be readily obtainable in the ordinary course of business upon due application therefore).

## 17.5 No Suits, Proceedings

There are no actions, suits, proceedings or investigations pending or, to the knowledge of the QS, 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 QS'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 QS has no knowledge of a violation or default with respect to any law which could result in any such materially adverse effect or impairment. The QS is not in breach of, in default under, or in violation of, any applicable Law, or the provisions of any authorization, or in breach of, in default under, or in violation of, or in conflict with any provision of any promissory note, indenture or any evidence of indebtedness or security therefor, lease, contract, or other agreement by which it is bound, except for any such breaches, defaults, violations or conflicts which, individually or in the aggregate, could not reasonably be expected to have a material adverse effect on the business or financial condition of Buyer or its ability to perform its obligations hereunder.

## 17.6 Environmental Matters

## 17.6.1 QS Representations

To the best of its knowledge after diligent inquiry, the QS 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.

## 17.6.2 Ownership and Offering For Sale Of Renewable Energy Attributes

The QS retains any and all rights to own and to sell any and all environmental attributes associated with the electric generation of the Facility, including but not limited to, any and all renewable energy certificates, "green tags" or other tradable environmental interests (collectively "RECs"), of any description, provided that: (i) FPL shall have a right of first refusal with respect to any and all bona fide offers to purchase any RECs; and (ii) the QS shall not sell RECs to any party at a price less than that charged to FPL. FPL agrees to exercise such right of first refusal, if at all, within thirty (30) days of receiving written notification by the QS of a bona fide offer.

(Continued on Sheet No. 9.045)

(Continued from Sheet No. 9.044)

**17.6.3 Changes in Environmental and Governmental Regulations**

If new environmental and other regulatory requirements enacted during the term of the Contract change FPL's full avoided cost of the unit on which the Contract is based, either party can elect to have the contract reopened.

**17.7 Interconnection/Wheeling Agreement**

The QS has executed an interconnection agreement with FPL, or represents or warrants that it has entered into a valid and enforceable Interconnection Agreement with the utility in whose service territory the Facility is located, pursuant to which the QS assumes contractual responsibility to make any and all transmission-related arrangements (including control area services) between the QS and the transmitting utility for delivery of the Facility's capacity and energy to FPL.

**17.8 Technology and Generator Capabilities**

That for the term of this Contract the Technology and Generator Capabilities table set forth in Section 1 is accurate and complete.

**18. General Provisions****18.1 Project Viability**

To assist FPL in assessing the QS's financial and technical viability, the QS shall provide the information and documents requested in Appendix D 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 FPL must be submitted at the time this Contract is presented to FPL. Failure to provide the following such documents may result in a determination of non-viability by FPL.

**18.2 Permits**

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

**18.3 Project Management**

18.3.1 If requested by FPL, the QS shall submit to FPL its integrated project schedule for FPL's review within sixty calendar days from the execution of this Contract, and a start-up and test schedule for the Facility at least sixty 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 FPL, the QS shall submit progress reports in a form satisfactory to FPL every calendar month until the Capacity Delivery Date and shall notify FPL of any changes in such schedules within ten calendar days after such changes are determined. FPL shall have the right to monitor the construction, start-up and testing of the Facility, either on-site or off-site. FPL'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.

18.3.2 The QS shall provide FPL with the final designer's/manufacture's generator capability curves, protective relay types, proposed protective relay settings, main one-line diagrams, protective relay functional diagrams, and alternating current and direct current elementary diagrams for review and inspection at FPL no later than one hundred eighty calendar days prior to the initial synchronization date.

**18.4 Assignment**

This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns. This Agreement shall not be assigned or transferred by either Party without the prior written consent of the other Party, such consent to be granted or withheld in such other Party's sole discretion. Notwithstanding the foregoing, either Party may, without the consent of the other Party, assign or transfer this Agreement: (i) to any lender as collateral security for obligations under any financing documents entered into with such lender; (ii) to an affiliate of such Party; provided, that such affiliate's creditworthiness is equal to or better than that of such Party (and in not event less than Investment Grade) as determined reasonably by the non-assigning or non-transferring Party and; provided, further, that any such affiliate shall agree in writing to be bound by and to assume the terms and conditions hereof and any and all obligations to the non-assigning or non-transferring Party arising or accruing hereunder from and after the date of such assumption. "Investment Grade" means BBB- or above from Standard & Poor's Corporation or Baa3 or above from Moody's Investor Services.

**18.5 Disclaimer**

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

(Continued on Sheet No. 9.046)

(Continued from Sheet No. 9.045)

## 18.6 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 QS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

For FPL:

Florida Power &amp; Light Company

Manager, Purchased Power  
P. O. Box 029100 Miami, FL 33102-9100  
or  
9250 West Flagler Street  
Miami, FL 33174

This signed Contract and all related documents may be presented no earlier than 8:00 a.m. on the effective date of the Standard Offer Contract, as determined by the FPSC. 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 & Light Company  
9250 West Flagler Street Miami, FL 33174  
Attention: Manager, Purchased Power  
Resource Assessment and Planning Department

## 18.7 Applicable Law

This Contract shall be construed in accordance with and governed by, and the rights of the Parties shall be construed in accordance with, the laws of the State of Florida as to all matters, including but not limited to matters of validity, construction, effect, performance and remedies, without regard to conflict of law rules thereof.

## 18.8 Venue

The Parties hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the Southern District of Florida or, in the event that jurisdiction for any matter cannot be established in the United States District Court for the Southern District of Florida, in the state court for Palm Beach County, Florida, solely in respect of the interpretation and enforcement of the provisions of this Contract and of the documents referred to in this Contract, and in respect of the transactions contemplated hereby, and hereby waive, and agree not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof or of any such document, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Contract or any such document may not be enforced in or by such courts, and the Parties hereto irrevocably agree that all claims with respect to such action or proceeding shall be heard and determined in such a court. The Parties hereby consent to and grant any such court jurisdiction over the persons of such Parties solely for such purpose and over the subject matter of such dispute and agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 18.8 hereof or in such other manner as may be permitted by Law shall be valid and sufficient service thereof.

(Continued on Sheet No. 9.047)

(Continued from Sheet No. 9.046)

18.9. Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS CONTRACT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT A PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION RESULTING FROM, ARISING OUT OF OR RELATING TO THIS CONTRACT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) EACH PARTY MAKES THIS WAIVER VOLUNTARILY AND (iv) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS CONTRACT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 18.9

#### 18.10 Taxation

In the event that FPL becomes liable for additional taxes, including interest and/or penalties arising from an Internal Revenue Services determination, through audit, ruling or other authority, that FPL's payments to the QS for capacity under Options B, C, D, E or for energy pursuant to the Fixed Firm Energy Payment Option D are not fully deductible when paid (additional tax liability), FPL may bill the QS 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. FPL, at its option, may offset these costs against amounts due the QS hereunder. These costs would be calculated so as to place FPL 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 FPL 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 FPL.

#### 18.11 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.

#### 18.12 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.

#### 18.13 Survival of Contract

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.

#### 18.14 Record Retention

The QS agrees to retain 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 QS Entities to retain for the same period all such records.

#### 18.15 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.

(Continued on Sheet No. 9.048)

(Continued from Sheet No. 9.047)

## 18.16 Set-Off

FPL may at any time, but shall be under no obligation to, set off any and all sums due from the QS against sums due to the QS hereunder.

## 18.17 Assistance With FPL's evaluation of FIN 46R

Accounting rules set forth in Financial Accounting Standards Board Interpretation No. 46 (Revised December 2003) ("FIN 46R"), as well as future amendments and interpretations of those rules, may require FPL to evaluate whether the QS must be consolidated, as a variable interest entity (as defined in FIN 46R), in the consolidated financial statements of FPL. The QS agrees to fully cooperate with FPL and make available to FPL all financial data and other information, as deemed necessary by FPL, to perform that evaluation on a timely basis at inception of the PPA and periodically as required by FIN 46R. If the result of an evaluation under FIN 46R indicates that the QS must be consolidated in the financial statements of FPL, the QS agrees to provide financial statements, together with other required information, as determined by FPL, for inclusion in disclosures contained in the footnotes to the financial statements and in FPL's required filings with the Securities and Exchange Commission ("SEC"). The QS shall provide this information to FPL in a timeframe consistent with FPL's earnings release and SEC filing schedules, to be determined at FPL's discretion. The QS also agrees to fully cooperate with FPL and FPL's independent auditors in completing an assessment of the QS's internal controls as required by the Sarbanes-Oxley Act of 2002 and in performing any audit procedures necessary for the independent auditors to issue their opinion on the consolidated financial statements of FPL. FPL will treat any information provided by the QS in satisfying Section 18.17 as confidential information and shall only disclose such information to the extent required by accounting and SEC rules and any applicable laws.

IN WITNESS WHEREOF, the QS and FPL executed this Contract this \_\_\_\_\_ day of \_\_\_\_\_.

WITNESS:

FLORIDA POWER &amp; LIGHT COMPANY

\_\_\_\_\_  
Date

WITNESS:

\_\_\_\_\_  
(QS)\_\_\_\_\_  
Date



## RATE SCHEDULE QS-2

## APPENDIX A

TO THE STANDARD OFFER CONTRACT  
STANDARD RATE FOR PURCHASE OF FIRM CAPACITY AND ENERGY  
FROM A RENEWABLE ENERGY FACILITY

OR A QUALIFYING FACILITY WITH A DESIGN CAPACITY OF 100 KW OR LESS (2014 Avoided Unit)

SCHEDULE

QS-2, Firm Capacity and Energy

AVAILABLE

The Company will, under the provisions of this Schedule and the Company's "Standard Offer Contract for the Purchase of Firm Capacity and Energy from a Renewable Energy Facility or a Qualifying Facility with a design capacity of 100 KW or less (2014 Avoided Unit)" ("Standard Offer Contract"), purchase firm capacity and energy offered by a Renewable Energy Facility specified in Section 366.91, Florida Statutes or by a Qualifying Facility with a design capacity of 100 KW or less as specified in FPSC Rule 25-17-0832(4) and which is either directly or indirectly interconnected with the Company. Both of these types of facilities shall also be referred to herein as Qualified Seller or "QS".

The Company will petition the FPSC for closure upon any of the following as related to the generating unit upon which this standard offer contract is based i.e. the Avoided Unit : (a) a request for proposals (RFP) pursuant to Rule 25-22.082, F.A.C., is issued, (b) the Company files a petition for a need determination or commences construction of the Avoided Unit when the generating unit is not subject to Rule 25-22.082, F.A.C., or (c) the generating unit upon which the standard offer contract is based is no longer part of the utility's generation plan, as evidenced by a petition to that effect filed with the Commission or by the utility's most recent Ten Year Site Plan.

APPLICABLE

To Renewable Energy Facilities as specified in Section 366.91, Florida Statutes producing capacity and energy from qualified renewable resources for sale to the Company on a firm basis pursuant to the terms and conditions of this schedule and the Company's "Standard Offer Contract". Firm Renewable Capacity and Renewable Energy are capacity and energy produced and sold by a QS pursuant to the Standard Offer Contract provisions addressing (among other things) quantity, time and reliability of delivery.

To Qualifying Facilities ("QF"), with a design capacity of 100 KW or less, as specified in FPSC Rule 25-17.0832(4)(a) producing capacity and energy for sale to the Company on a firm basis pursuant to the terms and conditions of this schedule and the Company's "Standard Offer Contract", Firm Capacity and Energy are described by FPSC Rule 25-17.0832, F.A.C., and are capacity and energy produced and sold by a QF pursuant to the Standard Offer Contract provisions addressing (among other things) quantity, time and reliability of delivery.

CHARACTER OF SERVICE

Purchases within the territory served by the Company shall be, at the option of the Company, single or three phase, 60 hertz alternating current at any available standard Company voltage. Purchases from outside the territory served by the Company shall be three phase, 60 hertz alternating current at the voltage level available at the interchange point between the Company and the entity delivering the Firm Energy and Capacity from the QS.

LIMITATION

Purchases under this schedule are subject to Section 366.91, Florida Statutes and/or FPSC Rules 25-17.0832 through 25-17.091, F.A.C., and 25-17.200 through 25-17.310 F.A.C and are limited to those Facilities which:

- A. Commit to commence deliveries of firm capacity and energy no later than June 1, 2014, and to continue such deliveries for a period of at least 10 years up to a maximum of the life of the avoided unit;
- B. Are not currently under contract with the Company or with any other entity for the Facility's output for the period specified above

(Continued on Sheet No. 10.301)

(Continued from Sheet No. 10.300)

**RATES FOR PURCHASES BY THE COMPANY**

Firm Capacity and Energy are purchased at a unit cost, in dollars per kilowatt per month and cents per kilowatt-hour, respectively, based on the value of deferring additional capacity required by the Company. For the purpose of this Schedule, an Avoided Unit has been designated by the Company. The Company's Avoided Unit has been identified as a 1219 MW combined cycle unit with an in-service date of June 1, 2014. Appendix I to this Schedule describes the methodology used to calculate payment schedules, applicable to the Company's Standard Offer Contract filed and approved pursuant to Section 366.91, Florida Statutes and to FPSC Rules 25-17.082 through 25-17.091, F.A.C and 25-17.200 through 25-17.310, F.A.C.

**A. Firm Capacity Rates**

Options A through E are available for payment of firm capacity which is produced by a QS and delivered to the Company. Once selected, an option shall remain in effect for the term of the Standard Offer Contract with the Company. A payment schedule, for the normal payment option as shown below, contains the monthly rate per kilowatt of Firm Capacity which the QS has contractually committed to deliver to the Company and is based on a contract term which extends ten (10) years beyond June 1, 2014. Payment schedules for other contract terms, as specified in Appendix E, will be made available to any QS upon request and may be calculated based upon the methodologies described in Appendix I. The currently approved parameters used to calculate the following schedule of payments are found in Appendix II to this Schedule.

**Adjustment to Capacity Payment**

The firm capacity rates will be adjusted to reflect the impact that the location of the QS will have on FPL system reliability due to constraints imposed on the operation of FPL transmission tie lines.

Appendix III shows, for illustration purposes, the factors that would be used to adjust the firm capacity rate for different geographical areas. The actual adjustment would be determined on a case-by-case basis. The amount of such adjustment, as well as a binding contract rate for firm capacity, shall be provided to the QS within sixty days of FPL execution of the signed Standard Offer Contract.

**Option A - Fixed Value of Deferral Payments - Normal Capacity**

Payment schedules under this option are based on the value of a year-by-year deferral of the Company's Avoided Unit with an in-service date of June 1, 2014, as described in Appendix I. Once this option is selected, the current schedule of payments shall remain fixed and in effect throughout the term of the Standard Offer Contract.

EXAMPLE MONTHLY CAPACITY PAYMENT IN \$/KW/MONTH  
2014 COMBINED CYCLE AVOIDED UNIT (1219 MW)  
STANDARD OFFER CONTRACT AVOIDED CAPACITY PAYMENTS  
FOR A CONTRACT TERM OF 10 YEARS  
(\$/KW/MONTH)

Contract Year		Normal Payment
From	To	Starting 06/01/2014
6/1/2014	5/31/2015	11.13
6/1/2015	5/31/2016	11.41
6/1/2016	5/31/2017	11.69
6/1/2017	5/31/2018	11.98
6/1/2018	5/31/2019	12.28
6/1/2019	5/31/2020	12.59
6/1/2020	5/31/2021	12.90
6/1/2021	5/31/2022	13.23
6/1/2022	5/31/2023	13.56
6/1/2023	5/31/2024	13.90

(Continued on Sheet No. 10.302)



(Continued from Sheet No. 10.301)

**Option B - Fixed Value of Deferral Payments - Early Capacity**

Payment schedules under this option are based upon the early capital cost component of the value of a year-by-year deferral of the Company's Avoided Unit provided; however, that under no circumstances may payments begin before the QS is delivering firm capacity and energy to the Company pursuant to the terms of the Standard Offer Contract. When this option is selected, the capacity payments shall be made monthly commencing no earlier than the Capacity Delivery Date of the QS and calculated using the methodology shown on Appendix I.

The QS shall select the month and year in which the deliveries of firm capacity and energy to the Company are to commence and capacity payments are to start. The Company will provide the QS with a schedule of capacity payment rates based on the month and year in which the deliveries of firm capacity and energy are to commence and the term of the Standard Offer Contract as specified in Appendix E.

