Matilda Sanders

ORIGINAL

From: Jay Brew [Jay.Brew@bbrslaw.com]

Sent: Monday, July 02, 2007 2:54 PM

To: Filings@psc.state.fl.us

Cc: bryan_anderson@fpl.com; rhunter@greencoastenergy.org; Susan D. Ritenour; Schef Wright; jlavia@yvlaw.net; John Burnette; sclark@radylaw.com; richzambo@aol.com; KATHRYN.COWDERY@RUDEN.COM; regdept@ecoenergy.com; Paul Lewis; kstorain@potashcorp.com; Al Taylor

Subject: Petition to Intervene,

Attachments: Docket 070235 PCS Petition and Protest .pdf

1. James W. Brew, Brickfield, Burchette, Ritts & Stone, P.C., 1025 Thomas Jefferson Street, N.W., Washington, D.C. 20007, jay.brew@bbrslaw.com is the person responsible for this electronic filing.

2. The filing is to be made in Docket 070235-EQ, In re: Petition for approval of standard offer contract for purchase of firm capacity and energy from renewable energy producer or qualifying facility less than 100 kW tariff, by Progress Energy Florida, Inc." The filing is made on behalf of White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate-White Springs.

3. The total number of pages is 53.

4. The attached document is the Petition to Intervene, Protest and Petition for Formal Administrative Hearing of PCS Phosphate-White Springs.

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ORIGINAL

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of standard offer contract for purchase of firm capacity and energy from renewable energy producer or qualifying facility less than 100 kW tariff, by Progress Energy Florida, Inc.	)))))	**Docket No. 070235-EQ** **Filed: July 2, 2007**

PETITION TO INTERVENE,
PROTEST OF PROPOSED AGENCY ACTION AND
PETITION FOR FORMAL ADMINISTRATIVE HEARING OF
WHITE SPRINGS AGRICULTURAL CHEMICALS, INC. D/B/A
PCS PHOSPHATE – WHITE SPRINGS

Pursuant to Sections 120.569 and 120.57(1), Florida Statutes, and Rules 25-22.039 and 28-106.201, Florida Administrative Code, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs ("PCS Phosphate"), through its undersigned attorney, files its Petition to Intervene and Protest to Commission Order No. PSC-07-0493-TRF-EQ, which approved the Standard Offer Contract of Progress Energy Florida ("PEF") for energy and capacity purchased from renewable energy and small qualifying facilities. In support thereof, PCS Phosphate states as follows:

1. The name and address of the affected agency is:

   Florida Public Service Commission
   2540 Shumard Oak Boulevard
   Tallahassee, Florida 32399-0850

2. The name and address of the petitioner is:

   White Springs Agricultural Chemicals, Inc.
   d/b/a PCS Phosphate – White Springs
   15843 SE 78th Street, P.C. Box 300
   White Springs, Florida 32096

3. All pleadings, motions, orders and other documents directed to the petitioner should be served on:

James W. Brew
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Notice of Receipt of Agency Action

4. PCS Phosphate received notice of the Commission's proposed agency action on or about June 12, 2007.

Statement of Affected Interests

5. PCS Phosphate is a manufacturer of fertilizer products with plants and operations in or near White Springs, Florida that are located within PEF's electric service territory.[1] PCS Phosphate receives electric service under various PEF tariffs. In addition, PCS Phosphate uses waste heat recovered from the manufacture of sulfuric acid to cogenerate electric energy. This electric energy production is

[1] PCS Phosphate mines phosphate ore on approximately 100,000 acres (160 square miles) located in Hamilton County, Florida, and employs approximately 1,185 individuals.

considered renewable energy pursuant to Section 366.91(2)(b), Florida Statutes. PCS both uses that renewable energy to offset its load and sells excess energy to PEF.

6. In the above-referenced docket, Commission Order No. PSC-07-0493-TRF-EQ (the "Order") approved PEF's Standard Offer Contract for purchasing firm capacity and energy from renewable energy producers and qualifying facilities with a capacity less than 100 MW. This Standard Offer Contract is intended to implement Section 366.91, Fla. Statutes, which articulates an express state policy to promote renewable energy production. The PEF Standard Offer Contract, however, will undermine rather than effectuate that policy. The Standard Offer Contract imposes unnecessary and onerous terms, and offers contract payments that are understated and inadequate. Collectively, those prices and terms will have a chilling effect on renewable energy development and production.

7. Further, PEF's standard offer capacity payments are linked to the utility's decision first announced in its 2007 Ten Year Siting Plan ("TYSP") to abandon a planned coal-fired generation addition for 2013. PEF instead will rely on increased power purchases and natural gas-fired generation. This change in course shown in the 2007 TYSP will lead to a PEF system that gets 44% of its energy from oil- and gas-fired generation (compared to 32% today). This year's TYSP charts a course wholly at odds with express Florida policy to reduce its already excessive reliance on natural gas and restore a more balanced generation fuel mix. That TYSP policy, which is not sustainable, understates the full avoided cost that should be reflected in the renewable standard offer.

Disputed Issues of Material Fact and Law

8. Disputed issues of material fact and law include, but are not limited to, the following:

9. *PEF's Avoided Costs Rates Are Understated*: On the same day that PEF submitted its petition to approve its Standard Offer Contract, the utility also submitted the 2007 version of its TYSP. For purposes of this proceeding, the 2007 TYSP contained one significant change from the 2006 TYSP. Specifically, in the new TYSP, PEF removed two supercritical coal-fired generating units from its planned generation capacity additions. Construction of these units, according to the 2006 TYSP, was scheduled to commence in June 2008 and June 2009, respectively.

10. As a direct result of the removal of these units from PEF's planned capacity addition, the next avoidable fossil fueled unit identified in PEF's TYSP will now be a combined cycle unit scheduled to come into service in 2013. Thus, because under the new TYSP there will be no unit to be "avoided" until 2013, PEF offers no "normal" monthly capacity payment to RF/QFs until 2013 (except for those received pursuant to the prepayment options for post-2013 capacity).

11. PEF's avoidance of the monthly capacity payment for calendar years 2010, 2011 and 2012 discourages the production of renewable energy for sale to PEF. Consequently, the Commission should have completed its review of PEF's TYSP before accepting PEF's Standard Offer Contract. This review of the TYSP should include a thorough inquiry into the basis of PEF's decision to remove the coal-fired facilities from the utility's planning horizon.

12. PEF's removal of the planned coal-fired units and determination to increase its reliance on natural gas and power purchases is openly at odds with the Florida goal to reduce reliance on natural gas for electric generation and improve the diversity of the fuels utilized by Florida's generators. PEF concedes in its 2007 TYSP that, as a result of its decision to remove the coal-fired facilities and construct primarily natural gas-fired units for its additional capacity needs, natural gas will be the energy source for 43.6% of PEF's energy needs in 2011, more than double the percentage in 2006. *See* PEF's 2007 TYSP, Schedule 62. This increased dependence on natural gas will undoubtedly lead to higher prices to PEF's customers. The Commission should carefully examine the validity and basis for PEF's removal of the coal-fired facilities, in both this proceeding and in the proceeding for PEF's 2007 TYSP before approving a Standard Offer payment schedule.

13. *PEF's Standard Offer Contract is Unnecessarily Complicated*: As currently constructed, the Standard Offer Contract consists of approximately seventy pages of contractual language that includes a number of excessive restrictions and unneeded obligations that will deter renewable energy investment and production. These are discussed in greater detail below. Any potential renewable energy producer confronted with the Standard Offer Contract must question whether the substantial undertaking required to satisfy the numerous conditions is worthwhile.

14. Contrary to the direction of Section 366.92, Florida Statutes, the proposed mess of terms and provisions will neither "promote the development of renewable energy" nor "minimize the costs of power supply to electric utilities and their customers."

15. In contrast to the unnecessarily burdensome procedures proposed by PEF for its Florida operations, the treatment of RF/QF analogous generators in North Carolina

and South Carolina by PEF's affiliated utility (Progress Energy Carolinas) demonstrates that a more straight-forward, uncomplicated approach can be implemented. Specifically, the tariff provisions in South Carolina only encompass three pages, and in North Carolina, five pages. Within this limited space, Progress Energy Carolinas is able to clearly set forth the payments that a supplier can expect to receive as well as the conditions necessary to receive those payments. This concise presentation of the conditions surrounding the provision of alternative energy supplies is much more conducive to the development and utilization of these resources than PEF's current proposal, as this simple approach reduces the burden placed on both the supplier and the utility. The Commission should require PEF to revise the Standard Offer Contract to simplify its terms and reduce the difficulty of compliance with those terms.

