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 ORDER NO. PSC-09-0031-PHO-EQ ISSUED: January 15, 2009

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on January 8, 2009, in Tallahassee, Florida, before Commissioner Nancy Argenziano, as Prehearing Officer.

APPEARANCES:

R. WADE LITCHFIELD, ESQUIRE, and BRYAN S. ANDERSON, ESQUIRE, 700 Universe Boulevard, Juno Beach, Florida 33408-0420
On behalf of Florida Power & Light Company (FPL).

VICKI GORDON KAUFMAN, ESQUIRE, and JON C. MOYLE, ESQUIRE, 118 North Gadsden Street, Tallahassee, Florida 32301
On behalf of Wheelabrator Technologies, Inc. (WTI).

JEAN HARTMAN, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Florida Public Service Commission (Staff).

PREHEARING ORDER

I. CASE BACKGROUND

Since January 1, 2006, each investor-owned electric utility (IOU), as well as each electric municipal utility subject to the Florida Energy Efficiency and Conservation Act (FEECA), has been required to continuously offer to purchase capacity and energy from specific types of renewable sources. Section 366.91(3), Florida Statutes (F.S.), specifies that the contracts for purchase must be based on the utility's full avoided cost as defined in Section 366.051, F.S., and provide a term of at least ten years. Rules 25-17.200 through 25-17.310, Florida Administrative Code (F.A.C.), implement the statutes.

On April 1, 2008, Florida Power & Light Company (FPL or Company) filed its petition requesting our approval of a standard offer contract and associated tariffs based on its Ten-Year Site Plan for 2008-2017. While the Ten-Year Site Plan indicates that the West County Combined Cycle generating unit is planned, the Company expected to file a need determination for that unit in early April and thereby remove it from consideration as an avoidable unit. The

petition for the West County Unit was filed on April 8, 2008. The remaining next avoided unit using fossil fuel is a combined cycle unit with an expected in-service date of June 1, 2014.

On May 21, 2008, FPL filed revised tariff sheets with updated economic and financial assumptions for our approval. The Company explained that cost projections were updated in working on the costs associated with other projects. These revisions reflect the updated projections and bring the Standard Offer Contract in line with other current filings.

We approved FPL's proposed standard offer contract and associated revised tariffs and found that they were in compliance with Rules 25-17.200 through 25-17.310, F.A.C. by Order No. PSC-08-0544-TRF-EQ, issued August 19, 2008. On September 9, 2008, Wheelabrator Technologies, Inc. timely filed a petition for formal hearing.

This Order is issued pursuant to the authority granted by Rule 28-106.211, F.A.C., which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

II. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 366, F.S.. This hearing will be governed by said Chapter and Chapters 25-6, 25-17, 25-22, and 28-106, F.A.C., as well as any other applicable provisions of law.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, F.S., to

protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, F.S., at the hearing shall adhere to the following:

(1) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

(2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

Witness	Proffered By	Issues #
Direct		
Korel M. Dubin	FPL	1 - 4, & 11
John C. Dalton	WTI	1 - 7, & 10
Rebuttal		
Korel M. Dubin	FPL	1 - 11

VII. BASIC POSITIONS

FPL: FPL has requested approval of its revised Standard Offer Contract and a revised accompanying Rate Schedule QS-2 ("FPL's 2008 Standard Offer Contract"), prepared in compliance with Rule 25-17.0832, Florida Administrative Code ("F.A.C."), Rules 25-17.200 through 25-17.310, F.A.C., and Sections 366.91 and 366.92 of the Florida Statutes ("F.S."). Consistent with these legal and regulatory requirements, FPL's 2008 Standard Offer Contract is based on the avoidance of a 1219 MW combined cycle natural gas-fired generating unit with an expected in-service date of June 1, 2014. FPL's 2008 Standard Offer Contract complies with the applicable Commission rules and Florida statutes, and is consistent with past decisions of the Commission. From the outset, it is important to note that the Standard Offer Contract cannot and should not attempt to encompass all terms and provisions desired by a particular renewable generator. Additional or different provisions, which are tailored to a particular renewable generator's needs, can be negotiated, using the Standard Offer Contract as a baseline to begin negotiations.