**Option C - Fixed Value of Deferral Payment - Levelized Capacity**

Payment schedules under this option are based upon the levelized capital cost component of the value of a year-by-year deferral of the Company's Avoided Unit. The capital portion of capacity payments under this option shall consist of equal monthly payments over the term of the Standard Offer Contract, calculated as shown on Appendix I. The fixed operation and maintenance portion of the capacity payments shall be equal to the value of the year-by-year deferral of fixed operation and maintenance expense associated with the Company's Avoided Unit. The methodology used to calculate this option is shown in Appendix I. The Company will provide the QS with a schedule of capacity payment rates based on the month and year in which the deliveries of firm capacity and energy are to commence and the term of the Standard Offer Contract as specified in Appendix E.

**Option D - Fixed Value of Deferral Payment - Early Levelized Capacity**

Payment schedules under this option are based upon the early levelized capital cost component of the value of a year-by-year deferral of the Company's Avoided Unit. The capital portion of the capacity payments under this option shall consist of equal monthly payments over the term of the Standard Offer Contract, calculated as shown on Appendix I. The fixed operation and maintenance expense shall be calculated as shown in Appendix I. At the option of the QS, payments for early levelized capacity shall commence at any time before the anticipated in-service date of the Company's Avoided Unit as specified in Appendix E, provided that the QS is delivering firm capacity and energy to the Company pursuant to the terms of the Standard Offer Contract. The Company will provide the QS with a schedule of capacity payment rates based on the month and year in which the deliveries of firm capacity and energy are to commence and the term of the Standard Offer Contract as specified in Appendix E.

**Option E - Flexible Payment Option**

Payment schedules under this option are based upon a payment stream elected by the QS consisting of the capital component of the Company's avoided unit. Payments can commence at any time after the actual in-service date of the QS and before the anticipated in-service date of the utility's avoided unit, as specified in Appendix E, provided that the QS is delivering firm capacity and energy to the Company pursuant to the terms of the Standard Offer Contract. Regardless of the payment stream elected by the QS, the cumulative present value of capital cost payments made to the QS over the term of the contract shall not exceed the cumulative present value of the capital cost payments which would have been made to the QS had such payments been made pursuant to FPSC Rule 25-17.0832(4)(g)1, F.A.C. Fixed operation and maintenance expense shall be calculated in conformance with Rule 25-17.0832(6), F.A.C. The Company will provide the QS with a schedule of capacity payment rates based on the information specified in Appendix E.

(Continued on Sheet No. 10.303)

(Continued from Sheet No. 10.302)

**B. Energy Rates****(1) Payments Associated with As-Available Energy Costs prior to the In-Service Date of the Avoided Unit.**

Options A or B are available for payment of energy which is produced by the QS and delivered to the Company prior to the in-service date of the Avoided Unit. The QS shall indicate its selection in Appendix E. Once selected; an option shall remain in effect for the term of the Standard Offer Contract with the Company.

**Option A – Energy Payments based on Actual Energy Costs**

The energy rate, in cents per kilowatt-hour ( $\text{\$/KWh}$ ), shall be based on the Company's actual hourly avoided energy costs which are calculated by the Company in accordance with FPSC Rule 25-17.0825, F.A.C. Avoided energy costs include incremental fuel, identifiable operation and maintenance expenses, and an adjustment for line losses reflecting delivery voltage. The calculation of the Company's avoided energy costs reflects the delivery of energy from the region of the Company in which the Delivery Point of the QS is located. When economy transactions take place, the incremental costs are calculated as described in FPL's Rate Schedule COG-1.

The calculation of payments to the QS shall be based on the sum, over all hours of the billing period, of the product of each hour's avoided energy cost times the purchases of energy from the QS by the Company for that hour. All purchases of energy shall be adjusted for losses from the point of metering to the Delivery Point.

**Option B – Energy Payments based on the year by year projection of As-Available energy costs**

The energy rate, in cents per kilowatt-hour ( $\text{\$/KWh}$ ), shall be based on the Company's year by year projection of system incremental fuel costs, prior to hourly economy sales to other utilities, based on normal weather and fuel market conditions (annual As-Available Energy Cost Projection which are calculated by the Company in accordance with FPSC Rule 25-17.0825, F.A.C. and with FPSC Rule 25-17.250(6) (a) F.A.C.) plus a fuel market volatility risk premium mutually agreed upon by the utility and the QS. Prior to the start of each applicable calendar year, the Company and the QS shall mutually agree on the fuel market volatility risk premium for the following calendar year, normally no later than November 15. The Company will provide its projection of the applicable annual As-Available Energy Cost prior to the start of the calendar year, normally no later than November 15 of each applicable calendar year. In addition to the applicable As-Available Energy Cost projection the energy payment will include identifiable operation and maintenance expenses, an adjustment for line losses reflecting delivery voltage and a factor that reflects in the calculation of the Company's Avoided Energy Costs the delivery of energy from the region of the Company in which the Delivery Point of the QS is located.

The calculation of payments to the QS shall be based on the sum, over all hours of the billing period, of the product of each hour's applicable Projected Avoided Energy Cost times the purchases of energy from the QS by the Company for that hour. All purchases of energy shall be adjusted for losses from the point of metering to the Delivery Point.

**(2) Payments Associated with Applicable Avoided Energy Costs after the In-Service Date of the Avoided Unit.**

Option C is available for payment of energy which is produced by the QS and delivered to the Company after the in-service date of the avoided unit. In addition, Option D is available to the QS which elects to fix a portion of the firm energy payment. The QS shall indicate its selection of Option D in Appendix E, once selected, Option D shall remain in effect for the term of the Standard Offer Contract.

**Option C- Energy Payments based on Actual Energy Costs starting on June 1, 2014**

The calculation of payments to the QS for energy delivered to FPL on and after June 1, 2014 shall be the sum, over all hours of the Monthly Billing Period, of the product of (a) each hour's firm energy rate ( $\text{\$/KWh}$ ); and (b) the amount of energy (KWH) delivered to FPL from the Facility during that hour.

(Continued on Sheet No. 10.304)

(Continued from Sheet No. 10.303)

For any Dispatch Hour the firm energy rate shall be, on an hour-by-hour basis, the Company's Avoided Unit Energy Cost. For any other period during which energy is delivered by the QS to FPL, the firm energy rate in cents per kilowatt hour (¢/KWh) shall be the following on an hour-by-hour basis: the lesser of (a) the as-available energy rate calculated by FPL in accordance with FPSC Rule 25-17.0825, FAC, and FPL's Rate Schedule COG-1, as they may each be amended from time to time and (b) the Company's Avoided Unit Energy Cost. The Company's Avoided Unit Energy Cost, in cents per kilowatt-hour (¢/KWh) shall be defined as the product of: (a) the fuel price in \$/mmBTU as determined from gas prices published in Platts Inside FERC Gas Market Report, first of the month posting for Florida Gas Transmission Zone 3, plus all charges, surcharges and percentages that are in effect from time to time for service under Gulfstream Natural Gas System's Rate Schedule FTS; and (b) an average annual heat rate of 6,582 BTU per kilowatt hour; plus (c) an additional .121¢ per kilowatt hour in mid 2014 dollars for variable operation and maintenance expenses which will be escalated based on the actual Producer Price Index. All energy purchases shall be adjusted for losses from the point of metering to the Delivery Point. The calculation of the Company's avoided energy cost reflects the delivery of energy from the geographical area of the Company in which the Delivery Point of the QS is located.

Option D- Fixed Firm Energy Payments Starting as early as the In-Service Date of the QS Facility

The calculation of payments to the QS for energy delivered to FPL may include an adjustment at the election of the QS in order to implement the provisions of Rule 25-17.250 (6) (b), F.A.C. Subsequent to the determination of full avoided cost and subject to the provisions of Rule 25-17.0832(3) (a) through (d), F.A.C., a portion of the base energy costs associated with the avoided unit, mutually agreed upon by the utility and renewable energy generator, shall be fixed and amortized on a present value basis over the term of the contract starting, at the election of the QS, as early as the in-service date of the QS. "Base energy costs associated with the avoided unit" means the energy costs of the avoided unit to the extent the unit would have operated. The portion of the base energy costs mutually agreed to by the Company and the QS shall be specified in Appendix E. The Company will provide the QS with a schedule of "Fixed Energy Payments" over the term of the Standard Offer Contract based on the applicable information specified in Appendix E.

**ESTIMATED AS-AVAILABLE ENERGY COST**

For informational purposes only, the estimated incremental avoided energy costs for the next seven annual periods are as follows. In addition, avoided energy cost payments will include .0012¢/KWh for variable operation and maintenance expenses.

<u>Applicable Period</u>	<u>On-Peak ¢/KWH</u>	<u>Off-Peak ¢/KWH</u>	<u>Average ¢/KWH</u>
2008	10.27	9.76	9.91
2009	9.83	9.15	9.35
2010	10.02	9.36	9.55
2011	7.80	7.32	7.46
2012	7.96	7.44	7.59
2013	7.45	7.01	7.14
2014	7.84	7.40	7.53

A MW block size ranging from 58 MW to 65 MW has been used to calculate the estimated As-Available energy cost.

**ESTIMATED UNIT FUEL COST**

The estimated unit fuel costs listed below are associated with the Company's Avoided Unit and are based on current estimates of the price of natural gas.

<u>\$/MMBTU</u>									
<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>
9.72	10.02	10.41	10.81	11.20	11.59	11.84	12.30	12.79	13.30

(Continued on Sheet No. 10.305)

(Continued from Sheet No. 10.304)

**DELIVERY VOLTAGE ADJUSTMENT**

Energy payments to a QS within the Company's service territory shall be adjusted according to the delivery voltage by the following multipliers:

<u>Delivery Voltage</u>	<u>Adjustment Factor</u>
Transmission Voltage Delivery	1.0000
Primary Voltage Delivery	1.0214
Secondary Voltage Delivery	1.0472

**PERFORMANCE CRITERIA**

Payments for Firm Capacity are conditioned on the QS's ability to maintain the following performance criteria:

**A. Capacity Delivery Date**

The Capacity Delivery Date shall be no later than the projected in-service date of the Company's Avoided Unit (i.e., June 1, 2014).

**B. Availability and Capacity Factor**

The Facility's availability and capacity factor are used in the determination of firm capacity payments through a performance based calculation as detailed in Appendix B to the Company's Standard Offer Contract.

**METERING REQUIREMENTS**

A QS within the territory served by the Company shall be required to purchase from the Company hourly recording meters to measure their energy deliveries to the Company. Energy purchases from a QS outside the territory of the Company shall be measured as the quantities scheduled for interchange to the Company by the entity delivering Firm Capacity and Renewable Energy to the Company.

For the purpose of this Schedule, the on-peak hours shall be those hours occurring April 1 through October 31 Mondays through Fridays, from 12 noon to 9:00 pm. excluding Memorial Day, Independence Day and Labor Day; and November 1 through March 31 Mondays through Fridays from 6:00 a.m. to 10:00 a.m. and 6:00 p.m. to 10:00 p.m. prevailing Eastern time excluding Thanksgiving Day, Christmas Day, and New Years Day.. FPL shall have the right to change such On-Peak Hours by providing the QS a minimum of thirty calendar days' advance written notice.

**BILLING OPTIONS**

A QS, upon entering into a Standard Offer Contract for the sale of firm capacity and energy or prior to delivery of as-available energy, may elect to make either simultaneous purchases from and sales to the Company, or net sales to the Company; provided, however, that no such arrangement shall cause the QS to sell more than the Facility's net output. A decision on billing methods may only be changed: 1) when a QS selling as-available energy enters into a Standard Offer Contract for the sale of firm capacity and energy; 2) when a Standard Offer Contract expires or is lawfully terminated by either the QS or the Company; 3) when the QS is selling as-available energy and has not changed billing methods within the last twelve months; 4) when the election to change billing methods will not contravene this Tariff or the contract between the QS and the Company.

If a QS elects to change billing methods, such changes shall be subject to the following: 1) upon at least thirty days advance written notice to the Company; 2) the installation by the Company of any additional metering equipment reasonably required to effect the change in billing and upon payment by the QS for such metering equipment and its installation; and 3) upon completion and approval by the Company of any alteration(s) to the interconnection reasonably required to effect the change in billing and upon payment by the QS for such alteration(s).

Payments due a QS will be made monthly and normally by the twentieth business day following the end of the billing period. The kilowatt-hours sold by the QS and the applicable avoided energy rates at which payments are being made shall accompany the payment to the QS.

A statement covering the charges and payments due the QS is rendered monthly, and payment normally is made by the twentieth business day following the end of the billing period.

(Continued on Sheet No. 10.306)

(Continued from Sheet No. 10.305)

**CHARGES TO ENERGY FACILITY**

The QS shall be responsible for all applicable charges as currently approved or as they may be approved by the Florida Public Service Commission, including, but not limited to:

**A. Customer Charges:**

<u>Rate Schedule</u>	<u>Customer Charge (\$)</u>	<u>Rate Schedule</u>	<u>Customer Charge (\$)</u>
GS-1	8.51	CST-1	104.04
GST-1	11.64	GSLD-2	160.77
GSD-1	33.10	GSLDT-2	160.77
GSDT-1	39.24	CS-2	160.77
RS-1	5.34	CST-2	160.77
RST-1	8.47	GSLD-3	378.28
GSLD-1	38.78	CS-3	378.28
GSLDT-1	38.78	CST-3	378.28
CS-1	104.04	GSLDT-3	378.28

**B. Interconnection Charge for Non-Variable Utility Expenses**

The QS shall bear the cost required for interconnection, including the metering. The QS shall have the option of (i) payment in full for the interconnection costs including the time value of money during the construction of the interconnection facilities and providing a Bond, Letter of Credit or comparable assurance of payment acceptable to the Company adequate to cover the interconnection cost estimates, (ii) payment of monthly invoices from the Company for actual costs progressively incurred by the Company in installing the interconnection facilities, or (iii) upon a showing of credit worthiness, making equal monthly installment payments over a period no longer than thirty-six (36) months toward the full cost of interconnection. In the latter case, the Company shall assess interest at the rate then prevailing for thirty (30) day highest grade commercial paper, such rate to be specified by the Company thirty (30) days prior to the date of each installment payment by the QS.

**C. Interconnection Charge for Variable Utility Expenses**

The QS shall be billed monthly for the variable utility expenses associated with the operation and maintenance of the interconnection facilities. These include (a) the Company's inspections of the interconnection facilities and (b) maintenance of any equipment beyond that which would be required to provide normal electric service to the QS if no sales to the Company were involved.

In lieu of payment for actual charges, the QS may pay a monthly charge equal to a percentage of the installed cost of the interconnection facilities. The applicable percentages are as follows:

<u>Equipment Type</u>	<u>Charge</u>
Metering Equipment	0.193%
Distribution Equipment	0.262%
Transmission Equipment	0.123%

**D. Taxes and Assessments**

In the event that FPL becomes liable for additional taxes, including interest and/or penalties arising from an Internal Revenue Service's determination, through audit, ruling or other authority, that FPL's payments to the QS for capacity under options B, C, D, E or for energy pursuant to the Fixed Firm Energy Payment Option D are not fully deductible when paid (additional tax liability), FPL may bill the QS 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. FPL, at its option, may offset these costs against amounts due the QS hereunder. These costs would be calculated so as to place FPL in the same economic position in which it would have been if the entire early, leveled or early leveled capacity payments or the Fixed Firm Energy Payment had been deductible in the period in which the payments were made. If FPL 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 FPL.

(Continued on Sheet No. 10.307)

(Continued from Sheet No. 10.306)

TERMS OF SERVICE

- (1) It shall be the QS's responsibility to inform the Company of any change in its electric generation capability.
- (2) Any electric service delivered by the Company to a QS located in the Company's service area shall be subject to the following terms and conditions:
  - (a) A QS shall be metered separately and billed under the applicable retail rate schedule(s), whose terms and conditions shall pertain.
  - (b) A security deposit will be required in accordance with FPSC Rules 25-17.082(5) and 25-6.097, F.A.C., and the following:
    - (i) In the first year of operation, the security deposit should be based upon the singular month in which the QS's projected purchases from the Company exceed, by the greatest amount, the Company's estimated purchases from the QS. The security deposit should be equal to twice the amount of the difference estimated for that month. *The deposit is required upon interconnection.*
    - (ii) For each year thereafter, a review of the actual sales and purchases between the QS and the Company will be conducted to determine the actual month of maximum difference. The security deposit should be adjusted to equal twice the greatest amount by which the actual monthly purchases by the QS exceed the actual sales to the Company in that month.
  - (c) The Company shall specify the point of interconnection and voltage level.
  - (d) The QS must enter into an interconnection agreement with the Company which will, among other things, specify safety and reliability standards for the interconnection to the Company's system. In most instances, the Company's filed Interconnection Agreement for Qualifying Facilities will be used; however, special features of the QS or its interconnection to the Company's facilities may require modifications to this Interconnection Agreement or the safety and reliability standards contained therein.
- (3) Service under this rate schedule is subject to the rules and regulations of the Company and the Florida Public Service Commission.

