

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

IN RE: Florida Power & Light Company's	)	Docket No: 080193-EQ
Petition for Approval of Renewable Energy	)	
Tariff and Standard Offer Contract	)	Filed: January 5, 2009

**FLORIDA POWER & LIGHT COMPANY'S PREHEARING STATEMENT**

Florida Power & Light Company ("FPL" or the "Company"), pursuant to Order No. PSC-08-0709-PCO-EQ, issued October 27, 2008, files with the Florida Public Service Commission (the "FPSC" or the "Commission"), its Prehearing Statement in connection with its petition for approval of renewable energy tariff and standard offer contract, and states:

**I. FPL WITNESSES**

**A. Direct Testimony**

<b>Witness</b>	<b>Subject Matter</b>	<b>Issues</b>
Korel M. Dubin Senior Manager of Purchased Power in the Resource Assessment and Planning Department Florida Power & Light Company (Direct)	FPL's 2008 Standard Offer Contract complies fully with applicable Florida statutes and Commission rules and is reasonable. The Standard Offer Contract encourages the development of renewable resources in the State. The rates in the Standard Offer Contract are at avoided cost, as required by law. The terms and conditions contained in the contract are reasonable and fair to the renewable generators and utility customers. The Standard Offer Contract terms and conditions are necessary to protect customers, and without these provisions customers would incur higher costs and may have less reliable service.	1, 2, 3, 4, & 11

## B. Rebuttal Testimony

Witness	Subject Matter	Issues
Korel M. Dubin Senior Manager of Purchased Power in the Resource Assessment and Planning Department Florida Power & Light Company (Rebuttal)	Rebuts the testimony of Wheelabrator's witness John C. Dalton. Explains how FPL's 2008 Standard Offer Contract complies with Florida statutes, regulations and regulatory policy concerning Standard Offer Contracts, focusing on the several specific considerations raised in Mr. Dalton's testimony. Demonstrates how Wheelabrator's suggestions for changes to FPL's 2008 Standard Offer Contract are contrary to well-established regulatory and statutory direction of the Commission and the Florida Legislature.	1-11

## II. EXHIBITS

Rebuttal Exhibit	Description	Sponsoring Witness
KMD-1	Dalton Deposition Transcript	Korel M. Dubin
KMD-2	Excerpts from Commission Order No. 12634	Korel M. Dubin
KMD-3	Excerpt from Commission Order No. 13247	Korel M. Dubin
KMD-4	Excerpt from Commission Order No. 24989	Korel M. Dubin
KMD-5	Excerpt from Commission Order No. PSC-07-0492-TRF-EQ	Korel M. Dubin
KMD-6	Excerpt from FERC Order issued October 1, 2003, Docket No. EL03-133-000	Korel M. Dubin
KMD-7	Excerpt from Ontario Power Authority Standard Offer Program Rules	Korel M. Dubin

In addition to the above pre-filed exhibits, FPL reserves the right to utilize any exhibit introduced by any other party. FPL additionally reserves the right to introduce any additional exhibit necessary for rebuttal, cross-examination or impeachment at the final hearing.

### **III. STATEMENT OF BASIC POSITION**

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.

#### **IV. 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.?

**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.

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

**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.

**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.?

**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.”

**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.?

**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.

**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.?

**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.

**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.?

**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.

**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.?

**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.

**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.?

**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.

**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.?

**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.

**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) 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.?

**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.

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

**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.

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

**FPL:** Yes.

**VI. POLICY ISSUES**

FPL believes issues 1, 2 and 11 involve issues of policy.

**VII. STIPULATED ISSUES**

There are no stipulated issues at this time.

**VIII. PENDING MOTIONS**

FPL has no motions that are pending.

**IX. PENDING REQUESTS FOR CONFIDENTIAL CLASSIFICATION**

FPL has no requests for confidential classification that are pending.

**X. REQUIREMENTS OF THE PREHEARING ORDER THAT CANNOT BE MET**

At this time, FPL is not aware of any requirements in the Order Establishing Procedure with which it cannot comply.

**XI. OBJECTIONS TO WITNESSES' QUALIFICATIONS**

At this time, FPL has no objections to a witness's qualifications as an expert.

Respectfully submitted this 5th day of January, 2009.

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By: s/ Bryan S. Anderson  
Bryan S. Anderson  
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**CERTIFICATE OF SERVICE**  
**Docket No. 080193-EQ**

I HEREBY CERTIFY that a true and correct copy of the forgoing has been furnished electronically and by U.S. mail this 5th day of January 2009 to the following:

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