During 2005 the State of Florida enacted Section 366.91, Fla. Stat., which states in relevant part that:

> "(3) On or before, January 1, 2006, each public utility must continuously offer a purchase contract to producers of renewable energy. The commission shall establish requirements relating to the purchase of capacity and energy by public utilities from renewable energy producers and may adopt rules to administer this section. The contract shall contain payment provisions for energy and capacity which are based upon the utility's full avoided costs, as defined in Section 366.051; however, capacity payments are not required if, due to the operational characteristics of

> the renewable energy generator or the anticipated peak and off-peak availability and capacity factor of the utility's avoided unit, the producer is unlikely to provide any capacity value to the utility or the electric grid during the contract term. Each contract must provide a contract term of at least 10 years. Prudent and reasonable costs associated with a renewable energy contract shall be recovered from the ratepayers of the contracting utility, without differentiation among customer classes, through the appropriate cost-recovery clause mechanism administered by the commission."

Section 366.91, F.S.

Rule 25-17.250, F.A.C., directs that each investor-owned electric utility file with the Commission a standard offer contract or contracts for the firm capacity and energy from renewable generating facilities and small qualifying facilities with a design capacity of 100 kW or less. By April 1 each year, FPL must file a standard offer contract based on the next avoidable fossil fueled generating unit, for each technology type associated with planned units listed in FPL's Ten-Year Site Plan. Currently, all FPL fossil-based units having an in-service date prior to 2014 are in construction or have been approved through a need determination proceeding. The remaining units in the generation expansion plan are combined cycle units, so providing a standard offer contract based upon the operating and economic characteristics of a combined cycle unit satisfies the requirement for an offer based on each technology associated with planned units.

FPL's 2008 Ten-Year Site Plan contains a next avoidable fossil fueled generating unit within the meaning of Rule 25-17.250, F.A.C., which is a 1219 MW combined cycle Mitsubishi "G" class unit with an expected in-service date of June 1, 2014. Accordingly, the economic and operating characteristics of this combined cycle unit provide key parameters for FPL's 2008 Standard Offer Contract, consistent with Florida statutes and the Commission's rules. The detailed formula for computing FPL's full avoided costs is contained in the tariff sheets that have been submitted for approval, and is the same formula used for determining avoided costs in the Commission's rules.

In addition to complying with the applicable Commission rules, FPL's 2008 Standard Offer Contract also reflects certain updates to sections, consistent with considerations raised by White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate White Springs ("PCS Phosphate") in Docket No. 070235-EQ with respect to PEF's 2007 Renewable Standard Offer Contract docket. While that docket did not involve FPL's 2008 Standard Offer Contract, FPL reviewed PCS Phosphate's considerations and, without being required to do so, revised its own Standard Offer Contract in order to (i) grant the Qualified Seller "no less than 10

Business Days" notice when requiring the Qualified Seller to "validate the Committed Capacity of the facility by means of a subsequent Committed Capacity Test;" and (ii) revise the contract assignment language to be more mutual. Furthermore, as stated on page 2 of Order No. PSC-08-0544-TRF-EQ:

> "Subsequent to the filing of the 2008 standard offer for renewable generation, FPL requested approval for the Cape Canaveral and Riviera Conversion projects. Based on having sufficient available generation to meet load requirements during construction, FPL's conversion projects would make it possible to delay the 2014 in-service date for the designated avoided unit. That alteration notwithstanding, the standard offer continues with an avoided capacity date of 2014. If the avoided capacity were moved to a later date, the capacity payments for the renewable generator would be reduced. In addition, the Company has updated the fuel price projections and calculations based upon the most recent analysis, with the result that capacity and energy payments have increased. These modifications to the contract make for an increased revenue stream for the renewable generator."

