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March 10, 2008

Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
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Re: *Rebuttal Testimony of David W. Gammon to be filed in Docket No. 070235-EQ*

Dear Ms. Cole:

Enclosed please find an original and fifteen copies of the Rebuttal Testimony of David W. Gammon, on behalf of Progress Energy Florida, Inc., to be filed in Docket No. 070235-EQ.

Copies have been served to all other parties and staff, as shown on the attached

Certificate of Service, in accordance with Order No. PSC-07-0962-PCO-EQ.

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Sincerely,

Lisa C. Scoles

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Rebuttal Testimony of David W. Gammon, on behalf of Progress Energy Florida, Inc. was served by U.S. mail or hand delivery this 10th day of March 2008, to the following:

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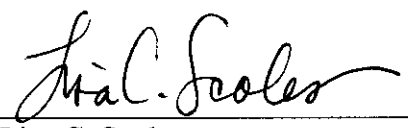
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Lisa C. Scoles

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: March 10, 2008

**REBUTTAL TESTIMONY OF
DAVID W. GAMMON**

**ON BEHALF OF
PROGRESS ENERGY FLORIDA, INC.**

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1 **I. INTRODUCTION**

2

3 **Q. Please state your name, position and business address.**

4 **A.** My name is David W. Gammon. I am a Senior Power Delivery Specialist for
5 Progress Energy Florida, Inc. (“PEF” or “the Company”). My business address is
6 P.O. Box 14042, St. Petersburg, Florida 33733.

7

8 **Q. Did you file direct testimony in this case?**

9 **A.** Yes, I did.

10

11 **Q. Have you reviewed the testimony and exhibits filed by Martin Marz, the witness**
12 **testifying for White Springs Agricultural Chemicals, Inc., d/b/a/ PCS Phosphate**
13 **– White Springs (“PCS Phosphate”)?**

14 **A.** Yes, I have.

15

16 **Q. Did you agree with Mr. Marz’s testimony?**

17 **A.** No, I do not. The theme of Mr. Marz’s testimony that PEF’s Standard Offer Contract
18 does not encourage renewable energy development and his characterization of PEF’s
19 Standard Offer Contract as an “industry-type” contract that two parties can choose to
20 utilize if it fits their needs are simply not true, as explained in detail below. PEF’s
21 Standard Offer Contracts are contracts that are mandated and pre-approved by the
22 Public Service Commission (“PSC”). PEF is required to accept a signed Standard
23 Offer Contract from a counterparty without any negotiation, unless it can be shown

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1 that the supplier is not financially or technically viable; or, it is unlikely that the
2 committed capacity and energy would be available by the date specified in the
3 Standard Offer Contract. In contrast, an industry-type contract, as suggested by Mr.
4 Marz, provides a forum for mutual negotiation where two parties can agree upon a
5 contract that fits their needs. Either party can decide that part of the industry-type
6 contract may not work for them and negotiate changes. Mr. Marz's suggestion that
7 PEF's Standard Offer Contract should be a "one size fits all" document without
8 regard for the fact that PEF must accept it without negotiation is both impractical and
9 unrealistic.

10
11 **II. PURPOSE OF STANDARD OFFER CONTRACT**

12
13 **Q. Do you agree with Mr. Marz that PEF's Standard Offer Contract does not**
14 **encourage the development of renewable energy?**

15 **A.** No, I do not. Mr. Marz has a fundamental misconception regarding the Standard
16 Offer Contract. It is not a form contract with fill-in-the-blanks. Instead, it is a firm
17 offer that PEF and its customers are obligated to make available, to enter into without
18 negotiations, and to make payments under. As such, it is necessary that the Standard
19 Offer Contract – both as a whole and within its specific provisions – be prepared in
20 such a way as to protect PEF's customers. With this understanding, and
21 acknowledging that the PSC has recognized these protections as appropriate for
22 PEF's customers, the provisions of the Standard Offer Contract are reasonable.