SPECIAL PROVISIONS

- (1) Special contracts deviating from the above standard rate schedule are allowable provided the Company agrees to them and they are approved by the Florida Public Service Commission.

APPENDIX I  
TO RATE SCHEDULE QS-2  
CALCULATION OF VALUE OF DEFERRAL PAYMENTS

**APPLICABILITY**

Appendix I provides a detailed description of the methodology used by the Company to calculate the monthly values of deferring or avoiding the Company's Avoided Unit identified in Schedule QS-2. When used in conjunction with the current FPSC-approved cost parameters associated with the Company's Avoided Unit contained in Appendix II, a QS may determine the applicable value of deferral capacity payment rate associated with the timing and operation of its particular facility should the QS enter into a Standard Offer Contract with the Company.

**CALCULATION OF VALUE OF DEFERRAL OPTION A**

FPSC Rule 25-17.0832(5) specifies that avoided capacity costs, in dollars per kilowatt per month, associated with capacity sold to a utility by a QS pursuant to the Company's Standard Offer Contract shall be defined as the year-by-year value of deferral of the Company's Avoided Unit. The year-by-year value of deferral shall be the difference in revenue requirements associated with deferring the Company's Avoided Unit one year, and shall be calculated as follows:

Where, for a one year deferral:

$VAC_m$	=	utility's monthly value of avoided capacity and O & M, in dollars per kilowatt per month, for each month of year n;
$K$	=	present value of carrying charges for one dollar of investment over $L$ years with carrying charges computed using average annual rate base and assumed to be paid at the middle of each year and present valued to the middle of the first year;
$R$	=	$(1 + ip) / (1 + r)$ ;
$I_n$	=	total direct and indirect cost, in mid-year dollars per kilowatt including AFUDC but excluding CWIP, of the Company's Avoided Unit with an in-service date of year n, including all identifiable and quantifiable costs relating to the construction of the Company's Avoided Unit which would have been paid had the Unit been constructed;
$O_n$	=	total fixed operation and maintenance expense for the year n, in mid-year dollars per kilowatt per year, of the Company's Avoided Unit;
$i_p$	=	annual escalation rate associated with the plant cost of the Company's Avoided Unit(s);
$i_o$	=	annual escalation rate associated with the operation and maintenance expense of the Company's Avoided Unit(s);
$r$	=	annual discount rate, defined as the utility's incremental after-tax cost of capital;
$L$	=	expected life of the Company's Avoided Unit(s); and
$n$	=	year for which the Company's Avoided Unit(s) is (are) deferred starting with its (their) original anticipated in-service date(s) and ending with the termination of the Company's Standard Offer Contract.

(Continued on Sheet No. 10.309)

(Continued from Sheet No. 10.308)

CALCULATION OF FIXED VALUE OF DEFERRAL PAYMENTS – EARLY CAPACITY–OPTION B

Normally, payments for firm capacity shall not commence until the in-service date of the Company's Avoided Unit(s). At the option of the QS, however, the Company may begin making payments for early capacity consisting of the capital cost component of the value of a year-by-year deferral of the Company's Avoided Unit starting as early as the in-service date of the QS facility. When such payments for early capacity are elected, the avoided capital cost component of capacity payments shall be paid monthly commencing no earlier than the Capacity Delivery Date of the QS, and shall be calculated as

$$A_m = A_c \frac{(1 + i_p)^{(m-1)}}{12} + A_o \frac{(1 + i_o)^{(m-1)}}{12} \text{ for } m = 1 \text{ to } t$$

follows:

Where:

- $A_m$  = monthly payments to be made to the QS for each month of the contract year  $n$ , in dollars per kilowatt per month in which QS delivers capacity pursuant to the early capacity option;
- $i_p$  = annual escalation rate associated with the plant cost of the Company's Avoided Unit(s);
- $i_o$  = annual escalation rate associated with the operation and maintenance expense of the Company's Avoided Unit(s);
- $m$  = year for which the fixed value of deferral payments under the early capacity option are made to a QS, starting in year one and ending in the year  $t$ ;
- $t$  = the term, in years, of the Standard Offer Contract;

$$A_c = F [ (1 - R) / (1 - R^t) ]$$

Where:

- $F$  = the cumulative present value, in the year that the contractual payments will begin, of the avoided capital cost component of capacity payments which would have been made had capacity payments commenced with the anticipated inservice date of the Company's Avoided Unit(s);
- $R$  =  $(1 + i_p) / (1 + r)$
- $r$  = annual discount rate, defined as the Company's incremental after-tax cost of capital; and

$$A_o = G [ (1 - R) / (1 - R^t) ]$$

Where:

- $G$  = The cumulative present value, in the year that the contractual payments will begin, of the avoided fixed operation and maintenance expense component of capacity payments which would have been made had capacity payments commenced with the anticipated in-service date of the Company's Avoided Unit(s).
- $R$  =  $(1 + i_o) / (1 + r)$

The currently approved parameters applicable to the formulas above are found in Appendix II.

(Continued on Sheet No. 10.310)



(Continued from Sheet No. 10.309)

CALCULATION OF FIXED VALUE OF DEFERRAL PAYMENTS – LEVELIZED AND EARLY LEVELIZED CAPACITY –  
OPTION C & OPTION D, RESPECTIVELY

Monthly fixed value of deferral payments for levelized and early levelized capacity shall be calculated as follows:

$$P_L = \frac{F}{12} \times \frac{r}{1 - (1 + r)^{-t}} + O$$

Where:

- $P_L$  = the monthly levelized capacity payment, starting on or prior to the in-service date of the Company's Avoided Unit(s);
- $F$  = the cumulative present value, in the year that the contractual payments will begin, of the avoided capital cost component of the capacity payments which would have been made had the capacity payments not been levelized;
- $r$  = the annual discount rate, defined as the Company's incremental after-tax cost of capital;
- $t$  = the term, in years, of the Standard Offer Contract;
- $O$  = the monthly fixed operation and maintenance component of the capacity payments, calculated in accordance with calculation of the fixed value of deferral payments for the levelized capacity or the early levelized capacity options.

**APPENDIX II  
TO RATE SCHEDULE QS-2  
CAPACITY OPTION PARAMETERS**

**FIXED VALUE OF DEFERRAL PAYMENTS - NORMAL CAPACITY OPTION PARAMETERS**

Where, for a one year deferral:		<u>Value</u>
$VAC_m$	= Company's value of avoided capacity and O&M, in dollars per kilowatt per month, during month m;	\$11.13
$K$	= present value of carrying charges for one dollar of investment over L years with carrying charges computed using average annual rate base and assumed to be paid at the middle of each year and present valued to the middle of the first year;	1.5135
$I_n$	= total direct and indirect cost, in mid-year dollars per kilowatt including AFUDC but excluding CWIP, of the Company's Avoided Unit with an in-service date of year n;	\$1,105.10
$O_n$	= total fixed operation and maintenance expense, for the year n, in mid-year dollars per kilowatt per year, of the Company's Avoided Unit;	\$15.10
$i_p$	= annual escalation rate associated with the plant cost of the Company's Avoided Unit;	2.5%
$i_o$	= annual escalation rate associated with the operation and maintenance expense of the Company's Avoided Unit;	2.5%
$r$	= annual discount rate, defined as the Company's incremental after-tax cost of capital;	8.35%
$L$	= expected life of the Company's Avoided Unit;	25
$n$	= year for which the Company's Avoided Unit is deferred starting with its original anticipated in-service date and ending with the termination of the Standard Offer Contract.	2014

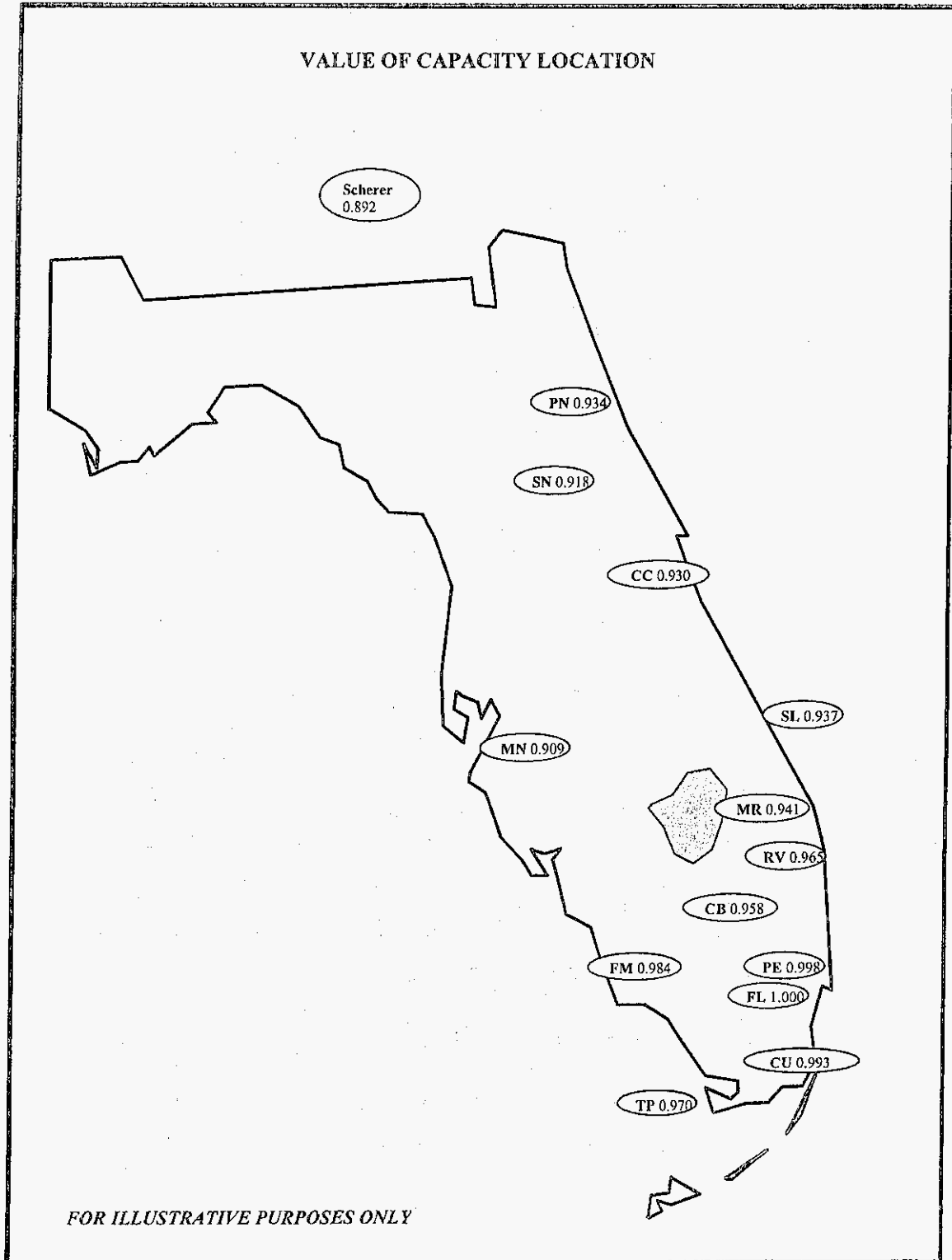
**FIXED VALUE OF DEFERRAL PAYMENTS - EARLY CAPACITY OPTION PARAMETERS**

$\Lambda_m$	= monthly capacity payments to be made to the QS starting on the year the QS elects to start receiving early capacity payments, in dollars per kilowatt per month;	*
$i_p$	= annual escalation rate associated with the plant cost of the Company's Avoided Unit;	2.5%
$i_o$	= annual escalation rate associated with the operation and maintenance expense of the Company's Avoided Unit;	2.5%
$n$	= year for which early capacity payments to a QS are to begin; (at the election of the QS early capacity payments may commence anytime after the actual in-service date of the QS facility and before the anticipated in-service date of the Company's avoided unit)	*
$F$	= the cumulative present value of the avoided capital cost component of capacity payments which would have been made had capacity payments commenced with the anticipated in-service date of the Company's Avoided Unit and continued for a period of 10 years;	\$934.53
$r$	= annual discount rate, defined as the Company's incremental after-tax cost of capital;	8.35%
$t$	= the term, in years, of the Standard Offer Contract for the purchase of firm capacity commencing in the year the QS elects to start receiving early capacity payments prior to the in-service date of the Company's Avoided Unit;	*
$G$	= the cumulative present value of the avoided fixed operation and maintenance expense component of capacity payments which would have been made had capacity payments commenced with the anticipated in-service date of the Company's Avoided Unit and continued for a period of 10 years.	\$119.12

\*From Appendix E

APPENDIX III TO RATE SCHEDULE QS - 2

VALUE OF CAPACITY LOCATION



APPENDIX B  
TO THE STANDARD OFFER CONTRACT  
FOR THE PURCHASE OF FIRM CAPACITY AND ENERGY  
FROM RENEWABLE ENERGY FACILITIES  
OR QUALIFYING FACILITIES WITH A DESIGN CAPACITY OF 100 KW OR LESS  
PAY FOR PERFORMANCE PROVISIONS MONTHLY CAPACITY PAYMENT CALCULATION

1. Monthly Capacity Payments (MCP) for each Monthly Billing Period shall be computed according to the following:

A. In the event that the Annual Capacity Billing Factor ("ACBF"), as defined below, is less than 80%, then no Monthly Capacity Payment shall be due. That is:

$$MCP = 0$$

B. In the event that the ACBF is equal to or greater than 80% but less than 97%, then the Monthly Capacity Payment shall be calculated by using the following formula:

$$MCP = BCP \times [.04 \times (ACBF - 72)] \times CC$$

C. In the event that the ACBF is equal to or greater than 97%, then the Monthly Capacity Payment shall be calculated by using the following formula:

$$MCP = BCP \times CC$$

Where:

MCP = Monthly Capacity Payment in dollars.

BCP = Base Capacity Payment in \$/KW/Month as specified in FPL's Rate Schedule QS-2.

CC = Committed Capacity in KW.

ACBF = Annual Capacity Billing Factor. This factor is calculated using the 12 months rolling average of the Monthly Capacity Factor. This 12 month rolling average shall be defined as the sum of the 12 consecutive Monthly Capacity Factors preceding the date of calculation, divided by 12. During the first 12 consecutive Monthly Billing Periods, commencing with the first Monthly Billing Period in which Capacity payments are to be made, the calculation of the Annual Capacity Billing Factor shall be performed as follows: (a) during the first Monthly Billing Period, the Annual Capacity Billing Factor shall be equal to the Monthly Capacity Factor; (b) thereafter, the calculation of the Annual Capacity Billing Factor shall be computed by dividing the sum of the Monthly Capacity Factors during the first year's Monthly Billing Periods in which Capacity payments are to be made by the number of Monthly Billing Periods which have elapsed. This calculation shall be performed at the end of each Monthly Billing Period until enough Monthly Billing Periods have elapsed to calculate a true 12-month rolling average Annual Capacity Billing Factor. Periods during which the Facility has temporarily set its Committed Capacity equal to 0 KW due to a Force Majeure event pursuant to Section 16 shall be excluded from the applicable capacity factor calculation.

MCF = Monthly Capacity Factor. The sum of (i) the Hourly Factors of the Non-Dispatch Hours plus (ii) the Hourly Factors of the Dispatch Hours or the hourly factors of the hours when FPL requested reduced deliveries pursuant to Section 8.4.8 (Reduced Delivery Hour); divided by the number of hours in the Monthly Billing Period.

HFNDH = Hourly Factor of a Non-Dispatch Hour. The energy received during the hour divided by the Committed Capacity. For purposes of calculating the Hourly Factor of a Non-Dispatch Hour the energy received shall not exceed the Committed Capacity.

HFDH = Hourly Factor of a Dispatch Hour or a Reduced Delivery Hour. The scheduled energy received divided by the scheduled energy requested. For purposes of calculating the Hourly Factor of a Dispatch Hour or the Hourly Factor of a Reduced Delivery Hour the scheduled energy received shall not exceed the scheduled energy requested.

On-Peak Hours = Those hours occurring April 1 through October 31 Mondays through Fridays, from 12 noon to 9:00 p.m. excluding Memorial Day, Independence Day and Labor Day; and November 1 through March 31 Mondays through Fridays from 6:00 a.m. to 10:00 a.m. and 6:00 p.m. to 10:00 p.m. prevailing Eastern time excluding Thanksgiving Day, Christmas Day and New Year's Day. FPL shall have the right to change such On-Peak Hours by providing the QS a minimum of thirty calendar days' advance notice.

Monthly Billing Period = 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 Period Date and ending with the last calendar day of such month.