FPL is also a strong supporter of purchasing cost-effective renewable resources. For 2008, through November, FPL has purchased 1,145,999 MWH of renewable energy under firm capacity contracts, with firm generating capacity of 157.6 MW. Additionally through November 2008, FPL purchased approximately 341,039 MWH of renewable energy from As-Available producers, with generating capacity of 126.05 MW. FPL is always interested in adding to these purchases of renewable energy upon terms and conditions beneficial to its customers and in compliance with applicable laws and regulations. Furthermore, FPL continues to encourage existing and potential renewable generators by facilitating dialogue with these entities and offering for negotiation contract terms that favor development of renewable resources.

FPL submits that its 2008 Standard Offer Contract satisfies all of the requirements contained in Sections 366.91 and 366.92, as well as the applicable Commission rules. FPL's petition for approval of its Renewable Energy Tariff and Standard Offer Contract should be granted.

WTI: The development of renewable energy in Florida and the lessening of Florida's dependence on natural gas is an important state goal that has been articulated by the Governor and the Florida Legislature. The overarching principle which must guide the Commission in its review of FPL's standard offer contract is the Legislature's direction in enacting the statutes related to renewable energy development in this state.

Section 366.91(1), Florida Statutes, states:

> The Legislature finds that it is in the public interest to promote the development of renewable energy resources in this state. Renewable energy resources have the potential to help diversify fuel types to meet Florida's growing dependency on natural gas for electric production, minimize the volatility of fuel costs, encourage investment within the state, improve environmental conditions, and make Florida a leader in new and innovative technologies.

To that end, section 366.91(3) requires FPL to have a standard offer contract continuously available. This requirement is not just idle verbiage – every enactment of the Legislature is intended to have meaning – but is a requirement intended to make a meaningful contract for the purchase of renewable energy available for renewable generators. The fact that contracts may also be negotiated does nothing to obviate the requirement for a viable standard offer contract.

Despite these critical legislative mandates, FPL's standard offer contract is unreasonable and unworkable for renewable facilities. It is a throwback to the 1970s PURPA era and is totally unsuited for the task that the Legislature has assigned to it. Many of the decisions FPL seeks to rely upon relate to PURPA era projects and are not relevant to the Legislature's goals noted above. Nothing could make this clearer than the uncontroverted fact that since FPL was required by the Legislature to make a standard offer contract continuously available to renewable generators, not a single megawatt of power has been signed up under such contracts. This could not possibly be the outcome the Legislature had in mind in enacting the statute quoted above.

FPL does not deny that it has signed up *no* renewable generation under its standard offer contract. Its answer seems to be a shrug of the shoulders and an "invitation" to negotiate. However, this falls far short of what the statutes require. FPL must have in place a viable standard offer contract that generators can sign, not an unreasonable contract that gathers dust on a shelf.

Wheelabrator has carefully reviewed FPL's standard offer contract. It suggests the following revisions to make the contract a viable document for renewable generators:

- Given that energy payments are based on avoided costs, provisions 8.4.6 and 8.4.8 should be revised to compensate renewable developers when FPL constrains their energy production. Without compensation for foregone sales, renewable producers do not receive full avoided cost.

- The Committed Capacity Test in FPL's contract should be revised to take into account the intermittent operating profiles of renewable projects. A four-hour test period for biomass facilities should be adopted.

- The basis for renewable facilities receiving capacity payments should be revised to better recognize the capacity value that they offer. The capacity factor or Annual Capacity Billing Factor required to achieve full capacity payments should be set at 89% and the minimum capacity factor to receive any capacity payment should be set at 69%.

- The provisions in FPL's standard offer contract providing FPL with a right of first refusal for Tradable Renewable Energy Certificates (TRECs) should be eliminated to avoid any adverse impact on their market value and to comport with the Commission rule.

- The maintenance provisions in FPL's standard offer contract should be revised so that FPL does not have the unilateral right to dictate a generator's maintenance schedule.