1 Further, because the Standard Offer Contract is offered to all renewable
2 producers with a broad range of sizes, fuel types, types of generation, geographical
3 location, and performance characteristics, its terms must be broad enough to cover all
4 possible circumstances; thus, some of its provisions may be inappropriate for a
5 particular project or type of supplier and may require revision to meet a specific
6 supplier's needs. PEF's Standard Offer Contract provides a good baseline of
7 acceptable terms and conditions for energy producers to work with, and, if necessary,
8 to revise in order to address the unique concerns of renewable suppliers. In PEF's
9 recent experiences with Florida Biomass Group, LLC and Biomass Gas & Electric,
10 changes to the Standard Offer Contract were successfully negotiated to accommodate
11 the unique nature of these projects. In summary, Mr. Marz's theoretical contentions
12 that PEF's Standard Offer Contract somehow inhibits renewable energy contracts are
13 belied by actual fact and experience.

14
15 **Q. Mr. Marz states that specific details of PEF's avoided unit, such as its location,**
16 **are not specified in PEF's 2007 Ten Year Site Plan ("TYSP"). How do you**
17 **respond?**

18 **A.** The location was not specified because at the time the 2007 TYSP was filed, the
19 determination had not been made. However, in the Standard Offer Contract, the
20 calculation of avoided capacity payments and all necessary characteristics, including
21 the location of the next generating unit of each generation type (base-load,
22 intermediate, or peaker) in the TYSP, are specified. Thus, Mr. Marz's observation is

1 nothing more than a “red herring” that has no impact on the proper application of
2 PEF’s Standard Offer Contract.

3
4 **III. PRICE TERMS**

5
6 **Q. Explain how PCS Phosphate is mistaken in alleging that PEF’s required**
7 **availability factor of 71% is inconsistent with the avoided unit and with the**
8 **operation of PEF’s existing combined cycle units.**

9 **A.** The mistake can be seen in Mr. Marz’s understanding of the purpose of a capacity
10 payment. In his testimony, Mr. Marz states that in his understanding, a capacity
11 payment is “simply a payment made to reserve the right to call upon a particular asset
12 to provide the payer with service when required.” That is not correct with respect to
13 this Standard Offer Contract; nor is it correct with respect to most qualifying facilities
14 (“QFs”) or renewable energy contracts in Florida. The Standard Offer Contract can
15 be characterized as a “must-take” contract. That is, PEF does not have the right to
16 call on the capacity in a Standard Offer Contract when PEF chooses. Rather, PEF
17 “must-take” and pay for energy and capacity whenever the renewable facility is
18 generating. But, in order to be eligible for capacity payments, the renewable
19 generator must be available to provide generating capacity in a manner similar to the
20 capacity that would be available from the avoided unit. The availability factor of the
21 avoided unit will be 91% of all hours and so that is the capacity factor required for the
22 renewable generator to receive the full capacity payment. The capacity payment is
23 reduced if the availability of the renewable generator is less than 91% but at least

1 71%. If the capacity factor is less than 71%, then the renewable supplier is not
2 providing the capacity necessary to avoid the unit and therefore should not receive a
3 capacity payment.

4 Mr. Marz's comment that the availability factors are unreasonable in light of
5 the capacity factors of PEF's existing combined cycle units is also misplaced. The
6 generation in PEF's fleet is dispatchable, whereas the generation provided under a
7 Standard Offer Contract is not. PEF has the ability to start or stop its various
8 generating units depending on PEF's system economics and reliability criteria. This
9 "dispatchability" accounts for the weighted average capacity factor of the existing
10 combined cycle units being less than 91% and for the capacity factor of the avoided
11 unit being less than 91%. The avoided unit will be available for dispatch 91% of all
12 hours, but for economic and reliability reasons maybe dispatched less often. PEF
13 could have chosen to require the renewable supplier to have the same capacity factor
14 as the avoided unit, but the renewable supplier would have been required to be
15 dispatchable. That is, the renewable energy supplier would have been required to start
16 or stop generating depending upon PEF's system economics and reliability criteria.
17 Furthermore, once the renewable energy supplier was dispatched on, it may have
18 been required to vary its output to match PEF's changing load. PEF felt that it would
19 be much easier for the renewable energy supplier to simply operate whenever it
20 could. This can be seen by the fact that PEF has entered into well over 20 contracts
21 with QFs or renewable suppliers since the late 1980's and all have required capacity
22 factors based upon the projected availability of the avoided unit, and nearly all have

1 required capacity factors between 80% and 93%. This includes the recent contracts
2 with Florida Biomass Group LLC and Biomass Gas & Electric.

