

ORIGINAL



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November 3, 2006

Blanca S. Bayo, Director  
Division of Commission Clerk and  
Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Via Hand-Delivery

Re: Proposed amendments to Rule 25-17.0832, F.A.C., Firm Capacity and Energy Contracts  
Docket No. 060555-EI

Dear Ms. Bayo:

Enclosed for filing in this docket are an original and 15 copies of the Certificate of Service of the Testimony of Sami Kabbani.

Please let me know if you have any questions.

Sincerely,

Kathryn G.W. Cowdery

- CMP \_\_\_\_\_
- COM 5 \_\_\_\_\_
- CTR Org \_\_\_\_\_
- ECR \_\_\_\_\_
- GCL 1 \_\_\_\_\_
- OPC \_\_\_\_\_
- RCA \_\_\_\_\_
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RUDEN, McCLOSKEY, SMITH, SCHUSTER & RUSSELL, P.A.

BEFORE THE PUBLIC SERVICE COMMISSION

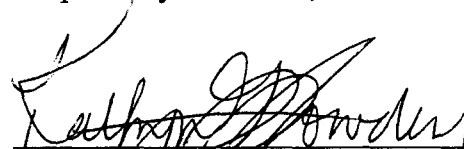
In re: Proposed amendments to)  
Rule 25-17.0832, F.A.C., Firm )  
Capacity and Energy Contracts )

Docket No. 060555-EI  
Filed: November 3, 2006

CERTIFICATE OF SERVICE  
OF TESTIMONY OF SAMI KABBANI

I hereby certify that a true and correct copy of the attached Testimony of Sami Kabbani has been delivered by hand delivery to Larry D. Harris, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0862, and by regular U.S. Mail to Susan F. Clark, P.O. Box 10967, Tallahassee, FL 32302-2967, Vicki Gordon Kaufman, The Perkins House, 118 N. Gadsden Street, Tallahassee, FL 32301, Robert Scheffel Wright, 225 S. Adams Street, Suite 200, Tallahassee, Florida 32301, and Richard Zambo, 2336 S. East Ocean Blvd, Number 309, Stuart, Florida 34996-3310, this 3rd<sup>th</sup> day of November, 2006.

Respectfully submitted,

  
Kathryn G.W. Cowdery  
Ruden McClosky  
215 S. Monroe Street, Suite 815  
Tallahassee, FL 32301  
Fla. Bar. No. 363995  
(850) 412-2000

Attorneys for Covanta Energy Corporation

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**DIRECT TESTIMONY**

**OF**

**Sami Kabbani**

**FOR**

**Covanta Energy Corporation**

**Q. Please state your name and occupation.**

A. My name is Sami Kabbani. I am the Director of Energy at Covanta Energy Corporation (“Covanta”). Our headquarters is located at 40 Lane Road, Fairfield, NJ 07004.

**Q. Please provide a brief description of Covanta Energy**

A. Covanta offers a wide variety of waste management and energy-related services to wide variety of clients both domestically and internationally. In the U.S., Covanta owns and/or operates 31 Waste-to-Energy (“WTE”) facilities that process more than fifteen million tons of municipal solid waste (“MSW”) per year and serve the solid waste disposal needs of more than 17 million citizens in 15 states. Each facility utilizes MSW as a renewable fuel to generate steam and/or electricity, thereby lessening the dependence on, and environmental impacts from, the combustion of fossil fuels, conserving landfill space and recovering and recycling scrap metals.

In addition, Covanta owns and/or operates four waste wood and five biogas facilities in the U.S. Combined, Covanta’s domestic portfolio of

1 facilities produces about 7,800 GWh of renewable energy annually,  
2 representing almost 10% of the nation's renewable electricity generation.  
3 Covanta manages over 44 Power Purchase Agreements ("PPA") in 15 different  
4 states.

5 In Florida, Covanta operates four WTE facilities with combined  
6 capacity of about 115 MW that process over 1.25 million tons of MSW  
7 annually. The WTE facilities we operate in Florida are located in Pasco  
8 County, Lake County, Hillsborough County, and Lee County. Furthermore,  
9 we are expanding the Lee and Hillsborough facilities to increase the Florida  
10 renewable portfolio and continue to provide reliable waste disposal service.