16. *The Standard Offer Contract Contains Unnecessary and Burdensome Requirements*: The Standard Offer Contract imposes significant obligations and restrictions on potential renewable energy suppliers with no corresponding responsibilities imposed on PEF. The Commission's approval of these contractual terms may reduce PEF's costs, but only by eliminating the likelihood that renewable suppliers will agree to contract with PEF. However, using potential cost saving to justify such onerous terms is at odds with the intent of the Florida Legislature. As Senator Michael S. Bennett explained to the Commission, the Florida Legislature "expected [the Commission] to take some serious steps that looked at the future of the State of Florida and understood the difference between price and cost."[2] Thus, to address its statutory obligation to promote the development of renewable energy, the

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[2] Transcript of November 9, 2006 hearing on the Proposed Amendments to Rule 25-17.0832, F.A.C., Firm Capacity and Energy Contracts, Docket No. 060555-EI at 10-11.

Commission needs to require PEF to modify the following terms:

(a) Section 2 – Right of Inspection: The Standard Offer Contract provides that PEF "shall have the right *at all times* to inspect the Facility and to examine any books, records, or other documents of the RF/QF that PEF deems necessary . . ." (emphasis added). This provision grants PEF an unlimited right to an RF/QF's facility and books that are not typical of wholesale power sales agreements. For example, in neither of the two power supply agreements that PEF filed with the Federal Energy Regulatory Commission ("FERC") in the last year[3] did PEF grant the capacity purchaser such unlimited access to its facilities or its records.

The unchecked access sought by PEF would complicate the ability of a supplier to operate its facility efficiently, especially in the case of a cogenerator like PCS Phosphate, whose primary business focus is its mining operations. To avoid this provision becoming a tool to dampen an RF/QF's desire to interact with PEF, the Commission should establish reasonable limits on PEF. For example, the Commission should restrict PEF's access to a facility to normal business hours and should impose a

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[3] PEF, filing as Florida Power Corporation, submitted two power supply agreements with FERC in the past year. The first was a five-year full requirements Cost-Based Power Sales Agreement with the City of Mount Dora, Florida ("Mount Dora Agreement") which was submitted on November 1, 2006 in FERC Docket No. ER07-141-000. The second agreement was a Cost-Based Power Sales Agreement with Seminole Electric Cooperative, Inc. ("Seminole Agreement") in which PEF committed to provide 150 MW of system intermediate capacity and associated energy, and 600 MW of seasonal capacity and associated energy, starting in 2014 and continuing for six years. This agreement was filed on March 30, 2007 in FERC Docket No. ER07-692-000. The Mount Dora Agreement and the Seminole Agreement are referred to collectively as the "PEF Supply Agreements." The sections of the Mount Dora Agreement and the Seminole Agreement cited herein are provided as Attachment A and Attachment B, respectively.

reasonableness requirement on PEF's exercise of any right to facility inspection and record examination.

In addition, the Standard Offer Contract places no obligation upon PEF to maintain books and records that support its energy payments and operational decisions directly affecting the RF/QF. By comparison, in the above-referenced FERC-filed wholesale PEF Supply Agreements, the recordkeeping requirements apply to symmetrically to both parties.[4]

(b) Section 5(a) – Conditions Precedent: Pursuant to this section, within twelve months of the execution of this contract, the supplier must, *inter alia*, have (i) obtained firm transmission service, (ii) obtained all required Project Consents, (iii) obtained all required Financing Documents, (iv) obtained all required Project Contracts, and (v) satisfied the insurance requirements. While many of these provisions can be satisfied by an existing facility, they may be infeasible for an entity that is seeking to develop a new generating facility to meet PEF's power needs. For example, a project developer often may not enter into a firm transmission service agreement or a fuel supply agreement such a long time before its project has been completed. Furthermore, some of requirements that must be fulfilled, including most of the Project Consents, are not fully within the developer's control. Indeed, PEF likely will have control over the satisfaction of several of the Conditions Precedent, e.g., the electrical interconnection and operating agreement and the transmission service agreement, thus providing it with the direct ability to affect a developer's capacity to satisfy the Conditions Precedent.

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[4] *See* Seminole Agreement, §§ 9.4 and 9.5, and Mount Dora Agreement, Article 17.

(c) Section 6.2 – Ownership and Offering For Sale of Renewable Energy Attributes: By granting PEF an unconditional right of first refusal to purchase any Environmental Attributes, the Standard Offer Contract ignores the possibility that an existing RF/QF may have a pre-existing commitment for its Environmental Attributes. As a result, the RF/QF could not satisfy this term of the Standard Offer Contract and would be precluded from supplying PEF. To remedy this oversight, the Commission should require PEF to incorporate an exception for those cases where a RF/QF has sold or otherwise committed its Environmental Attributes prior to the execution of the Standard Offer Contract.

(d) Section 6.3 – Use of Interruptible Standby Service for Start-up: PEF offers no reason for restricting a RF/QF's ability to utilize interruptible stand-by service tariffs. There is no legitimate basis for this provision, which serves only to increase the rates that PEF can collect from the RF/QF or unreasonably limit RF/QF access to this service. This requirement should be stricken from the Standard Offer Contract.

(e) Section 7.3 – Committed Capacity Test Results: PEF's requirement that an RF/QF "demonstrate[] at least one hundred percent (100%) of Committed Capacity" is an unreasonable requirement that contradicts standard industry practice. Typically, unit-specific power purchase agreements either will accept as satisfactory a test result that is within a few percentage points of the committed capacity (e.g., 97%) or adjust the capacity results to reflect operational and environmental conditions. This adjustment approach is especially appropriate in the context of RF/QF facilities for which the fuel sources are not comparable to the fossil and nuclear fuels of traditional power plants, and because cogeneration RF/QF

facilities may be subject to operational constraints imposed by the affiliated industrial operations.

(f) Section 8.2 – Test Period: Similar to the Committed Capacity Test Results provision, the test period set forth by PEF to establish a facility's capacity is incompatible with the nature of renewable energy facilities. For example, a solar- or wind-powered facility that is subject to the vagaries of the weather cannot be expected to maintain a steady capacity for a twenty-four hour period. In order to comply with its dual responsibility to promote renewable energy while minimizing costs, the Commission must recognize that the RF/QF facilities favored by the Florida Legislature are not the same as PEF's historic fossil- and nuclear-fueled units, and thus the Standard Offer Contract must be revised to accommodate the operational realities of RF/QF facilities. In fact, renewable energy production facilities that demonstrate utility-like performance capabilities should receive preferred rather than punitive treatment.

(g) Section 10.1 – Detailed Annual Plan: PEF's requirement that an RF/QF facility prepare a "detailed plan of the electricity to be generated by the Facility and delivered to PEF for each month of the following calendar year" imposes an impractical obligation upon an RF/QF. Solar- and wind-powered RF/QFs cannot forecast weather conditions in detail for the next year. Likewise, an RF/QF with an associated industrial load cannot predict in detail its precise generation output for the forthcoming year, as the output will be affected by market conditions for the industrial product.

(h) Section 10.4 – Requirement to Provide "total electrical output": Many RF/QFs, especially a cogenerator like PCS Phosphate, produce electric energy

in support of an industrial or commercial operation. PEF's requirement that the RF/QF provides its "total electrical output" to PEF effectively mandates a "buy all/sell all" arrangement that undercuts the net metering options provided by Rule 25-17.082(3)(a), Florida Administrative Code. This provision of the Standard Offer Contract is contrary to existing practice and Commission rules for cogenerators, and should be rejected.

(i) Section 10.5.4 – 24/7 Operating Personnel: Due to their operational nature or the sophistication of their administrative software, some RF/QF facilities do not require operational personnel to remain on duty around the clock. As a result, PEF's requirement that "operating personnel are on duty at all times, twenty-four (24) hours a calendar day and seven (7) days a week" may impose an unnecessary operating expense that could make an RF/QF economically infeasible. PEF has not shown that this provision, which unnecessarily intrudes on a renewable producer's operational and business practices, is required for any legitimate reason. It should be deleted from the Standard Offer Contract.

(j) Section 10.5.6 – Three Day Fuel Supply: PEF again attempts to impose a requirement that is unnecessary, burdensome, and may be inapplicable to many RF/QFs in any event. Unlike a traditional utility's coal- or nuclear-fired generating facility, RF/QFs that utilize solar, wind and waste heat energy do not keep a fuel supply conveniently stashed in some on-site storage area. The Commission must require PEF to delete this provision, or, at a minimum, incorporate sufficient flexibility within this and other sections of the Standard Offer Contract to accommodate the different characteristics of RF/QFs.

