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**Subject:** Docket No. 080193-EQ  
**Attachments:** Wheelabrator PHS.pdf

In accordance with the electronic filing procedures of the Florida Public Service Commission, the following filing is made:

- a. The name, address, telephone number and email for the person responsible for the filing is:

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b. This filing is made in Docket No. 080193-EQ, In re: Petition for approval of renewable energy tariff and standard offer contract, by Florida Power & Light Company.

c. The document is filed on behalf of Wheelabrator Technologies, Inc.

d. The total pages in the document are 8 pages.

e. The attached documents are Wheelabrator Technologies, Inc.'s Prehearing Statement.

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1/5/2009

**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: JANUARY 5, 2009

**WHEELABRATOR TECHNOLOGIES, INC.'S PREHEARING STATEMENT**

Wheelabrator Technologies, Inc. (Wheelabrator), pursuant to Order No. PSC-08-0709-PCO-EQ, files its Prehearing Statement.

**A. APPEARANCES:**

JON MOYLE, JR.  
VICKI GORDON KAUFMAN  
Keefe Anchors Gordon & Moyle, PA  
118 North Gadsden Street  
Tallahassee, FL 32301

**On Behalf of the Wheelabrator Technologies, Inc.**

**B. WITNESSES:**

<u>Witness</u>	<u>Subject Matter</u>	<u>Issues</u>
John C. Dalton	Failure of FPL's standard offer contract to encourage renewable energy development, discussion of specific provisions which require revision	1-7, 10

**C. EXHIBITS**

<u>Exhibit</u>	<u>Witness</u>	<u>Description</u>
JCD-1	Dalton	Resume
JCD-2	Dalton	Equivalent Availability Factors for FPL CCGTs

## **D. STATEMENT OF BASIC POSITION**

### **Wheelabrator's Statement of Basic Position:**

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 (TREC)s 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.

#### **E. STATEMENT OF 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.?

**Wheelabrator:** 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.

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

**Wheelabrator:** 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.

**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.?

**Wheelabrator:** 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%.

**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.?

**Wheelabrator:** 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.

**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. ?

**Wheelabrator:** 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.

**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. ?

**Wheelabrator:** 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.”

**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.?

**Wheelabrator:** 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.

**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.?

**Wheelabrator:** 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 1<sup>st</sup> 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.

**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.?

**Wheelabrator:** 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.

**ISSUE 10:** Is the requirement in FPL's standard offer contract giving it a right of first refusal as to tradable renewable energy credits (TREC's) 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.?

**Wheelabrator:** 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.

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

**Wheelabrator:** 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.

**ISSUE 12:** Should this docket be closed?

**Wheelabrator:** 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.

**F. STIPULATED ISSUES**

**Wheelabrator:** None at this time.

**G. PENDING MOTIONS**

**Wheelabrator:** None at this time.

**H. PENDING REQUEST OR CLAIMS FOR CONFIDENTIALITY**

**Wheelabrator:** None at this time.

**I. OBJECTIONS TO A WITNESS' QUALIFICATION AS AN EXPERT.**

**Wheelabrator:** None at this time.

**J. REQUIREMENTS THAT CANNOT BE COMPLIED WITH.**

**Wheelabrator:** None at this time.

**K. OTHER**

**Wheelabrator:** None at this time.

s/ Vicki Gordon Kaufman

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Prehearing Statement was served via Electronic Mail and First Class United States Mail this 5<sup>th</sup> day of January, 2009, to the following:

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