- The trip test provisions of the standard offer contract should be revised to comport with the operating characteristics of renewable facilities.

These simple revisions will go a long way toward making FPL's standard offer contract one that is more appropriate to encourage the development of renewable facilities in the state as required by Florida Statutes.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

ISSUE 1: Does FPL's standard offer contract encourage the development of renewable energy pursuant to Sections 366.91 and 366.92, F.S.?

POSITIONS

FPL: Yes. (DUBIN) During 2007 the Commission, after an extensive series of workshops and hearings conducted during 2005 and 2006, adopted rules to implement the requirements of Section 366.91, F.S. These rules require the Investor Owned Utilities ("IOUs") to continuously make available Standard Offer Contracts based on a portfolio approach of utility fossil-fueled units; establish a methodology for calculating capacity payments using a value of deferral methodology based on the utility's full avoided costs and need for power; require IOUs to expand the capacity and energy payment options to facilitate the

financing of renewable generation facilities; allow for reopening the contract in the event of future carbon taxes; clarify ownership of transferable renewable energy credits; provide for an expedited dispute resolution process; and require annual reporting from all utilities. These rules strongly encourage the development of renewable resources in Florida, and provide a range of unilateral options to the renewable generator. FPL's 2008 Standard Offer Contract complies with all of these rules, and hence complies with F.S. 366.91 and encourages the development of renewable generation in the State. See, Direct Testimony of Korel M. Dubin, filed November 3, 2008 ("Dubin Direct"), p. 4, lines 11-23 and p. 5, lines 1-5.

WTI: No, FPL's contract discourages the development of renewable resources. In 2005, the Florida Legislature enacted legislation stating that "it is in the public interest to promote the development of renewable resources in this state" noting the many benefits of renewable resources. The Legislature went on to require that each public utility *must* continuously offer a contract to purchase renewable energy. This legislation makes it clear that renewable energy is a valuable resource which should be encouraged.

Despite this clear legislative direction, FPL's standard offer contract is a barrier to the development of renewable energy in this state. It frustrates the Legislature's attempts to bring the benefits of renewable energy to Florida. This is plainly illustrated by the fact that not a single megawatt of renewable energy has been signed up under the FPL standard offer contract. Clearly, such a contract does not encourage the development of renewable energy as the statute requires.

STAFF: Staff takes no position at this time.

ISSUE 2: Does FPL's standard offer contract protect the economic viability of existing renewable facilities pursuant to Section 366.92, F.S.?

POSITIONS

FPL: Yes. (DUBIN) As discussed with respect to Issue 1, the Commission through an extensive series of workshops, hearings, and rulemaking recently adopted rules to implement the requirements of Section 366.91, F.S. These rules require the Investor Owned Utilities ("IOUs") to continuously make available Standard Offer Contracts based on a portfolio approach of utility fossil-fueled units; establish a methodology for calculating capacity payments using a value of deferral methodology based on the utility's full avoided costs and need for power; require IOUs to expand the capacity and energy payment options to facilitate the financing of renewable generation facilities; allow for reopening the contract in the event of future carbon taxes; clarify ownership of transferable renewable energy credits; provide for an expedited dispute resolution process; and require

annual reporting from all utilities. See, Dubin Direct, p. 4, lines 11-23. These rules protect the economic viability of Florida's existing renewable energy facilities, and provide a range of unilateral options to the renewable generator. FPL's 2008 Standard Offer Contract complies with all of these rules, and hence complies with F.S. 366.91 and protects the economic viability of Florida's existing renewable energy facilities.

WTI: No. Not only does the Legislature require FPL to encourage the development of new renewable facilities, it also requires that the economic viability of existing facilities be protected. Wheelabrator has several renewable facilities already built in Florida, but the standard offer contract that FPL offers presents a barrier to such facilities rather than a viable commercial arrangement. No existing renewable facility has signed a standard offer contract with FPL.

STAFF: Staff takes no position at this time.