11

12 **Q. Briefly describe your educational background.**

13 A. I have earned a Bachelor of Science in Mechanical Engineering from the  
14 George Washington University in 1985 and Master degree in Engineering  
15 Administration from the Virginia Polytechnic Institute and State University in  
16 1987 under the Industrial Engineering and Operations Research program.

17

18 **Q. Please describe your professional experience and qualifications.**

19 A. In my capacity as the Director of Energy at Covanta, I am responsible for  
20 addressing all energy issues (power, renewable attributes, gas, and steam)  
21 associated with the company's 43 plants located in 15 different states and  
22 diverse regions including PJM ISO, ISO NE, NY ISO, Midwest ISO, Florida,  
23 California and other regions. For power-related matters, I am responsible for

1 managing and evaluating the company's PPAs, reviewing pricing terms and  
2 the underlying avoided cost calculations, and restructuring these agreements,  
3 when appropriate. In addition, I am responsible for marketing the electrical  
4 and renewable output from the company's merchant plants and dealing with  
5 ISO- related matters.

6 I have been involved with the power industry since 1987 and have  
7 served in different positions addressing a wide array of issues covering both  
8 supply- and demand-side areas, power plant development and financing, and  
9 power market assessments in both domestic and international power markets.  
10 Prior to joining Covanta, I was Vice President at C.C. Pace Resources, an  
11 energy consulting firm located in Fairfax, Virginia, where I was responsible for  
12 the Power practice at the firm. In this capacity, I led a professional team of 20  
13 people to support the firm's clients' needs in the areas of project development,  
14 market assessment, price forecasting, PPA negotiations and restructuring, and  
15 project financing. Before that, I worked at the Potomac Electric Power  
16 Company ("Pepco") located in Washington, D.C., where I was responsible for  
17 supporting the analysis of various Non-Utility Generation (NUG)  
18 proposals/projects and negotiation of the associated PPAs as well as supporting  
19 the development of the company's Integrated Resource Plan (which is  
20 equivalent to the Florida IOU's 10-year site plans) and the calculation of the  
21 company's avoided costs using state-of-the-art models such as EGEAS and  
22 PROMOD utilizing the Differential Revenue Requirement method to develop  
23 the appropriate avoided cost. Prior to that, I worked at the Resource Dynamics

1 Corporation, a consulting firm located in Vienna, Virginia where I provided  
2 support to the Electric Power Research Institute's (EPRI) Demand-Side  
3 Management program and the U.S. Department of Energy's (DOE) Clean Coal  
4 Technology program by developing models for the least-cost-expansion plans  
5 in various power pools to determine the appropriate locations for coal-  
6 based/gas-based projects and the resulting avoided costs.

7

8 **Q. On whose behalf are you presenting this testimony?**

9 A. I am presenting this testimony on behalf of Covanta.

10

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

12 A. The purpose of my testimony is to highlight Covanta's concerns about the  
13 Commission's proposed rule and the associated Investor Owned Utilities (IOUs')  
14 Standard Offer Contracts (SOC). The thrust of my testimony will focus on the  
15 proposed SOCs and the need to establish separate hearings and rules for these  
16 SOCs. Specifically, I would like to expand on Mr. Michael D. Bedley's testimony  
17 on behalf of the Renewables Group (filed with this Commission as part of these  
18 proceedings) regarding the concept of "trip wires" that are currently included in  
19 the IOUs' SOC and how these trip wires negatively affect the development of  
20 renewable projects in Florida.

21

22 **Q. Why are you focusing on the SOC?**

1 A. The IOUs SOC's, as currently filed with the Commission, contain onerous terms  
2 and conditions that will discourage REF's investment in Florida and defeat the  
3 concept of SOC terms designed to facilitate and encourage the development of  
4 renewable generation in state. Further, as mentioned in Mr. Michael D. Bedley  
5 testimony and the comments of Green Coast Energy, Inc. (both were filed with this  
6 Commission as part of these proceedings), these SOC's are not "financeable" and  
7 are not to expected attract renewable energy investment to the state.