3

4 **Q. Do you have any comments regarding PCS Phosphate's position that a**
5 **renewable energy producer should be entitled to a full capacity payment if it**
6 **achieves an availability factor no less than the availability factor of the avoided**
7 **unit?**

8 **A.** Yes. I agree that a renewable energy producer should be entitled to a full capacity
9 payment when it achieves an availability factor equivalent to that of the avoided unit.
10 In this instance, the avoided unit's projected availability is 91%, so since the Standard
11 Offer Contract is not dispatchable and it is therefore presumed that the renewable
12 energy supplier will deliver to PEF whenever it is available to operate, this is the level
13 a renewable energy producer must achieve to receive a full capacity payment. This
14 presumption that the renewable energy supplier will deliver to PEF whenever it is
15 able to operate is meant to encourage renewables by eliminating the need to dispatch
16 their output thereby reducing their operational requirements.

17

18 **IV. NON-PRICE TERMS**

19

20 **A. Renewable Energy Credits ("RECs")**

21 **Q. Mr. Marz alleges that PEF's Standard Offer Contract provision 6.2 specifying**
22 **that PEF has the right of first refusal to purchase RECs and setting a price floor**
23 **is unreasonable and should be deleted. Do you agree?**

1 A. No, I do not. This provision simply allows PEF the right to purchase the RECs and to
2 pay what anyone else would pay. It should be immaterial to the renewable generator
3 to whom the RECs are sold if a fair market price is paid by the purchaser. Rule 25-
4 17.280, F.A.C., does not preclude a Standard Offer Contract from containing a
5 provision granting a utility the right of first refusal. In fact, at the January 9, 2007,
6 Agenda Conference at which the rule was adopted, PSC staff stated that utilities could
7 include a right of first refusal provision in the Standard Offer Contract. Further, it
8 just seems reasonable that if PEF's ratepayers are paying a renewable supplier for its
9 energy and capacity, then they should also have the right to purchase renewable
10 attributes at a market price rather than possibly being forced to purchase renewable
11 attributes elsewhere, possibly out of state. I would note Section 6.2, found on Sheet
12 No. 9.417 of the Standard Offer Contract, requires PEF to respond to a bona fide offer
13 for the purchase of the RECs within 30 days so if PEF does not choose to purchase
14 the RECs, the renewable generator or QF can sell to another party. Finally, the
15 renewable energy producer can negotiate different terms than those contained in the
16 Standard Offer Contract. PEF has done so a number of times, most recently in its
17 contracts with the Florida Biomass Group and Biomass Gas & Electric.

18
19 **B. Capacity Test Periods**

20 **Q. Please explain how PCS Phosphate is in error in alleging that the capacity**
21 **testing provisions are predicated upon a combined cycle unit and ignore the**
22 **distinctive features and requirements of renewable energy producers.**

1 **A.** In order for PEF to avoid constructing a generating facility, it has to know that the
2 replacement capacity can reliably be expected to replace that generating facility. A
3 requirement that the replacement capacity be able to operate reliably over a 24 hour
4 period is a reasonable test and is actually less than the reliability testing that would be
5 required of the avoided unit. If a supplier cannot meet this requirement then it is not
6 avoiding a combined cycle unit and should not be paid as if it was avoiding the unit.

7

8 **Q.** **Mr. Marz suggests that Section 8.2 be revised to make the Committed Capacity**
9 **Test results based on the manufacturer’s recommendations for testing the**
10 **facility or other agreed-upon procedures, to require results be adjusted to**
11 **reference environmental conditions and to delete the requirement for a 24**
12 **consecutive hour test period and uses PEF’s agreement with Vandolah as an**
13 **example. How do you respond?**

14 **A.** Again, Mr. Marz misunderstands the purpose of the Standard Offer Contract and the
15 basis on which capacity payments are made. The Standard Offer is a firm offer that
16 PEF and its customers are obligated to take without revision or negotiation and
17 which, accordingly, must be constituted to protected PEF’s customers. The Standard
18 Offer Contract “avoids” a combined cycle unit and the capacity to be provided under
19 the contract should be able to operate in a similar manner as the combined cycle unit
20 would.