(k) Section 11.1 – Performance Security: There are two substantial problems with PEF's collateral requirements. First, the requirements are entirely one-sided. Although the term "Eligible Collateral" is defined to include collateral of both the RF/QF and PEF, Section 11 clarifies that this "dual" nature of the collateral is in reality a sham, as there is no actual requirement for PEF to provide any form of collateral for the benefit of the RF/QF. Thus, even though an RF/QF may be owed significant monies by PEF for the capacity and energy provided, PEF bears no obligation to provide any guarantee to the RF/QF under the contract.

The second critical issue is the actual amount of collateral required from the RF/QF. Pursuant to Table 2, an RF/QF with the highest credit rating and providing 20 MW of capacity would be required to commit $900,000/year initially just to sell power to PEF. PEF has offered no explanation for why such a significant sum is necessary. The inequitable nature of this provision is contrary to how PEF has transacted when it supplies capacity and energy. In the earlier referenced PEF Supply Agreements, the "Acceptable Creditworthiness" provisions apply to both parties.[5] Additionally, neither party is required to provide any collateral so long as it maintains "Acceptable Creditworthiness," and the amount of collateral required is tied to the purchaser's bills, and not to a credit rating. As with PEF's own wholesale power transactions, credit requirements should be flexible and commensurate with the financial capabilities of the parties. For large entities possessing strong financial parameters, no credit requirements should be necessary or required.

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5 *See* Seminole Agreement, §§ 9.6 – 9.10 and Mount Dora Agreement, Article 8(a)-(f).

(l) Section 12 – Termination Fee: PEF imposes a significant obligation on an RF/QF with no corresponding obligation on itself. While PEF should recover "prepaid" capacity payments when the associated capacity was not actually provided due to the legitimate termination of the contract, PEF also must be accountable to RF/QF if a contract is terminated due to PEF's fault. To this end, the Commission should recognize that an RF/QF developer incurs many financial obligations that are tied to the revenues from the Standard Offer Contract. To protect the developer's investment, the Commission should, in the event of contract termination due to PEF's fault, require PEF to pay a termination fee corresponding to the costs that the RF/QF incurred in reliance on PEF's fulfillment of the Standard Offer Contract.

(m) Section 14 – Default: As an extreme example of the one-sided nature of the Standard Offer Contract, not a single one of the fourteen events of default listed in this section applies to PEF. For example, pursuant to Section 14(i), the RF/QF is in default if it breaches any material provision of the Standard Offer Contract but there is no penalty for PEF's breach of any material provision. Likewise, PEF can declare the RF/QF in breach if bankruptcy proceedings are initiated against the RF/QF, but the RF/QF has no protection if PEF befalls a similar fate. Indeed, the Standard Offer Contract does not even provide a clear basis for the RF/QF to declare PEF in default if PEF simply refused to compensate the RF/QF for the capacity and energy provided.

The Commission must recognize that no rational supplier would accept this section. As an example of this section's incompatibility with standard industry practice, in the Edison Electric Institute's Master Power Purchase & Sale Agreement,

the events of default apply to both parties equally and clearly states that a failure to make a required payment is grounds for default. PEF employs a similar approach in the PEF Supply Agreements, where thirteen of the fourteen total specified events of default apply equally to both parties.[6] The Commission must afford an RF/QF with the same protections and remedies provided to PEF.

(n) Section 17 – Insurance: Although an RF/QF is required to maintain insurance coverage, there is no corresponding obligation for PEF to provide analogous coverage for the RF/QF. The Commission should require PEF to explain why any insurance requirement is necessary, as it bears no insurance obligation in its wholesale power supply agreements with Seminole Electric Cooperative and the City of Mount Dora, Florida. To the extent the Commission concludes that any insurance requirement is necessary, the insurance obligations should apply equally to PEF and the renewable energy supplier.

(o) Section 18.1 – *Force Majeure*: PEF would not permit an RF/QF to claim force majeure for an equipment breakdowns and other issues unless the RF/QF "can conclusively demonstrate" to PEF's satisfaction that the event was not foreseeable or negligent. *Force Majeure* provisions are a basic element of wholesale power transactions, and there is no basis for PEF to impose more onerous terms on renewable energy producers than the terms common to industry practice. To remedy this fault, the Commission should modify the Standard Offer Contract to apply equally to both parties and remove PEF's discretion to arbitrarily reject an RF/QF's claim of force majeure. To this end, the Commission could replace the force majeure provisions in the Standard Offer Contract with the force majeure provisions of either

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[6] *See* Seminole Agreement, § 12.1, and Mount Dora Agreement, Article 15.

of the PEF Supply Agreements, as they impose symmetrical terms on both contractual parties.[7]

(p) Section 19 – Representations and Warranties: As with so many other sections of the Standard Offer Contract, only the RF/QF has to make any representations, warranties or covenants. PEF has provided no explanation for why the RF/QF should be required to make these representations and it should have to bear no corresponding obligation. In the PEF Supply Agreements, PEF made similar representations and warranties to those it seeks from the renewable energy supplier,[8] so there is no apparent reason why PEF cannot make the same representations in its Standard Offer Contract. Moreover, to the extent PEF seeks to obtain more detailed representations from a renewable supplier than it provides when it supplies power, PEF should be required to justify any differences.

(q) Section 20.4 – Assignment: The Standard Offer Contract prevents an RF/QF from assigning the agreement to any entity, including any affiliate or successor in interest, unless it receives PEF's approval. Moreover, PEF does not even have to satisfy a reasonableness standard in order to justify its rejection of a proposed assignment. PEF, on the other hand, has no restriction on its ability to transfer the agreement.

The Commission should revise the assignment language so that it is symmetrical and applies evenly to both parties. In addition, neither party should be able to unreasonably withhold its consent to an assignment. These suggested changes would be consistent with standard industry practice as well as the PEF Supply

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7 *See* Seminole Agreement, § 17, and Mount Dora Agreement, Article 27.

8 *See* Seminole Agreement, § 11, and Mount Dora Agreement, Article 13.

Agreements,[9] which could be utilized as a model for developing more equitable language.

(r) Section 20.14 – Record Retention: Although the RF/QF must retain its performance records for five years, PEF is under no concurrent obligation to retain any of its records relevant to the agreement. The Commission should impose the same obligation of PEF as PEF would impose on an RF/QF.

Ultimate Facts Alleged

17. The absence of any capacity payment to RF/QFs for the 2008 through 2012 period is a direct result of PEF's decision to remove the two coal-fired generating facilities from its 2007 TYSP.

18. The Commission has accepted PEF's Standard Offer Contract, including the absence of capacity payments for the 2008 through 2012 period, before it completed its evaluation of PEF's TYSP.

19. PEF's RF/QF program generally, and its proposed Standard Offer Contract specifically, will discourage the development of and investment in renewable resources in contradiction of the intent of the Florida Legislature.

20. PEF's RF/QF program generally, and its proposed Standard Offer Contract specifically, will increase PEF's dependence on natural gas and thus decrease its fuel diversity, in contradiction of the intent of the Florida Legislature.

21. PEF's increased reliance on natural gas will discourage renewable energy development and increase energy costs for all PEF customers.

22. PEF's RF/QF program generally, and its proposed Standard Offer

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[9] *See* Seminole Agreement, § 18.5, and Mount Dora Agreement, Article 18.

Contract specifically, is unnecessarily complicated and burdensome.

23. PEF's proposed Standard Offer Contract imposes on renewable suppliers onerous and one-sided obligations that do not comport with standard industry practice.

Laws Entitling Petitioner to Relief and Relation to Alleged Facts

24. The rules and statutes entitling PCS Phosphate to relief include but are not necessarily limited to the following: Sections 120.569 and 120.57(1), Florida Statutes, which entitle PCS Phosphate to an administrative hearing for the reasons presented above; Section 366.91 and 366.92, Florida Statutes, which enumerate the requirements to promote the development of renewable energy resources; and Rules 25-17.200 through 25-17.310, Florida Administrative Code, by which the Commission has implemented the requirements of Section 366.91.

Request for Relief

WHEREFORE, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs respectfully requests

(1) that the Commission enter an order allowing it to intervene as a full party in this docket;

(2) that the Commission conduct an administrative hearing to determine

(a) whether PEF's proposed capacity rates accurately reflect its true avoided costs;

(b) whether the terms and conditions of the proposed Standard Offer Contract will discourage the development of renewable energy resources; and

(3) that the Commission grant PCS Phosphate such other relief as may be deemed appropriate.

Respectfully submitted this 2nd day of July, 2007,

/s/ James W. Brew

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

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Petition to Intervene has been furnished by electronic mail and U.S. Mail this 2nd day of July 2007 to the following individuals:

/s/ James W. Brew

Attachment A

ORIGINAL

BRUDER, GENTILE & MARCOUX, L.L.P.