ISSUE 3: Is the requirement in FPL's standard offer contract that renewable generators must achieve availability of 97% to receive full capacity payments reasonable and consistent with Sections 366.91 and 366.92, F.S., Rule 25-17.0832, F.A.C. and Rules 25-17.200 through 25-17.310, F.A.C.?

POSITIONS

FPL: Yes. (DUBIN) The source of this requirement is that FPL's 2014 Combined Cycle ("CC") avoided unit has a projected annual Equivalent Availability of 97%, as shown on page 93, Schedule 9 of FPL's 2008 Ten Year Site Plan. In other words, the generating capacity of FPL's CC avoided unit is available to contribute to FPL's system reliability 97% of the hours in a year. By setting the performance requirement to a 97% Equivalent Availability factor in order for the Qualified Seller "QS" to receive full capacity payments (see payment provision C of Appendix B in FPL's 2008 Standard Offer Contract), FPL is ensuring that its customers receive the same level of reliability that they would receive from the CC avoided unit. This complies with applicable statutes and regulations, and is reasonable. See, Dubin Direct, p. 6, lines 4-23. p. 7, lines 1-13.

In addition, this provision is subject to negotiation to fit the characteristics of individual facilities and technologies. This is supported by the Commission statement in Order No. 12634 (page 7) in Docket No. 820406-EU (See KMD-2) that states "[a]t the outset, we wish to state that it is our preference that QFs and utilities negotiate individually tailored contracts. The rules we have adopted are intended to both encourage negotiated contracts and provide a fall back remedy in the event a contract cannot be negotiated."

WTI: No, the overarching principles that must guide the Commission in this docket are the statutory provisions set out in Issues 1 and 2 above – that is that standard offer contracts must encourage the development of renewable generation and protect the viability of existing renewable facilities. The requirement that a renewable facility achieve a capacity factor of 97% fails to meet that standard and fails to recognize that renewable resources with lower capacity factors provide capacity value to the system. And in fact, Wheelabrator's own current contracts with FPL contain much lower capacity factors, but the contracts provide great value to FPL and its ratepayers. The capacity factor to receive full capacity payments should be set at 89%.

STAFF: Staff takes no position at this time.

ISSUE 4: Is the requirement that the Equivalent Availability Factor ("EAF") be based on the expected EAF of FPL's next planned generating unit reasonable and consistent with Sections 366.91 and 366.92, F.S., Rule 25-17.0832, F.A.C. and Rules 25-17.200 through 25-17.310, F.A.C. ?

POSITIONS

FPL: Yes. (DUBIN) The EAF in FPL's 2008 Standard Offer Contract is a performance standard which is expressly based on the performance characteristics of FPL's avoided unit. This is consistent with Rule 25-17.0832(4)(e)8., F.A.C., which expressly requires that the "performance standards [in the Standard Offer Contract] shall approximate the anticipated peak and off-peak availability and capacity factor of the utility's avoided unit over the term of the contract." In addition, this provision is subject to negotiation to fit the characteristics of individual facilities and technologies.

WTI: No, the overarching principles that must guide the Commission in this docket are the statutory provisions set out in Issues 1 and 2 above – that is that standard offer contracts must encourage the development of renewable generation and protect the viability of existing renewable facilities. Because a renewable facility is unlikely to be able to meet the standards FPL seeks to impose on it, the contract is not consistent with the enabling statute.

Further, as Ms. Dubin notes in her rebuttal testimony, the EAF in the FPL standard offer contract is an "expected" value based on a unit which does not exist yet. In addition, the "expected" EAF exceeds the EAF of FPL's own units.

STAFF: Staff takes no position at this time.

ISSUE 5: Is the requirement in FPL's standard offer contract that renewable generators have

an Annual Capacity Billing Factor of at least 80% to receive capacity payments reasonable and consistent with Sections 366.91 and 366.92, F.S., Rule 25-17.0832, F.A.C. and Rules 25-17.200 through 25-17.310, F.A.C. ?