Scheduled Energy and Dispatch Hours are as defined in Section 8.4.7 of the Standard Offer Contract

APPENDIX C  
TO THE STANDARD OFFER CONTRACT  
TERMINATION FEE

The Termination Fee shall be the sum of the values for each month beginning with the month in which the Capacity Delivery Date occurs through the month of termination (or month of calculation, as the case may be), computed according to the following formula:

**Termination Fee = Termination Fee applicable to Capacity Payment Option plus Termination Fee applicable to Fixed Firm Energy Option**

**Termination Fee applicable to Capacity Payment Options B, C, D and E**

$$\sum_{i=1}^n (MCP_i - MCP_C) \times t^{(n-i)}$$

with:  $MCP_C = 0$  for all periods prior to the in-service date of the Company's Avoided Unit;

where:

- $i$  = number of the Monthly Billing Period commencing with the Capacity Delivery Date (i.e., the month in which Capacity Delivery Date occurs = 1; the month following the month in which Capacity Delivery Date occurs = 2; etc.)
- $n$  = the number of Monthly Billing Periods which have elapsed from the month in which the Capacity Delivery Date occurs through the month of termination (or month of calculation, as the case may be)
- $t$  = the future value of an amount factor necessary to compound a sum monthly so the annual percentage rate derived will equal FPL's incremental after-tax avoided cost of capital (defined as  $r$  in QS-2). For any Monthly Billing Period in which  $MCP_i$  is greater than  $MCP_C$ ,  $t$  shall equal 1.
- $MCP_i$  = Monthly Capacity Payment paid to QS corresponding to the Monthly Billing Period  $i$ , calculated in accordance with Appendix B.
- $MCP_C$  = Monthly Capacity Payment for Option A corresponding to the Monthly Billing Period  $i$ , calculated in accordance with QS-2.

In the event that for any Monthly Billing Period, the computation of the value of the Capacity Payment Termination Fee for such Monthly Billing Period (as set forth above) yields a value equal to or greater than zero, the amount of the Capacity Payment Termination Fee shall be increased by the amount of such value.

In the event that for any Monthly Billing Period, the computation of the value of the Capacity Payment Termination Fee for such Monthly Billing Period (as set forth above) yields a value less than zero, the amount of the Capacity Payment Termination Fee shall be decreased by the amount of such value expressed as a positive number (the "Initial Reduction Value"); provided, however, that such Initial Reduction Value shall be subject to the following adjustments (the Initial Reduction Value, as adjusted, the "Reduction Value"):

- a. In the event that in the applicable Monthly Billing Period the Annual Capacity Billing Factor (ACBF), as defined in Appendix B is less than 80%, then the Initial Reduction Value shall be adjusted to equal zero (Reduction Value = 0), and the Capacity Payment Termination Fee shall not be reduced for the applicable Monthly Billing Period.
- b. In the event that in the applicable Monthly Billing Period the Annual Capacity Billing Factor (ACBF), as defined in Appendix B, is equal to or greater than 80% but less than 97%, then the Reduction Value shall be determined as follows:

$$\text{Reduction Value} = \text{Initial Reduction Value} \times [0.04 \times (\text{ACBF} - 72)]$$

For the applicable Monthly Billing Period, the Termination Fee shall be reduced by the amount of such Reduction Value.

In no event shall FPL be liable to the QS at any time for any amount by which the Capacity Payment Termination Fee, adjusted in accordance with the foregoing, is less than zero (0).

**Termination Fee applicable to the Fixed Firm Energy Payment Option D**

Prior to in-service date of avoided unit:

The Termination Fee for the Fixed Firm Energy Option shall be equal to the cumulative sum of the Fixed Firm Energy Payments made to the QS pursuant to Option D, starting with the in-service date of the QS facility, for each billing cycle. Such number shall reach the maximum amount on the billing cycle immediately preceding the billing cycle associated with the in-service date of the Avoided Unit.

After in-service date of avoided unit:

The Termination Fee shall be decreased each billing cycle following the in-service date of the avoided unit by an amount equal to the difference between the projected Fixed Energy Cost that was used in the calculation to determine the base energy cost to be fixed and amortized pursuant to Option D for such billing cycle and the amortized Fixed Firm Energy Payment in cents/KWH times the energy delivered by the QS not to exceed the MWH block specified in Appendix E

**APPENDIX D  
TO THE STANDARD OFFER CONTRACT  
DETAILED PROJECT INFORMATION**

Each eligible Contract received by FPL will be evaluated to determine if the underlying QS project is financially and technically viable. The QS shall, to the extent available, provide FPL with a detailed project proposal which addresses the information requested below.

**I. FACILITY DESCRIPTION**

- Project Name
- Project Location
  - ◆ Street Address
  - ◆ Site Plot Plan
  - ◆ Legal Description of Site
- Generating Technology
- Facility Classification ( include types from statute)
- Primary Fuel
- Alternate Fuel (if applicable)
- Committed Capacity
- Expected In-Service Date
- Steam Host (for cogeneration facilities)
  - ◆ Street Address
  - ◆ Legal Description of Steam Host
  - ◆ Host's annual steam requirements (lbs/yr)
- Contact Person
  - ◆ Individual's Name and Title
  - ◆ Company Name
  - ◆ Address
  - ◆ Telephone Number
  - ◆ Telecopy Number

**II. PROJECT PARTICIPANTS**

- Indicate the entities responsible for the following project management activities and provide a detailed description of the experience and capabilities of the entities:
  - ◆ Project Development
  - ◆ Siting and Licensing the Facility
  - ◆ Designing the Facility
  - ◆ Constructing the Facility
  - ◆ Securing the Fuel Supply
  - ◆ Operating the Facility
- Provide details on all electrical generation facilities which are currently under construction or operational which were developed by the QS.
- Describe the financing structure for the projects identified above, including the type of financing used, the permanent financing term, the major lenders, and the percentage of equity invested at financial closing.

(Continued on Sheet No. 10.316)

(Continued from Sheet No. 10.315)

**III. FUEL SUPPLY**

- Describe all fuels to be used to generate electricity at the Facility. Indicate the specific physical and chemical characteristics of each fuel type (e.g., Btu content, sulfur content, ash content, etc.). Identify special considerations regarding fuel supply origin, source and handling, storage and processing requirements.
- Provide annual fuel requirements (AFR) necessary to support the requirements pursuant to Section 366.91, Florida Statutes, and the planned levels of generation and list the assumptions used to determine these quantities.
- Provide a summary of the status of the fuel supply arrangements in place to meet the AFR in each year of the proposed operating life of the Facility. Use the categories below to describe the current arrangement for securing the AFR.

Category	Description of Fuel Supply Arrangement
owned =	fuel is from a fully developed source owned by one or more of the project participants
contract =	fully executed firm fuel contract exists between the developer(s) and fuel supplier(s)
LOI =	a letter of intent for the fuel supply exists between developer(s) and fuel supplier(s)
REF =	renewable energy facility will burn biomass, waste, or another renewable resource
spot =	fuel supply will be purchased on the spot market
none =	no firm fuel supply arrangement currently in place
other =	fuel supply arrangement which does not fit any of the above categories (please describe)

- Indicate the percentage of the Facility's AFR which is covered by the above fuel supply arrangement(s) for each proposed operating year. The percent of AFR covered for each operating year must total 100%. For fuel supply arrangements identified as owned, contract, or LOI, provide documentation to support this category and explain the fuel price mechanism of the arrangement. In addition, indicate whether or not the fuel price includes delivery and, if so, to what location.
- Describe fuel transportation networks available for delivering all primary and secondary fuel to the Facility site. Indicate the mode, route and distance of each segment of the journey, from fuel source to the Energy Facility site. Discuss the current status and pertinent factors impacting future availability of the transportation network.
- Provide annual fuel transportation requirements (AFTR) necessary to support planned levels of generation and list the assumptions used to determine these quantities.
- Provide a summary of the status of the fuel transportation arrangements in place to meet the AFTR in each year of the proposed operating life of the Energy Facility. Use the categories below to describe the current arrangement for securing the AFTR.

owned =	fuel transport via a fully developed system owned by one or more of the project participants
contract =	fully executed firm transportation contract exists between the developer(s) and fuel transporter(s)
LOI =	a letter of intent for fuel transport exists between developer(s) and fuel transporter(s)
Spot =	fuel transportation will be purchased on the spot market
none =	no firm fuel transportation arrangement currently in place
other =	fuel transportation arrangement which does not fit any of the above categories (please describe)

- Indicate the percentage of the Facility's AFR which is covered by the above fuel supply arrangement(s) for each proposed operating year. The percent of AFR covered for each operating year must total 100%. For fuel supply arrangements identified as owned, contract, or LOI, provide documentation to support this category and explain the transportation price mechanism of the arrangement.
- Provide the maximum, minimum, and average fuel inventory levels to be maintained for primary and secondary fuels at the Facility site. List the assumptions used in determining the inventory levels.

(Continued on Sheet No. 10.317)

(Continued from Sheet No. 10.316)

**IV. PLANT DISPATCHABILITY/CONTROLLABILITY**

- Provide the following operating characteristics and a detailed explanation supporting the performance capabilities indicated.
  - ◆ Ramp Rate (MW/minute)
  - ◆ Peak Capability (% above Committed Capacity)
  - ◆ Minimum power level (% of Committed Capacity)
  - ◆ Facility Turnaround Time, Hot to Hot (hours)
  - ◆ Start-up Time from Cold Shutdown (hours)
  - ◆ Unit Cycling (# cycles/yr)
  - ◆ MW and MVAR Control (AGC, Manual, Other (please explain))

**V. SITING AND LICENSING**

- Provide a licensing/permitting milestone schedule which lists all permits, licenses and variances required to site the Facility. The milestone schedule shall also identify key milestone dates for baseline monitoring, application preparation, agency review, certification and licensing/siting board approval, and agency permit issuance.
- Provide a licensing/permitting plan that addresses the issues of air emissions, water use, wastewater discharge, wetlands, endangered species, protected properties, solid waste, surrounding land use, zoning for the Facility, associated linear facilities, and support of and opposition to the Facility.
- List the emission/effluent discharge limits the Facility will meet, and describe in detail the pollution control equipment to be used to meet these limits.

**VI. FACILITY DEVELOPMENT AND PERFORMANCE**

- Submit a detailed engineering, procurement, construction, startup and commercial operation schedule. The schedule shall include milestones for site acquisition, engineering phases, selection of the major equipment vendors, architect engineer, EPC contractor, and Facility operator, steam host integration, and delivery of major equipment. A discussion of the current status of each milestone should also be included where applicable.
- Attach a diagram of the power block arrangement. Provide a list of the major equipment vendors and the name and model number of the major equipment to be installed.
- Provide a detailed description of the proposed environmental control technology for the Facility and describe the capabilities of the proposed technology.
- Attach preliminary flow diagrams for the steam system, water system, and fuel system, and a main electrical one line diagram for the Facility.
- State the expected heat rate (HHV) at 75 degrees Fahrenheit for loads of 100%, 75%, and 50%. In addition, attach a preliminary heat balance for the Facility.
- [NOTE: add any requirements related to demonstrating that the facility meets the requirements under the statute or applicable rules]

(Continued on Sheet No. 10.318)



(Continued from Sheet No. 10.317)

**VII. FINANCIAL**

- Provide FPL with assurances that the proposed QS project is financially viable consistent with FPSC Rule 25-17.0832(4) (c) by attaching a detailed pro-forma cash flow analysis. The pro-forma must include, at a minimum, the following assumptions for each year of the project.
  - ◆ Annual Project Revenues
    - Capacity Payments (\$ and \$/KW/Mo)
    - Variable O&M (\$ and \$/MWh)
    - Energy (\$ and \$/MWh)
    - Steam Revenues (\$ and %/lb.)
    - Tipping Fees (\$ and \$/ton)
    - Interest Income
    - Other Revenues
    - Variable O&M Escalation (%/yr)
    - Energy Escalation (%/yr)
    - Steam Escalation (%/yr)
    - Tipping Fee Escalation (%/yr)
  - ◆ Annual Project Expenses
    - Fixed O&M (\$ and \$/KW/Mo)
    - Variable O&M (\$ and \$/MWh)
    - Energy (\$ and \$/MWh)
    - Property Taxes (\$)
    - Insurance (\$)
    - Emission Compliance (\$ and \$/MWh)
    - Depreciation (\$ and %/yr)
    - Other Expenses (\$)
    - Fixed O&M Escalation (%/yr)
    - Variable O&M Escalation (%/yr)
    - Energy Escalation (%/yr)
  - ◆ Other Project Information
    - Installed Cost of the Energy Facility (\$ and \$/KW)
    - Committed Capacity (KW)
    - Average Heat Rate - HHV (MBTU/KWh)
    - Federal Income Tax Rate (%)
    - Facility Capacity Factor (%)
    - Energy Sold to FPL (MWH)
  - ◆ Permanent Financing
    - Permanent Financing Term (yrs)
    - Project Capital Structure (percentage of long-term debt, subordinated debt, tax exempt debt, and equity)
    - Financing Costs (cost of long-term debt, subordinated debt, tax exempt debt, and equity)
    - Annual Interest Expense
    - Annual Debt Service (\$)
    - Amortization Schedule (beginning balance, interest expense, principal reduction, ending balance)
- Provide details of the financing plan for the project and indicate whether the project will be non-recourse project financed. If it will not be project financed please explain the alternative financing arrangement.
- Submit financial statements for the last two years on the principals of the project, and provide an illustration of the project ownership structure.

APPENDIX E  
TO THE STANDARD OFFER CONTRACT  
CONTRACT OPTIONS TO BE SELECTED BY QS

Term of Contract

Execution date \_\_\_\_\_

Termination date \_\_\_\_\_

Firm Capacity Rates

Commencement date for deliveries of Firm Energy and Capacity \_\_\_\_\_

Capacity Payment Option Selected (from available Options A through E) \_\_\_\_\_

If Option E is selected proposed payment stream:

\_\_\_\_\_  
\_\_\_\_\_

Schedule of Capacity Payments to be provided by the Company based on applicable parameters follows:

<u>Year</u>	<u>\$/KW/Month</u>
-------------	--------------------

Energy Rates

Energy payment Options selected applicable to energy produced by the QS and delivered to the Company (from available Option A or B and D)

Select from Option A or B \_\_\_\_\_

And \_\_\_\_\_

Select D \_\_\_\_\_

If Option D is selected by the QS; the Company and the QS mutually agree on fixing and amortizing the following portion of the Base Energy Costs associated with the Avoided Unit

\_\_\_\_\_ % which yields \_\_\_\_\_ MWH

Projected Energy Cost of Energy Produced by Avoided Unit (provided by the Company):

<u>Year</u>	<u>Projected Fixed Energy Cost (in Cents/KWH or in Dollars)</u>
-------------	---

Based on the projections of Energy Costs Produced by the Avoided Unit and the mutually agreed upon Portion of the Base Energy Costs associated with the Avoided Unit the Fixed Energy Payment shall be \_\_\_\_\_ \$/MWH or \$ \_\_\_\_\_ (as applicable).

**FLORIDA PUBLIC SERVICE COMMISSION**

DOCKET NO. 080193-ED EXHIBIT 17

COMPANY FL Power + Light

WITNESS Sections 8.4.6 & 8.4.8 Questions

DATE 01/22/09

(Continued from Sheet No. 9.035)

8.4.6 After providing notice to the QS, FPL shall not be required to accept or purchase energy from the QS during any period in which, due to operational circumstances, acceptance or purchase of such energy would result in FPL's incurring costs greater than those which it would incur if it did not make such purchases. An example of such an occurrence would be a period during which the load being served is such that the generating units on line are base load units operating at their minimum continuous ratings and the purchase of additional energy would require taking a base load unit off the line and replacing the remaining load served by that unit with peaking-type generation. FPL shall give the QS as much prior notice as practicable of its intent not to accept energy pursuant to this Section.

8.4.7 If the Facility has a Committed Capacity less than 75 MW, control, scheduling and dispatch of capacity and energy shall be the responsibility of the QS. If the Facility has a Committed Capacity greater than or equal to 75 MW, control, scheduling and dispatch of capacity and energy shall be the responsibility of the QS, except during a "Dispatch Hour", i.e., any clock hour for which FPL requests the delivery of such capacity and energy. During any Dispatch Hour: i) control of the Facility will either be by Seller's manual control under the direction of FPL (whether orally or in writing) or by Automatic Generation Control by FPL's system control center as determined by FPL, and ii) FPL may request that the real power output be at any level up to the Committed Capacity of the Facility, provided, in no event shall FPL require the real power output of the Facility to be below the Facility's Minimum Load without decommitting the Facility. The Facility shall deliver the capacity and energy requested by FPL, within \_\_\_\_\_ minutes, taking into account the operating limitations of the generating equipment as specified by the manufacturer, provided such time period specified herein is considered reasonable by industry standards for the technology and equipment being utilized and assuming the Facility is operating at or above its Minimum Load. Start-up time from Cold Shutdown and Facility Turnaround time from Hot to Hot will be taken into consideration provided such are reasonable and consistent with good industry practices for the technology and equipment being utilized. The Facility's Operating Characteristics have been provided by the QS and are set forth in Appendix D, Section IV of Rate Schedule QS-2.