21 Mr. Marz erroneously makes comparisons to “tolling agreements” such as
22 PEF’s Vandolah Agreement. In a tolling agreement, the purchaser provides the fuel
23 and dispatches the facility to operate when needed for system reliability or when it is

1 economically justified. The Vandolah Agreement is fundamentally a different type of
2 agreement that was negotiated with compromises on many terms. It is unreasonable
3 to pick and choose terms from the Vandolah Agreement and conclude that PEF
4 should be amenable to these same terms in all Standard Offer Contracts.

5
6 **Q. Please comment on Mr. Marz's suggested revisions to Section 7.4 to give 10
7 business days notice of a capacity test, that the test be done only once per year,
8 and that PEF pay for the test energy generated during the test.**

9 **A.** The 10 day notice seems reasonable. Regarding the number of tests per year, it should
10 be noted that PEF has already lowered the requirement from six times per year to two
11 times per year. Two tests per year is reasonable and necessary. If PEF has some
12 reason to believe that a supplier cannot reliably delivery energy, PEF must not be
13 required to wait up to 12 more months to ask for a test, which is necessary to ensure
14 that PEF's ratepayers are not paying for capacity that is not being provided. Finally,
15 as seen on Sheet No. 9.456 of the Standard Offer Contract, PEF would already be
16 obligated to pay for the test energy generated during the test since the Standard Offer
17 Contract provides for energy payments for any energy received from the supplier
18 before or after the Avoided Unit In-Service Date.

19
20 **C. Right of Inspection**

21 **Q. Mr. Marz's testimony alleges that the right of inspection provision is not limited
22 and that inspection could occur at any time, day or night, and that notice is
23 needed so that appropriate personnel can escort inspectors for safety and**

1 **liability reasons. Exhibit MJM-1 indicates that the provision should be deleted**
2 **and replaced with a new paragraph in Section 20. Explain the purpose behind**
3 **this provision and whether you agree with revising it.**

4 **A.** While I do not agree with deleting the provision on page 15 of Exhibit MJM-1 and
5 replacing it wholesale with the suggested paragraph, some revision of the existing
6 provision, incorporating some elements of Mr. Marz’s suggested language on page 41
7 of Exhibit MJM-1 may be acceptable. The intention of this provision is not and has
8 never been for PEF to be a nuisance or hindrance to a facility by repeatedly and
9 unreasonably inspecting a facility and/or its books, or to inspect in the middle of the
10 night or during other periods when a renewable energy producer’s representative
11 would be unavailable. The intention is simply for PEF to have the ability to inspect
12 when necessary. Accordingly, a revision to allow PEF inspection of a renewable
13 energy producer’s books and/or facility upon reasonable notice and during normal
14 business hours is acceptable.

15

16 **IV. GENERAL TERMS AND CONDITIONS**

17

18 **Q.** **On page 18 of Mr. Marz’s testimony, he argues that many provisions of the**
19 **Standard Offer Contract are “one-sided,” giving PEF a particular right without**
20 **providing the renewable generator with a reciprocal right or imposing an**
21 **obligation on the provider without imposing a reciprocal obligation on PEF.**
22 **How do you respond to this argument?**

1 A. Mr. Marz himself acknowledges that there are times when it is appropriate to provide
2 one party with a right or obligation and not the other, and the purpose of the Standard
3 Offer Contract and the circumstances under which it is made constitutes one of those
4 times. First, this is a purchase contract under which the supplier must build, operate
5 and interconnect a generating facility, while the buyer pays for the delivered capacity
6 and energy. Moreover, the utility is subject to the PSC's regulatory authority and is
7 required by law and regulations to purchase capacity and energy pursuant to the
8 contract. Cost recovery is assured through prior approval of the Standard Offer
9 Contract or PSC approval of a negotiated contract.

10 Unlike the utility, the renewable generator is not subject to the pervasive
11 jurisdiction of the PSC, so performance under the contract must be ensured by
12 contract provisions such as completion security, conditions precedent,
13 creditworthiness, and representations and warranties.

