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** CERTIFIED CRIMINAL TRIAL
LAWYER BY THE FLORIDA BAR
BOARD OF CERTIFICATION

September 9, 2008

Via Hand Delivery

Ann Cole
Office of Commission Clerk
Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 080193-EQ

Dear Ms. Cole:

Enclosed are the original and 7 copies of the Wheelabrator Technologies, Inc.'s Protest of Order No. PSC-08-0544-TRF-EQ and Petition for Formal Hearing. Also enclosed is an extra copy for you to stamp and return to me. Thank you for your assistance. Please contact me with any questions.

Sincerely,

Vicki Gordon Kaufman
Vicki Gordon Kaufman

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of
renewable energy tariff and
standard offer contract, by
Florida Power & Light Company

Docket No. 080193-EQ

Filed: September 9, 2008

COMMISSION
CLERK

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**WHEELABRATOR TECHNOLOGIES, INC.'S
PROTEST OF ORDER NO. PSC-08-0544-TRF-EQ AND
PETITION FOR FORMAL HEARING**

Wheelabrator Technologies, Inc. (Wheelabrator), by and through undersigned counsel, pursuant to sections 120.569 and 120.57, Florida Statutes, and rules 25-22.029 and 28-106.201, Florida Administrative Code, hereby protests Order No. PSC-08-0544-TRF-EQ (PAA Order), issued August 19, 2008, and requests the initiation of formal proceedings:

AGENCY AFFECTED AND DOCKET

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

The Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
The Docket No. is: 080193-EQ

PETITIONER'S INFORMATION

2. The name and address of Petitioner is:

Wheelabrator Technologies, Inc.
4 Liberty Lane West
Hampton, NH 03842
(603) 929-3345 (voice)

3. Copies of all correspondence, pleadings, notices, orders and other documents in

this docket should be provided to:

Jon C. Moyle, Jr.
Vicki Gordon Kaufman
Anchors Smith Grimsley
118 North Gadsden Street

Tallahassee, FL 32301
(850) 681-3828 (Voice)
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NOTICE OF RECEIPT OF ACTION

3. Wheelabrator received notice of this proceeding through review of the Commission's website.

BACKGROUND

4. Section 366.91, Florida Statutes, was passed to "promote the development of renewable energy resources in this state." Section 366.92, Florida Statutes, states that "[i]t is the intent of the Legislature to promote the development of renewable energy [and to] protect the economic viability of Florida's existing renewable energy facilities." Section 366.91(3) requires each public utility to "continuously offer a purchase contract to producers of renewable energy."

5. In the 2008 legislative session, House Bill 7135 was passed. This new legislation again emphasizes the Legislature's commitment to the support and development of renewable resources to meet the state's growing energy needs.

6. On April 1, 2008, Florida Power & Light Company (FPL) filed a standard offer contract and tariffs. At its Agenda Conference held on July 29, 2008, the Commission preliminarily approved FPL's filing.

7. As Wheelabrator stated at that Agenda Conference, many of the terms and conditions of FPL's proposed standard offer contract fail to comply with the Legislature's direction that "to promote the development of renewable energy [and to] protect the economic viability of Florida's existing renewable energy facilities." And in fact, many of the provisions

act as deterrents to such development and do not support and promote the development of renewable energy in Florida.

STATEMENT OF SUBSTANTIAL INTERESTS

7. Wheelabrator is a wholly-owned subsidiary of Waste Management, Inc. It operates nineteen (19) renewable energy facilities throughout the United States. Wheelabrator developed, built, and operated the first commercially successful waste-to-energy plant in the United States.

8. In Florida, Wheelabrator owns and operates two (2) waste-to-energy facilities in Broward County, which generate 134 MWs. Wheelabrator built and operates the City of Tampa's waste-to-energy facility, which generates 22 MWs. Wheelabrator owns and operates a waste wood/tires/landfill gas-to-energy facility in Auburndale, which generates 50 MWs. Wheelabrator has a strong interest in developing additional renewable energy projects in Florida.

9. As a company engaged in the production of renewable energy in Florida through base load waste-to-energy generation, Wheelabrator has a substantial interest in ensuring that FPL's proposed renewable energy contract and tariff comply with the statute and rules, is fair and reasonable, and will result in the development of renewable energy in Florida. Because the proposed contract and tariff contain unreasonable and burdensome terms, Wheelabrator's substantial interests will be affected by the action the Commission takes in this docket.