8.4.8 If the Facility has a Committed Capacity of less than 75 MW, FPL may require during certain periods, by oral, written, or electronic notification that the QS cause the Facility to reduce output to a level below the Committed Capacity but not lower than the Facility's Minimum Load. FPL shall provide as much notice as practicable, normally such notice will be of at least four (4) hours. The frequency of such request shall not exceed eighteen (18) times per calendar year and the duration of each request shall not exceed four (4) hours.

8.4.9 FPL's exercise of its rights under this Section 8 shall not give rise to any liability on the part of FPL, including any claim for breach of contract or for breach of any covenant of good faith and fair dealing.

## 9. Completion/Performance Security

9.1 As security for the achievement of the Capacity Delivery Date and satisfactory performance of its obligations hereunder, the QS shall provide FPL either: (a) an unconditional, irrevocable, standby letter of credit(s) with an expiration date no earlier than the end of the first (1st) anniversary of the Capacity Delivery Date (or the next business day thereafter), issued by a U.S. commercial bank or the U.S. branch of a foreign bank having a Credit Rating of A- or higher by S&P or A3 or higher by Moody's (a "Qualified Issuer"), in form and substance acceptable to FPL (including provisions (i) permitting partial and full draws and (ii) permitting FPL to draw in full if such letter of credit is not renewed or replaced as required by the terms hereof at least thirty (30) business days prior to its expiration date) ("Letter of Credit"); (b) a bond, issued by a financially sound Company and in a form and substance acceptable to FPL, ("Bond"); or (c) a cash collateral deposited with FPL ("Cash Collateral") (any of (a), (b), or (c), the "Completion/Performance Security"). Such Letter of Credit, Bond or Cash Collateral shall be provided in the amount and by the date listed below:

\$30.00 per KW (for the number of KW of Committed Capacity set forth in Section 5.1) to be delivered to FPL within thirty (30) calendar days of the execution of this Contract by the Parties hereto.

"Credit Rating" means with respect to any entity, on any date of determination, the respective ratings then assigned to such entity's unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P, Moody's or other specified rating agency or agencies or if such entity does not have a rating for its unsecured, senior long-term debt or deposit obligations, then the rating assigned to such entity as its "corporate credit rating" by S&P.

"Moody's" means Moody's Investors Service, Inc. or its successor.

"S&P" means Standard & Poor's Ratings Group (a division of The McGraw-Hill Companies, Inc.) or its successor.

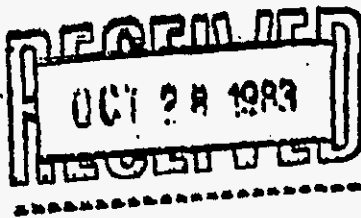
(Continued on Sheet No. 9.037)

**25-17.086 Periods During Which Purchases Are Not Required.**

Where purchases from a qualifying facility will impair the utility's ability to give adequate service to the rest of its customers or, due to operational circumstances, purchases from qualifying facilities will result in costs greater than those which the utility would incur if it did not make such purchases, or otherwise place an undue burden on the utility, the utility shall be relieved of its obligation under Rule 25-17.082, F.A.C., to purchase electricity from a qualifying facility. The utility shall notify the qualifying facility(ies) prior to the instance giving rise to those conditions, if practicable. If prior notice is not practicable, the utility shall notify the qualifying facility(ies) as soon as practicable after the fact. In either event the utility shall notify the Commission, and the Commission staff shall, upon request of the affected qualifying facility(ies), investigate the utility's claim. Nothing in this section shall operate to relieve the utility of its general obligation to purchase pursuant to Rule 25-17.082, F.A.C.

*Specific Authority 350.127(2) FS. Law Implemented 366.04(5), 366.051 FS. History—New 5-13-81, Amended 9-4-83, Formerly 25-17.86.*

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION



In re: Amendment of Rules . . . ) DOCKET NO. 820406-EU  
25-17.80 through 25-17.89 . . . ) ORDER NO. 12634  
relation to cogeneration. . . ) ISSUED: 10-27-83

The following Commissioners participated in the disposition of this matter:

JOSEPH E. CRESSE  
JOHN R. MARKS, III  
KATIE NICHOLS

FINAL ORDER

BY THE COMMISSION:

Background

In 1978 the Public Utility Regulatory Policies Act (PURPA) was enacted as part of a group of measures known as the National Energy Act. Certain provisions of PURPA established a federal policy encouraging cogeneration and small power production and required the Federal Energy Regulatory Commission and state regulatory commissions to implement that policy through the exercise of their regulatory authority over electric utilities. In March 1980, FERC issued its regulations. Tracking PURPA, the federal regulations established an obligation on the part of electric utilities to buy electricity from and sell electricity to cogenerators and small power producers who met certain fuel efficiency standards, hereinafter referred to as Qualifying Facilities (QFs). These transactions were to be conducted at rates which were just, reasonable, in the public interest, and non-discriminatory to QFs. FERC concluded that if rates for the purchase of electricity from QFs by utilities were set at full avoided cost for both energy and capacity, the rates would meet the criteria just mentioned and cogeneration and small power production would be encouraged to the maximum extent possible. FERC required state regulatory commissions to implement its regulations within one year. Thus, in April 1981, the Florida Public Service Commission adopted Rule 25-17.80 through Rule 25-27.89, Florida Administrative Code<sup>1</sup>. These rules, inter alia, required investor-owned electric utilities in Florida to buy energy at a rate which reflected the full decremental fuel cost avoided by the utility by the purchase of energy from QFs. A capacity credit was apparently required if a QF's operation was sufficiently reliable to anticipate that its capacity contribution would result in the avoidance of additional capacity construction by an electric utility. The level of any capacity payment was to be negotiated according to six criteria relating to the size and operational characteristics of the QF. Several controversies arose in connection with the implementation of the original rules. Hearings were held on each utility's tariff and a protracted dispute between Florida Power and Light Company and Resources Recovery, Dade County, Inc., was brought to us for resolution. In the course of resolving these questions, in Dockets Nos. 810296-EU and 820114-EU, we made several further

<sup>1</sup>In Florida Power & Light Co., Inc. v FPSC, (Case No. 60,671, March 17, 1983), the Florida Supreme Court ruled that the rules were invalid because the Commission lacked statutory authority to adopt them. The appeal is still pending. The issue it presents has been laid to rest with the passage of Section 366.05(9), Florida Statutes, which specifically empowers the Commission to set rates for cogenerators and small power producers.

DOCUMENT NUMBER-DATE

08081 OCT 27 1983

1100 COMMUNICATIONS

ORDER NO. 12634  
DOCKET NO. 820406-EU  
PAGE 23

25-17.84, a utility has the same obligation to provide adequate service to its customers who are QFs as it does to all customers. Firm service to a QF should not be qualitatively different than firm service to any other customers.

[ We have retained the provisions of the original rule excusing a utility from its obligation to purchase under certain circumstances, and have added to it to make clear that a utility is not required to purchase from a QF when to do so would result in costs greater than those which the utility would incur if it did not make such purchases. We believe this is most likely to happen during a utility's off-peak periods where it may be cycling its base load units and QF purchases would force it to shut down the units altogether.

Rule 25-17.87 Interconnection and Standards

We have substantially expanded this rule to establish general safety and interconnection standards that will apply in the absence of a determination by a utility that either less stringent or more stringent standards are necessary in a particular case. Several QFs expressed concern that a utility vested with this discretion would impose costly, unnecessary interconnection requirements on a QF. We expect utilities to act reasonably in this regard and impose only those requirements reasonably necessary to maintain system integrity and safety. In the event a QF believes it is being unfairly treated, it may petition the Commission for relief. [Rule 25-17.87(3)].

It is, therefore,

ORDERED by the Florida Public Service Commission, that all electric utility companies subject to the provisions of Rules 25-17.80 through 25-17.87, Florida Administrative Code, shall submit a tariff in compliance with these rules, by December 12, 1983, for consideration in Docket No. 830377-EU. It is further

ORDERED that all electric utility companies subject to the provisions of Rules 25-17.80 through 25-17.87, Florida Administrative Code, shall submit details of the methodology to be used to calculate avoided energy costs as set forth in Rule 25-17.825, Florida Administrative Code, by December 12, 1983, for consideration in Docket No. 830377-EU. It is further

ORDERED that notice, as required by 18 CFR Section 292.403(a), be given that the Florida Public Service Commission will seek a waiver of 18 CFR Section 292.304(b)(4), which permits a Qualifying Facility to engage in sales on a simultaneous purchase and sale basis. It is further

ORDERED that this docket be closed.

By ORDER of the Florida Public Service Commission, this 27th day of October, 1983.

  
Steve Tribble  
COMMISSION CLERK

( S E A L )

BED

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Docket No. 080193-EQ  
Order No 13247  
Exhibit KMD-3, Page 1 of 2

In re: Proceedings to Implement ) DOCKET NO. 830377-EU  
Cogeneration Rules ) ORDER NO. 13247  
ISSUED: 5-1-84

The following Commissioners participated in the disposition of this matter:

JOSEPH P. CRESSE  
JOHN R. MARKS, III  
KATIE NICHOLS

FINAL ORDER

BY THE COMMISSION:

On September 2, 1983 the Commission substantially revised Rule 25-17.80 through Rule 25-17.89, F.A.C. hereinafter referred to as the cogeneration rules. The revisions codified refinements of the Commission's cogeneration policy developed in Docket Nos. 810296-EU, 820114-EU, and 820165-EU; developed a methodology for determining the cost effectiveness of utility payments for the purchase of firm capacity and energy from cogenerators and small power producers; and established a statewide standard offer for the purchase of firm capacity and energy from cogenerators and small power producers (hereinafter referred to as Qualifying Facilities or QFs).

This docket was opened by the Commission's own motion pursuant to Rule 25-17.83(4) on August 16, 1983 to determine the statewide avoided unit for the purpose of determining the need for, timing, and pricing of firm capacity and energy purchases from QFs. Also, certain other aspects of implementation of the revised rules were addressed in this proceeding.

Several parties formally intervened in these proceedings. They were: Florida Power Corporation; Florida Power & Light Company; Florida Public Utilities Company; Gulf Power Company; Tampa Electric Company; Farmland Industries, Inc.; Florida Crushed Stone Company; International Minerals and Chemical Corporation; U.S. Sugar Corporation; W. R. Grace & Company; Resources Recovery, Dade County; Metropolitan Dade County; Conserv, Inc.; Broward County; U.S. Steel Corporation; Royster Company; Dothan Oil Mill Company; and St. Regis Paper Company.

On January 6, 1984, a prehearing conference was held. With the above listed intervenors in attendance, the parties agreed to a prehearing memorandum which established 45 substantive issues and 1 legal issue to be addressed at the hearing.

Public hearings were held on January 18 and 19, 1984 and on February 14 and 23, 1984. Sworn testimony was received from 11 witnesses on behalf of the intervenors listed above as well as testimony by the Commission staff.

In-Service Date of Statewide Avoided Unit

Rule 25-17.83(4) requires the Commission to designate a statewide avoided unit for the purpose of determining the need for, timing, and pricing of firm capacity and energy purchases from QFs. This approach to pricing QF capacity and energy reflects the Commission's long standing policy that the need for additional capacity by Florida utilities should be determined from a statewide perspective rather than simply focusing on the isolated needs of the individual Florida utility systems. This policy is derived from Section 366.04(3), Florida Statutes, which states:

RECORDED

3070-84



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PAGE 13

rolling average basis, QFs should also be required to maintain a 70 percent capacity factor during on peak hours on a 12 month rolling average basis. Since approximately 75 percent of the hours in the year, 6570 hours out of a total of 8760, are considered to be off peak hours, the utilities fear that a QF could generate all its required energy during off peak hours and hence make no contribution to the deferral of additional capacity construction.

While we are somewhat sympathetic to this concern, we are unconvinced that an absolute 70 percent on peak capacity factor is necessary. We note that during cross examination none of the utility witnesses were able to produce a specific study showing that they would be unable to defer additional capacity construction unless they received an average of 70 percent of their contracted cogeneration capacity during on peak hours. Accordingly, we decline to adopt this additional requirement at this time but will continue to monitor the performance of QFs with respect to our goal of deferring additional capacity construction in Florida.

We do find, however, that the following additional performance criteria are reasonable and should be adopted:

- (1) The QF must agree to provide monthly generation estimates by October 1 for the next calendar year; and
- (2) The QF must agree to promptly update the yearly generation schedule when any changes are determined necessary; and
- (3) The QF must agree to reduce generation or take other appropriate action as requested by the purchasing utility for safety reasons or to preserve system integrity; and
- (4) The QF must agree to coordinate scheduled outages with the purchasing utility; and
- (5) The QF must agree to comply with the purchasing utility's reasonable requests regarding daily or hourly communications.

In addition to the above performance criteria, we find that capacity payments to a QF should not commence until the QF has attained commercial in-service status. This additional requirement is necessary to protect ratepayers from the risk associated with speculative construction by QFs over which this Commission has no control. The commercial in-service date of a QF will be defined as the first day of the month following the successful completion of the QF maintaining an hourly kilowatt output, as metered at the point of interconnection, equal to or greater than the QF's contractually committed capacity for a 24 hour period. We fully expect each QF to coordinate the selection of and operation of its facility during this test period with the purchasing utility to insure that the performance of the QF during this 24 hour period is reflective of the anticipated day to day operation of the QF.

We further find that during the first twelve months during which these performance criteria are imposed, the QF's capacity factor should be calculated by dividing the sum of the kilowatt hours sold by the QF to the purchasing utility for the number of months since the performance criteria became applicable by the product of the number of hours in the months which have transpired times the maximum committed capacity of the QF. This calculation should be performed each month until enough months have transpired to calculate a true 12 month rolling average capacity factor.

State of Florida



*Public Service Commission*

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** September 21, 2006

**TO:** Director, Division of the Commission Clerk & Administrative Services (Bayó)

**FROM:** Office of the General Counsel (Harris)  
Division of Economic Regulation (Harlow, Haff, Hewitt, McRoy)

**RE:** Docket No. 060555-EI – Proposed amendments to Rule 25-17.0832, F.A.C., Firm Capacity and Energy Contracts.

**AGENDA:** 10/3/06 – Regular Agenda – Rule Proposal – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Deason

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\060555.RCM.DOC

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**Case Background**

In its 2005 session, the Florida Legislature enacted Section 366.91, Florida Statutes, regarding renewable energy. The statute became effective October 1, 2005. Section 366.91(1) states:

The Legislature finds that it is in the public interest to promote the development of renewable energy resources in this state. Renewable energy resources have the potential to help diversify fuel types to meet Florida's growing dependency on natural gas for electric production, minimize the volatility of fuel costs, encourage investment within the state, improve environmental conditions, and make Florida a leader in new and innovative technologies.

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080193-EE EXHIBIT 18

COMPANY FL Power + Light

WITNESS Staff Recommendation 10/03/06

DATE 01/22/09 18

subsections (g)(3) and (g)(6) increase the minimum term for a standard offer contract from five to ten years. Staff retained the existing rule language that allows a maximum term up to the life of the avoided unit.

There was extensive discussion on the contract term at the August 23, 2006, rule development workshop and in the post-workshop comments. The IOUs agree with a contract term with a minimum of ten years up to the life of the avoided unit, and believe the term should be set by the utility in the standard offer contract. As stated by FPL, "[s]tandard offer contracts by their very nature require some fixed duration." Utilities have included a fixed contract term in recent standard offers. The consensus of the renewable generators is that the renewable generator should have the flexibility to select the desired term. The City of Tampa, the Solid Waste Authority of Palm Beach County and FICA believe the maximum contract term should be at least 30 years, while Montenay-Dade Limited and Lee County agree with a maximum term equal to the life of the avoided unit.