14 Finally, Mr. Marz's many references to the Edison Electric Institute Master
15 Power Purchase and Sale Agreement, the North American Energy Standards Board
16 Base Contract for the Sale and Purchase of Natural Gas, and the International Swaps
17 and Derivatives Association's ISDA Master Agreement are inapplicable. As
18 explained previously, these are not examples of firm offer contracts that must be
19 accepted by PEF without further negotiations. Therefore, the terms contained in these
20 agreements are irrelevant.

21
22
23

1 **A. Performance Security**

2 **Q. Mr. Marz suggests that Section 11.1 of the Standard Offer Contract, Completion**
3 **Performance Security, be revised to require collateral upon satisfaction of the**
4 **Conditions Precedent and until completion of the facility and demonstration that**
5 **it can deliver the amount of capacity and energy specified. What is currently**
6 **required and do you agree with this revision?**

7 **A.** Currently, the Standard Offer Contract requires the security be obtained simultaneous
8 with the execution of the Standard Offer Contract and maintained throughout the term
9 of the contract. Performance securities are needed throughout the term of the
10 contract, beginning at its execution, to help ensure that if a supplier can no longer
11 meet its obligations under the contract, then the utility has funds available to cover a
12 portion of the replacement cost of energy needed to serve PEF customers. Without
13 these provisions, the entire risk of default would be borne by PEF's customers, rather
14 than by the party that is not meeting its obligations under a purchase power contract.
15 Therefore, I do not agree with this revision.

16

17 **Q. Please explain what would happen if, as PCS Phosphate suggests, the**
18 **performance security was “associated with the expected level of loss.”**

19 **A.** Typically, the required performance security amount does not cover all the costs of
20 the replacement energy, but merely offsets some of the costs that are otherwise borne
21 by PEF's customers. If the performance security truly covered the expected level of
22 loss, as PCS Phosphate suggests, the amounts specified in PEF's Standard Offer
23 Contract would have to be significantly increased. The magnitude of the required

1 increase could be very large. For instance, if a renewable supplier signed a Standard
2 Offer Contract for 100 MW with a 25 year term and then defaulted in contract-year 4,
3 PEF would have to purchase and/or build 100 MW of capacity to provide energy for
4 the remaining 21 years to replace the energy not delivered by the renewable supplier.
5 Further, even if only the replacement cost is considered until another facility could be
6 built, the security amount would have to be much larger.

7

8 **B. Creditworthiness, Default, Representations and Warranties**

9 **Q. Mr. Marz suggests adding a new section entitled “creditworthiness” after**
10 **Section 11, which would require both parties to maintain acceptable**
11 **creditworthiness or provide performance assurance. Is this new section**
12 **desirable?**

13 **A.** No, this new section is neither necessary nor desirable. Creditworthiness is relevant
14 to the issue of a party’s ability to perform under the contract, which for PEF means
15 the ability to pay for the capacity and energy delivered. PEF’s ability to pay is
16 addressed through the fact that the Standard Offer Contract is pre-approved by the
17 PSC and therefore eligible for cost recovery from PEF customers through a cost
18 recovery clause, making the creditworthiness of PEF irrelevant as it relates to
19 Standard Offer Contracts. Further, as a regulated company, the PSC has oversight
20 over PEF’s financial condition, which is not true for renewable generators. The
21 suggested provision is undesirable because it implies the need for further performance
22 assurances that are, in fact, inferior to those already existing.

23

1 **Q. In his testimony, Mr. Marz alleges that PEF's default provisions in Section 14**
2 **are one-sided and suggests rewriting them to impose requirements upon PEF (in**
3 **14.1), to eliminate some with respect to renewable energy producers (in 14.2),**
4 **and to make some apply to both parties (15.11-15.13). How do you respond to**
5 **each of these changes?**

6 **A.** Once again, Mr. Marz fails to recognize that PEF's actions and activities are subject
7 to the oversight of the PSC and the renewable generators are not. This results in
8 some asymmetry in the provisions of the Standard Offer Contract. Regarding default
9 provisions for PEF, these are not required because the PSC has already approved this
10 contract for cost recovery so, as explained previously, there are no issues about
11 payment or guarantees for payment. Since the default provisions are unnecessary, the
12 changes to Sections 15.11 through 15.13 are not needed. I will address the elimination
13 of the requirements for suppliers one-by-one from Mr. Marz's Exhibit MJM-1, Page
14 29.