ATTORNEYS AT LAW

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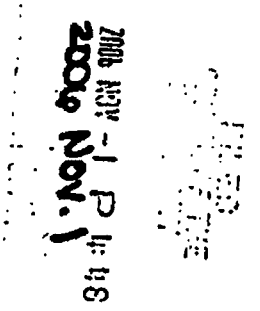
GEORGE F. BRUDER
RETIRED 1997

November 1, 2006



Honorable Magalie Roman Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Regarding: *Florida Power Corporation*; Cost-Based Power Sales Agreement with the City of Mount Dora, Florida; Docket No. ER07-141-000

Dear Secretary Salas:

Florida Power Corporation ("FPC"), doing business as Progress Energy Florida, Inc., hereby files, pursuant to Section 205 of the Federal Power Act, a cost-based power sales agreement with the City of Mount Dora, Florida ("Mount Dora"). FPC respectfully requests that the Commission accept this power sales agreement ("Agreement") for filing sixty days after the date of this filing and grant an effective date for the Agreement of January 1, 2007, which is the date that service commences under the Agreement.

A. DESCRIPTION OF THE MOUNT DORA AGREEMENT

The Agreement provides that FPC will provide and Mount Dora will purchase capacity and energy to serve all of Mount Dora's load requirements for a five-year period beginning January 1, 2007 through December 31, 2011. Article 3 of the Agreement provides that FPC and Mount Dora may agree to a minimum three-year extension (or a longer extension) of the Agreement if it is mutually agreeable to the parties.[1] The product that FPC is selling to Mount Dora shall be as firm as FPC's

1 Any extension of this Agreement, including the rates for the extension, would be submitted to the Commission for filing in accordance with the Commission's requirements.

POWER SALES AGREEMENT
BETWEEN
FLORIDA POWER CORPORATION,
DOING BUSINESS AS
PROGRESS ENERGY FLORIDA, INC.
AND
CITY OF MOUNT DORA, FLORIDA

TABLE OF CONTENTS

POWER SALES AGREEMENT BETWEEN FLORIDA POWER CORPORATION, DOING BUSINESS AS PROGRESS ENERGY FLORIDA, INC. AND CITY OF MOUNT DORA

This Agreement for the purchase and sale of electric capacity and energy (the "Agreement") dated as of October 17, 2006, is made and entered into by Florida Power Corporation, doing business as Progress Energy Florida, Inc. (the "Company") and the City of Mount Dora, Florida (the "Customer"). The Company and the Customer are sometimes herein referred to individually as a "Party" and collectively as the "Parties."

WHEREAS

1. The Company is a public utility as defined in the Federal Power Act and sells electric capacity and energy to other utilities for resale;

2. The Customer is a municipally-owned electric distribution utility; and

3. The Parties desire that the Company sell to the Customer and the Customer purchase from the Company all of its requirements for electric capacity and energy pursuant to the terms and conditions set out in this executed Agreement.

NOW THEREFORE

In consideration of the mutual covenants and agreements herein contained, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

When used in this Agreement, terms with initial capitalization shall have the following meanings:

determined based on the highest aggregate kW usage as measured at the Point(s) of Delivery during any two (2) consecutive 15-minute periods of each billing period, as compensated for incurred Losses from the Point(s) of Receipt.

(ii) The total monthly billing energy shall be determined based on the accumulation of 15-minute metered values as measured at the Point(s) of Delivery for each billing period and compensated for Losses from the Point(s) of Receipt.

ARTICLE 7.
TRANSMISSION SERVICE

(a) It is the Customer's responsibility to arrange and pay for transmission and ancillary services for the delivery of energy under this Agreement from the Point(s) of Receipt to the Point(s) of Delivery. There shall be no reduction in the Customer's payment obligation as a result of curtailments, interruptions, or reductions of transmission service or ancillary service.

(b) Until the commencement date of the Delivery Period (and during the Delivery Period, on an as-needed basis), the Company shall, at the option of the Customer, act as the transmission agent for the Customer under the terms of a separately negotiated agreement.

ARTICLE 8.
PAYMENT OF INVOICES; CREDIT SECURITY

(a) The capacity and energy supplied under this Agreement shall be subject to a true-up of the Monthly Fuel Charge in accordance herewith. The Company shall deliver to the Customer an invoice identifying and itemizing (i) the Capacity Charge for that month; (ii) the estimated Monthly Fuel Charge for that month which is equal to the product of the Monthly Energy Delivered multiplied by the estimated Fuel Charge for the calendar month (which is the actual Fuel Charge for the previous calendar month); (iii) a

true-up of the estimated Monthly Fuel Charge included in the previous calendar month's bill (where the true-up credit or charge, as applicable, is equal to the actual Fuel Charge of the previous calendar month minus the estimated Fuel Charge of the previous calendar month multiplied by the Monthly Energy Delivered for the previous calendar month); (iv) the Non-Fuel Energy Charge. Invoices supplied hereunder shall be rendered monthly by the Company as soon as reasonably practical after the first day of each month for the prior month's capacity and energy and shall be due when rendered and payable within thirty (30) days from the date the Customer receives the invoice. An example of the Company's invoices is provided as **EXHIBIT C**. All payments made to the Company by the Customer hereunder shall be by electronic funds transfer or other mutually agreeable method(s) to the account designated by the Company. Invoices not paid within said thirty (30) days shall be deemed delinquent and shall accrue interest at the Interest Rate. In the case of a disputed invoice, the Customer shall (1) pay the invoice to the Company during the thirty (30) day payment period and (2) provide to the Company, prior to the expiration of the thirty (30) day payment period, written notification of the amount of the invoice that is in dispute and the reasons therefor. The Company and the Customer shall fully cooperate with each other to resolve the dispute within thirty (30) days from the date that the Company receives written notification of the dispute. If the Parties cannot resolve the dispute within the time period, either Party may seek to resolve it pursuant to **ARTICLE 16** hereof. If the Customer does not pay an invoice or dispute it pursuant to the provisions set out above, the Company may exercise its rights as set out in this **ARTICLE 8** and in **ARTICLE 15** hereof.

(b) The Parties shall at all times each maintain Acceptable Creditworthiness or shall provide Performance Assurance to the Non-Affected Party. To maintain

Acceptable Creditworthiness, the Parties shall not be in default of any payment obligations as set out in **ARTICLE 8(a)** and **ARTICLE 15(a)(i)** hereof and:

(i) the Parties shall each maintain either a credit rating (i.e. the rating assigned to its unsecured senior long-term debt obligations or Underlying Rating if there is no unsecured senior long term debt) by Standard & Poor's of at least BBB- and/or a Long Term Issuer or Underlying Rating, if there is no Long Term Issuer Rating, from Moody's Investor Services of at least Baa3; or

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

(c) "Performance Assurance" shall mean one of the following: (a) as to either Party, an unconditional and irrevocable Letter of Credit or a cash deposit equal to the amount that the Parties estimate that the Customer would owe to the Company for the three months of the calendar year in which the Customer's bills are expected to be the highest; or (b) as to the Customer, advance payment for each month's service based on the Company's estimate of the amount that the Customer will owe for that month, paid not less than five (5) days prior to the beginning of the month, and trued up at the time of the second succeeding month's advance payment to reflect the actual amount the Customer owes. The Company shall pay interest on any prepayments made pursuant to this **ARTICLE 8(c)** at the Interest Rate.

(d) If a Party that originally demonstrates Acceptable Creditworthiness subsequently fails to maintain Acceptable Creditworthiness, as determined by the Non-Affected Party, the Non-Affected Party shall notify the Affected Party within five Business Days of the date on which it no longer meets the Acceptable Creditworthiness standards and shall request them to provide Performance Assurance to the Non-Affected Party within thirty (30) Business Days of the date on which it ceased to maintain Acceptable Creditworthiness.

(e) If an Affected Party fails to provide Performance Assurance as set out in this **ARTICLE 8**, then:

(i) in the event that the Customer is the Affected Party, the Company may suspend service to Customer, provided that the Company notifies the Customer in writing of its intent to suspend service at least thirty (30) days prior to the date on which service is to be suspended to give the Customer time to correct the deficiency ("Cure Period"). The Company's right to suspend service hereunder shall be in addition to its right to take action for default pursuant to ARTICLE 15 hereof;

(ii) in the event that the Company is the Affected Party, the Customer may terminate this Agreement, provided that the Customer notifies the Company in writing of its intent to terminate service at least thirty (30) days prior to the date on which termination is to occur to give the Company time to correct the deficiency ("Cure Period"). The Customer's right to terminate service hereunder shall be in addition to its right to take action for default pursuant to ARTICLE 15 hereof.