8 It has been mentioned by the IOUs that renewable developers will have the  
9 opportunity to "negotiate" different contracts to address any issues of concern;  
10 however, the SOC's contain numerous terms that require fundamental restructuring  
11 and fundamental "paradigm shift" in the thinking of the IOUs. Most likely,  
12 negotiations would not yield the desired result of encouraging the development of  
13 renewable energy, reducing dependence on natural gas, and increasing fuel  
14 diversity in Florida. I am concerned that the IOUs would operate off the false  
15 assumption that the SOC's represent some kind of a Commission mandate and,  
16 therefore, negotiated contracts should not deviate from these contracts  
17 substantially. This will result in a fruitless, time consuming, and expensive  
18 negotiating process. Without critically examining each term in these SOC's via the  
19 approach I am recommending below, renewable developers will either pursue  
20 other projects in different states or the Commission might find it necessary to rule  
21 on each issue/contract individually.

22

23 **Q. How do you propose addressing the SOC's?**

1 A. I strongly recommend that the Commission initiate separate proceedings to allow  
2 the parties to jointly develop one state-wide SOC that is workable to both the IOUs  
3 and the renewable developers in Florida. These proceedings should start with a  
4 series of workshops to give the parties an opportunity to narrow down the issues.  
5 If agreement is reached, the Commission will be positioned to review the proposed  
6 SOC and rule accordingly. If an agreement is not reached, each party will address  
7 its remaining concerns in a formal hearing thus giving the Commission the  
8 opportunity to hear the parties and establish a record upon which an order will be  
9 issued.

10 A statewide SOC is recommended to streamline the process and avoid having  
11 to rule on several SOC's and having to compare and contrast the terms of all the  
12 SOC's. Further, having one SOC in place would encourage the development of  
13 renewable energy projects by allowing developers to focus on key project  
14 development issues such as siting, technology selection, fuel source, and  
15 financing, rather than having to review and analyze several and substantially  
16 different SOC's before deciding if they should spend their time and effort pursuing  
17 a renewable project in the state.

18

19 **Q. Can you provide specific examples of areas in the SOC's that are not workable**  
20 **for renewable developers?**

21 A. As mentioned before, there are several areas that are not workable from renewable  
22 developers stand point. Rather than going through all the details, I would like to  
23 focus on the following issues:



- 1 a. Conditions Precedent
- 2 b. Committed Capacity and Capacity Testing
- 3 c. Performance Factors
- 4 d. Default and Termination
- 5 e. Completion and Performance Security
- 6 f. Other Provisions and Suggestions

7 Due to the limited amount of time given to develop and file my testimony, I am not  
8 able to address all the issues in detail in this testimony, but rather, I will address some  
9 of this points to highlight the reason for my concern about the SOCs and demonstrate  
10 the need for a formal process to critically examine of these contracts and standardize  
11 them.

12  
13 **Q. Please explain your concern about the Conditions Precedent (CPs)**

14 A. Some SOCs contain stringent Conditions Precedent that are unnecessary and  
15 appear to be designed to terminate the signed SOC at the first possible opportunity.  
16 This is because, according to some of the SOCs, if these CPs are not met within a  
17 specified period of time from the signature of the SOC, it will result in the  
18 termination of the contract (at the IOU's sole discretion). My concern here is (a)  
19 the number of CPs that should be met, many are not necessary, several are  
20 redundant, and some are outside the control of the developer and (b) the short  
21 period of time given to the developer to meet these conditions.

22 In the past, when the IOUs established SOCs for Qualifying Facilities (QFs),  
23 the utilities were relying on these facilities to meet their growing capacity needs

1 and reserve margin requirements. Now, as stated in Section 366.91, F.S., the  
2 purpose of the SOCs associated with Renewable Energy Facilities (REF) is to  
3 encourage development of REFs in the state to diversify the fuel mix and reduce  
4 reliance on natural gas for electricity generation. The imposition of numerous CPs  
5 certainly does not meet the spirit of the statute and actually discourages the  
6 development of REFs.

7 For example, the Progress Energy SOC gives the developer 12 months (Tampa  
8 Electric's gives the developer 120 days) to meet certain CPs, otherwise the signed  
9 SOC will be terminated. During this 12 months (or 120 day period in Tampa  
10 Electric's case), the developer is expected to obtain all the necessary permits,  
11 execute all project-related and construction contracts, and finance the project.

12 Furthermore, some of the SOCs contain vague CPs that could result in the  
13 termination of a signed SOC for reasons beyond the control of REF. An example  
14 of such CP is the following one contained in Progress Energy's SOC: "any  
15 legislation relevant to the above items [the CPs] being in full force and effect."