- 15 • Sections 14.2 (a), (h) and (j) – These sections remain unchanged from the
16 previous language.
- 17 • Section 14.2 (b) - The added language regarding *force majeure* or waiver is not
18 necessary because the Capacity Delivery Date is the date that the supplier begins
19 receiving capacity payments, not a deadline. The deletion of the 71% would mean
20 that a supplier could deliver to PEF at a single digit capacity factor for years and
21 PEF's ratepayers would still be obligated to make capacity payments under this
22 contract. To be clear, the 71% capacity factor requirement is a 12-month rolling

1 calculation; in order to drop below 71%, a supplier would have been off-line for a
2 total of 106 days out of the last 365.

- 3 • Section 14.2 (c) - The inclusion of this as an Event of Default demonstrates the
4 importance of this provision to PEF. In the event of a hurricane, for instance,
5 there may not be any way to deliver fuel for a few days. This provision ensures
6 that PEF's ratepayers have capacity available in the event of such a situation.
- 7 • Sections 14.2 (d), (e), (f), (i), and (k) - These provisions are included elsewhere in
8 Mr. Marz's marked-up Standard Offer Contract. The other locations for these
9 provisions are unnecessary and these provisions should remain in this section.
- 10 • Section 14.2 (g) - This provision states that the supplier must get its permits by
11 the Completed Permits Date. If the supplier cannot obtain its permits then it will
12 not be able to make deliveries to PEF.

13
14 **Q. What is your response to Mr. Marz's suggestion of rewriting Section 14 to**
15 **consolidate those provisions within Section 14 that relate to the obligation of a**
16 **renewable energy producer to meet the avoided unit in-service date?**

17 **A.** Conceptually, I do not oppose simply moving existing language within Section 14, if
18 doing so would provide clarity to renewable energy producers. However, I believe
19 they are appropriately placed in the current contract.

20
21 **Q. PCS Phosphate suggests revising Section 12.1.4 to read that upon termination**
22 **arising from default on the part of the renewable energy producer, PEF shall be**

1 **entitled to retain only such portion of the termination fee sufficient to cover any**
2 **liability arising from early payments. Do you agree with the suggested change?**

3 **A.** No, the suggested change is not needed. In PEF's Standard Offer Contract, the
4 Termination Fee already only covers the liability arising from early payments in
5 accordance with Rule 25-17.0832(4)(e)10, F.A.C.

6

7 **Q.** **Do you agree with Mr. Marz that the representations and warranties in the**
8 **Standard Offer Contract should be revised so each party would be expected to**
9 **represent and warrant certain items?**

10 **A.** No, I do not. Again, as explained previously, because a Standard Offer Contract has
11 been pre-approved by the PSC and because PEF is subject to the PSC's oversight,
12 there is no need for the reciprocal changes to the representations and warranties that
13 Mr. Marz suggests. Also, it is again important to keep in mind that PEF must accept
14 the Standard Offer Contract without negotiation, so it is not unusual or unfair to have
15 certain provisions that only apply to the renewable energy producer.

16

17 **C. Assignment**

18 **Q.** **Mr. Marz alleges that the assignment provision in Section 20.4 is one-sided and**
19 **should be revised to permit assignment by either party with prior written**
20 **consent, with certain exceptions. How do you respond?**

21 **A.** Conceptually, PEF does not object to the changes in the assignment provision
22 proposed by Mr. Marz.