POSITIONS

FPL: Yes. (DUBIN) Under Appendix B of the Standard Offer Contract FPL requires that the REF meet an Annual Capacity Billing Factor ("ACBF") equal to or greater than 97% to receive 100% of the capacity payment and a minimum of 80% to receive any type of payment. In Order No. 12634 (pages 15 and 16) in Docket No. 820406-EU (See KMD-2) the Commission stated that "risk associated with the purchase of QF capacity should be explicitly recognized in the rate of payment so as to reduce the risk to the ratepayers." Rebuttal Testimony of Korel M. Dubin, filed December 23, 2008 ("Dubin Rebuttal"), p. 13, lines 5-12. In addition, this provision is subject to negotiation to fit the characteristics of individual facilities and technologies.

WTI: No, this requirement fails to encourage renewable generation because it ignores the fact that renewable facilities provide capacity value at much lower capacity factors than required in FPL's standard offer contract. Section 366.91 provides that capacity payments are not required if the renewable generator is "unlikely to provide any capacity value." Thus, the statute plainly makes the point that capacity values below that recognized by FPL do provide capacity benefits and the renewable generator should be compensated on that basis. A renewable generator should be required to meet a minimum capacity factor of 69% to receive any capacity payment.

STAFF: Staff takes no position at this time.

ISSUE 6: Are provisions 8.4.6 and 8.4.8 of FPL's standard offer contract, that permit FPL to reduce output or not accept energy from renewable generators reasonable and consistent with Sections 366.91 and 366.92, F.S., Rule 25-17.0832, F.A.C. and Rules 25-17.200 through 25-17.310, F.A.C. ?

POSITIONS

FPL: Yes. (DUBIN) These two contract provisions are almost verbatim provided for under applicable Commission rules and past regulatory decisions. In addition, it is important to remember the concept that the Standard Offer Contract is modeled upon what customers would receive from a Next Planned Generating Unit. FPL would itself reduce output or curtail production from its next planned generating unit if necessary for reliability reasons, or due to availability of generation from a more cost-effective generating unit (or purchased power). These contract provisions are thus consistent with the underlying philosophy of the Standard

Offer Contract, which is to protect customers by providing for Standard Offer Contract service consistent with economic and operating characteristics of FPL's next planned generating unit. In addition, this provision is subject to negotiation to fit the characteristics of individual facilities and technologies. See, Dubin Rebuttal, pp. 6-8.

WTI: No. As to section 8.4.6, this provision is too broad and should be carefully crafted so as not to provide FPL with the open-ended ability to refuse to purchase from renewable facilities. Further, to the extent that such provisions remain in the contract, renewable facilities should be compensated during periods of curtailment based on lost energy margins.

Section 8.4.8 permits FPL to force a renewable generator to reduce output below its committed capacity up to 18 times per year. This arbitrary right should be subject to an economic test and FPL should compensate renewable generators during curtailment periods based on lost energy margins.

If purchases from a renewable provider are interrupted, as section 8.4.8 permits, then for that renewable provider to receive full avoided costs, it would need to have a capacity factor even greater than the 97% required in the contract. This is another example of how the standard offer contract requires renewable generators to outperform FPL's units if they are to achieve full avoided costs. Thus, this requirement is inconsistent with the requirement that the contract "contain payment provisions for energy and capacity which are based upon the utility's full avoided costs."

STAFF: Staff takes no position at this time.

ISSUE 7: Is the requirement in FPL's standard offer contract that committed capacity testing procedures be based on a test period of 24 hours reasonable and consistent with Sections 366.91 and 366.92, F.S., Rule 25-17.0832, F.A.C. and Rules 25-17.200 through 25-17.310, F.A.C.?