16 The short period of time allowed in the SOCs is a good demonstration of the  
17 unreasonableness of these SOCs, as they do not recognize, allow for, or encourage  
18 the development of new renewable technologies. Projects based on new  
19 technologies as well as projects based on commercial/existing technologies will  
20 require more than 12 months (and certainly more than 120 days) to develop,  
21 permit, finance, and construct. A reasonable approach could take the following  
22 form:

- 23
- Sign an SOC with REF

- 1           • Allow at least 24 months to obtain the necessary permits
- 2           • Allow flexibility if the above permits are delayed due to no fault of the
- 3           developer.
- 4           • Prohibit an IOU from terminating any signed SOC without (a) showing
- 5           good reason for such termination and (b) obtaining Commission's
- 6           approval.
- 7           • Allow at least 3 years for financing and construction from the date of the
- 8           final, non-appealable permit is granted.

9           The bottom line is: the encouragement of the development of renewable projects in  
10          the state requires partnership and support from all parties involved, not a series of  
11          "trip wires" designed to fault a project and terminate its SOC at the first possible  
12          opportunity.

13

14   **Q.     Can you elaborate on the Committed Capacity and Capacity Testing point**  
15   **you raised above?**

16   A. Yes, I will. Some of the SOCs require REFs to state the amount of Committed  
17   Capacity when the SOC is signed. Prior to allowing the project to reach  
18   commercial in-service, some of the SOCs require the REF to run an initial capacity  
19   test to show that the demonstrated capacity matches or exceeds the Committed  
20   Capacity amount. If the REF is not able to meet the Committed Capacity stated in  
21   the agreement, the SOC will not be honored and will be eventually terminated  
22   (after the project is already built and a substantial investment is already deployed).  
23   To meet this requirement, REFs will be forced to either under-state their

1 Committed Capacity when signing the SOC or over-design their projects to meet  
2 the committed amount. Both approaches result in low project returns and will  
3 make financing more difficult and expensive. This is especially true for “near  
4 commercial” or new renewable technologies. An alternative approach to this  
5 stringent requirement should take the following shape:

- 6 • The REF would state the Committed Capacity when the SOC is signed and  
7 based on the best available information.
- 8 • The initial Committed Capacity test should allow the developer to adjust  
9 (increase or decrease), if necessary, the amount of the Committed Capacity  
10 based on the test results. Such adjustment should not exceed 20% of the initial  
11 number.
- 12 • The REF should be allowed to adjust (increase or decrease) its Committed  
13 Capacity based on each subsequent capacity test, but in no case the REF is  
14 permitted to increase its Committed Capacity more than 20% from the  
15 Committed Capacity amount stated when the SOC is signed.
- 16 • The REF should be given ample time to correct technical problems and retest  
17 its facility without the threat of terminating the SOC after the facility is already  
18 built.

19

20 **Q. What is the benefit of the above approach?**

21 The rate payers in the state would benefit from the above approach by deriving the  
22 maximum capacity value from REFs. Understated capacity could create the artificial  
23 appearance of the need for more capacity in the state and might encourage the building

1 of unnecessary fast-track fossil fuel capacity (such as gas-fired combustion turbines)  
2 to meet a potential perceived capacity shortage.

3

4 **Q. Please state your concern about the Performance Factors (PF) included in the**  
5 **SOCs**

6 A. To earn their full capacity payment, REFs must maintain certain monthly capacity  
7 factor and/or certain availability factor (sometimes based on a rolling 12 month  
8 average). These PFs are, supposedly, based on “projected” capacity factor and/or  
9 availability factor of a unit that is yet to be built. These PFs appear to be quite  
10 high. For example, some SOC's require the REF to achieve a capacity factor of  
11 92% to receive full capacity payment. I think the PFs should be not be higher than  
12 the average of the IOU's base load plants as measured in the immediately  
13 preceding 10 years. And, to encourage the development of new renewable  
14 technologies, these PFs should not be higher than 80%.

15 Furthermore, the SOC's state a minimum capacity factor (and in some cases  
16 availability factor) below which the REF would not receive any capacity payment.  
17 These minimum PF numbers, as stated in the SOC's, appear to be quite high  
18 (ranging from 60% to 90%). Again, to encourage the development REFs, these  
19 PFs should not be higher than 50%.