(f) If a Party to this contract that has previously been deemed to not exhibit Acceptable Creditworthiness is subsequently upgraded to Acceptable Creditworthiness pursuant to **ARTICLE 8(b)**, or the Party's audited financial statements demonstrate, after being evaluated by the Non-Affected Party in a commercially reasonable manner, that they are considered to be of Acceptable Creditworthiness, then the Non-Affected Party shall notify the Affected Party within five Business Days of the date that it shall return any Performance Assurance being held by the Non-Affected Party within thirty (30) Business Days of the date on which it gained Acceptable Creditworthiness.

ARTICLE 9.
TAXES

(a) **General.** The Company and the Customer shall each use reasonable efforts to minimize taxes applicable to the transactions to be carried out under the terms of this Agreement. Either Party, upon written request of the other, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if such Party is exempt from taxes, and shall use reasonable efforts to obtain and cooperate with obtaining any exemption from or reduction of tax.

(b) **Applicable Taxes.**

(i) The Company shall be responsible for all existing and any new sale, use, transportation, excise, business and operation, *ad valorem*, or other similar tax, imposed or levied by any governmental authority relating to the energy prior to its delivery to Customer at the Point(s) of Receipt.

(ii) The Customer shall be responsible for all existing and any new sale, use, transportation, excise, *ad valorem*, or other similar tax imposed or levied by any governmental authority relating to the sale, use or consumption of energy at and after its receipt by Customer at the Point(s) of Receipt.

reasonable attorney's fees), damage or injury to persons, and property judgments in a total amount that is in excess of $100,000 per incident. In no event shall this Article 11 apply to a failure by a Party to perform any term or condition of this Agreement, including, but not limited to, a failure to pay the other Party under this Agreement, an Event of Default under this Agreement or a breach of this Agreement.

ARTICLE 12.
PERMITS AND EASEMENTS

The Customer shall furnish the Company with all Customer permits and other easements or licenses which are necessary for the construction and maintenance by the Company of the facilities required for delivery of service to the Customer's Point(s) of Delivery. The obligations of each Party to the other Party under this Agreement are subject to and conditioned upon the other Party securing and retaining all permits and easements and other rights and approvals that the other Party is required to secure under this Agreement and which are necessary for the Company or the Customer (as applicable) to perform under this Agreement.

ARTICLE 13.
REPRESENTATIONS AND WARRANTIES

(a) As a material inducement to enter into this Agreement, each Party represents and warrants to the other Party that as of the Effective Date of the Agreement:

(i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and has all requisite power and authority to enter into this Agreement and consummate the transactions contemplated herein;

(ii) it has all regulatory authorizations necessary for it to legally perform its obligations hereunder or will obtain such authorizations in a timely manner prior to the time that performance by such Party which requires such authorization becomes due;

(iii) the execution, delivery, and performance of this Agreement will not conflict with or violate any rule, statute or regulation of any court, agency, or regulatory body, or any contract, agreement or arrangement to which it is a party or by which it is otherwise bound;

(iv) this Agreement constitutes a legal, valid, and binding obligation of such Party enforceable against it in accordance with its terms, and each Party has all rights such that it can and will perform its obligations to the other Party in conformance with the terms and conditions of this Agreement, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and general principles of equity;

(v) it has negotiated and entered into this Agreement in the ordinary course of its respective business, in good faith, for fair consideration on an arm's-length basis;

(vi) it is not bankrupt and there are no proceedings pending or being contemplated by it, or to its knowledge, threatened against it which would result in it being or becoming bankrupt;

(vii) there are no pending, or to its knowledge, threatened legal proceedings against it that could materially adversely affect its ability to perform its obligations under this Agreement.

(b) EXCEPT AS PROVIDED HEREIN, THE PARTIES MAKE NO OTHER REPRESENTATIONS, WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, RELATING TO THEIR PERFORMANCE OR OBLIGATIONS UNDER THIS AGREEMENT, AND EACH PARTY DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE 14.
TITLE AND RISK OF LOSS

Title to and risk of loss related to the energy sold hereunder shall transfer from the Company to the Customer at the Point(s) of Receipt. The Company warrants that it will deliver the energy purchased hereunder free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Point(s) of Receipt.

ARTICLE 15.
DEFAULT

(a) Each of the following shall be an "Event of Default" under this Agreement:

(i) The failure of either Party to make any payment to the other Party as required by this Agreement within thirty (30) days of the date when such payment became due and payable.

(ii) The failure by either Party to perform any obligation to the other Party under this Agreement, other than obligations for the payment of money, provided that the defaulting Party shall have been given not less than thirty (30) days' notice of such failure by the non-defaulting Party and such defaulting Party

shall have unsuccessfully attempted to correct such default or shall have failed to use its reasonable best efforts to correct such default.

(iii) The insolvency or bankruptcy of a Party or its inability or admission in writing of its inability to pay its debts as they mature, or the making of a general assignment for the benefit of, or entry into any contract or arrangement with, its creditors other than the Company's or the Customer's mortgagee, as the case may be.

(iv) The application for, or consent (by admission of material allegations of a petition or otherwise) to, the appointment of a receiver, trustee or liquidator for any Party or for all or substantially all of its assets, or its authorization of such application or consent, or the commencement of any proceedings seeking such appointment against it without such authorization, consent or application, which proceedings continue undismissed or unstayed for a period of sixty (60) days.

(v) The authorization or filing by any Party of a voluntary petition in bankruptcy or application for or consent (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction or the institution of such proceedings against any Party without such authorization, application or consent, which proceedings remain undismissed or unstayed for sixty (60) days or which result in adjudication of bankruptcy or insolvency within such time.

(vi) Any representation or warranty made by the defaulting Party in the Agreement shall prove to have been false in any material respect when made.

(vii) The failure of the Customer to provide Performance Assurance as required under **ARTICLE 8**.

(b) Whenever an Event of Default occurs, the non-defaulting Party may give the defaulting Party written notice to remedy the default. In the Event of Default, the non-defaulting Party shall have all the rights it may have at law or in equity, including the right to terminate this Agreement.

ARTICLE 16.
DISPUTE RESOLUTION

In the event of any dispute arising out of or relating to this Agreement which the Parties are unable to settle within thirty (30) days after the dispute arose, either Party may refer the dispute to a meeting of senior management, in which case each Party shall nominate a senior officer of its management to meet at a mutually agreed time and place not later than forty-five (45) days after the dispute arose to attempt to resolve the dispute. If a resolution cannot be reached within fifteen (15) days after the meeting of senior officers or within sixty (60) days after the dispute arose, then either Party may pursue its rights at law or in equity with respect to such dispute. Unless directed otherwise by a court or government agency of competent jurisdiction or unless otherwise provided by the express terms of this Agreement, no Party shall cease or delay performance of its obligations under this Agreement during the existence of any dispute or the pendency of any proceeding to resolve it, and the Parties shall pay to each other all amounts owing.

ARTICLE 17.
AUDIT RIGHTS

Each Party shall have the right, at its own expense, to audit and to examine any supporting documentation related to any bill submitted or payment requested under this

Agreement for capacity and energy provided to Customer. Any audit hereunder shall be undertaken by the requesting Party, or its representatives, at reasonable times and in conformance with generally accepted auditing standards. The right to initiate an audit shall extend for a period of two (2) years following the end of the month in which service is rendered. Any audit initiated by a Party shall extend for no longer than a period of one (1) year. Each Party shall fully cooperate with any audit by the other Party and retain all necessary records or documentation for the entire length of the audit period. If any audit discloses that an overpayment or underpayment has been made, the amount of any undisputed portion of such overpayment or underpayment shall promptly be paid by the obligated Party, with interest calculated at the Interest Rate from the date on which the payment should have been made to the date on which the payment or repayment is actually made. Upon the mutual agreement of the parties that resolves a disputed portion of such overpayment or underpayment, such overpayment or underpayment shall be paid by the obligated Party, with interest calculated at the Interest Rate from the date on which the payment should have been made to the date on which the payment or repayment is actually made. This provision and the rights of the Parties to audit shall survive the termination of this Agreement.

ARTICLE 18.
ASSIGNMENT

(a) Except as provided herein, neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may not be unreasonably withheld. Any assignment of this Agreement in violation of this **ARTICLE 18** shall be, at the option of the non-assigning Party, void.

(b) Either Party (the "**Assigning Party**") may, without the consent of the other Party:

(i) transfer or assign this Agreement to an Affiliate of the Assigning Party which Affiliate's creditworthiness is equal to or higher than that of the Assigning Party based either on Standard and Poor's or Moody's ratings or, if the Affiliate does not have a such a rating, on credit assurances reasonably acceptable to the non-assigning Party, provided that such Affiliate is financially and operationally capable, including maintaining the same level of reliability and delivering capacity and energy at the same monthly charges as the Customer would have received had the assignment not been made, of performing its obligations under this Agreement; or

(ii) transfer or assign its rights and obligations under this Agreement to any person or entity (the Assignee) succeeding to all or substantially all of the Assigning Party's assets, provided that the Assignee's creditworthiness is equal to or higher than that of the Assigning Party and it is financially and operationally capable of performing its obligations under this Agreement.