POSITIONS

FPL: Yes. (DUBIN) Under section 6.2 of the Standard Offer Contract FPL requires the renewable energy facility to base its committed Capacity Test on a test period of 24 hours. This provision is consistent with the committed Capacity Testing requirements that are characteristic of FPL's Next Planned Generating Unit, which is a modern combined cycle base load unit capable of operating reliably 24 hours per day, 7 days per week. The amount of money paid to a facility owner under a Standard Offer Contract is designed to purchase capacity and energy delivered on a reliability basis comparable to such a unit, consistent with the Commission's basic approach for Standard Offer Contracts. If a specific facility

cannot satisfy the reliability requirements and characteristics of the Next Planned Generating Unit, this can be a subject of negotiations.

WTI: No. This provision discourages the development of renewable generation because such a requirement fails to recognize that a renewable facility has inherently variable output due to its fuel source. Therefore, the Committed Capacity Test should be based on a short- duration test period that recognizes the intermittent nature of renewable facilities, such as a four-hour test period.

STAFF: Staff takes no position at this time.

ISSUE 8: Are the maintenance requirements in FPL's standard offer contract reasonable and consistent with Sections 366.91 and 366.92, F.S., Rule 25-17.0832, F.A.C. and Rules 25-17.200 through 25-17.310, F.A.C. ?

POSITIONS

FPL: Yes. (DUBIN) FPL's maintenance requirements are based on those of FPL's Next Planned Generating Unit, which in turn are based upon and consistent with manufacturers' recommendations and FPL's operating and maintenance practices. This provision is also supported by the Commission's statement in Order No. 24989 (page 19) in Docket No. 910004-EU that: "FPL must have the ultimate ability to reject a QF's maintenance schedule to prevent planned outages when FPL needs the capacity. The language in sections 6.1 and 6.2 of FPL's standard offer provides a mechanism for the QF and the utility to develop a mutually acceptable maintenance schedule. These sections allow the QF to perform its maintenance when it wishes, if possible. If the QF requests a maintenance schedule that would lessen FPL's reliability, FPL will advise the QF of an acceptable time period which is close to the one it requested. This approach is reasonable." Thus, a different maintenance schedule based on the characteristics of a renewable supplier's specific technology may be negotiated, but should not be required in the Standard Offer Contract.

WTI: No, the maintenance requirements in FPL's standard offer contract discourage renewable generation because they fail to take into account the nature of such generation. Maintenance outages must spread throughout the year to the greatest extent possible. FPL should not be given the unilateral ability to dictate maintenance schedules as its current contract provides. Thus, a renewable facility should be required to inform FPL before October 1st of each year of the duration and magnitude of any planned outages. The renewable generator should also be required to promptly update this schedule when changes are necessary and use best efforts to coordinate its scheduled outages with FPL. The renewable generator must retain the ability to set and maintain an outage schedule according

to the requirements of the equipment and its solid waste customer base. The current FPL standard offer contract does not allow any such flexibility.

STAFF: Staff takes no position at this time.

ISSUE 9: Are the trip test requirements in FPL's standard offer contract reasonable and consistent with Sections 366.91 and 366.92, F.S., Rule 25-17.0832, F.A.C. and Rules 25-17.200 through 25-17.310, F.A.C. ?

POSITIONS

FPL: Yes. (DUBIN) These requirements are consistent with manufacturers' recommendations and FPL's operating and maintenance practices for combined cycle units like FPL's Next Planned Generating Unit, which is the basis of the Standard Offer Contract as required by the referenced Commission rules. Different trip test requirements based on the characteristics of a renewable supplier's specific technology may be negotiated, but should not be required in the Standard Offer Contract.

WTI: No, the trip test requirements in FPL's standard offer contract discourage renewable generation because they fail to take into account the nature of such facilities.

STAFF: Staff takes no position at this time.

ISSUE 10: Is the requirement in FPL's standard offer contract giving it a right of first refusal as to tradable renewable energy credits (TRECs) reasonable and consistent with Sections 366.91 and 366.92, F.S., Rule 25-17.0832, F.A.C. and Rules 25-17.200 through 25-17.310, F.A.C.?