20 I also noticed that the PFs specified in the SOC's remain constant throughout  
21 the term of the SOC (10 years or more) as they do not recognize the aging process  
22 of a new unit and the associated deterioration of performance. I believe the

1 “aging” issue could be addressed by allowing the REFs to adjust their Committed  
2 Capacity based on actual capacity tests as stated above.

3 Finally, the PFs should be based on a 12 months rolling average and not on one  
4 month calculation (as stated in some SOC's). This will enable the REF to correct  
5 any plant issues that are affecting its PFs without substantially reducing or perhaps  
6 eliminating its capacity payments and exposing the project to unnecessary  
7 financial hardship.

8

9 **Q. Do you find the Default and Termination conditions in the SOC's**

10 **reasonable?**

11 A. The Default and Termination conditions in the several SOC's are not reasonable  
12 as they contain provisions that would result in the termination of a signed SOC  
13 without giving the REF enough time to cure the default. This will either  
14 eliminate, altogether, the developers' ability to attract equity and long-term  
15 debt to fund their REFs or require high risk premium that will increase the cost  
16 of REF and substantially reduce returns, which in turn reduces the developers'  
17 interest pursuing renewable projects in Florida.

18 In my opinion, prior to terminating a signed SOC due to lack of  
19 performance on a “material” provision, IOUs should be required to serve a  
20 formal notice upon the REF with a copy to the Commission specifying the  
21 event of default as well as providing a reasonable cure period, no less than 12  
22 months, unless the event is related to a payment provision. Furthermore, the  
23 SOC's contain default provisions directed at the REF and no default provisions

1 directed at the IOUs. This unbalanced approach should be remedied as  
2 follows:

- 3 • Defaults must be limited to violating “material” provisions of the SOC.
- 4 • The default and termination provisions should apply to both parties, not  
5 only the REFs.
- 6 • Upon the occurrence of an event of default, the non-defaulting party  
7 may, at its sole discretion, terminate the SOC and/or seek all available  
8 remedies by law or equity, provided that (i) the non-defaulting party  
9 has served a notice to the defaulting party, (ii) the event of default is  
10 not remedied within 12 months or the time frame specified below, and  
11 (iii) the Commission has issued an order, after holding evidentiary  
12 hearings, authorizing the IOU to terminate an SOC.
- 13 • The Default sections from the IOUs’ SOCs should be deleted in their  
14 entirety and replaced with language limited to the following events of  
15 default:
  - 16 i. Failure to make, when due, any payment required by the SOC if  
17 such failure is not remedied within 30 Business Days after  
18 notice.
  - 19 ii. Any intentional false or misleading statement made by the  
20 defaulting party related to a material issue.
  - 21 iii. Failure to perform any material covenant or obligation set forth  
22 in the SOC, if such failure is not remedied by the defaulting

1 party within 12 months from the receipt of a notice from the  
2 non-defaulting party.

3 iv. A party becomes bankrupt.

4 v. If a party consolidates with, merges with or into, or transfers all  
5 or substantially all of its assets to another entity and the  
6 resulting, surviving, or transferee entity fails to assume all  
7 obligations of such party under the SOC.

8

9 **Q. Please explain your concern about the Completion and Performance**  
10 **Security provisions in the SOC.**

11 A. Different SOCs contain different Completion and Performance Security  
12 provisions that should be standardized.

13 The Completion Security should be limited to new projects, designed to  
14 track the development progress of such projects, tied to specific development  
15 milestones, and limited to a reasonable amount. For example, the SOCs  
16 should contain Completion Security limited to the following:

- 17 ● Initial Security Amount (ISA): due upon signature of an SOC and  
18 should not to exceed \$5/KW of Committed Capacity.
- 19 ● The REF shall have 24 months to obtain the necessary permits. If  
20 permits are not received within this period, due to no fault of the REF,  
21 the REF shall have the option to terminate the SOC. The ISA shall be  
22 refunded in full, plus interest. If the REF fails to diligently pursue the  
23 necessary permits and the 24 months period lapses, the IOU shall have



1 the right to terminate the SOC and keep the Initial Amount (subject to  
2 an order from the Commission as mentioned in the Default and  
3 Termination discussion above).