(c) An assignment or transfer pursuant to **ARTICLE 18(b)** may be made only if:

(i) any required regulatory approvals that may be required are obtained in connection with such transfer or assignment;

(ii) the Assignee agrees in writing to be bound by the terms and conditions of this Agreement; the Assignee has Acceptable Creditworthiness as defined in **ARTICLE 8(b)** or provides Performance Assurance pursuant to **ARTICLE 8(c)**; and the Assignee is financially and operationally capable of performing its obligations under this Agreement; and

(iii) the non-assigning Party is not obligated to perform its obligations hereunder in favor of the Assignee to the extent the Assignee shall not perform the obligations of the Assigning Party.

(d) If either Party terminates its existence as a corporate entity by merger, acquisition, sale, consolidation or otherwise, or if all or substantially all of such Party's assets are transferred to another person or business entity, without complying with this **ARTICLE 18**, the other Party shall have the right, enforceable in a court of competent jurisdiction, to enjoin the first Party's successor from using the property in any manner that interferes with, impedes, or restricts such other Party's ability to carry out its ongoing business operations, rights, and obligations.

(e) This **ARTICLE 18** and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

ARTICLE 19.
MATERIAL ADVERSE EVENT

(a) A Material Adverse Event is any of the following events:

(i) This Agreement is not approved or accepted for filing by the FERC without modification or condition.

(ii) A Regional Transmission Organization or regional reliability organization or a restructuring of the electric utility industry in the State of Florida prevents, in whole or in part, either Party from performing any provision of this Agreement in accordance with its terms or imposes obligations on a Party that materially affect the costs that a Party incurs to comply with this Agreement.

(b) Either Party may provide written notice to the other Party of the occurrence of a Material Adverse Event within sixty (60) days of the occurrence of the

Company:

Progress Energy Florida
100 Central Avenue
MAC-BT9G
St. Petersburg, Florida 33701
Attention: Director, Origination & Account Management - FRCC

Customer:

City of Mount Dora
P.O. Box 176
Mount Dora, Florida 32757
Attention: Electric Utility Manager

Either Party may specify a different person to be notified and / or different address by written notice.

ARTICLE 26.
NO AGENCY RELATIONSHIP

Nothing in this Agreement is intended or shall be deemed to constitute a partnership, agency, or joint venture relationship between the Company and the Customer.

ARTICLE 27.
FORCE MAJEURE

Neither Party shall be in breach of this Agreement for failure to perform its obligations hereunder if such failure is the result of a Force Majeure Event. A "Force Majeure Event" under this Agreement shall mean an event, occurrence, or circumstance beyond the reasonable control of, and without the fault or negligence, of the Party claiming Force Majeure, including, but not limited to, acts of God, labor disputes (including strikes), acts of public enemies, orders or absence of necessary orders and permits of any kind which have been properly applied for, from the Government of the United States or from any State or Territory, or any of their departments, agencies or officials, or from any civil or military authority, extraordinary delay in transportation,

inability to transport, store or reprocess spent nuclear fuel, lightning, severe weather, epidemics, earthquakes, fires, hurricanes, tornadoes, storms, floods, washouts, war, civil disturbances, explosions, sabotage, injunction, blight, blockade, quarantine, breakage of machinery or equipment; or any other similar cause or event which is beyond the Party's reasonable control and which, wholly or in part, prevents the Party claiming Force Majeure from performing its obligations under this Agreement. Mere economic hardship of a Party does not constitute Force Majeure. Any Party which claims that its performance is being delayed or prevented as a result of a Force Majeure shall proceed with due diligence to overcome the events or circumstance of the Force Majeure and shall use all reasonable efforts to mitigate the effects of the Force Majeure.

ARTICLE 28.
ENTIRE AGREEMENT

The Agreement shall be the final expression of the Parties' agreement and shall be the complete and exclusive statement of the terms thereof. No statements or agreements, oral, or written, made prior to the date hereof, shall vary or modify the written terms set forth herein and neither Party shall claim any amendment, modification, or release from any provision hereof by reason of a course of action or mutual agreement unless such agreement is in writing, is signed by both Parties and specifically states it is an amendment to the Agreement.

ARTICLE 29.
SEVERABILITY

Except as expressly set forth herein, if any term or provision of this Agreement is held illegal or unenforceable by a court with jurisdiction over the Agreement, all other terms in this Agreement will remain in full force, and the illegal or unenforceable provision shall be deemed struck. In the event that the stricken provision materially

Attachment B

ORIGINAL

BRUDER, GENTILE & MARCOUX, L.L.P.

ATTORNEYS AT LAW

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GEORGE F. BRUDER
RETIRED 1997

March 30, 2007

Honorable Philis J. Posey
Acting Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Regarding: *Florida Power Corporation*;
Cost-Based Power Sales Agreement with
Seminole Electric Cooperative, Inc.;
Docket No. ER07-692-000

Dear Acting Secretary Posey:

Florida Power Corporation ("FPC"), doing business as Progress Energy Florida, Inc., hereby files, pursuant to Section 205 of the Federal Power Act, a cost-based power sales agreement with Seminole Electric Cooperative, Inc. ("SECI"). FPC respectfully requests that the Commission accept this power sales agreement ("Agreement") for filing within 90 days after the date of this filing and grant an effective date for this Agreement of June 28, 2007, which is 90 days after the date of this filing.

A. BACKGROUND

FPC is an investor-owned utility that provides generation, transmission and distribution services to retail customers in the State of Florida. It also is a power supplier for a number of wholesale customers in the State of Florida, including SECI.

SECI is a Florida corporation and a generation and transmission cooperative. SECI has a need for system intermediate capacity and energy and seasonal system peaking capacity and energy to serve its future load requirements beginning January 1, 2014. Pursuant to the Agreement submitted here, FPC has agreed to provide that power supply to SECI under a long-term agreement beginning January 1, 2014 through December 31, 2020. The firmness of the power supply that FPC will be providing to SECI is as firm as FPC's service to its firm native load customers.

AGREEMENT FOR SALE AND PURCHASE

OF

CAPACITY AND ENERGY

BETWEEN

FLORIDA POWER CORPORATION
DOING BUSINESS AS
PROGRESS ENERGY FLORIDA, INC.

AND

SEMINOLE ELECTRIC COOPERATIVE, INC.

DATED AS OF

September 22, 2006

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AGREEMENT FOR SALE AND PURCHASE OF CAPACITY AND ENERGY

This Agreement ("Agreement") is made and entered into as of this 22nd day of September, 2006 by and between Seminole Electric Cooperative, Inc., a Florida corporation ("Customer"), and Florida Power Corporation, a Florida corporation, doing business as Progress Energy Florida, Inc. ("Company"). The Company and the Customer are sometimes herein referred to individually as a "Party" and collectively as the "Parties."

WHEREAS

1. The Company is a public utility as defined in the Federal Power Act and sells electric capacity and energy to other utilities for resale;
2. the Customer is a generation and transmission cooperative; and
3. the Parties desire that the Company sell to the Customer and the Customer purchase from the Company electric capacity and energy pursuant to the terms and conditions of this executed Agreement.

NOW THEREFORE

In consideration of the mutual covenants and agreements herein contained, the Parties do hereby mutually agree as follows:

SECTION 1 -DEFINITIONS

For the purposes of this Agreement, the terms defined in this section shall have the following meanings. Except where the context otherwise requires, definitions and other terms expressed in the singular shall include the plural and vice versa.

1.1 "Acceptable Creditworthiness" shall have the meaning set forth in Section 9.7 hereto.

1.2 "Agreement" shall have the meaning set forth in the introductory paragraph hereto.

1.3 "Assigning Party" shall have the meaning set forth in Section 18.5 hereto.

1.4 "Assurance Notice" shall have the meaning set forth in Section 9.9 hereto.

1.5 "Billing Month" shall mean a calendar month billing cycle for invoicing.

1.6 "Binding Arbitration Notice" shall have the meaning set forth in Section 18.3 hereto.

1.7 "Business Day" shall mean any day except Saturdays, Sundays, and Federal Reserve Bank holidays.

1.8 "Change in Environmental Law" shall have the meaning set forth in Section 15.1 hereto.

§35.19a, or if the Dispute is resolved after the termination of this Agreement, any amount owed plus interest shall be paid immediately.