Staff is concerned that allowing the renewable generator to set the contract term will expose ratepayers to the risk associated with long-term contracts. Over time, technological advancements or economic factors could change, resulting in opportunities for utilities to generate or purchase capacity at reduced costs. Under the current rule, however, standard offer contracts are priced with fixed escalation factors based on current conditions. Long-term contracts may therefore result in above market costs for ratepayers. At the August 23, 2006, workshop, Wheelabrator Technologies Incorporated's representative agreed that there is risk in long-term contracts, but stated that there is also risk associated with a utility building a unit with a useful life of 25 to 40 years. Several renewable generators also expressed concern that they may be unable to obtain financing for a new project with only a ten-year contract in hand. Staff does not believe that there is enough evidence at this time to change the Commission's existing policy of allowing utilities to set the contract term in standard offer contracts. Staff notes that if a renewable generator is unable to obtain financing under the conditions of a standard offer contract, that renewable generator is free to negotiate a longer term contract with the utility. If a utility is unwilling to negotiate, the renewable generator has recourse to petition the Commission for relief. In its post-workshop comments, PEF stated that the Commission's rules require a utility to negotiate in good faith. If this does not occur, PEF agreed that a renewable generator can petition for relief.

Staff disagrees with TECO that standard offer contracts based on a purchase should have a term equal to the expected term of the purchase, even if this term is less than ten years. Under the proposed rule amendments, only IOUs with no planned generation are required to offer a standard offer contract based on a planned purchase. It is clear that standard offer contracts, regardless of how avoided cost is determined, must have a minimum ten-year term in order to meet the requirements of Section 366.91, Florida Statutes.

**Additional Issues** – Several additional issues were addressed in the post-workshop comments that staff does not believe are appropriate to include in the recommended rule amendments at this time, including:

*Tradable Renewable Energy Credits (T-RECs)* – These are tradable financial instruments that represent the environmental benefits of renewable energy. There is a developing market for T-

RECs in the United States. The IOUs and renewable generators agree that T-RECs belong to the renewable generators. The credits will provide an additional revenue source for renewable generators. The IOUs and renewable generators agree that it is appropriate for standard offers to provide a right of first refusal for utilities to purchase T-RECs from the renewable generator. The renewable generators expressed concern that IOUs must offer market rates for T-RECs. Staff believes it is premature to address this in a rule because T-RECs are a relatively new concept with a developing market. Utilities can address T-RECs in future standard offer contracts, which can be reviewed by the Commission on a case-by-case basis.

*Carbon Taxes* – Montenay-Dade Limited and Lee County stated that renewable generators should receive payment for avoided future carbon taxes or carbon allowances. Carbon taxes or allowances are not currently required under federal or state law. Staff believes it is premature to address this issue in the rule amendments. If carbon taxes or allowances are required by law in the future, staff believes this should be reflected in a utility's avoided cost, and that this can initially be reviewed on a case-by-case basis when individual contracts are submitted for approval.

*Goals for Renewable Energy* – In the 2006 session, the Legislature enacted Section 366.92, Florida Statutes, which states that the Commission may set goals for renewable energy for electric utilities. Several renewable generators expressed a desire to include this topic in the standard offer rulemaking proceeding. Staff believes it is premature to include goals in the current rulemaking proceeding. The recommended rule amendments, along with relatively high avoided cost, recently passed tax incentives for renewable generators, and the developing T-REC market provide significant encouragement for renewable generators. Further, staff is collecting information to get a clearer picture of the status of renewable energy activities by the state's utilities. Staff believes it is appropriate to move forward expeditiously with putting an amended rule in place, so the effect of the rule can be analyzed prior to considering a goal setting proceeding.

**Cost Impacts of the Recommended Rule Amendments** – Staff prepared a Statement of Estimated Regulatory Costs which is included as Attachment B. In summary, the IOUs would have insignificant transactional costs from the recommended rule amendments and would benefit administratively from having the same standard offer contract for renewable generators and small qualifying facilities. There would be some additional costs for the Commission to review any additional contracts that are required by the recommended rule amendments, but this would not require additional staff. The Commission would benefit because the recommended rule amendments clarify when a new standard offer contract must be filed. The IOUs' customers would benefit from having a more diverse fuel supply and enhanced reliability. The recommended rule amendments would expand the choice of avoidable generation units for renewable generators wishing to enter standard offer contracts to sell their output, as well as increase the size of the capacity offered under these contracts.

**Conclusion** - Staff recommends that the Commission propose the amendments to Rule 25-17.0832, F.A.C., as shown in Attachment A. The recommended rule amendments meet the intent of Section 366.91, Florida Statutes, to encourage the development of renewable generators while balancing the interests of ratepayers. Staff disagrees with the post-workshop comments of

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060555-EI

In the Matter of:

PROPOSED AMENDMENTS TO RULE  
25-17.0832, F.A.C., FIRM CAPACITY  
AND ENERGY CONTRACTS.

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PROCEEDINGS: AGENDA CONFERENCE  
ITEM NO. 4

BEFORE: CHAIRMAN LISA POLAK EDGAR  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER ISILIO ARRIAGA  
COMMISSIONER MATTHEW M. CARTER, II  
COMMISSIONER KATRINA J. TEW

DATE: Tuesday, October 3, 2006

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: LINDA BOLES, CRR, RPR  
Official Commission Reporter  
(850) 413-6734

FLORIDA PUBLIC SERVICE COMMISSION

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060193-E0 EXHIBIT 19

COMPANY Florida Power + Light

WITNESS 10/3/06 + 1/9/07 Transcript Excerpts

DATE 0/22/09

1 and the Florida Industrial Cogeneration Association.

2 CHAIRMAN EDGAR: Thank you.

3 Ms. Kaufman.

4 MS. KAUFMAN: Thank you, Madam Chairman. Vicki  
5 Gordon Kaufman; I'm with the Moyle, Flanigan Law Firm here in  
6 Tallahassee, and I'm appearing before you this morning on  
7 behalf of Wheelabrator Technologies, Inc. Wheelabrator is a  
8 waste energy provider here in the State of Florida.

9 Mr. Zambo did a pretty good job of highlighting a lot  
10 of the issues that the renewable generators, including  
11 Wheelabrator, have with the proposed rule that's in front of  
12 you. So I'll try not to repeat what he said, but I do think it  
13 bears repeating that I don't think the Legislature would have  
14 enacted Section 366.91 in 2005 and then followed it up with  
15 366.92 in 2006 if they didn't want to see a change in  
16 direction, if they didn't want to see a real push to encourage  
17 renewable energy. And so we would echo Mr. Zambo's comments.  
18 And I don't think that they're looking for business as usual.  
19 And I would urge you to look at Senator Bennett's two letters  
20 that he sent to you on this topic.

21 I just want to talk about the staff recommendation  
22 for a moment, and I wanted to direct your attention to Page 3,  
23 the first full paragraph where staff provides a little bit of a  
24 summary of the March 6th workshop. And they have three points  
25 there, and they say after they set out those points that there

1 appeared to be general agreement among the representatives of  
2 renewable generators on these issues. I'm only here to speak  
3 on behalf of Wheelabrator, but we do take issue with those  
4 comments. We certainly don't agree, from at least our  
5 perspective, that there was agreement on at least the first two  
6 points there. We don't agree that the ten-year minimum  
7 contract term should begin on the in-service date on the  
8 avoided unit. And as we've already said, one of the goals of  
9 the new statutes is to get as much renewable energy on the grid  
10 as quickly as possible for reasons of fuel diversity,  
11 environmental impacts and all the other issues that are set out  
12 in the statute.

13           This limitation that staff says we agree to but which  
14 we do not would cause existing renewable generators who may  
15 have renewable power to put on a grid right now to have to wait  
16 to put that energy on the grid -- assuming all the contractual  
17 terms that Mr. Zambo talked about could be worked out, and  
18 that's an entirely different issue -- but if they could, they  
19 would have to wait for the in-service date of the next avoided  
20 unit. There may be existing contracts expiring now and there  
21 may be energy available that this rule would get in the way of.  
22 And it also seems to me to be inconsistent with the requirement  
23 in 366.91 that these contracts be continuously available or  
24 that the utility be required to continuously offer these  
25 contracts. Payments ought to begin when the renewable energy

1 is available. And one thing we certainly think you should look  
2 at, as Section 366.92 states, is to set goals for the amount of  
3 renewable energy that is required, and that's in the 2006  
4 legislation.

5 Secondly, we don't agree with staff's representation  
6 that there should be a subscription limit for renewable  
7 generation. And, again, we think that's inconsistent with the  
8 requirement that these contracts be continuously offered. We  
9 agree with Mr. Zambo that there needs to be a look and a hard  
10 look at how avoided costs are calculated. We do not think that  
11 it should be based on the regime that's been in place for, I  
12 guess he said, 25 plus years.

13 Finally, on Page 9 your staff has a discussion of the  
14 renewable energy credits, and I know that that was discussed  
15 the last time this matter was before you. And we certainly  
16 don't have a problem with the IOUs having the, I think what's  
17 been called the right of first refusal to those credits. We  
18 agree that they belong to the renewable generator. We don't  
19 have a problem with the right of first refusal. But there is a  
20 practical problem there, and that is often when these credits  
21 are bid into the market, it occurs very quickly and the  
22 renewable generators have to have the ability to bid quickly.  
23 And so we see a problem if the renewable generator has to wait  
24 for an extended period of time for an answer from the utility  
25 as to whether or not they're interested in the credit. We



1 think that that's an issue that the rule ought to address, and  
2 that it should require the IOUs to commit to a rapid response  
3 as to whether or not they're going to exercise any right of  
4 first refusal.

5 We also agree with Mr. Zambo that the importance of  
6 contract terms cannot be overstated, and often times those  
7 terms are a barrier to these generators coming into the market.  
8 We think that's something that the rule needs to address.

9 And so in closing, I guess our point to you is that  
10 we think these rules have a very, very long way to go in  
11 complying with what we think is a very clear statutory  
12 direction, not in one session, but in two consecutive sessions,  
13 that we move forward to take extraordinary measures to  
14 encourage renewable generation. Thank you.

15 CHAIRMAN EDGAR: Thank you, Ms. Kaufman.

16 Mr. Wright.

17 MR. WRIGHT: Thank you, Madam Chair and  
18 Commissioners. I'm Schef Wright, and I have the privilege to  
19 be here today representing Montenay-Dade Limited, which  
20 operates the Dade County, Miami-Dade County Resources Recovery  
21 Facility, and also on behalf of Lee County, which owns the Lee  
22 County Resources Recovery Facility.

23 I'll begin by saying first that I agree with the  
24 comments of Mr. Zambo regarding, and Ms. Kaufman regarding the  
25 intent of Section 366.91. At a minimum, it is clear that it is

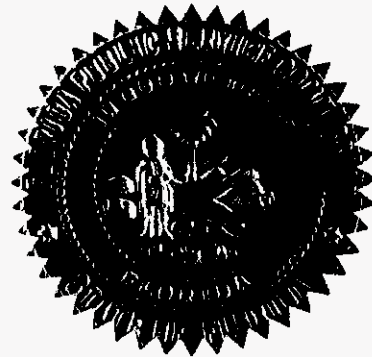
BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060555-EI

In the Matter of:

PROPOSED AMENDMENTS TO RULE  
25-17.0832, F.A.C., FIRM CAPACITY  
AND ENERGY CONTRACTS.

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ELECTRONIC VERSIONS OF THIS TRANSCRIPT ARE  
A CONVENIENCE COPY ONLY AND ARE NOT  
THE OFFICIAL TRANSCRIPT OF THE HEARING,  
THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

PROCEEDINGS:           AGENDA CONFERENCE  
ITEM NO. 3

BEFORE:               CHAIRMAN LISA POLAK EDGAR  
                        COMMISSIONER ISILIO ARRIAGA  
                        COMMISSIONER MATTHEW M. CARTER, II  
                        COMMISSIONER KATRINA J. TEW  
                        COMMISSIONER KENNETH W. LITTLEFIELD

DATE:                  Tuesday, January 9, 2007

PLACE:                Betty Easley Conference Center  
                        Room 148  
                        4075 Esplanade Way  
                        Tallahassee, Florida

REPORTED BY:         JANE FAUROT, RPR  
                        Official Commission Reporter  
                        (850)413-6732

FLORIDA PUBLIC SERVICE COMMISSION

DOCUMENT NUMBER-DATE

00459 JAN 17 2007

FPSC-COMMISSION CLERK

1 post-hearing comments that the record of this rulemaking  
2 proceeding be kept open so as to include the January 19th,  
3 2007, workshop.

4 I have gotten a copy of a draft agenda for that  
5 workshop. Now, this is probably out of date because it is  
6 from, I think, December 21st. But when I review that, we are  
7 looking at issues that directly are related to what we are  
8 covering in this rule. The Commission is bringing together  
9 experts, a lot of people, a lot of knowledge, that are looking  
10 at how to encourage renewable production in Florida. It seems  
11 to me this is only ten days away, you know, we are going to  
12 have a lot of people there. We have got a lot of new  
13 suggestions here today. We got some new suggestions today. We  
14 still have some questions about implementation. It seems like  
15 a very good opportunity to take one more step forward where we  
16 might get some new input or we might get some supporting input  
17 for past ideas that would affect this rule.

18 Thank you very much.

19 CHAIRMAN EDGAR: Mr. Moyle.

20 MR. MOYLE: Thank you, Madam Chairman. And I will  
21 try to be brief. I know you guys have had a long day.

22 For the record, Jon Moyle, Jr., with the Moyle  
23 Flannagan law firm, appearing today on behalf of Wheelabrator  
24 Technologies, which is a waste-to-energy company. I'm also  
25 appearing on behalf of the Palm Beach County Solid Waste

1 Authority, the City of Tampa, and the Florida Industrial  
2 Cogenerators. Those are folks who have been actively  
3 participating in this case, as well.

4 Let me start by making some general comments that I  
5 think we have come a long way from where we were when we first  
6 started this rule development process many, many months ago.  
7 And I applaud you for doing that. I applaud your staff for  
8 doing that. I know it's hard sometimes to look at things  
9 differently, but you all have taken steps that we have asked  
10 you to consider, and we appreciate that. I mean, we have a new  
11 rule. We have, I think, something that is very valuable,  
12 which is information about renewables. Before you can make  
13 good policy judgments, I think you need to have good  
14 information. And I applaud you for actively seeking good  
15 information from the electric industry about the amount of  
16 renewables that they are currently using and what is in the  
17 future. The track recognition, the attribute that the  
18 renewable has, I thank you for recognizing that specifically.

19 Ms. Clark made a comment that she wanted to make sure  
20 that there is no comments or no issues about a right of first  
21 refusal. And I think the renewable energy generators have  
22 said, look, we are fine on a right of first refusal provided  
23 pricing can be worked out and that the time frame is limited so  
24 you don't have somebody wanting to buy and you have an issue  
25 where you have got to get the utilities to sign off before you

1 can sell. So I think those are good steps in the right  
2 direction.

3           The contract term, the mediation, the equity penalty,  
4 I applaud you for taking a look at that. And the way we read  
5 it indicating that the utility is not to put the equity penalty  
6 in place in a standard offer unless and until they come back to  
7 you to seek permission. Now, Ms. Clark said in her comments  
8 the way she is reading that is we can go ahead and put the  
9 equity penalty in place and then come to you and get approval  
10 of that, which I would argue that is not the right reading of  
11 that, because it puts the renewable at a disadvantage if they  
12 have to sit there and have the equity penalty and its  
13 ramifications imposed and then wait on the utility to come to  
14 the PSC. We think the correct reading is to say, wait a  
15 minute, no equity penalty unless and until at some point in the  
16 future the utility comes in and seeks specific approval of  
17 that.

18           And you also removed any subscription limit, which,  
19 again, was something that we think is a step in the right  
20 direction to accomplish the legislative goals of promoting  
21 renewable energy in the state of Florida.

22           Covanta made some comments that there are still some  
23 work left to do, and Wheelabrator and the others that I am  
24 representing agree with that. There is still work left to do,  
25 I think, in order to make Florida a vibrant leader in renewable

**Ten Year Power Plant Site Plan**  
**2002 - 2011**



**FPL**

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080193-E2 EXHIBIT 20

COMPANY Wheelabrator Technologies, Inc.