10. Wheelabrator's substantial interests will be directly affected by the Commission's decision in this proceeding and are the type of interests that this proceeding is designed to protect. *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So.2d 478 (Fla. 2nd DCA 1981).

DISPUTED ISSUES OF MATERIAL FACT AND LAW

11. Wheelabrator's allegations of disputed issues of material fact and law include, but are not limited to, the following:

a. FPL's performance requirement that the renewable generator maintain the very high 97% availability to receive full capacity payments unfairly penalizes renewable generators, discourages the development of renewable resources, is inconsistent with its proposed energy payments, and should be rejected. (Section 3);

b. FPL's committed capacity testing procedures requiring that the generator results be based on a test period of twenty-four (24) hours is commercially unreasonable, discourages the development of renewable resources, and should be rejected. (Section 6.2);

c. FPL's ability to dictate a generator's maintenance schedule and limit the number of maintenance days and when such maintenance should occur is commercially unreasonable, discourages the development of renewable resources, and should be rejected. (Section 8.2);

d. FPL's requirement that the renewable generator "perform a trip-test after each overhaul of the Facility's turbine, generator, or boilers," is commercially unreasonable for a waste-to-energy unit, discourages, the development of renewable resources, and should be rejected. (Section 8.4.2);

e. FPL's ability to curtail a renewable resource and "not accept or purchase energy" when "incurring costs greater than those which it would incur if it did not make such purchases" is unilateral and one-sided, discourages the development of renewable resources, and should be rejected. (Section 8.4.6);

f. FPL's ability to require a renewable generator to reduce output during certain hours, and the number of times FPL may make such a request is commercially unreasonable for a base load renewable resource, i.e., waste-to-energy, and should be rejected. (Section 8.4.8);

g. FPL's proposed contract contains an excessive time frame for FPL to exercise its right of first refusal as to tradable renewable energy credits (TRECs). This provision is commercially unreasonable, discourages the development of renewable resources, and should be rejected. This contractual provision also violates rule 25-17.280, Florida Administrative Code, which prohibits FPL from placing any conditions on a renewable generator's ownership of TRECs. (Section 17.6.2).

STATEMENT OF ULTIMATE FACTS

10. Without waiving or relinquishing the right to allege additional ultimate facts should they become known through discovery or otherwise, Wheelabrator's allegations of ultimate facts include the following:

a. FPL's proposed standard offer contract contains terms and conditions that are onerous, burdensome, unilateral, and commercially unreasonable; and

b. FPL's proposed standard offer contract will not encourage the development of renewable resources in the state as required by section 366.91, Florida Statutes, and the Commission's rules, but rather will discourage such development.

STATEMENT OF SPECIFIC RULES AND STATUTES REQUIRING REVERSAL OF THE AGENCY'S DECISION

11. Wheelabrator is entitled to relief pursuant to:

a. Sections 120.569 and 120.57, Florida Statutes, which entitle Wheelabrator to a hearing when its substantial interests are affected as they are in this matter;

b. Sections 366.91, 366.92, Florida Statutes, which require the promotion of the development of renewable energy in the state; and

c. Rule 25-17.200-17.310, Florida Administrative Code, via which the Commission is to require and encourage the development of renewable energy in the state and protect the viability of Florida's existing renewable energy facilities;.

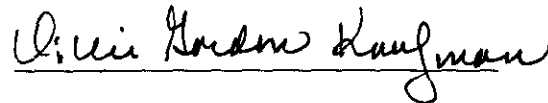
RELIEF REQUESTED

WHEREFORE, Wheelabrator requests that:

a. The Commission require FPL to adopt terms and conditions in its standard offer contract and tariff which are reasonable and which will encourage the development of renewable energy in the state of Florida pursuant to the mandate of sections 366.91, .92, Florida Statutes, and rule 25-17.200, Florida Administrative Code;

b. The Commission immediately set this matter for evidentiary hearing; and

c. The Commission grant such other relief as appropriate.



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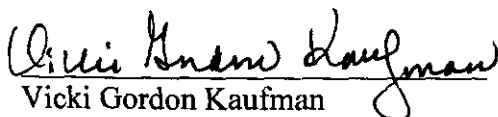
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail and U.S. mail this 9th day of September, 2008, to the following:

Jean Hartman
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399
jhartman@psc.state.fl.us

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Vicki Gordon Kaufman