- 4 • Completion Security Amount (CSA): The REF shall be required to post  
5 additional \$5/KW within 30 days from receiving final and non-  
6 appealable permits. The CSA shall not exceed \$10/KW (including any  
7 amounts retained from the ISA).
- 8 • The REF shall have at least 3 years from the date of receiving the final  
9 non-appealable permits to finance, construct the plant, and conduct the  
10 necessary initial capacity tests to demonstrate the amount of Committed  
11 Capacity. If the REF fails to meet the above, the IOU, shall have the  
12 right to terminate the SOC (subject to an order from the Commission as  
13 mentioned in the Default and Termination discussion above). Once the  
14 SOC is terminated by a Commission order, the IOU shall have the right  
15 to keep the CSA.

16 The requirement to post a Performance Security should be limited to  
17 projects receiving capacity payments that exceed the revenue requirements  
18 payments in any annual period, unless the levelized payment option is selected  
19 in which case no Performance Security would be required. No other form of  
20 performance security shall be required from REFs. REFs must post the  
21 necessary Completion and/or Performance Security amounts utilizing the  
22 appropriate form of collateral from an investment-grade entity. If the  
23 investment-grade entity posting the collateral drops to below investment grade,

1 the collateral amount must be replaced within 30 days or the IOU shall have  
2 the right to terminate the SOC.

3 Finally, pursuant to Rule 25-17.091(4) F.A.C., REFs qualifying as “Solid  
4 Waste Facility” may use unsecured promise to pay, by the local government  
5 which owns the Facility or on whose behalf the REF operates the facility, to  
6 secure its obligation to achieve the initial in-service date. This term should be  
7 clearly stated in all SOCs as some do not include this term.

8

9 **Q. Do you have any suggestions to encourage the development of REFs in the**  
10 **state?**

11 A. Yes I do. I would like to make the following suggestions:

12 a. Conversion from As-Available Energy to Firm Capacity and Energy

13 SOC: The REF should have the opportunity for such conversion,  
14 subject to establishing and meeting the necessary capacity testing  
15 requirements.

16 b. Audit Rights: during the term of a signed SOC, the REF should have  
17 the right to examine the utility’s records related to billing, applicable  
18 rate calculations, and any other items related to a material provision of  
19 the SOC, provided however that the REF should submit its request for  
20 records in writing. The utility should provide all the requested records  
21 within 60 days from the receipt of the written notice.

22 c. Rejection of a signed SOC: IOUs should not have the right to reject a  
23 signed and completed SOC without approval from the Commission.

1           Such approval should not be granted without conducting an evidentiary  
2           hearing in which parties present the relevant facts. In addition, when  
3           an SOC is signed by an REF and presented to an IOU, the IOU should  
4           execute within 15 days or provide detailed reasons to the REF why the  
5           SOC is not ready for execution and what additional information is  
6           needed to complete the SOC.

7           d. Approval of SOCs: No new form of SOC should be approved prior to  
8           the Commission issuing a public notice and soliciting comments from  
9           interested or affected parties. Prior to the approval of a new SOC, the  
10          proposed SOC, together with all supporting documents, attachments,  
11          appendices, rules, and regulations, must be electronically and publicly  
12          posted in a format that allows interested parties to electronically enter  
13          and highlight suggested modifications or deletions for the  
14          Commission's consideration.

15          e. Posting of Information: Once the SOC form is approved by the  
16          Commission, IOUs should be required to post it on their web site,  
17          together with all the supporting information, tariffs, and  
18          interconnection agreements.

19          f. Backup and Maintenance Power: All the electricity purchased by the  
20          REF to startup its facility or during maintenance, should be offered at  
21          the utilities' interruptible service. Utilities should not charge demand  
22          charges to REF as long as they are using interruptible service. Demand

1 charges should only be imposed on REFs if they (i) request firm service  
2 in writing or (ii) fail to interrupt when requested by the IOU.

3 g. Standard Interconnection Agreements: the SOC should contain  
4 Commission- and/or FERC-approved Standard Interconnection  
5 Agreements (including rates) for both small and large facilities.