9.4 Audit Rights. Each Party shall have the right, at its own expense, to audit and to examine any supporting documentation related to any bill submitted or payment requested under this Agreement for capacity and Corresponding Energy provided by Company to Customer. Any audit hereunder shall be undertaken by the requesting Party, or its representatives, at reasonable times and in conformance with generally accepted auditing standards. The right to initiate an audit shall extend for a period of two (2) years following the end of the calendar year in which service is rendered. Each Party shall fully cooperate with any audit by the other Party and retain all necessary records or documentation for the entire length of the audit period (and thereafter if an audit is in progress until such audit is completed). If any audit discloses that an overpayment or underpayment has been made, the amount of such overpayment or underpayment shall promptly be paid by the owing Party, with interest calculated at the rate set for refunds under the Federal Power Act pursuant to 18 C.F.R. §35.19a from the date on which the payment should have been made to the date on which the payment or repayment is actually made. This provision and the rights of the Parties to audit and resolve audit-related Disputes as set forth in Section 18.3 shall survive the termination of this Agreement.

9.5 Books and Records. Each Party shall keep complete and accurate records and memoranda of its actions taken hereunder and shall maintain such records, memoranda, and data as may be necessary to determine or justify with reasonable accuracy any item relevant to this Agreement.

9.6 Creditworthiness. Both Parties shall at all times maintain Acceptable Creditworthiness. If a Party no longer maintains Acceptable Creditworthiness, it may be required to provide Performance Assurance to the other Party in accordance with Section 9.9.

9.7 Acceptable Creditworthiness. To maintain Acceptable Creditworthiness, a Party must not be in default of its obligations as set out in this Agreement and it must meet one of the following criteria:

(a) The Party has a credit rating of at least Baa2 (Moody's) or BBB (Standard and Poors); or

(b) The Party provides its most recent financial statements to the other Party and is able to demonstrate that the Party meets standards that are at least equivalent to the standards underlying credit ratings of Baa2 (Moody's) or BBB (Standard and Poors); provided that if the Party is found not to be creditworthy by the other Party based upon an evaluation made in a commercially reasonable manner, the other Party will inform the Party of the reasons for that determination; or

(c) The Customer, which is a borrower from the RUS, has a Times Interest Earned Ratio of 1.05 or better and a Debt Service Coverage Ratio of 1.00 or better in the

most recent calendar year, or is maintaining the Times Interest Earned Ratio and Debt Service Coverage Ratio as established in the Customer's RUS mortgage.

9.8 Performance Assurance. "Performance Assurance" shall mean one of the following: (a) as to either Party, an unconditional and irrevocable Letter of Credit or a cash deposit equal to the amount that the Parties estimate that the Customer would owe to the Company for the three months of the calendar year in which the Customer's bills are expected to be the highest; or (b) as to the Customer, advance payment for each month's service based on the Company's estimate of the amount that the Customer will owe for that month, paid not less than five (5) days prior to the beginning of the month, and trued up at the time of the second succeeding month's advance payment to reflect the actual amount the Customer owes. The Company shall pay interest on any prepayments made pursuant to this Section 9.8(b) at the rates established pursuant to 18 C.F.R. §35.19a(a)(2)(iii).

9.9 Failure to Maintain Acceptable Creditworthiness. If either Party that originally demonstrates Acceptable Creditworthiness subsequently fails to maintain Acceptable Creditworthiness, such Party shall notify the other Party within five (5) Business Days of the date on which it no longer meets the Acceptable Creditworthiness standards described herein. Upon receipt of such notice, the other Party may give written notice ("Assurance Notice") demanding that the affected Party provide Performance Assurance to the other Party within thirty (30) Business Days of the date of receipt of the Assurance Notice.

9.10 Failure to Provide Performance Assurance. If the affected Party under Section 9.9 fails to provide Performance Assurance as described herein, the non-affected Party may suspend performance hereunder to the affected Party, provided that the non-affected Party notifies the affected Party in writing of its intent to suspend performance at least thirty (30) days prior to the date on which performance is to be suspended. The non-affected Party's right to suspend performance hereunder shall be in addition to its right to take action for default pursuant to Section 12 hereof.

SECTION 10 - CONTINUITY OF SERVICE

10.1 The Company shall exercise due care and diligence to supply electric capacity and Corresponding Energy hereunder free from interruption; provided, however, the Company shall not be responsible for any failure to supply electric capacity and Corresponding Energy, nor for interruption, reversal or abnormal voltage of the supply, if such failure, interruption, reversal or abnormal voltage results from an event of Force Majeure. Each Party shall promptly notify the other Party of any applicable communication equipment failure or signal problem. The Parties shall work together to avoid any interruption of service upon a failure of electronic transmittal of a schedule.

SECTION 11 - REPRESENTATIONS AND WARRANTIES

11.1 Representations and Warranties.

(a) As a material inducement to enter into this Agreement, each Party represents and warrants to the other Party that as of the Effective Date of the Agreement, subject to the conditions precedent provided for in Section 3.2:

(i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and has all requisite power and authority to enter into this Agreement and consummate the transactions contemplated herein;

(ii) it has all regulatory authorizations necessary for it to legally perform its obligations hereunder or will obtain such authorizations in a timely manner prior to the time that performance by such Party which requires such authorization becomes due;

(iii) the execution, delivery, and performance of this Agreement will not conflict with or violate any rule, statute or regulation of any court, agency, or regulatory body, or any contract, agreement or arrangement to which it is a party or by which it is otherwise bound;

(iv) subject to subsection (ii) above, this Agreement constitutes a legal, valid, and binding obligation of such Party enforceable against it in accordance with its terms, and each Party has all rights such that it can and will perform its obligations to the other Party in conformance with the terms and conditions of this Agreement, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and general principles of equity;

(v) it has negotiated and entered into this Agreement in the ordinary course of its respective business, in good faith, for fair consideration on an arm's-length basis;

(vi) it is not bankrupt and there are no proceedings pending or being contemplated by it, or to its knowledge, threatened against it which would result in it being or becoming bankrupt;

(vii) there are no pending, or to its knowledge, threatened legal proceedings against it that could materially adversely affect its ability to perform its obligations under this Agreement.

EXCEPT AS PROVIDED HEREIN, THE PARTIES MAKE NO OTHER REPRESENTATIONS, WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, RELATING TO THEIR PERFORMANCE OR OBLIGATIONS UNDER THIS AGREEMENT, AND EACH PARTY DISCLAIMS ANY

IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

SECTION 12 - DEFAULT

12.1 Default. Each of the following shall be an "Event of Default" under this Agreement:

(a) The failure of either Party to make any payment to the other Party as required by this Agreement within thirty (30) days of the date when such payment became due and payable.

(b) The failure by either Party to perform any obligation to the other Party under this Agreement, other than the obligations described in Sections 12.1(a) and (g) herein.

(c) The insolvency or bankruptcy of a Party or its inability or admission in writing of its inability to pay its debts as they mature, or the making of a general assignment for the benefit of, or entry into any contract or arrangement with, its creditors other than the Company's or the Customer's mortgagee, as the case may be.

(d) The application for, or consent (by admission of material allegations of a petition or otherwise) to, the appointment of a receiver, trustee or liquidator for any part or for all or substantially all of its assets, or its authorization of such application or consent, or the commencement of any proceedings seeking such appointment against it without such authorization, consent or application, which proceedings continue undismissed or unstayed for a period of sixty (60) days.

(e) The authorization or filing by any Party of a voluntary petition in bankruptcy or application for or consent (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction or the institution of such proceedings against any Party without such authorization, application or consent, which proceedings remain undismissed or unstayed for sixty (60) days or which result in adjudication of bankruptcy or insolvency within such time.

(f) Any representation or warranty made by the defaulting Party in the Agreement shall prove to have been false in any material respect when made.

(g) The failure of a Party to provide Performance Assurance as required by Section 9.9.

12.2 Cure Period for Certain Events of Default. When an Event of Default occurs under Section 12.1(b), the non-defaulting Party will give the defaulting Party written notice of the Event of Default and an opportunity to remedy the Event of Default. If the Event of Default shall not have been fully cured within thirty (30) days from the date of the notice or other mutually agreed upon time, the non-defaulting Party shall have all the rights it may have at law or in equity, including the right to terminate this Agreement and to

the claim, suit or action) by the Party claiming the indemnity. Each indemnifying Party shall also reimburse the other Party for any reasonable expenses and attorney's fees incurred by such Party as a result of the Party's failure to comply with this provision.

16.3 Other Indemnification. In addition to the provisions of Section 16.2, each Party shall indemnify, defend and hold harmless the other Party and its officers, directors, trustees, affiliates, agents, members, employees, contractors, and subcontractors from and against any Claims arising in any manner directly or indirectly connected with or growing out of, the operation of its own facilities, except to the extent such Claims are the result of the other Party's, its agents', servants', or employees' negligence or willful misconduct, or the failure to perform and/or comply with any material provisions of this Agreement. Claims shall mean all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting liabilities, including, but not limited to, losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement. This Section 16.3 shall not be applicable to any Claims arising directly or indirectly from or out of any event, circumstance, act or incident associated with the Transmission Provider's obligations to deliver power and other services under the OATT to the Customer or under any other agreement for transmission-related services between the Transmission Provider and Customer.