WITNESS Ten Year Site Plan Excerpt

DATE 01/22/09

DOCUMENT NUMBER-DATE

03700 APR-18

FPSC-COMMISSION ~~CLERK~~



**FPL**

***Ten Year Power Plant Site Plan***

***2002-2011***

***Submitted To:***

***Florida Public  
Service Commission***

***Miami, Florida  
April, 2002***

## Schedule 9

**Status Report and Specifications of Proposed Generating Facilities**

- (1) **Plant Name and Unit Number:** Sanford Unit 5 Repowering
- (2) **Capacity**  
a. Summer 567 MW Incremental (957 MW Total After Repowering)  
b. Winter 671 MW Incremental (1065 MW Total After Repowering)
- (3) **Technology Type:** Combined Cycle
- (4) **Anticipated Construction Timing**  
a. Field construction start-date: 2000  
b. Commercial In-service date: 2002
- (5) **Fuel**  
a. Primary Fuel Natural Gas  
b. Alternate Fuel Distillate
- (6) **Air Pollution and Control Strategy:** Natural Gas, Dry Low NO<sub>x</sub> Combustors,  
0.05% S. Distillate, & Water Injection on Distillate
- (7) **Cooling Method:** Cooling Pond
- (8) **Total Site Area:** 1,718 Acres
- (9) **Construction Status:** V (Under Construction > 50% Complete)
- (10) **Certification Status:** V (Under Construction > 50% Complete)
- (11) **Status with Federal Agencies:** V (Under Construction > 50% Complete)
- (12) **Projected Unit Performance Data:**  
Planned Outage Factor (POF): 3%  
Forced Outage Factor (FOF): 1%  
Equivalent Availability Factor (EAF): 96%  
Resulting Capacity Factor (%): Approx. 96% (First Year)  
Average Net Operating Heat Rate (ANOHR): 6,918 Btu/kWh
- (13) **Projected Unit Financial Data \*,\*\*,\*\*\***  
Book Life (Years): 25 years  
Total Installed Cost (In-Service Year \$/kW): 656  
Direct Construction Cost (\$/kW):  
AFUDC Amount (\$/kW):  
Escalation (\$/kW):  
Fixed O&M (\$/kW -Yr.): (2001 \$kW-Yr) 14.41  
Variable O&M (\$/MWH): (2001 \$/MWH) 0.374  
K Factor: 1.5395

\* \$/kW values are based on incremental Summer capacity.

\*\* Note that cost values shown do not reflect the FPL system benefits which result from efficiency improvements to the existing steam capacity at the site.

\*\*\* Fixed O&M includes capital replacement.

NOTE: Total installed cost already includes escalation and AFUDC.



**FLORIDA PUBLIC SERVICE COMMISSION**

DOCKET NO. 080193-FQ EXHIBIT 21

COMPANY Wheelabrator Technologies, Inc.

WITNESS Evolution Bid Document

DATE 01/22/09



MASSACHUSETTS  
TECHNOLOGY  
COLLABORATIVE

RENEWABLE ENERGY TRUST



EVOLUTION  
MARKETS

**For Immediate Release**

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**Evolution Markets to Host Renewable Energy Certificate Auction for the  
Massachusetts Technology Collaborative**

***-- Auction is First Under Renewed Agreement between MTC and Evolution Markets to Host  
Regular REC Auctions through 2010 --***

**Westborough, MA (January 29, 2008):** Evolution Markets Inc. announces today it will conduct an auction of Renewable Energy Certificates (RECs) on behalf of the Massachusetts Technology Collaborative (MTC), a quasi-public economic development agency responsible for administering the state's Renewable Energy Trust. The auction slated for February 13, 2008 will be a sale of both Massachusetts-eligible and Connecticut-eligible renewable energy certificates (RECs).

For the February auction, MTC plans to offer 4,351 Massachusetts "New" Renewable Certificates generated in the first, second, and third quarters of 2007. MTC will also offer 841 Connecticut Class I Renewable Certificates generated in the first, second, and third quarters of 2007.

"The New England REC markets have seen growing supplies, so this auction comes at an important time," said Andrew Kolchins, Director, Renewable Energy Markets. "Massachusetts and Connecticut REC prices remain near alternative compliance payments, but new generation and persistent regulatory uncertainty could alter the market outlook. We look forward to the valuable price signals this auction will provide."

The Massachusetts-eligible certificates for sale were generated from the Ameresco Chicopee landfill gas-to-energy facilities 1, 2, and 3, which have been approved by the Massachusetts Department of Energy Resources as an eligible source under the Massachusetts Renewable Portfolio Standard. The Connecticut-eligible certificates are from the Swift River Pepperell hydroelectric facility, located in Pepperell, MA. This facility has been approved by the Connecticut Utility Commission as a Class I Renewable Certificate producer.

"Our auctions have been an important gauge for the New England REC markets, and we anticipate this auction will continue MTC's role in providing price discovery for market participants," said Ian Springsteel, Industry Investment & Development Manager at MTC's Renewable Energy Trust. "The sale of both Massachusetts and Connecticut RECs should provide a check of where buyer interest is in these markets, which we still expect to be robust."

This auction is the first under the new auction services agreement between MTC and Evolution Markets. In late 2007, MTC conducted a request for proposal process to choose a service provider to conduct its regular REC auctions for the next two years, with an option for a third year. MTC chose to renew its relationship with Evolution Markets, which has conducted MTC's REC auctions since 2005.

"After conducting an open, competitive services selection process last fall, we are pleased to continue working with Evolution Markets to conduct our biannual REC auctions," said Mr. Springsteel. "The auctions have become a staple of the New England REC markets, and the professional and efficient process led by Evolution Markets has proven to be an effective way for the MTC to sell RECs."

(more)

**Page Two.**

MTC administers the state's Renewable Energy Trust, which promotes clean energy technologies. Under the Massachusetts program, the MTC provides financing to help develop renewable energy in the state. The agency receives a portion of the renewable certificates generated by these projects, which are then sold to generate additional revenue for development.

An auction notice and MTC's REC Sales Agreement are available from Evolution Markets for bidders to consider, as well as on the MTC website. No exceptions or counter-proposals to the terms of MTC's REC purchase and sale contract will be considered, and no post-bid acceptance contract negotiations are permitted. Material questions about the auction, the generator, or other such information should be submitted in writing to Ian Springsteel at MTC (details below) no later than seven days prior to the auction date (Feb. 6 at 5 p.m.), and will be responded to in written form no later than two days prior the auction (Feb. 11 at 12 p.m.). All questions and responses shall also be posted on MTC's website. Please see official Auction Notice for more details.

Bidders interested in participating are asked to submit bids to Evolution Markets via telephone prior to 1:45 p.m. ET on February 13, 2008. Bidders are then given the opportunity to improve upon the best bid by 2:00 p.m. ET. Bids must be binding until 5:00 p.m. ET on the day following the Auction Date. Once a bid or bids have been accepted by MTC, Evolution Markets will inform the successful bidders, issue transaction confirmations, and then announce the auction results to the market.

For additional information regarding the MTC REC auction please contact:

Andrew Kolchins  
Director, Renewable Energy Markets  
Evolution Markets Inc.  
914.323.0257  
akolchins@evomarkets.com

Questions regarding decisions and policies of the MTC should be directed to:

Ian Springsteel  
Manager, Industry Investment & Development  
Massachusetts Technology Collaborative  
508.870.0312 x1255  
springsteel@masstech.org

**About Evolution Markets Inc.**

Evolution Markets Inc. provides strategic financial and industry-leading transactional services to participants in global environmental markets and the clean energy sector. Formed in 2000, the company has become the green markets leader, leveraging its unrivaled experience and knowledge on behalf of participants in the global carbon, U.S. emissions, renewable energy, weather derivative, and over the counter (OTC) coal, natural gas, nuclear fuel, and biofuels markets. Evolution Markets is actively involved in the emerging compliance REC markets in NEPOOL, PJM, NY, CA, and Texas. In addition Evolution Markets also serves the nationwide voluntary REC market. Evolution Markets' Renewable Energy Markets team was voted "Best Broker" for U.S. Renewable Energy Certificate Markets by *Environmental Finance* magazine in 2003, 2004, 2005, 2006, and 2007. [www.evomarkets.com](http://www.evomarkets.com)

**About Massachusetts Technology Collaborative**

The Massachusetts Technology Collaborative is the state's quasi-public economic development agency focused on growing the renewable energy sector and the state's knowledge-based economy. MTC administers the Renewable Energy Trust, works to generate the maximum economic and environmental benefits from renewable energy for citizens of the Commonwealth. The Trust has supported more than 1,300 projects to generate new clean electricity, create new economic opportunity, and spur construction of highly energy efficient green buildings and schools that incorporate renewable technologies. For more information, please visit: [www.masstech.org](http://www.masstech.org).

# # #

*FINAL*

## PECO Second AEPS RFP KEY DATE SCHEDULE

TASK	Day of Week	Date	Responsibility
Press Release Announcing RFP and Bidder Meeting date	Monday	Nov 10	PECO
Bidder Meeting (WebEx)	Monday	Nov 24	Coordinated by Navigant Consulting
Non-binding Notice of Intent to Bid Date	Tuesday	Dec 2	Bidders
Bidder Inquiries Deadline	Tuesday	Dec 9	Bidders
Final Responses to Bidder Inquiries	Tuesday	Dec 16	PECO
Holiday Weeks	N/A	Dec 22 – Jan 2	N/A
Bid Applications/ Bid Deposit Due	Thursday	Jan 15	Bidders
Notification of Bidder Qualification	Tuesday	Jan 27	PECO
Bids Due/ Bid Opening	Tuesday	Feb 3	Bidders / Navigant / PECO / PUC Staff
Report to PUC	Wednesday	Feb 4	Navigant Consulting
PUC Review Period	Thursday, Friday, Monday	Feb 5, 6, 9	PUC
PUC Notifies PECO of Review Results	Tuesday	Feb 10	PUC
PECO Notifies Bidders	Wednesday	Feb 11	PECO
Execution of Agreements	Friday	Mar 6	PECO/ Winning Bidders

November 17, 2008

**FLORIDA PUBLIC SERVICE COMMISSION**

DOCKET NO. 08019368 EXHIBIT 22

COMPANY Wheelabrator Technologies, Inc.

WITNESS AEPS Key Dates

DATE 01/27/09

***PECO Energy Company***

***Request for Proposals  
To Supply***

***Alternative Energy Credits***

***In Compliance With***

***Pennsylvania's Alternative Energy Portfolio  
Standards Act***

***\_\_\_\_\_, 2007***

## ARTICLE 1 INTRODUCTION

- 1.1 In this Request for Proposals ("RFP"), PECO Energy Company ("PECO" or the "Company") is voluntarily soliciting competitive proposals for supply of Alternative Energy Credits ("AECs") from Tier 1, non-solar Alternative Energy Systems under Pennsylvania's Alternative Energy Portfolio Standards Act, 73 P.S. § 1648.1 ("AEPS" or the "Act").<sup>1</sup> PECO intends to use these AECs to apply towards its future AEPS obligations, and seeks to enter into fixed-price, five-year agreements with successful bidders to purchase up to a total of \_\_\_,000 AECs annually (the "RFP Maximum"). This document describes the process by which bidders may qualify and submit bids in response to this RFP.
- 1.2 PECO is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with its principal corporate office in Philadelphia, Pennsylvania. PECO is an electric distribution company under Pennsylvania law and provides electric delivery service to approximately 1.6 million retail customers in Southeastern Pennsylvania. PECO's electric delivery service territory falls entirely within the area served by PJM Interconnection, LLC ("PJM").
- 1.3 PECO is implementing this RFP in two stages. Bidders must first qualify by submitting an application (an "Application") to PECO demonstrating their qualifications, as described in detail in Section 4.2 (Bidder Qualifications). These qualifications include the ability to provide AECs to PECO from a Tier 1, non-solar Alternative Energy System in accordance with the Act commencing no later than December 31, 2008 (2009).
- 1.4 Following qualification, bidders may submit a bid proposal ("Bid Proposal") to deliver a specified amount of AECs annually from a single Alternative Energy System for a term of five years, with a single fixed price for each delivered AEC. Bid Proposals will be ranked by price, and PECO will execute an AEC purchase and sale agreement with each successful bidder in the form attached hereto as Exhibit 1 (Form Alternative Energy Credit Purchase and Sale Agreement).
- 1.5 At the present time, PECO is in its transition period under the Act, and its AEPS obligations are deferred pending PECO's final collection of all transition costs under the Electricity Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. 2801 et seq. (the "Competition Act"). AECs purchased and delivered to PECO prior to January 1, 2011, will be banked by PECO in accordance with the Act for use in satisfying PECO's AEPS obligations in 2011 and in subsequent years. PECO is not purchasing electricity or capacity through this RFP.
- 1.6 The Pennsylvania Public Utility Commission ("PA PUC") has approved the procedures described in this RFP and the terms of the form AEC purchase and sale agreement ("AEC

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<sup>1</sup> All capitalized terms not expressly defined herein are defined in the form Alternative Energy Credit Purchase and Sale Agreement attached as Exhibit 1.

Purchase Agreement”) attached to this RFP as Exhibit 1 by order dated \_\_\_\_\_, 2007, in Pa. PUC Docket No. \_\_\_\_\_ (“PUC Order”). The RFP process will be managed by PECO, with the opening and ranking of bids monitored by [company name] (the “RFP Monitor”). **Potential bidders are strongly urged to review both the RFP and the AEC Purchase and Sale Agreement and to consult with counsel with respect to requirements and obligations under this RFP and the AEC Purchase and Sale Agreement.**

- 1.7 The following documents are attached to this RFP Overview and are to be considered part of the RFP:

- Exhibit 1: Form of PECO AEC Purchase and Sale Agreement
- Exhibit 2: Non-Binding Notice of Intent to Bid
- Exhibit 3: Bidder Application Submission Form
- Exhibit 4: Form of Bidder Application
- Exhibit 5: Bid Proposal Form
- Exhibit 6: Confidentiality Agreement

## ARTICLE 2 SCHEDULE AND BIDDER INFORMATION

- 2.1 **RFP Schedule.** The following table sets forth significant dates for this RFP. The time for each deadline on the specified date is 5:00 pm Eastern Prevailing Time (EPT). *[Actual dates to be inserted upon PA PUC approval, based upon date of a final PUC approval order.]* PECO reserves the right to modify these dates at its discretion.

PUC Order	Day 0
RFP Overview Conference	Day 10
Non-binding Notice of Intent to Bid Due Date	Day 17
Bidder Inquiries Deadline	Day 24
Final Publication of Responses to Inquiries	Day 31
Bidder Applications Due Date	Day 45
Notification of Bidder Qualification	Day 55
Bid Proposal Due Date	Day 60
Notification of Selected Bidders	Day 67
Execution of AEC Purchase and Sale Agreements	Day 82

- 2.2 **RFP Overview Conference.** On \_\_\_\_\_ at \_\_\_\_ p.m. EPT, PECO will conduct a teleconference to outline the RFP process and the terms of the AEC Purchase and Sale Agreement. Potential bidders are urged to review this RFP, including exhibits, prior to the teleconference. PECO will answer questions raised at this teleconference to the extent possible. Any party wishing to participate in this teleconference must send an e-mail to AEPS\_RFP@peco-energy.com with the subject line “AEC Bidder

Teleconference.” PECO will provide a dial-in number for the teleconference by return e-mail.

- 2.3 **Non-Binding Notice of Intent To Bid.** Following the bidder teleconference and no later than \_\_\_\_\_, all parties seeking to submit a bid in response to this RFP must submit a non-binding Notice of Intent to Bid in the form attached hereto as Exhibit 2 to the address specified on the Notice. PECO shall assign a bidder number to each notice and inform the bidder of its assigned number. Any party who does not submit a non-binding **Notice of Intent to Bid** may not submit an Application for this RFP.
- 2.4 **Bidder Inquiries.** On or before the Bidder Inquiries Deadline \_\_\_\_\_, bidders may submit questions to PECO via electronic mail (AEPS\_RFP@peco-energy.com). To the extent possible, questions submitted prior to the RFP Overview Conference will be addressed by PECO at the teleconference. Additional questions submitted and answered by PECO thereafter shall be posted with answers at [website to be established] no later than \_\_\_\_\_. The person or company submitting the question shall not be identified. While PECO will review and attempt to answer questions in good faith, PECO reserves the right not to answer any question. The RFP Overview Conference and this bidder inquiry procedure are the exclusive methods for inquiring about this RFP and the AEC Purchase and Sale Agreement, and questions submitted to individual PECO employees, the Company, or the RFP Monitor by other means will not be answered and may result in disqualification of the bidder.
- 2.5 **Informational Website and Updates.** PECO has established a website – [website to be established] – for electronic copies of RFP materials, posting of questions and answers, and other updates on this RFP. Bidders are encouraged to review this website regularly. In its sole discretion, PECO will endeavor to provide e-mail notification of important website updates to those bidders who have filed non-binding notices of intent to bid in this RFP.

### ARTICLE 3 PROJECT ELIGIBILITY AND REQUIREMENTS

- 3.1 **Eligibility.** Applications may be submitted by qualified entities who currently own, propose to develop, or have production rights to Tier 1 non-solar Alternative Energy Systems generating energy from one or more of the following: wind, low-impact hydropower; methane (coal mine or biologically derived); geothermal energy; biomass energy; and fuel cells. Successful bidders must commence delivery of AECs to PECO no later than December 31, 2008. Entities who seek to submit bids from multiple Alternative Energy Systems must submit a separate Application for each such system.
- 3.2 **General Requirements.** Successful bidders must be able to meet all requirements of the AEC Purchase and Sale Agreement. All terms described in the Purchase Agreement are considered final and non-negotiable. Bidders will be required to demonstrate in Bidder Applications that they can meet all specified terms of the AEC Purchase and Sale



Agreement and that they take no exception to the Agreement terms. Failure to do so will result in exclusion of the bidder's Applications from further consideration.