6 h. Dispatch and Curtailment: IOUs should be required to purchase all the  
7 electricity produced by REF at all times. When curtailment is  
8 necessary, during system emergencies or minimum load periods,  
9 utilities must curtail their own generation and all other “fossil fuel”  
10 purchases before requesting curtailment from REFs. Utilities must  
11 exercise their best efforts to minimize curtailment of and resume  
12 purchases from REF. Within 2 business days of a curtailment event,  
13 utilities must provide the REF with a report stating, at minimum, the  
14 cause for curtailment and the steps taken by the utility to prevent future  
15 occurrences. When feasible, utilities must coordinate their outages or  
16 curtailments with the REF. Utilities must give the REF at least 30-day  
17 notice of a planned outage or curtailment. During the curtailment  
18 period, the REF should have the right to sell its capacity and/or energy  
19 output to a 3rd party of its choice, provided that such sale does not  
20 negatively impact the grid conditions.

21 i. Damage and Liability Limits: For the REFs, the SOCc should limit  
22 damages and liabilities to the amount of Completion or Performance  
23 Security amounts described above.

1           j. Force Majeure: The Force Majeure section of the SOCs should be  
2 deleted in their entirety and replaced with the following language:

3  
4           A. Force Majeure means an event or circumstance which prevents one  
5 party from performing its obligations under one or more  
6 Transactions, which event or circumstance was not anticipated as of  
7 the date the Transaction was agreed to, which is not within the  
8 reasonable control of, or the result of the negligence of, the  
9 Claiming Party, and which, by the exercise of due diligence, the  
10 Claiming Party is unable to overcome or avoid or cause to be  
11 avoided. Force Majeure shall not be based on (i) the loss of  
12 Buyer's markets; (ii) Buyer's inability economically to use or resell  
13 the Product purchased hereunder; (iii) the loss or failure of Seller's  
14 supply; or (iv) Seller's ability to sell the Product at a price greater  
15 than the Contract Price.

16  
17           B. To the extent either Party is prevented by Force Majeure from  
18 carrying out, in whole or part, its obligations under the Transaction  
19 and such Party (the "Claiming Party") gives notice and details of  
20 the Force Majeure to the other Party as soon as practicable, then the  
21 Claiming Party shall be excused from the performance of its  
22 obligations (other than the obligation to make payments then due or  
23 becoming due with respect to performance prior to the Force  
24 Majeure). The Claiming Party shall remedy the Force Majeure with  
25 all reasonable dispatch. The non-Claiming Party shall not be  
26 required to perform or resume performance of its obligations to the  
27 Claiming Party corresponding to the obligations of the claiming  
28 Party excused by Force Majeure.

29  
30           **Q. Would you like to make a closing comment?**

31           A. Yes. The SOCs, as currently drafted, do not represent constructive means to  
32 help Florida achieve its stated renewable energy goals, and in my view, will  
33 accomplish just the opposite by discouraging independent private sector  
34 development and investment in renewable energy initiatives. For the reasons  
35 stated in my testimony above, bilateral contract negotiations are not expected  
36 to yield better results either. Encouraging the development of renewable

1 energy projects in the state will require the Commission to lead the utilities  
2 beyond the old QF regime and prompt them to think more creatively about  
3 ways to implement Section 966.91, F.S. Furthermore, it is quite clear from  
4 my review of the SOCs that there is a need for one statewide SOC to be jointly  
5 developed by the parties involved (IOUs and REFs) and approved by the  
6 Commission. This would go a long way towards attracting and encouraging  
7 renewable energy investment in the state.

8 In their October 25, 2006 combined comments on the proposed rule,  
9 the IOUs state the following (on page 2, item 3): "IOUs remain committed to  
10 the use of renewable resources in serving customers in the state of Florida."  
11 To support this statement the IOUs state that they are already purchasing 865  
12 MW from renewable energy facilities. In my opinion, this point provides a  
13 good example of why there is a need for creative implementation of Section  
14 966.91, F.S.

15 I say this because: (a) all or substantially all these 865 MW were  
16 purchased before Section, 966.91, F.S. was passed and (b) more importantly,  
17 the 865 MW represent less than 1.7% of the state's installed capacity. This  
18 record should not be satisfactory to any entity that truly appreciate the purpose  
19 and intent of Section 966.91, F.S. and should support the need for aggressive  
20 implementation of this law.

21

22 **Q. Does this conclude your direct testimony?**

23 A. Yes it does.