POSITIONS

FPL: Yes. (DUBIN) The TREC provision is a valuable right protecting FPL's customers. Under section 17.6.2 of the Standard Offer Contract FPL has a right of first refusal with respect to any and all bona fide offers to purchase any RECs received by the REF and FPL agrees to exercise that option within 30 days of receiving notification by the REF of a bona fide offer. In Order No. PSC-07-0492-TRF-EQ (page 5) in Docket No. 070234-EQ (See KMD-5), the Commission notes that a right of first refusal "will insure that Florida's ratepayers enjoy all of the attributes associated with renewable generation without imposing a financial penalty to the owner of the renewable generation facility." FPL's 30 day provision for the right of first refusal permits FPL a reasonable period of time to conduct due diligence and assess the value of bona fide offers for TRECs, and

respond to the seller. This period and time provision permits FPL to ensure that it protects its customers interests by only exercising the right of first refusal if it is in the best interests of FPL customers, based upon assessment of then-existing TREC market conditions. Finally, if this provision does not meet the requirements of an individual seller of capacity and energy, it is like other provisions subject to potential negotiation within the context of an individual contract. See, Dubin Rebuttal, p. 17, lines 5-24, p. 18, line 1.

WTI: No, this provision is in direct conflict with rule 25-17.280, Florida Administrative Code. That rule provides that:

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

FPL's attempt to encumber the tradable renewable energy credit with a 30-day right of first refusal is in direct conflict with the rule. It adversely affects the value of the REC and will make it more difficult for a renewable provider to receive full market value for the REC.

STAFF: Staff takes no position at this time.

ISSUE 11: Should the standard offer contract filed by Florida Power & Light Company be approved?

POSITIONS

FPL: Yes. As discussed with respect to each of the issues listed above, FPL's 2008 Standard Offer Contract complies fully with applicable statutes and Commission rules, and is reasonable.

WTI: No. FPL's standard offer contract should not be approved. Rather, the Commission should require FPL to make the changes outlined above and in the testimony of Mr. Dalton and resubmit the contract for approval.

STAFF: Staff takes no position at this time.

ISSUE 12: Should this docket be closed?

POSITIONS

FPL: Yes.

WTI: The docket should be closed after FPL has revised its standard offer contract in the manner Wheelabrator has outlined and the Commission has approved it.

STAFF: Staff takes no position at this time.

IX. EXHIBIT LIST

Witness	Proffered By		Description
Direct			
John C. Dalton	WTI	JCD-1	Resume
John C. Dalton	WTI	JCD-2	Equivalent Availability Factors for FPL CCGTs
Rebuttal			
Korel M. Dubin	FPL	KMD-1	Dalton Deposition Transcript
Korel M. Dubin	FPL	KMD-2	Excerpts from Commission Order No. 12634
Korel M. Dubin	FPL	KMD-3	Excerpt from Commission Order No. 13247
Korel M. Dubin	FPL	KMD-4	Excerpt from Commission Order No. 24989
Korel M. Dubin	FPL	KMD-5	Excerpt from Commission Order No. PSC-07-0492-TRF-EQ
Korel M. Dubin	FPL	KMD-6	Excerpt from FERC Order issued October 1, 2003, Docket No. EL03-133-000
Korel M. Dubin	FPL	KMD-7	Excerpt from Ontario Power Authority Standard Offer Program Rules

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XI. PENDING MOTIONS

There are no pending motions at this time.

XII. PENDING CONFIDENTIALITY MATTERS

Florida Power & Light Company's Request for Confidential Classification of the confidential portions of the information provided in response to Wheelabrator's First Request for Production of Documents (Nos. 3, 6, and 7), dated November 18, 2008.

XIII. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 80 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 80 words, it must be reduced to no more than 80 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time.

XIV. RULINGS

Opening statements, if any, shall not exceed ten minutes per party.

It is therefore,

ORDERED by Commissioner Nancy Argenziano, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Nancy Argenziano, as Prehearing Officer, this 15th day of January, 2009.

NANCY ARGENZIANO
Commissioner and Prehearing Officer

(SEAL)

JEH

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.