- 3.3 Contract for AECs Only. AEC Purchase and Sale Agreements executed pursuant to this RFP will be for AECs only. Successful bidders will retain title to all generated electricity and capacity associated with Alternative Energy Systems generating the AECs purchased by PECO. Successful bidders shall be responsible for undertaking all activities and paying all costs and charges associated with developing, permitting, and operating the bidder's Alternative Energy System and delivering energy associated with the purchased AECs to an interconnection point within the PJM Interconnection Regional Transmission Organization grid.
- 3.4 Delivery of AECs. All AECs shall be delivered to PECO using the PJM Generation Attribute Tracking System ("PJM GATS") and become the sole property of PECO.
- 3.5 Pricing and Term. Bidders will specify in Bid Proposals an annual contract amount of AECs to be delivered to PECO (the "Contract Amount") during a AEPS reporting period (June 1 – May 31), with a single, fixed price for each delivered AEC. Bids must be based on a five-year contract term, commencing upon the Commercial Operation Date and terminating no later than May 31, 20XX. In the event that the Commercial Operation Date does not coincide with the beginning of an AEPS reporting period (i.e. in June), the contract term may be extended an initial period of up to eleven months so that each year of the five-year term is coincident with AEPS reporting periods. (For example, if an Alternative Energy System is scheduled to achieve Commercial Operation in January, 1, 2008, an initial period from the date of Commercial Operation to May 31, 2008, would be added to the Term of the AEC Purchase and Sale Agreement and the agreement would terminate on May 31, 2013.) Delivery of AECs from an existing system will commence the month after execution of an AEC Purchase and Sale Agreement by the successful bidder.
- 3.6 Development Security and Performance Security. Successful bidders developing new facilities will be required to post Development Security (cash deposit or letter of credit) with PECO of \$3.75 per AEC of the Contract Amount at execution of an AEC Purchase and Sale Agreement. This Development Security shall be returned if the bidder achieves the Commercial Operation Date specified in the Bidder Application; if the date is not achieved, some or all of the development fee will be forfeited and retained by PECO in its sole discretion. Performance security equal to \$7.50 per AEC to be delivered annually must be posted by bidders of existing facilities upon execution of an AEC Purchase and Sale Agreement, and by developers of new facilities upon commencement of Commercial Operation. Performance Security will be returned to the bidder upon successful completion of all obligations in the AEC Purchase and Sale Agreement.
- 3.7 Replacement AECs. In the event that PECO does not annually receive the Contract Amount under the AEC Purchase and Sale Agreement, PECO must be provided with replacement Tier 1, non-solar AECs of the same vintage year as the AECs PECO should have received but did not receive. Failure to provide such replacement AECs will require

a payment equal to the alternative compliance payment required by the Act (\$45) for each AEC not delivered.

- 3.8 AEC Rollover. At Seller's discretion, upon notice to PECO no later than June 30th of each year, AECs produced in excess of the Contract Amount may be sold to PECO and credited against the next Contract Year's in a Contract Year delivery obligations. Such excess AECs must be delivered no later than July 31st of such year.

#### **ARTICLE 4 BIDDER QUALIFICATION**

- 4.1 Bidder Application. In order to submit a bid proposal in response to this RFP, a bidder must submit a printed original and three printed copies of an Application for approval by PECO using the form attached hereto as Exhibit 3 (Form of Bidder Application). All Applications shall be submitted by certified mail, registered mail, hand delivery or courier service to the submission address specified in Section 7.1. Applications which are incomplete, do not conform to the form attached hereto, or otherwise do not satisfy all requirements of this RFP shall not be considered. Submission of a Bidder Application constitutes a bidder's agreement to and acceptance of all terms and conditions of this RFP.
- 4.2 Bidder Qualifications. Time is of the essence in this solicitation, and bidders that cannot demonstrate an ability to achieve Commercial Operation on or before December 31, 2008 (2009) will be eliminated from further consideration. In order to qualify to submit a bid proposal, a bidder must demonstrate and document in the Application that it satisfies the following criteria (the "Bidder Qualifications"):
- (a) Has secured or will secure all required land rights to ensure a Commercial Operation Date on or before December 31, 2008, including any required easements and rights-of-way the proposed point of interconnection with the Grid;
  - (b) Has obtained or will obtain all required local, state and federal permits to ensure a Commercial Operation Date on or before December 31, 2008;
  - (c) Has executed, or will execute within six months of the close of the RFP, an Interconnection Agreement with PJM;
  - (d) Has executed, or will execute within six months of the close of the RFP, a Construction Service Agreement with the relevant utility;
  - (e) Has secured or will secure all necessary equipment and services required to ensure construction, testing and a Commercial Operation Date on or before December 31, 2008 (including, with respect to any wind project, a commitment letter or equivalent document from a turbine vendor showing the availability and delivery schedule for all turbines for the project);

- (f) Has or will be certified as an "Alternative Energy System" capable of delivery of AECs equal to or greater than the Contract Amount the bidder intends to bid in response to this RFP;
- (g) Has obtained or will obtain all authorizations necessary for the generation and delivery of electricity underlying the AECs to PJM;
- (h) Has sufficient management and other personnel experienced in developing and operating systems similar to the proposed Alternative Energy System;
- (i) Has satisfied or will satisfy all performance and financial security requirements as described in the Purchase Agreement;
- (j) Has or will have an operations and maintenance plan with adequate resources (including funding) to maintain the system that will be generating AECs through the term of the AEC Purchase and Sale Agreement;
- (k) For new projects, financial backing sufficient for the project to achieve a Commercial Operation Date on or before December 31, 2008, demonstrated by a letter from the project financier(s) stating the name of the financial institution, contact information for the person preparing the letter, the structure of any proposed financing (confidential information such as proposed financing costs need not be disclosed), confirmation that the financier(s) have reviewed project pro forma statements, have reviewed this RFP and the AEC Purchase and Sale Agreement, have reviewed the bidder's anticipated offer to the Company, including project costs and pricing terms, and that based on this review, the financier(s) consider the project financeable, given project costs as currently known, at the bidder's proposed price and that the financier(s) has a strong interest in financing the project; and
- (l) Has or will own the right to all AECs associated with their bids in their entirety and be capable of transferring undivided rights to those AECs to PECO for the duration of the AEC Purchase and Sale Agreement, without restriction.

- 4.3 **Minimum Contract Amount.** Only Applications in which the bidder intends to propose a Contract Amount in excess of 1,000 AECs shall be considered by PECO.
- 4.4 **Confidentiality Agreement.** All Bidder Applications shall include two copies of the Confidentiality Agreement (attached hereto as Exhibit 6) executed by the bidder. PECO will promptly execute the Agreement and return a copy to the bidder.
- 4.5 **PECO Affiliates.** Affiliates of PECO are permitted to submit Applications and to participate in this RFP to the same extent as any other entity.

- 4.6 **Multiple Bids.** Bidders will be permitted to submit up to three Bid Proposals for a single facility provided that each such Bid Proposal offers different Contract Amounts at different prices. Multiple bids must be structured in a way that, should all bids win, the facility is capable of delivering the total of Contract Amounts offered. If a bidder intends to bid more than one facility, a separate Application must be submitted for each facility.
- 4.7 **Bid Deposit.** Each Application shall be accompanied by a bid deposit (a "Bid Deposit"), in the form of a certified check, equal to the amount corresponding to the Contract Amount of AECs the applying bidder intends to bid in response to the RFP:

Contract Amount (AECs)	Bid Deposit (US\$)
1,000 to 4,999	\$5,000
5,000 to 49,999	\$10,000
50,000 to 99,999	\$25,000
Over 100,000	\$50,000

Bid Deposits submitted by a bidder whose Bid Application is rejected or who is not selected for execution of an AEC Purchase and Sale Agreement shall be refunded at the time of rejection or upon notification of successful bidders. No interest shall be paid on Bid Deposits. A qualified bidder may not submit a Bid Proposal for a Contract Amount in excess of the Contract Amount for which the bidder provides a Bid Deposit. Bid Proposals submitted for Contract Amounts that exceed that maximum Contract Amount for the Bid Deposit received will be rejected.

- 4.8 **Additional Information.** PECO may, but is not obligated to, request additional information and materials from any bidder for evaluation of a Application. Information submitted by a bidder absent a request by PECO which is not in the nature of a correction or clarification to the Application will not be considered by PECO. If any information in an Application is no longer true, Bidder shall immediately notify PECO of the changed information. Failure to provide such notification or respond to a request for additional information and materials may result in disqualification of the bidder and rejection of any Bid Proposal. PECO shall have no duty to inform any bidder of any deficiency in its Application.
- 4.9 **Application Evaluation and Notification of Applicants.** PECO, in its sole discretion, will evaluate each Application using a standard protocol for its completeness and satisfaction of the Bidder Qualifications. The RFP Monitor will oversee this evaluation. PECO will provide each bidder with notice of its satisfaction or failure to satisfy the Bidder Qualifications by the date for Notification of Bidder Qualification set forth in Section 2.3 hereof.

## **ARTICLE 5 BID PROPOSALS**

- 5.1 Submission of Bid Proposals. Only bidders who submit an Application and receive notice of qualification as provided in Article 3 will be permitted to submit a Bid Proposal. PECO will provide Bid Proposal forms to qualified bidders substantially in the form of Exhibit 5. A bidder must submit an original and three copies of its Bid Proposal to the address specified on the Bid Proposal form provided by PECO no later than the Bid Proposal Due Date. Each Bid Proposal shall be submitted in a sealed envelope clearly marked "BID PROPOSAL" with bidder's previously assigned bid number on the outside of the sealed envelope.
- 5.2 Other Limitations. Bid Proposals that are incomplete, unsigned, or otherwise do not conform to the form of the Bid Proposal provided herein shall be rejected by PECO. No Bid Proposal may be conditioned on any other Bid Proposal. Any bid that is contingent in any way, including any proposed change in the AECPA, shall be rejected as non-conforming. PECO may reject any Bid Proposal which it determines, in its sole discretion, is submitted by a bidder in coordination or in concert with any other bidder.

## **ARTICLE 6 EVALUATION OF BID PROPOSALS**

- 6.1 Evaluation of Bid Proposals. All Bid Proposals will be opened by the RFP Monitor, who will rank proposals by price. A Bid Proposal offering a larger Contract Amount at the same price as another Bid Proposal will be prioritized over the Bid Proposal offering the lower Contract Amount, provided that the RFP Monitor may assign a higher priority to a Bid Proposal with a lower Contract Amount where the Bid Proposal offering the larger Contract Amount will cause PECO to exceed the RFP Maximum. Where acceptance of a Bid Proposal will cause PECO to exceed the RFP Maximum but rejection would require PECO to contract with a bidder offering AECs at a higher price in order to obtain the RFP Maximum, PECO shall have the right to negotiate a lower Contract Amount with the bidder offering the lower price.
- 6.2 Selection of Successful Bidders and PA PUC Approval. Upon completion of the evaluation of Bid Proposals, the RFP Monitor shall prepare a report of the RFP results in consultation with PECO, summarizing the bidder qualification process and the Bid Proposals and identifying the successful and unsuccessful bidders, along with successful and unsuccessful Bid Proposals. The report shall then be submitted to the PA PUC for approval.
- 6.3 PA PUC Approval. The PA PUC will have one business day to review the report of the RFP Monitor and approve the report and bid prices submitted by successful bidders as consistent with the PUC Order. If the results are approved, PECO shall notify all bidders of the PA PUC's decision and the results of the RFP. If the results are not approved, PECO will not sign any AEC Purchase and Sale Agreement with winning bidders. PECO reserves the right to cancel all additional RFPs should the PA PUC fail to approve the results.

- 6.4 Execution of AEC Purchase and Sale Agreement. Upon approval of the results by the PA PUC and subject to all provisions of this RFP (including Section 7.8), PECO shall prepare two copies of an AEC Purchase and Sale Agreement with information from the successful bidder's Application and Bid Proposal inserted and transmit those copies to the applicable bidder within five (5) days of notification by PECO. Bidder shall execute and return the AEC Purchase and Sale Agreement to PECO with all Development Security or Performance Security as required under the AEC Purchase and Sale Agreement within ten (10) days.
- 6.5 Forfeiture of Bid Deposit and Disqualification. Failure of a successful bidder to execute the AEC Purchase and Sale Agreement and provide Development Security or Performance Security to PECO as provided in Section 6.4 may result in the disqualification of such bidder from this RFP and forfeit of the entire Bid Deposit of that bidder.
- 6.6 Consideration of Additional Bidders. PECO reserves the right to enter into discussions with higher cost bidders if agreements with lower cost bidders are not executed.

## ARTICLE 7 GENERAL CONDITIONS

- 7.1 Address for submissions. All submissions to PECO for this RFP shall be delivered via registered mail, certified mail, overnight courier, or hand delivery to the following address:

PECO AEPS RFP

c/o [Name],

PECO Energy Company

S6-2

2301 Market Street

Philadelphia, PA 19103

Applications, Bid Proposals, and other materials received after the date specified in this RFP shall be returned unopened and without consideration. Bidder is solely responsible for the timely delivery of any submission for this RFP.

- 7.2 No Unauthorized Modifications. No interpretation or change to this RFP shall be valid unless it is signed by a duly authorized representative designated by an Officer of PECO.

- 7.3 Ownership of RFP Materials; Confidentiality. All materials submitted to PECO pursuant to this RFP shall be the property of PECO and shall be treated as confidential in accordance with the terms of the Confidentiality Agreement.
- 7.4 Presentation and Formatting. All information submitted by a bidder must be in the English language.
- 7.5 Costs. PECO shall have no responsibility whatsoever with respect to the costs of any bidder in considering or responding to this RFP, including but not limited to (i) any costs of preparing any materials submitted to PECO; (ii) any costs associated with any studies, permits, or other agreements contemplated by this RFP; (iii) any costs associated with any Alternative Energy System; (iv) any costs associated with financing, employees or consultants, or real property.
- 7.6 Publicity. Bidders are not permitted to announce or release any information regarding this RFP or PECO's evaluation process without PECO's prior written approval, which PECO may withhold approval in its sole discretion. Each bidder understands and agrees that PECO does not participate in, nor does it allow, bidders to utilize media releases of any kind to publicize bidder's business relationship with PECO. Each bidder shall not use any trade name, trademark, service mark or any other information which identifies PECO in such bidder's sales, marketing and publicity activities, including interviews with representatives of any written publication, or television or radio station or network, without PECO's express prior written consent. Successful bidders agree to cooperate with PECO in preparation of any press release announcing the results of this RFP.
- 7.7 Disclaimer. PECO makes no representations or warranties regarding the accuracy or completeness of the information contained in this RFP and its exhibits or any statements made by representatives of PECO during the RFP process. Each bidder is responsible for making its own evaluation of information and data contained in this RFP and in preparing and submitting responses to this RFP. The issuance of this RFP and the receipt of information in response to this RFP shall not, in any way, cause PECO to incur any liability (whether contractual, financial or otherwise) to any bidder participating in the RFP process, and by submitting an Application, bidder releases PECO from any and all claims, demands, actions, losses, liabilities, and expenses (including reasonable legal fees and expenses) relating to this RFP.
- 7.8 Not an Offer. This RFP is issued to elicit responses to PECO's inquiry and is not an offer. The issuance of the RFP and the submission of bidder's information do not create any obligation upon PECO to buy goods or services from a bidder, and PECO reserves the right to accept or reject any or all proposals received. PECO also reserves the right to amend, suspend, or terminate the RFP process at any time, without reason and without liability, and makes no commitments, implied or otherwise, that this process will result in a business transaction with one or more bidders. No contract or other binding obligation on PECO will be implied unless and until an agreement has been executed on terms and conditions acceptable to PECO. PECO also reserves the right to not execute agreements with any or all bidders should the Company determine, in its sole discretion, that would

not guarantee delivery, would impose unreasonably high costs on the Company's customers and/or would violate existing regulatory standards.

- 7.9 Non-conforming Applications and Bid Proposals. PECO reserves the right to reject any Application or Bid Proposal at any time on the grounds that it does not conform to the terms and conditions of this RFP or the bidder has not complied with the provisions of this RFP.
- 7.10 Interpretation. Notwithstanding any provision of this Agreement, in the event an AEC Purchase and Sale Agreement is executed between a bidder and PECO, that agreement shall control over any provision of this RFP.