SECTION 17 - FORCE MAJEURE

17.1 Force Majeure. Neither Party shall be in breach of this Agreement for failure to perform its obligations hereunder if such failure is the result of a Force Majeure Event. A "Force Majeure Event" under this Agreement shall mean an event, occurrence, or circumstance beyond the reasonable control of, and without the fault or negligence, of the Party claiming Force Majeure, including but not limited to, acts of God, labor disputes (including strikes), acts of public enemies, orders or absence of necessary orders and permits of any kind that affect performance hereunder and which have been properly applied for, from the Government of the United States or from any State or Territory, or any of their departments, agencies or officials, or from any civil or military authority, extraordinary delay in transportation, lightning, epidemics, earthquake, fires, hurricanes, tornadoes, storms, floods, washouts, drought, war, civil disturbances, explosions, sabotage, injunction, blight, famine, blockade, quarantine; breakage of machinery or equipment; or any other similar cause or event which is beyond the claiming Party's reasonable control and which, wholly or in part, prevents the Party claiming Force Majeure from performing its obligations under this Agreement. Mere economic hardship of a Party does not constitute Force Majeure. Notwithstanding the above, the Company may not use this Force Majeure provision to interrupt or curtail service under this Agreement unless (a) Company has already interrupted all of its non-Firm Native Load; and (b) it is at the same time interrupting or curtailing its Firm Native Load, so that the service hereunder is equivalent thereto, as provided for in this Agreement.

17.2 Mitigation. A Party suffering an occurrence of Force Majeure shall remedy with all reasonable dispatch the cause or causes preventing such Party from carrying out its duties

and obligations as required in this Agreement; provided, that the settlement of strikes, lockouts, or other industrial disturbances affecting a Party's facilities shall be entirely within the discretion of the Party, and it shall not be required to make settlement of strikes, lockouts, or other industrial disturbances by acceding to the demands of the opposing party or parties when such course is unfavorable in the judgment of such Party.

SECTION 18 - MISCELLANEOUS

18.1 Curtailment and Interruption. Whenever the integrity of the Company's system or the supply of the electricity is threatened by conditions on its system or on the systems with which it is directly or indirectly interconnected, or whenever it is necessary or desirable to aid in the restoration of service, the Company may in conformance with Prudent Electric Utility Practice and its obligations under this Agreement and with the application of standards no more interruptive than service to its other Firm Native Load customers, curtail or interrupt electric capacity or energy deliveries hereunder or reduce voltage for such deliveries to some or all of the service to Customer and such curtailment, interruption or reduction in and of itself shall not constitute negligence by the Company and absent negligence or willful misconduct the Company shall not be liable for such curtailment, interruption or reduction in service under this Agreement.

18.2 Governing Law. This Agreement is made under and shall be governed by, and construed in accordance with, the laws of the State of Florida without giving effect to any principles of conflicts of laws where the giving of effect to any such principles would result in the laws of any other state or jurisdiction being applied to this Agreement.

18.3 Dispute Resolution. Except as provided in Sections 14.1 and 15, the dispute resolution procedures set forth in this Section 18.3 shall govern the resolution of any dispute, controversy or claim arising out of, under, or relating to this Agreement (a "Dispute") unless mutually agreed to by the Parties. The Parties agree to first negotiate in good faith to attempt to resolve any Dispute that arises under this Agreement. In the event that the Parties are unsuccessful in resolving a Dispute through such negotiations, the controversy may be submitted to binding arbitration as provided below.

(a) Good-Faith Negotiations. The process of "good-faith negotiations" requires that each Party set out in writing to the other its reason(s) for adopting a specific conclusion or for selecting a particular course of action, together with the sequence of subordinate facts leading to the conclusion or course of action. The Parties shall attempt to agree on a mutually agreeable resolution of the Dispute. Upon request, each Party shall promptly make available to the other such information, including existing studies and raw data, to the extent related to the Dispute. The related information to be made available must include both studies and raw data that support the position advocated and existing studies and raw data that are related to, but do not support, the position advocated. A Party shall not be required as part of these negotiations to provide any information which is confidential or proprietary in nature unless it is satisfied in its discretion that the other Party will maintain the confidentiality of and will not misuse such

(c) Confidentiality and Non-Admissibility of Statements Made in, and Evidence Specifically Prepared for, Good Faith Negotiations and Binding Arbitration. Each Party hereby agrees that all statements made in the course of good faith negotiations, as contemplated in Section 18.3(a), and in binding arbitration, as contemplated in Section 18.3(B), shall be confidential, and shall not be disclosed to or shared with any third parties (other than the arbitrator, potential arbitrators or any other person whose presence is necessary to facilitate the negotiation and/or binding arbitration process). Furthermore, each Party agrees that any documents or data specifically prepared for use in good faith negotiations and/or binding arbitration shall not be disclosed to any third party, except those parties whose presence is necessary to facilitate the binding arbitration process. Each Party agrees and acknowledges that no statements made in or evidence specifically prepared for good faith negotiations, under Section 18.3(a) shall be admissible for any purpose in any subsequent binding arbitration.

18.4 No Amendments Without Consent. Except as otherwise provided herein, this Agreement shall not be amended, changed, altered, or modified except by a written instrument duly executed by an authorized representative of each Party.

18.5 Assignment.

(a) Except as provided herein, neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may not be unreasonably withheld. Any assignment of this Agreement in violation of this Section shall be, at the option of the non-Assigning Party, void.

(b) Either Party ("the "Assigning Party") may, without the consent of the other Party:

(i) transfer or assign this Agreement to an affiliate of the Assigning Party which affiliate's creditworthiness is equal to or higher than that of the Assigning Party based either on Standard and Poor's or Moody's ratings or, if the affiliate does not have such a rating, on credit assurances reasonably acceptable to the non-Assigning Party, provided that such affiliate is financially and operationally capable, including maintaining the same level of reliability and delivering capacity and energy at the same monthly charges as the Customer would have received had the assignment not been made, of performing its obligations under this Agreement; or

(ii) transfer or assign its rights and obligations under this Agreement to any person or entity (the Assignee) succeeding to all or substantially all of the Assigning Party's assets, provided that the Assignee's creditworthiness is equal to or higher than that of the Assigning Party and it is financially and operationally capable of performing its obligations under this Agreement.

(c) An assignment or transfer pursuant to this Section 18.5 may be made only if:

(i) any required regulatory approvals that may be required are obtained in connection with such transfer or assignment;

(ii) the Assignee agrees in writing to be bound by the terms and conditions of this Agreement; the Assignee has Acceptable Creditworthiness as defined in Section 9.7 or provides Performance Assurance pursuant to Section 9.8; and the Assignee is financially and operationally capable of performing its obligations under this Agreement; and

(iii) the non-Assigning Party is not obligated to perform its obligations hereunder in favor of the Assignee to the extent the Assignee shall not perform the obligations of the Assigning Party.

(d) If either Party terminates its existence as a corporate entity by merger, acquisition, sale, consolidation or otherwise, or if all or substantially all of such Party's assets are transferred to another person or business entity, without complying with this Section 18.5, the other Party shall have the right, enforceable in a court of competent jurisdiction, to enjoin the first Party's successor from using the property in any manner that interferes with, impedes, or restricts such other Party's ability to carry out its ongoing business operations, rights, and obligations.

(e) Notwithstanding the foregoing, the Customer's interest in this Agreement may be assigned, transferred, mortgaged or pledged by Customer without Company's consent for the purpose of creating a security interest for the benefit of the United States of America, acting through RUS (and thereafter the RUS, without the approval of Company or its Lenders, may cause the RUS's interest in this Agreement to be sold, assigned transferred or otherwise disposed of to a third party).

18.6 Successors. This Agreement shall be binding on and inure to the benefit of the Parties and their respective successors, assigns, and legal representatives, including any entity with which or into which a Party may be merged or which may succeed to the assets or business of a Party.

18.7 Title. Title to and risk of loss related to the energy sold hereunder shall transfer from Company to Customer at the Point(s) of Receipt. Company warrants that it will deliver capacity and Corresponding Energy hereunder free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Point(s) of Receipt.

18.8 Agency. Nothing in this Agreement is intended or shall be deemed to constitute a partnership, agency, or joint venture relationship between the Company and the Customer.

18.9 Headings. Section Headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

18.10 Contract Construction. For purposes of construing this Agreement, it is agreed and understood that both Parties are equally responsible for drafting same.