23

1 **D. *Force Majeure***

2 **Q. Do you have any comments regarding Mr. Marz’s testimony that the *force***
3 ***majeure* provisions in Section 18 do not correspond to what is found in the**
4 **existing master agreements or that they put a burden on the renewable energy**
5 **producer while giving PEF discretion?**

6 **A.** Yes. Again, because a Standard Offer Contract has been pre-approved by the PSC,
7 there is no need for the reciprocal changes to the *force majeure* language that
8 Mr. Marz suggests. As to the changes Mr. Marz suggests regarding PEF’s loss of
9 markets, PEF’s economic use, or the renewable supplier’s ability to sell at a higher
10 price, while I do not think these are necessary or significant, PEF has no objection to
11 incorporating these changes into the Standard Offer Contract. Similarly, because a
12 Standard Offer Contract has been pre-approved by the PSC, there is no need for the
13 reciprocal changes suggested by Mr. Marz, but PEF is willing to agree to these
14 changes. Mr. Marz also suggests that the standard of “conclusively demonstrate”
15 should be changed to “reasonably demonstrate.” Again, this change, while largely
16 immaterial in the context of the current contractual language, is acceptable to PEF.

17

18 **E. Conditions Precedent**

19 **Q. Mr. Marz has suggested several revisions to Section 5 relating to Conditions**
20 **Precedent. Please respond.**

21 **A.** I will respond to each of the suggested changes:

- 22 • Section 5(a) – The revisions making the conditions precedent provisions apply to
23 both parties are unnecessary. As explained previously, PCS Phosphate fails to

1 recognize that PEF's actions and activities are subject to the PSC's oversight and
2 the renewable generators are not, resulting in some asymmetry in the provisions
3 of the Standard Offer Contract.

- 4 • Sections 5(a)(i), (ii), (iii) and (iv) – Mr. Marz suggests that the form and
5 substance in which information is provided be at the renewable generator's sole
6 discretion. PEF does not object to this language as long as the provision that the
7 renewable supplier has to certify that the conditions are met remains intact.
- 8 • Section 5(v) – PEF does not agree with deleting the requirement that a renewable
9 generator obtain insurance as required by Section 17. This is further explained
10 below.
- 11 • Section 5(a)(vi) - Once again, because a Standard Offer Contract has been pre-
12 approved by the PSC and the PSC is subject to the oversight of the PSC, there is
13 no need for the delivery of constitutional documents and corporate resolutions
14 from PEF that Mr. Marz suggests.
- 15 • Section 5(a)(vii) – This section, as well as the last paragraph of Section 2, requires
16 the supplier to obtain QF status from the PSC and to maintain that status
17 throughout the term of the Standard Offer Contract. These provisions are
18 reasonable because the Standard Offer Contract is only available to QFs or
19 renewables that can be certified as a QF by the PSC. If a supplier cannot meet
20 these requirements then another type of contract would be more appropriate.
- 21 • Section 5(b) – As explained above, the revisions making the conditions
22 precedent apply to both parties are unnecessary.

1 • Section 5(c) – As explained above, the revisions making the conditions
2 precedent apply to both parties are unnecessary. PEF does not object to the
3 suggested change to allow termination of the contract with proper notice.

4 • Sections 5(d) and (e) – The provisions Mr. Marz suggests moving are properly
5 considered conditions precedent and therefore should be included in that section.

6 It is understood that failure to meet the conditions would amount to a default, so
7 there is some logic to his suggestions. However, it would seem the provisions
8 are appropriately placed in the current contract.

9
10 **F. Annual Plan and Electricity Production and Plant Maintenance Schedule**

11 **Q. Mr. Marz states that it is unreasonable to expect renewable energy producers to**
12 **meet the plan requirements set out in Section 10.1. Do you agree?**

13 **A.** No. A renewable energy producer should be able to provide an estimate of its
14 deliveries to PEF so that PEF can coordinate the planned outages of the supplier with
15 the outages of its own facilities and the other facilities under contract with PEF to
16 ensure at any given moment there is adequate generation to meet demand. Meeting
17 the plan requirements in this section is critical to PEF's responsibility and ability to
18 serve its customers and maintain system reliability. PEF must plan to serve its
19 customers in a reliable manner while minimizing cost. Without the requirement to
20 coordinate outages, a large renewable supplier could take an outage and jeopardize
21 PEF's system reliability or force uneconomic purchases or sales to accommodate the
22 renewable supplier's unforecasted outage or deliveries.

23

1 **Q. What is your response to Mr. Marz’s suggested revisions in Section 10.1 to**
2 **change “detailed plan” to “good faith estimate”?**

3 **A.** Conceptually, I do not oppose changing “detailed plan” to “good faith estimate” in
4 Section 10.1. A “good faith estimate” would include a maintenance schedule with
5 anticipated output levels during the maintenance periods.
6

7 **Q. Mr. Marz suggests the deletion of Section 10.2, alleging it fails to acknowledge**
8 **the distinctive nature of renewable energy technologies and is unduly restrictive.**
9 **How do you respond?**

10 **A.** This section is vitally important to PEF’s responsibility and ability to serve its
11 customers and maintain system reliability. PEF must coordinate the outages of its
12 units with those of its suppliers to ensure at any given moment there is adequate
13 generation to meet demand. By the deletion of Section 10.2, a large portion of PEF’s
14 generation could decide to take outages at the same time or a large supplier could
15 choose to take an outage during a time of high demand. These potential situations
16 would make it difficult for PEF to maintain system reliability. Obviously, PEF
17 coordinates the outages of its own generation, including combined cycle units, so that
18 the maximum amount of generation is available when it is likely to be most needed.
19 For instance, PEF would avoid planning outages of its own units during the heat of
20 the summer.
21

22 **Q. Do you agree with Mr. Marz’s deletion of Section 10.5.6, which requires a**
23 **renewable energy producer to have a three day fuel supply on-site?**

1 A. No, I disagree with deleting this provision. This provision is included in the Standard
2 Offer Contract because it helps to ensure that during an extreme operating event, the
3 supplier will be able to continue operating for 72 hours, using its on-site supply. The
4 provision should not be deleted just because some renewable generators, such as a
5 wind facility, cannot maintain a fuel inventory, because many renewable generators
6 can. A wind facility has the option of proposing the deletion of those sections and
7 negotiating other provisions that address its unique operating requirements. Further,
8 in my experience, it is likely that a supplier using biomass, municipal solid waste or
9 natural gas (remember the Standard Offer Contract applies to QFs as well) can meet
10 this requirement and for those types of facilities the maintenance of a fuel inventory
11 or a back-up fuel inventory is very important.

12

13 **G. Insurance**

14 **Q. Do you agree with PCS Phosphate's suggested deletion of Section 17, regarding**
15 **insurance?**

16 A. No. First, as indicated in my direct testimony, Rule 25-17.087(5), F.A.C., requires
17 insurance. That this rule governs the interconnection process and not the Standard
18 Offer Contract makes no difference to the requirement; it is still a condition that has
19 to be met prior to the interconnection and operation of the renewable generator's or
20 QF's facility. In addition, the PSC's recent amendments to Rule 25-6.065, F.A.C.,
21 which will be effective in April, require insurance for the interconnection of systems
22 greater than 10 kW. As part of the recent net metering and interconnection

1 rulemaking, the PSC thoroughly discussed and considered the issue of insurance and
2 determined that insurance is required for all but the smallest systems.

3

4 **H. Use of Interruptible Standby Service for Start-up**

5 **Q. Is PEF's requirement that a renewable energy producer utilize firm standby**
6 **service for start up unreasonable, as PCS Phosphate alleges?**

7 **A.** No, this provision is not unreasonable as it ensures the supplier's generation is
8 available when it is needed most. As I stated in my direct testimony, if the generating
9 unit was off-line when PEF interrupted its interruptible customers, then the generating
10 unit could not return to service because it would not have power from PEF. This
11 means the renewable supplier may not be able to provide power to PEF's customers
12 at exactly the time it is most needed because its standby service has been interrupted.
13 The standby service purchased must be firm stand-by service to assure there is power
14 available to start the unit.

15

16 **I. Energy**

17 **Q. Mr. Marz suggests revising Section 6.1 (which he moves to 9.1.3) to delete the**
18 **provision that no billing arrangement can result in a renewable energy producer**
19 **selling more than the Facility's net output. Do you agree with this change?**

20 **A.** No. The Federal Energy Regulation Commission ("FERC") has long held the position
21 that a QF cannot sell more than its net output as a QF. In a 1981 case involving
22 Occidental Geothermal, Inc., FERC found that the "power production capacity" of a
23 facility is "the maximum net output of the facility."

1 V. CONCLUSION

2 Q. Does this conclude your testimony?

3 A. Yes.